

# ***Oakland City Planning Commission***

Case File Number CM12-184

## **STAFF REPORT**

November 7, 2012

<b>Project Name:</b>	<b>Diving Dog</b>
<b>Location:</b>	<b>1802 Telegraph Avenue(APN008-0640-004-00)</b>
<b>Proposal:</b>	<b>Allow Alcoholic Beverage Sales Activity</b>
<b>Contact Person/Phone Number:</b>	<b>Rob Bailard, Diving Dog LLC (310)460-8030</b>
<b>Owner:</b>	<b>KMTJ Investments LP</b>
<b>Case File Number:</b>	<b>CM12-184</b>
<b>Planning Permits Required:</b>	<b>Major Conditional Use Permit to allow an Alcoholic Beverage Sales Activity, in a 4,300 square foot building in the Uptown area of the Central Business District</b>
<b>General Plan:</b>	<b>Central Business District</b>
<b>Zoning:</b>	<b>CBD-P Central Business District-Pedestrian Retail Commercial Zoning District</b>
<b>Environmental Determination:</b>	<b>Categorically Exempt under California Environmental Quality Act (CEQA) Guidelines Section 15301</b>
<b>Historic Status:</b>	<b>Potential Designated Historic Property, Cal+, Uptown District</b>
<b>Service Delivery District:</b>	<b>Metro</b>
<b>City Council District:</b>	<b>3</b>
<b>Commission Action to Be Taken:</b>	<b>Approve Staff Recommendation</b>
<b>Appeal:</b>	<b>To City Council</b>
<b>For Further Information:</b>	<b>Contact <b>David Valeska</b> at <b>(510) 238-2075</b> or <a href="mailto:dvaleska@oaklandnet.com">dvaleska@oaklandnet.com</a></b>

### **SUMMARY**

This application involves the request to serve alcoholic beverages at a bar with on-site beer brewing in an existing commercial building in Uptown Oakland.

### **PROJECT DESCRIPTION**

The applicant proposes to utilize 4,300 square feet in a commercial building for a bar and beer-brewing operation, as shown on the attached floor plan. The applicant plans to operate with typically 35 persons seated indoors. Proposed hours would be noon to 1:45 am. A dozen employees will operate the facility. The building was built in the mid-20th Century in the Uptown commercial district. A Major Conditional Use Permit is required to establish the alcohol sales activity because this site will not serve both lunch and dinner with alcohol incidental to dining.

### **ENVIRONMENTAL REVIEW**

Staff has evaluated the project according to the California Environmental Quality Act (CEQA) and determined it is exempt from environmental review for the following reasons: Sections 15303 and 15183 of the CEQA Guidelines exempt from environmental review for activities in small existing commercial facilities. The alcoholic beverage use is in a 4,300 square foot area of an existing commercial building area, and will not produce measurable physical or other environmental impacts. Therefore, the project is determined to be exempt from further CEQA review. This project is exempt because Section 15183 of the CEQA Guidelines exempts projects that are consistent with a community plan, general plan or zoning. This project is consistent with the General Plan and zoning subject to CUP approval.

# CITY OF OAKLAND PLANNING COMMISSION



0 125 250 500 750 1,000 Feet



Case File: CM12-184  
Applicant: Rob Bailard, Diving Dog LLC  
Address: 1802 Telegraph Avenue  
Zone: CBD-P

## 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. Relevant 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 specialty alcohol service uses in the Uptown Oakland area consistent with the LUTE.

## ZONING ANALYSIS

The project is located in the Central Business District-Pedestrian (CBD-P) Zone, which requires a Major Conditional Use Permit for an Alcoholic Beverage Sales Commercial Activity. In addition, the 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 for sites in the Central Business District or for other circumstances not related to this case. This proposal is consistent with Resolution 75490 because it is located in the Central Business District.

## KEY ISSUES AND IMPACTS

The proposed facility, a bar with on-site brewing of beer, will provide service to approximately 35 patrons at a time. A business of this type is likely to produce police calls on a low to moderate basis, which is typical of such businesses in this area. The proposed use would provide a variety of beverages while generating minimum nuisance due to the implementation of alcohol license restrictions such as hours, security staff, and maintenance of the site (See Conditions).

Issues reviewed include: Crime Control; Parking; and Aroma.

