

Case File Number CM12-041

June 6, 2012

Project Name:	Sound Room/BAJA Network
Location:	2147 Broadway (APN008-0648-001-00)
Proposal:	Allow Alcoholic Beverage Sales Activity/nightclub
Contact Person/Phone Number:	Robert Bradsby (415) 994-3501
Owner:	Rosen & Laurie Cooperman
Case File Number:	CM12-041
Planning Permits Required:	Major Conditional Use Permit to allow an Alcoholic Beverage Sales Activity in Group Assembly (nightclub), in less than 2,000 square foot existing space in a building in Uptown Oakland
General Plan:	Central Business District
Zoning:	CBD-P Central Business District-Pedestrian Retail Commercial Zoning District
Environmental Determination:	Categorically Exempt under California Environmental Quality Act (CEQA) Guidelines Section 15303
Historic Status:	Potential Designated Historic Property, rated Ec3, no particular interest/potentially secondary importance
Service Delivery District:	Metro
City Council District:	3
Commission Action to Be Taken:	Approve Staff Recommendation
Appeal:	To City Council
For Further Information:	Contact David Valeska at (510) 238-2075 or dvalueska@oaklandnet.com

SUMMARY

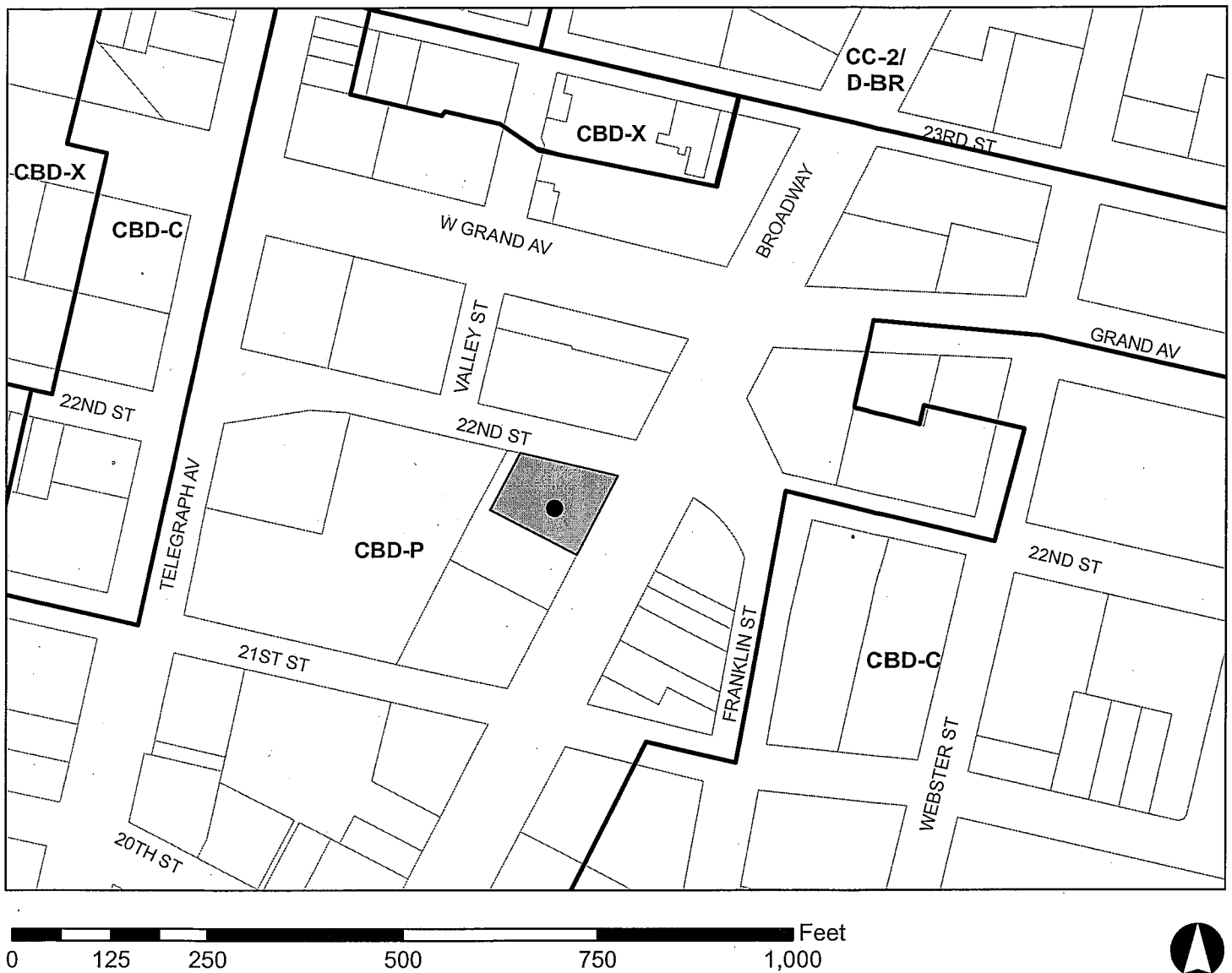
This is an application to allow sales of alcoholic beverages in a 2,000 square foot bar, on the ground floor of an existing 2 story commercial building. The building is located at Broadway at 22nd Street, in Uptown Oakland near the Fox Theater and Arts districts. If an Activity is not a "Full-Service" restaurant, a Major Conditional Use Permit (CUP) is required to sell alcoholic beverages. Since the applicant plans a bar not a Full Service restaurant, a Major CUP is required.

PROJECT DESCRIPTION

The proposed project for alcoholic beverage service/nightclub for the Bay Area Jazz and Art Network (BAJA Network), a nonprofit corporation which supports artists and musicians. The applicant offers training for jazz students, space for jazz music writing and other activities. The subject of this application is the ancillary alcoholic beverage service which helps to financially support other activities.

The two story building was built in 1917 and is rated Potential Designated Historical Property Ec3 on the City's Historical Building Survey, a moderately historical building. Approximately one-half of the space would be an 80 seat jazz nightclub, serving alcoholic beverages and limited menu food. The remainder would provide entry, restrooms, coat and janitor rooms. No full service restaurant is claimed, but vegetarian dishes will be available. The applicant proposes up to 80 customers to be served by 3 to 5 employees or volunteers at one time. Security staff will be one per 50 customers (e.g. 1 to 2 guards), who may be volunteers. The business requested to be open at any of seven days a week, initially 11 am until 12 am, although there may be days or times with no events. Students under age 21 will be in the building.

CITY OF OAKLAND PLANNING COMMISSION



Case File: CM12-041
Applicant: Robert Bradsby
Address: 2147 Broadway
Zone: CBD-P

Group Assembly is a permitted use in this zone for spaces less than 7,500 square feet in area; this assembly space is 2,000 square feet.

PROPERTY DESCRIPTION

The building is one of the more simple façades, modified over the decades but retaining a transitional architecture in keeping with this Uptown area. Two story concrete and glass walls rise from the property line, with blue canvas awnings over the sidewalks. This area has experienced substantial rehabilitation through the City façade program and Fox Theater restoration in the past decade. Nearby, several early- and mid-20th Century commercial buildings, have been restored. Cafes, offices, theaters and retail stores complete the neighboring uses. New high-rise apartments and condominiums are located nearby and a BART station entrance is a 5 minute walk from the building.

GENERAL PLAN ANALYSIS

This project is located in the 'Central Business District' General Plan Land Use Classification, under the General Plan Land Use and Transportation Element (LUTE). One intent of this classification is to identify, create, maintain and enhance commercial and residential structures in this area with good access to transportation and other services. Excerpts from LUTE include:

Policy D1.1: *The characteristics that make Downtown Oakland unique, including its strong core area, proximity to destinations such as the Jack London waterfront, Lake Merritt, historic areas, cultural, arts and entertainment activities, should be enhanced and used to strengthen the downtown as a local regional asset.*

Policy D5.1: *Activities and amenities that encourage pedestrian traffic during the work week, as well as evenings and weekends should be promoted.*

Policy D12.1: *Build on and promote Oakland's educational resources, historic importance as an entertainment venue, existing cultural diversity and strong arts community.*

Staff review of these policies confirms that there is community support for a specialty alcohol service uses in the Uptown Oakland area. Existing business districts should be supported, and neighborhood dining/entertainment experiences should be enhanced through business retention and attraction efforts.

ZONING ANALYSIS

A Major Conditional Use Permit is required for an Alcoholic Beverage Sales Commercial Activity in the Central Business District-Pedestrian (CBD-P) Zone. Regular Conditional Use Permit findings per Section 17.134.050 and special findings for Alcoholic Beverage Sales Commercial Activities per Section 17.102.210 must be made.

