

Location: Existing: 5248 Telegraph Avenue/5227 Claremont Avenue (APN: 014 -1225-015-01); Proposed: 5239 Telegraph Avenue (APN: 014 -1219-002-00) (see map on reverse)

Proposal: To demolish a closed restaurant building at 5239 Telegraph Ave; relocate a bar building (Kingfish) from 5248 Telegraph Ave to the newly vacant site; construct a rear building behind the bar; and resume operation of the bar. The existing property is a through-block-lot, with the bar facing Claremont Avenue, and is scheduled to be cleared to accommodate new construction.

Applicant-Owner / Phone Number: Baitshop Dives LLC / (774) 239-1464

Planning Permits Required: Major Conditional Use Permit with additional findings for Alcoholic Beverage Sales Commercial Activity; Variances for Alcohol Sales within 1,000 feet of existing Alcohol Sales & within 1,000 feet of civic uses in an over-concentrated area; Regular Design Review with additional findings for demolition, removal, and relocation of buildings; Findings of Public Convenience or Necessity for Alcohol Sales in an over-concentrated area

General Plan: Existing site: Mixed Housing Type Residential; Proposed: Community Commercial

Zoning: Existing: CN-2 Neighborhood Commercial Zone; Proposed: CN-3 Community Commercial Zone

Environmental Determination: Exempt, Section 15301(l) of the State CEQA Guidelines: Existing Facilities (Demolition); Exempt, Section 15303(c): New Construction of Small Structures (store, office); Exempt, Section 15331: Historical Resources Restoration/Rehabilitation; Section 15183: Projects Consistent with a Community Plan, General Plan or Zoning

Historic Status: 5248 Telegraph Ave: Potential Designated Historic Property; survey rating: C3; 5239 Telegraph Ave: Non historic property

Service Delivery District: 2

City Council District: 1

Date Filed: June 14, 2014

Action To Be Taken: Approve with Conditions

Finality of Decision: *Appealable to City Council within 10 days*

For Further information: Contact case planner **Aubrey Rose AICP, Planner II** at (510) 238-2071 or arose@oaklandnet.com

SUMMARY

The applicant requests Planning Commission approval of a Major Conditional Use Permit, Regular Design Review, Variances, and additional findings to demolish a vacant restaurant along Telegraph Avenue, relocate the Kingfish bar from its existing location along Claremont Avenue to the newly-cleared site, construct a rear building, and to resume bar operations using the new rear building as an office and possible kitchen serving the bar.

Staff recommends approval of the requested permits, subject to the Conditions of Approval included in this report.

CITY OF OAKLAND PLANNING COMMISSION



0 125 250 500 750 1,000 Feet



Case File: PLN14192
Applicant: Baitshop Dives LLC
Address: Existing: 5248 Telegraph Avenue
Proposed: 5239 Telegraph Avenue
Zone: Existing: CN-2 (bar), CC-2 (house)
Proposed: CN-3

PROPERTY DESCRIPTION

The proposal features two properties as the project involves moving of a structure from one site to another site. The properties are located in the upper Temescal neighborhood along Telegraph Avenue north of 51st Street. The property lines are located one hundred ten (110) feet apart; the existing and proposed building footprints are located one hundred seventy-five (175) feet apart.

Existing site: 5248 Telegraph Avenue/5227 Claremont Avenue

The existing site is a through-lot with frontage on both Telegraph and Claremont Avenues. The property abuts the triangular-shaped corner lot situated at the intersection of those streets. The property contains four buildings and a garage: three residential buildings, including two homes facing Telegraph Avenue and the one-story commercial bar building facing Claremont Avenue. The bar building was constructed in 1922. The building consists of wooden siding painted green, large front windows with trim painted white, a metal awning sign and a painted wall sign on the right side, and a tar-and-gravel roof. The building's interior measures approximately one thousand three hundred (1,300) square-feet in floor-area with customer areas totaling eight hundred (800) square-feet. It contains a front seating area with a bar at the right side of the room, a rear game room with a shuffleboard, restrooms to the rear, and a former kitchen space to the rear of the bar area. The interior ceiling height is low by current building code standards. The establishment originally opened as a bait shop, became a restaurant/bar in 1933, and was approved by the Planning Commission in as a bar in 2009. The area along Claremont Avenue contains apartments, child care, restaurants, and a DMV office. The area along Telegraph Avenue contains apartments, restaurants, a church, a drug/alcohol rehabilitation center, a wine shop, and a new cabaret in place of former music retail/recording shop. To the north is the 24 freeway overpass.

Proposed site: 5239 Telegraph Avenue

The proposed site is a level lot measuring forty-feet in width fronting Telegraph Avenue, a four-lane street. The site contains a vacant one-story commercial building that is non-historic and formerly contained a restaurant that held a beer and wine license. The building has an awning and glazing. It is pushed towards the front of the lot with a small front patio. The side and rear property lines contain fencing. The lot contains a driveway along its left side with an open rear yard comprising half of the lot. To the right of the building is a two-sided billboard. In front of the lot is the City sidewalk, an unplanted area toward the curb, and a utility pole with a street lamp. To the north is a three-acre apartment complex site with three-story buildings over parking set back twenty-five (25) feet from the property line; its main entrance is opposite Telegraph Avenue. To the west is the rear yard of a residence along 53rd Street (sixty feet between existing buildings). To the south are the Oakland Public Library's Temescal branch with tool lending library (ten feet between existing buildings); its main entrance is opposite the project site towards 52nd Street. Library hours are as follows:

- | | |
|---------------------------------|----------------|
| • Sunday, Monday: | Closed |
| • Tuesday: | 12:30-8:00pm |
| • Wednesday-Thursday, Saturday: | 10:00am-5:30pm |
| • Friday: | 12:00-5:30pm |

BACKGROUND

In 2008 the Planning Commission approved a project for the existing site, involving clearing of all structures, and the construction of a new building. The building would be five-stories containing thirty-three units of residential condominium units over ground floor commercial space. There would be no bar component. The Kingfish, at that time permitted as a restaurant with a bar, closed in 2007 to accommodate the project. Due to the worsening of the economy beginning in late 2008, the project did not commence immediately following

approval. In 2009, the Kingfish owner applied to reopen the business as a bar, only. Due to the historic location and function, the Planning Commission approved the necessary conditional use permit with variance. In 2010, the Zoning Administrator granted a minor revision to the bar for hours of operation and jukebox use. The new project for the site is now ready to move forward and the bar must therefore be relocated or demolished. Prior to submitting this application, the owner met with the Temescal-Telegraph Business Improvement District; two Neighborhood Crime Prevention Councils; the Temescal merchants; and the Rockridge Community Planning Council.

PROJECT DESCRIPTION

The proposal is to demolish the vacant restaurant building at 5239 Telegraph Avenue; relocate a bar building (Kingfish) with existing signage from 5248 Telegraph Avenue to the newly-vacant site; construct a two-story rear building behind the bar with a patio terrace in between the buildings; remove paving and install landscaping, fencing, concrete, and illumination throughout the site; and resume operation of the bar, using the rear building as its office and potentially as its kitchen in the future. Smoking is requested for the rear patio terrace. The project would utilize the historic building code to maintain its ceiling height and other nonconforming features. The sidewalk planter strip would be installed with landscaping and pavers. The interior would remain same as described in the preceding 'Property Description' section of this report. Operation would remain same as existing, as follows: the bar would employ twelve workers, up to five at any given time (one manager and four bartenders); the space would have a capacity of fifty persons; security would consist of one closed-circuit television (CCTV) to perform video surveillance. The proposed hours of operation are daily from 10:00am to 2:00am.

The proposal includes relocating the existing ABC license, so the project will not increase the quantity of liquor establishments or licenses located in the City. The bar may host occasional mobile food vending trucks and special events subject to City approval.

GENERAL PLAN ANALYSIS

The front of the proposed site is located in the Community Commercial area under the General Plan's Land Use and Transportation Element (LUTE). The intent of the area is: "To identify, create, maintain, and enhance areas suitable for a wide variety of commercial and institutional operations along the City's major corridors and in shopping districts or centers." The rear of the proposed site is located in the Urban Residential area and the intent of the area is: "to create, maintain, and enhance areas of the City that are appropriate for multi-unit, mid-rise or high-rise residential structures in locations with good access to transportation and other services." The corridor has a Strategy Objective of 'Grow and Change' under the LUTE (Strategy Diagram Figure # 3 p. 122) and lies within a Neighborhood Activity Center located on a Key City Corridor (City Structure Diagram). The General Plan is silent for both areas on Alcoholic Beverage Sales Commercial Activity. The proposal conforms to the following Policies of the LUTE and Historic Preservation Element:

Policy I/C1.2 Retaining Existing Business.

Existing businesses and jobs within Oakland which are consistent with the long-range objectives of this Plan should, whenever possible, be retained.

Policy 3.7 Property Relocation Rather Than Demolition As Part Of Discretionary Projects

As a condition of approval for all discretionary projects involving demolition of existing or Potential Designated Historic Properties, the City will normally require that reasonable efforts be made to relocate the properties to an acceptable site.

The proposal is to relocate the building and business on the edge of a vibrant neighborhood commercial district, where the business is essentially the resumption of a prior non-problematic use, and where the building is an improved design over the existing structure and might otherwise be demolished. Staff finds the project to conform to the General Plan subject to Conditions of Approval.

ZONING ANALYSIS

The proposed site is located within the CN-3 Neighborhood Commercial Zone. The intent of the CN-3 Zone is: "to create, improve, and enhance areas neighborhood commercial centers that have a compact, vibrant pedestrian environment." Following are a list of the zoning permits required for the project, the reasons they are required, and descriptions of why the proposal meets the criteria:

- Major Conditional Use Permit (CUP) for Alcoholic Beverage Sales Commercial Activity; a bar is an alcohol use that historically can be problematic in certain locations and approval requires a CUP to verify compatibility and attach operating restrictions. Due to the severity of undesirable outcomes these CUP's are elevated to the Planning Commission for review. The proposal is essentially a resumption of an existing successful bar at an appropriate new location and will continue adhering to Conditions of Approval.
- Additional findings (specific criteria) for establishments selling alcoholic beverages; these findings more specific to review compatibility of an alcoholic beverage sales activity, and can be made as discussed in the 'Key Issues and Impacts' section of this report.
- Additional findings for a CUP in a CN Neighborhood Commercial Zone: these findings essentially ensure new projects will not be automobile-oriented and will be pedestrian and bicycle oriented with active space, which the proposal will be.
- Findings of Public Convenience or Necessity: the area is over-concentrated for ABC licenses in the Census Tract and these additional findings are therefore required to ensure an additional license is warranted. In this case, the existing license is merely relocated within the neighborhood.
- Regular Design Review: required for demolition, relocation, and construction. The relocation is preferable to a demolition of the Potential Designated Historic Property (PDHP), and the building to be replaced is not noteworthy. The new rear structure will be attractive and compatible in appearance.
- Additional findings for removal of a Potential Designated Historic Property and CEQA Section 15331 for Historical Resources Restoration/Rehabilitation: these findings ensure PDHP's are retained or replaced with superior projects; in this case, the PDHP, an iconic Oakland building, would be moved and re-used rather than demolished.
- Variances: these are required given the site is located with one thousand (1,000) feet of existing alcohol outlets, and, within one thousand (1,000) feet of civic uses which is prohibited for such projects in over-concentrated areas. The area is not over-concentrated for crime however and the project only involves a relocation of a business, which has already been granted variances, to move to a busier street as is appropriate.

The proposal conforms to the intent of the CN-3 Zone. It also conforms to the following purpose of the zoning regulations (OMC Sec. 17.07.030(P)):

To prevent the unnecessary destruction or impairment of structures, other physical features, sites, and areas of special character or special historical, cultural, educational, architectural, aesthetic, or environmental interest or value and to achieve the following purposes:

1. The protection, enhancement, perpetuation, and use of structures and other physical features, sites, and areas that are reminders of past eras, events, and persons important in local, state, or national history, or which provide significant examples of architectural styles of the past or are landmarks in the history of architecture, or which are unique and irreplaceable assets to the City and its neighborhoods, or which provide for this and future generations examples of the physical surroundings in which past generations lived,
2. The development and maintenance of appropriate settings and environment for such structures, and other physical features, on such sites, and in such areas,
3. The enhancement of property values, the stabilization of neighborhoods and areas of the City, the increase of economic and financial benefits to the City and its inhabitants, and the promotion of tourist trade and interest,
4. The preservation and encouragement of a City of varied architectural styles, reflecting the distinct phases of its cultural, social, economic, political, and architectural history,
5. The enrichment of human life in its educational and cultural dimensions in order to serve spiritual as well as material needs, by fostering knowledge of the living heritage of the past.