### Crime Control

Staff consulted Police statistics for the 90 day period ending October 3, 2012, within a quarter-mile radius of the 2000 block of Telegraph Avenue in Uptown Oakland, which also reflects conditions in the applicant's 1800 block. The 2000 block crime statistics were: Alcohol, 1; Aggravated Assault, 7; Simple Assault, 13; Burglary, 6; Disturbing the Peace, 1; Narcotics, 1; Murder, 0; Robbery, 12;

Theft, 52; Vandalism, 6; Vehicle Theft, 5. This is not exceptionally high for a downtown nightlife area and is comparable to other similar Oakland areas. Adding this activity to Uptown Oakland is not likely to increase crime.

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 determined that this use will not likely create a large amount of 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.

### **Parking**

A parking lot is not required for the building, which was built in 1928 long before the City's parking regulations were added to the Zoning Code in the 1950's. There are no new buildings proposed and the proposed activity does not require parking spaces. Nearby parking lots such as the YMCA parking structure are open to the public. Two BART station entrances are located nearby and bus service is frequent on Broadway and Telegraph Avenue.

### **Odors**

While some people enjoy the aroma of brewing beer, others do not. This activity would be located near office, retail, restaurant and some residential activities. If the bar's doors are open and the air conditioning vents are not adequately planned, an odor could effect the surrounding area throughout the day and night. Therefore conditions of approval implement existing City codes for control of odors as found in our City performance standards (see Condition of Approval #19).

### **SUMMARY**

Staff finds the project meets the intent of the Zoning and General Plan requirements for approval of the Conditional Use Permit, including criteria discussed above. The facility will have no substantial impacts, will not increase crime or affect nearby historical resources. The facility will bring more visitors to Uptown Oakland, reinforcing the commercial success which provides revenue to preserve the Uptown's momentum as a night life district. Staff concludes that the application merits support.

### **RECOMMENDATION:**

1. Affirm staff's environmental determination.
2. Approve the Major Conditional Use Permit for Alcoholic Beverage Sales at 1802 Telegraph Avenue, based on findings and subject to the attached conditions.

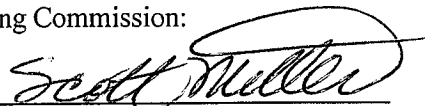
Prepared by:

  
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. Findings for Approval
- B. Conditions of Approval
- C. Plans and Photographs
- D. Applicant Correspondence

Open  
Case:

Open  
Case:

**ATTACHMENT A: FINDINGS****FINDINGS FOR APPROVAL (ALCOHOLIC BEVERAGE SERVICE)**

This proposal meets the required findings under the Oakland Planning Code. 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 alcoholic beverage service would satisfy a community need which does not affect livability of the surrounding neighborhood, and will be operated in a small scale which is compatible with neighborhood character. The proposed use would offer beverage service in a neighborhood which derives part of its identity from other nearby gourmet food and drink facilities. Conditions are drafted for this action limiting noise, light, trash/litter, loitering, hours and similar factors to offset any potential for negative effects of alcohol sales.

- 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 proposed alcoholic beverage service will promote availability of quality beverages and enhance the convenience and functional living environment of its customers. The small size of the facility is attractive as warranted by the location and setting, in the recesses of a building in an area of larger buildings. This is in a gourmet food/beverage related business district where such uses are appropriate.

- 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 proposed alcoholic beverage service will function to meet the community's needs for a bar with a gourmet/tourism theme. The operation of the surrounding area is for entertainment, food etc. and this proposal will fit into the area. This facility would have less traffic, noise and light than a similar business might have offered in a larger format. This facility complements the offerings of nearby existing offices and businesses.

- 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 to be utilized by the alcoholic beverage service has existed in this neighborhood since the early-20th Century. No major changes in the building are proposed from the existing façade which has been compatible with designs of neighboring facilities for many years.

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

The General Plan is silent on approval of alcoholic beverage sales uses, which Zoning regulations allow by Conditional Use Permit in specified Zones. The General Plan also allows for businesses that will not cause undue nuisance activity. An attractive and well-managed alcoholic beverage service supporting the Central Business District classification will conform to adopted plans, such as Policies D1.1, D5.1 and D12.1 for Downtown activity and amenity.

**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 proposed alcoholic beverage service is not envisioned to contribute to the same types of loitering and other problems as some other Alcoholic Beverage Sales facilities such as strip-commercial liquor stores or bars serving a greater variety of alcoholic beverages. City crime statistics for recent months show that overall crime rates near the applicant's site are similar to other Downtown commercial areas which are not major crime locations. The neighborhood streets have sufficient capacity to support this small facility without causing undue traffic or other problems.

