

Case File Number: A10-035 (CU09-237)

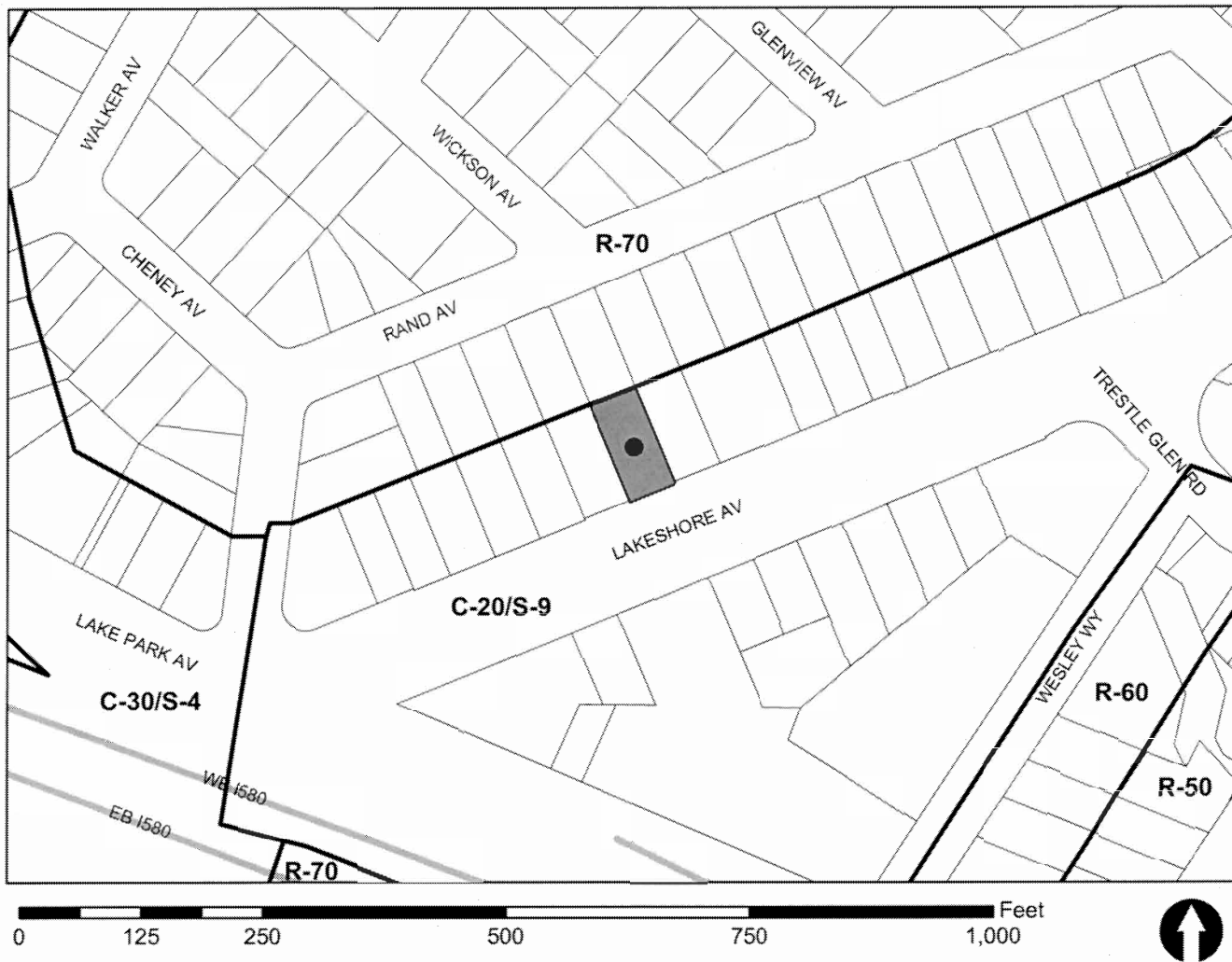
March 17, 2010

Location:	3261 Lakeshore Avenue (See map on reverse)
Assessors Parcel Numbers:	(011-0838-018-00)
Proposal:	Appeal of the Zoning Administrator's approval of an application for a new frozen yogurt shop (Limited Service Restaurant and Café)
Original Applicant/Contact:	Issac Kim, Edinburg Design / (510)872-9981
Appellant/Contact:	Steve Cheung (owner/operator of Yogurt Deluxe) / (510)798-5589
Owner:	North Bank of CA Trust
Case File Number:	A10-035
Original Case File Number:	CU09-237
Planning Permits Required:	Minor Conditional Use Permit to establish a Limited Service Restaurant and Café Commercial Activity on the ground floor in the S-9 Zone
General Plan:	Neighborhood Center Mixed Use
Zoning:	C-20 Shopping Center Commercial Zone S-9 Retail Frontage Combining Zone
Environmental Determination:	Exempt, Section 15301 of the State CEQA Guidelines; minor additions and alterations to an existing facility. Section 15321 (a) of the State CEQA Guidelines; actions by regulatory agencies to enforce or revoke a permit or other entitlement for use issued. Section 15183 of the State CEQA Guidelines; projects consistent with a community plan, general Plan or zoning.
Historic Status:	Potential Designated Historic Property; Survey rating: B+2+
Service Delivery District:	3
City Council District:	2
Date Appeal Filed:	2/4/10
Date Original Case Filed:	11/3/10
Finality of Decision:	Final (Not Appealable Pursuant to OMC Sec. 17.132.030)
For Further Information:	Contact case planner Michael Bradley at (510) 238-6935 or mbradley@oaklandnet.com

SUMMARY

The proposed project, the establishment of a Limited Service Restaurant and Café Commercial Activity (Frozen Yogurt Shop) in the S-9 Retail Frontage Combining Zone, was approved by the Zoning Administrator on January 22, 2010. The approval was subsequently appealed by Steve Cheung, the owner and operator of another yogurt shop on Lakeshore Avenue. Under Planning Code 17.134.060, appeals of minor conditional use permits must state where an error or abuse of discretion was made by the Zoning Administrator or where the Zoning Administrator's decision is not supported by evidence in the record. The arguments raised by the appellant fail to assert error, abuse of discretion or lack of evidence, and are summarized below in the *Basis for the Appeal* portion of this report, along with staff's response to each argument. The arguments are

CITY OF OAKLAND PLANNING COMMISSION



Case File: A10-035 (originally CU09-237)
Applicant: Isaac Kim, Edinburgh Design
Appellant: Steve Cheung (owner operator of Yogurt Deluxe)
Address: 3261 Lakeshore Avenue
Zone: C-20/S-9

also addressed in the attached January 22, 2010 decision letter (*Attachment B*). For the reasons stated in this report and attachments, staff recommends the Planning Commission deny the appeal, thereby upholding the Zoning Administrator's approval.

