

<b>Project Name:</b>	<b>Temescal Plaza</b>
<b>Location:</b>	<b>5095 Telegraph Avenue (APN013-1154-009-05)</b>
<b>Proposal:</b>	Allow Increased Short-term Parking in Shopping Center Parking Lot
<b>Contact Person/Phone Number:</b>	Josh Reed (707)967-9846
<b>Owner:</b>	Temescal Plaza LLC
<b>Case File Number:</b>	<b>A12-130</b>
<b>Planning Permits Required:</b>	Appeal of a Zoning Manager finding that Condition 14 of PUDVMC94-219 does not permit converting 25 parking spaces in a shopping center parking lot from 2 hour turnover to ½ hour turnover without Revision to the Condition
<b>General Plan:</b>	Neighborhood Commercial
<b>Zoning:</b>	CN-2 Neighborhood Commercial Zoning District
<b>Environmental Determination:</b>	Categorically Exempt under California Environmental Quality Act (CEQA) Guidelines Section 15301
<b>Historic Status:</b>	Not a Potential Designated Historic Property
<b>Service Delivery District:</b>	2
<b>City Council District:</b>	1
<b>Commission Action to Be Taken:</b>	Approve Staff Recommendation
<b>Appeal:</b>	To City Council
<b>For Further Information:</b>	Contact <b>David Valeska</b> at <b>(510) 238-2075</b> or <a href="mailto:dvaleska@oaklandnet.com">dvaleska@oaklandnet.com</a>

## **SUMMARY**

The Appellant requests that the Planning Commission overturn the Zoning Manager's Administrative Determination letter dated July 6, 2012 that 25 parking spaces converted from 2 hour turnover to one-half hour turnover without amending PUDVMC94-219 are in violation of that entitlement's conditions and must be restored to 2 hour turnover parking, at the Temescal Plaza Shopping Center. During the Zoning Manager's determination process, there were expressions of concern from Temescal businesses who benefit from the current parking lot pursuant to Condition 14 of the entitlement and do not wish to see their customers restricted to half-hour turnover if they park in these 25 spaces, which are in effect joint-use spaces for the nearby shopping district.

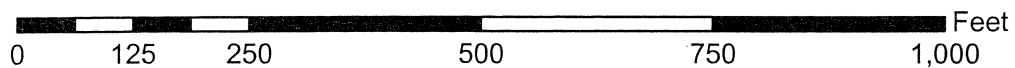
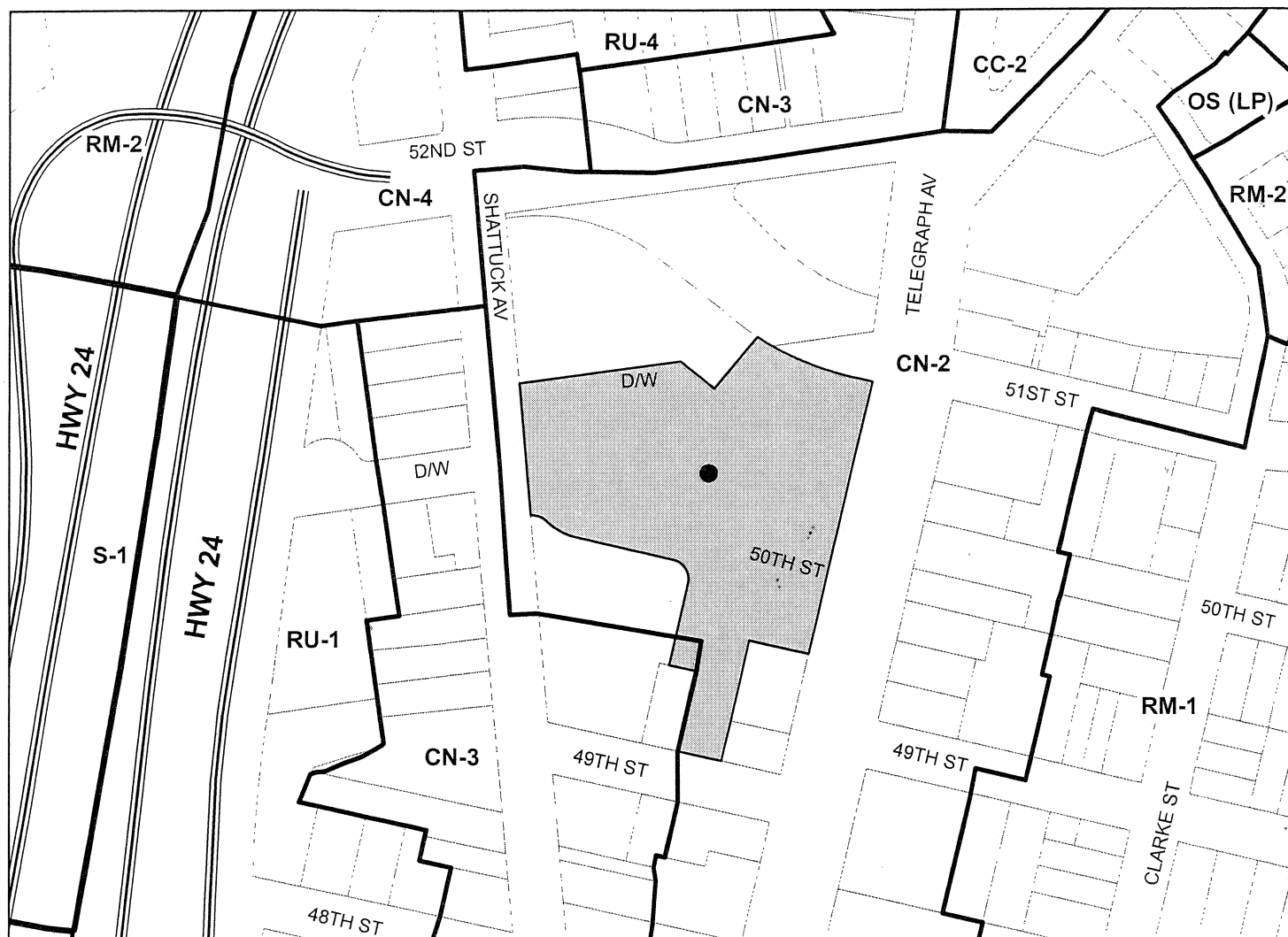
The appeal fails to correctly cite any error or abuse of discretion by the Zoning Manager, or where the decision is not supported by appropriate evidence in the record, and therefore, staff recommends the Planning Commission deny the Appeal and uphold the Zoning Manager's Determination.

## **BACKGROUND**

On April 5, 1995 the City approved a 158 space parking lot along with the Temescal Plaza Shopping Center, in an area previously used for parking by neighboring businesses. Condition 14 was added to PUDVMC94-219 limiting the reduction of parking time limits below 2 hours and requiring Zoning Manager approval (or on appeal, Planning Commission approval) for reducing spaces to less than 2 hour parking in order to preserve some community parking for the greater shopping district.

In May and June 2012 the shopping center restriped 25 spaces near the entrance for half-hour parking. The neighboring businesses did challenge the additional 25 short-term spaces near the Center entrance as reducing their parking access below an acceptable level. Condition 14e requires that the Merchants Association agree to such reduction near the entry.

# CITY OF OAKLAND PLANNING COMMISSION



Case File: A12-130  
Applicant: Josh Reed  
Address: 5095 Telegraph Avenue (Temescal Plaza)  
Zone: CN-2

While parking distant from the entry and the Temescal businesses, at the back of the shopping center, might not have needed such agreement, the Zoning Manager determined in DET12-038 that adding 25 short-term spaces in the front did violate Condition 14e. (See Attachment A, the July 6, 2012 Determination letter DET12-038).

The shopping center management appealed on July 16, 2012, stating that the drug store and other merchants needed more high-turnover short-term parking to serve their customers. Implicit in their statement was moving Temescal merchant customer parking further back from Telegraph Avenue to the back of the 158-space parking area, a longer walk for merchant customers.

### **PROPERTY DESCRIPTION AND NEARBY LAND USES**

The shopping center was built in the mid-1990's with two sets of one story commercial spaces bracketing surface parking areas. The drug store is closest to Telegraph Avenue, with the Temescal Post Office in the back and various restaurants, gift shops and service businesses in between. Across Telegraph Avenue is the Temescal Merchants Association area, including restaurants (Bake Sale Betty's, a pizza parlor, a Mexican restaurant), shops (Sagrada etc.) and the mall shops in the Waite properties behind the first row of stores. Temescal is a renaissance area with many new businesses in the past 15 years. Beyond these two areas are low and midrise residential areas. Koreatown/Northgate is to the south along Telegraph Avenue, and Rockridge is to the north.

### **ENVIRONMENTAL DETERMINATION**

The California Environmental Quality Act (CEQA) Guidelines statutorily and categorically exempts specific types of projects from environmental review. Section 15321 categorically exempts enforcement actions by regulatory agencies. The determination letter indicating a legal nonconforming land use had lapsed pursuant to the City's Planning Code conforms to these Sections and hence the action is exempt from Environmental Review.

### **APPEAL DESCRIPTION**

The owner appealed the Zoning Manager's letter on July 16, 2012 (Attachment B). This action is treated as an administrative appeal of a determination made by the Zoning Manager, pursuant to the Planning Code's Administrative Appeal Procedures section (OMC Sec. 17.132). The Appellant's sole reason for appeal is that the drug store needs more high turnover spaces and the Appellant does not wish to file an amendment or revision (REV) request to hear a condition change.

### **STAFF'S RESPONSE TO APPEAL**

The Planning Code's Administrative Procedures generally describes the procedure for appeal of a Determination of the Zoning Manager: "the appeal must cite *error or abuse of discretion* by the Zoning Manager, or where their decision is not supported by the evidence in the record." The Planning Commission considers the appeal in light of the intent of the applicable Zoning Ordinance, and the decision is final (non-appealable).

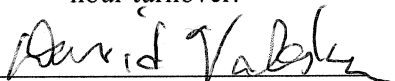
The following are staff's responses to the applicant's bases for appeal:

Condition 14 of PUDVCMD94-219 states that the applicant must retain spaces near the main driveway on Telegraph Avenue for 2 hour turnover, implicitly to allow convenient customer access for Temescal Merchants across Telegraph Avenue. By removing 25 2-hour spaces from this area, the shopping center has not met the conditions of the entitlement, and did not follow proper amendment procedure so that the Planning Commission could hear both sides and make a change. The appeal only challenges the need, but does not dispute the facts of the condition. Since they did not follow the mechanism the Planning Commission established in the 1995 approval, the argument of the appellant is moot. There are other paths as well, such as filing for a revision to the 1995 permit to modify the condition to allow more flexibility. The appellant did not pursue any of these strategies, they simply added the signage to the parking lot without seeking approval beforehand. Therefore, the determination by the Zoning Manager was the correct one and staff believes the appeal should be rejected as groundless. If the appellant wishes to adjust who can park in their parking lot for how long, there are some clear paths to pursuing such a change to the parking lot restrictions.

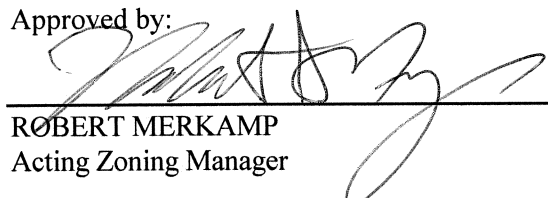
**RECOMMENDATIONS:**

1. Affirm the environmental determination;
2. Deny the Appeal, thereby upholding the Zoning Manager's Determination, and confirming that the applicant must return the 25 spaces near Telegraph Avenue to 2 hour turnover.

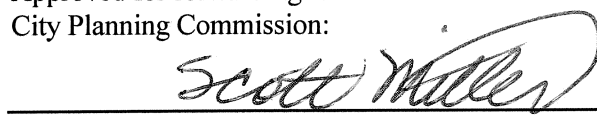
Prepared by:

  
DAVID VALESKA  
Planner II

Approved by:

  
ROBERT MERKAMP  
Acting Zoning Manager

Approved for forwarding to the  
City Planning Commission:

  
SCOTT MILLER  
Interim Planning and Zoning Director

**ATTACHMENTS:**

- A. Zoning Manager's Determination letter dated July 6, 2012
- B. Appeal letter dated July 16, 2012 with Exhibits
- C. Neighbor & Merchants Correspondence
- D. Previous Conditions of Approval



**LEGAL NOTICE:** This action of the Planning Commission is final and is not administratively appealable. Any party seeking to challenge such decision in court must do so within ninety (90) days of this decision, unless a different date applies.