- 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**

The facility will be over 300 feet from community-recreational parks, with few nearby churches and temples and is unlikely to adversely affect them. There are few public schools nearby other than the School for the Arts and private charter schools. Being located in Uptown's nightlife district has not adversely affected these schools and one more bar will not affect them. While Uptown Oakland is visited by minors and their families, the proposal's restricted business plan ameliorates the issue. This facility design has built-in sound attenuation characteristics because of the positions of structures. Staff believes that the alcoholic beverage service will protect nearby uses from adverse effects by conditions of approval and by the nature of the project itself.

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

The facility entrance provides disabled access. The 100 to 150 projected daily customers would be mostly spaced throughout the day and evening, which minimizes the crowd management issues of the building tenant. The building entry does not impede pedestrian corridors.

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's façade shares an early-20<sup>th</sup> Century architectural theme compatible with nearby facilities and is similar to some of its neighbors, including size and shape of building volumes. The facility is of an architectural character that harmonizes with and enhances the area. The building will be preserved.

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

Any signage would be similar to past signage for this commercial building, and would not be overly large or obtrusive. No parking is provided on-site, which is consistent with the Oakland Planning Code standard for reuse of existing commercial buildings. The site is a short walking distance to BART, AC Transit, and to parking garages, which supplement on-street parking in the area.

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

As conditioned, there will be non-flammable trash containers installed proximate to the entrance of the facility and litter will be removed from the sidewalk and gutter in front of and to twenty feet beyond the premises.

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 nearest dwellings, such as Uptown multifamily dwellings a block away, are sufficiently distant and/or buffered by building mass to limit noise effects. Existing roadway noise creates an ambient level which may mask some of the business's noise effects. Rows of commercial buildings block sound transmittal past these blocks. Attached conditions are provided to ameliorate some of the potential noise effects.

#### **Section 17.102.210(B) - Special Use Permit Criteria**

Finding C.1.below is not required for facilities in the Central Business District:

#### **C. 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; 27<sup>th</sup> 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 property is within the Central District, therefore this separation is not a requirement.



**17.102.210-B-3: Public Necessity and Convenience Findings (Central Business District Sites)**

- a. 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 community need or population within the overall Oakland community or the community in which the project is located, and how the proposed project would enhance physical accessibility to needed goods or services that the project would provide, including, but not limited to alcohol; and**

The proposed alcoholic beverage service is of a custom brew-pub theme different from that generally available to the public on this street, as demonstrated by the applicant's documents in the public record files. Where nearby larger businesses offer food and/or alcoholic beverage service, they do not all provide the particular customer service which the applicant proposes, with fast service, custom beverage production setting and affordable alcoholic beverage service.

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

An alcoholic beverage service would be compatible with and complimentary to other businesses in the Uptown Oakland gourmet business concentration, providing economic benefits to the area. Such businesses serving alcoholic beverages in the Central Business District are not reported by consulted Police officers to cause significant increases in calls for police service.

- c. 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 sales are a common use in downtown areas. The applicant's activity proposes alcoholic beverage service primarily to facilitate gathering for downtown workers nearby and for other customers including tourists.

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

a. The project shall be constructed and operated in accordance with the authorized use as described in this letter and the plans dated **September, 2012** and submitted **September 20, 2012** and as amended by the following conditions. Any additional uses or facilities other than those approved with this permit, as described in the project description and the approved plans, will require a separate application and approval. Any deviation from the approved drawings, Conditions of Approval or use shall required prior written approval from the Director of City Planning or designee.

b. This action by the City Planning Commission ("this Approval") includes the approval set forth as follows: On-site sales area and production (brew-pub) of alcoholic beverage products with hours limited by conditions herein.

**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 of Oakland reserves the right at any time during construction, to require certification by a licensed professional that the as-built project conforms to all applicable zoning requirements, including but not limited to approved maximum heights and minimum setbacks. Failure to construct the project in accordance with approved plans may result in remedial reconstruction, permit revocation, permit modification, stop work, permit suspension or other corrective action.
- c. Violation of any term, Conditions or project description relating to the Approvals is unlawful, prohibited and a violation of the Oakland Municipal Code. The City of Oakland reserves the right to initiate civil and/or criminal enforcement and /or abatement proceedings, or after notice and public hearing, to revoke the Approvals or alter these Conditions if it is found that there is violation of any of the Conditions, or the provisions of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance. This provision is not intended to, nor does it, limit in any manner whatsoever the ability of the City to take appropriate enforcement Actions. The project applicant shall be responsible for paying fees in accordance with the City's Master Fee Schedule for inspections conducted by the City or a City-designated third-party to investigate alleged violations of the Conditions of Approval.