On February 1, 2000, the Oakland City Council passed Resolution #75490 establishing a no net increase policy in the number of alcoholic beverage sales commercial activities in Oakland neighborhoods to protect the health, safety and welfare of residents. This resolution states that new off-sale and on-sale retail alcoholic beverage sales licenses should only be permitted if one or more criteria are met. One exception to these criteria is for sites in the Central Business District, such as the Uptown entertainment district. The applicant intends to obtain an existing Oakland license if possible.

ENVIRONMENTAL DETERMINATION

The California Environmental Quality Act (CEQA) Guidelines list projects which are categorically exempt from environmental review. Section 15301 exempts facilities, which consist of minor alterations to existing structures, involving negligible or no expansion of use beyond that previously existing, including interior or exterior alteration. This project involves few or minimal external changes to the building, which has moderate Ec3 PDHP rating. Therefore, this project is considered categorically exempt from the provisions of CEQA pursuant to Sections 15303 of the State CEQA guidelines. In addition, Section 15183 applies as this activity, subject to Conditional Use Permit approval, is consistent with a Community Plan, General Plan, and Zoning.

KEY ISSUES AND IMPACTS

The proposed facility will establish a bar for typically 80 patrons in a suite of jazz education practice and meeting spaces. Particular events may draw more persons. The proposed use would provide a greater variety of beverages while generating minimum nuisance due to the implementation of alcohol license restrictions (See Conditions 13 to 22 inclusive).

Issues reviewed include: Crime Control; Traffic/Parking; and Concentration of Alcoholic Beverage Services.

Crime Control

Staff consulted Police statistics for the 90 day period listed in ¼ mile radius for a comparable nightclub area (Old Oakland, half a mile west), and compared these with statistics for 90 days prior to May 8, 2012 for 2147 Broadway and found similar or somewhat higher crime statistics to those of Old Oakland as shown below.

2147 BROADWAY. Alcohol (3), Aggravated Assault (3), Simple Assault (9), Burglary (6), Narcotics (2), Disturbing the Peace (3), Robbery (7), Theft (50), Vandalism (10), Murder (0) and Vehicle Theft (3).

OLD OAKLAND (10th Street at Washington Street). (90 days prior to May 10, 2012): Alcohol (0), Aggravated Assault (3), Simple Assault (15), Burglary (3), Disturbing the Peace (5), Narcotics (7), Robbery (6), Theft (37), Vandalism (10), Murder (2) and Vehicle Theft (6).

This is not exceptionally high for a downtown nightlife area and is comparable to other similar areas. Adding area to this activity is not likely to increase statistical crime. However, the applicant will need to follow a security plan due to the late hours of events and the need to distinguish ordinary adult events from events which may cause problems.

With appropriate conditions regarding hours and alcohol sales limitations, this project will meet all of the Use Permit Criteria pursuant to Section 17.134.050 and other Sections listed, which are attached herein and are hereby incorporated into this report.

The Oakland Police Departments ABAT unit has not determined that this use will create nuisance activity if managed properly. As a part of the program ABAT will be responsible for monitoring this location. Through active enforcement and police assistance this use will remain safe and successful.

Traffic/Parking

The facility has housed stores and offices for years; no building expansion is planned. As an increment in revitalization of Uptown, where a dozen new bars and restaurants have located recently in a one-mile radius, this facility is not expected to contribute more than a small fraction of traffic to Broadway, Webster Street, 22nd Street and other access routes in early evening hours. In late evenings, capacity on these streets is usually more than sufficient to allow passage of vehicles. In addition, many customers would be expected to take public transit (due to distance traveled for some families and the desire not to drink and drive).

The project proposes no additional parking spaces. There are parking lots and garages within a 3 block walking area, and the site is near the 19th Street BART station. Frequent bus service is along Broadway.

A new building in the CBD-P (formerly C-52) Central Business District Pedestrian zoning would not require parking for these uses. There are no new buildings proposed; this building has existed for decades in its current configuration.

Section 17.116 of the Zoning Code does not require that parking in excess of requirements be preserved. In fact, a new fee parking lot outside of a structure in this area would require a Conditional Use Permit.

Staff concludes that approval of this use does not require parking spaces due the building pre-dating parking requirements.

Concentration of Alcoholic Beverage Services

The Uptown area near this site includes new bars and alcohol-serving restaurants which have located within the past 5 years: Somar; Flora; Bar Dogwood, Make Westing, the Den bar at the Fox Theater; Mua; Pican and Ozuma at Broadway/Grand etc. In addition, older bars have remained such as Van Cleefs. These establishments cater to an upscale clientele.

This would be the first adult jazz-oriented club in the area. The other main club is Yoshi's in Jack London Square over a mile distant. This opens a new market for the many jazz-oriented adults in Oakland. Thus this facility contributes to rather than detracting from the night life orientation of Uptown.

There are youth-related facilities nearby such as the Ice Rink, Youth Radio and the School for the Arts. However, an upscale facility such BAJA Network is not likely to attract clientele who would put youth at risk or cause embarrassment; and most students tend to leave the area before nightclubs reach their peak attendance.

Staff finds, upon review of the General Plan and Redevelopment plans, that this concentration is beneficial rather than adverse, by drawing tourism and resident night life to an area of Downtown which formerly was mostly closed after daytime business hours and on weekends. This increases security for the area and helps to establish Oakland as a reasonable alternative to San Francisco for opening new entertainment and dining facilities. The nightclub and bar will also add jobs to Uptown.

SUMMARY

BAJA Network will bring more visitors to the Uptown area, reinforcing commercial benefits which provides revenue to preserve the building. The business would be a one-of-a-kind facility in central Oakland. The facility will be an enhancement as seen from the street, replacing space empty at night with night-life. Staff concludes that the application merits support, subject to appropriate Conditions of Approval.

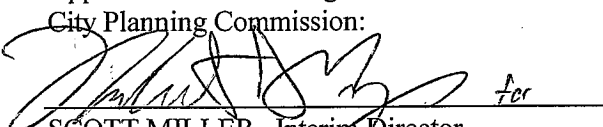
RECOMMENDATION:

1. Affirm staff's environmental determination.
2. Approve the Major Conditional Use Permit, based on the ability to make the findings and subject to the attached conditions.

Prepared by:


David Valeska, Planner II

Approved by:


ROBERT MERKAMP
Acting Zoning ManagerApproved for forwarding to the
City Planning Commission:
SCOTT MILLER, Interim Director
Department of Planning, Building and Neighborhood Preservation**Attachments:**

- A. Findings
- B. Conditions
- C. Site Plan/Aero Photo
- D. Applicant Letter
- E. Applicant Plans and Photographs

A. FINDINGS FOR APPROVAL

This proposal meets the required findings under Sections 17.134.050, General Use Permit Criteria, 17.102.210(A)&(B) Special Use Permit Criteria, as set forth below. Required findings are shown in **bold** type; explanations as to why these findings can be made are in normal type.

Section 17.134.050 (General Use Permit Criteria):

- 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 proposed expansion of alcohol sales in this section of Uptown Oakland will be compatible with adjacent and surrounding businesses. There are nearby residences (Uptown/Forrest City) but these will not be effected. As approved the activity with limited operating hours and other operating characteristics will not adversely affect livability or appropriate development. The building is existing and Uptown Oakland can support the anticipated traffic.

- 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 existing development will provide a convenient and functional living, working and shopping environment by providing a convenient location for specialty alcoholic beverages.

- 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 additional alcohol sales will enhance the area by providing a supplementary space for this service within the busy Uptown Oakland entertainment/nightlife district. The project, a bar and nightclub, will provide an essential meeting area and service within reasonable proximity to the convention center, hotel and office community.

- D. **That the proposal conforms to all applicable design review criteria set forth in the design review procedure at Section 17.136.070.**

The building is existing and only minor changes would be needed such as replacing doors and windows, which can be reversed if needed in the future.

- 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 General Plan is silent regarding sales of alcohol. The General Plan allows for businesses that will not cause undue nuisance activity. The proposed activity is within an established entertainment/nightlife district and as conditioned will cause a minimum of nuisance activity. The Central Business District land use category envisions a wide range of retail, restaurant and specialty stores along with promoting mixed-use developments. This use of an existing commercial storefront will enhance the Uptown Oakland visitors' experience.