PROJECT DESCRIPTION

The applicant (Yogofina) is proposing to establish a new Frozen Yogurt Shop (Limited Service Restaurant and Café Commercial Activity) on the ground floor in the S-9 Retail Frontage Combining Zone. The proposal is for a self-service yogurt shop where customers will be able to select their flavor of frozen yogurt and toppings.

PROPERTY DESCRIPTION

The subject property is currently a 621 square-foot ground level vacant tenant space. The property was developed in 1932 (based on Alameda County Assessors Data).

GENERAL PLAN ANALYSIS

The subject property is located within the Neighborhood Center Mixed Use General Plan designation. The Neighborhood Center Mixed Use land use classification is intended to identify, create, maintain and enhance mixed use neighborhood commercial centers. These centers are typically characterized by smaller scale pedestrian-oriented, continuous street frontage with a mix of retail, housing, office, active open space, eating and drinking places, personal and business services, and smaller scale educational, cultural, or entertainment uses. Staff finds that the proposal would be consistent with the intent of the General Plan.

ZONING ANALYSIS

The subject property is located within the C-20 Shopping Center Commercial Zone and the S-9 Retail Frontage Combining Zone. The C-20 zone is intended to create, preserve, and enhance integrated centers devoted primarily to retail shopping within attractive surroundings, and is typically appropriate to locations near major thoroughfares within or near residential communities, especially in newly developed portions of the city. The S-9 zone is intended to create, preserve, and enhance compact, attractive, and clearly defined street frontage, to assure continuity of retail and consumer service uses at ground level along principal shopping streets, and to encourage retail establishments serving both short and long term needs to locate in compact locations oriented toward pedestrian comparison shopping, and is typically appropriate to district shopping areas and along important shopping streets. Consistent with the intent of the S-9 Zone, this segment of Lakeshore Avenue is characterized by pedestrian oriented retail activities, restaurants and other neighborhood service commercial activities, which service the adjoining residential neighborhood.

The conditional use permit procedure for Limited Services Restaurant and Cafés are intended to ensure that commercial areas zoned S-9 remain pedestrian oriented, that the food sales activities support the general retail nature of the neighborhood, and that potential impacts are mitigated through conditions of approval. The Lakeshore Shopping District, with its variety of retail stores, restaurants and neighborhood servicing commercial uses, has become a shopping destination. While it is true that there are a number of limited service frozen dairy and related

establishments within the surrounding neighborhood, the conditional use permit procedure is not intended to limit the number of a particular type of business within a neighborhood but is instead intended to limit specific impacts such as odors and trash generation. Normal market forces typically foster variety in a shopping district. Specific "distance-separation" regulations are not applicable to limited service restaurants as they are for alcoholic beverage sales or check cashing establishments.

The proposal provides a somewhat unique experience in that it is a self-serve, do-it-yourself frozen yogurt store, which will encourage patrons to eat on the go and visit other stores and shops in the surrounding area. Staff finds that the proposed application meets applicable C-20 and S-9 zoning regulations.

ENVIRONMENTAL DETERMINATION

The California Environmental Quality Act (CEQA) Guidelines lists the projects that qualify as categorical exemptions from environmental review. The proposed project is categorically exempt from the environmental review requirements pursuant to Section 15301, alterations to existing facilities, and 15183, projects consistent with a community plan, general plan or zoning. Should the Planning Commission approve the appeal, such action would be exempt pursuant to CEQA guidelines 15321 (a) actions by regulatory agencies to enforce or revoke a permit.

BASIS FOR THE APPEAL

An appeal (*Attachment A*) of the Zoning Administrator's approval was filed on February 4, 2010 by Steve Cheung (owner and operator of Yogurt Deluxe located at 3203 Lakeshore Avenue). The appeal was based on his claim that the proposal does not conform to the required Conditional Use Permit criteria. Specifically, the appeal states that the site is not appropriate for a yogurt shop based on safety concerns, the size of the space, the trash it would generate, and possible foul odors and health hazards.

The following is a list of the specific issues raised in the appeal along with staff's response to each point. The basis for the appeal is shown in **bold** text and the staff response follows each point in regular type.

1. The appellant is concerned with the safety of elderly, handicapped, and parents with strollers using the public right-of-way in front of the proposed yogurt shop. The appellant writes: "The space to open the self-serve, do-it-yourself frozen yogurt store at 3261 Lakeshore Avenue between Arizmendi Bakery and Lakeshore Café within that compact area would not generate a large enough span for pedestrians to safely cross that active space without accidental incidents that could incite. Especially in the weekend, the pedestrians would feel crowded, uncomfortable, and possibly cause some sort of conflict to arise. An elderly, handicap or a mom with a stroller would have a difficult time passing and could have the likelihood of being knocked over, shoved into others, or a car".

Staff's Response:

The proposed yogurt shop is not proposing any outdoor seating within the public right-of-way. The proposal is for a self-serve counter area with a directional waiting line for customers to

follow. There are other frozen dessert shops in the area including one located at 3203 Lakeshore Avenue currently owned and operated by the appellant and those existing sites provide similar products. These establishments do not cause safety concerns. If proposed yogurt shops in general cause a danger to citizens, then the appellant's yogurt shop would be questionable for the same reasons he has discussed in his appeal. Staff finds that the proposed frozen yogurt shop (Limited Service Restaurant and Café) will not provide an unsafe environment for customers in the surrounding area and does meet the required Conditional Use Permit findings, as summarized in Attachment B.

