

Case File Number CM12-041**August 29, 2012**

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

SUMMARY

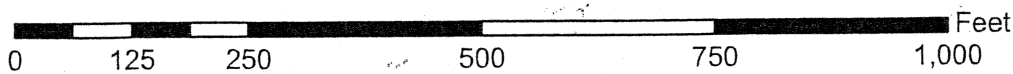
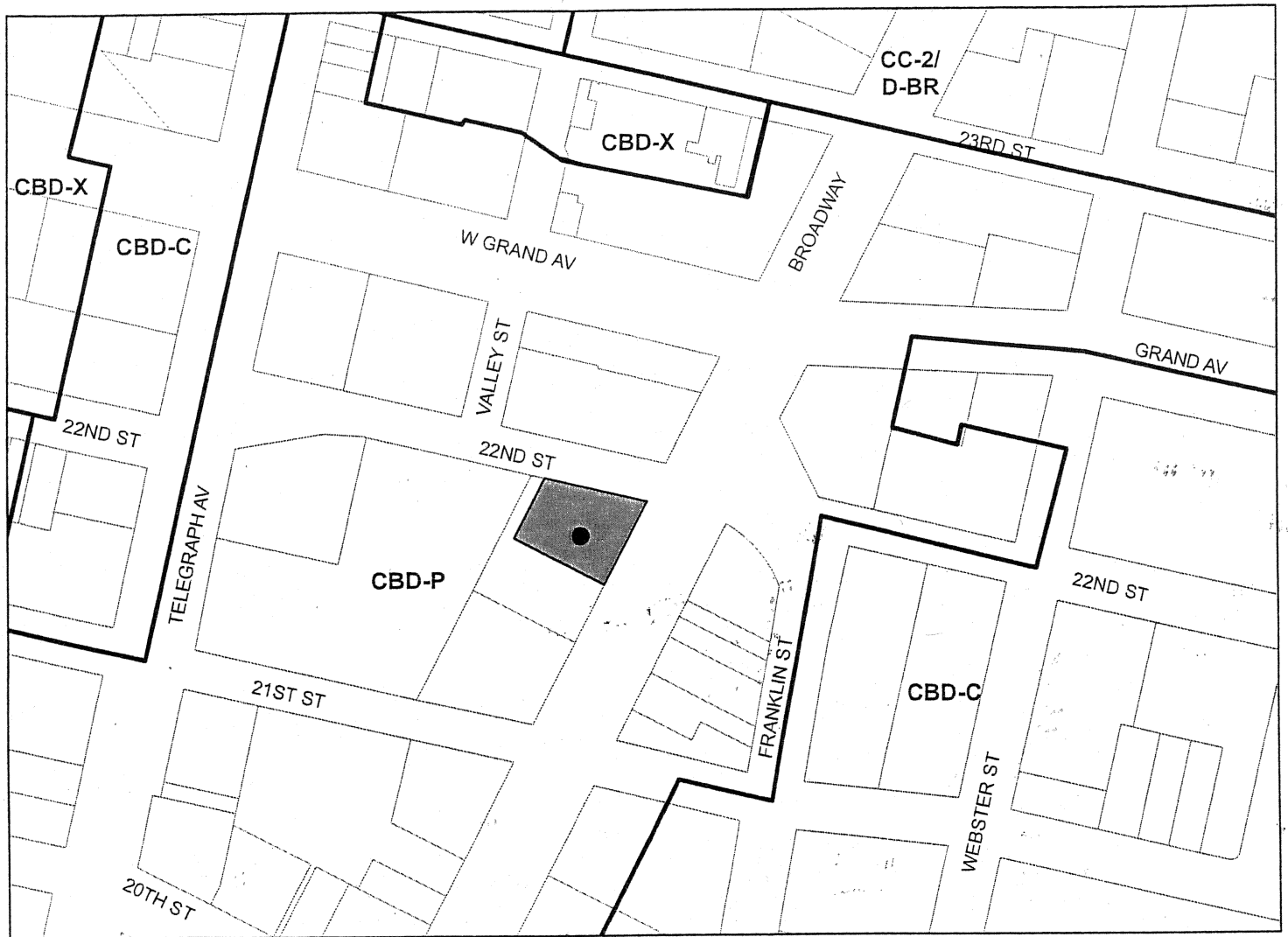
Staff recommends that the Planning Commission approve the Conditional Use Permit with five (5) additional conditions, plus a revised condition, all of which address concerns raised during the public comment period. On June 6, 2012 the Planning Commission continued the hearing for SoundWorks/BAJA Network, a planned jazz club, until the applicant could produce an acoustical study of potential sound effects on sensitive tenants in the building, and attempt dialogue again with the potential upstairs neighbor, who now occupies the BAJA space. This hearing has been re-noticed for August 29, 2012 for the Planning Commission because there were some problems with reproduction of the agenda-related materials for the August 1st meeting date.

This is an application to allow sales of alcoholic beverages in a 2,000 square foot bar, on the ground floor of an existing two story commercial building. The building is located at Broadway at 22nd Street, in Uptown Oakland near the Fox Theater and Arts districts. If an activity is not a "Full-Service" restaurant, a Major Conditional Use Permit (CUP) is required to sell alcoholic beverages. Since the applicant plans a bar, with some food service but not a Full Service Restaurant, a Major CUP is required. The activity also includes Foundation-funded painting and sculpture art exhibitions and nonprofit musical programs for school children and adults, which may or may not have simultaneous paid musical activities.

STAFF ANALYSIS

Staff has reviewed the June 27, 2012 acoustical report by Krause Engineering Services of El Cerrito (which is included as an Attachment to the August 1, 2012 Planning Commission Report; see Attachment A).

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Address: 2147 Broadway
Zone: CBD-P

Staff finds that the acoustical report shows the feasibility, with normal due diligence in the construction and building permit processes, to lower a jazz club's sound received by neighbors to 45 CNEL (decibels), which is the ambient noise in an urban area, based upon Section 17.120 the City's Municipal Code and Figure 6 of the 2005 General Plan Noise Element. While the neighbor might like a lower number such as 30 CNEL for meditation and religious practices, the City's standard (like other cities) is 45 CNEL for residential uses and higher for commercial uses; the residential use being the most restrictive. Thus a claim that the City must enforce interior noise in a commercial building below 45 CNEL is not reasonable. The City has met its obligations to ensure that the use is generally compatible with other "sensitive uses." The City does not have the obligation nor the responsibility to ensure that the Meditation Center's co-tenants of the building also operate in silence. If the Meditation Center wanted to guarantee a certain noise level below that which is generally acceptable, or a certain frequency of noise, then it should have written such into its lease, in which case that would be a private matter between the Center and its landlord and not for the City to enforce. It is not reasonable for the Meditation Center to expect that other uses in a multi-tenant commercial building must also be silent.

Staff has also reviewed the Meditation Center's July 25, 2012 letter from its attorney Jonathan O'Donnell (Attachment B). The applicant (through its architect) and its acoustical engineer (Krause Engineering Services) have also reviewed the Meditation Center's July 25, 2012 letter which explained concerns about the consultant's tests (see Attachments A and B). Both the applicant and its acoustical engineer dispute the allegation of a lack of noise standard, use of "pink noise" (steady broadband testing equipment blended noise) and low frequency jazz sounds mentioned in the Meditation Center letter would alter the test results. A noise test is calibrated with "pink noise" equipment is accurate and this calibration is an accepted practice. The types of noise mentioned in the Meditation Center's letter would be within this margin, being a not-perceptible difference to an average person.

The Krause study showed that the jazz stage was at least 40 to 50 feet distant horizontally and 1 story vertically, through walls and floors, from the Meditation Center potential relocation site. These walls and floors will be upgraded further by the applicant. The Meditation Center has not offered to perform any modifications to their own space, such as air conditioning, automatic door closers and weather stripping, although the jazz club will be doing so for their own space. Therefore the Meditation Center's allegation is not a valid basis for finding undue noise would emit from the applicant's lease. However, the acoustical engineer did provide some additional recommendations, which staff has included as additional conditions of approval (as discussed below).

It should be noted that the meditation group is moving from the applicant's first floor space, possibly (but not certainly) to an upstairs space in the building. The landlord and tenant are engaged in ongoing discussions, which, as of August 21, 2012, had not been resolved. (For some reasons staff was provided copies of what appear to be privileged settlement discussion materials by the Meditation Center's Attorney. Because these appear to be privileged, staff has elected not to provide them in the Agenda packet). It is not definite that the meditation group will occupy the upper level or otherwise remain in the building.

Members of the Planning Commission spoke on June 6, 2012, noting that the meditation group is a valid and welcome land use in Oakland, either in this building or elsewhere. However, they gave the group and the applicant time to communicate and try to work out this matter. During that time no such meeting is reported to have taken place or achieved accommodation. In this impasse, the meditation group's attorney cites their rights as a religious group. However, the City is not required to provide absolute silence for a group that chooses to rent in a particular commercially-zoned building in which there may be other uses producing normal and acceptable noise levels.

ADDITIONAL CONDITIONS

On June 6, 2012 the Planning Commission discussed two possible additional conditions, which are proposed to be added:

21. Outdoor Seating

Ongoing

The applicant is not approved for outdoor seating and shall not apply for Small Project Design Review or other City permit for such outdoor seating.

22. Cabaret Permit

Prior to occupancy and ongoing

The applicant shall obtain and maintain a Cabaret Permit from the City Administrator's Office.

In addition, a third condition is proposed to respond to noise concerns raised in the July 25, 2012 letter from Jon O'Donnell, MVB Law LLP, attorney for the meditation center ("O'Donnell Letter"):

23. Noise Insulation and Control

Prior to occupancy and ongoing

The applicant shall install sufficient insulation and other wall and floor improvements to result in a noise level of 45 CNEL/decibels or less within any adjacent lease space during peak business hours. Within three months of occupancy, the applicant shall provide the Zoning Manager a professional noise study by a consultant approved by the Zoning Manager that determines whether the wall and floor improvements result in a noise level of 45 CNEL/decibels or less within any adjacent lease space during peak business hours. The Zoning Manager may require an additional study six months later. If the either study demonstrates that adjacent lease space receives on average of more than 45 CNEL/decibels during any one hour, corrective action must immediately be undertaken to achieve a 45 CNEL/decibels or less within any adjacent lease space. Failure to achieve the required reductions, or if 3 exceedances occur within a one year period, then enforcement action pursuant to Condition of Approval #5 including without limitation revocation of the Conditional Use Permit, may be initiated.

Furthermore, the August 20, 2012 Krause Engineering Services supplemental letter (Exhibit C) makes two additional recommendation, which staff has included as conditions of approval:

24. Monitoring Noise Levels

Ongoing

The applicant shall continuously monitor sound levels inside the facility during all music events to implement condition 23 and shall regulate these levels to less than 90 dBA, using equipment equivalent to an Extech Instruments SL130G (which provides a large display that can be read at a distance and includes an alert feature that provides a visual indication when the sound levels are exceeding a preset limit), and shall report results of tests to the Zoning Manager in writing on the schedule in Condition 23 and if determined by the Zoning Manager to be necessary, in any subsequent year upon written request to the applicant. Failure to achieve the required reductions, or if 3 exceedances occur within a one year period, then enforcement action pursuant to Condition of Approval #5 including without limitation revocation of the Conditional Use Permit, may be initiated.

25. Implement Acoustical Design Details

Prior to occupancy and ongoing

The applicant shall cause sound-baffling construction, with building permits, to meet conditions 23 and 24 which provide a continuous airtight seal at edges in contact with the existing walls and ceilings of the space. Doors shall be provided with perimeter seals, with two (2) sets of front doors such that when one door is open the second is typically closed, in order to create a sound seal, unless Building or Fire Codes prohibit such structures. The two doors together should never be left open for any extended time during music performances, particularly after 10 pm.

Staff also recommends revising Condition No. 19 Security/ Crowd control to expand the area the security personnel patrol to include the entrance to the Meditation Center entrance as follows:

The applicant shall retain qualified security personnel (volunteer or paid) to monitor the event site and areas within 100 feet of entrances, including all entrances used by East Bay Meditation Center. There shall be at least one security guard per 50 patrons, but at all times at least one (1) guard. The guards shall cooperate with the Oakland Police Department in maintaining order inside and outside the venue. ~~The applicant stipulates that Three (3) violent or disruptive incidents in such areas within a period of one calendar year, verified by the Oakland Police Department, may constitute reason for the Zoning Manager to agendize a hearing regarding the Conditional Use Permit before the Planning Commission to consider amending conditions or consider recission of the Conditional Use Permit pursuant to Oakland Planning Code.~~ may result in enforcement action pursuant to Condition of Approval #5 including without limitation revocation of the Conditional Use Permit.

Staff's Response to Other Objections Raised in the O'Donnell Letter

Staff does not believe that Mr. O'Donnell's (page 4) comment that security risks being higher from the jazz club are valid. Repeated staff reports to the Planning Commission about crime risks in this Uptown vicinity have shown the risks comparable to or lower than other areas within a 2 mile radius. Jazz clubs have an older demographic than other music clubs and do not tend to attract significant criminal activity. Other jazz clubs such as Yoshi's have not been associated with security issues for the City. Nevertheless, Condition of Approval No. 19 requires security at the site, and this has been revised to require the security also monitor the Meditation Center entrance,

Staff does not believe that Mr. O'Donnell's (page 5) comment about cigarette smoke near building entrances is valid. By law, individuals cannot smoke near such doorways now (smokers must be at least 25 feet from the entranceway). The risk of secondhand smoke is not concentrated in such a way as to pose a measurable health hazard to people inside the building, such as meditation members. Moreover, smoking can occur with any other use of the property—adult education classes or offices.

Staff does not believe Mr. O'Donnell's (page 6) comments about negative economic impact are justified. While the Meditation Center does employ part-time staff, the jazz club is not preventing them from being in the building; that is a matter between landlord and lessees. The jazz club will offset any issue with its own hiring of staff, caterers, musicians etc.

Staff does not believe Mr. O'Donnell's (page 6) comment about lack of community need is valid. This jazz club will fill a gap in the Uptown music scene by providing a smaller venue and offer alcoholic beverages as ancillary rather than primary activity. In addition, the art exhibits and school programs also serve a community need.

CONCLUSION

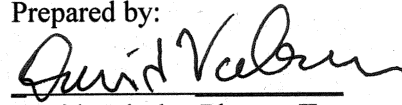
A professional acoustical study demonstrates that the jazz club can control its noise under Planning and building conditions to community standards. Therefore, staff continues to believe that noise should not restrict the jazz club activity. Moreover, the other objections raised can be dealt with through other conditions of approval or are not a valid basis to deny the conditional use permit.

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

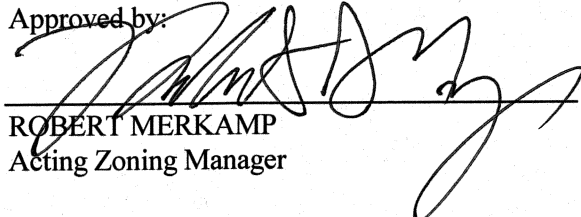
RECOMMENDATION:

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

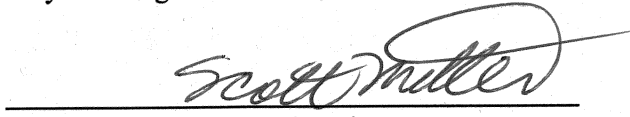
Prepared by:


David Valeska, Planner II

Approved by:


ROBERT MERKAMP
Acting Zoning Manager

Approved for forwarding to the
City Planning Commission:


SCOTT MILLER, Interim Director
Department of Planning, Building and Neighborhood Preservation

Attachments:

- A. August 1, 2012 Planning Commission Report with June 27, 2012 Acoustical Report
- B. July 25, 2012 Objection Letter from J. O'Donnell, attorney for EBMC
- C. Acoustical Report Update, August 20, 2012
- D. August 21 2012 Applicant Reply to EBMC
- E. August 21, 2012 Applicant Attorney Reply, for Applicant
- F. August 21, 2012 EBMC Request to Continue Hearing

Attachment A: Planning Commission Staff Report, August 1, 2012
With Acoustical Report, June, 2012
(Attachments A to E for August 1, 2012 Included)

(Attachments B to F for August 29, 2012 Follow Separately)

Attachment B: Acoustical Report Update, August 20, 2012

Attachment C: Letter, East Bay Meditation Center, July 25, 2012

Attachment D: Letter, BAJA (Applicant), August 21, 2012

Attachment E: Letter, Clinton Killian (Applicant Attorney), August 21, 2012

Attachment F: Letter, East Bay Meditation Center, Hearing Continuance Request, August 21, 2012

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City Council District:	3
Commission Action to Be Taken:	Approve Staff Recommendation
Appeal:	To City Council
For Further Information:	Contact David Valeska at (510) 238-2075 or dvaleska@oaklandnet.com

RECOMMENDATION AND SUMMARY

Staff recommends that the Planning Commission approve the Conditional Use Permit with two additional conditions described herein in order to respond to concerns raised in the prior public hearing. On June 6, 2012 the Planning Commission tabled a hearing for SoundWorks/BAJA Network, a planned jazz club, until the applicant could produce an acoustical study of potential sound effects on tenants in the building, and attempt dialogue again with the potential upstairs neighbor. This hearing has been re-noticed for August 1, 2012 for the Planning Commission.