Section 17.102.210 (A) - Special Use Permit Criteria:

- 1. That the proposal will not contribute to undue proliferation of such uses in a 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 proposal will not result in a net increase in such effects and the activity is in conjunction with other desired activities. While the urban concentration at night may cause concentration of both legal and illegal behavior, performance by other venues in Oakland and San Francisco has shown minimal contribution by this type of bar to crime, loitering or traffic problems. As conditioned, this bar and nightclub activity will not contribute significantly to such problems. Uptown and the Central Business District together have capacity for the projected traffic without affecting the level of service.

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

Sensitive uses as listed above within 1,000 feet have not been adversely affected by new Alcoholic Beverage Sales Activities developed in the area in recent years. Staff believes that CUP conditions will ensure addition of this Activity will not adversely effect surrounding uses.

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

There will be no direct effect on people along Broadway or nearby pedestrian streets. This Activity should enhance the pedestrian corridor.

- 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.**

The building is existing and the façade will retain most of its modified 1917 style and make minor changes. A high-quality interior and operation are proposed by the applicant to enhance the area.

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

There is no proposed added signage at this time. Any signage proposed will be modest and will go through a separate design review process. No additional parking areas would be built.

- 6. That adequate litter receptacles will be provided where appropriate.**

As conditioned, there will be one non-flammable trash container installed proximate to the entrance of the restaurant and litter will be removed from the sidewalk and gutter in front of and to twenty feet beyond the premises along Broadway in Uptown Oakland.

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 PM and seven AM.

The business is not in close proximity to residential uses or bedroom windows; new condominium and apartment projects are sufficiently distant.

Section 17.102.210(B) - Special Use Permit Criteria

B. Special Restrictions on Establishments Selling Alcoholic Beverages.

1. No Alcoholic Beverage Sales Commercial Activity shall be located closer than one thousand (1,000) feet to any other Alcoholic Beverage Sales Commercial Activity except;
 - a. On-sale retail licenses located in the Central District (defined as within the boundaries of I-980 and Brush Street to the west; 27th Street to the north; Harrison Street/Lake Merritt and the Lake Merritt Channel to the east; and the Estuary to the south); or
 - b. Activity is in conjunction with a Full-Service Restaurant; or
 - c. Establishments with twenty-five (25) or more full time equivalent (FTE) employees and a total floor area of twenty thousand (20,000) square feet or more.

The proposal is within the Uptown Oakland district of the Central District; other findings need not apply.

3. In addition to the criteria prescribed elsewhere in the zoning regulations, a land use permit for an Alcoholic Beverage Sales Activity located within an Alcoholic Beverage Sales license overconcentrated area shall be granted and a finding of Public Convenience or Necessity made only if the proposal conforms to all of the following three criteria:
 - 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:

This Census Tract includes the nightlife districts of Uptown Oakland and nearby areas, and is considered overconcentrated with alcoholic beverage service according to General Plan policies. Documents filed by the applicant and other information on record shows that the project would serve the Uptown Oakland and convention center/hotel district nearby, and the overall Oakland community, with alcoholic beverage service so as to increase physical accessibility and variety of choice for patrons to this nightlife district of the City, in a manner complimentary to nearby restaurants and retail uses.

- 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.**

Information supplied by Oakland Police Department and review of police service calls confirm that this small expansion of use will be a positive influence on community life and would not likely result in a significant increase in police calls for service, due to clientele orientation interested in social gatherings and culture.

- c. That alcohol sales are typically a part of this 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 beverage service is typically a part of nightlife district restaurants and the applicant's proposal is consistent with this pattern in Uptown Oakland.

B. CONDITIONS OF APPROVAL**STANDARD CONDITIONS:****1. Approved Use.*****a. Ongoing.***

The project shall be constructed and operated in accordance with the authorized use as described in this staff report and the plans submitted in April, 2012 and as amended by the following conditions. Any additional uses other than those approved with this permit, as described in the project description, will require a separate application and approval. The approved activity is the sales for on-premise consumption of beer, wine, and distilled alcohol in a space of 2,000 square feet in an existing building, during the hours and with the conditions stated below.

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 have been issued, or 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 valid 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 codes, requirements, regulations, and guidelines, including but not limited to those imposed by the City's Building Services Division, the City's Fire Marshall, and the City's Public Works Agency.

b. The applicant shall submit approved plans for project-specific needs related to fire protection 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 Planning Department 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 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 and submitted with each set of permit plans submitted 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 their respective agents, officers, and employees (hereafter collectively called the City) from any liability, damages, claim, judgment, loss (direct or indirect) action, causes of action or proceeding (including legal costs, attorney's 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 project applicant shall reimburse the City for its reasonable legal costs and attorneys fees.

b. Within ten (10) calendar days of the filing any Action as specified in subsection A above, the project applicant shall execute a Letter Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations shall survive termination, extinguishment or invalidation of the approval. Failure to timely execute the Letter Agreement does not relieve the project applicant of any of the obligations contained in this condition or other requirements, or other 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 and all applicable adopted mitigation measures 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 any 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 and when operating

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

11. Waste Reduction and Recycling

a. Prior to issuance of a building or demolition permit

The applicant may be required to complete and submit a "Waste Reduction and Recycling Plan," and a plan to divert 50 percent of the solid waste generated by the operation of the project, to the Public Works Agency for review and approval, pursuant to City of Oakland Ordinance No. 12253. Contact the City of Oakland Environmental Services Division of Public Works at (510) 238-7073 for information.

12. Recycling Space Allocation Requirements

a. Prior to issuance of building permit

The design, location and maintenance of recycling collection and storage areas must substantially comply with the provision of the Oakland City Planning Commission "Guidelines for the Development and Evaluation of Recycling Collection and Storage Areas", Policy 100-28. A minimum of two cubic feet of storage and collection area shall be provided for each dwelling unit and for each 1,000 square feet of commercial space.

STANDARD CONDITIONS FOR ALCOHOLIC BEVERAGE SALES COMMERCIAL ACTIVITY:

13. Visual Security.

a. Ongoing

The applicant/property owner shall keep windows clear of visual obstructions including, but not limited to signage beyond 20% window coverage, any advertising displays, product racks, refrigerated equipment, cardboard, trash, wire mesh/security bars, reflective coatings, or other materials. Note that this is more restrictive than the state regulations related to signage. The purpose of this condition is to maintain good sight lines in and out of the store to allow police to monitor activity inside and to allow business staff to monitor and discourage inappropriate activity in front of the business.

14. Hours.

a. Ongoing.

The business may be open from 11:00 AM to 12:00 AM for alcohol sales. Alcohol sales shall terminate at 12:00 AM. Any work outside these hours shall solely be staff preparation or cleaning the site.

15. Conformance with State Department of Alcoholic Beverage Control regulations

a. 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.

b. Ongoing

Lighting shall be maintained to meet the B&P code section providing enough illumination to identify loiterers standing in front of the store and in the parking lot. Such illumination shall remain lit during all hours of darkness when the business is open.

c. Ongoing

The licensees/property owners shall clear the gutter and sidewalks twenty feet beyond the property lines along these streets 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.

16.

Compliance with City of Oakland Special Regulations for Alcoholic Beverage Sales Commercial Activities.

a. Ongoing.

Unless waived by the Zoning Manager, 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 the store. The "No Open Container" signs are available from the cashier located on the second floor of 250 Frank H. Ogawa Plaza.

b. Ongoing.

The applicant/property owners shall clear the sidewalks adjacent to their property of all "Street Furniture" including mattresses, crates, pads, and other items for sitting or laying on by loiterers on a daily basis.

c. Ongoing.

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

d. Ongoing.

No pay phones are permitted outside the building.

e. Ongoing.

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.

17. **Trash and litter**

a. Prior commencement of use and ongoing.

The applicant/property owner shall install and maintain at least one (1), non-flammable trash can located near the entrance of the store.

18. Outdoor Tables/No Smoking

Ongoing

Due to close proximity to the front door, there shall be no smoking allowed at the outdoor seating and appropriate signage shall be installed stating "No Smoking Area."

19. Security/Crowd Control

Ongoing

The applicant shall retain qualified security personnel (volunteer or paid) to monitor the event site and areas within 100 feet of entrances. There shall be at least one security guard per 50 patrons, but at all times at least one (1) guards. The guards shall cooperate with the Oakland Police Department in maintaining order inside and outside the venue. The applicant stipulates that three (3) violent or disruptive incidents in such areas within a calendar year, verified by the Oakland Police Department, may constitute reason for the Zoning Manager to agendaize a hearing regarding the Conditional Use Permit before the Planning Commission to consider amending conditions or consider rescission of the Conditional Use Permit pursuant to Oakland Planning Code.

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

a. 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 number 13 through 19 in the conditions of their ABC license. 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.