2. The appellant writes: "the self-serve, do-it-yourself frozen yogurt store design to open in this small space is not big enough for tables and chairs for the customers to sit comfortable. As customers eat on and go, the street waste and trash rates would also increase because of the higher concentration of inhabitants which would lead to foul odors and possible health hazards. This will not serve Lakeshore Community as it claims under Attachment A".

Staff's Response:

The proposed yogurt shop is not proposing any tables or chairs for customers. The proposal provides a somewhat unique experience in that it is a self-serve, do-it-yourself frozen yogurt store, which will encourage patrons to eat on the go and visit other stores and shops in the surrounding area. The Conditions of Approval number 20 *Right-of-way Clean-up*, states: "The applicant shall clear the sidewalk and gutter areas along Lakeshore Avenue and 10 feet beyond the property lines along this street, of litter and debris at least once daily or as needed to control litter. The applicant shall sweep or mechanically clean the sidewalk with steam or equivalent measures at least once per month". The prospects for litter and odors are typical for food establishments and the City has found such conditions have been useful in addressing this concern. Staff finds that the proposed frozen yogurt shop (Limited Service Restaurant and Café) will provide a clean environment for customers in the surrounding area and does meet the required Conditional Use Permit findings, as summarized in Attachment B.

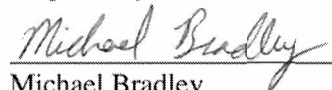
CONCLUSION

City of Oakland planning staff believes that the proposed project and subject property satisfies applicable zoning criteria for similar types of developments. Staff believes that the findings for approval can be made to support the Conditional Use Permit.

RECOMMENDATIONS:


1. Uphold staff's CEQA environmental determination
2. Deny the appeal and uphold the Zoning Administrator's approval of the project based on this appeal report, the project plans, and the Zoning Administrator's decision letter with Findings and Conditions of Approval dated January 22, 2010.

Prepared by:



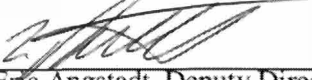
Michael Bradley
Planner I

Approved by:



Scott Miller
Zoning Manager

Approved for forwarding to the
City Planning Commission



Eric Angstadt, Deputy Director
Community & Economic Development Agency

ATTACHMENTS:

- A. Steve Cheung appeal dated February 3, 2010
- B. Zoning Administrator's decision letter dated January 22, 2010
- C. Project Plans

LEGAL NOTICE:

ANY PARTY SEEKING TO CHALLENGE THIS DECISION IN COURT MUST DO SO WITHIN NINETY (90) DAYS OF THE ANNOUNCEMENT OF A FINAL DECISION, PURSUANT TO THE CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1094.6, UNLESS A SHORTER PERIOD APPLIES.

ATTACHMENT A

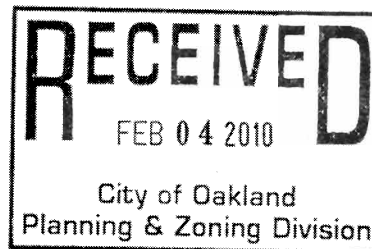
February 3, 2010

Case File No. Cu09-237

I disagree with your decision for the new yogurt shop. The space to open the self-serve, do-it-yourself frozen yogurt store at 3261 Lakeshore Ave between Arizmendi Bakery and Lakeshore Café within that compact area would not generate a large enough span for pedestrians to safely cross that active space without accidental incidents that could incite. Especially in the weekend, the Pedestrians would feel crowded, uncomfortable, and possibly cause some sort of conflict to arise. An elderly, handicap or a mom with a stroller would have a difficult time passing and could have the likelihood of being knocked over, shoved into others, or a car.

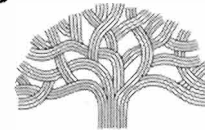
The self-serve, do-it-yourself frozen yogurt store design to open in this small space is not big enough for tables and chairs for the costumers to sit comfortable . As customers eat on and go, the street waste and trash rates would also increase because of the higher concentration of inhabitants which would lead to foul odors and possible health hazards. This will not serve Lakeshore community as it claims under Attachment A. Please review this appeal.

Thank you.



ATTACHMENT B

CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 2114 • OAKLAND, CALIFORNIA 94612-2031

Community and Economic Development Agency
Planning & Zoning Services Division

(510) 238-3911
FAX (510) 238-4730
TDD (510) 238-3254

January 22, 2010

Isaac Kim
Edinburg Design & Engineering Inc.
777 Southland Dr. Suite 255
Hayward, CA 94541

RE: Case File No. CU09-237, 3261 Lakeshore Avenue (APN: 011-0838-018-00)

Dear Mr. Kim:

Your application for a Minor Conditional Use Permit to establish a Limited Service Restaurant and Cafe Commercial Activity (Frozen Yogurt Shop) in the S-9 Retail Frontage Combining Zone has been **approved**. The application complies with the General Use Permit criteria as set forth in the Oakland Zoning Regulations of the Oakland Planning Code. Attachment A contains the findings required for this approval and the reasons your proposal satisfies them. Attachment B contains the Conditions of Approval for the project. This approval is effective ten (10) days after the date of this letter unless appealed as explained below.

Information regarding the proposed project is summarized below:

General Plan Land Use Classification: Neighborhood Center

Zoning Designation: C-20 Shopping Center Mixed Use

S-9 Retail Frontage Combining Zone

Environmental Determination: Exempt, section 15301 of the State CEQA Guidelines: Minor alterations and operation of existing facilities

Section 15183 of the State CEQA Guidelines: Projects consistent with a community plan, general plan or zoning.