**6. Signed Copy of the Conditions**

***With submittal of a demolition, grading and building permit.***

A copy of the approval letter and Conditions shall be signed by the property owner 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 City may elect, in its sole discretion, to participate in the defense of said Action and the applicant shall reimburse the City for its reasonable legal costs and attorneys' fees.

- b. Within ten (10) calendar days of the filing 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 and the Letter of Agreement shall survive termination, extinguishment or invalidation of the approval. Failure to timely execute the Letter Agreement does not relieve the 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***

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. Recycling Space Allocation Requirements**

***Prior to issuance of a 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. Pursuant to Section 17.118.020 of the Oakland Planning Code, this condition shall apply to new commercial and industrial development that requires a building permit. 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.

***Ongoing.***

No deviation shall be made from the approved drawings or conditions of approval that alters the project's siting, height, exterior appearance, and/or required new landscaping without prior written approval from the Oakland Planning & Zoning Department.

**12. Construction Practices.**

***During construction.***

All work shall apply the "Best Management Practices" (BMPs) for the construction industry, including BMPs for dust, erosion and sedimentation abatement per Section 15.04 of the Oakland Municipal Code, as well as all specific construction-related conditions of approval attached to this project.

**13. Days/Hours of Construction Operation**

***Ongoing throughout demolition, grading and/or construction.***

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

- a) Construction activities are limited to between 7:00 AM and 7:00 PM Monday through Friday, except that pile driving and/or other extreme noise generating activities greater than 90 dBA shall be limited to between 8:00 AM and 4:00 PM Monday through Friday.
- b) Any construction activity proposed to occur outside of the standard hours of 7:00 AM to 7:00 PM Monday through Friday for special activities (such as concrete pouring which may require more continuous amounts of time) shall be evaluated on a

case by case basis, with criteria including the proximity of residential uses and a consideration of residents' preferences for whether the activity is acceptable if the overall duration of construction is shortened and such construction activities shall only be allowed with the prior written authorization of the Building Services Division.

- c) Construction activity shall not occur on Saturdays, with the following possible exceptions:
  - i) Prior to the building being enclosed, requests for Saturday construction for special activities (such as concrete pouring which may require more continuous amounts of time), shall be evaluated on a case by case basis, with criteria including the proximity of residential uses and a consideration of residents' preferences for whether the activity is acceptable if the overall duration of construction is shortened. Such construction activities shall only be allowed on Saturdays with the prior written authorization of the Building Services Division.
  - ii) After the building is enclosed, requests for Saturday construction activities shall only be allowed on Saturdays with the prior written authorization of the Building Services Division, and only then within the interior of the building with the doors and windows closed.
- d) No extreme noise generating activities (greater than 90 dBA) shall be allowed on Saturdays, with no exceptions.
- e) No construction shall take place on Sundays or Federal holidays.
- f) Construction activities include but are not limited to: truck idling, moving equipment (including trucks, elevators, etc.) or materials, deliveries and construction meetings held on-site in a non-enclosed area.
- g) Applicant shall use temporary power poles instead of generators where feasible.

#### **SPECIFIC PROJECT CONDITIONS**

##### **14. Hours.**

###### ***Ongoing.***

The business may be open to the public for business from 10am to 1:45 am. Alcohol may only be served after 11:30 am. Any work outside these hours shall solely be staff preparation and not open to the public.

##### **15. Signage.**

###### ***Ongoing***

The applicant/property owner shall continue to 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.

##### **16. Facility Management**

###### ***a. Ongoing***

Lighting shall be maintained 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.

**b. Ongoing**

The licensees/property owners shall clear the gutter and sidewalks twenty-five feet beyond the property lines along these streets of litter twice daily or as needed to control litter (sweep or mechanically clean weekly). The licensee shall clean the sidewalk with steam or equivalent measures once per month if required by the Zoning Manager.

**c. Ongoing.**

Graffiti shall be removed from the premises within 48 hours (2 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**

***Prior to 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. Said trash receptacle shall be emptied as needed to avoid overflow and/or adverse odors.

**18. Sign Modifications**

***Within 90 Days of Approval, with Zoning Manager Option to Extend 90 Further Days***

Signs if modified shall receive all required Planning and Building permits to the satisfaction of the Zoning Manager.