The project involves a relocation of a longtime, non-problematic neighborhood-serving business. Potential issues are discussed in the 'Key Issues and Impacts' section of this report. All required findings can be made for the project as proposed and staff finds the project to be consistent with the Planning Code, subject to Conditions of Approval.

ENVIRONMENTAL DETERMINATION

The California Environmental Quality Act (CEQA) Guidelines categorically exempts specific types of projects from environmental review. Section 15301(l) exempts demolition of existing facilities (non-historic resources); section 15303(c) exempts new construction of small structures including stores and offices; and section 15331 exempts projects involving restoration or rehabilitation of historical resources. The proposal meets these descriptions: it involves demolition of one non-historic building; removal of a separate Potential Designated Historic Property building at another site and relocation of it to the first site to preserve the building; and construction of a new building behind the relocated building. Section 15183 of the State CEQA Guidelines relates to Projects Consistent with a Community Plan, General Plan or Zoning. The project adheres to this section, as described above. The project is, therefore, not subject to further Environmental Review.

KEY ISSUES AND IMPACTS

The issues identified for this proposal include: alcoholic beverage sales in relation to over-concentration and proximity to civic/residential uses; historic preservation; and design review.

Alcoholic Beverage Sales

New alcoholic beverage outlets in most districts such as this must be located at least one thousand (1,000) feet from existing outlets. The proposed site does not meet this requirement and a variance is, therefore, required for proximity to the following outlets:

Name	Address	Existing distance separation between lots	Proposed	ABC license
Wine Mine	5427 Telegraph Avenue	305-feet	395-feet	20 *
Leo's	5447 Telegraph Avenue	435-feet	520-feet	47 *
ARCO gas station/ am-pm market	5131 Shattuck Avenue	745-feet	525-feet	20 *

* See following table for description of license type

The proposed site is located in an over-concentrated area in terms of ABC licenses in the Census Tract, but not for reported crimes in the Police Beat (11X). Census Tract 4003 contains thirty-eight active retail licenses under the following license types:

ABC license type - description	# of licenses in census tract
20 – market with beer and wine	2
21 – liquor store	2
41 – restaurant with beer and wine	14
42 – bar with beer and wine only	1
47 – restaurant with liquor, beer and wine	13
48 – bar with liquor, beer and wine	4*
50 – private club	1
79 – farmer's market	1

* 1 location is existing site requested to be relocated under this application

Therefore, a one thousand-foot distance separation is also required between a new alcohol sales outlet and existing civic uses. Twenty seven of these thirty eight licenses are for restaurants. The proposed site does not meet this requirement and, therefore, requires an additional variance for proximity to the following civic uses:

Name	Address	Existing distance separation	Proposed
Temescal branch library	5205 Telegraph Avenue	135-feet	0-feet
Telegraph Baptist Church	5302-5316 Telegraph Avenue	0-feet	150-feet
Day care	5808-5212 Claremont Avenue	75-feet	300-feet
Redondo ("Frog") Park	Cavour Street & Redondo Avenue	170-feet	355-feet
Drug and alcohol rehab	5406 Telegraph Avenue	255-feet	380-feet

The project would not increase the number of bars in the area. It would locate the Kingfish bar further from a wine shop and nightclub than the present location. It would also locate the bar further from a day care, park, church, and drug/alcohol rehabilitation center than the present location. The project would also move the bar from a secondary street in a neighborhood commercial area to primary street closer to a community commercial area. Although the proposal would locate the bar between a library and an apartment building, it is anticipated that the bar would be most active when the library is closed, and bar patron smoking would not be permitted to occur in front of the bar. The apartment is set back from the bar; however, findings for establishments selling alcoholic beverage prohibit such activities adjacent to residences after 10:00pm when they might cause a deleterious effect. Therefore, conditions of approval lay out a phased approach to evening use of the patio,

including a procedure to end the practice should complaints be received by the Bureau of Planning from residents. The existing bar establishment has a longstanding reputation as a well-run bar that does not negatively impact the surrounding neighborhood, and the same operator would own and run the new bar location.

Historic Preservation/Design

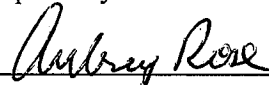
The City typically prefers a larger building (two or more stories) along a corridor; given the existing building is one-story, the Kingfish bar building is a Potential Designated Historic property, an Oakland icon that might otherwise be demolished, and the rear building would be two-story, staff finds the proposal to adhere to several Policies from the 'Design Guidelines for Corridors and Commercial Areas.' Finally, other examples of "kitsch" architecture exist in the area such as the triangular Kasper's hot dog shop and Hooper's Chocolate building near Shattuck Avenue at Telegraph as well as the "windmill" building north of the 24 freeway.

Staff supports the proposal, subject to Conditions of Approval.


RECOMMENDATIONS:

1. Affirm staff's environmental determination.
2. Approve the Major Conditional Use Permit, Regular Design Review, Variances, and Findings of Public Convenience or Necessity subject to the attached findings and conditions.

Prepared by:


AUBREY ROSE, AICP
Planner II

Approved by:


SCOTT MILLER
Zoning Manager

Approved for forwarding to the
City Planning Commission:


DARIN RANELLETTI
Deputy Director
Bureau of Planning

ATTACHMENTS:

- A. Findings
- B. Conditions of Approval
- C. Plans

ATTACHMENT A: FINDINGS

This proposal meets the required findings under Conditional Use Permit Procedure/General Use Permit Criteria (OMC Sec. 17.134.050); Use Permit Criteria for Establishments Selling Alcoholic Beverages (OMC Sec. 17.103.030.A); Additional CUP Finding For The CN Neighborhood Commercial Zone (OMC Sec. 17.33.030(L4)); Findings of Public Convenience or Necessity (OMC Sec. 17.103.030(B)(3) & (4)); Variance Procedure/Findings Required (OMC Sec. 17.148.050(A)); Regular Design Review Criteria For Nonresidential Facilities (OMC Sec. 17.136.050(B)); Regulations For Removal Of Potential Designated Historic Properties (OMC Sec. 17.136.075(D)) under the Oakland Planning Code (Title 17), and Findings for Historical Resources Restoration/Rehabilitation (Section 15331) under the California Environmental Quality Act, as set forth below and which are required to approve your application. Required findings are shown in **bold type**; reasons the proposal satisfies them are shown in normal type.

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.

The relocation and continued use of an establishment that is historic, popular, small scale, and not problematic will be an asset to the community. Appropriate use is ensured by Conditions of Approval relating to noise and other potential minor nuisances. Conditions will include employee monitoring of noise and of patrons' outdoor smoking by observation and signage, contact numbers, last call fifteen (15) minutes prior to closing, and a taxi cab program.

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 is pedestrian and bicycle oriented; it is a activity small space situated at the edge of the Temescal District and lacks on-site parking where adequate on-street parking exists. The site could draw pedestrians and cyclists, thereby effectively extending the boundaries of the commercial district.

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

The proposal to preserve a neighborhood bar at the edge of a vibrant commercial district will enhance the neighborhood atmosphere of the district sought by residents and patrons.

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

The proposal is subject to design review; required criteria is met as described in a following section of this attachment.

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 front of the site along Telegraph Avenue is located in the Community Commercial area under the General Plan's Land Use and Transportation Element (LUTE). The Intent of the area is: "To identify, create, maintain, and enhance areas suitable for a wide variety of commercial and institutional operations along the City's major corridors and in shopping districts or centers." The rear of the site is located in the Urban Residential area and the intent of the area is: "to create, maintain, and enhance areas of the City that are appropriate for multi-unit, mid-rise or high-rise residential structures in locations with good access to transportation and other services." This area has a Strategy Objective of 'Grow and Change' under the LUTE (Strategy Diagram Figure # 3 p. 122) and lies within a Neighborhood Activity Center located on a Key City Corridor (City Structure Diagram). The General Plan is silent for both areas on Alcoholic Beverage Sales Commercial Activity. The proposal conforms to the following Policies of the LUTE and Historic Preservation Element:

Policy I/C1.2 Retaining Existing Business.

Existing businesses and jobs within Oakland which are consistent with the long-range objectives of this Plan should, whenever possible, be retained.

Policy 3.7 Property Relocation Rather Than Demolition As Part Of Discretionary Projects

As a condition of approval for all discretionary projects involving demolition of existing or Potential Designated Historic Properties, the City will normally require that reasonable efforts be made to relocate the properties to an acceptable site.

To proposal, to relocate the building and business on the edge of a vibrant neighborhood commercial district, where the business is essentially the resumption of a prior non-problematic use, and where the building is an improved design over the existing structure and will otherwise be demolished, conforms to the General Plan.

Use Permit Criteria for Establishments Selling Alcoholic Beverages (OMC Sec. 17.103.030(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 project would not increase the number of bars in the area. It would locate a bar further from an area wine Shop and nightclub than the present location. The project would also locate the bar further from a day care, park, and drug/alcohol rehabilitation center than the present location. The project would also move the bar from a secondary street in a neighborhood commercial area to primary street closer to a community commercial area. The proposal would locate the bar between a library and an apartment building. However, it is anticipated that the bar would be most active when the library is closed and bar patron smoking would not be in front of the bar. The apartment is set back from the bar; however, findings for establishments selling alcoholic beverage prohibited such activities adjacent to residences after 10:00pm when they might cause a deleterious effect. Therefore, conditions of approval lay out a phased approach to evening use of the patio including a procedure to end the practice should complaints be received by the Bureau of Planning from residents. The existing bar establishment has a longstanding reputation as a well-run bar that does not negatively impact the surrounding neighborhood, and the same operator would run the new location. The liquor establishments in the district are not undesirable or a source of major area crime or congestion. Therefore, the project will not constitute a proliferation of undesirable uses. This will be ensured by Conditions of Approval that include adherence to ABC and City regulations, including Deemed Approved Alcoholic Beverage Sale Regulations (OMC Sec. 17.156).

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;

No schools have been identified within one thousand (1,000) feet of the site; the adjacent library will be closed when the establishment is most active and interference by patrons is not expected.

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

The project will not block the sidewalk in any way; smoking will not be allowed in front of the bar.

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 project involves demolishing a non-historic building and the desirable architectural outcome of replacing it with a Potential Designated Historic Property that might otherwise be demolished.

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

The project does not involve new signage; should the applicant desire new signage, they will be subject to Design Review.

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

Conditions of Approval ensure that litter deposited by patrons on the public right-of-way be collected by staff and that ashtrays be available at the rear patio where smoking is permitted.

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 p.m. and seven 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 business does indirectly face residences. The proposal is the relocation of an existing neighborhood bar that is not known to have constituted a nuisance to adjacent residences. Conditions of Approval address noise and smoke.

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 not applicable; the proposal does not involve a Fast Food Restaurant.

Additional CUP findings for the CN Neighborhood Commercial Zone (OMC Sec. 17.33.030)

1. That the proposal will not detract from the character desired for the area;

The project to replace a vacant non-historic building with a Potential Designated Historic Property containing a thriving business will enhance the area.

2. That the proposal will not impair a generally continuous wall of building facades;

The proposal will replace one building with another building of similar bulk at roughly the same footprint, with the addition of a rear two-story building to complement the form of the site and corridor.

3. That the proposal will not weaken the concentration and continuity of retail facilities at ground level, and will not impair the retention or creation of an important shopping frontage;

The proposal will replace a vacant, dilapidated restaurant space with an active, iconic bar business.

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

The proposal will not interfere with pedestrians or cyclists along the west side of Telegraph Avenue but may in fact attract them to the site.

5. That the proposal will conform in all significant respects with any applicable district plan which has been adopted by the City Council.

The proposal conforms to the General Plan as described in a previous section of this attachment.

Public Convenience or Necessity Findings (OMC Sec. 17.103.212(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

Following is a copy of the applicant's written response, shown in italics:

The Kingfish is widely recognized as a significant community and historic asset in the Temescal neighborhood and if it were not to re-open in the new nearby location around the corner (also in Temescal), that community asset would be lost. Built in the early 1930s, the Kingfish is one of the oldest establishments – and community gathering places – in all of the East Bay. The pub brings together young and older neighbors, Cal students and alums and old old-timers who revisit the Fish from all over to see friends and relive memories. The Kingfish would be demolished if it were not allowed to relocate to the new location. Re-opening at the new location around the corner provides access to a beloved institution and community gathering place.