Historic Status: Potential Designated Historic Property; Survey rating: B+2+

Service Delivery District: 3

City Council District: 2

An Appeal to the City Planning Commission of this Administrative Case decision may be submitted within ten (10) calendar days after the date of this letter, and by 4:00 p.m. 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 **Michael Bradley, Planner I**. The appeal shall state specifically wherein it is claimed there was error or abuse of discretion by the Zoning Administrator or wherein his/her decision is not supported by substantial evidence and must include payment of \$1,181.93 in accordance with the City of Oakland Master Fee Schedule. 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 from raising

such issues during your appeal and/or in court. If you challenge a Commission decision in court, you may be limited to issues raised at the hearing or in correspondence delivered to the Zoning Division, Community and Economic Development Agency, at, or prior to, the Appeal hearing. Any party seeking to challenge in court those decisions that are final and not administratively appealable to the City Council must do so within ninety (90) days of the date of the announcement of the Commission's final decision.

A signed Notice of Exemption (NOE) is enclosed certifying that the project has been found to be exempt from CEQA review. You may record the NOE, the Environmental Declaration, and, if applicable, the De Minimis Impact Findings at the Alameda County Clerk's office at 1106 Madison Street, Oakland, CA 94612, at a cost of \$50.00 made payable to the Alameda County Clerk. Please bring the original NOE related documents and five copies to the Alameda County Clerk, and return one date stamped copy to the Zoning Division, to the attention of Michael Bradley, Planner I. Although recordation of the Notice of Exemption (NOE) is optional pursuant to Section 15062(d) of the California Environmental Quality Act (CEQA) Guidelines, recordation of the NOE reduces the statute of limitations on challenges to your project, based on environmental issues, to 35 days after the NOE is recorded with the County. In the absence of a recorded NOE, the statute of limitations for challenges extends to 180 days.

If you have any questions, please contact the case planner, Michael Bradley at (510) 238-6935 or mbradley@oaklandnet.com.

Sincerely,



Scott Miller,
Zoning Manager

cc: j.forsyth@sbcglobal.net
maha_hermes@yahoo.com
blakely52@sbcglobal.net
Katzpjs@gmail.com
Jkarchmer@oaklandnet.com
Richard_p_hart@yahoo.com
Michele@informedeating.org
ross@rossturnerdesign.com
sunrise5767@yahoo.com
marie2900@gmail.com
Steven Cheung
3203 Lakeshore Avenue
Oakland, CA 94610

Attachments:

- A. Findings for Approval
- B. Conditions of Approval
- C. Notice of Exemption

ATTACHMENT A

FINDINGS FOR APPROVAL:

This proposal meets all the required findings under General Use Permit Findings (Section 17.134.050) and the S-9 Retail Frontage Combining Zone Additional Conditional Use Permit Findings (Section 17.88.040), as set forth below and which are required to approve your application. Required findings are shown in normal type; reasons your proposal satisfies them are shown in **bold type**.

17.134.050 GENERAL USE PERMIT FINDINGS:

- 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 minor conditional use permit is to establish a Limited Services Restaurant and Cafe Commercial Activity (Frozen Yogurt Shop) in the S-9 Retail Frontage Combining Zone. The S-9 zone is intended to create, preserve, and enhance compact, attractive, and clearly defined street frontage, to assure continuity of retail and consumer service uses at ground level along principal shopping streets, and to encourage retail establishments serving both short and long term needs to locate in compact locations oriented toward pedestrian comparison shopping, and is typically appropriate to district shopping areas and along important shopping streets. Consistent with the intent of the S-9 Zone, this segment of Lakeshore Avenue is characterized by pedestrian oriented retail activities, restaurants and other neighborhood service commercial activities, which service the adjoining residential neighborhood.

The conditional use permit procedure for Limited Services Restaurant and Café is intended to ensure that commercial areas zoned S-9 remain pedestrian oriented, that the food sales activities support the general retail nature of the neighborhood, and that potential impacts are mitigated through conditions of approval. The Lakeshore Shopping District, with its variety of retail stores, restaurants and neighborhood servicing commercial uses, has become a shopping destination. Although there are a number of limited service frozen dairy and related establishments within the surrounding neighborhood the conditional use permit procedure is not intended to limit the number of a particular type of business within a neighborhood but is instead intended to limit specific impacts such as odors and trash generation. Normal market forces typically foster variety in a shopping district.

Justification for this minor conditional use permit is based on the proposed project meeting the required Design Review criteria and 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.

- 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 frozen yogurt shop is consistent with the existing location and setting. The design is both efficient and functional within the context of the C-20 and S-9 Zones. The proposal provides a somewhat unique experience in that it is a self-serve, do-it-yourself frozen yogurt store, which will encourage patrons to eat on the go and visit other stores and shops in the surrounding area.

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

The proposal will enhance the surrounding area by adding desirable site improvements to enhance the public safety, security and appearance of the area. The proposal provides a somewhat unique experience in that it is a self-serve, do-it-yourself frozen yogurt store, which will encourage patrons to eat on the go and visit other stores and shops in the surrounding area.

- D. That the proposal conforms to all applicable design review criteria set forth in the DESIGN REVIEW PROCEDURE of Chapter 17.136 of the Oakland Planning Code.

The proposal conforms with all significant aspects of the design review criteria set forth in Chapter 17.136 of the Oakland Planning Code. The proposal does not involve any exterior alterations to the building.

- E. For proposals involving a One- or Two-Family Residential Facility: If the Conditional Use Permit concerns a regulation governing maximum height, minimum yards, or maximum lot coverage or building length along side lot lines, the proposal also conforms with at least one of the following criteria:

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

- OR -

2. At least sixty (60) percent of the lots in the immediate context are already developed and the proposal would not exceed the corresponding as-built condition on these lots, and, for conditional use permits that allow height increases, the proposal provides detailing,

articulation or other design treatments that mitigate any bulk created by the additional height. The immediate context shall consist of the five closest lots on each side of the project site plus the ten closest lots on the opposite side of the street (see illustration I-4b); however, the Director of City Planning may make an alternative determination of immediate context based on specific site conditions. Such determination shall be in writing and included as part of any decision on any conditional use permit.

The subject site and proposal does not involve a residential facility.

