

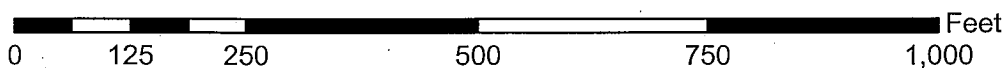
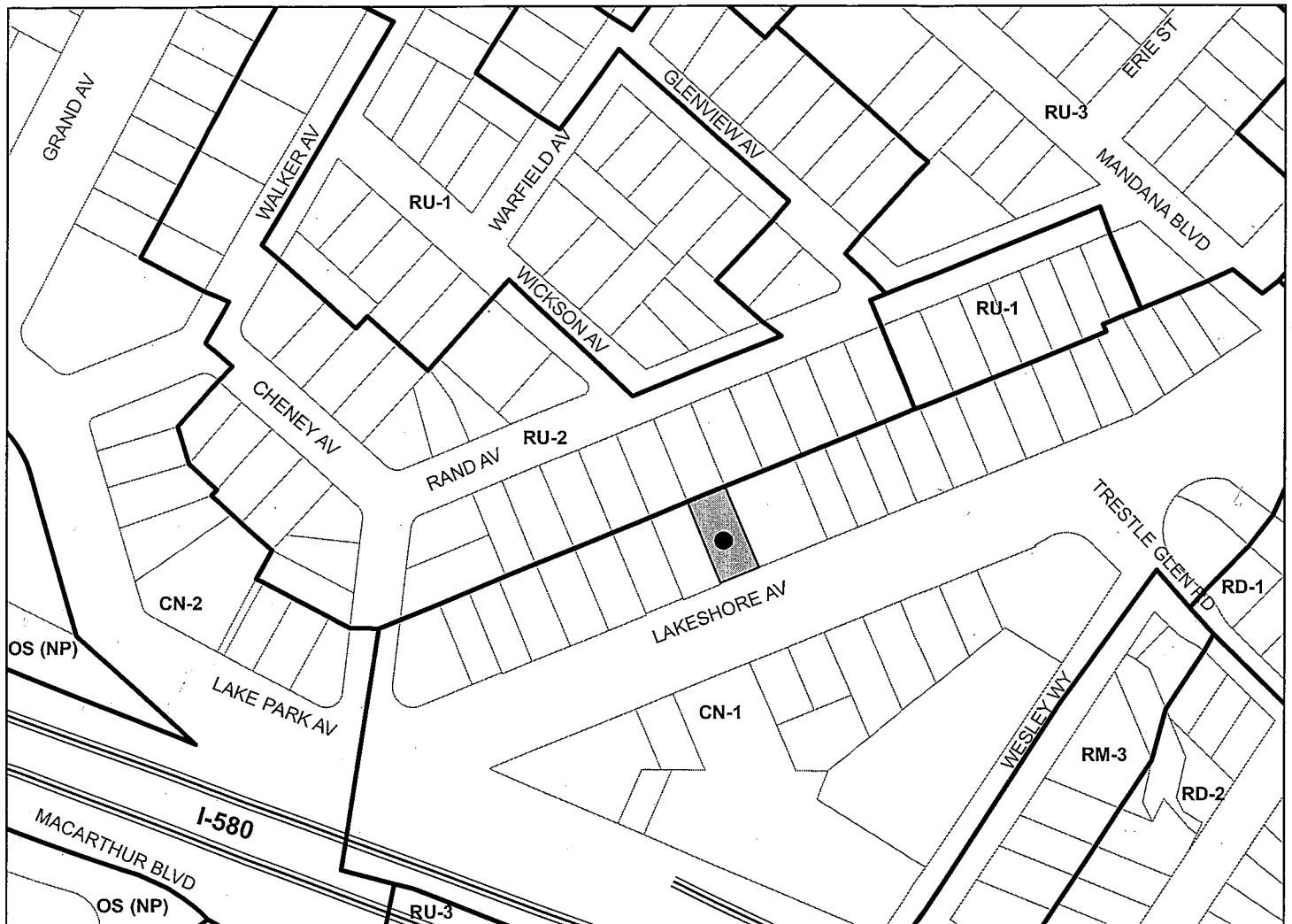
Location:	3271 Lakeshore Avenue (see map on reverse)
Assessor's Parcel Number:	011 -0838-017-00
Proposal:	To serve beer & wine for on-site consumption with meals in a limited service restaurant with a 10:00 pm closing time (Chipotle Mexican Grill).
Applicants/	Ms. Stacy Kroft / Harlan R. Faust Architects
Phone Number:	(402) 895-0878
Owners:	3275 Lake Shore LLC
Planning Permits Required:	Major Conditional Use Permit with additional findings to allow an Alcoholic Beverage Sales Commercial Activity; Findings for Public Convenience Or Necessity (PCN) to allow new Alcoholic Beverage Sales in an over-concentrated area; Variances to allow a new Alcoholic Beverage Sales outside of the Central Business District (1) within 1,000 feet of an existing location and (2) within 1,000 feet of civic uses (parks; school; church) in an over-concentrated area
General Plan:	Neighborhood Center Mixed Use
Zoning:	CN-1 Neighborhood Commercial Zone – 1
Environmental	Exempt, Section 15301 of the State CEQA Guidelines:
Determination:	Existing Facilities (operations); Section 15183 of the State CEQA Guidelines: Projects Consistent with a Community Plan, General Plan or Zoning
Historic Status:	Potential Designated Historic Property; Survey rating: Fd2+ (contributor, Area of Secondary Importance: Lakeshore Avenue Commercial historic district)
Service Delivery District:	III
City Council District:	2
Date Filed:	January 12, 2012
Staff Recommendation:	To Approve the application with Conditions
Finality of Decision:	<i>Appealable to City Council within 10 days</i>
For Further Information:	Contact case planner Aubrey Rose, AICP at (510) 238-2071 or arose@oaklandnet.com

SUMMARY

The applicants request a Major Conditional Use Permit and a Variance to allow sale of alcoholic beverages (beer and wine) at a Limited Service Restaurant (Chipotle Mexican Grill) located within 1,000-feet of other alcohol sales locations and civic uses (parks; school; church).

Staff recommends approval of the application subject to Conditions of Approval as described in this report.