**CITY OF OAKLAND**  
**PLANNING & ZONING SERVICES DIVISION**  
250 Frank H. Ogawa Plaza, Suite 2114, Oakland, CA 94612-2031  
Phone: 510-238-3911 Fax: 510-238-4730

To: John Dobrovich  
Assistant General Counsel  
LRICO Services LLC  
1275 Inglewood Avenue  
St. Helena, CA 94574

July 6, 2012

Re: 5095 Telegraph Avenue, Temescal Plaza Shopping Center (APN: 013-1154-009-05)  
Planning Application: DET12-038.

You inquired whether a 158-space shopping center parking lot authorized on April 5, 1995 by City approval PUDVMCMD94-219 may convert 25 parking spaces from 2 hour or longer occupancy to 30-minute occupancy in the area immediately along the Telegraph Avenue driveway (in addition to 17 quarter-hour and half-hour spaces approved by DET08-055 on August 12, 2008).

Staff concludes from evidence on file that the 25 additional parking spaces at the Telegraph Avenue driveway recently converted to half-hour spaces may NOT be converted from two-hour to half-hour spaces. This conversion was done without the benefit of any permit and is in direct violation of conditions of approval 14d and 14e of PUDVMCMD94-219. You are directed to restore the 25 spaces already converted to two-hour spaces within 30 days of the date of this letter.

Condition 14d of PUDVMCMD94-219 states that "If in the future the owner determines that it is necessary to request a limit of some parking to less than two (2) hours, the property owners located within 300 feet of the project shall be notified and the request shall be subject for approval to the Director of City Planning with an appeal to the City Planning Commission, if necessary."

While your DET12-038 application submits for approval of the Director as required, the Director's ability to grant your request is limited by the following Condition 14e:

"In any event, the owner will always maintain a minimum of 55 contiguous parking spaces for all shopping customers, which 55 spaces shall provide a minimum of two hour parking. Unless otherwise agreed to by the owner, the Director of City Planning, and the representatives of the Temescal Merchants Association, such 55 parking stalls will be located in the parking stalls on both sides (north/south) of the Telegraph Avenue entrance to the project (the former) 50<sup>th</sup> Street and in their nearest contiguous parking area (See Attachment B, Site Plan)."

The 25 spaces proposed for half-hour parking (and in fact installed as such without City approval) displace the minimum contiguous two-hour spaces specified by Condition 14e. In addition, Planning and Zoning staff received a letter dated June 11, 2012 from the President of the Temescal Merchants Association specifically NOT agreeing to locating more half-hour spaces along the driveway. Given the status of these 25 spaces, you are in violation of Condition of Approval 14. As stated above, correction to this violation should be made within 30 days, or formal compliance action will be initiated by the City.

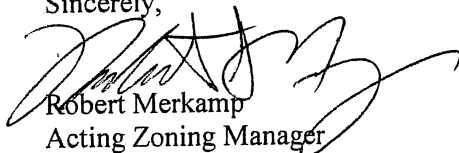
**ATTACHMENT A: Zoning Manager's Determination letter dated July 6, 2012**

If you wish to amend conditions of the approval you may file for a Revision (REV) to the 1995 entitlement PUDVMCMD94-219, which requires a public hearing before the Planning Commission. This requires approximately two-months time and a filing fee to the City Cashier of \$1,803.87 is required. Staff cannot indicate at this time whether or not staff would support the request.

If you, or any interested party, seeks to challenge this decision, an appeal **must** be filed by no later than ten calendar (10) days, adjusted for July 13, 2012 furlough day, from the announcement of the decision by **4:00 pm on Monday, July 16, 2012**. An appeal shall be on a form provided by the Planning and Zoning Division of the Community and Economic Development Agency, and submitted to the same at 250 Frank H. Ogawa Plaza, Suite 2114, to the attention of David Valeska, Planner II. The appeal shall state specifically wherein it is claimed there was error or abuse of discretion by the Zoning Manager or wherein the decision is not supported by substantial evidence and must include payment of \$1,352.91 in accordance with the City of Oakland Master Fee Schedule. Failure to timely appeal will preclude you, or any interested party, from challenging the City's decision in court. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record which supports the basis of the appeal; failure to do so may preclude you, or any interested party, from raising such issues during the appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented to the Zoning Manager prior to the Zoning Manager's action on the matter.

If you have further questions regarding this matter, please contact David Valeska, Planner II, at (510) 238-2075.

Sincerely,



Robert Merkamp  
Acting Zoning Manager

Cc: Temescal Merchants Association  
Property owners & businesses within 300 feet of  
Telegraph Avenue at the main Center driveway  
Scott Miller, Interim Director, Planning, Building &  
Neighborhood Preservation Department  
Heather Lee, City Attorney's Office

Attachment: Conditions of Approval for Original Permit

L:\common files\Dave V\det12038temescal

April 5, 1995

duration, that restriction shall apply to all parking stalls except to those 20 spaces north of Store A and the first 13 spaces on the east side of the 49th Street entry as per site plans submitted on February 27, 1995. Those 33 spaces will not be designated for employee parking but may be excluded from any two (2) hour or more limit restrictions and enforcement.

- d) If in the future the owner determines that it is necessary to request a limit of some parking to less than two (2) hours, the property owners located within 300 feet of the project shall be notified and the request shall be subject for approval to the Director of City Planning with an appeal to the City Planning Commission, if necessary.
  - e) In any event, the owner will always maintain a minimum of 55 contiguous parking spaces for all shopping customers, which 55 spaces shall provide a minimum of two hour parking. Unless otherwise agreed to by the owner, the Director of City Planning, and the representatives of the Temescal Merchants Association, such 55 parking stalls will be located in the parking stalls on both sides (north/south) of the Telegraph Avenue entrance to the project (the former) 50th Street and in their nearest contiguous parking area. (See Attachment B, Site Plan.)
- 15. All graffiti on the building shall be removed with the identical color paint of the building within 72 hours of application of the graffiti.
  - 16. There shall be no exterior pay telephones along the public right-of-way. Pay telephones shall be allowed only upon review and approval by the Director of City Planning and shall be within view and supervision of an on-site employee. The manager of the restaurant shall be responsible for use of any pay telephones on the site and shall discourage use of the telephones for illegal activities.
  - 17. That a landscape and irrigation plan shall be prepared by a licensed landscape architect or other qualified person and submitted for review and approval to the Director of City Planning prior to issuance of building permits; that such plan include a planting schedule detailing plant types and locations and a system for irrigation of plantings; that the planting include the provision of 15 gallon size coast live oak trees as shown on the landscaping plan submitted on February 27, 1995; that all landscaping and irrigation be installed prior to final building permit inspection; and that all landscaping be permanently maintained in a neat, safe and healthy condition.

July 16, 2012

To: City Planning Commission, Oakland, CA  
c/o David Valeska, Planner II  
Planning and Zoning Division of the Community  
and Economic Development Agency  
250 Frank H. Ogawa, Suite 2114  
Oakland, CA 94612-2031

Re: DET 12-038: Temescal Plaza Shopping Center, 5095 Telegraph Avenue

Dear Commission Members:

Temescal Plaza, LLC ("**Temescal Plaza**") hereby appeals the decision of the City of Oakland Planning & Zoning Services Division (the "**City PZSD**") denying Temescal Plaza's request to redesignate twenty-five (25) parking spaces at its Temescal Plaza Shopping Center (the "**Shopping Center**") from two-hour to half-hour spaces. The City PZSD erred in its interpretation of the applicable PUD and the City PZSD's decision is not supported by the substantial evidence in the record.

On June 6, 2012, Temescal Plaza submitted its request (the "**Request**") to the City PZSD to redesignate 25 parking spaces at the Shopping Center from two-hour to half-hour spaces. A complete copy of the Request and all enclosures is attached hereto. Temescal Plaza submitted its Request pursuant to PUDVMCMD94-219 (the "**PUD**"). On or about July 3, 2012, the City PZSD denied Temescal Plaza's Request, by letter sent via email to Temescal Plaza (the "**Denial**", a copy of which is attached hereto).

The sole basis for the City PZSD's Denial was its erroneous conclusion that the additional 25 half-hour parking spaces requested would "displace the minimum contiguous two-hour spaces specified by Condition 14e [of the PUD]." (See Denial, ¶ 6.) In other words, the City erroneously concluded that by adding the 25 half-hour spaces, Temescal Plaza failed to meet Condition 14e, which requires that there be at least 55 two-hour parking spaces in the parking areas identified in Condition 14e. It should be noted that the City PZSD's Denial provided no basis, reasoning or explanation for its conclusion that Temescal Plaza failed to maintain the 55 two-hour space minimum.

To the contrary, Temescal Plaza easily satisfied Condition 14e and the City PZSD's Denial must be reversed. Condition 14e very plainly identifies an area of the Shopping Center that contains more than enough two-hour parking spaces to satisfy the 55 minimum and still meet Temescal Plaza's half-hour space requirements. Indeed, the areas identified in Condition 14e includes the majority of the Shopping Center parking spaces.

Condition 14e states in relevant part:

[T]he owner [Temescal Plaza] will always maintain a minimum of 55 contiguous parking spaces for all shopping customers, which 55 spaces shall provide a minimum of two hour parking. Unless otherwise agreed to ... such 55 parking stalls will be located in the parking stalls on both

sides (*north/south*) of the *Telegraph Avenue entrance* to the project (*the former*) *50th Street* and in their nearest contiguous parking area. (See Attachment B, Site Plan.)

(See PUD (emphasis added).) Dictionary.com defines “contiguous” as “touching; in contact” or “*in close proximity* without actually touching; *near*.” (See <http://dictionary.reference.com/browse/contiguous?s=t>. (emphasis added).)

By looking at the Site Map of the current parking available at the Shopping Center (please see Site Map enclosed with Temescal Plaza’s Request and attached hereto), one can plainly identify at least 76 parking spaces “on both sides (north/south)” of the Telegraph Avenue entrance and along “the former 50th Street”. Additionally, one can identify at least another 74 two-hour (or longer) parking spaces in the “contiguous parking areas” thereto. Therefore, there are at least 150 parking spaces included in the area identified by Condition 14e and after redesignating the 25 half-hour spaces identified in Temescal Plaza’s Request, at least 96 two-hour (or longer) parking spaces remain in the Condition 14e area (please see Site Map). This is more than sufficient to meet the 55 space minimum.

Temescal Plaza has included the following Attachments in support of this appeal and the analysis above, each of which is also part of the public record:

1. Temescal Plaza’s June 6, 2012 Request, with the flowing enclosures:
  - a. Site Plan
  - b. Photos of subject area
  - c. PUDVMCMD94-912 dated April 5, 1995
  - d. August 12, 2008 Confirmation of Zoning & Plan Designation
  - e. August 27, 2008 Confirmation of Zoning & Plan Designation
  - f. Memorandum of Third Lease Amendment, dated January 16, 2012, between Temescal Plaza, LLC and Walgreen Co.
2. City PZSD’ July 3, 2012 Denial

Temescal Plaza respectfully submits that the City PZSD erred in its conclusion that Temescal Plaza violated Condition 14e by redesignating only 25 half-hour spaces at the Shopping Center and requests the City Planning Commission reverse the City PZSD’s Denial and approve Temescal Plaza’s Request. Please contact me directly should you require additional information. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Dobrovich', with a stylized, overlapping loop structure.

John Dobrovich  
Assistant General Counsel  
LRICO Services, LLC  
1275 Inglewood Avenue  
St. Helena, CA 94574  
(707) 948-2688  
[John.Dobrovich@LRICO.com](mailto:John.Dobrovich@LRICO.com)



CITY OF OAKLAND  
PLANNING & ZONING SERVICES DIVISION  
250 Frank H. Ogawa Plaza, Suite 2114, Oakland, CA 94612-2031  
Phone: 510-238-3911 Fax: 510-238-4730

**Administratively Revise a Condition of Approval  
Confirmation of Zoning & General Plan Designation**

Date: August 27, 2008  
To: Jon Bowman for Temescal Plaza  
68 Coombs Street, Suite C-1  
Napa, CA 94559  
Re: 5095 Telegraph Avenue (APN: 013-1154-009-05)  
Planning Application: DET08-055.

This Zoning Determination is effective now that the public notice period has concluded with no appeals or comments; implementation may require building permits or other City approvals, however, the Planning approval is given herein.