F. 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.

This proposal conforms to the City of Oakland Comprehensive General Plan and is consistent with the Neighborhood Center Mixed Use general plan designation. The intent of the Neighborhood Center Mixed Use classification is to identify, create, maintain and enhance mixed use neighborhood commercial centers. These centers are typically characterized by smaller scale pedestrian-oriented, continuous street frontage with a mix of retail, housing, office, active open space, eating and drinking places, personal and business services, and smaller scale educational, cultural, or entertainment uses. Therefore the proposal would be consistent with the intent of the General Plan.

17.88.040 S-9 RETAIL FRONTAGE COMBINING ZONE CONDITIONAL USE PERMIT FINDINGS:

A. The proposal will not detract from the compact, integrated character of the area.

The project does not propose any exterior alterations. The Lakeshore Shopping District, with its variety of retail stores, restaurants and neighborhood servicing commercial uses, has become a shopping destination. The frozen yogurt shop will be compatible with the other limited service restaurants and cafe establishments and retail stores in the area.

B. The proposal will not impair a generally continuous wall of building facades.

The subject structure maintains the prevailing bulk, scale, and architecture of adjacent facilities and blends with the distant neighborhood.

C. The proposal will not weaken the concentration and continuity of retail facilities at ground level, and will not break up an important shopping frontage.

The proposed frozen yogurt shop will provide for a customer population in the area, which will help generate commerce to surrounding businesses in the area. The proposal provides a somewhat unique experience in that it is a self-serve, do-it-yourself frozen yogurt store, which will encourage patrons to eat on the go and visit other stores and shops in the surrounding area.

D. The proposal will not interfere with the movement of people along an important pedestrian walkway.

The proposal does not involve any exterior alterations and will not interfere with the movement of people along the pedestrian walkway.

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

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

ATTACHMENT B

The proposal is hereby approved subject to the following 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 the application materials, **letter**, and the plans dated **March 30, 2009** and submitted on **April 21, 2009**, and as amended by the following conditions. Any additional uses or facilities other than those approved with this permit, as described in the project description and the approved plans, will require a separate application and approval. Any deviation from the approved drawings, Conditions of Approval or use shall require prior written approval from the Director of City Planning or designee.
- b) This action by the **Zoning Manager** ("this Approval") includes the approvals set forth below. This Approval includes: **a Minor Conditional Use Permit to establish a Limited Service Restaurant and Cafe Commercial Activity (Frozen Yogurt Shop) in the S-9 Retail Frontage Combining Zone at 3261 Lakeshore Avenue (APN: 011-0838-018-00), under Oakland Municipal Code Section 17.134 and 17.88.**

2. Effective Date, Expiration, Extensions and Extinguishment

Ongoing

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

3. Scope of This Approval; Major and Minor Changes

Ongoing

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

4. **Conformance with other Requirements**

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

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

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) The project applicant shall defend (with counsel reasonably 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 claim, action, or proceeding (including legal costs and attorney's fees) against the City to attack, set aside, void or annul this Approval, or any related approval by the City. The City shall promptly notify the project 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 project applicant shall reimburse the City for its reasonable legal costs and attorney's fees.

- b) Within ten (10) calendar days of the filing of a claim, action or proceeding to attack, set aside, void, or annul this Approval, or any related approval by the City, the project applicant shall execute a Letter Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations and this condition of approval. This condition/obligation shall survive termination, extinguishment, or invalidation of this, or any related approval. Failure to timely execute the Letter Agreement does not relieve the project applicant of any of the obligations contained in 7(a) above, or other conditions of approval.

8. Compliance with Conditions of Approval

Ongoing

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

9. Severability

Ongoing

Approval of the project would not have been granted but for the applicability and validity of each and every one of the specified conditions, and if 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. Special Inspector/Inspections, Independent Technical Review, Project Coordination and Management

Prior to issuance of a demolition, grading, and/or construction permit

The project applicant may be required to pay for on-call special inspector(s)/inspections as needed during the times of extensive or specialized plancheck review, or construction. The project applicant may also be required to cover the full costs of independent technical and other types of peer review, monitoring and inspection, including without limitation, third party plan check fees. The project applicant shall establish a deposit with the Building Services Division, as directed by the Building Official, Director of City Planning or designee.

12. Special Inspector/Inspections, Independent Technical Review, Project Coordination and Management

Prior to issuance of a demolition, grading, and/or construction permit

The project applicant may be required to pay for on-call special inspector(s)/inspections as needed during the times of extensive or specialized plancheck review, or construction. The project applicant may also be required to cover the full costs of independent technical and

other types of peer review, monitoring and inspection, including without limitation, third party plan check fees, including inspections of violations of Conditions of Approval. The project applicant shall establish a deposit with the Building Services Division, as directed by the Building Official, Director of City Planning or designee.

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

14. Noise Control

Ongoing throughout demolition, grading, and/or construction

To reduce noise impacts due to construction, the project applicant shall require construction contractors to implement a site-specific noise reduction program, subject to the Planning and

Zoning Division and the Building Services Division review and approval, which includes the following measures:

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

15. Noise Complaint Procedures

Ongoing throughout demolition, grading, and/or construction

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

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

16. Interior Noise

Prior to issuance of a building permit

If necessary to comply with the interior noise requirements of the City of Oakland's General Plan Noise Element and achieve an acceptable interior noise level, noise reduction in the form of sound-rated assemblies (i.e., windows, exterior doors, and walls) shall be incorporated into project building design, based upon recommendations of a qualified acoustical engineer. Final recommendations for sound-rated assemblies will depend on the specific building designs and layout of buildings on the site and shall be determined during the design phase.

17. Construction Traffic and Parking

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

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

- a) A set of comprehensive traffic control measures, including scheduling of major truck trips and deliveries to avoid peak traffic hours, detour signs if required, lane closure procedures, signs, cones for drivers, and designated construction access routes.
- b) Notification procedures for adjacent property owners and public safety personnel regarding when major deliveries, detours, and lane closures will occur.
- c) Location of construction staging areas for materials, equipment, and vehicles (must be located on the project site).
- d) A process for responding to, and tracking, complaints pertaining to construction activity, including identification of an onsite complaint manager. The manager shall determine the cause of the complaints and shall take prompt action to correct the problem. Planning and Zoning shall be informed who the Manager is prior to the issuance of the first permit issued by Building Services.
- e) Provision for accommodation of pedestrian flow.