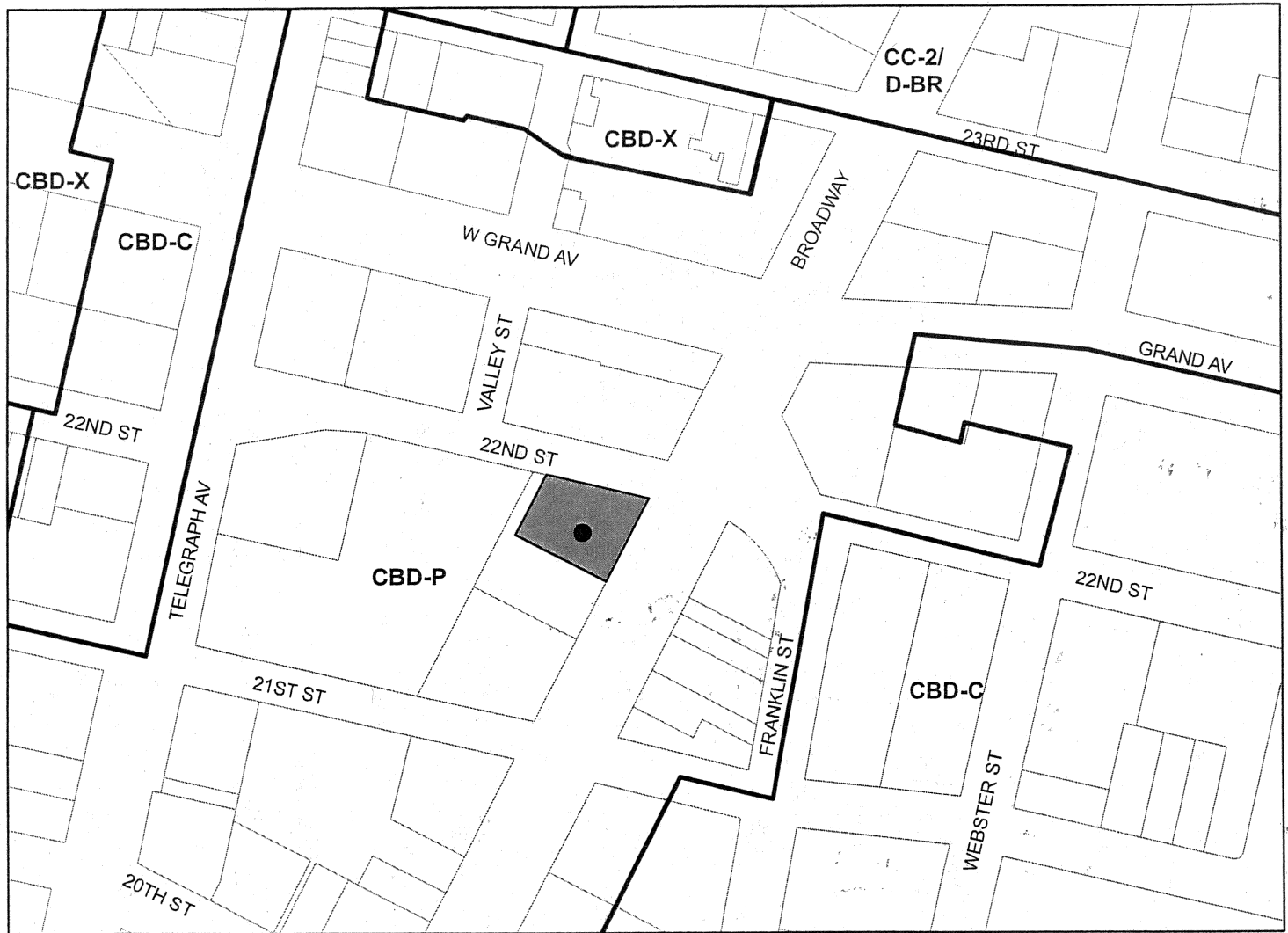
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STAFF ANALYSIS

Staff has reviewed the June 2012 Planning Commission record in Attachment A and reviewed the June 2012 acoustical report by Krause Engineering Services of El Cerrito, which is Attachment B.

Staff finds that the acoustical report shows the feasibility, with normal due diligence in the construction and building permit processes, to lower a jazz club's sound received by neighbors to 45 CNEL (decibels), which is ambient noise in an urban area. While the neighbor might like a lower number such as 30 CNEL for meditation and religious practices, the City's standard (similar to many other cities) is 45

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0 125 250 500 750 1,000 Feet



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CNEL for residential uses and higher for commercial uses. Thus a claim that the City must enforce interior noise in a commercial building below 45 CNEL is invalid.

In addition, the meditation group is moving from the applicant's first floor space, possibly (but not certainly) to an upstairs space in the building. The landlord and tenant are engaged in ongoing discussions which, as of July 16, 2012, had not been resolved. It is not definite that the meditation group will occupy the upper level.

Members of the Planning Commission spoke on June 6, 2012, noting that the meditation group is a valid and welcome land use in Oakland, either in this building or elsewhere. However, they gave the group and the applicant time to communicate and try to work out this matter. During that time no such meeting is reported to have taken place or achieved accommodation. In this impasse, the meditation group's attorney cites their rights as a religious group. However, the City is not required to provide absolute silence for a group that chooses to rent in a particular commercially-zoned building where there may be other uses producing normal and acceptable noise levels.

ADDITIONAL CONDITIONS

On June 6, 2012 the Planning Commission discussed two possible additional conditions, which are proposed to be added after draft Condition 20 in Attachment A, an excerpt from the June 6, 2012 packet:

21. Outdoor Seating

Ongoing

The applicant is not approved for outdoor seating and would not apply for Small Project Design Review or other City permit for such outdoor seating.

22. Cabaret Permit

Prior to occupancy and ongoing

The applicant shall obtain and maintain a Cabaret Permit from the City Administrator's Office.

CONCLUSION

The Planning Commission gave the applicant and meditation group time to work out their differences, however, an accommodation has not been reached. A professional acoustical study demonstrates that the jazz club can control its noise under Planning and building conditions to community standards. Therefore staff continues to believe that noise should not restrict the jazz club activity.

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

RECOMMENDATION:

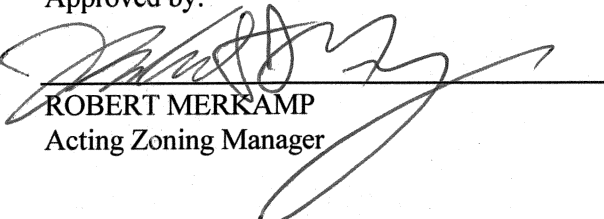
1. Affirm staff's environmental determination.
2. Approve the Major Conditional Use Permit, based on the ability to make the findings and subject to the attached conditions.

Prepared by:




David Valeska, Planner II

Approved by:



ROBERT MERKAMP
Acting Zoning Manager

Approved for forwarding to the
City Planning Commission:



SCOTT MILLER, Interim Director, Planning
and Building

Attachments:

- A. June 2012 Report with Attachments
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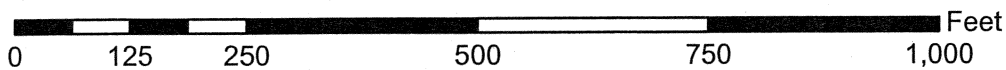
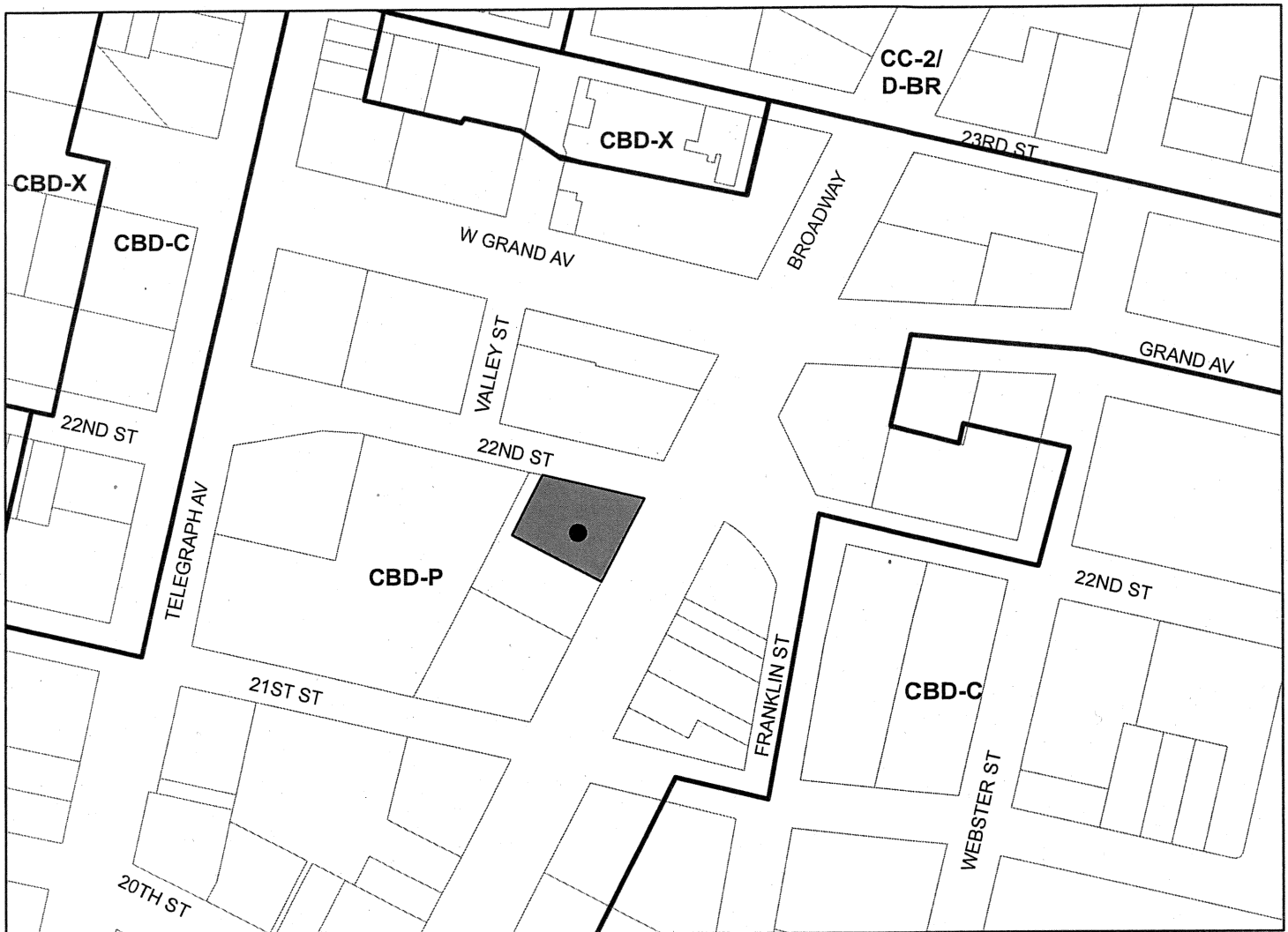
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PROJECT DESCRIPTION

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

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

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

PROPERTY DESCRIPTION

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

GENERAL PLAN ANALYSIS

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

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

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

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

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

ZONING ANALYSIS

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

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

ENVIRONMENTAL DETERMINATION

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

KEY ISSUES AND IMPACTS

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

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

Crime Control

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

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

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

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

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

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

Traffic/Parking

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

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

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

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

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

Concentration of Alcoholic Beverage Services

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

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

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

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

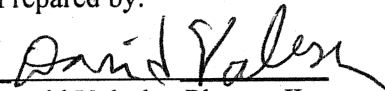
SUMMARY

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

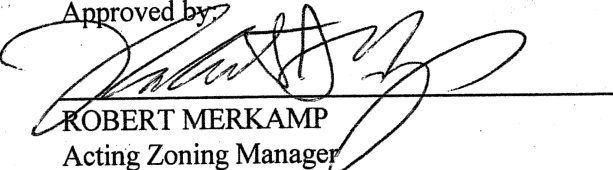
RECOMMENDATION:

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

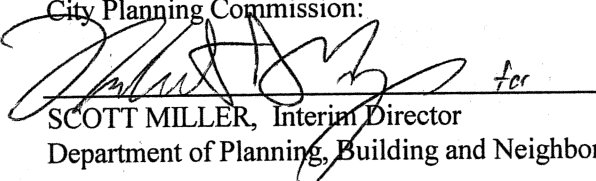
Prepared by:


David Valeska, Planner II

Approved by:


ROBERT MERKAMP
Acting Zoning Manager

Approved for forwarding to the
City Planning Commission:


SCOTT MILLER, Interim Director
Department of Planning, Building and Neighborhood Preservation

Attachments:

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

A. FINDINGS FOR APPROVAL

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

Section 17.134.050 (General Use Permit Criteria):

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

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

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

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

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

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

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

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

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

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

Section 17.102.210 (A) - Special Use Permit Criteria:

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

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

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

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

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

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

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

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

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

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

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

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

7. That where the proposed use is in close proximity to residential uses, and especially to bedroom windows, it will be limited in hours of operation, or designed or operated, so as to avoid disruption of residents' sleep between the hours of ten PM and seven AM.

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

Section 17.102.210(B) - Special Use Permit Criteria

B. Special Restrictions on Establishments Selling Alcoholic Beverages.

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

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

3. In addition to the criteria prescribed elsewhere in the zoning regulations, a land use permit for an Alcoholic Beverage Sales Activity located within an Alcoholic Beverage Sales license overconcentrated area shall be granted and a finding of Public Convenience or Necessity made only if the proposal conforms to all of the following three criteria:
 - a. That a community need for the project is clearly demonstrated. To demonstrate community need, the applicant shall document in writing, specifically how the project would serve an unmet or underserved need or population within the overall Oakland community or the community in which the project is located, and how the proposed project would enhance physical accessibility to needed goods or services that the project would provide, including, but not limited to, alcohol:

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

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

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

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

Alcohol beverage service is typically a part of nightlife district restaurants and the applicant's proposal is consistent with this pattern in Uptown Oakland.

B. CONDITIONS OF APPROVAL

STANDARD CONDITIONS:

1. **Approved Use.**

a. Ongoing.

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

2. **Effective Date, Expiration, Extensions and Extinguishment**

Ongoing.

Unless a different termination date is prescribed, this Approval shall expire **two calendar years** from the approval date, unless within such period all necessary permits have been issued, or authorized activities have commenced in the case of a permit not involving construction or alteration. Upon written request and payment of appropriate fees submitted no later than the expiration date of this permit, the Director of City Planning or designee may grant a one-year extension of this date, with additional extensions subject to approval by the approving body. Expiration of any valid building permit for this project may invalidate this approval if the said extension period has also expired.

3. **Scope of This Approval; Major and Minor Changes**

Ongoing.

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

4. **Conformance with Other Requirements.**

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

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

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

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

Ongoing.

a. Site shall be kept in a blight/nuisance-free condition. Any existing blight or nuisance shall be abated within 60-90 days of approval, unless an earlier date is specified elsewhere.

b. The City Planning Department reserves the right at any time during construction, to require certification by a licensed professional that the as-built project conforms to all applicable zoning

requirements, including but not limited to approved maximum heights and minimum setbacks. Failure to construct the project in accordance with approved plans may result in remedial reconstruction, permit revocation, permit modification or other corrective action.

c. Violation of any term, Conditions or project description relating to the Approvals is unlawful, prohibited and a violation of the Oakland Municipal Code. The City of Oakland reserves the right to initiate civil and/or criminal enforcement and /or abatement proceedings, or after notice and public hearing, to revoke the Approvals or alter these Conditions if it is found that there is violation of any of the Conditions, or the provisions of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance. This provision is not intended to, nor does it, limit in any manner whatsoever the ability of the City to take appropriate enforcement Actions. The project applicant shall be responsible for paying fees in accordance with the City's Master Fee Schedule for inspections conducted by the City or a City-designated third-party to investigate alleged violations of the Conditions of Approval.

6. Signed Copy of the Conditions

With submittal of a demolition, grading and building permit.

A copy of the approval letter and Conditions shall be signed by the property owner and submitted with each set of permit plans submitted for this project.

7. Indemnification

Ongoing

a. To the maximum extent permitted by law, the applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the City of Oakland Redevelopment Agency, the Oakland City Planning Commission and their respective agents, officers, and employees (hereafter collectively called the City) from any liability, damages, claim, judgment, loss (direct or indirect) action, causes of action or proceeding (including legal costs, attorney's fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul, (1) an approval by the City relating to a development-related application or subdivision or (2) implementation of an approved development-related project. The project applicant shall reimburse the City for its reasonable legal costs and attorneys fees.