You asked to modify condition 14(d) of City approval PUDVMCMD94-219, the spaces are to be 2 hour spaces unless "if in the future the owner determines that it is necessary to request a limit of some parking to less than two (2) hours, the property owners located within 300 feet of the project shall be notified and the request shall be subject for approval to the Director of City Planning with an appeal to the City Planning Commission if necessary."

The City of Oakland Planning and Zoning Division finds that:

1. If fifteen (15) spaces adjacent to the 14,370 square foot drug store are converted to one-half hour time limits, one-hundred thirty-three (133) other spaces will remain with two (2) hour or longer limits for other customers of approximately 30,000 square feet elsewhere in the center. Thus only one-tenth of the parking spaces are effected by the change.
2. The nature of pharmacy medicine pickups is that shorter rather than longer parking times are practiced. If the pharmacy allowed two (2) hour time limits for customers, which are a substantial part of its clientele, then many medicine pickup customers would have to walk from the far end of the parking lot or during busy periods, from offsite street parking, to pickup medicine. This is an unfair burden for such customers, many of whom are ill or aged or escorting small children. Therefore, allowing some short-term parking is more equitable.
3. Other land uses such as post offices, City Halls, utility payment offices and similar uses often have rows of short-term parking for their brief-errand customers, so there is a precedent for a pharmacy to need the same accommodation for customers.

**Det08-055: 5095 Telegraph Avenue**  
**August 27, 2008**

**Page 2**

If you have further questions regarding this matter, please contact David Valeska, Planner II, at (510) 238-2075.

Sincerely,






David Valeska  
Planner II

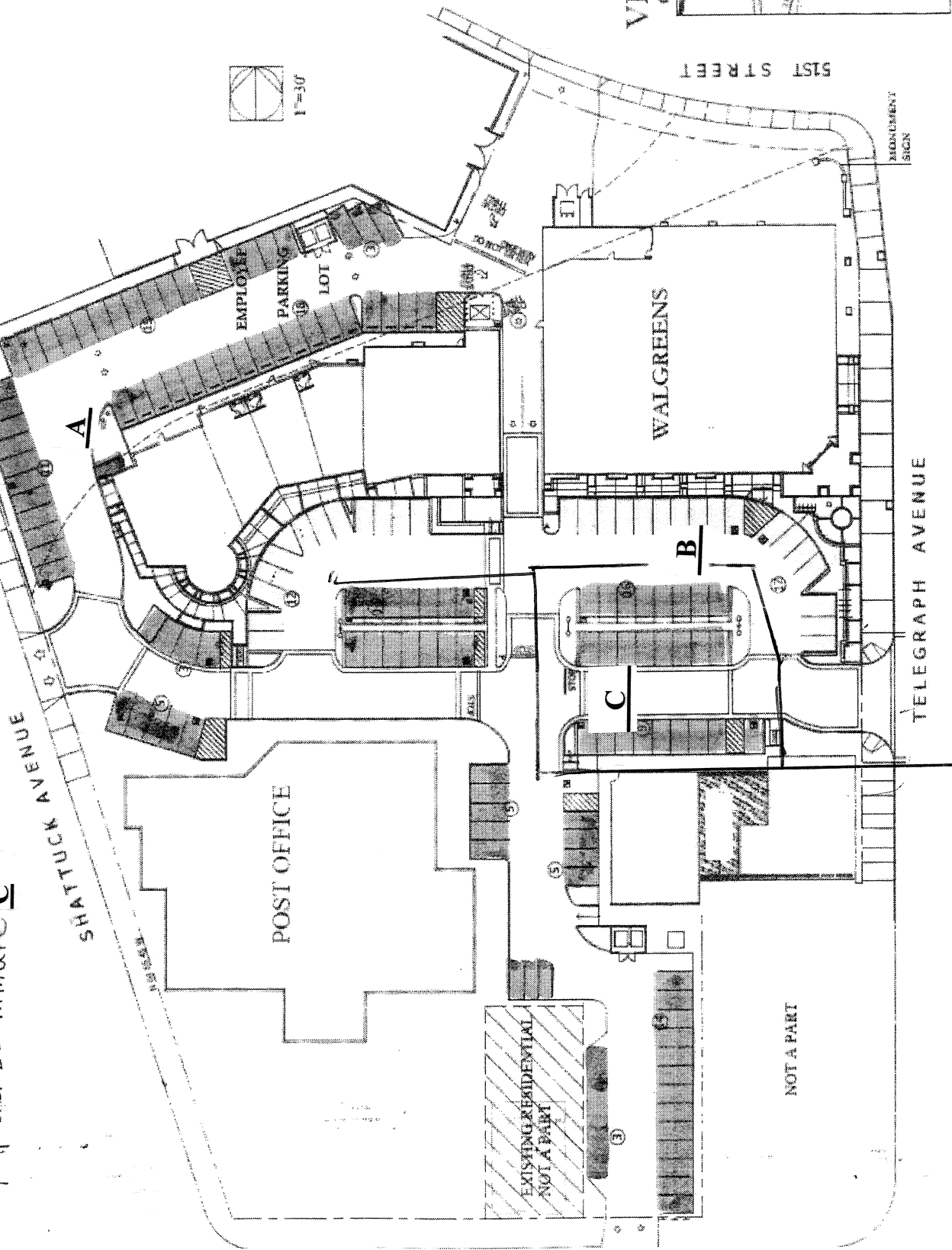
Per Det08-055 signed by  
Scott Miller  
Zoning Manager

L:\common files\Dave V\det08-055two



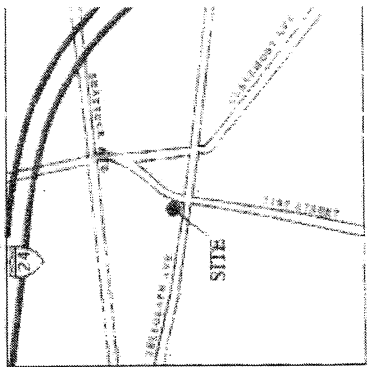
# TEMESCAL PLAZA

-  existing 2-hour A
-  existing 30-minute B
-  proposed 30-minute C



## VICINITY MAP

OAKLAND, CA









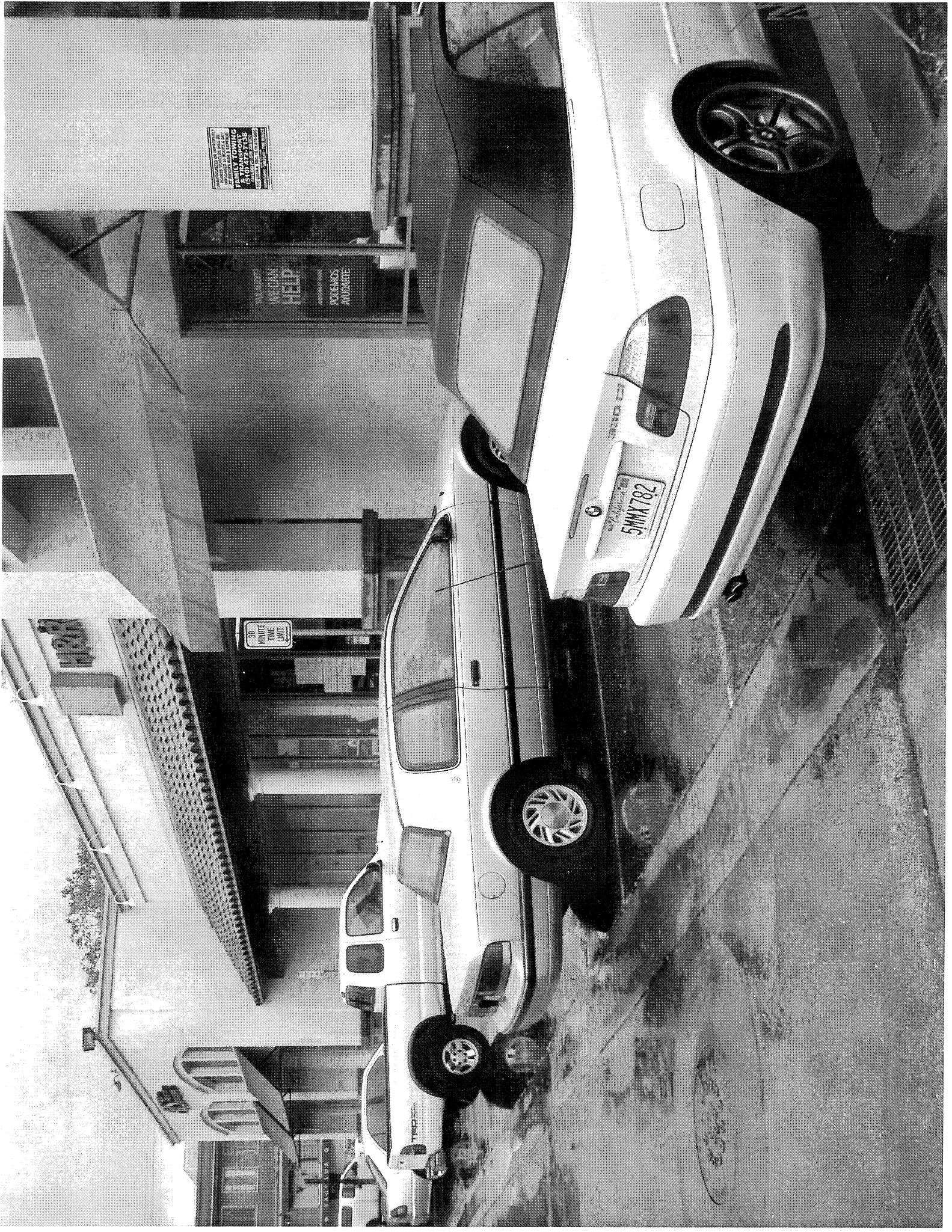




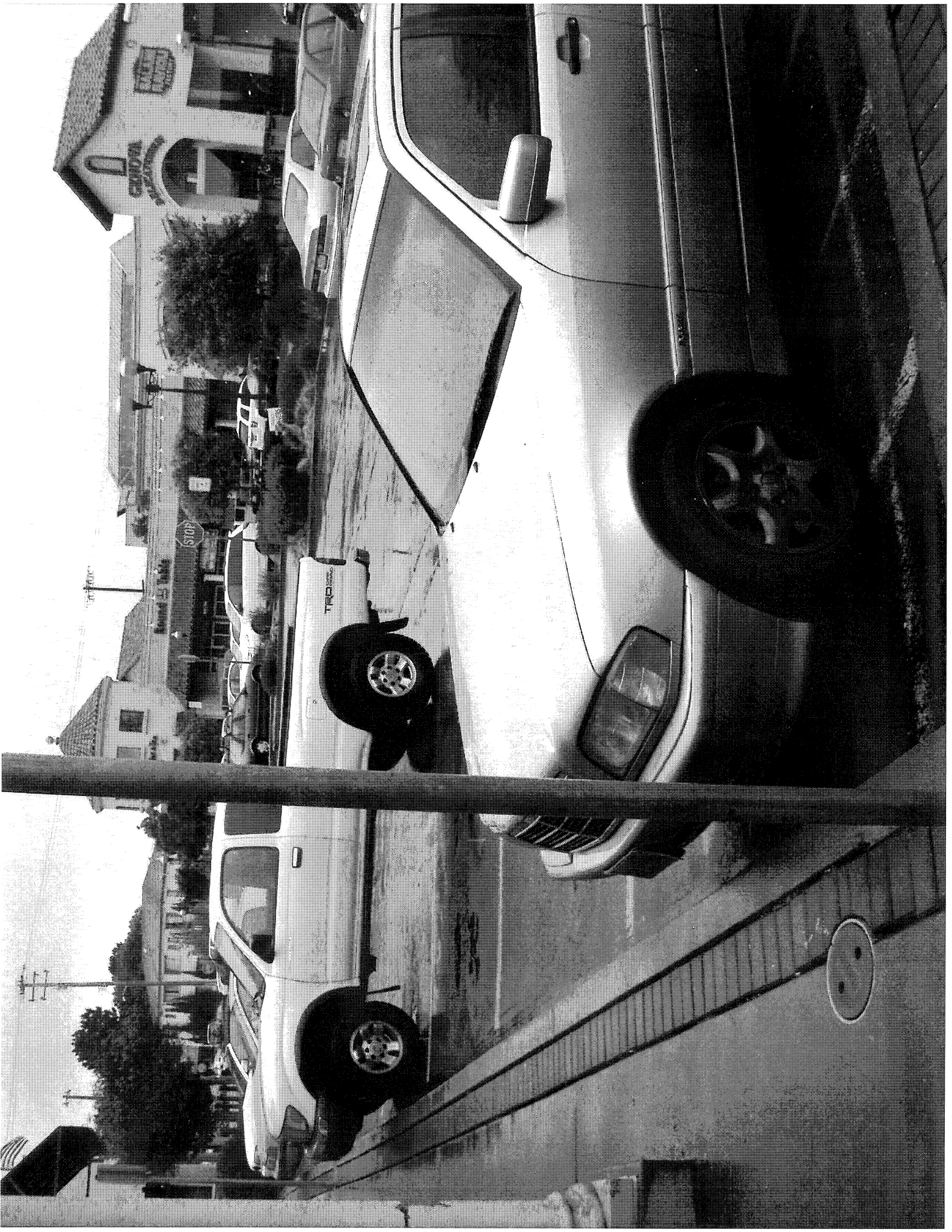


















*By Hand Delivery*

June 6, 2012

City of Oakland  
Planning & Zoning Services Division  
250 Frank H. Ogawa, Suite 2114  
Oakland, CA 94612-2031  
Attn: Director of City Planning