SPECIFIC CONDITIONS.

18. Signage

Ongoing.

All proposed signage must be applied for with the proper City of Oakland Planning and Building permits. Signage must meet the City of Oakland Small Project Design Guidelines.

19. Zoning Clearance

Ongoing

A Zoning Clearance for the proposed General Food Sales activity and any future activities must be applied for before operation of the business.

20. Right-of-way Clean-up.

Ongoing.

The applicant shall clear the sidewalk and gutter areas along Lakeshore Avenue and 10 feet beyond the property lines along this street, of litter and debris at least once daily or as needed to control litter. The applicant shall sweep or mechanically clean the sidewalk with steam or equivalent measures at least once per month.

City of Oakland
Community and Economic Development Agency
Zoning Division 250 Frank H. Ogawa Plaza, Suite 2114
Oakland, CA 94612

NOTICE OF EXEMPTION

TO: Alameda County Clerk
1106 Madison Street
Oakland, CA 94612

Project Title: Case No. CU09-237

Project Applicant: Isaac Kim

Project Location: 3261 Lakeshore Avenue; APN: 011-0838-018-00

Project Description: To establish a Limited Service Restaurant and Cafe
Commercial Activity (frozen yogurt shop) in the S-9 Retail
Frontage Combining Zone

Exempt Status: CHECK ALL THAT APPLY

Statutory Exemptions
{Article 18:Section 21080;15260}

- ☐ Ministerial {Sec.15268}
☐ Feasibility/Planning Study {Sec.15262}
☐ Emergency Project {Sec.15269}
☐ General Rule {Sec.15061(b)(3)}
☐ Other: {Sec._____}

Categorical Exemptions
{Article 19:Section 21084;15300}

- ☒ Existing Facilities {Sec.15301}
☐ Replacement or Reconstruction {Sec.15302}
☐ Small Structures {Sec.15303}
☐ Minor Alterations {Sec.15304}
☐ In-fill Development {Sec. 15332}

☒ Other {Sec. 15183}

Reasons why project is exempt: The establishment of a Limited Service Restaurant and Cafe
Commercial Activity (frozen yogurt shop) in the S-9 Retail Frontage Combining Zone will not have
a significant impact on the environment and is exempt from environmental review.

Lead Agency: City of Oakland, Community and Economic Development Agency, Zoning Division, 250
Frank H. Ogawa Plaza, Suite 2114, Oakland, CA 94612

Department/Contact Person: Michael Bradley, Planner I

Phone: (510) 238-6935


Signature (Scott Miller, Zoning Manager)

1-22-10
Date:

Pursuant to Section 711.4(d)(1) of the Fish and Game Code, statutory and categorical exemptions are also
exempt from Department of Fish and Game filing fees.

*ENVIRONMENTAL DECLARATION
(CALIF. FISH AND GAME CODE SEC. 711.4)

: FOR COURT USE ONLY
:
:
NAME AND ADDRESS OF APPLICANT OR LEAD AGENCY :
:
LEAD AGENCY: :
:
COMMUNITY & ECONOMIC :
DEVELOPMENT AGENCY/PLANNING: :
250 Frank H. Ogawa Plaza :
Room 2114 :
Oakland, CA 94612 :
:
APPLICANT: Isaac Kim : _____
:
Contact: Isaac Kim : FILING NO. _____
:

CLASSIFICATION OF ENVIRONMENTAL DOCUMENT:	<u>CLERK'S USE ONLY</u>
1. NOTICE OF EXEMPTION/STATEMENT OF EXEMPTION	PLU 117
<input checked="" type="checkbox"/> A - STATUTORILY OR CATEGORICALLY EXEMPT \$50.00 (Fifty Dollars) - CLERK'S FEE	
<input type="checkbox"/> B - DE MINIMUS IMPACT - CERTIFICATE OF FEE EXEMPTION REQUIRED \$50.00 (Fifty Dollars) - CLERK'S FEE	PLU 117
2. NOTICE OF DETERMINATION - FEE REQUIRED	
<input type="checkbox"/> A -- NEGATIVE DECLARATION \$1,993.00 (Nineteen Hundred Ninety Three Dollars)- STATE FILING FEE \$50.00 (Fifty Dollars) - CLERK'S FEE	PLU 116
<input type="checkbox"/> B - ENVIRONMENTAL IMPACT REPORT \$2,768.25 (Two Thousand Seven Hundred Sixty Eight Dollars and Twenty Five Cents)- STATE FILING FEE \$50.00 (Fifty Dollars) - CLERK'S FEE	PLU 115
<input type="checkbox"/> C -- Certificate of Fee Exemption & De Minimis Impact Fee \$50.00 (Fifty Dollars) - CLERK'S FEE	PLU 117

*THIS FORM MUST BE COMPLETED AND SUBMITTED WITH ALL ENVIRONMENTAL DOCUMENTS
FILED WITH THE ALAMEDA COUNTY CLERK'S OFFICE.

FIVE COPIES OF ALL NECESSARY DOCUMENTATION ARE REQUIRED FOR FILING PURPOSES.

APPLICABLE FEES MUST BE PAID AT THE TIME OF FILING AN ENVIRONMENTAL DOCUMENT WITH
THE ALAMEDA COUNTY CLERK'S OFFICE.