CITY OF OAKLAND PLANNING COMMISSION



Case File: CMV12-004
Applicant: Ms. Stacy Kroft / Harlan R. Faust Architects
Address: 3271 Lakeshore Avenue
Zone: CN-1

PROPERTY DESCRIPTION

The property consists of a level, commercially zoned lot containing a one-story commercial building of 3,284 square feet. The property contains no driveways or parking. The building, constructed of masonry, contains two commercial spaces with façade glazing, awnings and signage. It is at zero lot line along its front and side property lines, abutting the adjacent buildings on each side. The project site is at the south (left side) space. It measures twenty-five feet in width and most recently contained a restaurant. The north (right side) space is occupied by an athletic shoe store. The building situated to the south (left) contains a bakery. The district consists of commercial uses such as retail, services, markets, full and limited service restaurants, a liquor store, and a bar. Several full service restaurants serve alcoholic beverages. At the edges of the district are residential neighborhoods (to the rear), parks, a school, and a church. Parking is provided on-street in metered spaces and in City parking lots one block south beneath the 580 freeway (metered) and at a garage one block west at 721 Wesley Way (non-metered).

BACKGROUND

The space has been used as a restaurant for several years (most recently, China Lake Express) and a new CUP for a restaurant in a retail district is not required. The most recent tenant and façade improvements were completed in 2004-2005. At that time the restaurant operated as full service and has since been operated as limited service (both use-classified at the time as General Food Sales). In late 2011/early 2012 permits were pulled for new tenant and façade improvements in preparation for a Chipotle restaurant. Tenant improvement will result in a 650 square-foot dining room with thirty-three chairs, an order counter, a utensil area, and separate restrooms for men and women. Façade improvements include replacement signage. All façade improvements have been reviewed by the Cultural Heritage Survey (staff historic preservation planner) due to the historic rating of the property and district. The historic planner made recommendations to the applicant on façade and signage treatments, which were incorporated into revised plans, and recommended staff approves the design reviews.

The applicant representing Chipotle for this proposal initially expressed interest in a full liquor license. Chipotle's corporate model is to serve beer and margaritas with tequila (a distilled spirit) for on-site consumption where permitted by zoning. Beer sales require a beer and wine license from the State Department of Alcoholic Beverage Control (ABC) and margaritas with tequila requires a general license. The following table depicts types of alcoholic beverage sales for several Chipotle locations in the area:

Location	No alcohol	Beer only	Distilled spirits + beer	ABC license
Alameda		X		41-beer/wine
Berkeley (Gilman St)			X	47-general
Berkeley (U.C.)		X		41
Castro Valley			X	47
Walnut Creek			X	47
San Francisco (Market Street)	X			none
San Francisco (Union Square)		X		41

Of eight locations, half do not serve distilled spirits: three locations serve beer only and one does not serve alcoholic beverages. None of these locations serve wine.

The applicant applied with ABC for a general license prior to obtaining Zoning approvals. Staff advised the ABC to not approve. Staff suggested to the applicant that the proposal be modified to include beer

and wine only. This was due to the fact that a variance is involved and because other on and off-sale locations in the district feature distilled spirits. In late 2011 a similar approval for beer and wine at a limited service restaurant was granted for a nearby site (528 Lake Park Avenue) with a 12:00am closing time. The Chipotle proposal for beer and wine sales was discussed at a neighborhood meeting held the week of Monday January 16, 2012 with Council District office staff in attendance. Staff is not aware of any significant community concerns regarding the proposal being expressed at that time.

PROJECT DESCRIPTION

The current application is a request to serve beer and wine for patrons dining at the premises. Alcoholic beverages would be served in bottles only. The restaurant would be operated as a Limited Service Restaurant as described in the previous Background section of this report. Minors would be admitted at all times. Requested hours of operation would be 11:00am to 10:00pm daily. Entertainment is not contemplated and admission would not be charged. The sale of alcoholic beverage is expected to comprise two percent of revenues. The business would utilize security cameras. Staff would monitor the site and public right-of-way fronting the site to ensure cleanliness and eliminate nuisances such as noise or loitering, as required by Conditions of Approval.

GENERAL PLAN ANALYSIS

The premises are located in a Neighborhood Center Mixed Use area of the General Plan's Land Use & Transportation Element (LUTE). The intent of the area is: *"to identify, create, maintain and enhance mixed use neighborhood commercial centers. These centers are typically characterized by smaller scale pedestrian-oriented, continuous street frontage with a mix of retail, housing, office, active open space, eating and drinking places, personal and business services, and smaller scale educational, cultural, or entertainment uses."* The property is located in a "Maintain and Enhance" strategy area under the LUTE. The proposal to renovate an existing restaurant space and establish a new limited service restaurant there, enhanced with beer and wine service, conforms to this intent and strategy and to the following LUTE Objective and Policies:

Objective I/C1

Expand and retain Oakland's job base and economic strength

Policy I/C3.2 Enhancing Business Districts

Retain and enhance clusters of similar types of commercial enterprises as the nucleus of distinctive business districts, such as the existing new and uses automobile sales and related uses through urban design and business retention efforts.

Policy I/C3.3 Clustering Activity in "Nodes".

Retail uses should be focused in "nodes" of activity, characterized by geographic clusters of concentrated commercial activity, along corridors that can be accessed through many modes of transportation

Staff finds the proposal to conform to the General Plan because beer and wine in conjunction with restaurants attracts customer activity in retail areas.

ZONING ANALYSIS

The premises are located in a Neighborhood Center Mixed Use (CN) Zone, the CN-1 Neighborhood Commercial Zone – 1. The intent of the CN Zones is: *“to create, preserve, and enhance mixed use neighborhood commercial centers. The centers are typically characterized by smaller scale pedestrian oriented, continuous and active store fronts with opportunities for comparison shopping.”* The intent of the CN-1 Zone is: *“to enhance the character of established neighborhood commercial centers that have a compact, vibrant pedestrian environment.”*

Conditional Use Permit

A CUP is required for alcohol sales in all restaurants that are not full service. The restaurant will not be full service and requests a Major Conditional Use Permit to sell alcoholic beverages. Under the Planning Code, a limited service restaurant serving alcohol is subject to the same criteria as a bar or liquor store even though the potential for nuisance activity is less than would be the case for a bar or liquor store. The purpose of the CUP review is to address the possibility of nuisance activities that sometimes are associated with alcohol sales outlets. Through the CUP, potential concerns such as litter, loitering, and noise can be addressed through implementation of conditions of approval.