RE: Temescal Plaza Shopping Center, Southwest Corner of 51<sup>st</sup> and Telegraph Avenue ("Shopping Center") - DET 12-038

Dear Sir or Madam:

I represent Temescal Plaza, LLC ("Owner"), the owner and operator of the Shopping Center referenced above. Owner hereby submits its request for your approval of Owner's redesignation of 25 parking spaces located at the Shopping Center from two-hour parking to one-half hour parking spaces. This request is made pursuant to condition 14(d) of PUDVMCMD94-912 dated April 5, 1995 (the "PUD"), for the Shopping Center (a copy of which is enclosed). Owner has enclosed a site map of the Shopping Center, which identifies the 25 additional one-half hour spaces in orange, as well as photos of the subject area.

There are an insufficient number of one-half hour parking spaces at the Shopping Center. Only 29 of the total 154 public parking spaces are one-half hour spaces. The additional 25 spaces will increase the availability of parking and allow more customers to access the stores, which will greatly benefit the tenants of the Shopping Center.

Walgreens is the anchor tenant at the Shopping Center and leases the largest space at approximately 14,370 square feet. On January 16, 2012, Owner executed an amendment of lease with Walgreens, wherein Owner agreed to designate the additional 25 one-half hour parking spaces, which are located in the parking area immediately adjacent to the Walgreens store. The lease amendment was recorded on April 3, 2012 with the County of Alameda, a copy of which is enclosed for your reference.

The City of Oakland Planning and Zoning Division has previously recognized that "the nature of pharmacy medicine pickups is that shorter rather than longer parking times are practiced." (See enclosed August 27, 2008 Confirmation of Zoning & Plan Designation.) Indeed, this is true for nearly all shoppers at Walgreens, who generally spend less than 30 minutes in the store, and do not require two-hour parking. Further, as noted below, there would still be more than 100 two hour public parking spaces at the Shopping Center for any customers requiring additional time at Walgreens or any other store.

There has been no objection to the additional one-half hour parking from the other tenants of the Shopping Center. To the contrary, all the tenants will benefit, including, for example, the United States Post Office and Peet's Coffee, whose customers also require quick and easy access.

With the addition of 25 one-half hour spaces, at least 60 two hour (non-employee permitted) spaces will still remain in the contiguous Shopping Center parking area, which exceeds the 55 space minimum number of two hour spaces required, without amending the PUD. This is in addition to the 33 separate employee-permitted public parking spaces at the Shopping Center. In other words, after the addition of

25 one-half hour spaces, more than 100 two hour public parking spaces will still remain at the Shopping Center.

Please contact me directly should you require additional information. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Dobrovich', written over a horizontal line.

John Dobrovich  
Assistant General Counsel  
LRICO Services, LLC  
1275 Inglewood Avenue  
St. Helena, CA 94574  
(707) 948-2688  
*John.Dobrovich@LRICO.com*

cc: Steven Kay, Esq.

Enclosures:

1. Site Plan
2. Photos of subject area
3. PUDVMCMD94-912 dated April 5, 1995
4. August 12, 2008 Confirmation of Zoning & Plan Designation
5. August 27, 2008 Confirmation of Zoning & Plan Designation
6. Memorandum of Third Lease Amendment, dated January 16, 2012, between Temescal Plaza, LLC and Walgreen Co.
7. \$400.00 review fee

*By Overnight Courier and Email (carlo@sagrada.com)*

August 22, 2012

Temescal Merchants Association  
c/o Sagrada  
4926 Telegraph Ave.  
Oakland, CA 94609  
Attn: Mr. Carlo Busby, President

RE: Temescal Plaza Shopping Center, Southwest Corner of 51<sup>st</sup> and Telegraph Avenue (the  
"Shopping Center") - DET 12-038

Dear Mr. Busby:

Temescal Plaza, LLC ("Temescal Plaza") would like to suggest a compromise to resolve the parking situation at our Shopping Center, as further detailed below. Additionally, Temescal Plaza has in good faith returned the 25 parking spaces at issue back to two-hour spaces, while our Appeal is pending before the City Planning Commission.

We have negotiated an alternative agreement with our tenant Walgreens to allow for additional half-hour parking at the Shopping Center, while still incurring no change in the current number of two-hour spaces during the evening hours, to accommodate the dinner crowds at the neighboring restaurants in the District. Temescal Plaza hereby requests the consent of the Merchants Association for the following alternative parking designation:

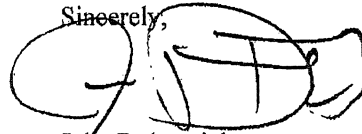
- The 25 parking spaces at issue (as identified in the Site Plan included in the attached Appeal) will be designated as half-hour parking spaces only between the hours of 8 am to 6 pm (seven days a week).
- Between the hours of 6 pm to 8 am, the 25 spaces will remain two-hour restricted spaces.
- This will allow the surrounding restaurants in the District to make use of the longer two-hour spaces during the dinner hours, while still helping to meet the parking needs of our tenants at the Shopping Center during business hours.

We hope that this compromise will be agreeable to the Merchants Association.

As you are aware, on July 16, 2012, Temescal Plaza filed its appeal (the "Appeal") of the City of Oakland Planning & Zoning Services Division's denial of our request to designate the 25 parking spaces as half-hour parking (a complete copy of the Appeal is attached for your convenience). As we expect the Appeal to be heard in early October 2012, by the Planning Commission, we ask that you please respond to this request for consent by August 31, 2012, to allow sufficient time to resolve this issue with the City prior to the hearing.

Please contact me directly if you have any questions or wish to discuss. We are happy to meet with you as well. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Dobrovich', written over a faint, stylized outline of a person's head and shoulders.

John Dobrovich  
Assistant General Counsel  
LRICO Services, LLC  
1275 Inglewood Avenue  
St. Helena, CA 94574  
(707) 948-2688  
*John.Dobrovich@LRICO.com*

cc: David Valeska, Planner II (*DValeska@oaklandnet.com*)

Enclosure

# Temescal

## MERCHANTS ASSOCIATION

John Dobrovich  
Assistant General Counsel  
LRICO Services LLC  
1275 Inglewood Ave.  
St. Helena CA 94574

September 26, 2012

Dear Mr. Dobrovich,

Since your letter and proposal of August 22nd, you as the representative for the Temescal Plaza and I as the representative of the Temescal Merchants Association have been unable to find a mutually workable date for you to meet with our Parking Committee to discuss that proposal. As I suggested when we meet briefly the other day, I have instead circulated the proposal among the committee members by email and solicited their views.

At this time I can summarize our response as twofold:

1. The decision by Temescal Plaza to appeal the determination by the City should be denied by the Planning Commission as that Determination correctly concluded that the Plaza's action, followed by the request to restrict certain parking spaces to short-term parking, was prohibited by the CUP. The application of the regulation to the facts of the matter was exactly right.
2. The proposal in your letter would make those same spaces short-term until 6:00 pm to benefit the evening activity of the restaurants in the area. This fails to take into account that such a restriction would be especially harmful to all the retail shops and businesses with customers who can only shop the daytime hours in which they conduct business; the short-term parking primarily benefiting a single tenant, Walgreens, whereas the clear intent of the CUP is that the parking benefit is intended for customers of all the merchants in the Temescal district.

The offer to make those identified spaces into 30 minutes in the daytime hours and 2 hours at night cannot be agreed to by our members.

Sincerely,



Carlo Busby  
President, Temescal Merchants Association  
c/o SAGRADA 4926 Telegraph Ave  
Oakland CA 94609  
510-653-7196  
carlo@sagrada.com

cc: Robert Merkamp  
Scott Miller, Interim Director, Planning  
David Valeska, Planner II

**ATTACHMENT C: Neighbor & Merchants Correspondence**

TELEGRAPH AVENUE • 40TH - 55TH STREET • OAKLAND, CALIFORNIA

April 5, 1995

10. That the applicant is prohibited from sub-leasing for a period of 90 days after the vacation by Genova's Delicatessen the commercial property at 4937 Telegraph Avenue to a business engaged in alcoholic beverage sales.
11. That the applicant submit for review and approval to the Director of City Planning a comprehensive sign plan consistent with the limitations set forth in Sections 4438, 7041 and the Design Review Criteria under Section 9300 prior to issuance of building permits.
12. That any and all exterior signs, landscaping and irrigation, colors and materials, building lighting plans, parking lot lighting, screening of mechanical or roof equipment, the provision of windows on the Walgreen's facade on Telegraph Avenue and any other changes to the exterior appearance (including props/signs visible through the windows) of the storefront shall be approved by the Director of City Planning prior to issuance of building permits. All permanent and temporary signs shall be subject to the provisions of Section 7040(g) of the Zoning Regulations and that window signs shall be limited to an area of 10% of the window pane. The applicant shall make a reasonable good effort to obtain approval from Temescal Neighborhood Together (TNT) prior to submitting said plans to the Director of City Planning.
13. That the hours of operation shall be limited to between 7:00 A.M. and 9:00 P.M. Monday through Sunday. Further, that the Commission may modify the hours of operation after holding a public hearing.
14. All parking spaces on the project shall be available in perpetuity on the following terms:
  - a) All parking spaces shall be available free of charge to the customers of all the Temescal merchants in the Temescal Shopping District and a sign to that effect shall be installed at the entrances on Telegraph Avenue, Shattuck Avenue, 49th and 51st Streets. The design of said sign shall be submitted for review and approval to the Director of City Planning prior to issuance of building permits. That the applicant shall make a reasonable good effort to obtain approval from Temescal Neighborhood Together (TNT) prior to submitting said plans to the Director of City Planning.
  - b) There shall be no dedication or designations of any particular parking spaces for any particular individual tenant, as all spaces shall be available to all customers (except for required disabled parking spaces).
  - c) The owner of the shopping center shall have the right to limit the duration of parking by restricting parking to two (2) hours or greater and all parking restrictions shall be enforced. If there is such a restriction on

April 5, 1995

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11. That the applicant submit for review and approval to the Director of City Planning a comprehensive sign plan consistent with the limitations set forth in Sections 4438, 7041 and the Design Review Criteria under Section 9300 prior to issuance of building permits.
12. That any and all exterior signs, landscaping and irrigation, colors and materials, building lighting plans, parking lot lighting, screening of mechanical or roof equipment, the provision of windows on the Walgreen's facade on Telegraph Avenue and any other changes to the exterior appearance (including props/signs visible through the windows) of the storefront shall be approved by the Director of City Planning prior to issuance of building permits. All permanent and temporary signs shall be subject to the provisions of Section 7040(g) of the Zoning Regulations and that window signs shall be limited to an area of 10% of the window pane. The applicant shall make a reasonable good effort to obtain approval from Temescal Neighborhood Together (TNT) prior to submitting said plans to the Director of City Planning.
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  - a) All parking spaces shall be available free of charge to the customers of all the Temescal merchants in the Temescal Shopping District and a sign to that effect shall be installed at the entrances on Telegraph Avenue, Shattuck Avenue, 49th and 51st Streets. The design of said sign shall be submitted for review and approval to the Director of City Planning prior to issuance of building permits. That the applicant shall make a reasonable good effort to obtain approval from Temescal Neighborhood Together (TNT) prior to submitting said plans to the Director of City Planning.
  - b) There shall be no dedication or designations of any particular parking spaces for any particular individual tenant, as all spaces shall be available to all customers (except for required disabled parking spaces).
  - c) The owner of the shopping center shall have the right to limit the duration of parking by restricting parking to two (2) hours or greater and all parking restrictions shall be enforced. If there is such a restriction on

April 5, 1995

duration, that restriction shall apply to all parking stalls except to those 20 spaces north of Store A and the first 13 spaces on the east side of the 49th Street entry as per site plans submitted on February 27, 1995. Those 33 spaces will not be designated for employee parking but may be excluded from any two (2) hour or more limit restrictions and enforcement.