MAKE CHECK PAYABLE TO: **ALAMEDA COUNTY CLERK**

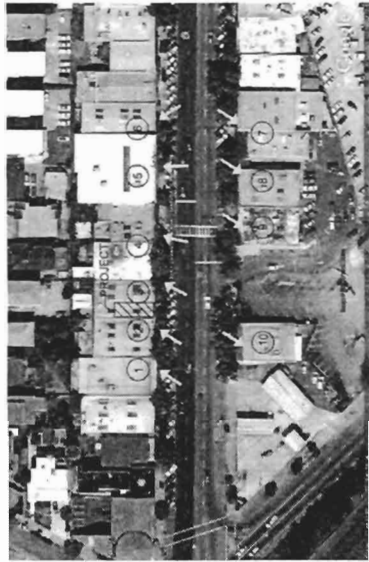
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MAR 03 2010

CITY PLANNING COMMISSION
ZONING DIVISION



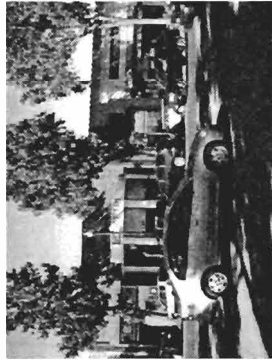
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6 ADVENTURE TOYS-3291/BUCKINGHAM-3293/
ROSE QUARTY-3295



2 VIP FLORIST & GIFTS 3247/ SHERMAN
CLEANERS-3248/ MARIBEL-3251/ EASY-3255



3 LAKE SHORE CAFE-3257/PROJECT YOGOFINA/
ARIZMENDI-3265



4 CHINA LAKE EXPRESS-3271/ FOOT LOCKER-3276



5 GAP-3277



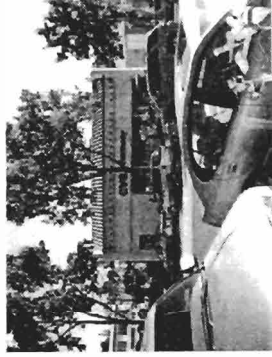
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BLOCKBUSTER VIDEO-3300



8 FITTS MATERIAL ART-3269/ FLAVOR OF INDIA-3276/
RAINBOW-3272/ BEAUTY CENTER-3268



9 VERIKON WHEELS-3284/ LAKE SHORE PRODUCE-3260/
PEET'S COFFEE/TA-3286/ THE BURRITO SHOP-3259



10 CVS/ PHARMACY



EXISTING SURROUNDING
FRONT ELEVATION PHOTOS
PROJECT TITLE

YOGOFINA
3261 LAKE SHORE AVE
OAKLAND, CA

REVISIONS

DATE: 08/20/09
DRAWN BY: YJ
CHECKED BY: YJ
DATE: AS NOTED

SHARED NO.
A-1.1



DEMOLITION PLAN
(N)WALL PLAN
SHEET TITLE

YOGOPINA
3261 LAKE SHORE AVE
PROJECT

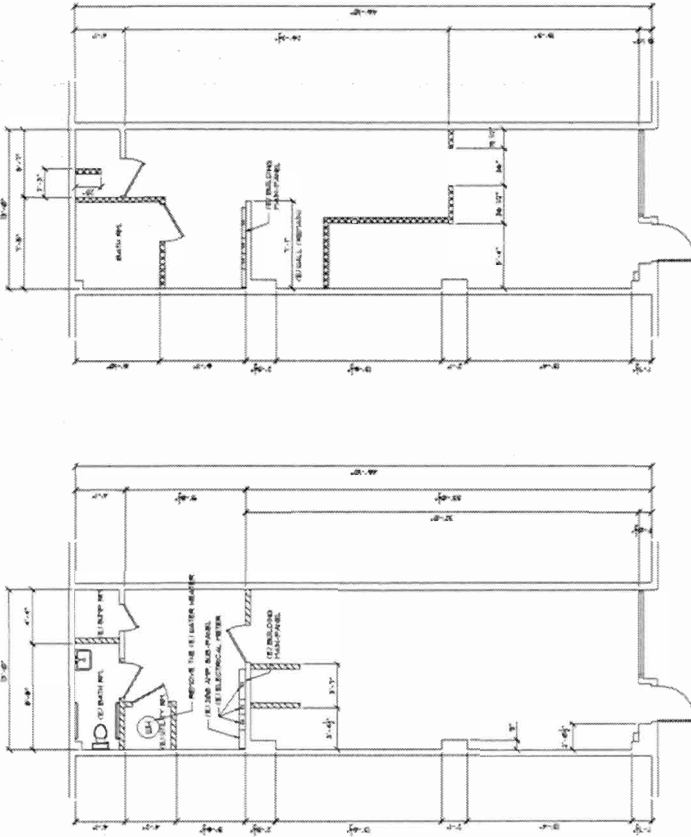
NO.	REVISION

JOB NO.	082908
DATE	08/29/08
DRAWN BY	YI
CHECKED BY	W
SCALE	AS NOTED

DATE: 08/29/08
A-2

LEGEND

[Hatched Box]	EXISTING WALL
[Dashed Box]	DEMOLITION OF EXISTING WALL
[Solid Box]	NEW 2x4 STUD WALL
[Dotted Box]	NEW
[Cross-hatched Box]	EXISTING



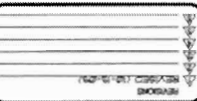
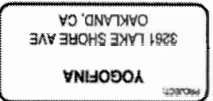
EXISTING PLAN