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 draw a diverse spectrum of individuals from across the Temescal and other parts of Oakland as it has since the 1930s. The pub will continue to generate tax revenue in its new location and likely produce more income, given that it is moving to a more prominent location. The new location is a storefront that has been empty for many years. It is on a commercial corridor (Telegraph) that has good transit, pedestrian and bike access, but which still struggles economically. Replacing an empty storefront with a vibrant popular meeting spot will enliven the area and is likely to draw more commerce there. In addition, the pub represents jobs for those who work there. The owners of the pub have managed it appropriately and will continue to do so. As a result, there will not be an increase in police calls.

c. That alcohol sales are customarily associated with, and are appropriate, incidental, and subordinate to, a principal activity on the lot.

The Kingfish is re-opening in a location that has had alcohol sales as part of a restaurant. In addition, the distance between the existing Kingfish and its new location is about 30 yards. The Kingfish has been operating as a bar since the 1930s in the same exact neighborhood.

4. In addition to the above criteria, projects outside the Central District and Hegenberger Corridor shall meet all of the following criteria to make a finding of Public Convenience or Necessity, with the exception of those projects that will result in twenty-five (25) or more full time equivalent (FTE) employees and will result in a total floor area of twelve thousand (12,000) square feet or more:

Additional Public Convenience or Necessity Findings (OMC Sec. 17.103.030(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.

This finding cannot be made and a Variance is required: the project is located within one thousand (1,000) feet of other alcohol outlets as well as a church, day care center, drug/alcohol rehabilitation center, library and a public park. Variance findings can be made as provided in a following section of this attachment.

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

The site is located in Police Beat 11X which lists less than average calls for police service compared to Police Beats averaged Citywide.

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 to provide relief from the following quantitative provisions:

OMC Sec. 17.102.212(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

The project is located within one thousand (1,000) feet of other alcohol outlets as well as a church, day care center, drug/alcohol rehabilitation center, library and a public park. Compliance would disallow the essential continuation of a relatively non-problematic land use that was present before the establishment of adjacent sensitive uses in the district, and provides for the preservation (through re-location) of a potential historic resource. The variance would not provide for an additional bar to be established, but rather for the short-distance re-location of an existing bar.

The intent and purpose of the ordinance requiring distance separations between certain uses is to ensure neighborhoods with high crime are not saturated with poorly run operations (especially off-sale operations) that are sandwiched between residences and civic uses where the operations may generate off site impacts, including but not limited to, sale of alcohol to minors, littering, public drinking / intoxication / urination / violence / noise / crime.

A key justification for a Major Variance includes unique conditions of design that warrant relief from regulations to allow beneficial use of a property. Generally, "conditions of design" means the appearance or physical attributes of a proposed use or property, as addressed in Minor Variances. Major Variances are allowed for particular uses that might not otherwise be permitted under the zoning regulations. With use variances, "conditions of design" encompasses specific operational elements of a project; that is, business practices as they relate to a use's land use impacts. Here, the differences in operating characteristics among the proposed bar and the other alcohol outlets located within one-thousand feet (a gas station market, nightclub, and wine shop) and between the proposed use and a typical corner liquor store are key factors. In addition, the operator has a proven track-record with trained staff and the establishment does not include off-sale of alcoholic beverages.

The intent and purpose of the ordinance is primarily to prevent the creation of public nuisances associated with problematic liquor stores with particular operational characteristics or business practices. These problematic practices can include sales alcohol to minors, unrestricted sale of small quantities of inexpensive malt liquor, fortified wines, and liquor; late hours, lack of signage, security, and minimal staffing. These practices of some alcohol outlets have led to public nuisances such as loitering, littering, noise, fighting, public urination, and crime. The separation requirements are in place so that problem establishments are not allowed to proliferate, particularly in high crime areas. In addition, too many similar alcohol establishments in close proximity could weaken the desired vibrant balance of uses so important to a neighborhood shopping district. The proposed establishment is not anticipated to create or contribute to nuisance issues per their operational characteristics and as stipulated by conditions of approval. To preclude the relocation of an iconic Oakland bar along a commercial corridor due to the presence of other types of outlets will prohibit the maintaining and furthering of a diversity of economic retail opportunities in a retail district in a manner that is inconsistent with the intent and purpose of the regulation. As mentioned earlier, the project features a well-run bar as demonstrated by the proposal and the applicant's prior experience at an adjacent site.

The operational characteristics of the proposal also fulfill the intent of the ordinance as described above. Therefore, due to operational conditions of design, the intent of the Planning Code to prevent a proliferation of potential nuisance-generating or poorly run outlets between residential and civic uses in high crime areas, will be maintained here even with the granting of the requested variance.

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 properties located within the CN-3 Zone that either possess liquor licenses or could obtain them with or without a Variance. The applicant currently operates this bar at 5248 Telegraph Avenue, and the variance will facilitate the short-distance re-location of the existing bar and hence no net increase in alcohol activity in the immediate vicinity.

Leo's Nightclub, another local business, was granted a similar Variance for on-sale of alcoholic beverages and has commenced operation at that location with no known adverse impacts.

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 Variance will not negatively impact adjacent sensitive land uses including civic uses as ensured by Conditions of Approval, as well as the fact that the existing bar is being re-located just across the street.

The project is not anticipated to generate off-site impacts associated with certain bars and liquor stores as proposed and evidenced by operational characteristics at the business' existing site in the neighborhood and as stipulated by conditions of approval.

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;

The Variance will not constitute special privilege as owners of other properties with similar circumstances have been granted Variances or are eligible to apply and be granted.

Several other alcoholic beverages sales outlets in the district are located within one-thousand feet of other outlets or residential/civic uses. As summarized in findings, above, the granting of the variances maintains consistency with the purposes of the zoning regulations, based on the existence on this bar across the street and its operating characteristics.

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.

The Variance provides relief for an activity and not a facility; the activity will occur within a relocated facility and design review is required. Design review criteria can be made as described in a following section of this attachment.

The elements of the proposal requiring the variances, the distance separations, are not subject to design review.

6. For proposals involving one or two residential dwelling units on a lot: That, if the variance would relax a regulation governing maximum height, minimum yards, maximum lot coverage or building length along side lot lines, the proposal also conforms with at least one of the following criteria:

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

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

This finding is not applicable; the project does not involve a home or duplex.

Regular Design Review Criteria for Nonresidential Facilities and Signs (OMC Sec. 17.136.050(B))

1. That the proposal will help 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. Only elements of design which have some significant relationship to outside appearance shall be considered, except as otherwise provided in Section 17.136.060

The replacement building and existing signage is more attractive and has a higher historic rating than the existing building and along with the new rear building will be compatible with the eclectic mix of building styles, heights, and uses in the district. The proposal includes fencing, landscaping, illumination on-site as well as plantings and pavers in the public right-of-way.

2. That the proposed design will be of a quality and character which harmonizes with, and serves to protect the value of, private and public investments in the area;

The proposal will preserve the historic Kingfish bar building and will allow a character-defining business to remain in the district.

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

The proposed design conforms to several Policies from the 'Design Guidelines for Corridors and Commercial Areas.'

Regulations For Demolition Or Removal Of Potential Designated Historic Properties (OMC Sec. 17.136.075(D))

1. The design quality of the proposed replacement project is at least equal to that of the original structure and the proposed replacement project is compatible with the character of the neighborhood;

The replacement building is more attractive and more highly-rated than the existing building.

California Environmental Quality Act (CEQA) Section 15331/ Secretary of the Interior's Standards for Rehabilitation

1. A property shall be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.

The Kingfish building will be relocated and continued for use as a bar rather than demolished.

2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.

The building will be preserved to the extent possible, while being moved to a new foundation including retention of any character-defining nonconformities such as low ceiling height subject to adherence to the building code for historic properties.

3. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development such as adding conjectural features or elements from other historic properties will not be undertaken.

No changes to the building are proposed other than to be moved to a new site in the same neighborhood so that it can be preserved rather than demolished, with any necessary building code upgrades to the least extent allowed under the building code for historic structures.

4. Changes to a property that have acquired historic significance in their own right shall be retained and preserved.

No changes to the building are proposed other than to be moved to a new site in the same neighborhood so that it can be preserved rather than demolished, with any necessary building code upgrades to the least extent allowed under the building code for historic structures.

5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.

No changes to the building are proposed other than to be moved to a new site in the same neighborhood so that it can be preserved rather than demolished, with any necessary building code upgrades to the least extent allowed under the building code for historic structures.

6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and where possible, materials. Replacement of missing features shall be substantiated by documentary and physical evidence.

No changes to the building are proposed other than to be moved to a new site in the same neighborhood so that it can be preserved rather than demolished, with any necessary building code upgrades to the least extent allowed under the building code for historic structures.

7. Chemical or physical treatments, if appropriate, shall be undertaken using the gentlest means possible. Treatments that cause damage to historic materials shall not be used.

No changes to the building are proposed other than to be moved to a new site in the same neighborhood so that it can be preserved rather than demolished, with any necessary building code upgrades to the least extent allowed under the building code for historic structures.

8. Archeological resources shall be protected and preserved in place. If such resources must be disturbed, mitigation measures shall be undertaken.

No archaeological resources are known to exist at the site.

9. New additions, exterior alterations, or related new construction shall not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and shall be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

No changes to the building are proposed other than to be moved to a new site in the same neighborhood so that it can be preserved rather than demolished, with any necessary building code upgrades to the least extent allowed under the building code for historic structures.

10. Additions and adjacent or related new construction shall be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

No changes to the building are proposed other than to be moved to a new site in the same neighborhood so that it can be preserved rather than demolished, with any necessary building code upgrades to the least extent allowed under the building code for historic structures.

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 **June 18, 2014** and submitted on **June 14, 2014**, 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 require 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, Regular Design Review, Minor Variances, and additional findings including Public Convenience or Necessity to demolish a building at 5248 Telegraph Avenue; move the bar building from 5227 Telegraph Avenue to 5239 Telegraph Avenue and construct a rear structure; and operate the bar and rear office and/or kitchen.

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.

12. Landscape Requirements for Street Frontages.

Prior to issuance of a final inspection of the building permit

On streets with sidewalks where the distance from the face of the curb to the outer edge of the sidewalk is at least six and one-half (6 ½) feet and does not interfere with access requirements, a minimum of one (1) twenty-four (24) inch box tree shall be provided for every twenty-five (25) feet of street frontage, unless a smaller size is recommended by the City arborist. The trees to be provided shall include species acceptable to the Tree Services Division.

13. Landscape Maintenance.

Ongoing

All required planting shall be permanently maintained in good growing condition and, whenever necessary, replaced with new plant materials to ensure continued compliance with applicable landscaping requirements. All required irrigation systems shall be permanently maintained in good condition and, whenever necessary, repaired or replaced.

14. Underground Utilities

Prior to issuance of a building permit

The project applicant shall submit plans for review and approval by the Building Services Division and the Public Works Agency, and other relevant agencies as appropriate, that show all new electric and telephone facilities; fire alarm conduits; street light wiring; and other wiring, conduits, and similar facilities placed underground. The new facilities shall be placed underground along the project applicant's street frontage and from the project applicant's structures to the point of service. The plans shall show all electric,

telephone, water service, fire water service, cable, and fire alarm facilities installed in accordance with standard specifications of the serving utilities.

15. Improvements in the Public Right-of-Way (General)

Approved prior to the issuance of a P-job or building permit

- a) The project applicant shall submit Public Improvement Plans to Building Services Division for adjacent public rights-of-way (ROW) showing all proposed improvements and compliance with the conditions and City requirements including but not limited to curbs, gutters, sewer laterals, storm drains, street trees, paving details, locations of transformers and other above ground utility structures, the design specifications and locations of facilities required by the East Bay Municipal Utility District (EBMUD), street lighting, on-street parking and accessibility improvements compliant with applicable standards and any other improvements or requirements for the project as provided for in this Approval. Encroachment permits shall be obtained as necessary for any applicable improvements- located within the public ROW.
- b) Review and confirmation of the street trees by the City's Tree Services Division is required as part of this condition.
- c) The Planning and Zoning Division and the Public Works Agency will review and approve designs and specifications for the improvements. Improvements shall be completed prior to the issuance of the final building permit.
- d) The Fire Services Division will review and approve fire crew and apparatus access, water supply availability and distribution to current codes and standards.

16. Payment for Public Improvements

Prior to issuance of a final inspection of the building permit.

The project applicant shall pay for and install public improvements made necessary by the project including damage caused by construction activity.