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

City Council

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02/01/12
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01/01/12



Google earth

feet
meters



ATTACHMENT C: SITE PLAN/AERO PHOTO

Bay Area Jazz & Arts Network, Inc.

P.O Box 20784
4192 Piedmont Ave.
Oakland, CA 94620

April 11, 2012

Planning & Zoning Department
Community and Economic Development Agency
City of Oakland
250 Ogawa Plaza, suite 2114
Oakland, Ca 94612

RE: Conditional Use Permit Application for business at 2147 Broadway

Dear Sir or Madam,

Attached is our application requesting approval of the Conditional Use Permit as required for alcohol and food sales at a proposed performance venue. The Bay Area Jazz & Art Network Inc (BAJA Network) is a non-profit corporation created to support the community of artists and musicians by providing a network for collaboration and fostering community interaction with the arts. BAJA Network desires to be a hub of creativity, a home to musicians and artists, and an intimate setting for visitors and residents of the Bay Area to enjoy the arts.

The location is on the ground floor of the existing 2 story building at the corner of Broadway and 22nd Street in downtown Oakland. The tenant space is approximately 1850 sf with existing glass storefront facing Broadway for 43' and 18' on 22nd Street. The entrance is on Broadway with an emergency exit on 22nd Street. Please see the attached photographs and plans.

The name of the business is proposed to be "The Sound Room". BAJA Network's goal is to provide a space for live music performances with seating for up to 80 persons. There will be a small bar serving local beers and wines. A small kitchen is planned to serve organic vegetarian food to the public and during events.

It is anticipated that BAJA will provide musical performances several nights per week. An art exhibition will be simultaneous with the musical performances. Additional time for art exhibition is anticipated during lunch times and early evening during the week to accommodate workers in the area and on the weekend. During the weekday business

ATTACHMENT D: APPLICANT LETTER

hours the facility anticipates hosting musical programs for children in coordination with area schools.

Programs for school children will last 45 – 60 minutes. Art exhibits will be open for multiple hours during the day. Evening performances/exhibitions will be open until midnight. To attract people into the venue, food and beverages will be offered when the venue is open with art exhibits.

Small scale group assembly use and food sales are permitted uses in the CBD-P zoning district which the tenant space is located. The sale of alcohol is proposed in conjunction with the sponsored events. We feel this is an appropriate location for the proposed uses.

Please consider our application for approval,

Thank you,

A handwritten signature in black ink, appearing to read 'K. Van Leuven', with a long horizontal flourish extending to the right.

Karen Van Leuven
President, BAJA Networks Inc.

Conditional Use Permit Findings

A. 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 location is in the central business district zone among other restaurants, bars and entertainment venues. The performance space will be less than the 7500 sf limit identified in the planning code for this part of Broadway. The sale of beer and wine with food is also a permitted use in the Central Business District – Pedestrian zone. The BAJA Networks performance space will provide a much needed small scale venue that will complement the established larger venues such as the Paramount, Fox and Uptown. It will give the community of musicians a place to perform to listening audiences and artists to display their work. The surrounding restaurants and bars will benefit from our audience by providing increased foot traffic and customers before and after performances.

B. 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 will benefit from the robust transit options available at the confluence of several AC Transit bus lines, the Broadway free shuttle and proximity of the downtown BART stations. The Sound Room will draw its audience from the commuting downtown office workers and urban neighborhood residents. Such transit options combined with existing street and off street parking facilities will draw from the regional fan base for live music. The art shows presented will attempt to more closely link downtown workers and commuters with the emerging Uptown gallery scene. The art shows will be juried by local artists and attempt to present the potential range of art created by Bay Area artists.

C. 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 changing menu of food offered by the Sound Room will focus on healthy vegetarian selections coupled with food and healthy cooking education opportunities. Food and drinks will be offered at a range of prices to reflect the different demographics and economic conditions of the target audience and participants.

D. The proposal conforms with all applicable Regular Design Review criteria set forth in Section 17.136.050 of the Oakland Planning Code:

The Sound Room will be fully accessible and open to the public. This use fits nicely with the proposed non-profit community center, The Kobet

achieve or maintain a group of facilities which are well related to one another and which, when taken together, will result in a well-composed design, with consideration given to site, landscape, bulk, height, arrangement, texture, materials, colors, and appurtenances; the relation of these

factors to other facilities in the vicinity; and the relation of the proposal to the total setting as seen from key points in the surrounding area.

E. For proposals involving a One- or Two-Family Residential Facility: not applicable

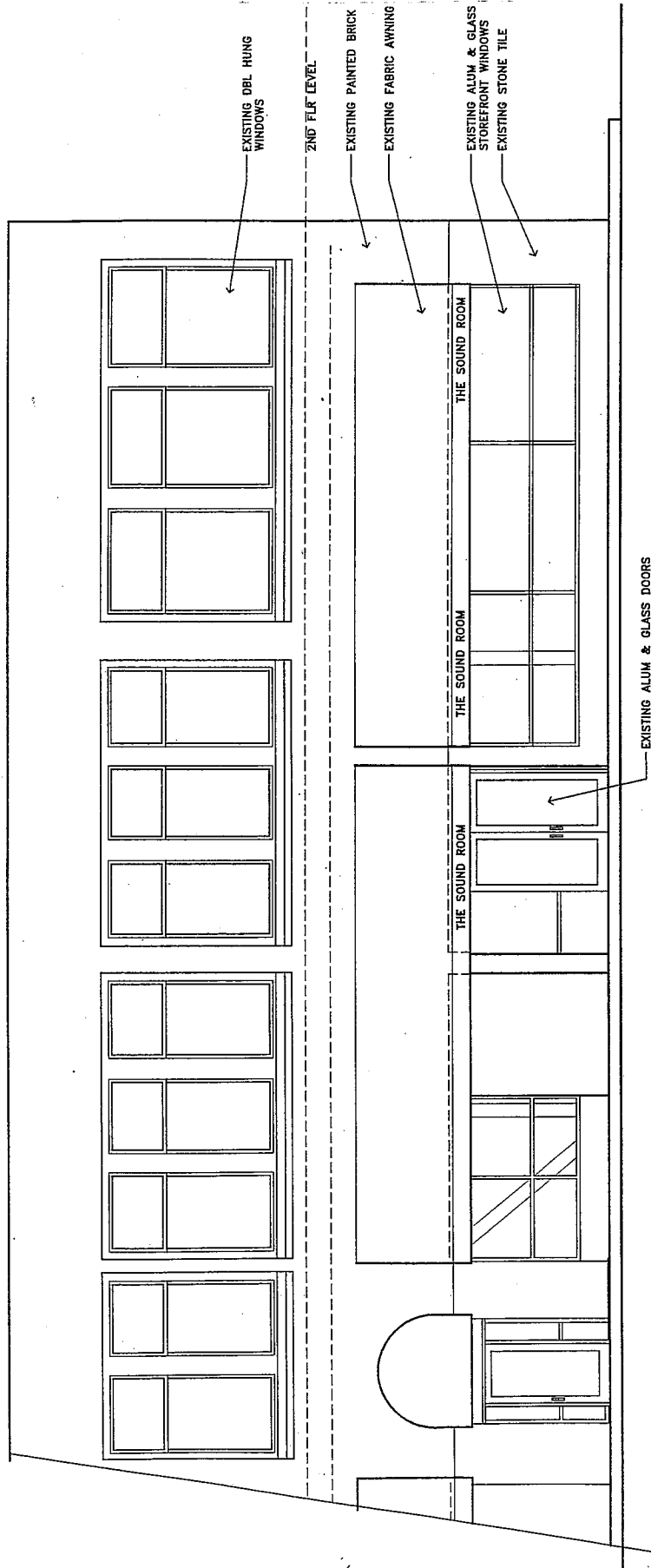
F. The proposal conforms in all significant respects with the Oakland General Plan and with any other applicable plan or development control map which has been adopted by the City Council.

The Oakland General Plan encourages the highest intensity uses in the CBD. The proposed uses of live music performances and art gallery shows are encouraged business in the revitalization of this part of Broadway. It links small performance events with transit systems, pedestrians, bike paths and bike parking. This non-profit will join the new Kapor Foundation across the street on Broadway as a hub of organizations supporting local groups for change.