**19. Odor Control**

***At commencement of use and ongoing.***

The applicant shall control odors, particularly brewing beer, which may affect nearby sensitive activities, pursuant to Section 17.120.090 of the Oakland Planning Code. These controls shall include but not be limited to keeping doors and windows closed to the outside, or providing secondary odor containment inside; and retrofitting air exhaust vents with equipment to remove odors from the expelled air, sufficient that a person of average smell sensitivity at the property line would not be offended by odors from the property. No brewing shall commence between 10 pm and 8 am.

**20. Security**

***Ongoing***

The applicant shall provide one qualified security guard for the first fifty patrons, and one additional security guard for each additional increment of patrons (one to fifty patrons per increment) during hours when alcoholic beverages are served.

**21. Sidewalk Café**

***Prior to submittal for building permits***

The applicant shall provide plans for the sidewalk café railing and improvements to the Director of Planning for approval prior to construction.

**SPECIFIC CONDITIONS RELATED TO ALCOHOL SALES**

**22. Conformance with State Department of Alcoholic Beverage Control regulations**

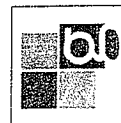
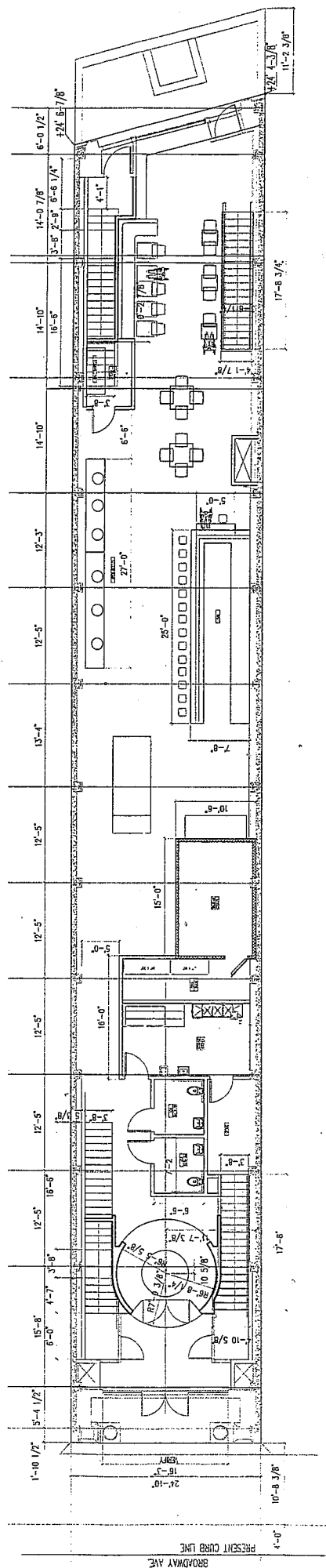
***Ongoing.***

This use shall conform to all provisions of the State ABC license. The state license and state conditions shall be posted along with these Conditional Use Permit conditions in a place visible to the public. This use shall also conform to all State Operating Standards of the Business and Professions Code and local Performance Standards, 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.

**23. Inclusion of conditions in State Department of Alcoholic Beverage Control license.**

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

The applicant shall submit a letter to staff signed by the applicant addressed to the State Department of Alcoholic Beverage Control stipulating that they wish to include conditions number 14, 15, 16, 17, 18, 19, 20, 21 and 22 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 or fails to maintain an ABC license.



DIVING DOG BREW HOUSE  
TELEGRAPH AVE  
OAKLAND, CA.