17. Compliance Matrix

Prior to issuance of a demolition, grading, or building permit

The project applicant shall submit to the Planning and Zoning Division and the Building Services Division a **Conditions** compliance matrix that lists each condition of approval, the City agency or division responsible for review, and how/when the project applicant has met or intends to meet the conditions. The applicant will sign the Conditions of Approval attached to the approval letter and submit that with the compliance matrix for review and approval. The compliance matrix shall be organized per step in the plancheck/construction process unless another format is acceptable to the Planning and Zoning Division and the Building Services Division. The project applicant shall update the compliance matrix and provide it with each item submittal.

18. Construction Management Plan

Prior to issuance of a demolition, grading, or building permit

The project applicant shall submit to the Planning and Zoning Division and the Building Services Division for review and approval a construction management plan that identifies the conditions of approval related to construction impacts of the project and explains how the project applicant will comply with these construction-related conditions of approval.

19. Construction-Related Air Pollution Controls (Dust and Equipment Emissions)

Ongoing throughout demolition, grading, and/or construction

During construction, the project applicant shall require the construction contractor to implement all of the following applicable measures recommended by the Bay Area Air Quality Management District (BAAQMD):

- a) Water all exposed surfaces of active construction areas at least twice daily (using reclaimed water if possible). Watering should be sufficient to prevent airborne dust from leaving the site. Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour. Reclaimed water should be used whenever possible.
- b) Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer).
- c) All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- d) Pave all roadways, driveways, sidewalks, etc. as soon as feasible. In addition, building pads should be laid as soon as possible after grading unless seeding or soil binders are used.
- e) Enclose, cover, water twice daily or apply (non-toxic) soil stabilizers to exposed stockpiles (dirt, sand, etc.).
- f) Limit vehicle speeds on unpaved roads to 15 miles per hour.
- g) Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measure Title 13, Section 2485, of the California Code of Regulations. Clear signage to this effect shall be provided for construction workers at all access points.
- h) All construction equipment shall be maintained and properly tuned in accordance with the manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- i) Post a publicly visible sign that includes the contractor's name and telephone number to contact regarding dust complaints. When contacted, the contractor shall respond and take corrective action within 48 hours. The telephone numbers of contacts at the City and the BAAQMD shall also be visible. This information may be posted on other required on-site signage.
- j) All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe.
- k) All excavation, grading, and demolition activities shall be suspended when average wind speeds exceed 20 mph.
- l) Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- m) Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for one month or more).
- n) Designate a person or persons to monitor the dust control program and to order increased watering, as necessary, to prevent transport of dust offsite. Their duties shall include holidays and weekend periods when work may not be in progress.
- o) Install appropriate wind breaks (e.g., trees, fences) on the windward side(s) of actively disturbed areas of the construction site to minimize wind blown dust. Wind breaks must have a maximum 50 percent air porosity.
- p) Vegetative ground cover (e.g., fast-germinating native grass seed) shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.
- q) The simultaneous occurrence of excavation, grading, and ground-disturbing construction activities on the same area at any one time shall be limited. Activities shall be phased to reduce the amount of disturbed surfaces at any one time.
- r) All trucks and equipment, including tires, shall be washed off prior to leaving the site.

- s) Site accesses to a distance of 100 feet from the paved road shall be treated with a 6 to 12 inch compacted layer of wood chips, mulch, or gravel.
- t) Minimize the idling time of diesel-powered construction equipment to two minutes.
- u) The project applicant shall develop a plan demonstrating that the off-road equipment (more than 50 horsepower) to be used in the construction project (i.e., owned, leased, and subcontractor vehicles) would achieve a project wide fleet-average 20 percent NOx reduction and 45 percent particulate matter (PM) reduction compared to the most recent California Air Resources Board (CARB) fleet average. Acceptable options for reducing emissions include the use of late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters, and/or other options as they become available.
- v) Use low VOC (i.e., ROG) coatings beyond the local requirements (i.e., BAAQMD Regulation 8, Rule 3: Architectural Coatings).
- w) All construction equipment, diesel trucks, and generators shall be equipped with Best Available Control Technology for emission reductions of NOx and PM.
- x) Off-road heavy diesel engines shall meet the CARB's most recent certification standard.

20. Days/Hours of Construction Operation

Ongoing throughout demolition, grading, and/or construction

The project applicant shall require construction contractors to limit standard construction activities as follows:

- a) Construction activities are limited to between 7:00 AM and 7:00 PM Monday through Friday, except that pile driving and/or other extreme noise generating activities greater than 90 dBA shall be limited to between 8:00 a.m. and 4:00 p.m. Monday through Friday.
- b) Any construction activity proposed to occur outside of the standard hours of 7:00 am to 7:00 pm Monday through Friday for special activities (such as concrete pouring which may require more continuous amounts of time) shall be evaluated on a case by case basis, with criteria including the proximity of residential uses and a consideration of resident's preferences for whether the activity is acceptable if the overall duration of construction is shortened and such construction activities shall only be allowed with the prior written authorization of the Building Services Division.
- c) Construction activity shall not occur on Saturdays, with the following possible exceptions:
 - i. Prior to the building being enclosed, requests for Saturday construction for special activities (such as concrete pouring which may require more continuous amounts of time), shall be evaluated on a case by case basis, with criteria including the proximity of residential uses and a consideration of resident's preferences for whether the activity is acceptable if the overall duration of construction is shortened. Such construction activities shall only be allowed on Saturdays with the prior written authorization of the Building Services Division.
 - ii. After the building is enclosed, requests for Saturday construction activities shall only be allowed on Saturdays with the prior written authorization of the Building Services Division, and only then within the interior of the building with the doors and windows closed.
- d) No extreme noise generating activities (greater than 90 dBA) shall be allowed on Saturdays, with no exceptions.
- e) No construction activity shall take place on Sundays or Federal holidays.
- f) Construction activities include but are not limited to: truck idling, moving equipment (including trucks, elevators, etc) or materials, deliveries, and construction meetings held on-site in a non-enclosed area.

- g) Applicant shall use temporary power poles instead of generators where feasible.

21. Noise Control

Ongoing throughout demolition, grading, and/or construction

To reduce noise impacts due to construction, the project applicant shall require construction contractors to implement a site-specific noise reduction program, subject to the Planning and Zoning Division and the Building Services Division review and approval, which includes the following measures:

- a) Equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds, wherever feasible).
- b) Except as provided herein, Impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electrically powered to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used, if such jackets are commercially available and this could achieve a reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever such procedures are available and consistent with construction procedures.
- c) Stationary noise sources shall be located as far from adjacent receptors as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or use other measures as determined by the City to provide equivalent noise reduction.
- d) The noisiest phases of construction shall be limited to less than 10 days at a time. Exceptions may be allowed if the City determines an extension is necessary and all available noise reduction controls are implemented.

22. Noise Complaint Procedures

Ongoing throughout demolition, grading, and/or construction

Prior to the issuance of each building permit, along with the submission of construction documents, the project applicant shall submit to the Building Services Division a list of measures to respond to and track complaints pertaining to construction noise. These measures shall include:

- a) A procedure and phone numbers for notifying the Building Services Division staff and Oakland Police Department; (during regular construction hours and off-hours);
- b) A sign posted on-site pertaining with permitted construction days and hours and complaint procedures and who to notify in the event of a problem. The sign shall also include a listing of both the City and construction contractor's telephone numbers (during regular construction hours and off-hours);
- c) The designation of an on-site construction complaint and enforcement manager for the project;
- d) Notification of neighbors and occupants within 300 feet of the project construction area at least 30 days in advance of extreme noise generating activities about the estimated duration of the activity; and
- e) A preconstruction meeting shall be held with the job inspectors and the general contractor/on-site project manager to confirm that noise measures and practices (including construction hours, neighborhood notification, posted signs, etc.) are completed.

23. Interior Noise

Prior to issuance of a building permit and Certificate of Occupancy

If necessary to comply with the interior noise requirements of the City of Oakland's General Plan Noise Element and achieve an acceptable interior noise level, noise reduction in the form of sound-rated assemblies (i.e., windows, exterior doors, and walls), and/or other appropriate features/measures, shall be incorporated into project building design, based upon recommendations of a qualified acoustical engineer and submitted to the Building Services Division for review and approval prior to issuance of building permit. Final recommendations for sound-rated assemblies, and/or other appropriate features/measures, will depend on the specific building designs and layout of buildings on the site and shall be determined during the design phases. Written confirmation by the acoustical consultant, HVAC or HERS specialist, shall be submitted for City review and approval, prior to Certificate of Occupancy (or equivalent) that:

- (a) Quality control was exercised during construction to ensure all air-gaps and penetrations of the building shell are controlled and sealed; and
- (b) Demonstrates compliance with interior noise standards based upon performance testing of a sample unit.
- (c) Inclusion of a Statement of Disclosure Notice in the CC&R's on the lease or title to all new tenants or owners of the units acknowledging the noise generating activity and the single event noise occurrences. Potential features/measures to reduce interior noise could include, but are not limited to, the following:
 - a) Installation of an alternative form of ventilation in all units identified in the acoustical analysis as not being able to meet the interior noise requirements due to adjacency to a noise generating activity, filtration of ambient make-up air in each unit and analysis of ventilation noise if ventilation is included in the recommendations by the acoustical analysis.
 - b) Prohibition of Z-duct construction.

24. Operational Noise-General

Ongoing.

Noise levels from the activity, property, or any mechanical equipment on site shall comply with the performance standards of Section 17.120 of the Oakland Planning Code and Section 8.18 of the Oakland Municipal Code. If noise levels exceed these standards, the activity causing the noise shall be abated until appropriate noise reduction measures have been installed and compliance verified by the Planning and Zoning Division and Building Services.

25. Construction Traffic and Parking

Prior to the issuance of a demolition, grading or building permit

The project applicant and construction contractor shall meet with appropriate City of Oakland agencies to determine traffic management strategies to reduce, to the maximum extent feasible, traffic congestion and the effects of parking demand by construction workers during construction of this project and other nearby projects that could be simultaneously under construction. The project applicant shall develop a construction management plan for review and approval by the Planning and Zoning Division, the Building Services Division, and the Transportation Services Division. The plan shall include at least the following items and requirements:

- a) A set of comprehensive traffic control measures, including scheduling of major truck trips and deliveries to avoid peak traffic hours, detour signs if required, lane closure procedures, signs, cones for drivers, and designated construction access routes.
- b) Notification procedures for adjacent property owners and public safety personnel regarding when major deliveries, detours, and lane closures will occur.
- c) Location of construction staging areas for materials, equipment, and vehicles at an approved location.
- d) A process for responding to, and tracking, complaints pertaining to construction activity, including identification of an onsite complaint manager. The manager shall determine the cause of the complaints

and shall take prompt action to correct the problem. Planning and Zoning shall be informed who the Manager is prior to the issuance of the first permit issued by Building Services.

- e) Provision for accommodation of pedestrian flow.

26. Erosion and Sedimentation Control

Ongoing throughout demolition grading, and/or construction activities

The project applicant shall implement Best Management Practices (BMPs) to reduce erosion, sedimentation, and water quality impacts during construction to the maximum extent practicable. Plans demonstrating the Best Management Practices shall be submitted for review and approval by the Planning and Zoning Division and the Building Services Division. At a minimum, the project applicant shall provide filter materials deemed acceptable to the City at nearby catch basins to prevent any debris and dirt from flowing into the City's storm drain system and creeks.

27. Hazards Best Management Practices

Prior to commencement of demolition, grading, or construction

The project applicant and construction contractor shall ensure that construction of Best Management Practices (BMPs) are implemented as part of construction to minimize the potential negative effects to groundwater and soils. These shall include the following:

- a) Follow manufacture's recommendations on use, storage, and disposal of chemical products used in construction;
- b) Avoid overtopping construction equipment fuel gas tanks;
- c) During routine maintenance of construction equipment, properly contain and remove grease and oils;
- d) Properly dispose of discarded containers of fuels and other chemicals.
- e) Ensure that construction would not have a significant impact on the environment or pose a substantial health risk to construction workers and the occupants of the proposed development. Soil sampling and chemical analyses of samples shall be performed to determine the extent of potential contamination beneath all UST's, elevator shafts, clarifiers, and subsurface hydraulic lifts when on-site demolition, or construction activities would potentially affect a particular development or building.
- f) If soil, groundwater or other environmental medium with suspected contamination is encountered unexpectedly during construction activities (e.g., identified by odor or visual staining, or if any underground storage tanks, abandoned drums or other hazardous materials or wastes are encountered), the applicant shall cease work in the vicinity of the suspect material, the area shall be secured as necessary, and the applicant shall take all appropriate measures to protect human health and the environment. Appropriate measures shall include notification of regulatory agency(ies) and implementation of the actions described in the City's Standard Conditions of Approval, as necessary, to identify the nature and extent of contamination. Work shall not resume in the area(s) affected until the measures have been implemented under the oversight of the City or regulatory agency, as appropriate.