Variances

In addition to a Major CUP to regulate operations, the Planning Code requires a 1,000-foot distance separation between Alcoholic Beverage Sales Commercial Activities. Additionally, premises located in over-concentrated areas (that is, census tracts with liquor licenses exceeding the County median *or* police beats with reported crime rates exceeding the Citywide mean) should not be located within 1,000-feet of civic activities (such as parks, schools and churches) *or* in police beats with calls for police service exceeding the Citywide median. The subject site is in an over-concentrated area as follows: Census Tract 4038 is over-concentrated for number of establishments; Police Beat 14Y is not over-concentrated in terms of police calls. The premises are located within 1,000-feet of alcoholic beverage sales, parks, a school, and a church as shown in the following table. (The table also indicates restaurants serving alcohol; as explained, those restaurants that are full service are not considered alcoholic beverage sales activities):

	<u>Address</u>	<u>Distance separation between parcels (approx)</u>	<u>Description</u>
On-sale	4259 Lakeshore Ave	60-feet	bar (Easy Lounge) – ABC license type 48/on-sale general
	504 Lake Park Ave	510-feet	bar (Heart and Dagger Saloon)
	3339 Grand Ave	910-feet	bar (Kingman's)
Off-sale	3293 Lakeshore Ave	90-feet	liquor store (Buckingham's) - 21/off-sale general
	3250 Lakeshore Ave	115-feet	supermarket (Trader Joe's) – general
	3417 Lakeshore Ave.	535-feet	market (Oakland Kosher Foods) – general
	3217 Grand Ave	950-feet	liquor store (New Grandlake Market) – general
Restaurant	478 Lake Park Ave		restaurant (Chao Thai) - 41/on-sale beer and wine
	3257 Lakeshore Ave		restaurant (Lakeshore Café) – beer and wine
	3232 Grand Ave		restaurant (Boot & Shoe Service) – 47/on-sale general
	3276 Lakeshore Ave		restaurant (Flavors of India) – beer and wine
	3268 Grand Ave		restaurant (Ikaros) - beer and wine
	3331 Lakeshore Ave		restaurant (Rolling Dunes) - beer and wine

	<u>Address</u>	<u>Distance separation between parcels (approx)</u>	<u>Description</u>
	3343 Lakeshore Ave		restaurant (Yayu) - beer and wine
	3355 Lakeshore Ave		restaurant (Spettros) - beer and wine
	3407 Lakeshore Ave		restaurant (Mezze) - general
	528 Lake Park Ave		restaurant (WingStop) – beer and wine
Civic	Lake Park Way	735-feet	park (Splash Pad)
	Lakeshore at Mandana	745-feet	park (Mandana Park Plaza)
	Grand Ave	870-feet	park (East Shore)
	3518 Lakeshore Ave	910-feet	church (Lakeshore Avenue Baptist)
	Grand Ave at Lake Park	990-feet	school (Lakeview Elementary)

Variances are thus required for the project. The general purpose of the distance separation is to prevent alcohol outlet types that can be problematic such as liquor stores and bars from locating and proliferating adjacent to residential and civic uses. The issues related to this application for these permits are discussed in the Key Issues And Impacts section of this report.

ENVIRONMENTAL DETERMINATION

The California Environmental Quality Act (CEQA) Guidelines categorically exempts specific types of projects from environmental review. Section 15301 of the State CEQA Guidelines exempts project involving *operation of existing private...facilities*. The proposal to serve beer and wine at a limited service restaurant located in a commercial district meets this description: the project would constitute operation of an existing facility. The project is therefore exempt from Environmental Review.

KEY ISSUES AND IMPACTS

For a conditional use permit application staff must consider what potential issues could occur as a result of the project or future use of an approval, and attach appropriate conditions of approval to the activity to ensure it operates compatibly with its surroundings. In this case, the proposal involves alcohol sales with proximity to existing alcohol sales activities (a bar, liquor store, and supermarket are in closest proximity) and civic uses. To justify the operation, the proposal cannot constitute a nuisance to these uses or contribute to a proliferation of alcohol sales around them. Typical problems that can result from alcohol sales include litter, loitering, noise, public intoxication and associated nuisances.

Alcohol regulations

Staff finds that alcohol regulations are sufficient to control nuisances due to the following factors:

- Consumption of beer and wine would occur on site with Mexican food in a newly renovated dining room at a premises admitting children and containing restrooms. As a result, this type of restaurant tends to attract families, which create limited on- or off-site nuisances.
- There would be several requirements attached to the establishment that are more restrictive than requirements applying to other similar establishments located in the district and throughout the City.

- Restaurants rarely require Planning Commission decision; this establishment is being regulated similar to a bar except that it will have an earlier closing time, and food must be served with alcohol sales.
- The ABC often mandates a standard closing time for all restaurants serving alcohol in a given district. Should that time ever become earlier than 10:00pm for this district, the establishment will be further restricted to that early closing time.
- Unlike with ABC approvals for a restaurant (license type #41), no off-sale (to go) of alcoholic beverages would be permitted.
- With a license type #41 the ABC does not differentiate between full service and limited service; the Planning Code is, therefore, more restrictive than the ABC in this regard in requiring a CUP for the project.
- Under the Limited Service Restaurant or Café use classification, the Planning Code does not distinguish between restaurant and café and a Major Conditional Use Permit does not distinguish between types of alcohol; therefore, this limited service restaurant is being regulated the same as a café with a full bar or a stand-alone bar, for that matter.
- The Code also does not distinguish between types or quantity of alcohol at a full service restaurant. In the case of a limited service restaurant, the permit type would be restricted to beer and wine where some restaurants also serve liquor/distilled spirits.
- Quantity would be restricted to a minimal sales display area of eight square-feet.
- Should the business be sold, a future operator of similar nature could utilize an approved CUP but would be subject to the same conditions.

Location analysis

The area is over-concentrated for liquor licenses in the Census Tract only and not for crime in the Police Beat; crime is, therefore, not a major concern at this location but potential proliferation adjacent to alcohol outlets and civic uses is still a consideration. Staff finds the reduced distance separation is acceptable due to the following factors:

- While the premises is located on the same block as a bar it would function as a restaurant with different hours of operation and only serve beer and wine with food.
- Area parks are not on the same lengthy block as the restaurant and a school and church are greater distances from the site at nearly 1,000-feet away.
- The majority of park, school, and church users are not expected to pass by the premises and patrons are not expected to pass directly by the parks, school or church on foot.
- Due to these locations as well as differing hours of use and the primary restaurant nature of the establishment, the potentially undesirable situation where intoxicated patrons pose a nuisance to civic uses is considered very unlikely.

- The proposed activity would differ greatly from a bar or liquor store; required findings especially for a variance could likely not be made for those types of establishments; the character of a restaurant serving beer and wine is very different.
- Conditions of approval (Attachment B) would require the litter clean-up by the establishment and signage to discourage loitering, litter, and noise with a contact telephone number to report transgressions.