DEMOLITION PLAN

PROJECT DATA

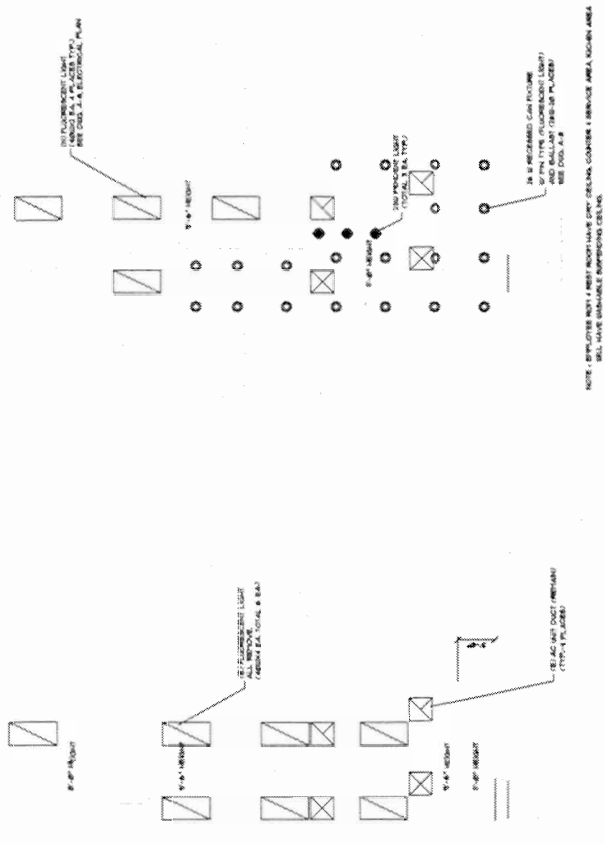
PROJECT NAME : YOGOPINA
PROJECT NO. : 082908
TOWN : SAN LEANDRO
TOWN ADDRESS : 3261 LAKE SHORE AVE
PROJECT ADDRESS : 3261 LAKE SHORE AVE
CITY : SAN LEANDRO, CALIFORNIA
STATE : CA
ZIP : 94775

FLOOR PLAN



LEGEND

- FLUORESCENT FIXTURE
- WALL MOUNT BRACKET
- RECESSED CAN FIXTURE
- TRUSSEY
- EXHAUST FAN
- APPLIANCE MECH
- CEILING OUTLET
- A/C SUPPLY
- A/C RETURN
- INDICATED THE FACILITY
- FLUORESCENT REA
- NEW
- EXISTING



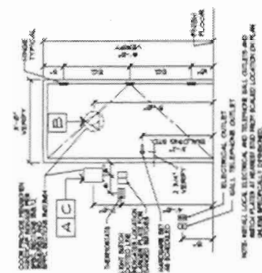
(N) REFLECTED CEILING
AND PARTITION WALL PLAN

(E) REFLECTED CEILING
AND PARTITION WALL PLAN

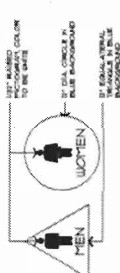
PROJECT DATA

PROJECT NAME: YOGOFINA
PROJECT NO: 10000
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CHECKED BY: J. J. J. J.
SCALE: AS NOTED
PROJECT ADDRESS: 3261 LAKE SHORE AVE
OAKLAND, CALIFORNIA

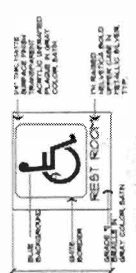




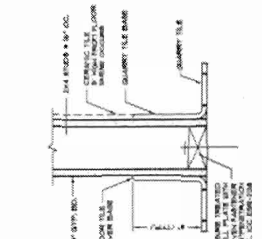
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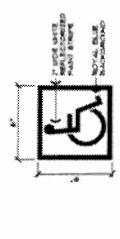
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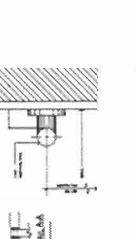
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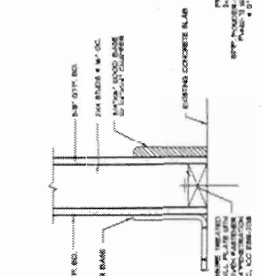
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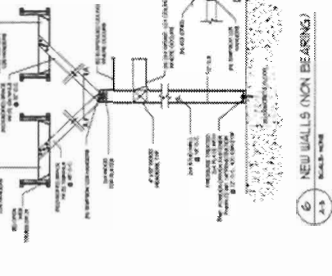
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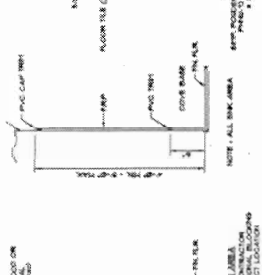
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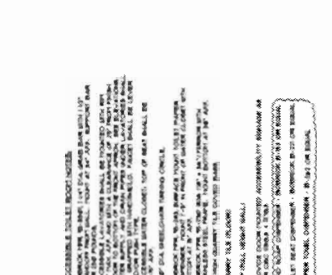
COUNTER TOP DETAIL
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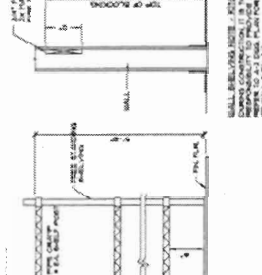
TYPICAL WALL & BASE
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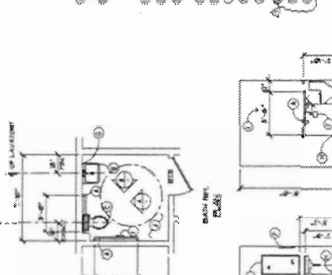
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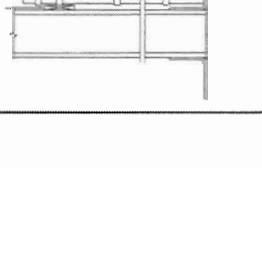
WALL BLOCKING
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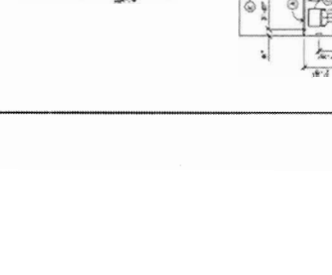
TOILET DETAILS (TYP.)
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EXIT SIGN
SCALE: 1/8" = 1'-0"



ACCESSIBILITY TACTILE SIGN
SCALE: 1/8" = 1'-0"



ACCESSIBILITY DOOR SILL DETAIL
SCALE: 1/8" = 1'-0"

[illegible]

PROJECT DATA

PROJECT NAME :	YOCORONA
TENANT NAME :	LOKO YI
TENANT P.O. :	(818) 437-7023
TENANT ADDRESS :	108 WILLIAMS STREET SAN LEANDRO, CALIFORNIA
PROJECT ADDRESS :	316 LAKE BURNIE AVE. DUBLIN, CALIFORNIA