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

8. Compliance with Conditions of Approval

Ongoing

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

9. Severability

Ongoing

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

10. Job Site Plans

Ongoing throughout demolition, grading, and/or construction and when operating

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

11. Waste Reduction and Recycling

a. Prior to issuance of a building or demolition permit

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

12. Recycling Space Allocation Requirements

a. Prior to issuance of building permit

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

STANDARD CONDITIONS FOR ALCOHOLIC BEVERAGE SALES COMMERCIAL ACTIVITY:

13. Visual Security.

a. Ongoing

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

14. Hours.

a. Ongoing.

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

15. Conformance with State Department of Alcoholic Beverage Control regulations

a. Ongoing.

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

b. Ongoing

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

c. Ongoing

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

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

a. Ongoing.

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

b. Ongoing.

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

c. Ongoing.

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

d. Ongoing.

No pay phones are permitted outside the building.

e. Ongoing.

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

17. Trash and litter

a. Prior commencement of use and ongoing.

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

18. Outdoor Tables/No Smoking

Ongoing

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

19. Security/Crowd Control

Ongoing

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

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

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

The applicant shall submit a letter to staff signed by the applicant addressed to the State Department of Alcoholic Beverage Control stipulating that they wish to include conditions number 13 through 19 in the conditions of their ABC license. The Oakland Planning Commission may, after notice and hearing, revoke this Conditional Use Permit if the applicant fails to include the above conditions in the ABC license.

City Council

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ATTACHMENT C: SITE PLAN/AERO PHOTO

Bay Area Jazz & Arts Network, Inc.

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

April 11, 2012

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

RE: Conditional Use Permit Application for business at 2147 Broadway

Dear Sir or Madam,

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

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

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

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

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

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

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

Please consider our application for approval,

Thank you,

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

Karen Van Leuven
President, BAJA Networks Inc.

Conditional Use Permit Findings

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

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

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

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

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

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

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

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

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

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

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

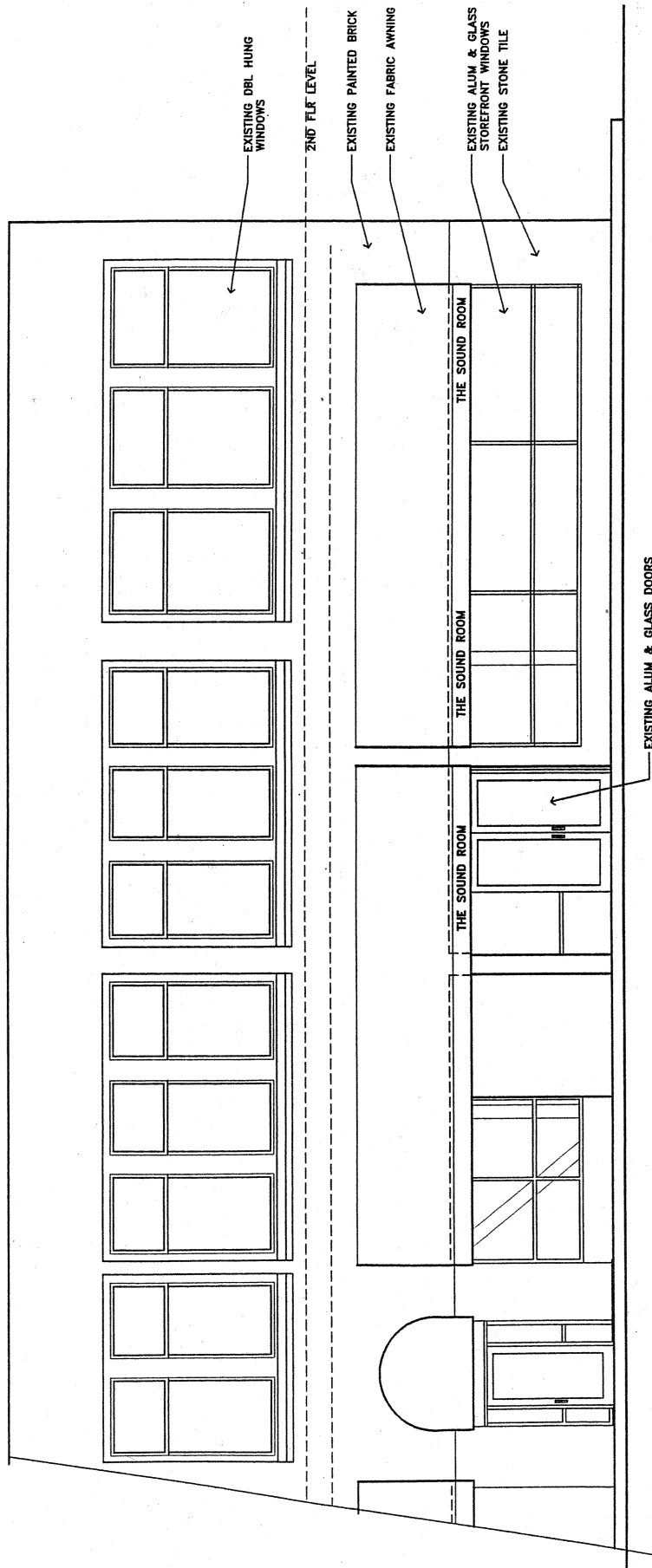
F. The proposal conforms in all significant respects with the Oakland General Plan and with any other applicable plan or development control map which has been adopted by the City Council.

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

Reference organization

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

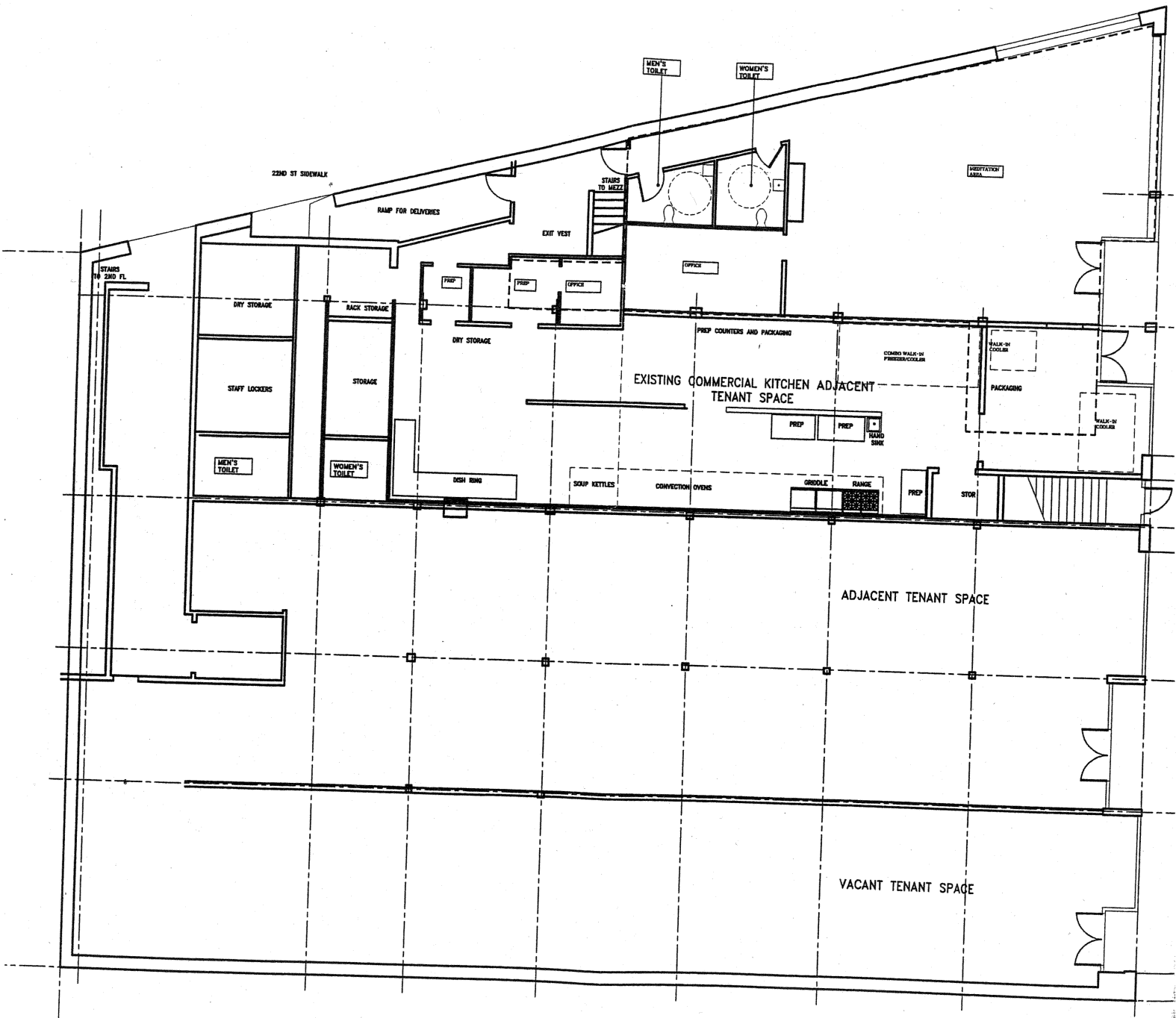
at "The Woodshed at The Jazz Gallery", which will provide free rehearsal space to jazz musicians beginning in January 2012, The Jazz Gallery seeks to provide a powerful creative environment for the musicians it supports and presents, and at the same time, to establish a replicable model for supportive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



chitecture + art Exterior Elevation Broadway Street

LABORATIVE

04.11.