In conclusion, staff finds the proposal to not pose a nuisance to civic uses or constitute a proliferation of alcohol outlets in the district. Due to the nature of the operation and setting, staff supports the proposal with the inclusion of conditions of approval.

RECOMMENDATIONS: 1. Affirm staff's environmental determination.

Approve the Major Conditional Use Permit and Variances subject to the attached Findings (Attachment B)

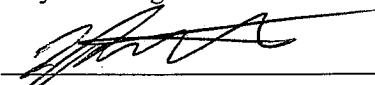
Prepared by:


AUBREY ROSE, AICP
Planner II

Approved by:


SCOTT MILLER
Zoning Manager

Approved for forwarding to the
City Planning Commission:


ERIC ANGSTADT
Deputy Director
Community and Economic Development Agency

ATTACHMENTS:

- A. Findings for Approval
- B. Conditions of Approval
- C. Plans/photographs

Attachment A: Findings for Approval

This proposal meets the required findings under Conditional Use Permit Procedure/General Use Permit Criteria (OMC Sec. 17.134.050), Special Regulations Applying To Certain Establishments Selling Alcoholic Beverages (OMC Sec. 17.102.210(A)), Findings of Public Convenience or Necessity (OMC Sec. 17.102.210(B)(3)), and Variance Procedure/Findings Required (OMC Sec. 17.148.050) under the 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 in normal type.

CONDITIONAL USE PERMIT PROCEDURE/GENERAL USE PERMIT CRITERIA (OMC SEC. 17.134.050)

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.

Sale of alcoholic beverages is expected to comprise only two percent of revenues. The business will utilize security cameras to increase safety. Staff at the establishment will monitor the site and public right-of-way for noise, loitering, and cleanliness as required by Conditions of Approval. As evidenced by visits to other Chipotle restaurants that serve beer and wine, and as confirmed on plans, the space devoted to sales of beer and wine is very limited, approximately eight square feet of floor space. The limited space devoted to alcohol sale further indicates the ancillary nature of such sales, and reduces the potential for nuisance activities that could adversely affect abutting properties and the district.

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 location formerly contained a restaurant and the building façade including signage and interior are being renovated. The renovation will result in a n efficient floor plan and attractive frontage. The frontage will be consistent with other storefronts in the neighborhood.

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 restaurant will contribute to a variety of choices for consumers and will include new jobs. The proposal will bring additional customers to a retail district.

D. That the proposal conforms to all applicable design review criteria set forth in the design review procedure at Section 17.136.050.

The proposal for alcohol sales does not require design review; façade improvements and new signage were approved prior to this application for sale of alcohol at a restaurant.

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

The premises are located in the Neighborhood Center Mixed Use area of the General Plan's Land Use & Transportation Element (LUTE). The intent of the area is: *"to identify, create, maintain and enhance mixed use neighborhood commercial centers. These centers are typically characterized by smaller scale pedestrian-oriented, continuous street frontage with a mix of retail, housing, office, active open space, eating and drinking places, personal and business services, and smaller scale educational, cultural, or entertainment uses."* The property is located in a "Maintain and Enhance" strategy area under the LUTE. The proposal to renovate an existing restaurant space and establish a new limited service restaurant there, including maintaining beer and wine service, conforms to this intent and strategy and to the following LUTE Objective and Policies:

Objective I/C1

Expand and retain Oakland's job base and economic strength

Policy I/C3.2 Enhancing Business Districts

Retain and enhance clusters of similar types of commercial enterprises as the nucleus of distinctive business districts, such as the existing new and uses automobile sales and related uses through urban design and business retention efforts.

Policy I/C3.3 Clustering Activity in "Nodes".

Retail uses should be focused in "nodes" of activity, characterized by geographic clusters of concentrated commercial activity, along corridors that can be accessed through many modes of transportation

The proposal conforms to the General Plan.

SPECIAL REGULATIONS APPLYING TO CERTAIN ESTABLISHMENTS SELLING ALCOHOLIC BEVERAGES (OMC SEC. 17.102.210(A))

1. That the proposal will not contribute to undue proliferation of such uses in an area where additional ones would be undesirable, with consideration to be given to the area's function and character, problems of crime and loitering, and traffic problems and capacity;

The area consists of commercial establishments including several food and beverage businesses along Lakeshore Avenue as well as Lake Park and Grand Avenues. Food and beverage businesses include formula retail franchises, independents, establishments serving alcoholic beverages, and establishments not engaged in serving alcohol. On-sale alcohol establishments such as restaurants and bars are appropriate for this area and do not constitute nuisance such as litter, noise, loitering, or crime when controlled by conditions of approval. As evidenced by visits to other Chipotle restaurants that serve beer and wine, and as confirmed on plans, the space devoted to sales of beer and wine is very limited, approximately eight square feet of floor space. The limited space devoted to alcohol sale further indicates the ancillary nature of such sales, and reduces the potential for nuisance activities that could adversely affect abutting properties and the neighborhood. The premises is at zero lot line with no driveway or parking lot and has one entrance and exit, so vehicular and pedestrian circulation as well as capacity will not be an issue. Nuisances and capacity will be regulated by conditions of approval.

Alcohol regulations are sufficient control nuisances due to the following factors:

- Consumption of beer and wine would occur on site with burritos in a newly renovated dining room at a premises admitting children and containing restrooms. As a result, this type of restaurant tends to attract families, which create limited off-site nuisances.

Findings for Approval

- There would be several requirements attached to the establishment that are more restrictive than requirements applying to other similar establishments located in the district and throughout the City.
- Restaurants rarely require Planning Commission decision; this establishment is being regulated similar to a bar except that it will have an earlier closing time.
- The ABC often mandates a standard closing time for all restaurants serving alcohol in a given district. Should that time ever become earlier than 10:00pm for this district, the establishment will be further restricted to that early closing time.
- Unlike with ABC approvals for a restaurant (license type #41), no off-sale (to go) of alcoholic beverages would be permitted.
- With a license type #41 the ABC does not differentiate between full service and limited service; the Planning Code is, therefore, more restrictive than the ABC in this regard in requiring a CUP for the project.
- Under the Limited Service Restaurant or Café use classification, the Planning Code does not distinguish between restaurant and café and a Major Conditional Use Permit does not distinguish between types of alcohol; therefore, this limited service restaurant is being regulated the same as a café with a full bar or a stand-alone bar, for that matter.
- The Code also does not distinguish between types or quantity of alcohol at a full service restaurant. In the case of a limited service restaurant, the permit type would be restricted to beer and wine where some restaurants also serve liquor/distilled spirits.
- Quantity would be restricted to a minimal sales display area of eight square feet.
- Should the business be sold, a future operator of similar nature could utilize an approved CUP but would be subject to its conditions.