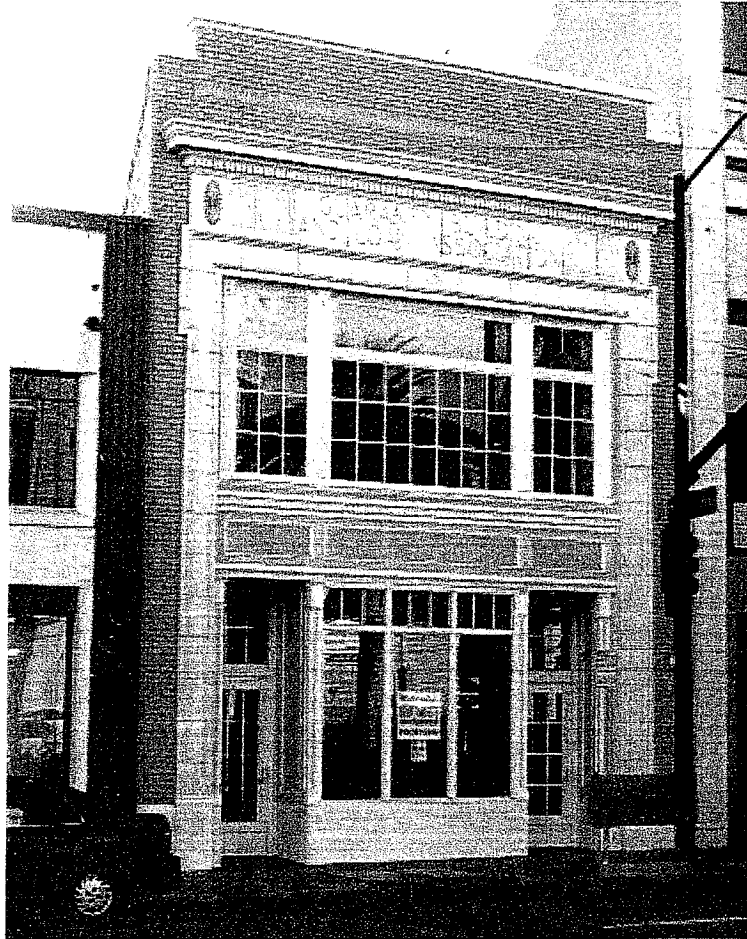
I.T.S.  
SEPTEMBER 17, 2012



## Attachment C: Plans and Photographs



**SUBJECT PROPERTY**  
**1802 Telegraph Avenue**

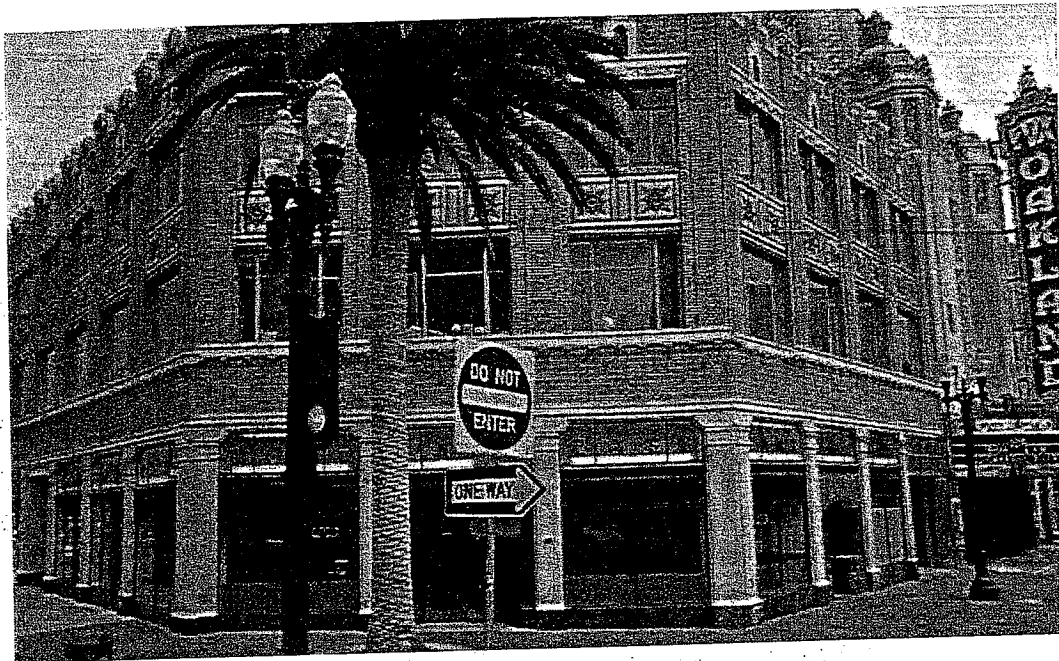


**FLORA**  
1900 Telegraph Avenue



# RUDY'S CAN'T FAIL CAFÉ

1807 Telegraph



# Conditional Use Permit Narrative

## 1802 Telegraph Avenue

### Oakland, California

#### **Uptown**

The rejuvenation of the Uptown entertainment district is an inspiring story of success. With the renovation of the Fox Theater, this district has quickly developed into one of the most exciting nighttime destinations in the Bay Area. A number of fantastic restaurants, nightclubs, and bars have established themselves around the anchor of this neighborhood, the Fox Theater. This theater has quickly become the venue of choice for top headliners visiting the Bay Area.