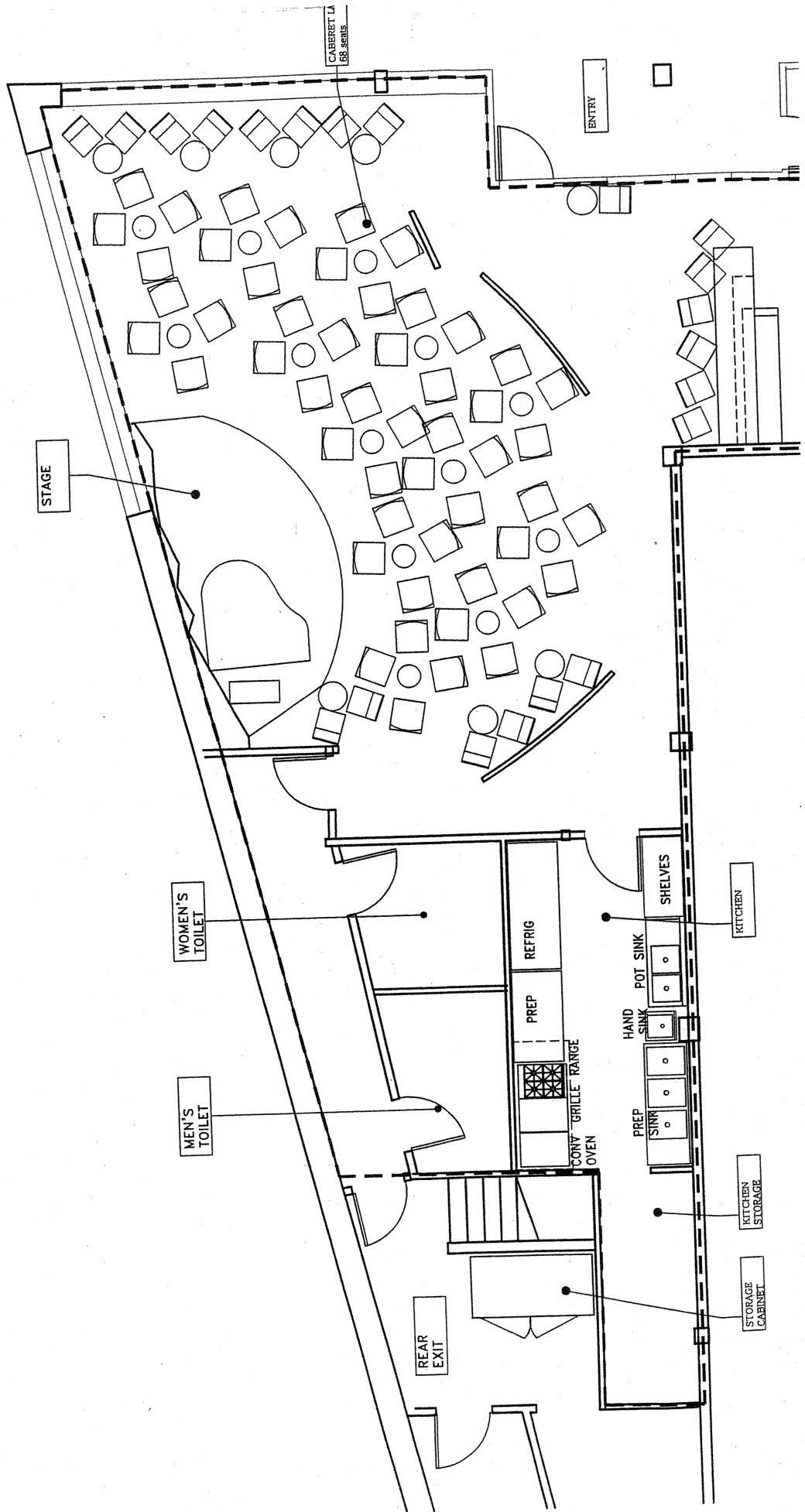
REVISED BASE BUILDING
PLAN

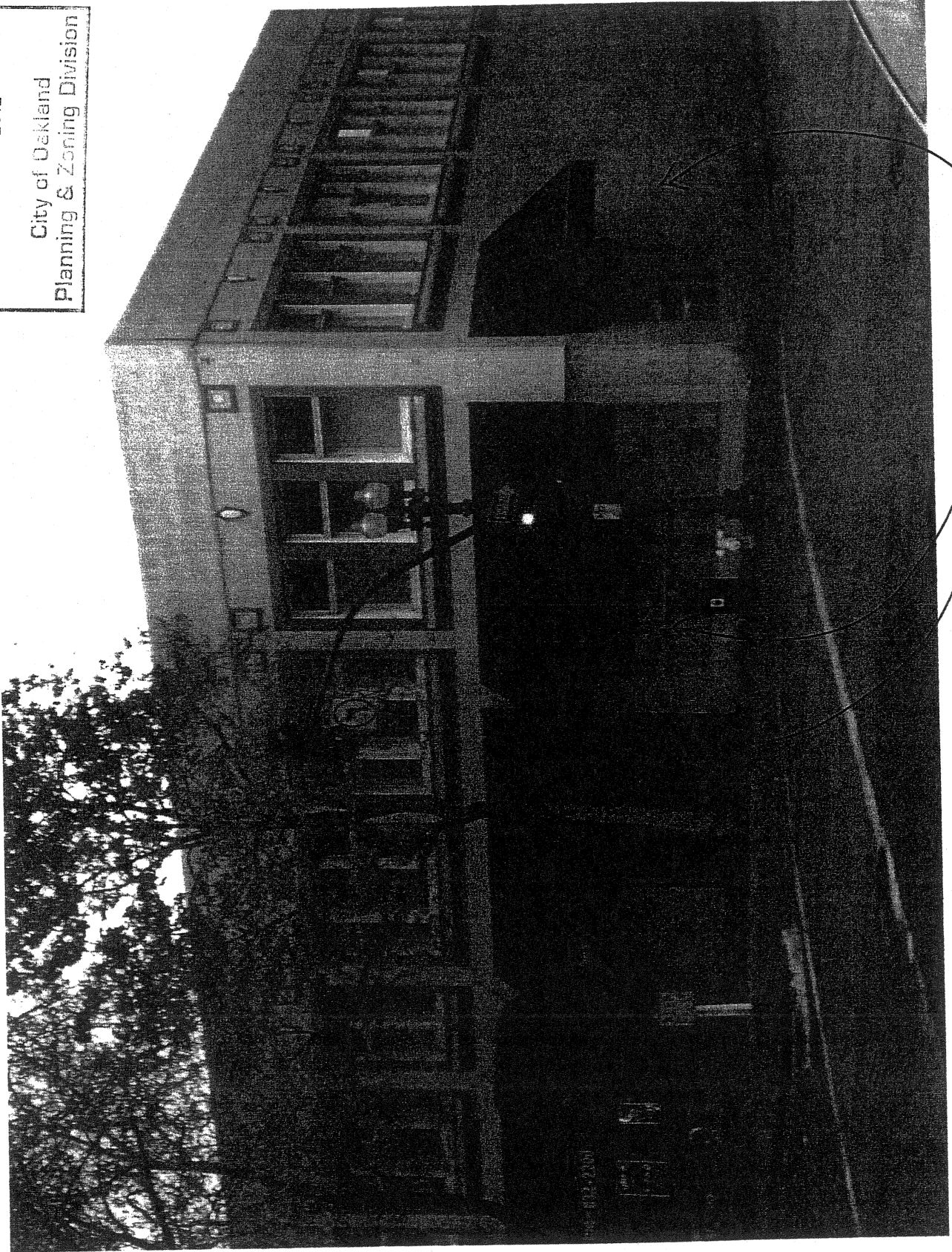
architecture + art

COLLABORATIVE

Existing Plan

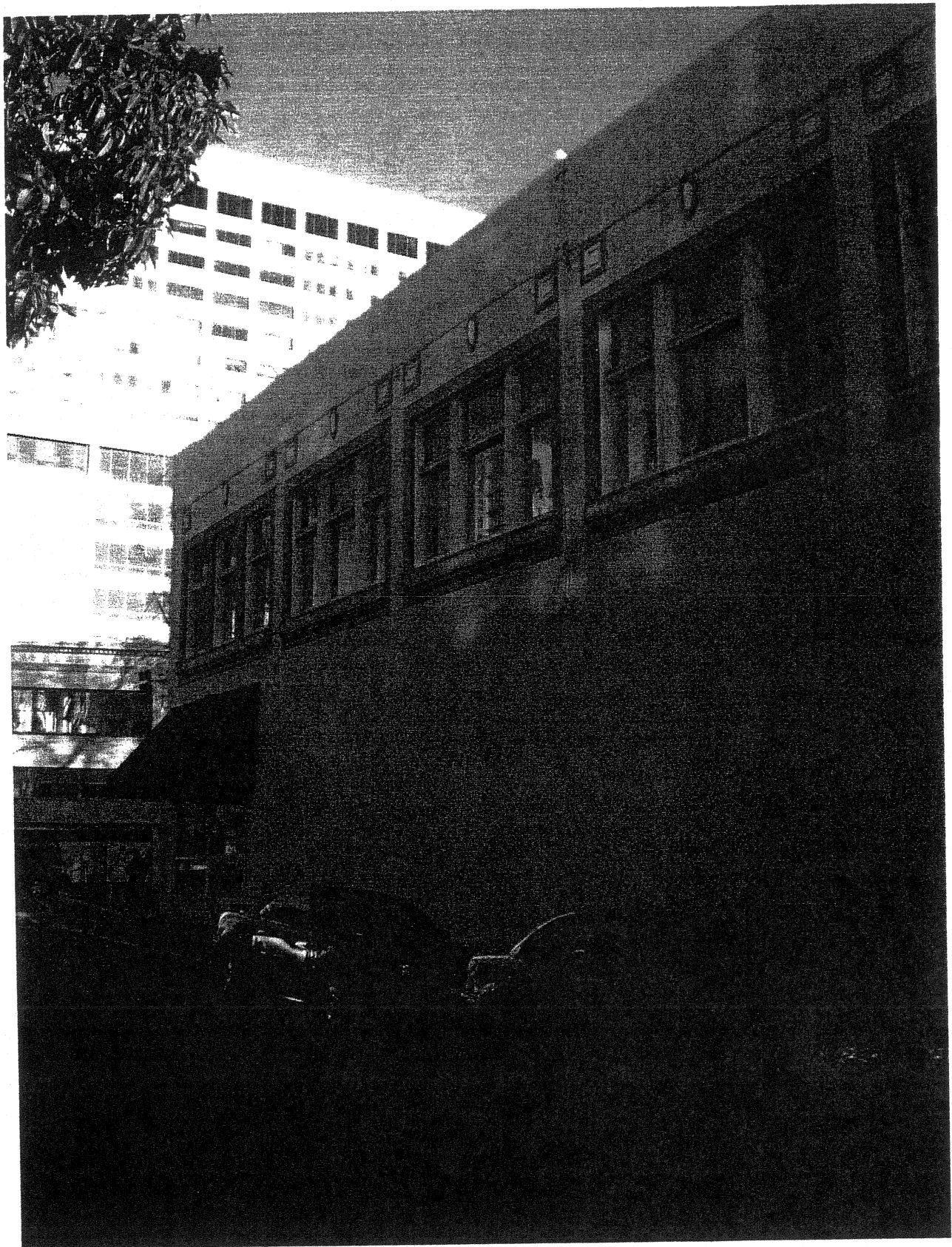
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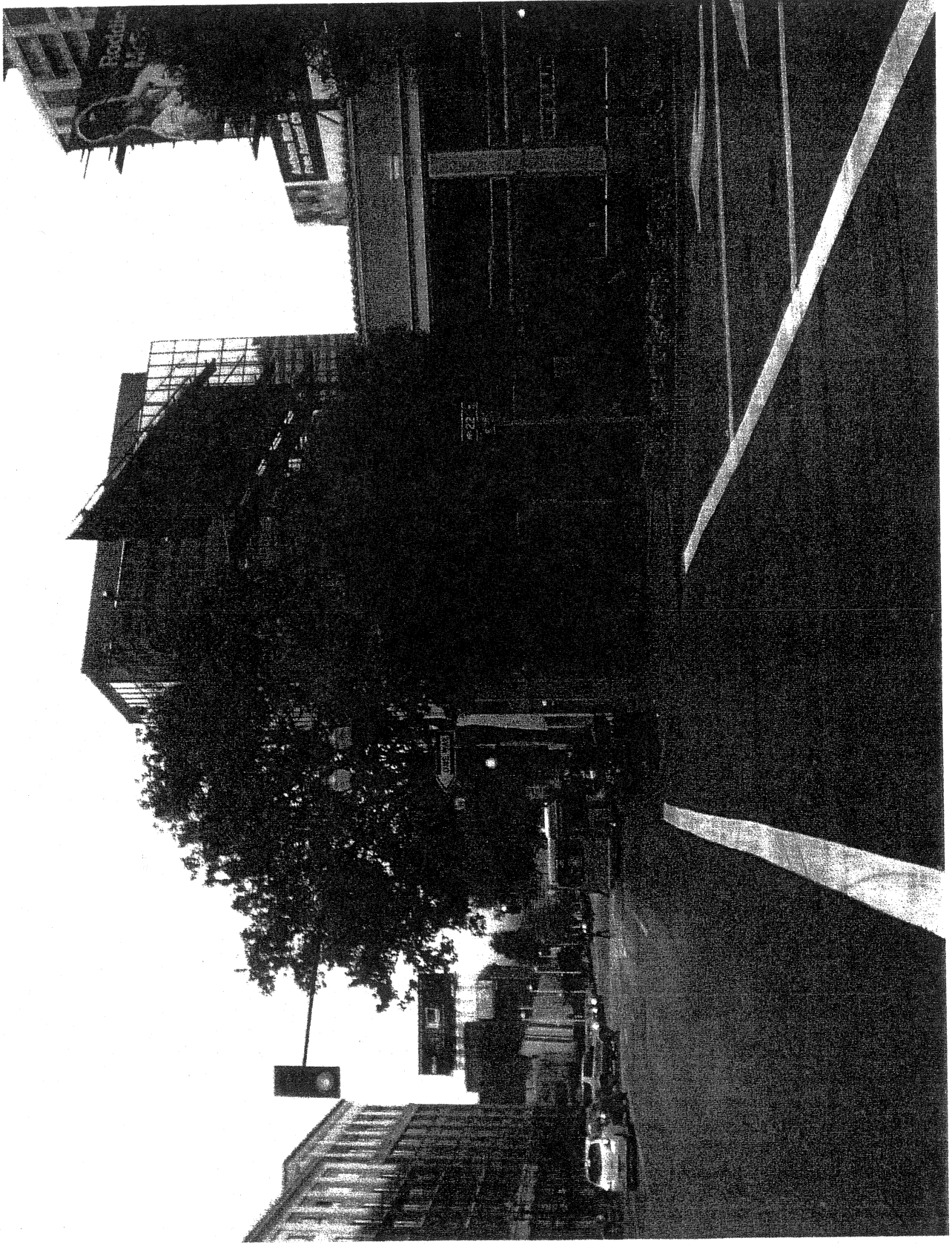


CORNER OF 22ND & BROADWAY

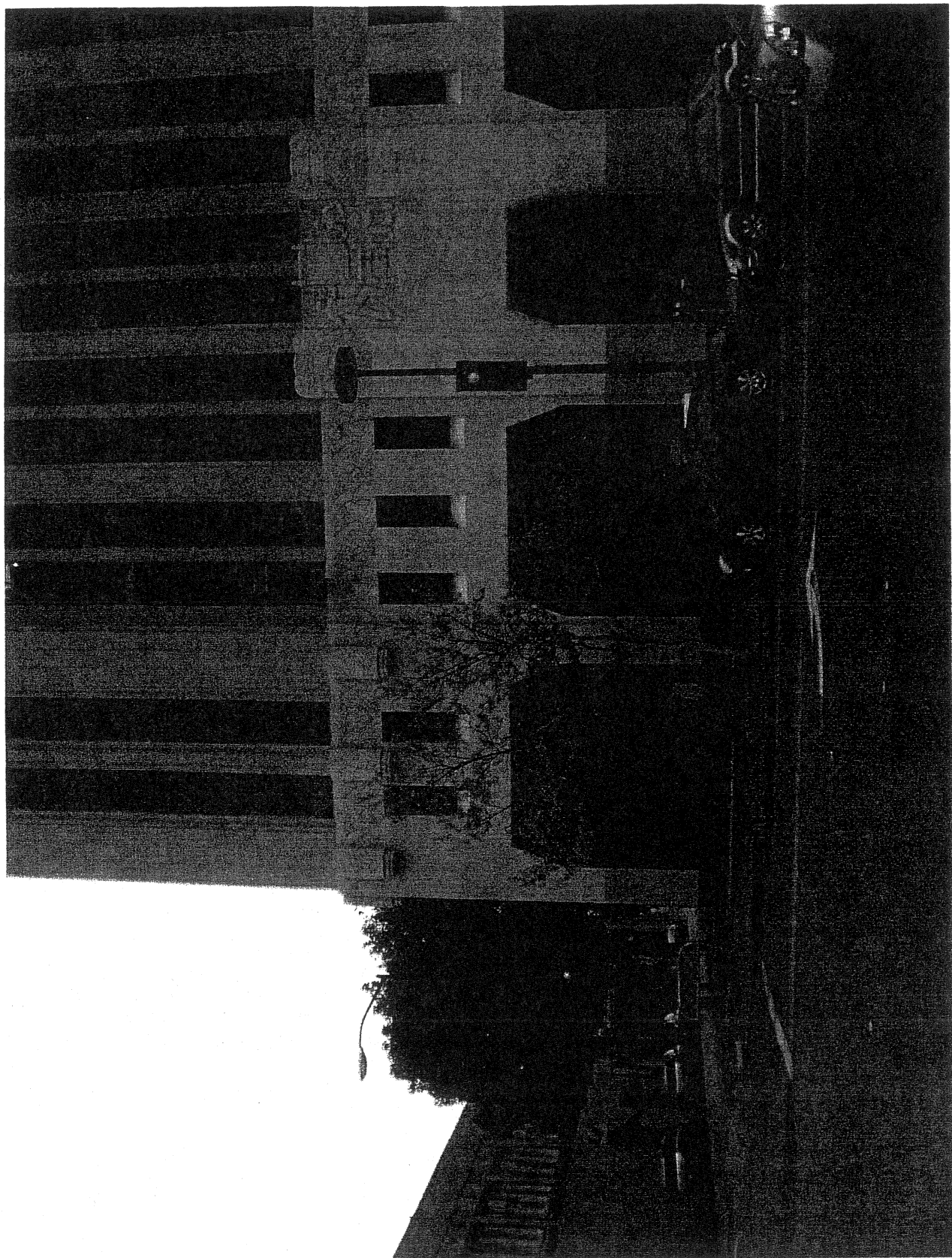
TENANT SPACE



SIDE OF BUILDING AT 22ND ST



BROADWAY @ FRANKLIN - ADJACENT RESTAURANTS



CORNER BROADWAY @ 22ND

Valeska, David

From: Jon S. O'Donnell [jon@mbvlaw.com]
Sent: Wednesday, May 23, 2012 12:40 PM
To: Valeska, David
Subject: Objection to Issuance of Major Conditional Use Permit at 2147 Broadway (Case File No. CM12-041)
Mr. Valeska

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

Please confirm receipt.

Thank-you,

Jon S. O'Donnell
MBV | LAW LLP

855 Front Street | San Francisco, CA 94111
Tel: 415-781-4400 ext. 1432 | Fax: 415-989-5143
www.mbvlaw.com | jon@mbvlaw.com

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5/23/2012

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ATTORNEYS AT LAW

May 23, 2012

VIA EMAIL

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

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

To Whom It May Concern:

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

I. The EBMC's Role in the Community

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

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

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

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

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

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

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

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

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

II. The Proposed Use Is Inconsistent with the EBMC

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

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

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

a. **Proximity of Amplified Music**

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

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

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

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

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

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

c. Cigarette Smoke

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

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

d. Security

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

III. Conclusion

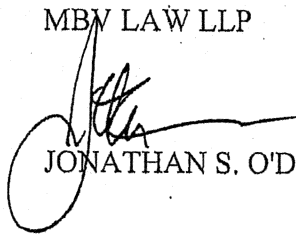
The EBMC understands the City's interest in locating nightclubs and entertainment downtown. But, the EBMC has been well established at this location for five and one half years.) The EBMC has and can deal with neighborhood bars and nightclubs. However, this Permit will install the Nightclub almost directly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

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

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

Very truly yours,

MBV LAW LLP



JONATHAN S. O'DONNELL

JSO:evm
91369.01/4849-4592-9743, v. 3
cc: East Bay Meditation Center

Krause Engineering Services

2635 Monte Vista Avenue
El Cerrito, CA 94530
(510) 685-9987
nickkrause@comcast.net

To: Bay Area Jazz & Arts
2147 Broadway
Oakland, CA 94611

Attn: Karen Van Leuven

Date: June 27, 2012

Re: Noise Isolation Study

1. Introduction

The study subject is a proposed music performance space on the ground floor of an existing commercial use building. The study objective is to assess noise isolation between the music area and the space above that is used for offices and classrooms, based on test methods and noise insulation standards of the California Building Code. The study is based on an inspection and noise isolation tests done on June 23, 2012.

2. Noise Insulation Ratings

Single-number airborne noise insulation ratings are based on the Noise Reduction (NR) or difference between sound levels in two rooms when a loud noise source is in one room. The following rating systems are used to rate airborne noise insulation; higher values indicate better insulation.

- STC Sound Transmission Class is the basic rating system for a wall or floor-ceiling assembly specimen when tested between two otherwise well-isolated rooms in a laboratory. STC ratings are used to prescribe sound isolation details for new and retrofit construction, based on prior lab tests of similar designs.
- FSTC Field Sound Transmission Class is a similar rating for a partition when tested as installed in a real building. FSTC values are always lower than STC ratings, due to flanking paths (air leaks and structural ties) not found in lab tests.
- NIC Noise Isolation Class is a rating used for tests made between two adjacent rooms within a real building. NIC ratings are essentially the same as FSTC ratings, except for small corrections to the test results for nonstandard conditions. NIC ratings are used to demonstrate compliance with requirements of building codes.

ATTACHMENT B: JUNE 2012 ACOUSTICAL REPORT

3. Noise Insulation Standards

The City of Oakland uses the noise insulation standards of the California Building Code (CBC). The CBC noise insulation standard is defined in Section 1207 of Title 24 Part 2 of the California Code of Regulations, which specifies the minimum allowable noise separation between adjacent residential units, or commercial spaces next to residential units, in a common building. New construction and renovation projects must use wall and floor-ceiling partition assembly designs that have an airborne noise insulation rating of at least STC 50 in laboratory tests, existing buildings must demonstrate at least NIC 45 performance in the field.

The CBC does not specify minimum allowable insulation ratings for partitions between adjacent commercial spaces. In this case, the space above the music venue is commercial but a portion of it is used as group classrooms for meditation, which is a noise-sensitive land use. The residential land use criterion is assumed to be appropriate for the purposes of this report.

4. Building Arrangement

Figure 1 shows the existing arrangement of partition walls for the ground level (black) and the upper level (red). Partial-height walls in the music space of the lower level are shown in gray.

Locations of noise source rooms on the lower level are the music space S1 and the vestibule S2; the space adjoining S2 is an existing commercial kitchen. Locations of receiver rooms on the upper level (in red) are corner office R1, library suite R2, classrooms R3 and R4, and small office R5.

The floor-ceiling structure consists of wood joists with wood plank sub-floor. Lower ceiling is lath and plaster directly attached to the joists; there is no insulation in the joist cavities. There is an additional lower ceiling in S1 and S2 consisting of fissured mineral board tiles in a dropped T-bar grid with integrated fluorescent tube light fixtures.

Figure 2 shows proposed renovations for music space S1.

Area A currently has a series partial-height walls (shown in grey) with separate ceiling, to form an office, storage space, and two rest rooms. The proposed renovation will extend the partial wall separating A from S1, up to the plaster ceiling and out to the building exterior wall, with a new door for access to the rest room corridor. There will also be a new door through the office space for club access to the kitchen.