Reference organization

The Jazz Gallery is a nonprofit organization that nurtures the youngest generation of professional jazz musicians by giving them an audience for their performances and a stage upon which to assemble their bands. The Gallery is open 3 to 5 nights per week, 50 weeks per year and produces more than 150 events per year. The Gallery is a hub of creativity, a home to jazz musicians/composers, many of them from all over the world but now permanently settled in the United States. The Jazz Gallery presented nine of the last 11 winners of the Thelonious Monk Jazz Competition **PRIOR** to their winning this competition. In September 2011, drummer **Dafnis Prieto**, who has frequented the Gallery's stage since his arrival in NYC and who has been commissioned by the gallery twice, won a MacArthur Award; in 2010, **Jason Moran**, a formidable pianist who has frequented the stage of The Gallery for more than 10 years, also won a MacArthur Fellowship Award; and in 2008, 2010-11 Jazz Gallery Resident Artist **Miguel Zenon**, whose emergence began at The Jazz Gallery in 2001, was a MacArthur Fellowship recipient. The Jazz Gallery's Residency Commissions offer artists a commissioning and residency fee (up to \$7,000 in 2011-12) that allows them to take a hiatus from the road as they create their new works. In addition, the Gallery provides them with a creative and convivial space in which to develop, rehearse and workshop the new music before it is made public. During each artist's four to six week residency period, The Jazz Gallery space is made available to the selected artists during "off hours," when they can collaborate with their ensemble members and utilize the month to realize artistic goals. The program is made possible by a major grant from The Jerome Foundation, with additional support from the New York City Department of Cultural Affairs. Support for this program has been renewed for 2011-12, and the second Residency Commissioning Series will focus on bassist/composer/bandleaders, with new works scheduled from Alexis Cuadrado, Joe Sanders, Linda Oh and Matt Brewer. In each case, The Jazz Gallery does not dictate the exact nature of each residency, but rather, allows each composer the freedom to create a residency that meets his/her individual needs. Through The Residency Commissions as well as other new projects such

at "The Woodshed at The Jazz Gallery", which will provide free rehearsal space to jazz musicians beginning in January 2012, The Jazz Gallery seeks to provide a powerful creative environment for the musicians it supports and presents, and at the same time, to establish a replicable model for supportive relationships between jazz musicians and presenters in general.

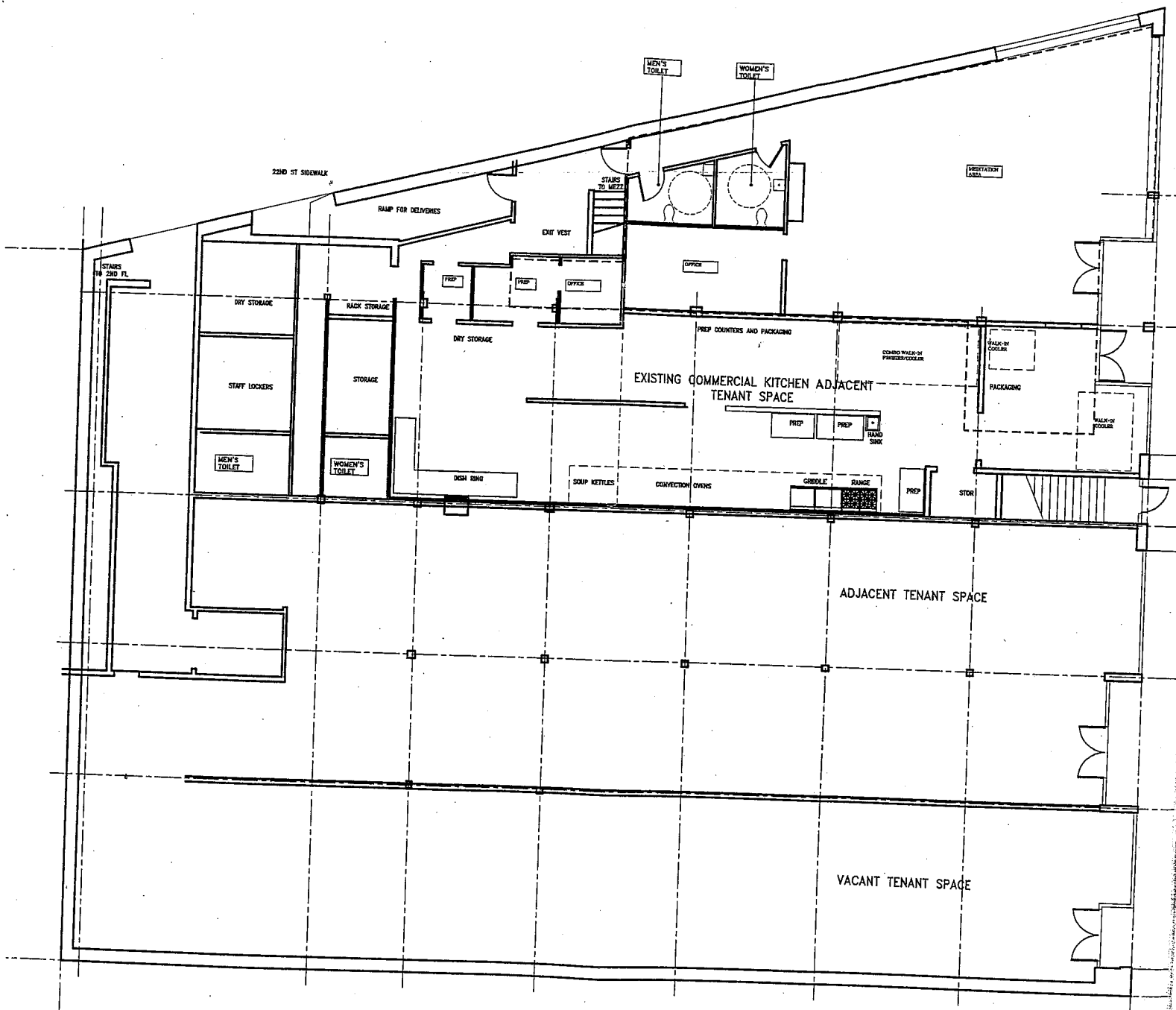


architecture + art

LABORATIVE

Exterior Elevation Broadway Street

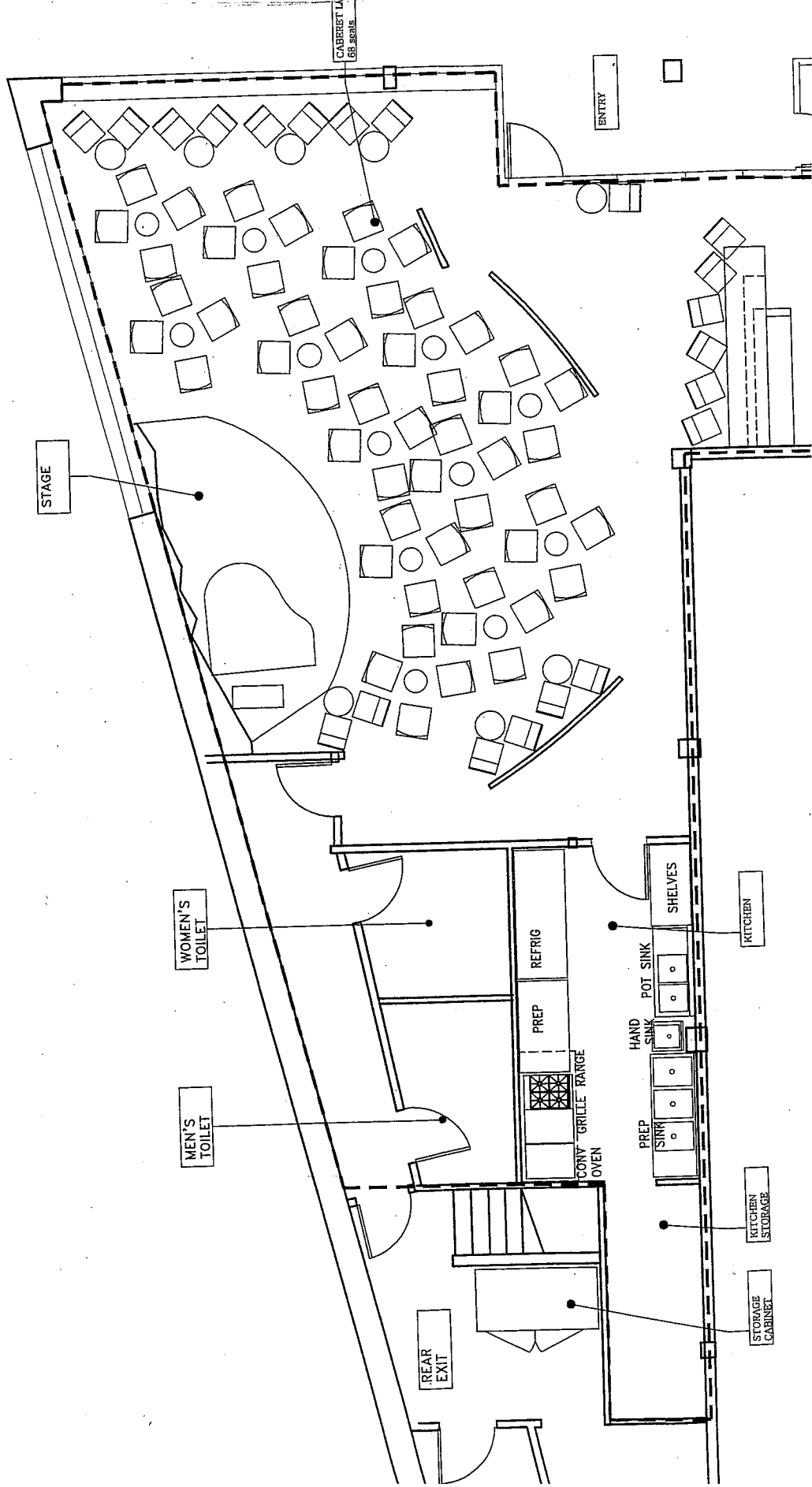
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REVISED BASE BUILDING
PLAN