28. Waste Reduction and Recycling

The project applicant will submit a Construction & Demolition Waste Reduction and Recycling Plan (WRRP) and an Operational Diversion Plan (ODP) for review and approval by the Public Works Agency.

Prior to issuance of demolition, grading, or building permit

Chapter 15.34 of the Oakland Municipal Code outlines requirements for reducing waste and optimizing construction and demolition (C&D) recycling. Affected projects include all new construction, renovations/alterations/modifications with construction values of \$50,000 or more (except R-3), and all demolition (including soft demo). The WRRP must specify the methods by which the development will divert C&D debris waste generated by the proposed project from landfill disposal in accordance with current City requirements. Current standards, FAQs, and forms are available at

www.oaklandpw.com/Page39.aspx or in the Green Building Resource Center. After approval of the plan, the project applicant shall implement the plan.

Ongoing

The ODP will identify how the project complies with the Recycling Space Allocation Ordinance, (Chapter 17.118 of the Oakland Municipal Code), including capacity calculations, and specify the methods by which the development will meet the current diversion of solid waste generated by operation of the proposed project from landfill disposal in accordance with current City requirements. The proposed program shall be implemented and maintained for the duration of the proposed activity or facility. Changes to the plan may be re-submitted to the Environmental Services Division of the Public Works Agency for review and approval. Any incentive programs shall remain fully operational as long as residents and businesses exist at the project site.

29. Lighting Plan

Prior to the issuance of an electrical or building permit

The proposed lighting fixtures shall be adequately shielded to a point below the light bulb and reflector and that prevent unnecessary glare onto adjacent properties. Plans shall be submitted to the Planning and Zoning Division and the Electrical Services Division of the Public Works Agency for review and approval. All lighting shall be architecturally integrated into the site.

30. Site Design Measures for Post-Construction Stormwater Management

Prior to issuance of building permit (or other construction-related permit)

The project drawings submitted for a building permit (or other construction-related permit) shall contain a final site plan to be reviewed and approved by Planning and Zoning. The final site plan shall incorporate appropriate site design measures to manage stormwater runoff and minimize impacts to water quality after the construction of the project. These measures may include, but are not limited to, the following:

- i. Minimize impervious surfaces, especially directly connected impervious surfaces;
- ii. Utilize permeable paving in place of impervious paving where appropriate;
- iii. Cluster buildings;
- iv. Preserve quality open space; and
- v. Establish vegetated buffer areas.

Ongoing

The approved plan shall be implemented and the site design measures shown on the plan shall be permanently maintained.

31. Source Control Measures to Limit Stormwater Pollution

Prior to issuance of building permit (or other construction-related permit)

The applicant shall implement and maintain all structural source control measures imposed by the Chief of Building Services to limit the generation, discharge, and runoff of stormwater pollution.

Ongoing

The applicant, or his or her successor, shall implement all operational Best Management Practices (BMPs) imposed by the Chief of Building Services to limit the generation, discharge, and runoff of stormwater pollution.

32. Compliance with the Green Building Ordinance, OMC Chapter 18.02

Prior to issuance of a demolition, grading, or building permit

Unless precluded by building code exemptions for historic preservation projects, the applicant shall comply with the requirements of the California Green Building Standards (CALGreen) mandatory measures and the applicable requirements of the Green Building Ordinance, OMC Chapter 18.02.

- a) The following information shall be submitted to the Building Services Division for review and approval with the application for a building permit:
 - i. Documentation showing compliance with Title 24 of the 2008 California Building Energy Efficiency Standards.
 - ii. Completed copy of the final green building checklist approved during the review of the Planning and Zoning permit.
 - iii. Copy of the Unreasonable Hardship Exemption, if granted, during the review of the Planning and Zoning permit.
 - iv. Permit plans that show, in general notes, detailed design drawings, and specifications as necessary, compliance with the items listed in subsection (b) below.
 - v. Copy of the signed statement by the Green Building Certifier approved during the review of the Planning and Zoning permit that the project complied with the requirements of the Green Building Ordinance.
 - vi. Signed statement by the Green Building Certifier that the project still complies with the requirements of the Green Building Ordinance, unless an Unreasonable Hardship Exemption was granted during the review of the Planning and Zoning permit.
 - vii. Other documentation as deemed necessary by the City to demonstrate compliance with the Green Building Ordinance.
- b) The set of plans in subsection (a) shall demonstrate compliance with the following:
 - i. CALGreen mandatory measures.
 - ii. All pre-requisites per the **LEED** checklist approved during the review of the Planning and Zoning permit, or, if applicable, all the green building measures approved as part of the Unreasonable Hardship Exemption granted during the review of the Planning and Zoning permit.
 - iii. **75 Points** per the appropriate checklist approved during the Planning entitlement process, unless otherwise allowed by the Planning and Building Department given the structure is a Potential Designated Historic Property.
 - iv. All green building points identified on the checklist approved during review of the Planning and Zoning permit, unless a Request for Revision Plan-check application is submitted and approved by the Planning and Zoning Division that shows the previously approved points that will be eliminated or substituted.
 - v. The required green building point minimums in the appropriate credit categories.

During construction

The applicant shall comply with the applicable requirements CALGreen and the Green Building Ordinance, Chapter 18.02.

- a) The following information shall be submitted to the Building Inspections Division of the Building Services Division for review and approval:
 - i. Completed copies of the green building checklists approved during the review of the Planning and Zoning permit and during the review of the building permit.
 - ii. Signed statement(s) by the Green Building Certifier during all relevant phases of construction that the project complies with the requirements of the Green Building Ordinance.
 - iii. Other documentation as deemed necessary by the City to demonstrate compliance with the Green Building Ordinance.

After construction, as specified below

Within sixty (60) days of the final inspection of the building permit for the project, the Green Building Certifier shall submit the appropriate documentation to **Build It Green** and attain the minimum certification/point level identified in subsection (a) above. Within one year of the final inspection of the building permit for the project, the applicant shall submit to the Planning and Zoning Division the Certificate from the organization listed above demonstrating certification and compliance with the minimum point/certification level noted above.

33. Compliance with the Green Building Ordinance, OMC Chapter 18.02, for Building and Landscape Projects Using the StopWaste.Org Small Commercial or Bay Friendly Basic Landscape Checklist Prior to issuance of a building permit

Unless precluded by building code exemptions for historic preservation projects, the applicant shall comply with the requirements of the California Green Building Standards (CALGreen) mandatory measures and the applicable requirements of the Green Building Ordinance, (OMC Chapter 18.02.) for projects using the StopWaste.Org Small Commercial or Bay Friendly Basic Landscape Checklist.

- a) The following information shall be submitted to the Building Services Division for review and approval with application for a Building permit:
 - i. Documentation showing compliance with the 2008 Title 24, California Building Energy Efficiency Standards.
 - ii. Completed copy of the green building checklist approved during the review of a Planning and Zoning permit.
 - iii. Permit plans that show in general notes, detailed design drawings and specifications as necessary compliance with the items listed in subsection (b) below.
 - iv. Other documentation to prove compliance.
- b) The set of plans in subsection (a) shall demonstrate compliance with the following:
 - i. CALGreen mandatory measures.
 - ii. All applicable green building measures identified on the StopWaste.Org checklist approved during the review of a Planning and Zoning permit, or submittal of a Request for Revision Plan-check application that shows the previously approved points that will be eliminated or substituted.

During construction

The applicant shall comply with the applicable requirements of CALGreen and Green Building Ordinance, Chapter 18.02 for projects using the StopWaste.Org Small Commercial or Bay Friendly Basic Landscape Checklist.

- a) The following information shall be submitted to the Building Inspections Division for review and approval:
 - i. Completed copy of the green building checklists approved during review of the Planning and Zoning permit and during the review of the Building permit.
 - ii. Other documentation as deemed necessary by the City to demonstrate compliance with the Green Building Ordinance.

PROJECT-SPECIFIC CONDITIONS

34. Prior Approval

Within six months of this approval

The applicant shall make a good faith effort to request that the property owner of 5248 Telegraph Avenue request extinguishment of existing alcoholic beverages sales zoning approvals on that property (#CMVM09086 and #REV100017) to the City of Oakland. Good faith effort shall consist of items such as letters to the property owner and/or telephone call logs. Should such a request to extinguish be received by the City of Oakland, such letter should be recorded against the property with the County of Alameda Recorder's Office and a copy provided to the Bureau of Planning.

35. Alcoholic Beverage Sales

Prior to commencement of activity & Ongoing

a. Additional Permits Required

ABC license type no. 48 must be obtained prior to commencement of activity.

b. Location and manner of alcohol consumption

Alcoholic beverage sales is on-sale, for on-site consumption only.

c. Hours of Alcohol Sale

Hours of alcohol sales are limited to the following:

- Daily 10:00am to 1:45pm

Hours of operation are allowed to fifteen minutes past hours of alcoholic beverage sales.

d. Nuisances

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

36. 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. Pay Phones

No pay phones are permitted outside the building.

d. 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 loiters 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.

e. Deemed Approved Alcoholic Beverage Sale Regulations

The applicant and proprietor voluntarily agree to conform to the Oakland Planning Code Deemed Approved Alcoholic Beverage Sale Regulations (OMC Sec. 17.156).

37. 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.

38. Signage

Prior to constructing signage

The design for any new signage must be approved by the Bureau of Planning prior to installation.

39. Trash and litter

Ongoing

The licensees/property owners shall clear the gutter and sidewalks along Telegraph 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.

40. Noise

Ongoing

- a. No live music or DJ's are allowed without a Cabaret Permit from the City Administrator's Office.
- b. No jukebox music after 1:00am
- c. The City Noise Ordinance (OMC Sec. 8.18.010) and Performance Standards (OMC Sec. 17.20.050) shall be observed for noise emanating from within the establishment from the jukebox and from patrons as well as from outdoor noise from patrons.
- d. The establishment shall display signage inside the building and next to the exit discouraging patrons from generating excessive noise outdoors both fronting the building and within the neighborhood.
- e. The front and rear doors shall remain closed after 10:00pm.

41. Signage to discourage other nuisances

Ongoing

The establishment shall display signage inside the building and next to the exit discouraging the patrons from generating nuisances outdoors both fronting the building and within the neighborhood. This signage may be combined with other information signage required under these Conditions of Approval.

42. Contact phone numbers

Ongoing

The establishment shall display signage behind the bar offering contact numbers for both the establishment and the City (Planning and Building Department, Code Compliance at (510)238-3381 and OPD non-emergency at (510)777-3333) for the purpose of reporting nuisances.

43. Taxi Cab Call Program

Ongoing

The establishment shall maintain a program of calling taxi cabs for patrons on request for the purpose of preventing driving while intoxicated and shall maintain this service. Signage offering this service shall be displaying behind the bar.

44. Smoking/Ashtrays

Ongoing

The City Smoking Ordinance shall apply (OMC Sec. 8.30). Smoking shall only be located in the rear patio terrace. Ashtrays shall be provided adjacent to the rear door to prevent littering of cigarette butts. The establishment shall provide signage inside the building and next to the exit to direct patrons to the proper location for smoking. Upon commencement of the activity, the rear patio shall be open until 11:00pm and shall be allowed to remain open one hour later after each six months of satisfactory operation. Should the Bureau of Planning receive ongoing complaints from adjacent residents regarding noise and smoke, the patio terrace shall be closed at 10:00pm nightly.

45. Building Code Upgrades

Prior to commencing approved activities

The applicant shall obtain Building Permits and construct any building upgrades required to comply with the Building Code for bar occupancy requirements less any nonconformities that may be maintained given the structure is a Potential Designated Historic Properties being relocated for preservation.

46. Special Events

Ongoing

Special Events including but not limited to Mobile Food Vending trucks must obtain proper approvals from the City Administrator's Office.

47. Compliance hearings

After 6 months of commencement of sale of alcoholic beverages

The applicant shall return to the Bureau of Planning to report their progress. Should any complaints regarding on-sale provision or other issues regarding sale of alcohol be identified, staff may refer the item back to the Planning Commission under a Director's Report. In that case, the applicant shall submit for a Compliance Review, and pay all appropriate fees consistent with the current Master Fee Schedule at that time (currently \$1,310.00). The Compliance Review will be agendized for an upcoming Planning Commission meeting. The Compliance Review shall provide an opportunity for the Commission and the public to provide comment on the operation and determine whether there is a violation of any term, **Conditions** or project description relating to the Approvals or if there is violation of any provision of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance or there exists adverse impacts caused. As a result of the hearing, the Commission may direct staff to initiate enforcement proceedings pursuant to Condition of Approval 5C and/or 35d, and/or may impose additional conditions related to the operation.