Area B currently has a full height wall separating S1 from S2. The proposed renovation will remove this wall to expand the music space into the existing vestibule, close off one exterior entry door to the music space, and add a new corridor with separate exterior entry door to provide street access for the kitchen.

Figure 1 - Existing

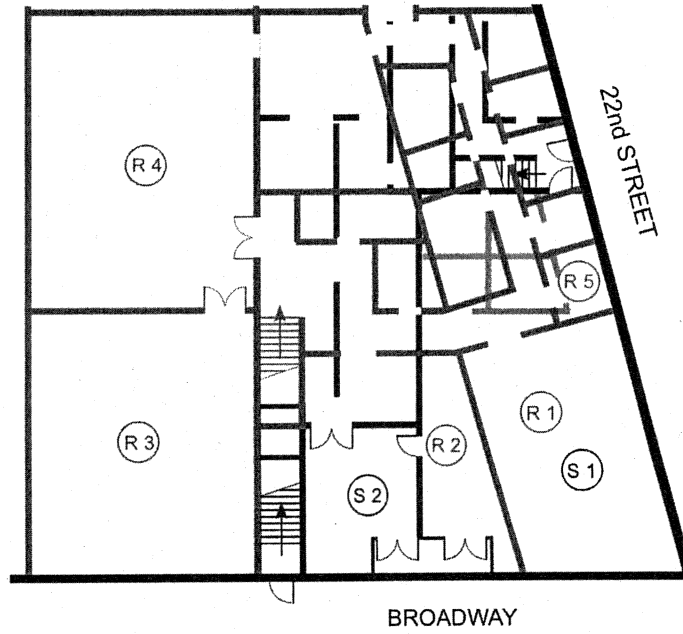
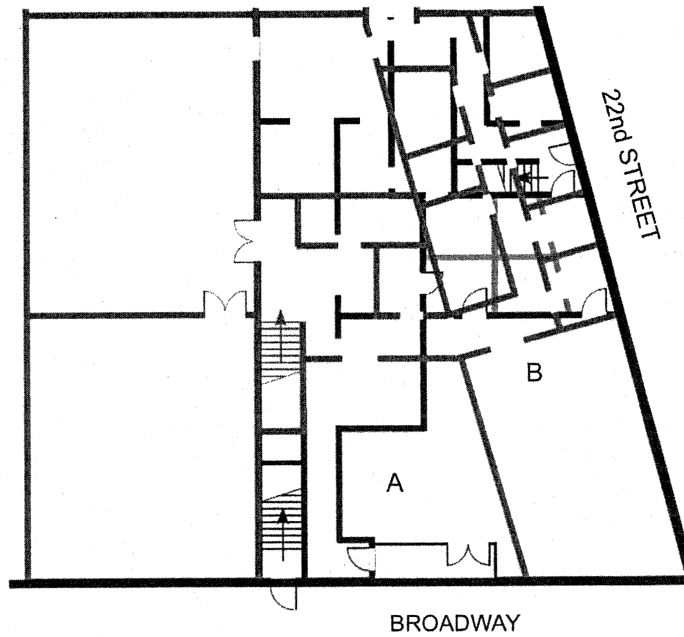


Figure 2 - Proposed



5. Noise Test Method

The method used to rate sound insulation between adjacent rooms by field tests is based on ASTM Procedure E-336. The test uses a steady broadband "pink" noise source in one room, measures the sound level in both the source and receiver rooms, and determines the difference or Noise Reduction (NR) between the two sides.

The single-number rating (FSTC or NIC) used to combine the NR values is calculated from the test data using ASTM Procedure E-413. The NR is analyzed using a spectrum made up of sixteen 1/3-octave bands with center frequencies from 125 to 4000 Hz.; a reference noise reduction spectrum contour defines nominal isolation ratings. The contour is adjusted relative to the measured NR values until no individual value is more than 8 dB below the reference contour and the sum of all NR deficits below the contour is no more than 32 dB; the single-number rating is the NR value of the adjusted contour in the 500 Hz frequency band.

Noise test sound levels were measured using an IVIE Technologies model IE-35 sound level analyzer system that was calibrated before the tests; ambient sound levels were also measured in receiver rooms to assure data validity. Data was obtained by slowly sweeping the analyzer microphone through the middle of each room for about one minute and time-averaging the data; the microphone sweep paths excluded locations within about three feet of bounding surfaces.

6. Noise Test Results

Table 1 lists the noise rating results derived from the test data; source and receiver locations are shown in Figure 1. Details of test data are shown in NIC charts of the Appendix.

Table 1
Noise Test Results

Test #	Source	Receiver	NIC
1	S1	R1	55
2	S1	R2	55
3	S1	R3	61+
4	S2	R1	61
5	S2	R2	55
6	S2	R3	62
7	S1(door open)	R3	45
8	S1	R5	56

7. Discussion of Noise Tests

The primary results (Tests 1, 2, 5) show that the basic floor-ceiling assembly above the music space provides a noise rating of NIC 55 for receiver rooms directly above source rooms. Test 8 shows a slightly higher rating of NIC 56 due to the smaller size of room R5, which makes the floor stiffer and increases noise isolation. All of these ratings are significantly greater than the allowable minimum of NIC 45. Secondary results (Tests 3, 4, 6) show that an even greater noise rating of at least NIC 60 is provided when the receiver rooms are not directly above the source rooms.

Test 3 result is an estimate of the lower bound of likely NIC rating, because the receiver sound level in room R3 was only slightly above than the ambient sound level and barely audible or measurable. Tests using receiver room R4 yielded no data, because the ambient sound level was sufficiently high to make the noise source inaudible and not measurable.

The allowable minimum of NIC 45 was reached only during Test 7, when the front entry door to source room S1 was left fully open and measurements in receiver room R3 were made near a fully open front window. This condition is not used for assessment of CBC noise insulation compliance.

8. Interpretation of Results

The NIC rating is approximately the same as the difference between A-weighted sound levels on opposite sides of a partition; the CBC even includes this sound level difference as an alternate descriptor for assessment. This represents the noise reduction (NR) that can be expected from the floor ceiling assembly under actual use conditions.

The CBC defines a noise exposure level of 45 dBA as the basic guideline for acceptable quality of noise-sensitive land uses such as dwellings. This is consistent with the ambient noise levels observed in receiver rooms during the noise tests. The primary NR of 55 dB implies that the acceptable exposure of 45 dBA would be achieved in a receiver room directly above a source room with a noise source as loud as 100 dBA. ($100 - 55 = 45$)

It is assumed that sound levels in the music space would be significantly less than 100 dBA; exposure to sound levels greater than 90 dBA can cause temporary hearing loss or permanent inner ear damage. If sound levels in the music space are maintained at less than 90 dBA, and the front door of the music space closed, the music will not be audible in either the office spaces, or in the classroom spaces. When front windows of the classroom space R3 are open the music may be just audible near the windows if the door of music space S1 is opened.

9. Recommendations

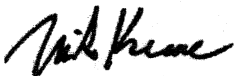
A. The best way to assure that the music is not harmful to club patrons or intrusive to neighbors is to monitor music performance sound levels and regulate them to less than 90 dBA. Recommended hand-held instrument is Model ASM-2 analog sound level meter by Nady Systems (about \$40). Alternate method is to use a fixed monitor such as Model SL130G by Extech Instruments (about \$300). This has a large display that can be read from a distance, and includes an alert feature that provides a visual indication when sound levels exceed a preset limit.

B. The front door of the music club should never be left open for any extended period of time during music performances.

C. The proposed wall realignments should incorporate details to assure that there is a continuous airtight seal at edges in contact with the existing walls and ceiling. Doors should be provided with perimeter seals.

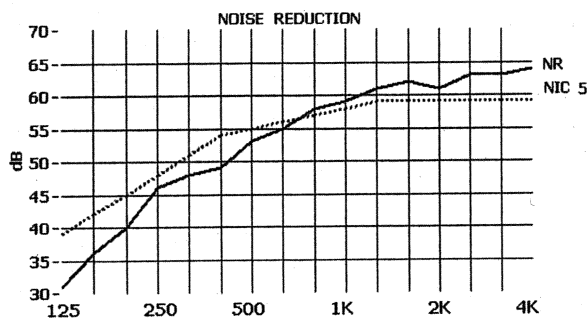
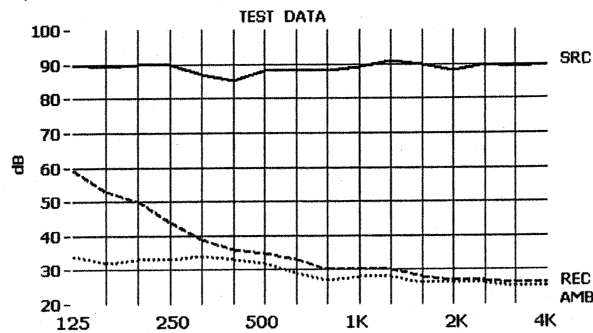
D. Insulation in the plenum space above the existing dropped ceiling would provide additional sound absorption for the music space, and would cause a slight increase the the floor-ceiling assembly NIC rating. Recommended application is type R-19 thermal fiber batt insulation laid in on top of the existing ceiling. Complete coverage is not necessary; about two-thirds of the total ceiling area should be sufficient.

This study and report were prepared by:



Nick Krause, P.E.
Krause Engineering Services

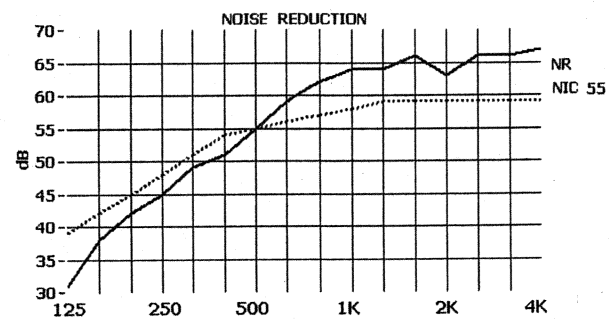
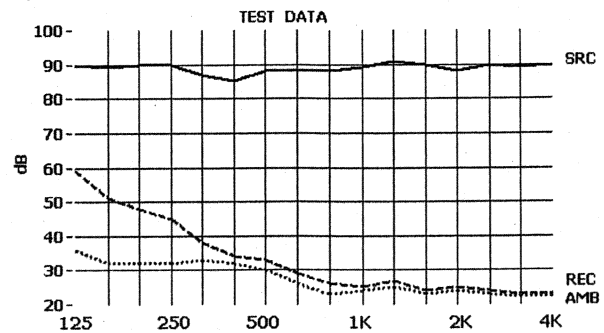
REC # **1** **NIC 55**



32	8	6	5	2	3	5	2	1	0	0	0	0	0	0	0	0	0
TOTAL	DEFICITS																

2147 Broadway, Oakland
June 23, 2012
SRC = S 1
REC = R 2

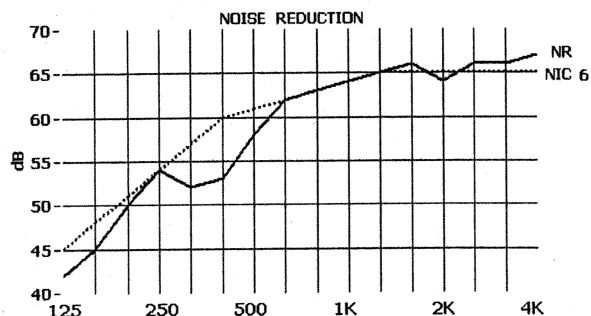
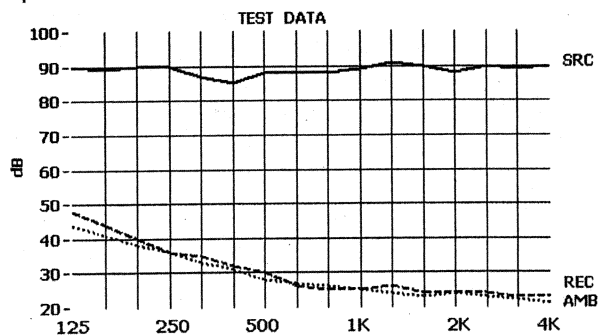
REC # 2 NIC 55



23	8	4	3	3	2	3	0	0	0	0	0	0	0	0	0	0	0
TOTAL	DEFICITS																

2147 Broadway, Oakland
June 23, 2012
SRC = S 1
REC = R 3

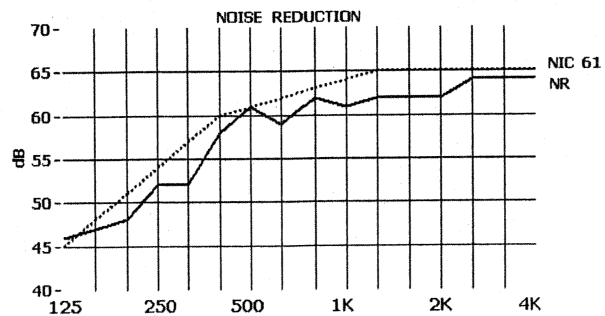
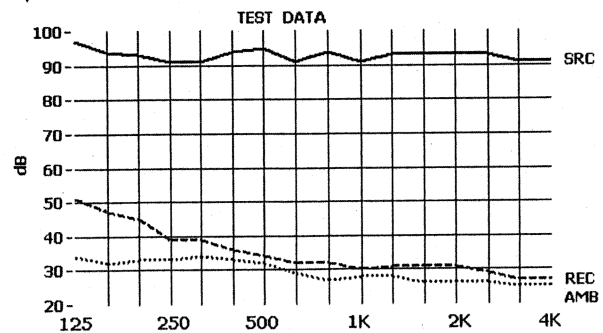
REC # **3** **NIC 61**



23	3	3	1	0	5	7	3	0	0	0	0	0	1	0	0	0
TOTAL	DEFICITS															

2147 Broadway, Oakland
June 23, 2012
SRC = S 2
REC = R 1

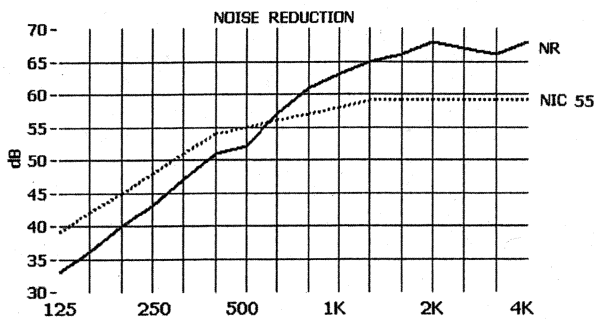
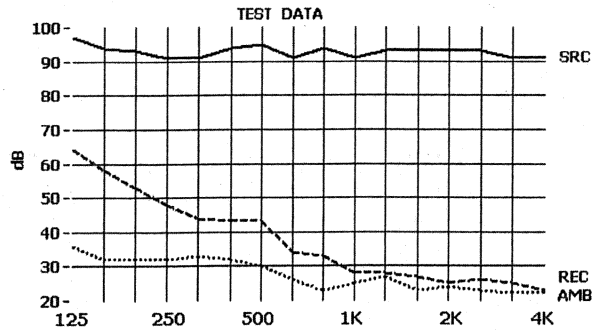
REC # 4 NIC 61



32	0	1	3	2	5	2	0	3	1	3	3	3	3	1	1	1
TOTAL	DEFICITS															

2147 Broadway, Oakland
June 23, 2012
SRC = S 2
REC = R 2

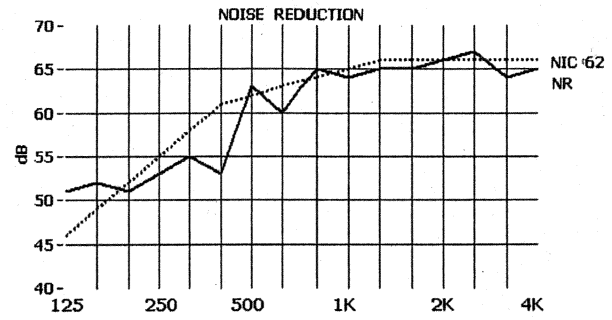
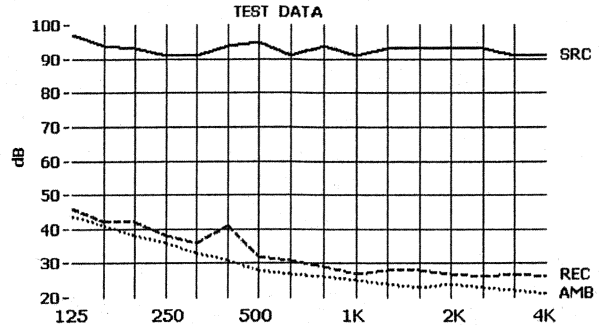
REC # **5** NIC 55