architecture + art
COLLABORATIVE

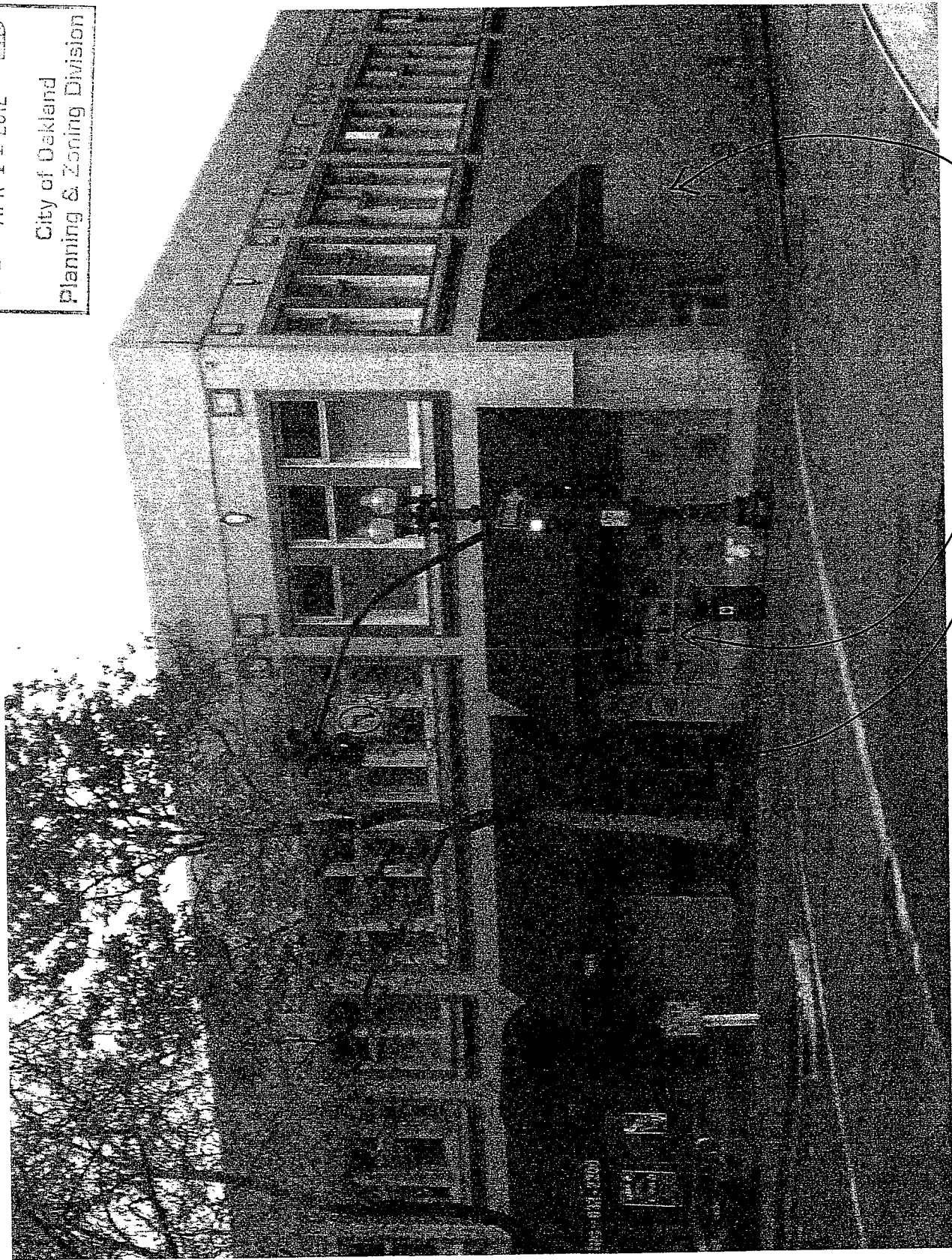
Existing Plan
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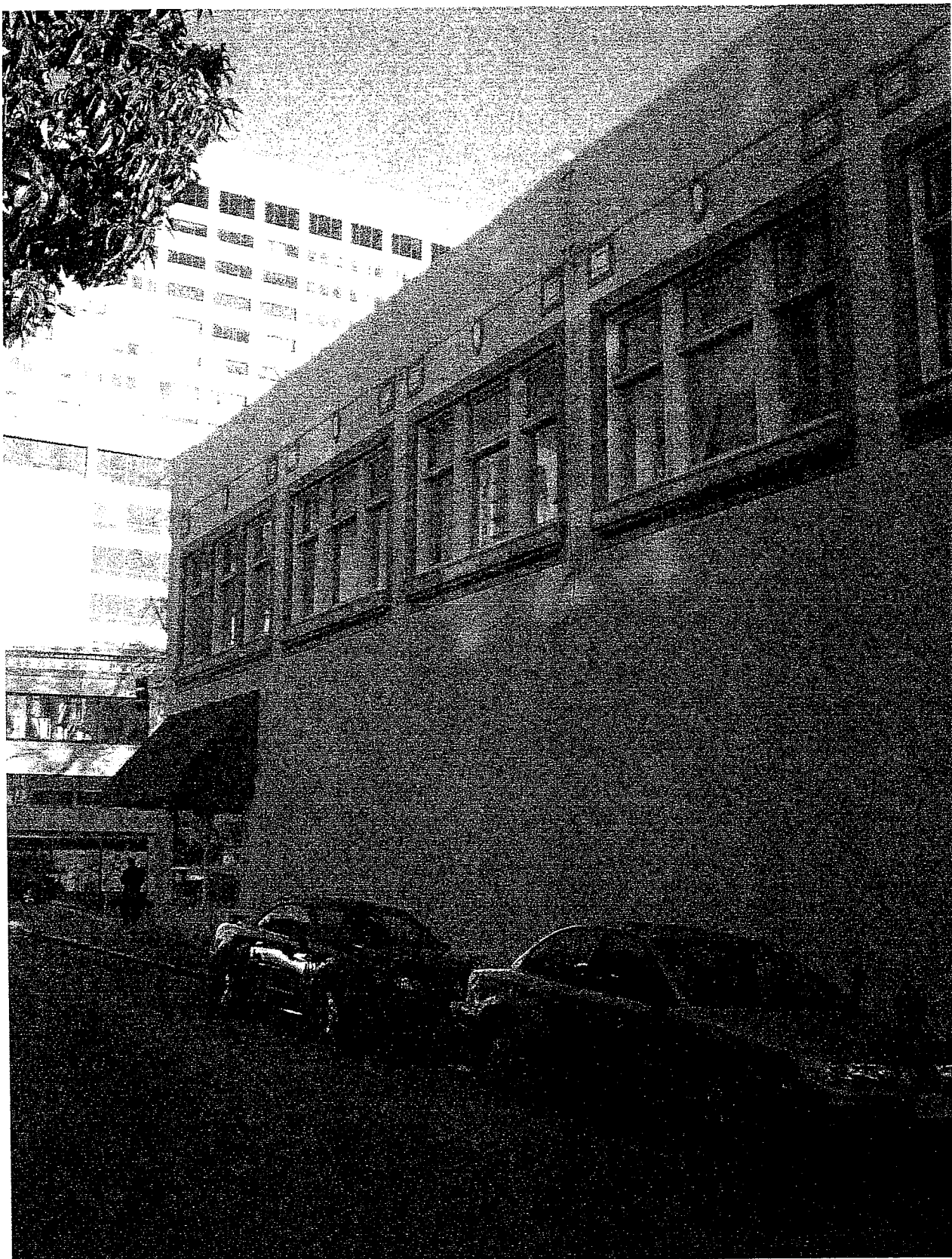
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City of Oakland
Planning & Zoning Division