APPROVED BY:

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

KINGFISH PUB & CAFE



VICINITY MAP



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C.O.O. (Project)

MAP OF THE RANCHOS OF VAL
DOMINGO PERALTA, PLOT 1
(17 M. 12)

[illegible]

BENCHMARK:
THE SCIENCE CENTER, A CORP. OF THE CORPORATION OF THE CITY OF NEW YORK, 100 WALL STREET, NEW YORK, N.Y. 10038

OWNER:
BUDY KAMM
373 40TH
DANVILLE, CA

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	D71	GRANITE	END OF PARAPET	END OF PARAPET	END OF PARAPET	END OF PARAPET	END OF PARAPET
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	D103	GRANITE	END OF PARAPET	END OF PARAPET	END OF PARAPET	END OF PARAPET	END OF PARAPET
	D104	GRANITE	END OF PARAPET	END OF PARAPET	END OF PARAPET	END OF PARAPET	END OF PARAPET
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	D146	GRANITE	END OF PARAPET	END OF PARAPET	END OF PARAPET	END OF PARAPET	END OF PARAP

SURVEYOR'S STATEMENT:
THIS MAP CORRECTLY REPRESENTS A FIELD SURVEY MADE BY ME OR
UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE
CALIFORNIA LAND SURVEYORS' ACT AT THE REQUEST OF ANDY KAHN
ON APRIL 15, 2004.

BY STATE THAT ALL EXISTING GRADES AND CONTOURS ARE
BASED UPON CITY OF OAKLAND DATUM.

I HEREBY FURTHER STATE THAT TO THE BEST OF MY KNOWLEDGE
AND BELIEF, THE INFORMATION CONTAINED HEREIN IS TRUE AND
CORRECT, AND I AM NOT PROVIDING ANY INFORMATION THAT I KNOW
TO BE FALSE OR MISLEADING.

ALL PROVISIONS OF APPLICABLE STATE LAWS AND ORDINANCES HAVE BEEN FULLY SATISFIED.

WHEREBY FURTHER STATE THAT THE PARCEL DESIGNATED BY "A" SURVEY AND SHOWN ON THE MAP IS THE SAME AS THAT SHOWN ON THE MAP SHOWN ON THE MAP, RECORDED DECEMBER 27, 2002, UNDER SITES

NO. 2002609193 IN THE OFFICE OF THE ALABAMA COUNTY RECORDER,
AND REGISTERED ON THE CURRENTLY QUALIFIED ASSESSMENT ROLL OF THE

WALAVEDA COUNTY ASSessor AS PARCEL NO 011-1219-002.

LAND SURVEYORS' ACT THE PERFORMANCE OF THIS SURVEY.

REQUIRES THAT A RECORD OF SURVEY BE FILED WITH THE ALAMEDA COUNTY SURVEYOR AND I WILL FILE SAME WITHIN THE TIME LIMITS PRESCRIBED BY STATE LAW, IF IN THE COURSE OF SUCH LONG COURTESY

ARE NECESSARY TO THE RECORD OF SURVEY THAT REFLECT UPON THE PRESCRIBED BY STATE LAW. IF, IN THE COURSE OF SUCH PLANNING, CHANGES SURVEY SUBMITTED TO THE CITY OF OAKLAND, I WILL PROMPTLY SURVEY

A CORRECTED COPY OF SAID SURVEY TO THE CITY.

I HEREBY ACKNOWLEDGE THAT THIS SURVEY SHALL BE A PUBLIC RECORD AND MAY BE AVAILABLE FOR INSPECTION AND DISTRIBUTION TO THE GENERAL PUBLIC.

Michael J. Foster
MICHAEL J. FOSTER
L.S. NO. 7170
EXPIRES: DECEMBER 31, 2009

April 16, 2008



**BOUNDARY &
TOPOGRAPHIC SURVEY**
A PORTION OF PLOT NO. 49 OF THE VINCENTE
AND DOMINGO PERALTA RANCHOS (17 M. 12)

A PORTION OF PLOT NO. 49 OF THE VINCENTE
AND DOMINGO PERALTA RANCHOS (17 M. 12)
MAP NO. 2 OF WATTS TRACT (6 M. 13)

MAP NO. 2 OF WATTS TRACT (6 M. 13)

CITY OF OAKLAND,
COUNTY OF ALAMEDA, CALIFORNIA

APRIL, 2008 · SCALE: 1" = 10'

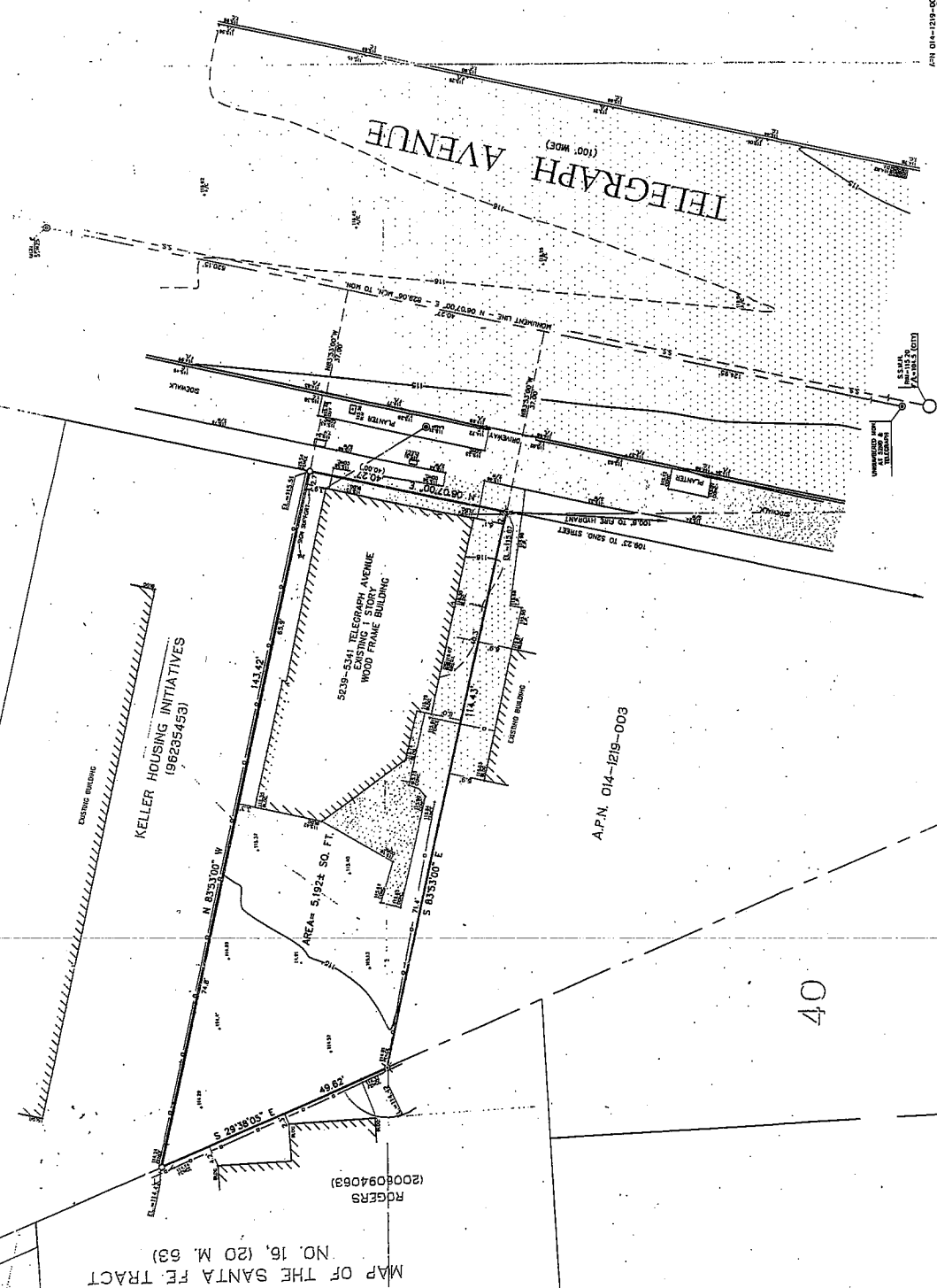
RAY AREA LAND SURVEYING III
961 MITCHELL WAY

961 MITCHELL WAY
EL SOBRANTE, CALIFORNIA
94803

(510) 223-5167

F.B.I. 308 & 309 / TELEGRAPH1501 BT,OTG J08 P

7-10 014-1219-002 SHL 1 OF 1 F.B.I. 308 & 309 / TELEGRAPH 1501 BLDG JOB NO. 08-1501





andrews+chang

5427 Telegraph Avenue Suite K
Oakland CA 94609

ISSUE

PLANNING PERMIT APP. 5-18-14

104115.944.9331



THE KINGFISH PUB
BATTSBOP DIVES, LLC
ATTN: EMIL PEINERT
5239 TELEGRAPH AVE.
OAKLAND, CA
APN: 14-1219-2

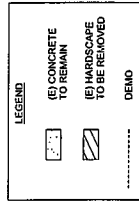
PLANNING
APPLICATION SET

EXISTING SITE AND
DEMOLITION PLAN

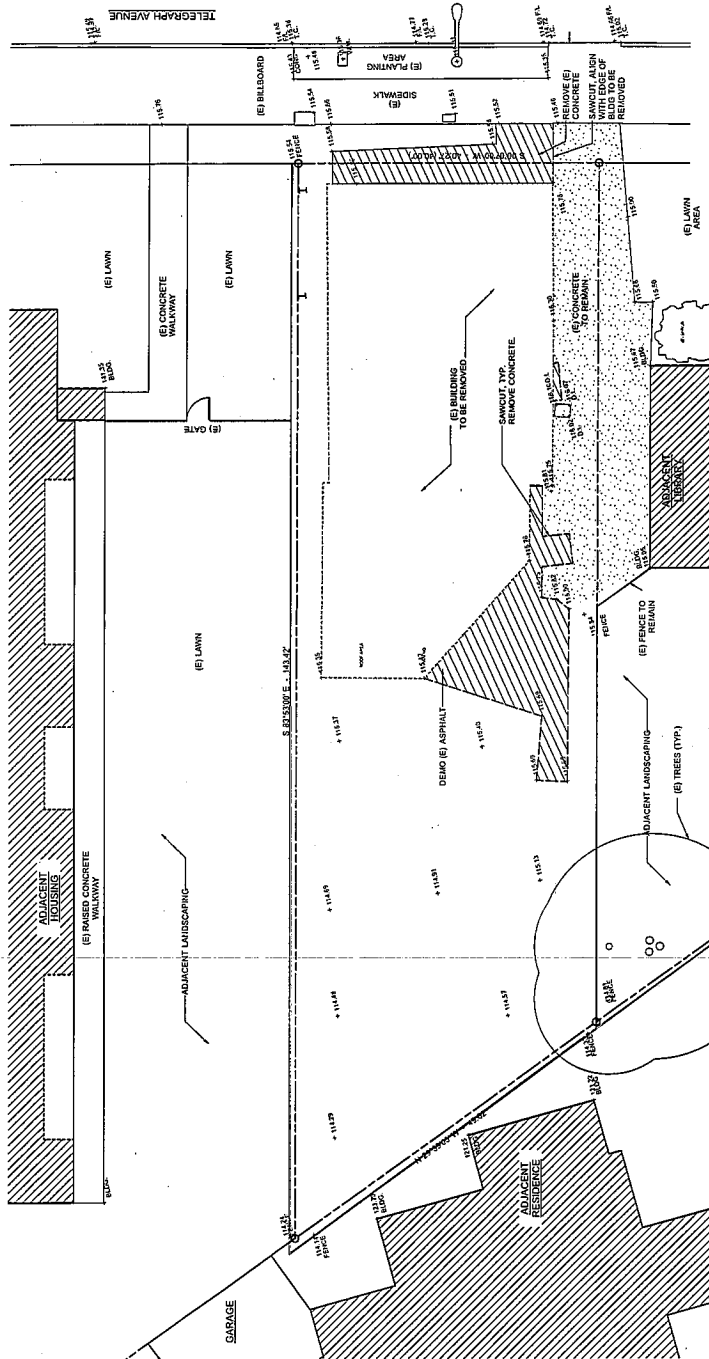


Drawn 7/21/2014
Scale: 1/8" = 1'-0"