TOTAL **32** 6 6 5 5 4 3 3 0 0 0 0 0 0 0 0 0 0 0
DEFICITS

2147 Broadway, Oakland
June 23, 2012
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REC = R 3

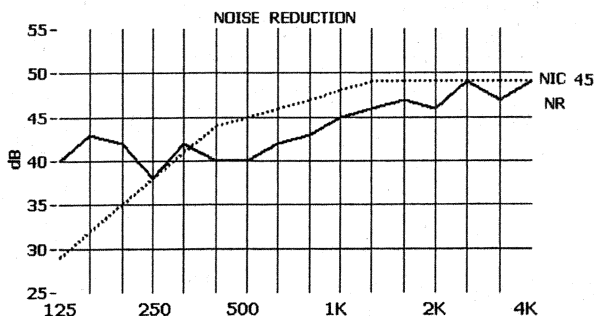
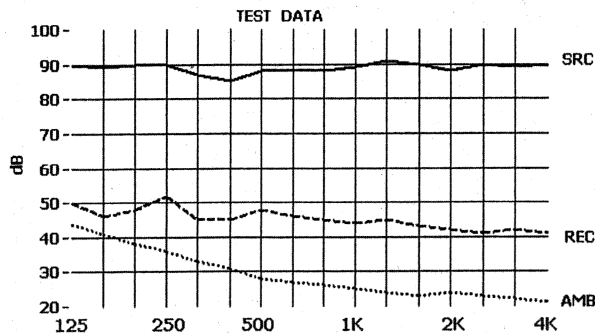
REC # **6** NIC 62



TOTAL **23** 0 0 1 2 3 8 0 3 0 1 1 1 0 0 2 1
DEFICITS

2147 Broadway, Oakland
June 23, 2012
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REC = R 3 door open

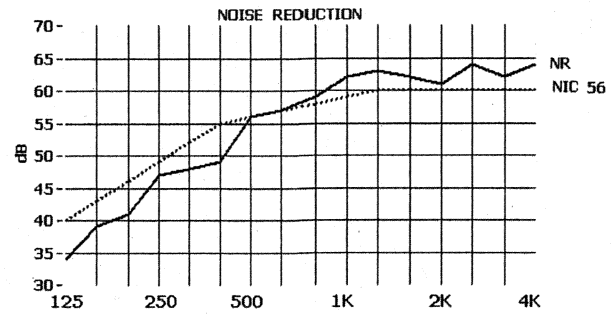
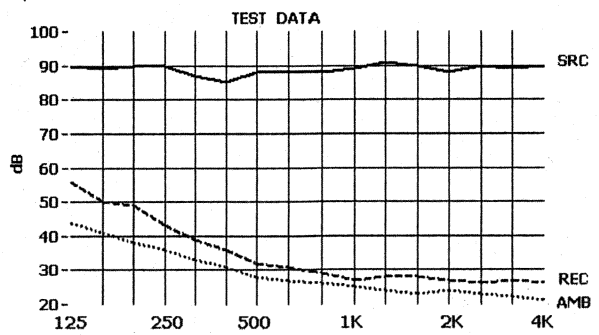
REC # **7** NIC 45



TOTAL **30** 0 0 0 0 0 4 5 4 4 3 3 2 3 0 2 0
DEFICITS

2147 Broadway, Oakland
June 23, 2012
SRC = S 1
REC = R 5

REC # **8** NIC 56



TOTAL **27** 6 4 5 2 4 6 0 0 0 0 0 0 0 0 0 0 0
DEFICITS

July 25, 2012

VIA EMAIL

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

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

Dear Mr. Valeska:

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

I. The EBMC's Role in the Community

Our letter to you of May 23, 2012 explained the vital role the EBMC plays in the greater Oakland community and will not be repeated here, but is incorporated by this reference.

Attachment B. July 25, 2012 Objection Letter from J. O'Donnell, attorney for EBMC

II. The Issuance of the Conditional Use Permit to the Nightclub¹ Will Violate Three Sections of the Oakland Municipal Code

A. Section 17.102.210(A)(2): Adverse Effects on a Nearby Church

Section 17.102.210(A)(2) of the Oakland Municipal Code requires that the following criterion be met, before a Conditional Use Permit is issued for an establishment that will include Alcoholic Beverage Sales Activity: *"That the proposal will not adversely affect nearby churches, temples or synagogue"*

A Nightclub virtually beneath the EBMC will adversely affect the EBMC's operations and religious mission because of the material increase in noise, security risks, and exposure to toxic cigarette smoke.

1. Noise

The results of the acoustics study undertaken on behalf of the proposed nightclub which was requested by the Commission: (1) did not address the EBMC's core concern that the type of noise that will be produced by playing amplified jazz music will materially interfere with the EBMC's operations and religious mission which require silence and/or reasonably constant ambient background noise; and (2) wholly failed to address the negative impact of the noise from patrons as they come and go from the nightclub and congregate to socialize and/or smoke on the sidewalk below the EBMC.

An acoustics test that measures only *levels* of noise is woefully inadequate to deter-

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

mine whether the applicable standard that "the proposal should not adversely affect nearby churches . . ." has been met. Oakland Code § 17.102.210(A) ("Section 17"). A test to adequately assess whether Section 17 has been met must take into account (a) the *nature* of the noise and (b) the *nature of the spiritual and religious practices* in the nearby church.

The nature of the spiritual and religious practices at the EBMC includes the following:

- Most meditation practices are based in silence.
- Most of the silent meditation practices – especially for beginning meditators (who make up a large proportion of EBMC's community) – are more easily able to accommodate the consistent hum of passing traffic. Jazz music and conversations from concert-goers congregating on the sidewalk beneath the second floor Broadway-facing windows will be substantially more distracting, and therefore have a much more significant negative adverse effect on the EBMC.

The study states that in the California Building Code ("CBC"), the standard used for the acoustics testing, there is not even a specified minimum allowable insulation rating for noise reduction between commercial spaces, let alone between a commercial space and a church. *See* CBC ¶ 3. Using the CBC standard (even the residential standard chosen for use as the standard in the study), therefore, is arbitrary and indefensible. An appropriate noise level standard must take into account the fact that the affected organization's religious practices are based upon *silence*.

The use of "pink noise" for the testing is similarly inadequate. Jazz music is very different than pink noise.

All of the tests conducted show that the lower the frequency of the noise, the less the

noise reduction (the inadequate CBC standard used allows for this to be the case, and for the standard to still be met). Jazz music relies heavily on low frequencies. The tests show that low frequencies are substantially less attenuated than higher frequencies, and yet the arbitrary CBC standard is still met.

Section 7 of the report shows when the door to the prospective Nightclub is open, even the inadequate CBC standard is exceeded. The report's recommendation concerning mitigation of this effect is that the door to the Nightclub should "never be left open for any extended period of time." This recommendation demonstrates a complete lack of understanding on the part of the acoustician about the spiritual and religious practices of the EBMC. *Anytime* the Nightclub door is open, even for short periods, there will be disruption of meditation practices, and therefore adverse effects on the EBMC, *even* using the arbitrary, and inadequate standard chosen for the testing.

2. Security Risks

A simple analysis of the statistics provided in the June 6 Staff Report shows that, when serious crimes are considered that there is a 45% higher incidence of such crimes around the Old Oakland nightclub that was used by the Staff for comparison. For example, during the 90-day period covered by the Staff analysis, there were two murders around the Old Oakland nightclub, whereas none occurred around 2147 Broadway.

It is unacceptable to the EBMC for its community members to be exposed to an almost 50% increase in serious crime that could result from the siting of a Nightclub in the same building as the EBMC.

The June 6 Staff Report acknowledges this increased security risk since it states (page 8): *"urban concentration at night may cause concentration of both legal and illegal*

behavior"

The proposed Conditional Use Permit proposes to mitigate the risks from illegal behavior as follows: *The applicant shall retain qualified security personnel (volunteer or paid) to monitor the event site and areas within 100 feet of the entrances.* (Condition No. 19 at 15 [emphasis added].)

- But, the entrance to the EBMC is located approximately 150 feet from the entrance to the proposed nightclub, on 22nd Street. Therefore, the increase in illegal activity, when it occurs, will occur near the entrance to the EBMC, and beyond the security perimeter dictated by the conditions of the proposed Conditional Use Permit. A 100-foot security perimeter will not protect the EBMC community.

- Volunteer security personnel will be inadequate to deal with an anticipated almost 50% increase in serious crimes that the June 6 Staff Report's statistics show are likely to occur.

- The EBMC would therefore be obliged to hire its own security personnel, to assure the safety of its community members. This will be an unreasonable financial burden on the EBMC, and would be contrary to the religious culture of the EBMC.

3. Cigarette Smoke

Nightclubs attract smokers and the Nightclub is no different. The smokers will smoke on the sidewalk, putting them either near the building's 22nd Street entrance being used by EBMC community members, or on Broadway, beneath the windows of the upstairs space, which must to be kept open by the EBMC to provide adequate ventilation during warm days throughout the year. Exposing EBMC community members to secondhand smoke, which is recognized as dangerous and injurious to the health of the non-smoker, will

create a health risk to EBMC community members and thwart a central purpose of the EBMC's religious mission of increasing the overall community health and wellbeing for Oakland residents.

B. Section 17.102.210 (B)(3)(b): Negative Economic Impact

Section 17.102.210 (B)(3)(b) of the Oakland Municipal Code requires that a Conditional Use Permit only be granted for uses that include Alcoholic Beverage Sales Activity if the following criterion is met: *"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"*

The EBMC currently employs seven part-time staff people. The proposed nightclub, through the adverse effects previously identified, will threaten the viability of the EBMC. It therefore puts at risk the seven jobs currently provided by the EBMC. The nightclub is therefore likely to have a *negative* economic impact, putting more jobs at risk than it will likely create.

C. Section 17.102.210 (B)(3)(a): Lack of Demonstrated Community Need

Section 17.102.210 (B)(3)(a) of the Oakland Municipal Code requires that a Conditional Use Permit only be granted for uses that include Alcoholic Beverage Sales Activity if the following criterion is met: *"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"*

The EBMC is unaware of any written documentation from the applicant demonstrating a community need for yet another nightclub in the Uptown area. Nor has the applicant demonstrated how its proposed project will serve an unmet or underserved need or popula-

tion, To the contrary, on page 5, the June 6 Staff Report explicitly states that the recent new bars and restaurants that have opened in the Uptown area in the last five years "*cater to an upscale clientele.*" But, an upscale clientele is not an underserved population.

By threatening the viability of the EBMC, the nightclub will put at risk an existing five-year-old Church *whose religious mission is to serve, and is serving, an unmet need and underserved populations.*

III. Contacts Between the EBMC and the Nightclub

You asked about conversations between the EBMC and the Nightclub. The Landlord has filed litigation against the EBMC, which has constrained the EBMC's right to interact with the Nightclub. But, the EBMC cooperated with the Nightclub in providing access for the acoustics study. During those site visits, some conversations did occur between the parties. The Nightclub expressed the unfounded belief that it would not interfere with the EBMC's operation and/or religious mission. For the reasons set forth above, the EBMC disagrees.

IV. Conclusion

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

The EBMC submits that the Nightclub is one of a dozen nightclubs in the area and

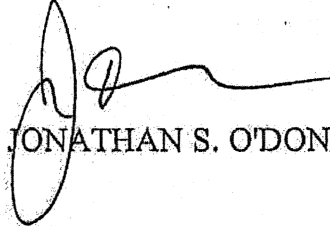
David Valeska
Zoning Division of the Community
and Economic Development Agency
July 25, 2012
Page 8

could easily be relocated elsewhere in the neighborhood or the block so that the EBMC, can continue to provide its unique and valuable services to the diverse communities in Oakland and the Bay Area without disruption and interference.

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

Very truly yours,

MBV LAW LLP

A handwritten signature in black ink, appearing to be "Jonathan S. O'Donnell", written over the printed name.

JONATHAN S. O'DONNELL

JSO:evm

91369.01/4817-9239-3232, v. 2

cc: East Bay Meditation Center

Krause Engineering Services

2635 Monte Vista Avenue

El Cerrito, CA 94530

(510) 685-9987

nickkrause@comcast.net

To: Bay Area Jazz & Arts
2147 Broadway
Oakland, CA 94611

Attn: Karen Van Leuven

Date: August 20, 2012

Re: Noise Isolation Study - Revised Per Comments
Planning Commission Case # CM12-041

1. Introduction

The study subject is a proposed music performance space (BAJA) on the ground floor of an existing commercial use building. The study objective is to assess noise isolation between the music area and the space on the level above that is used for a meditation center (EBMC). The study is based on an inspection and noise tests done on 06/23/2012. Results are assessed using noise standards of the City of Oakland and test methods of the California Building Code.

The following is a revision to an initial study report issued on 07/27/2012. This revision was made to address EBMC comments regarding noise described in an attachment to the Planning Commission Staff Report dated 08/01/2012.

2. Noise Exposure Standards

Although its facilities are located in a commercial space in the building, the EBMC represents itself as a church and claims entitlement to consideration as such with regard to noise exposure.

The Noise Element of the Oakland General Plan (page 26) specifies an acceptable maximum noise level of 45 dB for noise-sensitive land uses (residences, hotels, motels, transient lodging, churches, hospitals, classrooms, libraries, and movie theaters). The Oakland Municipal Code (Section 8.18.010) defines noise-sensitive uses (hospital or medical care facility, nursing home, school, court, day care, church, or similar facility) and considers it an infraction to "create noise within or adjacent to such a land use so as to interfere with the functions of such activity."

The Municipal Code (Section 17.120.050) specifies "residential and civic" noise level standards. Although not specifically called out, it is reasonable to assume that this performance standard also applies equally to all other noise-sensitive land uses described in section 8.18.010 and the Noise Element, including churches.

The following are pertinent portions of Section 17.120.050.

17.120.050 Noise.

All activities shall be so operated that the noise level inherently and regularly generated by these activities across real property lines shall not exceed the applicable values indicated in subsection A, B or C as modified where applicable by the adjustments indicated in subsection D or E. Further noise restrictions are outlined in Section 8.18.010 of the Oakland Municipal Code.

A. Residential Zone Noise Level Standards. The noise level received by any residential zone are described in Table 17.120.01. Table 17.120.01 establishes the maximum allowable receiving noise level standards.

Table 17.120.01: MAXIMUM ALLOWABLE RECEIVING NOISE LEVEL STANDARDS, dBA-Residential and Civic

Cumulative Number of Minutes in Either the Daytime or Nighttime One Hour Time Period	Daytime 7 a.m. to 10 p.m.	Nighttime 10 p.m. to 7 a.m.
20	60	45
10	65	50
5	70	55
1	75	60
0	80	65

(B. Commercial Noise Level Standards ... Table 17.120.02)

(C. Manufacturing, Industrial, etc. Noise Level Standards, dBA ... Table 17.120.03)

D. In the event the measured ambient noise level exceeds the applicable noise level standard in any category above, the stated applicable noise level shall be adjusted so as to equal the ambient noise level.

E. Each of the noise level standards specified above in subsections A, B, and C shall be reduced by five dBA for a simple tone noise such as a whine, screech, or hum, noise consisting primarily of speech or music, or for recurring impulse noise such as a hammering or riveting.

F. Noise Measurement Procedures. Utilizing the "A" weighting scale of the sound level meter and the "slow" meter response (use "fast response for impulsive type sounds), the noise level shall be measured at a position or positions at any point on the receiver's property. ... If the noise complaint is related to interior noise levels, interior noise measurements shall be made within the affected residential unit. The measurements shall be made at a point at least four feet from the wall, ceiling or floor nearest the noise source, with windows in the normal seasonal configuration.

If the adjustment of Subsection E for music sources is applied to Table 17.120.01, the result is shown in the following Table 1.

Table 1
Music Sound Level Limits , dB(A)

Cumulative Minutes per Hour	Daytime 7 a.m. - 10 p.m.	Nighttime 10 p.m. - 7 a.m.
20	55	40
10	60	45
5	65	50
1	70	55
0	75	60

3. Noise Insulation Ratings

Single-number airborne noise insulation ratings are based on the Noise Reduction (NR) or difference between sound levels in two rooms when a loud noise source is in one room. The following rating systems are used to rate airborne noise insulation; higher values indicate better insulation.

- STC Sound Transmission Class is the basic rating system for a wall or floor-ceiling assembly specimen when tested between two otherwise well-isolated rooms in a laboratory. STC ratings are used to prescribe sound isolation details for new and retrofit construction, based on prior lab tests of similar designs.
- FSTC Field Sound Transmission Class is a similar rating for a partition when tested as installed in a real building. FSTC values are always lower than STC ratings, due to flanking paths (air leaks and structural ties) not found in lab tests.
- NIC Noise Isolation Class is a rating used for tests made between two adjacent rooms within a real building. NIC ratings are essentially the same as FSTC ratings, except for small corrections to the test results for nonstandard conditions. NIC ratings are used to demonstrate compliance with requirements of building codes.
- DN This is the difference between A-weighted sound levels in adjacent rooms.