#### **1802 Telegraph Avenue**

Located in the heart of this dynamic neighborhood, across the street from the Fox Theater and steps from the high-end restaurants that are increasingly defining the area, 1802 Telegraph Avenue offers the perfect opportunity to give the neighborhood a fantastic flagship craft beer bar and brew-on-premise facility, unique to the Bay Area and only found in the City of Oakland.

The property is currently zoned CBD-P. The property has been vacant for over a year. The previous use for the Telegraph entrance was a nail salon, and the previous use for the Broadway entrance was a non-profit group.

The building was purchased by KMTJ Investments, LP, and has undergone extensive renovations in the past year.

1802 Telegraph Avenue is conspicuously located in the heart of this booming entertainment district, across the street from the Fox Theater, and mere steps from the 19<sup>th</sup> Street BART Station. It is the perfect location for a stylish beer bar and brew-on-premise facility, unique to the City of Oakland and entire Bay Area.

#### **Diving Dog, LLC**

Diving Dog, LLC is the result of extensive planning to launch a craft beer bar with an accompanying brew-on-premise facility. The Managing Member of Diving Dog, LLC is Robert Bailard.

Robert grew up in the Bay Area, and developed a passion for the art of brewing beer while in college at the University of Colorado. Upon graduation from college, Robert moved to Los Angeles to attend law school at Pepperdine University School of Law.

Upon graduation, he began work in transactional real estate, but stayed active in brewing. In 2010, Robert decided to follow the dream he and equity partner Matt Wendt had since college of opening a craft beer bar, and small scale brewing facility. Since that time, Robert began to plan for the launch of Diving Dog, LLC and hone his brewing with craft brewers in the greater Los Angeles area.

Upon moving back to the Bay Area, Robert was struck by the new developments in the Uptown area. Extensive research led Robert to the conclusion that this area was perfect for this unique concept.

Robert has put together an impressive team to execute the concept and design of the planned Diving Dog Brewhouse. Robert is extremely excited about this project, and the chance to be a part of the culture and rejuvenation of the Uptown district.

### **The Concept**

The concept of the Diving Dog Brewhouse is to combine a craft beer bar, with a brew-on-premise facility. Diving Dog, LLC will create a space that blends a hip and elegant bar atmosphere with the brew-on-premise equipment. The craft beer industry is booming throughout the United States. California has become the cornerstone of the industry, and ground zero for craft beer innovations not seen anywhere else in the world. Additionally, craft breweries fall into the category of small, independent business. The growth in popularity of these breweries supports an important movement to foster the small business community. The Diving Dog Brewhouse will offer customers the opportunity to experience all that this industry has to offer locally, nationally, and worldwide. The brew-on-premise facility will give customers the unique experience of "being their own brew master."

The craft beer offerings are planned to be approximately twenty to fifty beers on tap, numerous bottled craft beers, and wines. Beer by its very nature is inclusive and by no means inaccessible to the member of any community. The diverse craft beer offerings will allow the most savvy beer connoisseurs to access a broad range of craft beers, and expose novices to the world of quality, craft beer. In addition to a diverse offering of styles, craft beer enjoys wonderful diversity in terms of cost, allowing anyone to enjoy their beer of choice.

The brew-on-premise facility will offer customers the unique and fun opportunity to "be their own brew master." The process starts with a customer telling the brew coach their favorite style of beer. The Diving Dog Brewhouse then provides a recipe for this style of beer, ingredients, and personalized instruction on the small scale brewing equipment. The brewing process is simplified so that anyone can enjoy the experience. After approximately two hours, the wort (i.e., the name for beer before fermentation) is transferred to a small fermentation vessel, where it is allowed to ferment for a two-week period. After this period, the customer returns, hand bottles their beer, and applies their personally designed labels to the bottles. The customer

then gets to take their creation home to celebrate with their family and friends. The brew-on-premise is about the fun experience, education, and pride of creating and enjoying a personally crafted beer. With the advent of homebrewing, it also gives seasoned homebrewers the opportunity to brew using professional grade equipment that they would not have access to otherwise.