- d) If in the future the owner determines that it is necessary to request a limit of some parking to less than two (2) hours, the property owners located within 300 feet of the project shall be notified and the request shall be subject for approval to the Director of City Planning with an appeal to the City Planning Commission, if necessary.
  - e) In any event, the owner will always maintain a minimum of 55 contiguous parking spaces for all shopping customers, which 55 spaces shall provide a minimum of two hour parking. Unless otherwise agreed to by the owner, the Director of City Planning, and the representatives of the Temescal Merchants Association, such 55 parking stalls will be located in the parking stalls on both sides (north/south) of the Telegraph Avenue entrance to the project (the former) 50th Street and in their nearest contiguous parking area. (See Attachment B, Site Plan.)
15. All graffiti on the building shall be removed with the identical color paint of the building within 72 hours of application of the graffiti.
16. There shall be no exterior pay telephones along the public right-of-way. Pay telephones shall be allowed only upon review and approval by the Director of City Planning and shall be within view and supervision of an on-site employee. The manager of the ~~restaurant~~ shall be responsible for use of any pay telephones on the site and shall discourage use of the telephones for illegal activities.
17. That a landscape and irrigation plan shall be prepared by a licensed landscape architect or other qualified person and submitted for review and approval to the Director of City Planning prior to issuance of building permits; that such plan include a planting schedule detailing plant types and locations and a system for irrigation of plantings; that the planting include the provision of 15 gallon size coast live oak trees as shown on the landscaping plan submitted on February 27, 1995; that all landscaping and irrigation be installed prior to final building permit inspection; and that all landscaping be permanently maintained in a neat, safe and healthy condition.



CITY OF OAKLAND



CITY HALL • ONE CITY HALL PLAZA • OAKLAND, CALIFORNIA 94612

City Planning Commission

TDD 839-6451

October 18, 1995

Paul Smith  
2682 Bishop Dr. #206  
San Ramon, CA. 94583

RE: Case File PUDF95-166 (PUD94-219/ER94-32) - 5011 Telegraph Ave. (formerly Vern's Market).

Dear Mr. Smith:

Your application as noted above was approved at the City Planning Commission meeting on: October 18, 1995.

Commission action is indicated below. This action becomes final ten (10) days from the date of the Commission action unless an appeal to the City Council is filed by: October 30, 1995.

Appeals may be made to the City Council, at any time before that date on a form provided by the Office of Planning and Building and filed with the City Clerk.

If there is an appeal, Council members or citizens may have questions regarding this case. It is therefore advisable that you inquire of the City Clerk, on the above date or as soon thereafter as possible, whether or not the matter is set to be reviewed by the City Council.

( X ) Granted with required conditions. - (Vote: 5 ayes, 0 noes - to approve)

For your convenience a compliance table, a chart showing how to satisfy each condition of approval, will be sent to you after the end of the appeal period to assist you in meeting the requirements of this approval by the Planning Commission.

Very truly yours,

A handwritten signature in cursive script that reads "Charles S. Bryant".

CHARLES S. BRYANT, Secretary  
City Planning Commission

CSB:slj

cc: "To All Interested Parties"  
Ray Derania, Housing Conservation  
Cleve Williams, Parks and Recreation

Calvin Wong, Building Services Division  
Phil Grubstick, Engineer Services/Permit Processing  
Frank Kliever, Operations Managers

**NOTICE TO ALL PARTIES:**

The time within which judicial review must be sought of this decision of the Planning Commission is governed by Section 1094.6 of the Code of Civil Procedure of the State of California. With certain exceptions, the time is ninety (90) days from the date of the decision. If you challenge this application in court, you may be limited to raising only those issues you or someone else raised at the public hearing, or in written correspondence delivered to the Office of Planning and Building at, or prior to, the public hearing.

CITY OF OAKLAND  
Oakland, California 94612  
Telephone: 238-3911

ZONING REPORT

     City Planning Department  
X City Planning Commission

CASE FILE: PUDF95-166  
(PUD94-219)  
(ER94-32)

APPLICANT(s): SMITH, Paul

REPORT DATE: October 18, 1995

(Johnson Lyman Architects)

     Owner      Buyer X Lessee      Agent

FILING DATE: 9/18/95

LOCATION: Southwest corner of  
51st Street and Telegraph  
Avenue.

APPLICATION: Final Planned Unit  
Development

LAST DATE FOR  
CONSIDERATION: Not  
Applicable

PROPOSAL: To establish a ±43,250  
sq. ft. General Retail  
Center (including Walgreens),  
on a 3.03 acre site.

APPLICABLE ZONING  
REGULATION(S): Sec. 7800,  
9403

SUPPORT:

OPPOSITION:

STAFF RECOMMENDATION: Approve  
X Conditions Attached

COMMISSION ACTION: Approved  
Vote: 5 ayes, 0 noes - to approve  
Date: October 18, 1995

ZONING: C-28, Commercial Shopping District Zone

ENVIRONMENTAL STATEMENT:

     EIR X Negative Declaration      Categorically Exempt:  
ER94-32

PROPERTY DESCRIPTION: This irregular shaped, 3.03 acre site is bounded by Shattuck Avenue on the west, Telegraph Avenue on the east, 51st Street on the north, and 49th Street on the south. The site contains a ±4,500 sq. ft. commercial building, ±15 parking spaces (on 50th Street), and a large billboard sign located on the northwest corner of the lot. A large commercial building (containing Vern's Market) formerly occupied the site but was demolished several years ago. Surrounding uses consists of commercial development along Telegraph Avenue to the east and south; a P.G. & E. substation to the north on 51st Street; and a mix of retail and medium density residential development along Shattuck Avenue to the west. Temescal Creek runs in a 10' x 12' abandoned culvert which

(See Reverse Side)

October 18, 1995

crosses underneath the northern portion of the site. A 12' x 12' abandoned culvert crosses near the middle of the site.

**PROJECT DESCRIPTION:** The project is a request for a Final Development Plan to construct a  $\pm 43,250$  sq. ft. shopping center in four buildings and demolish a  $\pm 4,500$  sq. ft. building (containing Genova Delicatessen). A  $\pm 153$  space parking lot is proposed in the middle of the site. Some of the potential retail tenants include Walgreens with a drive-through pharmacy, Genova Delicatessen (includes beer and wine sales) and a video rental store. Generally, the stores will be open between 7:00 A.M. and 9:00 P.M. The stores will not be open for 24-hours. The four buildings will have an average height of 32 feet (35' maximum allowed). Signs include: a 17' tall monument sign at the Telegraph/51st Street intersection and various internally lit signs attached near the building's roof line. Primary access to the site is via a 25 ft. wide driveway along Telegraph Avenue. Secondary access points are from 20-30 ft. wide driveways along Shattuck Avenue, 49th and 51st Streets. The existing billboard near the corner of Telegraph Avenue and 51st Street will be removed.

The preliminary PUD was approved by the City Planning Commission on April 19, 1995. This approval also included a Major Conditional Use Permit for Off-Street Parking at Ground Level within 20 feet of the street line, and for a Fast-Food Restaurant Commercial Activity (Genova's Delicatessen); a Major Variance to locate the Fast-Food Restaurant with Alcoholic Beverage Sales (Beer and Wine) within 1,000 feet of other such activities and for the Walgreen's Drive-Through Nonresidential Facility; a Minor Conditional Use Permit to locate the driveway entrance along the principal street and for the proposed retail floor area of  $\pm 43,250$  sq. ft. (7,500 sq. ft. or more conditionally permitted); and Design Review for construction of the new buildings. The project was also found to be in compliance with the provisions of the Oakland City Planning Commission Guidelines for Development and Evaluation of Fast Food Restaurants, and Alcoholic Beverage Sales Activities. A Mitigated Negative Declaration was considered and approved by the Commission as part of the preliminary P.U.D., it discussed the environmental issues and mitigation measures related to the underground culverts, construction dust emissions, runoff treatment, noise, hazardous materials, traffic circulation, parking, and public services.

Subsequent to the P.U.D. approval, permission was granted by the City to commence grading prior to the granting of the Final P.U.D. and during the period of the winter grading moratorium. Several conditions of approval were attached to the grading permit including a requirement for a surety bond (150% of grading costs), development of a site restoration plan in the event the Final P.U.D. is not approved, a requirement that the Final P.U.D. be submitted by September 26, 1995, and development of a route for construction traffic and erosion control. In addition, a street vacation request to vacate 50th Street was granted by the City Council on July 11, 1995 (Ordinance 11809). Furthermore, an access easement and maintenance agreement between the site's owner and abutting property owner (P.G. & E.) to allow the proposed parking

October 18, 1995

spaces and driveway on the abutting property to the north has been granted by P.G. & E.

**ZONING ANALYSIS:** The main consideration in reviewing the Final Development Plan is whether it conforms in all significant respects with the previously approved Preliminary P.U.D., conditions of approval, and the applicable mitigation measures. It must also conform with Engineering Services, Fire Prevention Bureau, Traffic Engineering, and other applicable departments and agencies design standards and required improvements.

**DISCUSSION:** Minor design changes were made following the direction of the Planning Commission, conditions of approval and mitigation measures. Most of those changes are shown on Sheet A1.1 (see Attachment B) and include designation of the 51st Street driveway for entrance only and elimination of the raised island, installation of signs at each driveway stating "All Parking Stalls Available Free of Charge"; installation of signage directing truck traffic to the 51st Street or Shattuck Avenue driveways; installation of signs specifying truck delivery times and prohibiting littering or loitering; and installation of an 18 ft. high wall along the property line of Major Store 1 to minimize impacts to abutting residents. A mural painted by a local artist is also being considered for this wall. A comprehensive sign program, landscape and irrigation plan, and rooftop screening design have also been included. Furthermore, a plan to protect the mature pine tree at the corner of Telegraph and 51st Street was required and submitted. Additionally, the appropriate documentation to control litter and discourage loitering have been incorporated into the Final Development Plan. Engineering Services, Fire Prevention Bureau and Traffic Engineering have reviewed the Final P.U.D. and found the Plan meets the City's design standards and required improvements. The Final Development Plan also addresses the concerns raised by the neighborhood associations, Temescal Neighborhood Together (TNT) and merchants.