4. Noise Insulation Standards

The City of Oakland uses the noise insulation standards of the California Building Code (CBC). The CBC noise insulation standard is defined in Section 1207 of Title 24 Part 2 of the California Code of Regulations, which specifies the minimum allowable noise separation between adjacent residential units, or between commercial spaces next to residential units. New construction and renovation projects must use wall and floor-ceiling partition assemblies designed to have an airborne noise insulation rating of at least STC 50 in laboratory tests; existing buildings must demonstrate at least NIC 45 performance in the field.

5. Building Arrangement

Figure 1 shows the arrangement of rooms for the upper (EBMC) level, along with both the existing and proposed future arrangement of partition walls for the lower (BAJA) level.

Locations of noise source rooms on the lower level are the music space S1 and the vestibule S2; the space adjoining S2 is an existing commercial kitchen. Locations of receiver rooms on the upper level are corner office R1, library suite R2, group meeting rooms R3 and R4, and small office R5. Note that R3 and R4 are not directly above the source rooms.

Access to the upper level is by a stairway with front entry door next to S2.

Area A of the lower level currently has a series of partial-height walls (shown in grey) with separate ceiling, to form an office, storage space and two rest rooms. The proposed renovation will extend the partial wall separating A from S1, up to the ceiling and out to the building exterior wall, with a new door for access to the rest room corridor. There will also be a new door through the office space for club access to the adjacent kitchen space.

Area B currently has a full height wall separating S1 from S2. The proposed renovation will remove this wall to expand the music space into the existing vestibule, close off one exterior entry door to the music space, and add a new corridor with separate exterior entry door to provide street access for the kitchen.

Figure 1
Floor Plans



6. Noise Test Method

The method used to rate sound insulation between adjacent rooms by field tests is based on ASTM Procedure E-336. The test uses a steady broadband "pink" noise source in one room, measures the sound level in both the source and receiver rooms, and determines the difference or Noise Reduction (NR) between the two sides.

The single-number rating (FSTC or NIC) used to combine the NR values is calculated from the test data using ASTM Procedure E-413. The NR is analyzed using a spectrum made up of sixteen 1/3-octave bands with center frequencies from 125 to 4000 Hz; a reference noise reduction spectrum contour defines nominal isolation ratings. The contour is adjusted relative to the measured NR values until no individual value is more than 8 dB below the reference contour and the sum of all NR deficits below the contour is no more than 32 dB; the single-number rating is the NR value of the adjusted contour in the 500 Hz frequency band.

Noise test sound levels were measured using an IVIE Technologies model IE-35 sound level analyzer system that was calibrated before the tests; ambient sound levels were also measured in receiver rooms to assure data validity. Data was obtained by slowly sweeping the analyzer microphone through the middle of each room for about one minute and time-averaging the data; the microphone sweep paths excluded locations within about three feet of bounding surfaces.

7. Noise Test Results

Table 2 lists the noise rating results derived from the test data; source and receiver locations are shown in Figure 1. Details of test data are shown in NIC charts of the Appendix.

Table 2
Noise Test Results

Test #	Source	Receiver	NIC
1	S1	R1	55
2	S1	R2	55
3	S1	R3	61+
4	S2	R1	61
5	S2	R2	55
6	S2	R3	62
7	S1(door open)	R3	45
8	S1	R5	56

The primary results (Tests 1, 2, 5) show that the basic floor-ceiling assembly above the music space provides a noise rating of NIC 55 for receiver rooms directly above source rooms. Test 8 shows a slightly higher rating of NIC 56 due to the smaller size of room R5, which makes the floor stiffer and increases noise isolation. All of these ratings are significantly greater than the allowable minimum of NIC 45. Secondary results (Tests 3, 4, 6) show that an even greater noise rating of at least NIC 60 is provided when the receiver rooms are not directly above the source rooms.

Test 3 result is an estimate of the lower bound of likely NIC rating, because the receiver sound level in room R3 was only slightly above than the ambient sound level and barely audible or measurable. Tests using receiver room R4 yielded no data, because the ambient sound level was sufficiently high to make the noise source inaudible and not measurable.

The allowable minimum of NIC 45 was reached only during Test 7, when the front entry door to source room S1 was left fully open and measurements in receiver room R3 were made near a fully open front window.

8. Noise Exposure Assessment

The NIC rating is the same as the difference between A-weighted sound levels on opposite sides of a partition. This represents the noise reduction (NR) that can be expected from the floor-ceiling assembly under actual use conditions. The primary NR of 55 dB implies that the most restrictive (nighttime) allowable noise exposure of 40 dBA would be achieved in rooms directly above the music room with a source no louder than 95 dBA, i.e. $(95 - 55 = 40)$.

It is assumed that sound levels in the music space would actually be no greater than 90 dBA; exposure to higher sound levels can cause temporary hearing loss or permanent ear damage. If sound levels in the music space are regulated to less than 90 dBA, and the front door of the music space is closed, the resulting sound level will be inaudible in either the office spaces, or in the meeting spaces R3 and R4 (with windows closed).

If the front windows of the room R3 are fully open and the door of music space S1 is also open, the resulting NR of 45 dB would result in a 55 dB sound level near the windows in front meeting room R3 $(90 - 45 = 55)$. The sound level limits of Table 1 show that this would be acceptable during daytime hours (before 10 p.m.) but not during nighttime hours (after 10 p.m.) for more than about one minute out of any hour.

9. Responses to EBMC Concerns

The EBMC commented that music is inherently more intrusive than the broadband noise source used for noise isolation tests. This comment is addressed by the adjustment to the allowable noise levels of Table 1 per code subsection 17.120.050.F, which reduces the most restrictive sound level limit (after 10 p.m.) from 45 dB to 40 dB.

The EBMC stated that meditation practices require "complete silence", and commented that the noise standards for residences were inadequate for this need. The code references cited above include the same allowable limits for all noise-sensitive land uses, including residences and churches.

The EBMC stated that it is necessary to have front windows open to the street during meditation sessions in room S3. Although code subsection 17.120.050.F states that noise assessment should be done with windows in the "seasonal configuration", it is generally assumed that superior noise isolation cannot be achieved unless windows are fully closed. The assertion that noise coming through open front windows from traffic on Broadway would be less disruptive than music or conversations of patrons near the front entry is an unsupported opinion.

10. Recommendations

A. The best way to assure that the music is not harmful to club patrons or intrusive to neighbors is to monitor music performance sound levels and regulate them to less than 90 dBA. Recommended hand-held instrument is Model ASM-2 analog sound level meter by Nady Systems (about \$40). Alternate method is to use a fixed monitor such as Model SL130G by Extech Instruments (about \$300); this has a large display that can be read from a distance, and includes an alert feature that provides a visual indication when sound levels exceed a preset limit.

B. The front door of the music club should never be left open for any extended time during music performances, especially after 10 p.m.

C. The proposed wall realignments should incorporate details to assure that there is a continuous airtight seal at edges in contact with the existing walls and ceiling. Doors should be provided with perimeter seals.

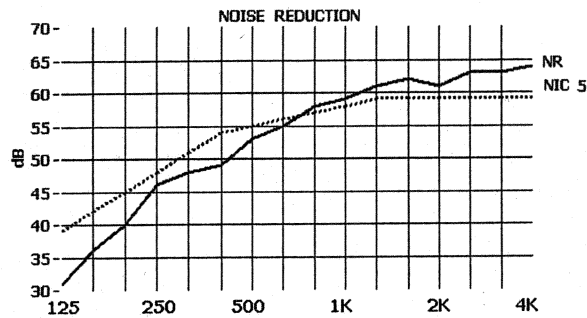
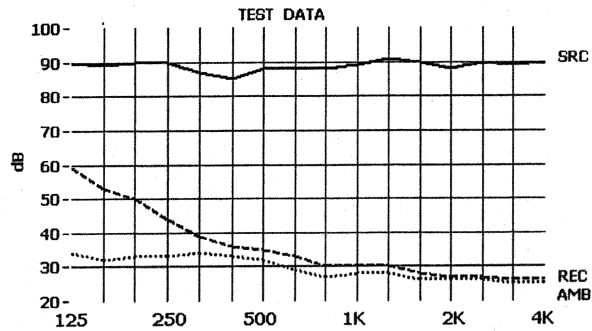
This study and report were prepared by:



Nick Krause, P.E.
Krause Engineering Services

2147 Broadway, Oakland
June 23, 2012
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REC = R 1

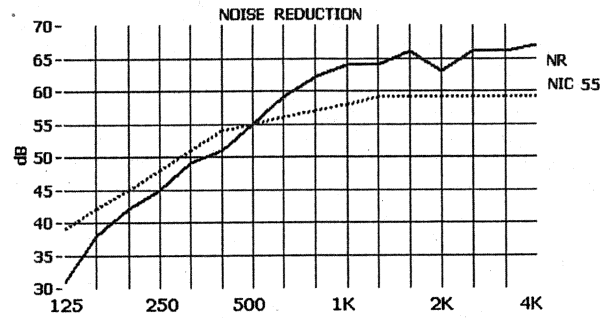
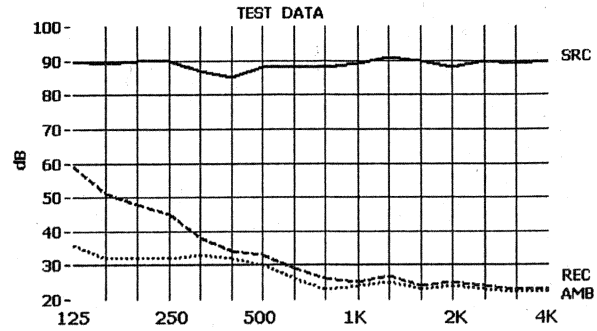
REC # **1** NIC 55



TOTAL **32** DEFICITS **8 6 5 2 3 5 2 1 0 0 0 0 0 0 0 0**

2147 Broadway, Oakland
June 23, 2012
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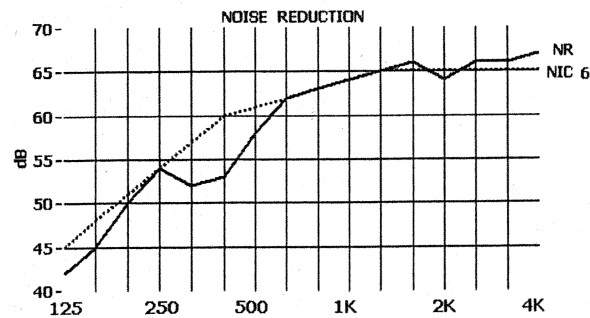
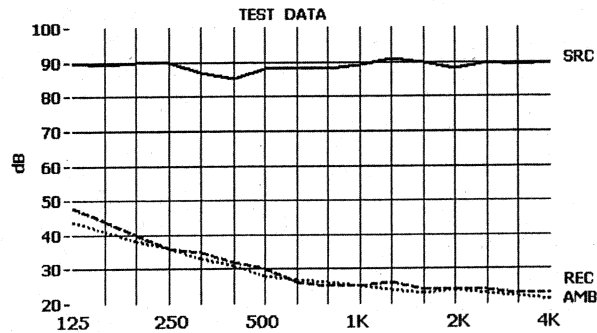
REC # **2** NIC 55



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June 23, 2012
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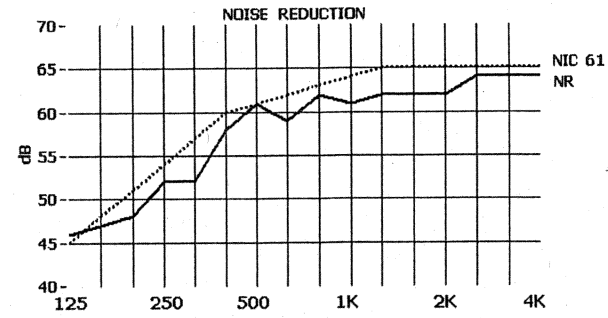
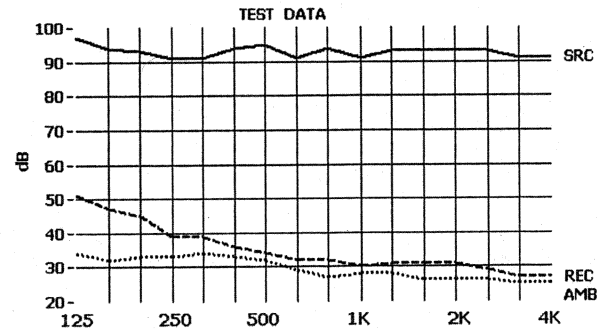
REC # **3** NIC 61



TOTAL **23** DEFICITS **3 3 1 0 5 7 3 0 0 0 0 0 1 0 0 0**

2147 Broadway, Oakland
June 23, 2012
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REC = R 1

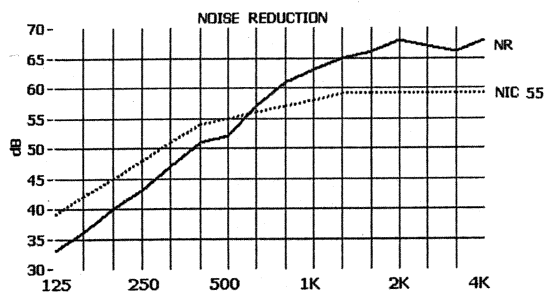
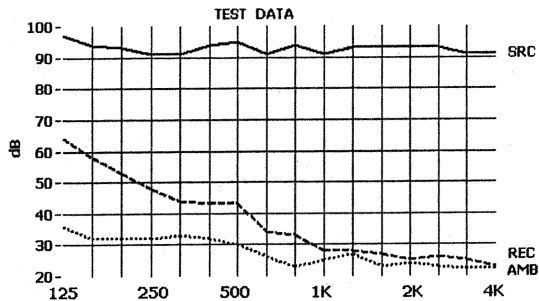
REC # **4** NIC 61



TOTAL **32** DEFICITS **0 1 3 2 5 2 0 3 1 3 3 3 3 1 1 1**

2147 Broadway, Oakland
June 23, 2012
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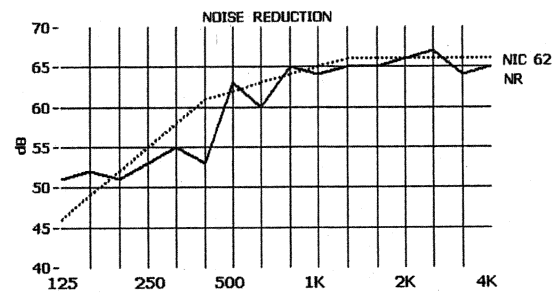
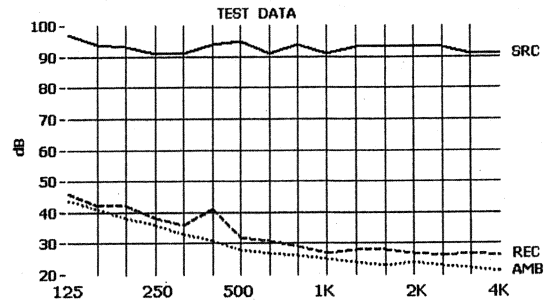
REC # **5** NIC 55



TOTAL **32** **6 6 5 5 4 3 3 0 0 0 0 0 0 0 0 0**
DEFICITS

2147 Broadway, Oakland
June 23, 2012
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REC = R 3

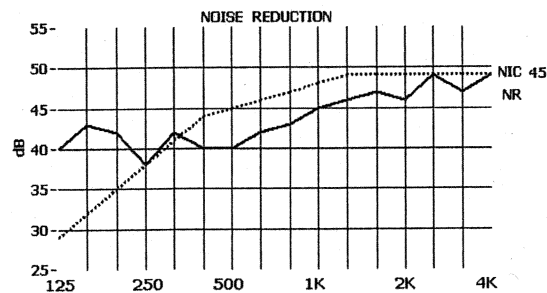
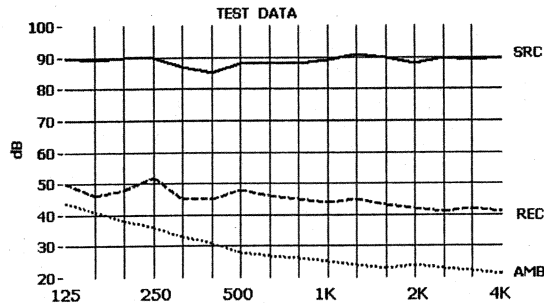
REC # **6** NIC 62



TOTAL **23** **0 0 1 2 3 8 0 3 0 1 1 1 0 0 2 1**
DEFICITS

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June 23, 2012
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REC = R 3 door open

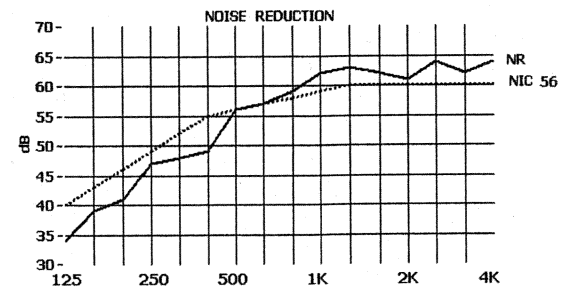
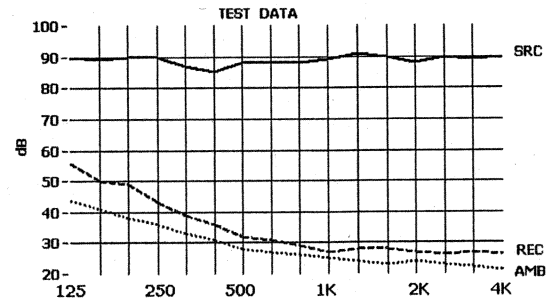
REC # **7** NIC 45



TOTAL **30** **0 0 0 0 0 0 4 5 4 4 3 3 2 3 0 2 0**
DEFICITS

2147 Broadway, Oakland
June 23, 2012
SRC = S 1
REC = R 5

REC # **8** NIC 56



TOTAL **27** **6 4 5 2 4 6 0 0 0 0 0 0 0 0 0 0 0**
DEFICITS

Valeska, David

From: Robert Bradsby [robert@arch2art.com]
Sent: Tuesday, August 21, 2012 3:58 AM
To: Valeska, David
Cc: karen van leuven; Nick Krause
Subject: 2147 Broadway response

Good morning David,

I would like to respond to EBMC's assertion that pink noise is not a fair test of sound transmission between the 2 spaces in the building and their misunderstanding of the character of live jazz music.