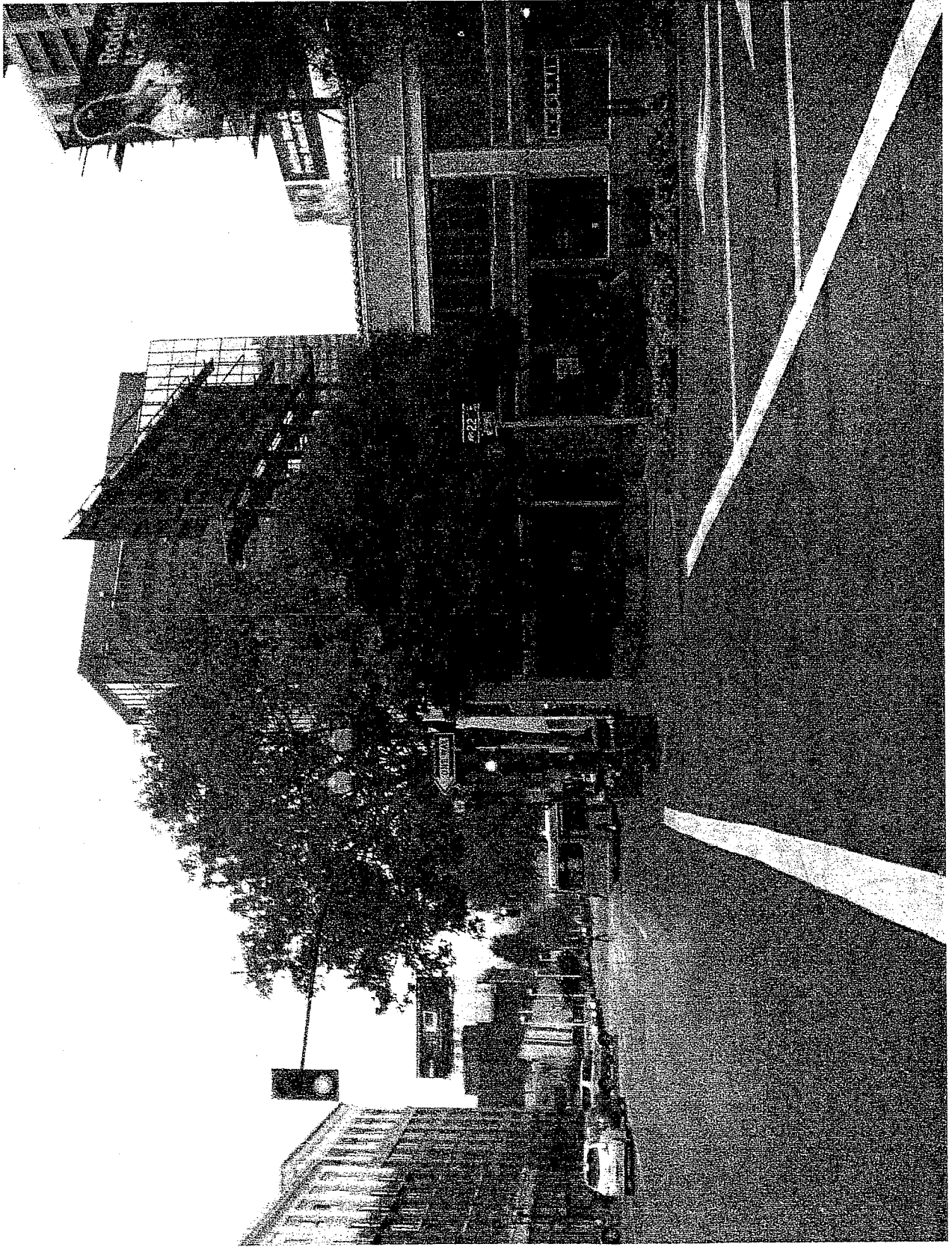


CORNER OF 22ND & BROADWAY

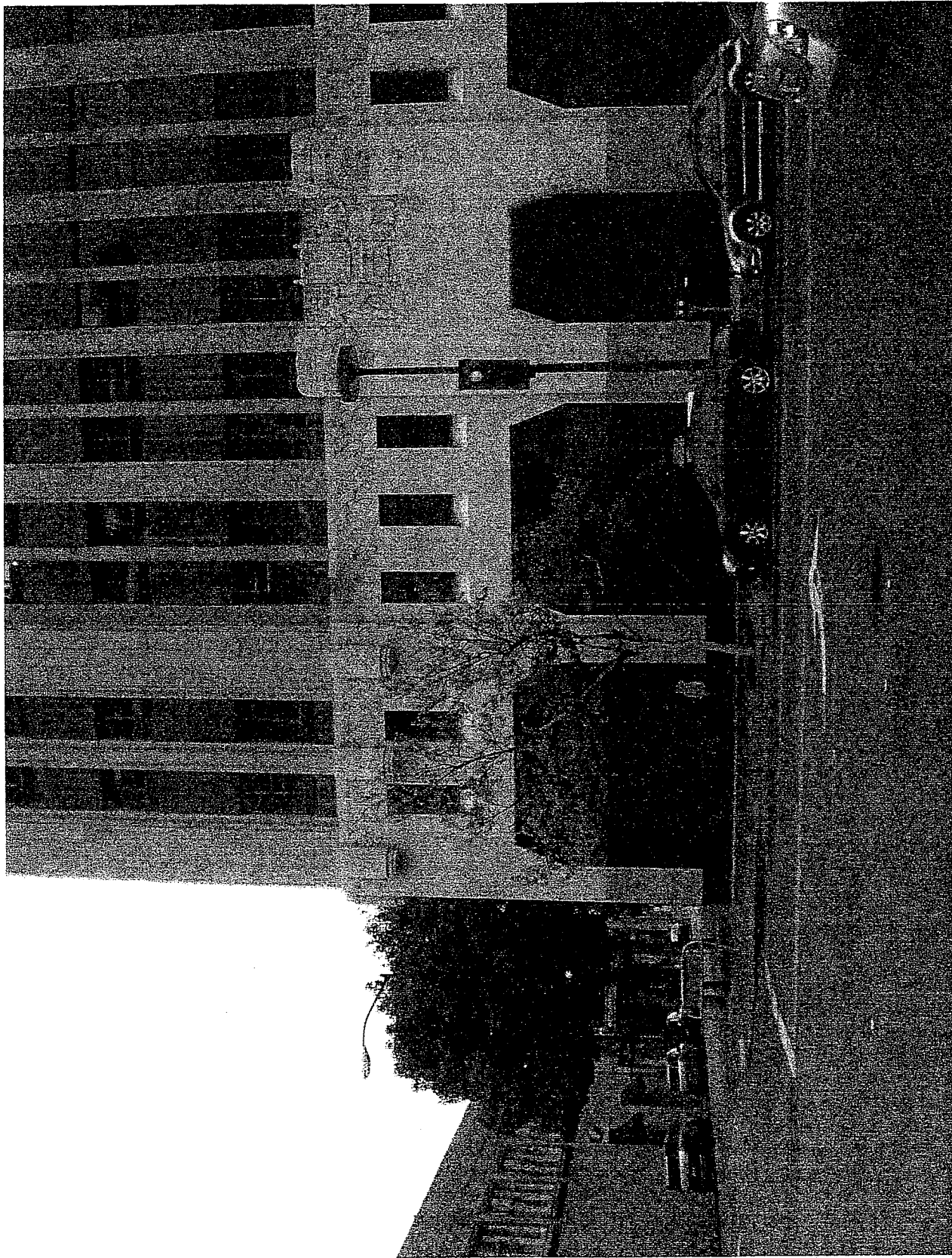
TENANT SPACE



SIDE OF BUILDING AT 22ND ST



BROADWAY @ FRANKLIN - ADJACENT RESTAURANTS



CORNER BROADWAY @ 22ND

Valeska, David

From: Jon S. O'Donnell [jon@mbvlaw.com]

Sent: Wednesday, May 23, 2012 12:40 PM

To: Valeska, David

Subject: Objection to Issuance of Major Conditional Use Permit at 2147 Broadway (Case File No. CM12-041)
Mr. Valeska

This firm represents the Easy Bay Meditation Center regarding the above Use Permit Application. Please see the attached letter setting forth the EMBC's Objections.

Please confirm receipt.