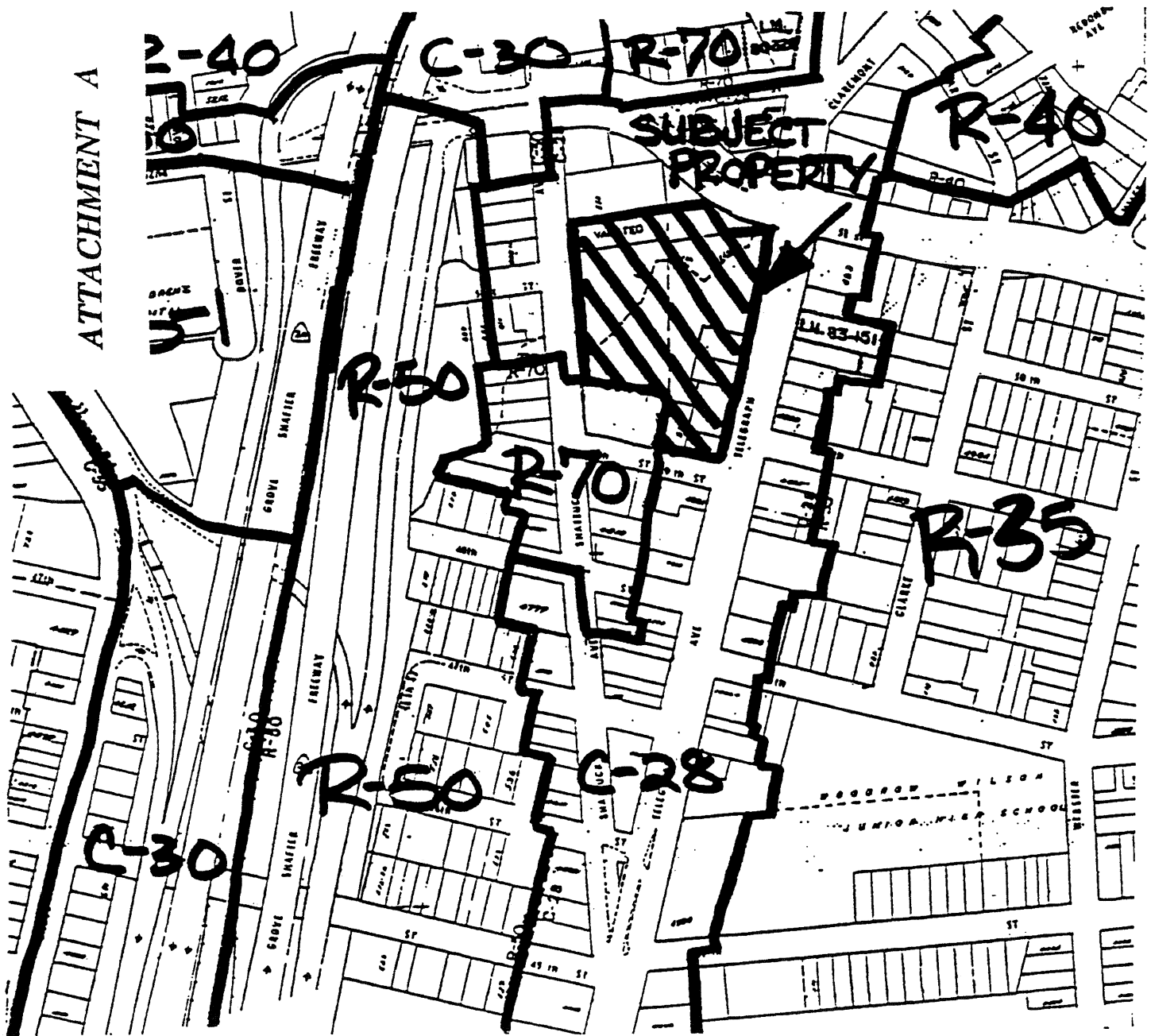
**FINDINGS:** The Final Development Plan is in substantial compliance with the previously approved Preliminary P.U.D. with regard to site design, height, location of buildings, signs and required parking, and with the conditions of approval and mitigation measures.

**RECOMMENDATION:** Approve the Final Development Plan subject to the conformance with the attached City Engineer's report and Conditions of Approval.

**ATTACHMENTS:**

- A. Location Map
- B. Final Site Plan Sheet A1.1
- C. Elevations
- D. City Engineers Report (dated October 6, 1995)
- E. Conditions of Approval (dated April 5, 1995)

# CITY OF OAKLAND PLANNING COMMISSION



Location Map



Meeting Date: 10-18-95	Agenda Item No.: 8	Case File No.: PUDF 95-166
APPLICANT: JOHNSON LYMAN ARCHITECTS / SMITH, PAUL		
ADDRESS / LOCATION: SOUTHWEST CORNER OF 51ST ST. & TELEGRAPH AVENUE		
ZONING DISTRICT: C-28	ZONING MAP NO(s): 297 & 298	

# ATTACHMENT C



FOR LAND  
USE AND  
ZONING

REVISED

JOB T

TEMESCAL  
PLAZA

TELEGRAPH AVE  
& 5TH STREET  
OAKLAND, CA

OWNER:

BERKELEY FARMS  
1330 SAN PABLO AVE  
EMERYVILLE, CA 94608

SHEET TITLE

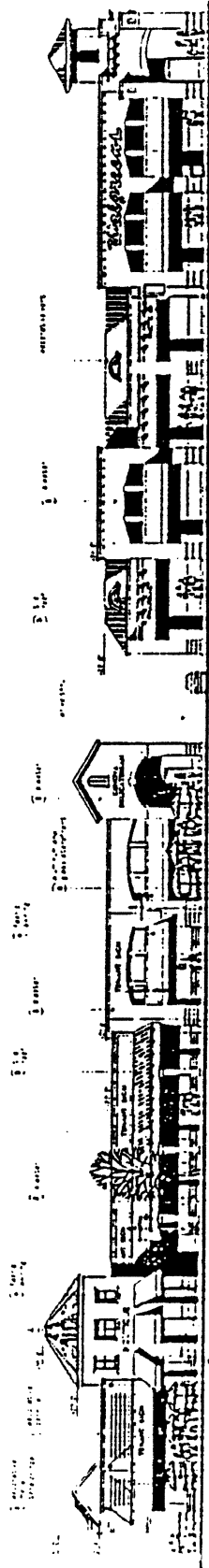
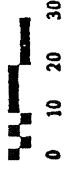
ELEVATIONS

DATE: 2/12/95

JOB No 9308

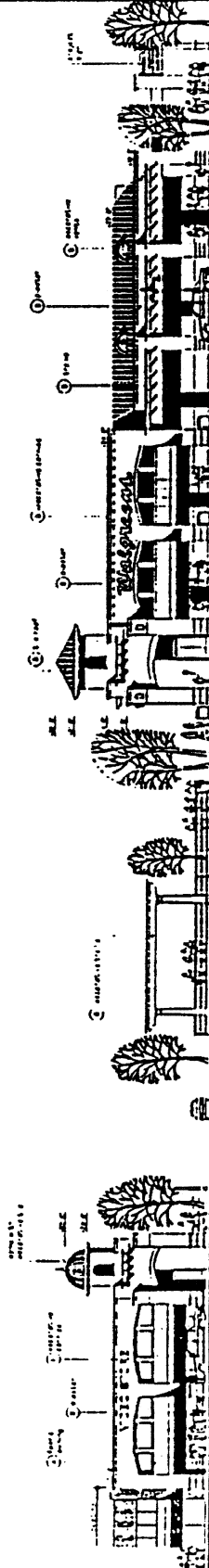
SHEET:

4



**SOUTH ELEVATION**

STORES A & WALGREENS FROM PARKING AREA 1"=10'



**EAST ELEVATION**

STORES E & WALGREENS FROM TELEGRAPH AVENUE 1"=10'

# ATTACHMENT C



DATE: 3/22/95  
JOB No. 93106  
SHEET:

REVISION:

JOB TITLE

TEAMESCAL  
PLAZA

TELEGRAPH AVE  
& 81ST STREET  
OAKLAND, CA

OWNER:

BERKELEY PARKS  
4550 SAN PABLO AVE  
EMERYVILLE, CA 94608

SHEET TITLE

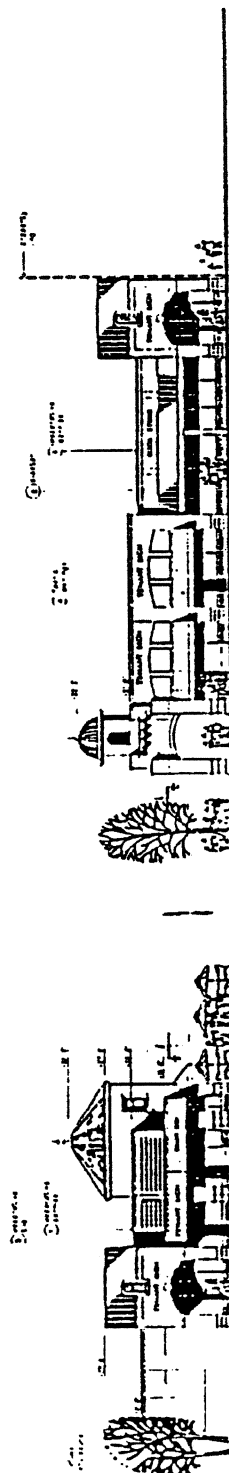
ELEVATIONS

DATE: 3/22/95

JOB No. 93106

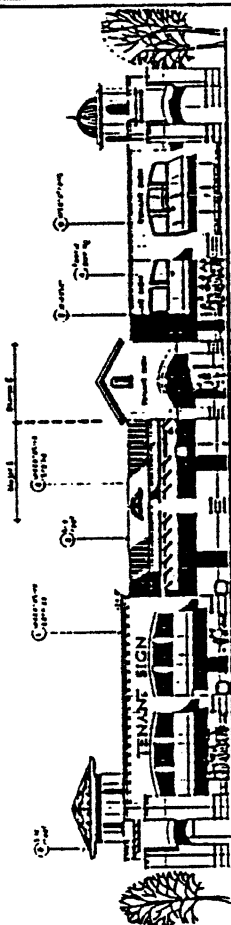
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5 of



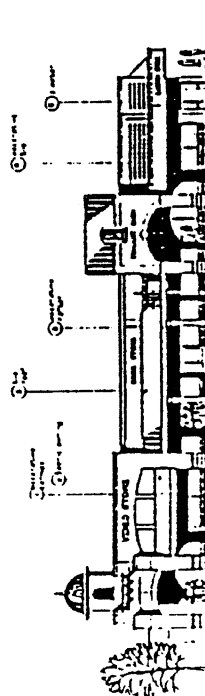
WEST ELEVATION

stores A & stores C from SHATTUCK AVENUE 1"=10'



NORTH ELEVATION

major 1 & store C from parking area 1"=10'



NORTH ELEVATION

stores B from parking area 1"=10'



# ATTACHMENT C



REVIS

JOB TITLE

TEMESECAL  
PLAZA

TELEGRAPH AVE  
& 5TH STREET  
OAKLAND, CA

OWNER:

BERKELEY FARMS  
4330 SAN PIERRE AVE  
EMERYVILLE, CA

SHEET TITLE

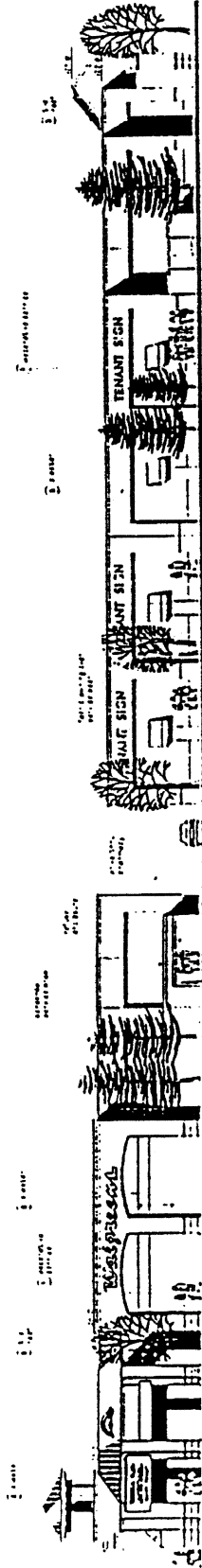
ELEVATIONS

DATE: 3/23/95

JOB No 93108

SHEET:

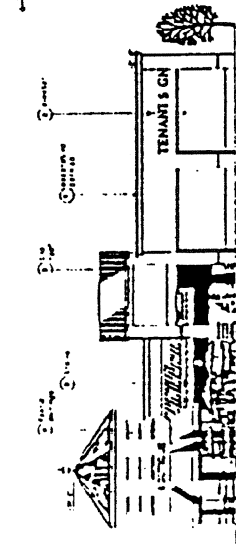
6



**NORTH ELEVATION**

WALKERS & STORES A FROM EAST STREET

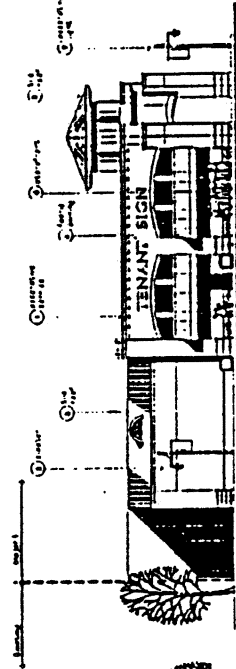
1"=10'



**EAST ELEVATION**

STORES A FROM DRIVE THRU

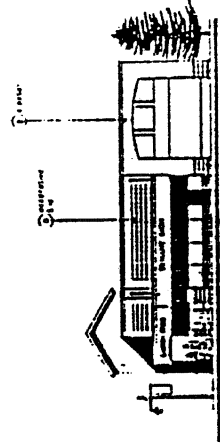
1"=10'



**EAST ELEVATION**

MAJOR 1 FROM PARKING AREA

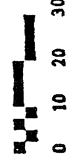
1"=10'



**WEST ELEVATION**

STORES B FROM PARKING AREA

1"=10'





OCT 6 1995

## ATTACHMENT D

C I T Y O F O A K L A N D

### Memorandum

TO: City Planning  
ATTN: Karen Howard  
FROM: Engineering Services  
DATE:

RE: FINAL PUD-PUDF95-166  
LOCATED AT 51ST ST/TELEGRAPH AVENUE

---


Please incorporate the following items into the conditions of approval for the subject PUD:

1. The existing sidewalk shall be repaired or replaced wherever deemed necessary by the Sidewalk Inspection Section of the Office of Public Works.