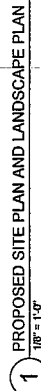
A1.0



NOTE:
DEMOLITION INCLUDES ALL
ASSOCIATED FOOTINGS AND SUBBASE



1 EXISTING PLAN AND DEMO
1/8" = 1'-0"



- PATH OF EGRESS**
- MAINTAIN REQUIRED MIN. WIDTH FOR OCCUPANCY, 44" MIN. WIDTH
- NOT TO EXCEED 2% CROSS-SLOPE AND 5% SLOPE IN DIRECTION OF TRAVEL

1.	EXISTING BUILDING • NEW BATH CONFIGURATION	1332 SF
2.	STORAGE / FUTURE KITCHEN	1084 SF
3.	SECOND FLOOR OFFICE	584 SF
	TOTAL:	3000 SF



andrews+chang
5427 Telegraph Avenue Suite K
Oakland, CA 94609

ISSUE: 10-15-2014 5:43 PM

PLANNING PERMIT

DATE: 6/18/2014

BY: SEE DRAWING



THE KINGFISH PUB

BAITSHOP DIVES, LLC
ATTN: EMIL PENERT
5239 TELEGRAPH AVE.
OAKLAND, CA

APN: 14-1210-2

PLANNING
APPLICATION SET

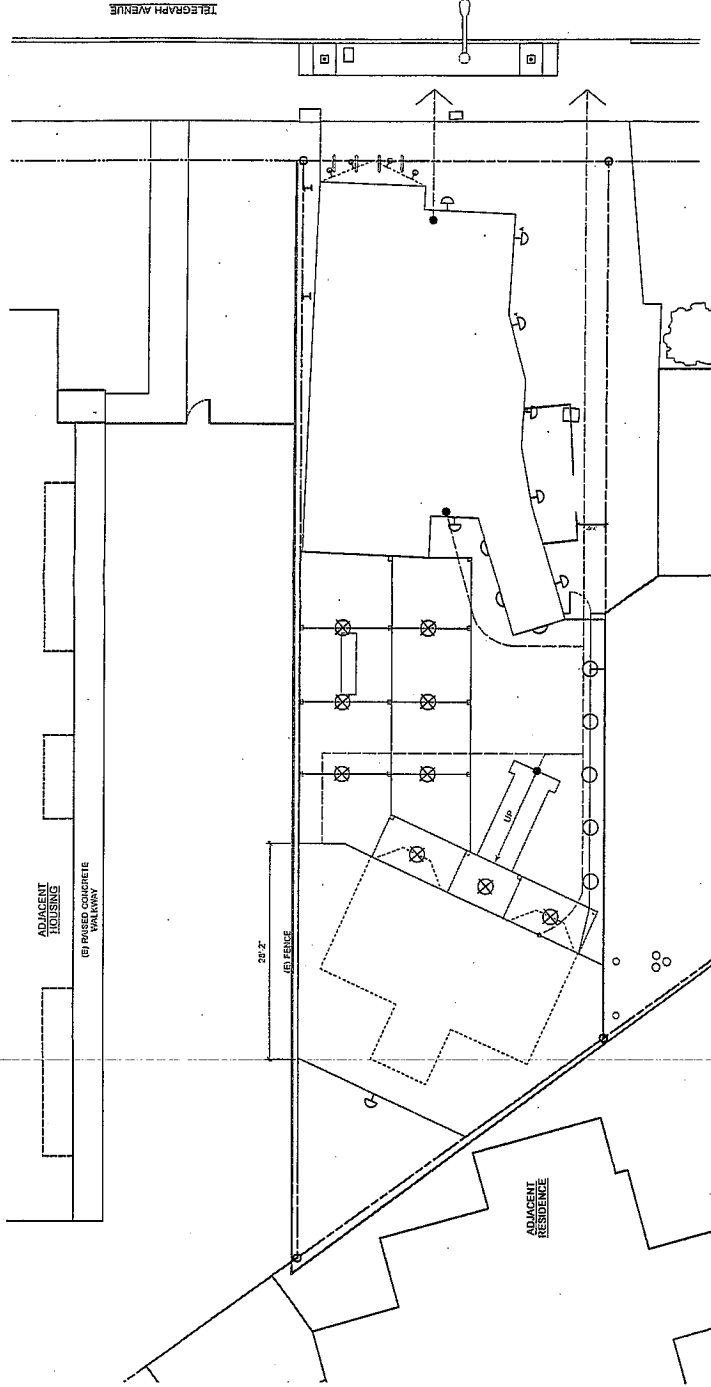
SITE AND
LANDSCAPE PLAN



DATE: 6/18/2014

BY: SEE DRAWING

A1.2



LEGEND:

- DOWNWARD HOODED LIGHTS, WALL MOUNTED FLOODS
- DOWNWARD HOODED LIGHTS, WALL MOUNTED
- HANGING LIGHTS
- PATH LIGHTS
- SMALL SIGN LIGHTS WITH LIMITED FOCUS SPREAD
- WALL MOUNTED PATH LIGHTS

NOTE:
LIGHT SYMBOLS NOT TO SCALE ON DRAWING

1 PROPOSED LIGHTING PLAN
1/8" = 1'-0"



andrews+chang

5427 Telegraph Avenue Suite K
Oakland CA 94609
Tel: 415.944.9431

ISSUE

PLANNING PERMIT



THE KINGFISH PUB

BATSHOP DINES, LLC
ATTN: EMIL PERREY
5239 TELEGRAPH AVE
OAKLAND, CA

APN: 14-1219-2

PLANNING

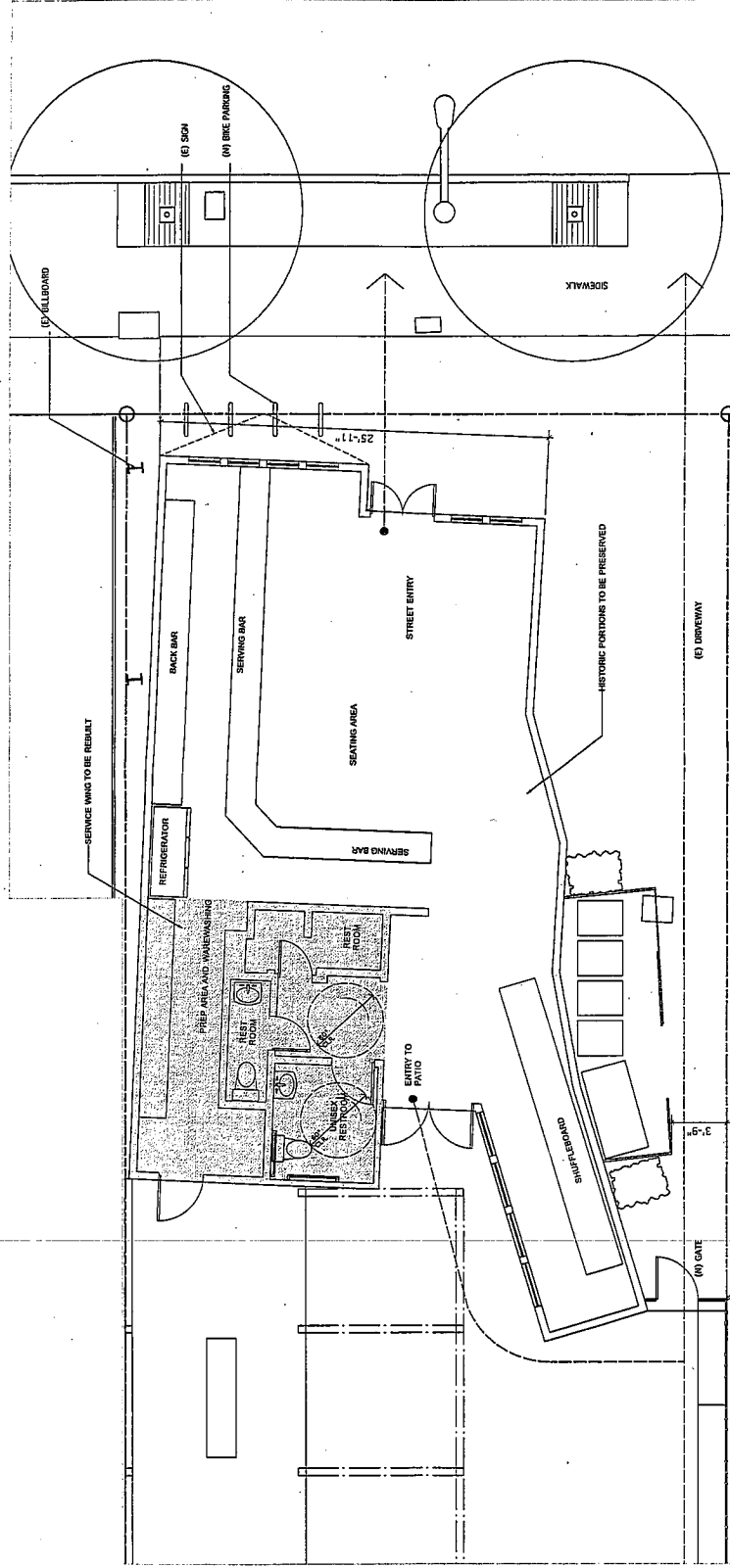
APPLICATION SET

FLOOR PLAN
PUB



Date: 8-18-2014
Scale: 1/4" = 1'-0"

A2.0



1 PROPOSED FLOOR PLANS - PUB
1/4" = 1'-0"



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5427 Telegraph Avenue Suite K
Oakland CA 94609

tel: 415.944.9331

ISSUE

PLANNING PERMIT



THE KINGFISH PUB

BATTSBOP DIVES, LLC
ATTN: EMIL PEINERT
5239 TELEGRAPH AVE.
OAKLAND, CA

APN: 14-1219-2

PLANNING
APPLICATION SET

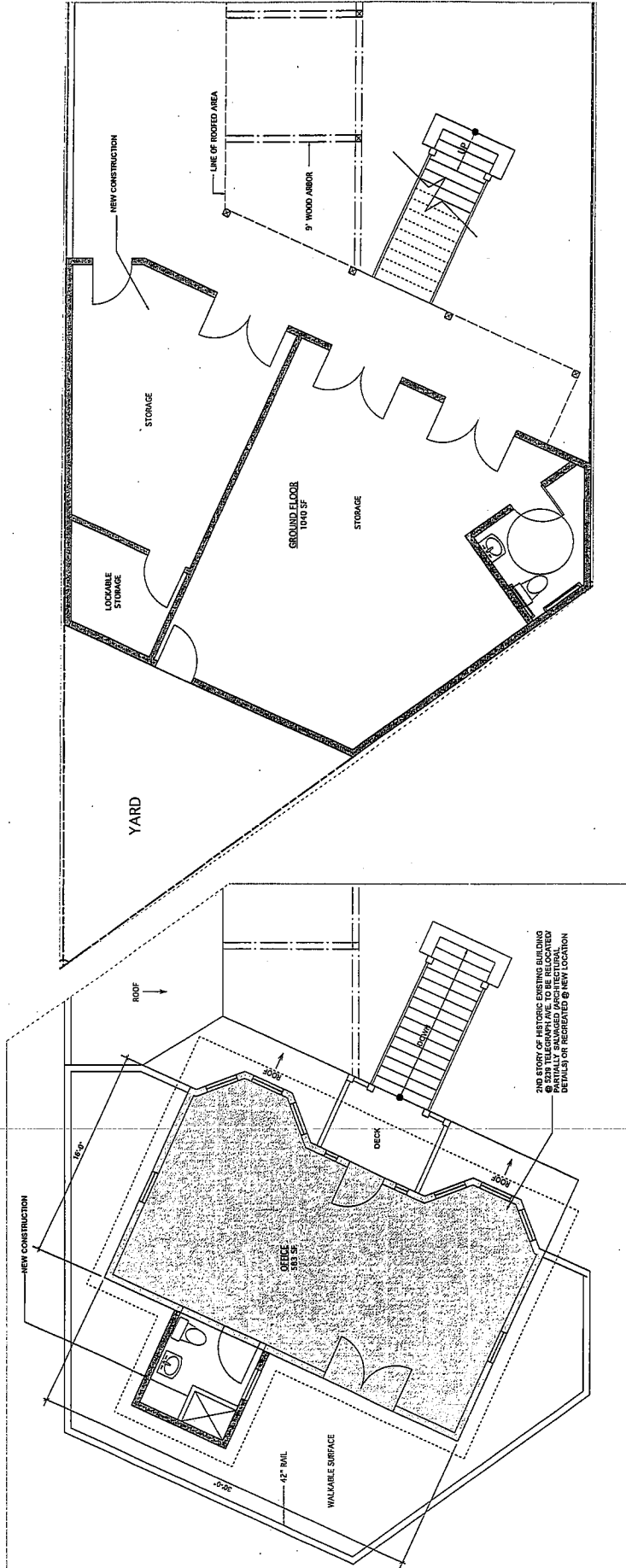
FLOOR PLANS
ACCESSORY
BUILDING



Date: 6-18-2014

Scale: SEE DRAWING

A2.1



1 GROUND FLOOR PLAN
1/4" = 1'-0"

2 UPPER FLOOR PLAN
1/4" = 1'-0"



andrews+chang
5427 telegraph avenue suite k
oakland ca 94609
tel: 415.544.8431
info: 415.544.8431