Thank-you,

Jon S. O'Donnell

MBV | LAW LLP

855 Front Street | San Francisco, CA 94111

Tel: 415-781-4400 ext. 1432 | Fax: 415-989-5143

www.mbvlaw.com | jon@mbvlaw.com

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May 23, 2012

VIA EMAIL

Zoning Division of the Community
and Economic Development Agency
250 Frank H. Ogawa Plaza, 2nd Floor
Oakland, California 94612-2031

Re: *Objection to Issuance of Major Conditional Use Permit at 2147 Broadway*
(Case File No. CM12-041)

To Whom It May Concern:

This firm has been retained to represent the East Bay Meditation Center (the "EBMC") with respect to the application of Sound Room/BAJA Network (the "Nightclub"), Case File No. CM12-041, for a major conditional use permit to allow alcoholic beverage sales activity and group assembly (nightclub) (the "Permit"). The Nightclub will be located almost directly below the EBMC.

I. The EBMC's Role in the Community

The EBMC is a non-profit California Religious Corporation and exempt from federal income taxes under Internal Revenue Code Section 501(c)(3). The EBMC is therefore entitled to the same protections under federal, state, and city law that apply to all churches, synagogues, and other houses of worship. The EBMC is one of the most diverse meditation centers in the country, with 50% of program participants who self-identify as People of Color, and 45% who self-identify as members of the Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Same-Gender Loving ("LGBTQI-SGL") community. For anyone familiar with the world of meditation centers in this country this is, in and of itself, a remarkable

achievement. Such diversity is only possible because of the EBMC's location in downtown Oakland.

The EBMC also serves the low-income community. Twenty percent (20%) of the EBMC's community members make less than \$20,000/year, and almost 40% make less than \$35,000/year. Again, for anyone familiar with the world of meditation centers, this too is a remarkable achievement, which is, again, only possible because the EBMC is located in downtown Oakland and readily accessible by public transportation.

The EBMC serves a large community. In the short 5-1/2 years of the EBMC's existence, attendance at the EBMC's events has increased tenfold, going from under 1,000 to over 10,000 people per year.

The EBMC brings immeasurable benefits to Oakland. It is well documented that the effects of racism and oppression contribute to greater levels of stress-related health and social impacts. It is also well known the economic crisis disproportionately impacted communities of color. The stress-reducing benefits of meditation are also well documented. However, until the opening of the EBMC, many Bay Area People of Color did not feel welcome or comfortable attending meditation classes at other Buddhist-based meditation centers, workshops, or retreats, as they would often find themselves the only person of color in the room.

The EBMC trains participants to benefit from mindfulness meditation and to counteract the stresses felt by many in the Oakland community. The Center also offers workshops to apply meditation to the practices of conflict resolution, to nonviolence, and to healing the effects of racism and homophobia, among a host of other related topics. Last year the EBMC offered a one-day stress reduction retreat for people who had lost their jobs and/or homes to foreclosure, providing a hot lunch and accepting no donations for that day.

This year the EBMC will offer a one-day "Resilience and Well-Being Workshop" for People of Color. The EBMC offers separate weekly meditation groups for People of Color; members of the LGBTQI-SGL community; people with chronic illness and/or disability; a group open to all; and a meditation and yoga group for Spanish-speaking people.

And, of course, just as with many other churches, all of this has been accomplished without any fees charged for the meditation classes, workshops, retreats, or meditation sitting groups. Like other churches, the EBMC relies on the generosity of its community for its financial support.

All of these remarkable achievements have only been possible because the EBMC is located in downtown Oakland, accessible by BART and other public transportation.

II. The Proposed Use Is Inconsistent with the EBMC

The Permit sought is for a nightclub that will operate one floor almost directly below the EBMC.¹ On its face, the sharing of such contrasting uses in a single building is impossible to reconcile. This permit application is subject to the additional permit criteria set forth in Oakland Municipal Code Section 17.102.210(A)(2) because the EBMC is an "adjacent or nearby church[,] temple or synagogue[.]" That Section requires the additional criteria that the Permit will not "adversely affect" the EBMC. There are very clear reasons, under the above section of the above Section of the Oakland Municipal Code why the proposed permit should be denied, and the EBMC intends to pursue all legal avenues to make that case. The

¹ The EBMC is currently located in the Nightclub's proposed ground floor space. The EBMC's Lease, if followed by the Landlord, requires the remodel of the second floor of the building. Once the second floor remodel is complete, the EBMC will move to the second floor and vacate the ground floor space. If the Landlord does not remodel the second floor as required, the EBMC will not vacate the ground floor and the issuance or denial of the Permit will be moot. This letter assumes the Landlord will comply with the Lease and that the EBMC will take possession of the second floor of the building.

EBMC offers the following reasons why issuance of the Permit would adversely affect the EBMC:

a. **Proximity of Amplified Music**

The Nightclub, like virtually all music venues, will involve amplified music. Undoubtedly the noise will travel through the floor of the EBMC and interfere with the EBMC activities, including meditation.

We are informed the Nightclub will operate both during the day and the night. Just as the Nightclub plans to, the EBMC currently operates both during the day and night. The proposed Permit is in direct conflict with the principal hours of operation of the meditation center. The EBMC has regular weekly meditation groups meeting four nights per week, and often has meditation classes or workshops on two of the other nights of the week. In addition, the EBMC has frequent day-long meditation retreats on one or both weekend days, as well as weekday daytime classes such as yoga and meditation, and a daytime meditation group teaching healing practices for women of color. Board meetings, staff meetings, and committee meetings which incorporate periods of silent meditation take place at the EBMC during the daytime hours as well.

The majority of the meditation practices taught at the EMBC are based in *silence*. And while it is one thing for the EBMC and participants to accommodate the "white noise" of traffic, it is quite another thing to subject the EBMC and participants to amplified music booming from one floor below. Further, the proposed space is located in an old building, where noise carries easily.

b. **Noise from Patrons in Front of the Nightclub**

The main entrance to the Nightclub would be almost directly below the (single pane) windows of one of the meditation spaces. Nightclub patrons will congregate near the en-

trance on the sidewalk below the meditation center windows. Many patrons will smoke cigarettes, and many patrons—some inebriated—will engage in loud conversation. Clearly this will be very disruptive to the meditation classes occurring—often in silence—just one floor above.

c. Cigarette Smoke

Nightclubs, and any locations serving alcohol, attract smokers. The smokers will smoke on the sidewalk; putting them near the 22nd Street entrance to the building being used by meditation center members. The cigarette smoke will migrate into the entryway of the meditation center and be an exposure on the sidewalk affecting meditation center members coming and going from meditation sessions and the EBMC events.

Moreover, cigarette smoke on Broadway below the windows in the 2141 Broadway upstairs space will waft into the second story windows of the EBMC. These windows must be kept open for ventilation purposes when holding an event in the space during certain times of the year. Secondhand smoke is a known danger to public health, and a significant number of the EBMC church congregation are people with respiratory-related illnesses and chemical injury, for whom this would be especially injurious.

d. Security

Nightclubs and alcoholic beverages increase security risks. The main entrance to the EBMC will be on 22nd Street. This is a side street and is already less visible from the more heavily trafficked Broadway and is therefore less secure than the Broadway side of the building. Undesirable activities that will surround the periphery of the Nightclub will inevitably invade the alleyway and occur near the main entrance to the EBMC. This is an unacceptable risk for members of the meditation center who would be coming and going through that entrance.

III. Conclusion

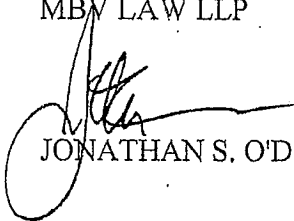
The EBMC understands the City's interest in locating nightclubs and entertainment downtown. But, the EBMC has been well established at this location for five and one half years.) The EBMC has and can deal with neighborhood bars and nightclubs. However, this Permit will install the Nightclub almost directly below the EBMC, adversely impacting the EBMC's mission and important community work. In addition, the City is considering another Conditional Use Permit for another nightclub, at 2120 Broadway, which would be located directly across the street from the EBMC.

The EBMC submits that the Nightclub is one of a dozen nightclubs in the area and could easily be relocated elsewhere in the neighborhood or the block so that the EBMC, can continue to provide its unique and valuable services to the diverse communities in Oakland and the Bay Area without disruption and interference.

For the reasons catalogued above, the application for the Permit should be denied.

Very truly yours,

MBV LAW LLP



JONATHAN S. O'DONNELL

JSO:evm

91369.01/4849-4592-9743, v. 3

cc: East Bay Meditation Center