2. All existing driveway curb cuts that will no longer be used shall be removed and replaced with City Standard curb, and gutter.

CALVIN N. WONG  
Deputy Director  
of Building Services

by:

  
PHILIP A. GRUBSTICK  
Engineering Services Manager

AH:ah

doc:pmwm95-14

**ATTACHMENT E**

April 5, 1995

CONDITIONS OF APPROVAL ATTACHED TO AND MADE PART OF ZONING CASE FILE NO. PUDVMCD94-219: (Modifications to the Conditions of Approval as directed by the City Planning Commission at the April 19, 1995 meeting are indicated in bold print.)

1. That the project shall be operated in accordance with the authorized use as described in this staff report and as amended by the conditions listed below. **The proposed uses on the site shall not include auto-related uses or retail uses whose total gross receipts or receipts in excess of 50% are from the sales of automotive related parts or products.**
2. That the project shall be implemented according to the plans submitted on February 27, 1995; provided further, that the project incorporate the revisions listed below as conditions of approval.
3. That the conditions of approval shall be reproduced on page one of the plans submitted to the Director of City Planning for a building permit for this approval.
4. That the project is approved pursuant to the Planning Code only and that the project shall comply with all other applicable codes and requirements imposed by other affected departments.
5. That minor changes to approved plans may be approved administratively by the Director of City Planning except that major changes shall be subject to review and approval at a new public hearing by the City Planning Commission.
6. That all mitigation measures included and agreed upon by the applicant in ER94-32 be made a part of this approval. **Revised site plans showing no exiting onto 51st Street per Mitigation Measure #12 shall be submitted to the Director of City Planning for approval.**
7. That an access easement and maintenance agreement between the applicant and abutting property owner to allow the proposed parking spaces and driveway on the abutting P.G.&E. property to the north be submitted to the Director of City Planning for review and approval.
8. That the applicant shall comply with the Oakland City Planning Commission Guidelines for Development and Evaluation of Fast Food Restaurants (OCPD 100-18) and Alcoholic Beverage Sales Activities (OCPD 100-20) and submit to the Director of City Planning for review and approval, the appropriate documentation including plans to control litter and to discourage loitering prior to the issuance of building permits.
9. That loading operations be conducted during the hours that the stores are not open for business to avoid block parking spaces and creating traffic circulation and safety impacts.

April 5, 1995

10. That the applicant is prohibited from sub-leasing for a period of 90 days after the vacation by Genova's Delicatessen the commercial property at 4937 Telegraph Avenue to a business engaged in alcoholic beverage sales.
  11. That the applicant submit for review and approval to the Director of City Planning a comprehensive sign plan consistent with the limitations set forth in Sections 4438, 7041 and the Design Review Criteria under Section 9300 prior to issuance of building permits.
  12. That any and all exterior signs, landscaping and irrigation, colors and materials, building lighting plans, parking lot lighting, screening of mechanical or roof equipment, the provision of windows on the Walgreen's facade on Telegraph Avenue and any other changes to the exterior appearance (including props/signs visible through the windows) of the storefront shall be approved by the Director of City Planning prior to issuance of building permits. All permanent and temporary signs shall be subject to the provisions of Section 7040(g) of the Zoning Regulations and that window signs shall be limited to an area of 10% of the window pane. The applicant shall make a reasonable good effort to obtain approval from Temescal Neighborhood Together (TNT) prior to submitting said plans to the Director of City Planning.
  13. That the hours of operation shall be limited to between 7:00 A.M. and 9:00 P.M. Monday through Sunday. Further, that the Commission may modify the hours of operation after holding a public hearing.
  14. All parking spaces on the project shall be available in perpetuity on the following terms:
    - a) All parking spaces shall be available free of charge to the customers of all the Temescal merchants in the Temescal Shopping District and a sign to that effect shall be installed at the entrances on Telegraph Avenue, Shattuck Avenue, 49th and 51st Streets. The design of said sign shall be submitted for review and approval to the Director of City Planning prior to issuance of building permits. That the applicant shall make a reasonable good effort to obtain approval from Temescal Neighborhood Together (TNT) prior to submitting said plans to the Director of City Planning.
    - b) There shall be no dedication or designations of any particular parking spaces for any particular individual tenant, as all spaces shall be available to all customers (except for required disabled parking spaces).
    - c) The owner of the shopping center shall have the right to limit the duration of parking by restricting parking to two (2) hours or greater and all parking restrictions shall be enforced. If there is such a restriction on
-

April 5, 1995

duration, that restriction shall apply to all parking stalls except to those 20 spaces north of Store A and the first 13 spaces on the east side of the 49th Street entry as per site plans submitted on February 27, 1995. Those 33 spaces will not be designated for employee parking but may be excluded from any two (2) hour or more limit restrictions and enforcement.

- d) If in the future the owner determines that it is necessary to request a limit of some parking to less than two (2) hours, the property owners located within 300 feet of the project shall be notified and the request shall be subject for approval to the Director of City Planning with an appeal to the City Planning Commission, if necessary.
  - e) In any event, the owner will always maintain a minimum of 55 contiguous parking spaces for all shopping customers, which 55 spaces shall provide a minimum of two hour parking. Unless otherwise agreed to by the owner, the Director of City Planning, and the representatives of the Temescal Merchants Association, such 55 parking stalls will be located in the parking stalls on both sides (north/south) of the Telegraph Avenue entrance to the project (the former) 50th Street and in their nearest contiguous parking area. (See Attachment B, Site Plan.)
- 15. All graffiti on the building shall be removed with the identical color paint of the building within 72 hours of application of the graffiti.
  - 16. There shall be no exterior pay telephones along the public right-of-way. Pay telephones shall be allowed only upon review and approval by the Director of City Planning and shall be within view and supervision of an on-site employee. The manager of the ~~restaurant~~ shall be responsible for use of any pay telephones on the site and shall discourage use of the telephones for illegal activities.
  - 17. That a landscape and irrigation plan shall be prepared by a licensed landscape architect or other qualified person and submitted for review and approval to the Director of City Planning prior to issuance of building permits; that such plan include a planting schedule detailing plant types and locations and a system for irrigation of plantings; that the planting include the provision of 15 gallon size coast live oak trees as shown on the landscaping plan submitted on February 27, 1995; that all landscaping and irrigation be installed prior to final building permit inspection; and that all landscaping be permanently maintained in a neat, safe and healthy condition.

April 5, 1995

18. That street trees shall be provided to the satisfaction of the Director of Parks and Recreation and shall be equal to or more than the number of trees shown on the landscaping plan submitted on February 27, 1995.
19. That the applicant shall consult with AC Transit regarding the installation of bus shelters on the west and east sides of Telegraph Avenue in front of the project lot. That written determination from AC Transit be submitted to the Director of City Planning prior to issuance of any building permit. If bus shelters are required, these shall be installed prior to the issuance of any Certificate of Occupancy.
20. A copy of these conditions shall be posted in a conspicuous place and made available for public review at all times.
21. That the Commission, after proper notification and public hearing, may consider modifying conditions of approval or revoking the design review permit if the conditions are not met or there are violations of the Zoning Ordinance.
22. That prior to issuance of the building permit, the applicant shall execute and record with Alameda County Recorder's Office a copy of these conditions of approval for this zoning permit on a form approved by the Director of City Planning.
23. That the applicant shall defend, indemnify, and hold harmless the City of Oakland, its agents, officers, and employees from any claim, action, or proceeding (including legal costs and attorney's fees) against the City of Oakland, its agents, officers or employees to attack, set aside, void or annul, an approval by the City of Oakland, the City Planning Department, Planning Commission, or City Council. The City shall promptly notify the applicant of any claim, action or proceeding and the City shall cooperate fully in such defense. The City may elect, in its sole discretion, to participate in the defense of said claim, action, or proceeding. The maximum indemnification liability under this condition shall not exceed \$10,000.
24. That this permit shall become effective upon satisfactory compliance with the above conditions. Failure to obtain required building permits by April 5, 1996 shall invalidate this approval, provided further that, upon written request the Director of City Planning may grant a one (1) year extension of this date, with additional extensions subject to approval by the City Planning Commission.
25. That in the event of higher than normal wind speeds resulting in construction related dust, all construction on the site shall be halted. (Contact Diane Bradshaw, Design Review/Planning Investigator, (510) 238-6414.)

April 5, 1995

26. That prior to the issuance of any grading or building permits, the applicant shall submit plans to the Director of City Planning showing how the mature pine tree at the corner of Telegraph and 51st Street shall be protected during construction. The plan shall include, but not be limited to, the construction and maintenance of a 6 foot fence along the drip line of said tree. There shall be no grading, paving or storage of materials, debris or equipment within the enclosure under the tree's dripline.
27. That the applicant shall submit a litter control plan to keep the premises and surrounding area free of litter to the Director of City Planning. The plan should include, but not be limited to:
  - (a) Daily sweeping and trash collection of the premises, sidewalk and gutter area along its street frontage;
  - (b) Steam cleaning of the sidewalk area abutting the site at least once a month or more frequently if needed;
  - (c) A management schedule for keeping the premise and surrounding area in a 100 foot radius around the site free from litter originating from the operation of uses within the center;
  - (d) A management schedule for retrieval and storage of shopping carts emanating from the site within the neighborhood;
  - (e) The design and location of all trash and recyclable materials enclosures;
  - (f) A recycling program for the center.
28. That bike racks be provided on the site in accordance with plans approved by the City of Oakland's Pedestrian and Bicycle Committee.
29. The applicant shall submit a security plan for approval to the Director of City Planning including measures to be taken when stores are closed and in particular the hours between 9:00 P.M. and 7:00 A.M. The approved security plan shall be implemented upon the issuance of any Certificate of Occupancy for any building in the shopping center.

ADOPTED BY: City Planning Commission: April 19, 1995 (date) 5 ayes, 1 noes - to approve (vote)  
City Council \_\_\_\_\_ (date) \_\_\_\_\_ (vote)



**CITY OF OAKLAND**  
**PLANNING & ZONING SERVICES DIVISION**  
250 Frank H. Ogawa Plaza, Suite 2114, Oakland, CA 94612-2031  
Phone: 510-238-3911 Fax: 510-238-4730

**Confirmation of Zoning & General Plan Designation**

Date: August 12, 2008

To: Jon Bowman, Temescal Plaza LLC  
68 Coombs Street, Suite C-1  
Napa, California 94559

Re: 5095 Telegraph Avenue, Oakland, CA (APN 013-1154-009-05) Temescal Plaza Parking  
Determination: DET08-055.

This is to confirm that the property located at 5095 Telegraph Avenue may change a row of 17 (seventeen) two-hour-limit parking spaces to one-quarter-hour and one-half-hour parking spaces adjacent to the existing drug store, perpendicular to Telegraph Avenue and east of the main driveway. The property is located within the C-28 Commercial Shopping District Zone, and falls under the Neighborhood Center General Plan Land Use Designation.

In April 1995, the City of Oakland approved PUDVMCMD94-219 for Temescal Plaza, including the 2 hour parking area. Condition 14-d of the approval stated:

"If in the future the owner determines that it is necessary to request a limit of some parking to less than two hours, the property owners located within 300 feet of the project shall be notified and the request shall be subject for approval to the Director of City Planning with an appeal to the Planning Commission if necessary."

The Director of City Planning has no objection to the limited change to 17 (seventeen) parking spaces, providing a combination of 15 minute and 30 minute parking for these 17 spaces.

Within 10 days of the date of this notice, any interested party may file an appeal of this decision to the Planning Commission by filing a letter and paying the \$1,046.52 (one thousand forty-six and 52/100 dollars) appeal fee to the City cashier at 250 Frank Ogawa Plaza, 2<sup>nd</sup> Floor. The letter should state wherein staff erred or abused its discretion in this matter. If you challenge the decision in court, you may be limited to issues raised in written correspondence delivered to the Community and Economic Development Agency as part of an appeal.

If you have further questions regarding this matter, please contact me at (510) 238-2235 or David Valeska, Planner II at (510) 238-2075.