2. That the proposal will not adversely affect adjacent or nearby churches, temples, or synagogues; public, parochial, or private elementary, junior high, or high schools; public parks or recreation centers; or public or parochial playgrounds;

The premises are located within 1,000-feet of parks, an elementary school, and a church. The majority of park, school, and church users are not expected to pass by the premises due to area configuration and patrons are not expected to pass directly by the parks, school or church on foot (although staff does not find a clear concern with either scenario).

3. That the proposal will not interfere with the movement of people along an important pedestrian street;

This finding is met; the establishment will utilize existing premises at zero lot line to the sidewalk with no driveway or parking lot to interrupt pedestrians.

4. That the proposed development will be of an architectural and visual quality and character which harmonizes with, or where appropriate enhances, the surrounding area;

Findings for Approval

The project sponsors recently obtained an approved design review permit for façade improvements and new signage that harmonizes with the surrounding area.

5. That the design will avoid unduly large or obtrusive Signs, bleak unlandscaped parking areas, and an overall garish impression

The project will avoid unduly large or obtrusive signs, bleak unlandscaped parking areas, and an overall garish impression. The project sponsors recently obtained an approved design review permit for façade improvements and new signage that avoids these issues.

6. That adequate litter receptacles will be provided where appropriate;

The establishment will contain litter receptacles within the premises and the City contains litter receptacles outside along the sidewalk; additionally, conditions of approval require the business to ensure the public right-of-way (sidewalk and gutter) in front and near the restaurant remain free of litter.

7. That where the proposed use is in close proximity to residential uses, and especially to bedroom windows, it will be limited in hours of operation, or designed or operated, so as to avoid disruption of residents' sleep between the hours of ten (10) p.m. and seven (7) a.m. The same criteria shall apply to all conditional use permits required by subsection B of this section for sale of alcoholic beverages at full service restaurants.

The rear of the building abuts a residential building and a residential zone; however, no windows or doors that open from the dining room face to the rear. Closing time will be 10:00pm.

8. That proposals for new Fast-Food Restaurants must substantially comply with the provisions of the Oakland City Planning Commission "Fast-Food Restaurant--Guidelines for Development and Evaluation" (OCPD 100-18).

This finding is inapplicable; the proposal does not involve a fast food restaurant.

PUBLIC CONVENIENCE OR NECESSITY (OMC SEC. 17.102.210(B)(3))

a. That a community need for the project is clearly demonstrated. To demonstrate community need, the applicant shall document in writing, specifically how the project would serve an unmet or underserved need or population within the overall Oakland community or the community in which the project is located, and how the proposed project would enhance physical accessibility to needed goods or services that the project would provide, including, but not limited to alcohol; and

The applicants have submitted documentation as required. The proposal will utilize and enhance a restaurant space with a new, popular vendor in a renovated space and building. The premises will serve beer and wine with food as do many area establishments to provide a variety of consumer choices within one district. Variety in this district is important to serve visitors and residents

b. That the overall project will have a positive influence on the quality of life for the community in which it is located, providing economic benefits that outweigh anticipated negative impacts, and that will not result in a significant increase in calls for police service; and

The project will provide consumer variety, jobs, a gathering place, and involves renovation of the building's façade and interior. As noted elsewhere in the staff report and findings, there is not a

substantial risk of anticipated negative impacts or an anticipated significant increase in police calls. As a result, the economic and other benefits outweigh anticipated negative impacts.

c. That alcohol sales are typically a part of this type of business in the City of Oakland (for example and not by way of limitation, alcohol sales in a laundromat would not meet this criteria).

Alcohol sales are a typical component of many limited service restaurants. There are other restaurants in the City, including limited service restaurants, which serve beer and wine and other alcoholic beverages.

ADDITIONAL PUBLIC CONVENIENCE OR NECESSITY FINDINGS (OMC SEC. 17.102.210(B)(4))

a. The proposed project is not within one thousand (1,000) feet of another alcohol outlet (except full service restaurants), school, licensed day care center, public park or playground, churches, senior citizen facilities, and licensed alcohol or drug treatment facilities; and

This finding is *not* met and a variance is required; the premises are located within 1,000 feet of alcohol outlets (bars and markets), parks, a school, and a church. Variances findings are provided in the following section of this attachment.

b. Police department calls for service within the “beat” where the project is located do not exceed by twenty percent (20%), the average of calls for police service in police beats citywide during the preceding twelve (12) months.

This finding is met: average calls for police service in police beat 14Y did not exceed the citywide average plus twenty percent during the most recent calendar year for which data has been provided.

VARIANCE PROCEDURE/FINDINGS REQUIRED (OMC SEC. 17.148.050(A))

1. That strict compliance with the specified regulation would result in practical difficulty or unnecessary hardship inconsistent with the purposes 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 project requires a variance because it involves alcohol sales at a limited service restaurant in an over-concentrated area, and under the Planning Code an Alcoholic Beverages Sales Commercial Activity can consist of a stand-alone full bar and a Limited Service Restaurant and Café Commercial Activity can consist of a café with no food. The project meets neither the distance separation requirement of 1,000-feet to the next closest alcohol outlet (it is located on the same block as a bar and three markets selling alcoholic beverages) nor the required of 1,000-foot distance from civic uses (there are parks, a school, and a church in the area).

The area is over-concentrated for liquor licenses in the Census Tract only and not for crime in the Police Beat; crime is, therefore, not a major concern at this location but potential proliferation adjacent to alcohol outlets and civic uses is still a consideration. The variance finding can be made with respect to the deficient distance separation for the following reasons:

- While the premises are located on the same block as a bar it would function as a restaurant with different hours of operation and only serve beer with food.

- Area parks are not on the same lengthy block as the restaurant and a school and church are greater distances from the site at nearly 1,000-feet away.
- The majority of park, school, and church users are not expected to pass by the premises and patrons are not expected to pass directly by the parks, school or church on foot (although staff does not find a clear concern with either scenario).
- Due to these locations as well as differing hours of use and the primary restaurant nature of the establishment, the potentially undesirable situation where intoxicated patrons pose a nuisance to civic uses is considered very unlikely.
- The proposed activity would differ greatly from a bar or liquor store; required findings especially for a variance could likely not be made for those types of establishments; the character of a restaurant serving beer and wine is very different.
- Conditions of approval (Attachment B) would require the litter clean-up by the establishment and signage to discourage loitering, litter, and noise with a contact telephone number to report transgressions.