"Pink noise" is a universally accepted scientific method to generate a wide spectrum sound. High, medium and low frequencies. The engineer's sound system was set up at the location of the proposed stage. In 2 separate tests he produced sound at 85-90+ db. Painfully loud levels far in excess of real live jazz performances. Live jazz is not dominated by low frequencies as EBMC said. Jazz is more about the precise clean production of mid to high frequencies made by vocals, horns and pianos. Jazz has variations in sound levels but the basic pink noise tests for a wall or floor/ceiling assembly's capacity to transmit the sound into adjacent spaces. The engineer measured the resulting sound levels in several locations on the second floor. His recommendations take the resulting sound differentials measured and suggests industry standard construction details to insure sound "resistance" around the tenant space. Even without any construction changes the sound levels in EBMC's proposed space were nearly inaudible except with the windows open. This I found to be an artificially extreme condition created by EBMC to knowingly skew the results. BAJA has always intended to repair the existing ceiling assembly and enhance the wall construction to improve sound quality within the room. If EBMC requires silence for their programs beyond the limits in the building and planning codes, I recommend they modify their own windows, HVAC system and wall construction. Silence may be a goal of their program but it is not realistic in a multi-tenant commercial building in a busy urban location.

Thanks,
Robert Bradsby
Architect for BAJA

Attached is a more lengthy response to the several comments made by EBMC's attorney dated 7.25.12

architecture + art

COLLABORATIVE

August 21, 2012

David Valeska
Oakland Planning Department

RW: CUP application 2147 Broadway

Dear David,

I have read the latest letter from EBMC's attorney of 07.25.12 which raised several issues that need clarification.

Conditional Use Permit

BAJA's application for CUP is necessary only because they intend to serve alcohol at events and have over 49 persons attend. BAJA could change its intended program and apply for a permit as a full service restaurant. That would give them the ability to serve alcohol **as of right without a CUP**. BAJA could then apply for a small venue cabaret license and legally have less than 50 persons without a CUP. But BAJA feels there is a significant need for musical performance venues of over 50 in Oakland.

In 2006 EBMC moved in to the 2147 Broadway first floor tenant space using a modification of the CUP previously approved for Bay Area Community Services in 1996. BACS's original approval included an assembly area for on-site senior services connected with their core mission of providing food deliveries to western Alameda county. Nothing in the subsequent CUP said anything about requiring absolute silence as a condition in the building or neighborhood. The resulting 2006 CUP was for community assembly and did not define them as a church.

Noise

EBMC's intended space upstairs is 40 to 50 feet away horizontally from the stage. This is not beneath. Sound levels decrease as a function of distance. Furthermore building elements limit the transmission of sound. There are several other tenant spaces with walls and floor/ceiling assembly separating EBMC & BAJA's space.

When EBMC moved into the space BACS was operating a large commercial kitchen immediately next door producing thousands of meals a day. Noise reaching the EBMC space would have been significantly louder than the silence currently demanded by EBMC. BACS continued to run the kitchen until a few weeks ago. Between the 2 spaces existed uninsulated windows, hollow core wood doors and similar construction that would not limit sound transfer into the EBMC space. This has not prevented EBMC from holding meetings and indeed the group has grown in size. No assertion of their rights to silence had been raised or any legal challenges filed to change that kitchen use next door

BAJA hired a qualified consultant to study the issue of sound at the planning commission's request after the June meeting. This was the commission's **only** direction

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to BAJA. Please see the report for the details of the study. We feel it fairly answers all valid questions. The engineer used sound generating equipment placed at the stage location to create painfully loud levels. These levels are far in excess of that produced by live music performances (except in stadium sized venues). The engineer went beyond the standard required for noise between commercial tenant spaces and included analysis to the only higher level listed in the California Building Code (that used for residential uses during sleeping hours). Nothing in the building or planning codes provide a tenant in a commercial space with the right to silence.

The type of full range sound, "pink noise", is the industry standard for all acoustical studies and is a fair analysis. EBMC asserts that live jazz is heavily bass driven. This is untrue. Jazz in a small venue is more about the mid to upper frequencies represented by vocals, horns and piano. Furthermore the BAJA's fundamental concept is to create a listening environment where the PA system doesn't need to overpower noise from 200 people talking and drinking.

EBMC's open windows increased the background street noise further masking any sound generated by BAJA. The doors to the venue will be on automatic closers and are weather stripped to limit sound transfer. We suggest EBMC improve the acoustical performance of the existing 2nd floor windows and add cooling to the HVAC. This will have the most significant impact on sound transfer of music and street noise into their space.

Security Risks

The planning staff report on crime stats refer to the Old Oakland area where crime went from 1 incident to 2. This is not a fair comparison to a small jazz club, but the only data available to study. Increased foot traffic from events will decrease crime due to more people in the area. There is a full bar Latin nightclub already approved for directly across Broadway that will have professional security and add pedestrians in the area. Furthermore the EBMC's events end several hours before the typical BAJA music event ends.

Security for EBMC's entrance off 22nd Street should be the responsibility of their staff. They are choosing to move to a space with the only accessible entrance off a side street. That location is inherently less secure than Broadway. Furthermore, EBMC has hundreds if not thousands of members available to provide a visible presence on 22nd Street. Volunteering is a core part of EBMC's program.

Smoking

BAJA does not permit or support smoking of any kind inside the facility or near the entrance. Unfortunately smoking is still legal in CA. EBMC has its own dedicated HVAC system which draws air from the roof of the building significantly removed from the street vertically and horizontally.

Negative Economic Impact

A net loss of employment is unfounded. The few EBMC staff we spoke to were unpaid volunteers. BAJA will employ 2 or 3 paid staff and utilize volunteers as well. However the promotion of music and art events will support hundreds of musicians and artists. These are the underserved population which will most benefit from the proposed

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programs through 200 or 300 events a year. Furthermore the sales of food and drinks will support local food and drink producers and wholesalers.

Lack of Demonstrated Need

This reflects EBMC's lack of understanding of the music scene in the East Bay. Oakland and the East Bay are home to a large number of musicians due to cheaper housing compared to SF. There are only two full time live jazz venues in Oakland. Yoshi's is in Jack London Square and is a large high quality venue (100-250 seats). The price of tickets can be unaffordable for some fans at Yoshi's, where they feature mostly national and international performers. Fewer opportunities are scheduled for locals, mostly on Mondays. Those nights the locals have no guarantee of a fee and must first cover many costs. Yoshi's is not near BART and has limited transit service. 57th Street Gallery is in North Oakland and is not set up for a quality musical performance. It has limited transit via bus. Piedmont Piano Company has a limited music program where performers must pay for the venue and then hope to have ticket sales cover the minimum costs. BAJA will provide a generous percentage of ticket sales to the performers. BAJA will provide specific programs for young performers, a forum for new compositions or collaborations of bands. BAJA will provide opportunities for performers in a more intimate but professional setting conducive to listening. BAJA will support musicians and artists with a sponsorship program. Our goal is to institute supports similar to the NYC Jazz Gallery, which provides financial support to selected musicians for special projects such as new compositions and/or special collaborations between performers.

Contacts with EBMC

EBMC was the first to hire lawyers and rejected any attempts to discuss solutions to the situation with me or BAJA. EBMC's negotiations with the landlord (of which BAJA are not party) to avert eviction seem stalled and a final court date is scheduled for early September. During my 2 site visits with the acoustical engineer it was clear that EBMC was trying to unduly change the study methodology to their benefit. The instrument data readings those days were shown to the EBMC staff during the tests and showed results being inaudible with the club doors shut. With the 2nd floor windows open and club doors propped open the test sound was barely audible above the street noise.

I support their right to practice meditation, I have several immediate family members who are practicing Buddhists. However the environment in downtown Oakland and in a normal commercial building will never be silent. There is a reason that groups requiring silence locate in secluded monasteries, parks or rural places. BAJA will make interior modifications to their space consistent with the recommendations of the acoustical engineer. Anything more should be the responsibility of EBMC to insulate their space.

Thank you,

Robert Bradsby

Valeska, David

From: ckillian@friedwilliams.com
Sent: Tuesday, August 21, 2012 10:10 AM
To: Valeska, David
Subject: BAJA network

Here is a letter sent to the commissioners

Here is some background info on BAJA Network positive contributions it has made to the Oakland community and its very immediate and concrete goals to expand beyond just a jazz club:

Bay Area Jazz & Arts (BAJA).

BAJA grew out of experience we had with a successful house concert series. At these events jazz headliners and emerging artists perform in an intimate setting. Our goal is to present top quality music in a comfortable setting that allows you to hear the music, and interact with the performers and other jazz enthusiasts. An art exhibition is simultaneous with the musical performance, such that the artist is available to meet attendees and discuss his/her work. This is a uniquely positive concept and Oakland is the perfect place to grow this concept. BAJA will create a multi-use, Oakland- wide outreach service center for youth and seniors, disabled, low income and music enthusiasts throughout Oakland.

In addition to music and art performance, BAJA will offer educational programs to Oakland students and residents. An Advisory Board member has completed curriculum plan that focuses on music, specifically jazz, education for Oakland students that we are ready and eager to immediately implement . The program involves exposure to music, explanation about music, attendance at a musical performance and interaction with professional musicians. A similar program will be offered for art. Given the budget crisis, many Oakland schools have curtailed programs in the arts. We will provide a community venue for the arts so that children and adults can appreciate the arts and interact with artists. We want to have our place available now so we can implement these programs especially since school are now starting.

At a recent musical event, I was able to speak about our educational program with Dayna Stephens. Dayna is an internationally renowned saxophonist who originates from the Bay Area. Dayna spoke of the importance of having music and art programs accessible to youth. He stressed the need to be accessible to public transportation. This is exactly our intent and the rationale for why we think the location at 2147 Broadway is ideal. This will allow students from all over Oakland to attend and participate at our central Oakland Location, accessible by BART and all major AC Transit bus lines.

We have outreached and will work with the Bay Area Community Services

Attachment E. August 21, 2012 Applicant Attorney Reply, for Applicant

8/21/2012

(BACS), the original tenant for 2147 Broadway. BACS is an organization providing meals and outreach services for seniors and disabled Oakland community members. BACS vacated the premises due to loss of funding. We are working with BACS to provide daytime enrichment events for their clients, Oakland seniors and disabled. We will create programs that will improve the quality BACS client's lives. BACS thinks it is a great opportunity and is eager to get started. We look forward to the rich experiences we will immediately provide for BACS.

BAJA will be a resource for other Oakland community programs. We have networked with other area music and art centers. For example, in October & December of 2011 we held fund-raising events for the Junior Center for Arts & Science. The Junior Center offers art and science programs for Oakland youth during the summer, after school and on weekends. In addition, our Board members provide assistance to Oaktown Jazz Workshop, an organization founded by the late, great Khalil Shaheed. We have established contact and devolved a relationship with the Oakland Conservatory of Music and Oakland School for the Arts. We will be coordinating with both of them to serve as a performance venue for their students. Recently we showcased the talents of Oakland Conservatory students at Congresswoman Barbara Lee's birthday party.

BAJA is more than just a jazz club. It is a music and art education facility desperately needed by Oakland students. It is a community resource for BACS and the Oakland senior and disabled community. It will provide an outlet for Oakland performers and artists. BAJA will enrich the Oakland community and enhance Oakland music artist experience.

Our delay in getting into 2147 Broadway has resulted in lost income and opportunities to BAJA, musicians and artists, students and seniors. We have been forced to cancel numerous scheduled educational programs, musical and artistic events. With school starting soon, we will have to scramble to provide our student educational programs. Every day of delay is depriving an Oakland student of music/art education. We are incurring substantial cost that could be going to benefit artists, youth, disabled and seniors. BAJA is truly a charitable non-profit organization. As a result, these delays have resulted in substantial hardship for the organization. Nevertheless, we are firm in our vision and request approval for our venue at 2147 Broadway so we can begin our goals to provide music/art education to Oakland students, enhanced experiences to our seniors and disabled and jazz and art to Oakland citizens!! We are eager to use our energy, resources and commitment to Oakland to begin our positive mission. Thank you for your support!!!

Karen Van Leuven, President & Founder
Bay Area Jazz & Arts, Inc.

Clinton Killian

Valeska, David

From: Jon S. O'Donnell [jon@mbvlaw.com]
Sent: Tuesday, August 21, 2012 11:24 AM
To: Valeska, David
Cc: Eileen Van Matre
Subject: RE: EBMC Letter to D Valeska



2012-08-21 Ltr to D
Valeska re...

Please see the attached letter requesting that the hearing scheduled for August 29 be continued so that David Foecke can attend.

Please circulate this letter to the members of the Planning Commission.

Thanks you for your help.

Jon S. O'Donnell
MBV | LAW LLP
855 Front Street | San Francisco, CA 94111
Tel: 415-781-4400 ext. 1432 | Fax: 415-989-5143 www.mbvlaw.com | jon@mbvlaw.com

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-----Original Message-----

From: Valeska, David [mailto:DValeska@oaklandnet.com]
Sent: Monday, August 20, 2012 11:29 AM
To: Jon S. O'Donnell
Subject: RE: EBMC Letter to D Valeska

Mr. O'Donnell, you or a representative may appear at the August 29 Planning Commission at 6 pm and request a continuance; and/or submit A letter requesting such continuance.

Is there any update from the Meditation Center on potential relocation, Landlord/tenant discussions or other information? We have nothing new In the file. Thanks.

-----Original Message-----

From: Jon S. O'Donnell [mailto:jon@mbvlaw.com]
Sent: Thursday, August 09, 2012 2:34 PM
To: Valeska, David
Subject: Re: EBMC Letter to D Valeska

Other than sending the email we previously sent is there a more formal way to make that request?

Thank you,

Jon

Please excuse the typos as this was sent from my iPhone.

Jon O'Donnell

Attachment F: Letter, East Bay Meditation Center, Hearing Continuance Request, August 21, 2012

MBV | LAW
LLP

ATTORNEYS AT LAW

August 21, 2012

VIA EMAIL

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

Re: *Objection to Issuance of Major Conditional Use Permit at 2147 Broadway
(Case File No. CM12-041)
Continuance of August 29, 2012 Planning Commission Hearing*

Dear Mr. Valeska:

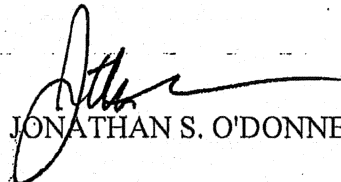
As you know, this firm has been retained to represent the East Bay Meditation Center (the "EBMC") with respect to the application of Sound Room/BAJA Network (the "Nightclub"), Case File No. CM12-041, for a major conditional use permit to allow alcoholic beverage sales activity and group assembly (nightclub)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

We would like to request a brief continuance of the Planning Commission hearing scheduled for August 29, 2012 because David Foecke, one of the key persons at the EBMC, has longstanding plans to be out of town on that date. This hearing was originally scheduled for August 1, 2012, at which time Mr. Foecke was available, but was rescheduled by the Planning Commission due to its failure to include EBMC's objections in the Staff Report for the August 1, 2012.

We previously requested this continuance by emails to you on August 3 and 9, 2012, and were advised by you on August 20, 2012 to either appear in person to request a continuance on August 29 or to submit a letter to that effect.

Very truly yours,

MBV LAW LLP


JONATHAN S. O'DONNELL

JSO:eym

91369.01/4830-1557-7616, v. 1

cc: East Bay Meditation Center