Sincerely,

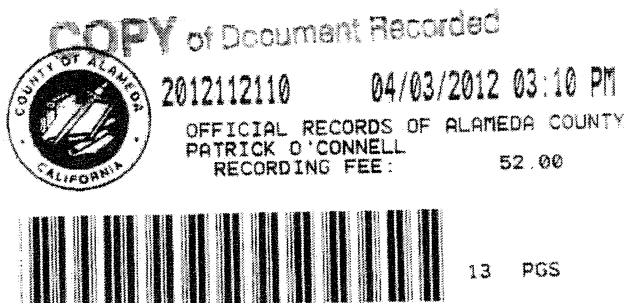
Scott Miller  
Zoning Manager

Cc: 300-ft. owners list  
Temescal Plaza tenants

L:\common files\Dave V\det08055doc

RETURN RECORDED DOCUMENT TO:

Walgreen Co.  
Corporate & Transactional Law Department  
104 Wilmot Road, 2<sup>nd</sup> Floor, MS #1420  
Deerfield, Illinois 60015  
Attn: Jennifer Pautler



MEMORANDUM OF THIRD LEASE AMENDMENT

This Memorandum of Lease Amendment ("Memorandum"), is made and entered into as of January 16, 2012, by and between Temescal Plaza, LLC, a Delaware limited liability company ("**Landlord**") and Walgreen Co., an Illinois corporation ("**Tenant**"), and Landlord and Tenant, together, the "**Parties**").

WHEREAS, Landlord and Tenant executed and delivered that certain Lease dated February 28, 1995, and recorded March 15, 1996 as Document #96065707, Official Records, Alameda County, CA, as amended thereafter by a Lease Modification Agreement dated October 18, 1996, and recorded November 25, 1996 as Document #96299389, Official Records, Alameda County, CA, and by an unrecorded Amendment to Lease dated September 5, 2008 (collectively, the "**Lease**"), for certain premises consisting of approximately 14,370 rentable square feet (the "**Premises**") located within and as a part of that certain shopping center commonly known as Temescal Plaza located at 51<sup>st</sup> Street and Telegraph Avenue in Oakland, California, legally described on Exhibit "A" attached hereto and incorporated herein (the "**Shopping Center**"); and

WHEREAS, Landlord and Tenant desire, via a 3<sup>rd</sup> Amendment to Lease of even date herewith (the "3<sup>rd</sup> Amendment") to further modify the Lease in certain respects, and to memorialize, via a recording of this Memorandum certain provisions of such 3<sup>rd</sup> Amendment to Lease.

For purposes of this Memorandum, Tenant shall pay a rent of One Dollar (\$1.00) per year. All capitalized terms used in this Memorandum and not otherwise defined herein shall have the meaning ascribed to them in the Lease.

Said 3<sup>rd</sup> Amendment contains, among others, the following provisions:

Common Area Parking:

- Section 2 of the 3<sup>rd</sup> Amendment provides as follows:

JPD JBP



*"Notwithstanding anything to the contrary contained herein or in the Lease, Landlord shall hereafter promptly designate those certain additional parking spaces on the Telegraph Avenue side of the Shopping Center parking area within the outlined area on the attached Exhibit "3" as thirty (30) minute parking (the "Additional Restricted Parking"), at Landlord's sole cost and expense, and shall identify all of such Additional Restricted Parking by painting curbs, erecting signs and taking such other measures so as to sufficiently and adequately identify and communicate such Additional Restricted Parking and such time limits. The Additional Restricted Parking shall comply with all applicable rules and regulations, not limited to the Americans with Disabilities Act. Upon so designating the Additional Restricted Parking, or within reasonable time thereafter, Landlord shall give Tenant written notice of the date upon which Landlord has successfully completed the above-described obligations (the "Parking Designation Date"), and said Parking Designation Date shall become effective immediately, unless, within five (5) days of receipt of said notice, Tenant delivers a written notice of objection to Landlord, stating all specific bases for Tenant's objection. Should Tenant timely object, Landlord shall, in its reasonable discretion, determine what, if any, additional action is required, and thereafter notify Tenant of the new Parking Designation Date or, if Landlord determines no additional action is required, renew its prior notification of the Parking Designation Date, and said Parking Designation Date shall become effective upon Tenant's receipt of said notice. Nothing herein shall require Landlord to designate the Additional Restricted Parking."*

#### Use Restrictions

- Section 3 of the 3<sup>rd</sup> Amendment provides as follows:

*"Effective upon the Parking Designation Date, as defined and determined in accordance with the preceding Section 2, it is hereby agreed that Article 9 of the Lease is hereby amended such that any portion of the Shopping Center, or any other additional property which Landlord, directly or indirectly, may now or hereafter own or control which is contiguous to the Shopping Center may be used as for the operation of a restaurant of any kind or size, including, but not limited to, sit-down and carry-out restaurants."*

#### Redbox

- Section 6 of the 3<sup>rd</sup> Amendment provides as follows:

*"Landlord hereby consents to Tenant's installation of a "Redbox DVD RENTAL" unit (the "Redbox Unit") at the exterior of the Premises, in such design either as specified in Exhibits "5" attached hereto or else such other design as reasonably desired by Tenant, subject to the conditions of this Section 6. The Redbox Unit shall be placed along the southern exterior facing of the Building, and no time shall the Redbox Unit be placed on the north, west, or east (Telegraph Ave.) facing sides of the Premises without express written consent of Landlord, not to*

*be unreasonably withheld, conditioned ore delayed). Tenant shall be solely responsible for the installation and maintenance of the Redbox Unit and all costs related thereto. Tenant shall at all times ensure that that the Redbox Unit complies with all rules and obligations under the Lease, as well as all applicable laws and regulations, including, but not limited to, the Americans with Disabilities Act. Tenant shall be required to move, modify, remove, or relocate, as applicable, the Redbox Unit from the Premises from time to time, should Landlord, in its reasonable discretion, determine that the Redbox Unit, or Tenant's operation thereof, is in violation of the Lease or any applicable law, or if its location or placement by Tenant materially impairs the use of the sidewalk in front of tenant's Building by pedestrians. "*

Provisions for other terms, covenants and conditions of said letting, including options to terminate, are set forth at length in said 3<sup>rd</sup> Amendment between the parties hereto and all of said provisions, terms, covenants and conditions are, by reference thereto, hereby incorporated in and made a part of this Memorandum.


This instrument shall also bind and benefit, as the case may require, the heirs, legal representatives, assigns and successors of the respective parties, and all covenants, conditions and agreements herein contained shall be construed as covenants running with the land. This instrument shall not become binding upon the parties until it shall have been executed and delivered by both Landlord and Tenant.

This Memorandum is made and executed by the parties hereto for the purpose of recording the same in the office of the public records of Alameda County, California, and is subject in each and every respect, to the rents and other terms, covenants and conditions of the aforesaid 3<sup>rd</sup> Amendment between the parties hereto, and this Memorandum is executed and delivered with the understanding and agreement that the same shall not in any manner or form whatsoever, alter, modify or vary the rents and other terms, covenants and conditions of such amendments.

[signature and notary pages follow]

**Tenant:**

WALGREEN CO.  
an Illinois corporation

By:   
Name: Richard N. Steiner  
Its: Director, Real Estate Law

Witness

Witness Paul B. Hill

Print Name: JOHN P. DOBROVICH Print Name: Daniel B. Pellin

[illegible]

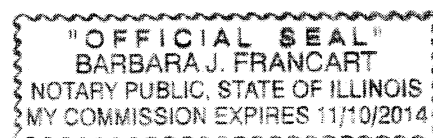
On February 23, 2012 before me, Barbara J. Francart  
Date Print Name

personally appeared Richard N. Steiner  
Name(s) of Signer(s)

    X     personally known to me – OR –            Proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Boubaing, Franck  
Signature of notary



STATE OF KANSAS )  
 ) SS  
COUNTY OF SEDGWICK )

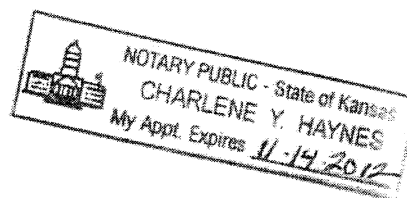
On FEB 28 2012 before me, CHARLENE Y HAYNES  
Date Print Name

personally appeared DARRELL SWANK  
Name(s) of Signer(s)

☒ personally known to me – OR – ☐ Proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Charlene Y Haynes  
Signature of notary

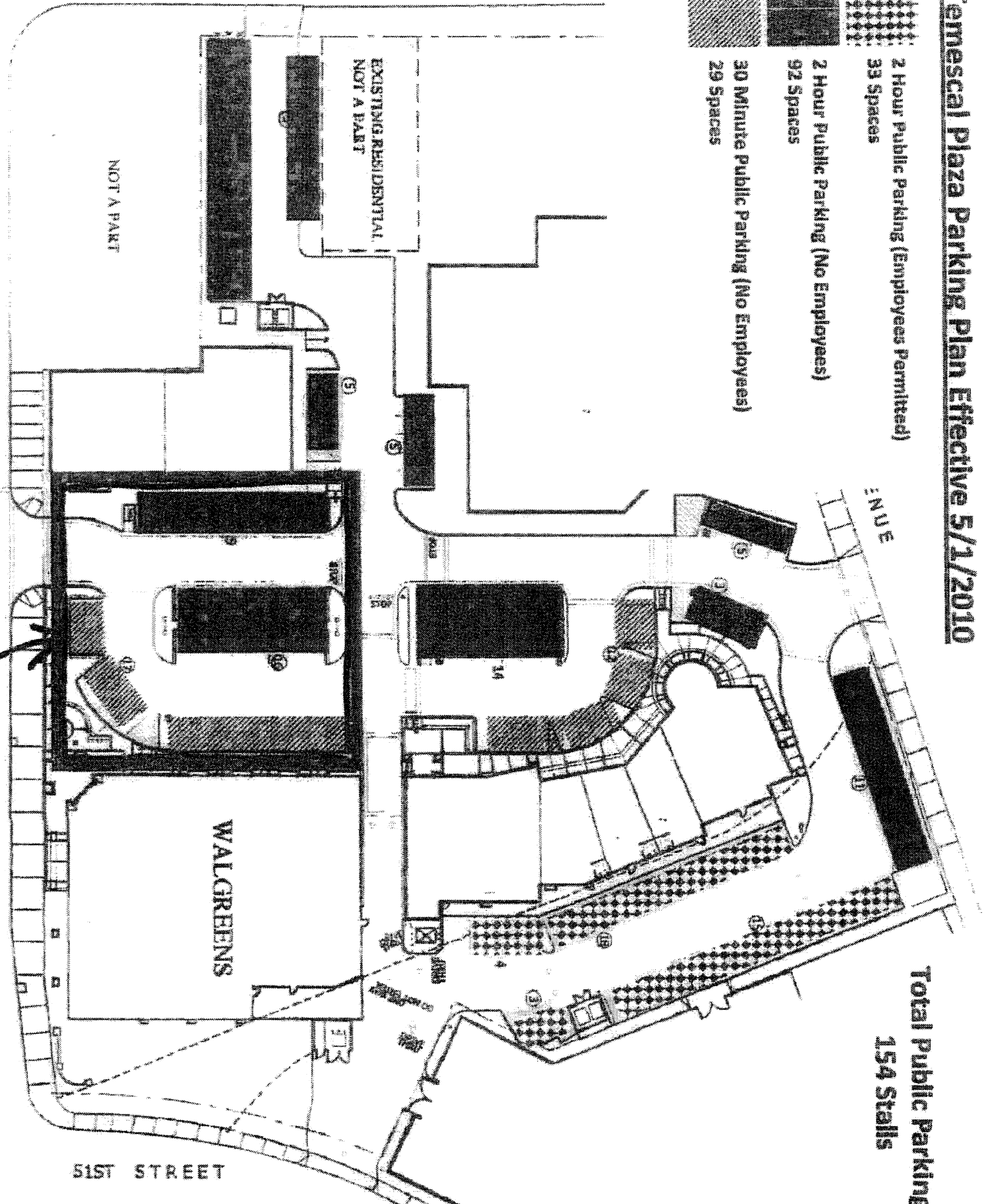


# Exhibit 3

## Temescal Plaza Parking Plan Effective 5/1/2010

	2 Hour Public Parking (Employees Permitted)
	30 Minute Public Parking (No Employees)
	2 Hour Public Parking (No Employees)
	30 Minute Public Parking (No Employees)

Total Public Parking:  
154 Stalls



New  
"Additional  
Restricted  
Parking"  
area

JPD DBF