Due to the nature of the operation and setting, the proposal with conditions of approval is justified. As evidenced by visits to other Chipotle restaurants that serve beer and wine, and as confirmed on floor plans, the space devoted to sales of beer and wine is very limited, approximately eight square feet of floor space. The limited space devoted to alcohol sale further indicates the ancillary nature of such sales, and reduces the potential for nuisance activities that could adversely affect abutting properties and the neighborhood.

2. That 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;

There are other establishments in the district that serve alcoholic beverages and are not full service restaurants. These establishments do not meet the regulations for required distance separation between alcohol outlets or civic uses given the area is over-concentrated.

3. That 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 restaurant is not full service and is located on the same block as a bar and three markets selling alcoholic beverages and within 1,000 feet of parks, a school, and a church. To allow the restaurant to sell beer and wine for on-site consumption with food while adhering to conditions of approval will not negatively affect pedestrians, patrons of adjacent businesses, park users, or children attending the school. The proposal will attract customers to the retail district.

4. That the variance will not constitute a grant of special privilege inconsistent with limitations imposed on similarly zoned properties or inconsistent with the purposes of the zoning regulations;

There are other similar establishments in the district, not subject to proposed conditions attached to this establishment. Other similar establishments, if approved in the future, will also be subject to such

Findings for Approval

heightened restrictions. Other limited service restaurants in the City of Oakland have been granted approvals, some including similar variances.

5. That the elements of the proposal requiring the variance (e.g., elements such as buildings, walls, fences, driveways, garages and carports, etc.) conform with the regular design review criteria set forth in the design review procedure at Section 17.136.050;

This finding is inapplicable; the variances are required due to insufficient distance separations which are elements not subject to design review.

6. That the proposal conforms in all significant respects with the Oakland General Plan and with any other applicable guidelines or criteria, district plan, or development control map which have been adopted by the Planning Commission or City Council.

The proposal conforms to the General Plan as described in the preceding Conditional Use Permit section of this Attachment under Finding E.

Attachment B: Conditions of Approval

1. Approved Use

Ongoing

a) The project shall be constructed and operated in accordance with the authorized use as described in the application materials, **staff report**, and the plans dated **December 23, 2011** and submitted on **January 12, 2012**, and as amended by the following conditions. Any additional uses or facilities other than those approved with this permit, as described in the project description and the approved plans, will require a separate application and approval. Any deviation from the approved drawings, Conditions of Approval or use shall required prior written approval from the Director of City Planning or designee.

b) This action by the **City Planning Commission** ("this Approval") includes the approvals set forth below. This Approval includes:

- i) **Major Conditional Use Permit with additional findings and variance to allow a limited service restaurant at 3271 Lakeshore Avenue located within 1,000 feet of alcohol sales activities and civic uses (parks, school, church) to serve beer and wine from a limited sales display area to patrons dining on site**

2. Effective Date, Expiration, Extensions and Extinguishment

Ongoing

Unless a different termination date is prescribed, this Approval shall expire **two calendar years** from the approval date, unless within such period all necessary permits for construction or alteration have been issued, 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 permit, 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 for this project may invalidate this Approval if the said extension period has also expired.

3. Scope of This Approval; Major and Minor Changes

Ongoing

The project is approved pursuant to the **Planning Code** only. Minor changes to approved plans may be approved administratively by the Director of City Planning or designee. Major changes to the approved plans shall be reviewed by the Director of City Planning or designee to determine whether such changes require submittal and approval of a revision to the approved project by the approving body or a new, completely independent permit.

4. Conformance with other Requirements

Prior to issuance of a demolition, grading, P-job, or other construction related permit

a) The project applicant shall comply with all other applicable federal, state, regional and/or local laws/codes, requirements, regulations, and guidelines, including but not limited to those imposed by the City's Building Services Division, the City's Fire Marshal, and the City's Public Works Agency. 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 of Approval 3.

b) The applicant shall submit approved building plans for project-specific needs related to fire protection to the Fire Services Division for review and approval, including, but not limited to automatic extinguishing systems, water supply improvements and hydrants, fire department access, and vegetation management for preventing fires and soil erosion.

5. Conformance to Approved Plans; Modification of Conditions or Revocation

Ongoing

- a) Site shall be kept in a blight/nuisance-free condition. Any existing blight or nuisance shall be abated within 60-90 days of approval, unless an earlier date is specified elsewhere.
- b) The City of Oakland reserves the right at any time during construction to require certification by a licensed professional that the as-built project conforms to all applicable zoning requirements, including but not limited to approved maximum heights and minimum setbacks. Failure to construct the project in accordance with approved plans may result in remedial reconstruction, permit revocation, permit modification, stop work, permit suspension or other corrective action.
- c) Violation of any term, **Conditions** or project description relating to the Approvals 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 Approvals 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 Conditions of Approval.

6. Signed Copy of the Conditions

With submittal of a demolition, grading, and building permit

A copy of the approval letter and **Conditions** shall be signed by the property owner, notarized, and submitted with each set of permit plans to the appropriate City agency for this project.

7. Indemnification

Ongoing

- a) To the maximum extent permitted by law, the applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the City of Oakland Redevelopment Agency, the Oakland City Planning Commission and its respective agents, officers, and employees (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, (1) an approval by the City relating to a development-related application or subdivision or (2) implementation of an approved development-related project. The City may elect, in its sole discretion, to participate in the defense of said Action and the 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 applicant shall execute a Letter Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Letter of Agreement shall survive termination, extinguishment or invalidation of the approval. Failure to timely execute

the Letter Agreement does not relieve the applicant of any of the obligations contained in this condition or other requirements or conditions of approval that may be imposed by the City.

8. Compliance with Conditions of Approval

Ongoing

The project applicant shall be responsible for compliance with the recommendations in any submitted and approved technical report and all the Conditions of Approval set forth below at its sole cost and expense, and subject to review and approval of the City of Oakland.

9. Severability

Ongoing

Approval of the project 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. Job Site Plans

Ongoing throughout demolition, grading, and/or construction

At least one (1) copy of the stamped approved plans, along with the Approval Letter and Conditions of Approval, shall be available for review at the job site at all times.