ISSUE

PLANNING PERMIT



THE KINGFISH PUB

BATSHOP DIVIS, LLC
ATTN: EMIL PERBERT
5239 TELEGRAPH AVE
OAKLAND, CA
APN: 14-1219-2

PLANNING
APPLICATION SET

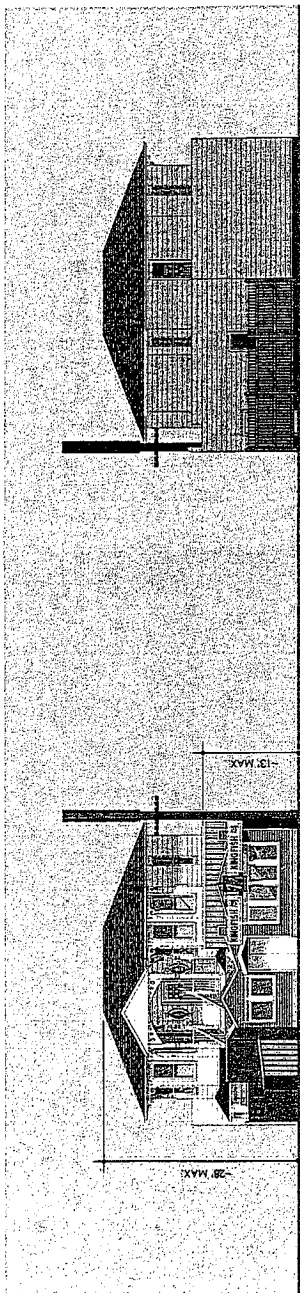
EXTERIOR
ELEVATIONS



Date: 6-15-2014

Scale: 1/8"=1'-0"

A5.0

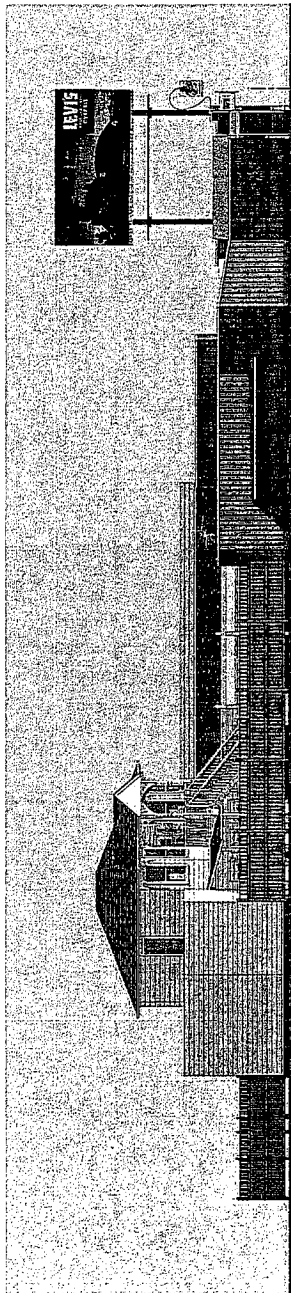


NO CHANGE TO
ORIGINAL BUILDING
REPAIRS REQUIRED

NEW 7'-0" HIGH
FENCE @ PROPERTY LINE
NEW WALLS @ PL
FIRE RATED AS REQUIRED

EAST ELEVATION

WEST ELEVATION



NEW 7'-0" HIGH
FENCE @ PROPERTY LINE

NEW WALLS @ PL
FIRE RATED AS REQUIRED

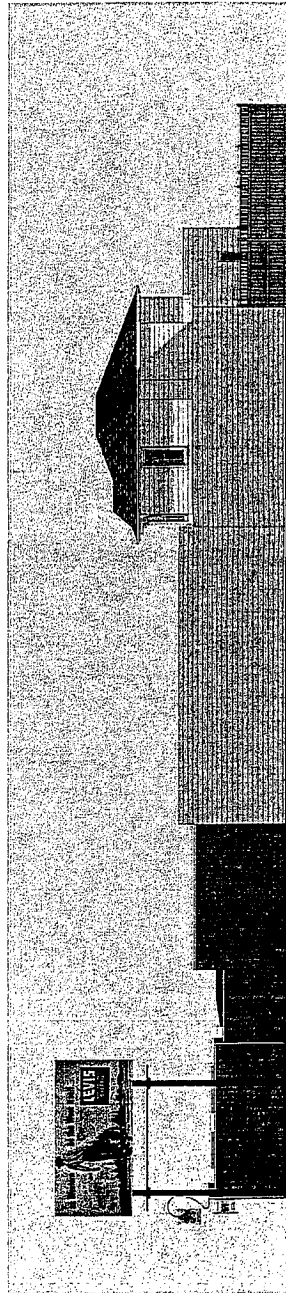
NEW 7'-0" HIGH
FENCE @ PROPERTY LINE

NEW DASH ENCLOSURE

NO CHANGE TO EXISTING BUILDING
REPAIR IN KIND EXISTING BOARD & BATTEN

EXISTING
SIGNS

SOUTH ELEVATION



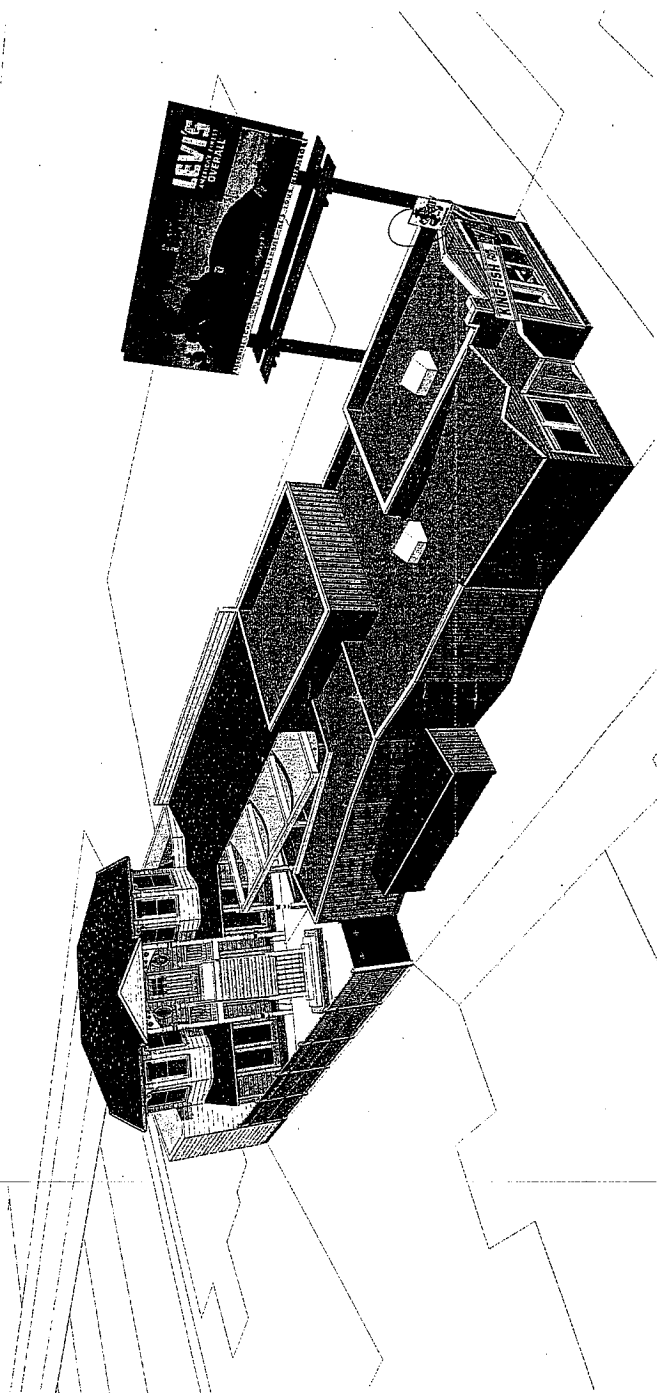
EXISTING
BUILDING @ PL

EXISTING WALLS
@ PROPERTY LINE
REPAIR AS REQUIRED

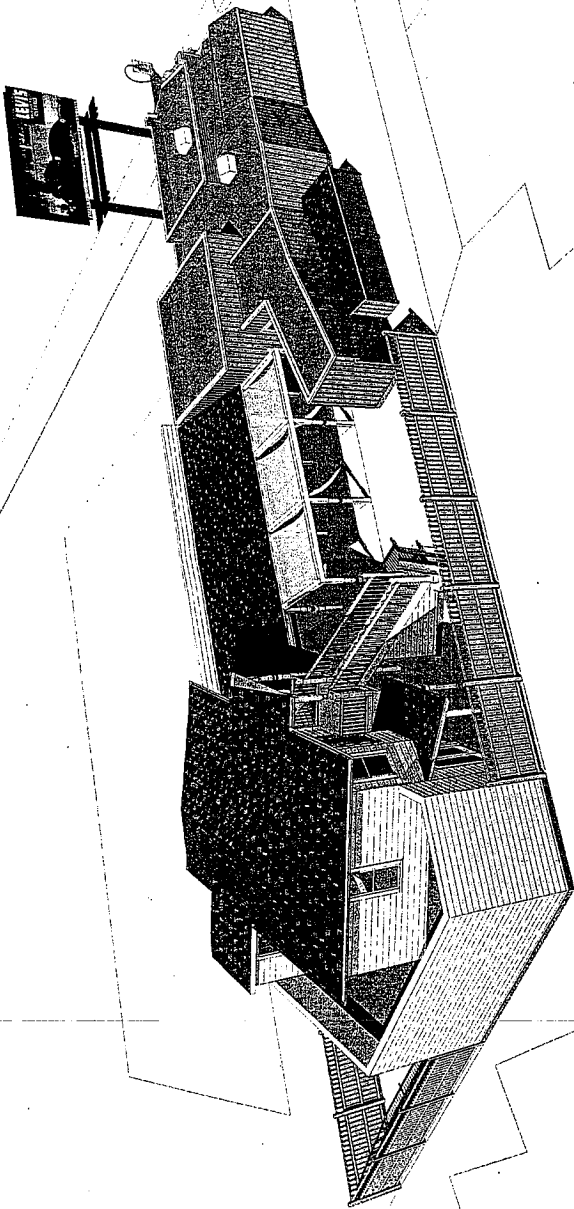
NEW WALLS @ PL
FIRE RATED AS REQUIRED

NEW 7'-0" HIGH
FENCE @ PROPERTY LINE

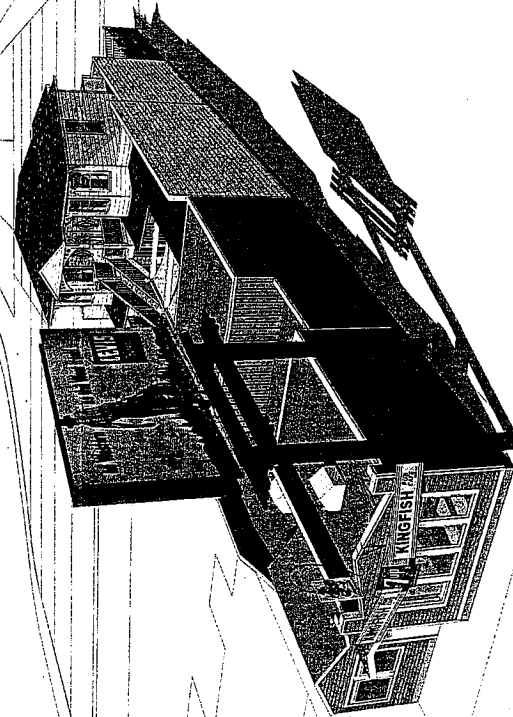
NORTH ELEVATION



BIRDS EYE VIEW FROM SOUTHEAST



BIRDS EYE VIEW FROM SOUTHWEST



BIRDS EYE VIEW FROM NORTHEAST