The copper clad brew-on-premise equipment will be located in the same space as the craft beer bar, adding to both the aesthetic and vibrant energy of the Diving Dog Brewhouse. This allows customers using the brew-on-premise equipment to enjoy the company of their friends during the brewing. Additionally, it is ideal for parties, groups, and team-building events. Production of alcoholic beverages is customarily associated with the selling of alcohol, incidental, appropriate and subordinate. The closest example would be a standard brewpub. They produce the beer there, and then sell it there to the public. All of the production activities come before and lead to the sale of alcohol. Thus, these activities are accessories to the final primary activity of selling alcoholic beverages. The brew-on-premise concept merely involves the customer in the brewing process as an educational tool and fun activity. All of the incidental brewing activities will be located in the same space as the primary activity, which is the sale of alcohol, and integrated into the craft beer bar area.

Open from noon onwards, customers will be able to reserve one (or more) brew kettles. With a total of six brew kettles, and three sessions a day per kettle, the Diving Dog Brewhouse will be accessible to upwards of eighteen teams of brewers a day. The craft beer bar element of the Diving Dog Brewhouse is not expected to pick up until 4 PM, where it will blend into an after work hotspot. As night falls, the Diving Dog Brewhouse will transition into a warm spot for both pre- and post-dinner or concert drinks.

A full restaurant menu is not intended. Instead the Brewhouse will offer freshly baked Bavarian pretzels and other snack items. Bavarian pretzels have long been a complementary snack to beer, and give people something to munch on while enjoying good company and good beer.

### **Public Necessity or Convenience**

As discussed above, craft beer and homebrewing are enjoying a renaissance and increasing in popularity at lightning speed. Currently, there is not a craft beer bar or brew-on-premise facility in the Uptown area of Oakland. Existing establishments in this district are restaurants and cocktail lounges. There is currently no brew-on-premise facility in the City of Oakland, the East Bay, or Northern California. The only brew-on-premise establishment in existence is in Belmont, California, but that site is no longer operating. Therefore, the Diving Dog Brewhouse would be the only brew-on-premise facility in Northern California and the only craft beer bar in Uptown Oakland. The craft beer bar will feature beers from small, craft brewers in the region

and state. The craft beer bar offerings and the brew-on-premise activities complement each other to create a unique experience and educational opportunity. This will in turn enhance users' enjoyment of the craft beer bar offerings. Additionally, the brew-on-premise will give users access to professional brewing equipment, ingredients, recipes, and instruction in the ever-more-popular art of brewing. Finally, as the site has stood unused for over a year, the opening of Diving Dog Brewhouse will serve to further invigorate and rejuvenate the Uptown landscape. Thus, the Diving Dog Brewhouse will serve the unmet needs of providing access to craft beer and instruction in brewing, as well as the underserved need of a community gathering spot, to local residents and visitors alike.

The craft beer bar and brew-on-premise activity will improve the quality of life of the City of Oakland through enhanced community connectivity, increased educational opportunities, and economic benefits. The craft beer industry is one that coincides with a growing trend in American society to focus on small business and fresh, locally made, quality goods. Craft brewers are by definition, small businesses that are focused on both the freshness and quality of their brews. Small businesses are vital to the vitality of a community. Further, providing a place for like-minded people (i.e., homebrewers) to come together to both recreate, connect, and learn will enhance the sense of community in the Uptown area. From an educational perspective, customers will have the ability to learn how the brewing process works, and get a greater understanding of what goes into the products they consume, also a trend of growing importance to many people. And, of course, while learning with their friends and colleagues, they will get to know other fellow residents and visitors. Additionally, the brew-on-premise facility will be the only such facility in Northern California. Therefore, this unique use will act as a draw outside of the City of Oakland and from around the State, bringing an economic boost to both the neighborhood and the City.

It is not anticipated that the Diving Dog Brewhouse will increase disturbances to the peace. The nature of craft beer is of slow enjoyment of a quality product (similar to wine), as opposed to the mass consumption of a watery product, previously associated with beer. This emphasis on taste and quality rather than quantity, reduces the likelihood of intoxication and thus reduces the potential for disturbance. Moreover, the Diving Dog Brewhouse is not seeking a full liquor license, but instead beer and wine only. Therefore, disturbances requiring the attention of the public safety departments of the City are not anticipated to be a regular occurrence. And the benefits listed above strongly outweigh the potential for any negative impacts.

The production of beer is also commonly associated with this type of business and can be considered an accessory use. As discussed above, production and purchase of alcohol go hand-in-hand at brewery establishments. Here, the order is reversed such that alcohol purchases are the primary activity with on-site brewing, the accessory use. Moreover, the production levels are small, with no use of mechanized equipment.