11. Special Inspector/Inspections, Independent Technical Review, Project Coordination and Management

Prior to issuance of a demolition, grading, and/or construction permit

The project applicant may be required to pay for on-call third-party special inspector(s)/inspections as needed during the times of extensive or specialized plancheck review or construction. The project applicant may also be required to cover the full costs of independent technical review and other types of peer review, monitoring and inspection, including without limitation, third party plan check fees, including inspections of violations of Conditions of Approval. The project applicant shall establish a deposit with the Building Services Division, as directed by the Building Official, Director of City Planning or designee.

PROJECT SPECIFIC CONDITIONS

12. Sale of Alcoholic Beverages

Prior to commencing activity

a) Additional Permits Required

Necessary ABC permits (license type 41) must be obtained prior to commencement of activity. Only beer and wine may be sold for alcoholic beverages. Beer shall be served in bottles only.

Ongoing

b) Operation

The restaurant must operate with an open kitchen at all times beer and wine are sold pursuant to limited service defined by the Planning Code (OMC Sec. 17.10)

c) Location and manner

Only on-sale (on-site consumption) is allowed; alcoholic beverages are intended for consumption with meals.

d) Minors

Minors shall be admitted at all times

e) Hours of Alcohol Sale

The proprietor voluntarily agrees to limit hours of alcohol sales to no later than 10:00pm or earlier if required by the ABC.

f) Sales display area

Maximum sales display area shall be limited to dimensions equivalent to 44" in width x 29" in height x 24" in depth (eight square feet) and located behind the counter or in another employees-only area.

g) Informational signage

The proprietor shall post inside the dining room signage discourage loitering, litter, and noise with a contact telephone number to report transgressions

h) Entry

Admission shall never be charged for events or otherwise

i) Future operators

Any future operators of any restaurant at this premise are subject to the requirements of this approval

j) Nuisances

Crime, litter, noise, or disorderliness conduct associated with alcohol sales at the establishment will result in a revocation of the Major Conditional Use Permit or a review to revoke.

k) Police Department

The operator shall register with the Police Department's Alcoholic Beverage Action Team and adhere to their regulations

13. Inclusion of conditions in State Department of Alcoholic Beverage Control license

Prior to signing of State Department of Alcoholic Beverage Control zoning affidavit

The applicant shall submit a letter to staff signed by the applicant addressed to the State Department of Alcoholic Beverage Control stipulating that they wish to include conditions of their ABC license to conform to all of the conditions and requirements in this approval. The letter shall request the ABC restrict its license to only those uses allowed under City permits. The Oakland Planning Commission may, after notice and hearing, revoke this Conditional Use Permit if the Applicant fails to include the above conditions in the ABC license.

14. Conformance with State Department of Alcoholic Beverage Control regulations

Ongoing

This use shall conform to all provisions of the State ABC license. The State license and State conditions shall be posted along with these Conditional Use Permit conditions in a place visible to the public. This use shall also conform to all State Retail Operating Standards, Section 25612.5 of the Business and Professions Code and local Performance Standards, Section 15210, where applicable including any future changes in the above regulations. The intent of these standards is to reduce nuisance, litter, loitering, and crime associated with alcohol outlets. The City Conditions of Approval shall be forwarded to the Department of Alcoholic Beverage Control.

15. Compliance with City of Oakland special regulations for Alcoholic Beverage Sales Commercial Activities

Ongoing

a) Signage

Within 30 days of the date of decision, at least one sign (one square foot maximum) shall be posted and maintained in a legible condition at each public entrance to the building prohibiting littering and loitering. Required signage prohibiting open containers and drinking in public shall also be maintained in legible condition near each public entrance to bar. The "No Open Container" signs are available from the cashier located on the second floor of 250 Frank H. Ogawa Plaza.

b) Graffiti

Graffiti shall be removed from the premises within 72 hours (3 days) of application.

c) Loitering

The owner, manager, and employees of this establishment shall make appropriate efforts to discourage loitering from the premises including calling the police to ask that they remove loiterers who refuse to leave. Persons hanging around the exterior of the establishment with no apparent business for more than ten minutes shall be asked to leave. Techniques discussed in the manual entitled "Loitering: Business and Community Based Solutions" may be used and are recommended by the Alcoholic Beverage Action Team.

16. Trash and litter

Ongoing

The licensees/property owners shall clear the gutter and sidewalks along Lakeshore Avenue plus twenty feet beyond the property lines along this street of litter twice daily or as needed to control litter. In addition to the requirements of B&P Section 25612.5, (sweep or mechanically clean weekly) the licensee shall clean the sidewalk with steam or equivalent measures once per month.

17. Performance standards

Ongoing

The establishment shall adhere to performance standards for noise, odor, and all environmental effects of the restaurant activity as regulated under OMC Chapter 17.120.

18. Design Review

Ongoing

a) Exterior modifications

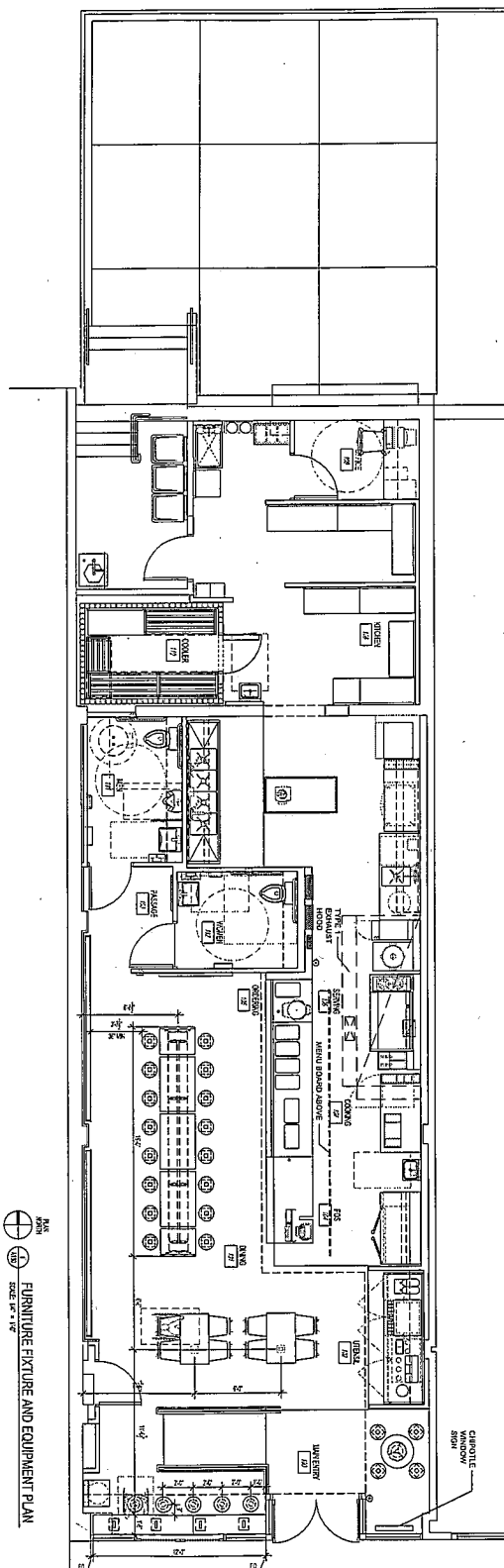
Any exterior modifications to the building must first be approved by the Planning and Zoning Department

b) Sidewalk dining

Sidewalk dining, if proposed, requires additional approvals

APPROVED BY:

City Planning Commission: _____ (date) _____ (vote)



ATTACHMENT C

STORE # 1738
OAKLAND LAKESHORE
3271 LAKESHORE AVENUE
OAKLAND, CA 94610



HARLAN R. FAUST
ARCHITECT

HARLAN R. FAUST, ARCHITECT
14344 "T" STREET • SUITE 101
OMAHA, NE 68137-2805
+02.935.0278
+02.935.9561 FAX

ADCON

Advertising Concepts Inc.
3725 Canal Drive,
Fort Collins, CO 80524
970 484 3637
www.adconsigns.com

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Design Proposal for:
Chipotle Mexican Grill
Oakland Lakeshore

Sign Type: Various

Date: November 10, 2011
Drawn by: SKD W.
Account Manager: Rob K.
Project Manager: 27091
Design Estimate #: Elevations
File Name:

Client Approval

Signature: _____

Date: _____

NOTE: Please return all design changes to model on this drawing to the client. The client is responsible for all design changes. Any design changes made to this drawing after the initial design are the client's responsibility and will be charged at the rate of \$150 per hour.

☐ Approved
☐ Approved As Noted
☐ Revise And Resubmit

Production Mgr. Approval Date: _____

Project Mgr. Approval Date: _____

Account Mgr. Approval Date: _____

PM Approval Date: _____

Revision Notes:

For production files:

*Change "Open Daily" font

*Remove scores

*Resize and color pepper graphic

For awning:

*Repeat justly graphics

Seq. No. 0 *TBD*

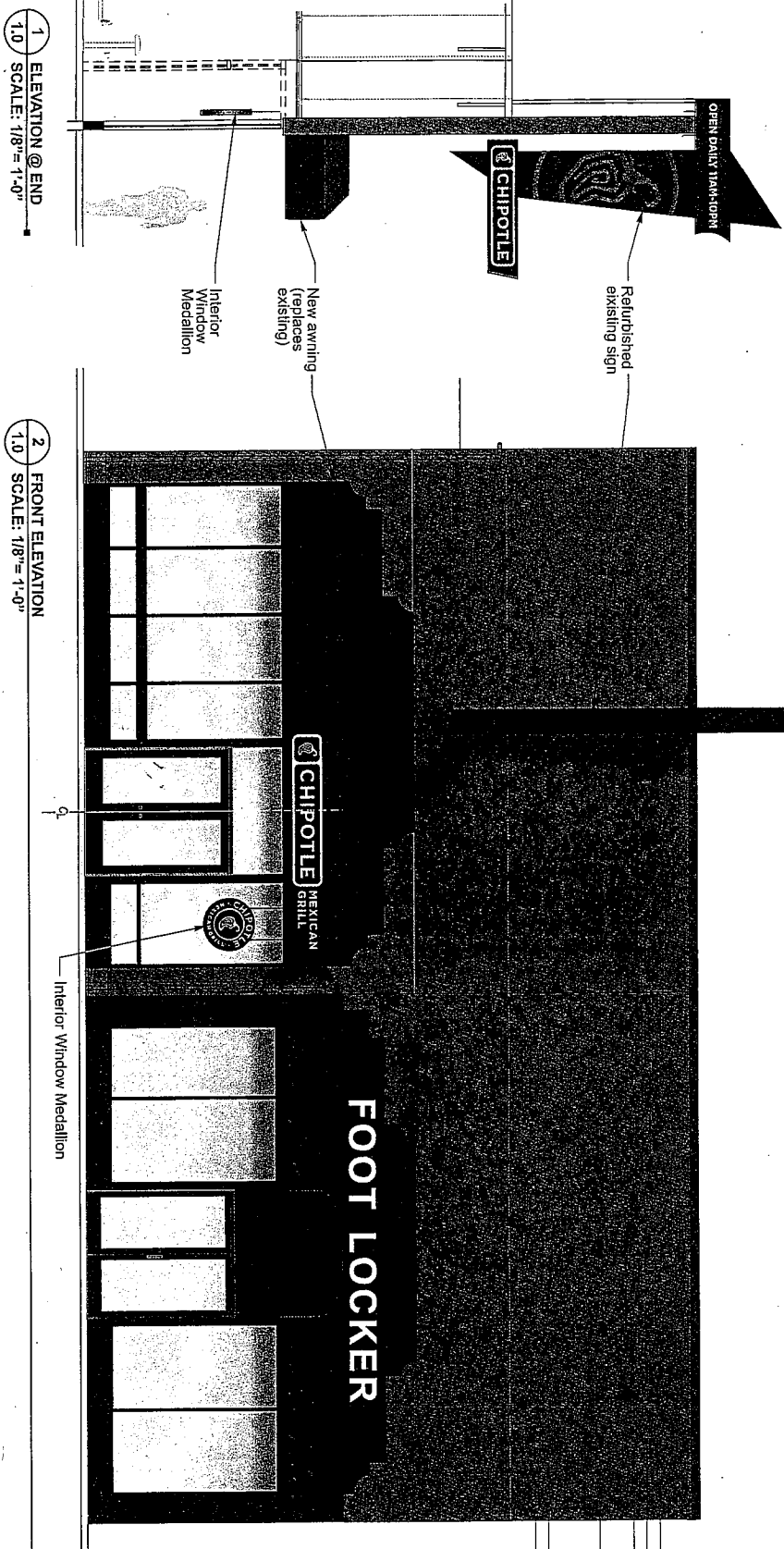
W.O. No. 0000000

Rev. No. B

Date: 11-16-11

By: SMV

Sheet No. 1.0



All elevation sketches indicated or presented by these drawings are the property of the Owner, and are used here in connection with the specified project.

EXTERIOR PHOTOS

