

<b>Location:</b>	514 Shattuck Avenue, 490 Shattuck Avenue, (5055 Telegraph Avenue)
<b>Assessor's Parcel Number(s):</b>	013 115400905, 013 115400904
<b>Proposal:</b>	Major revision to Planned Unit Development ("PUD") PUDF95166 to modify Condition of Approval Number 14 to allow for fifteen (15) parking spaces fronting the building at 5055 Telegraph Avenue in the northeast corner of the project site to be reserved for the business within said building.
<b>Applicant:</b>	Reuben, Junius & Rose
<b>Contact Person/ Phone Number:</b>	Mark Loper (415) 567-9000
<b>Owner:</b>	Temescal Property, LLC and Reininga Family, LLC
<b>Case File Number:</b>	PUDF95166-R01
<b>Planning Permits Required:</b>	Revision to a Planned Unit Development
<b>General Plan:</b>	Neighborhood Center Mixed Use
<b>Zoning:</b>	CN-2 & CN-3, Neighborhood Center Commercial 2 & 3; Height Area 65, S-13, S-14
<b>Proposed Environmental Determination:</b>	Exempt from the California Environmental Quality Act ("CEQA"), based on the following CEQA Guidelines Sections: Section 15301: Existing Facilities; Section 15304: Minor Alterations of Land; Section 15183: Projects Consistent with a Community Plan, General Plan or Zoning; and Section 15061(b): Common Sense exemption.
<b>Historic Status:</b>	N/A
<b>City Council District:</b>	CCD1
<b>Finality of Decision:</b>	Appealable to City Council
<b>For Further Information:</b>	Contact Case Planner Alexia Rotberg at (510) 418-8534 or by email at <a href="mailto:arotberg@oaklandca.gov">arotberg@oaklandca.gov</a>

CITY OF OAKLAND PLANNING COMMISSION



Site Parcel S-13 Combining Zone

100 Feet



Case File: PUDF95-166  
Applicant: Mark Loper  
Address: 490 and 514 Shattuck Ave  
Base Zone(s): CN-2, CN-3  
Combining Zone(s): S-13, S-14

**SUMMARY**

The applicant has filed a Revision application request to a previously approved Planned Unit Development permit for a project known as Temescal Plaza, which was entitled in 1995 and construction of all phases was completed in the early 2000's. The Revision application proposes to revise Condition of Approval Number 14 of Final Planned Unit Development PUDF95-166, and Preliminary Planned Unit Development PUD94-219, both originally approved in 1995. Proposed revisions include the conversion of 15, 2-hour public parking spaces at the northeast corner of the project site, to half-hour spaces reserved for the business operating at 5055 Telegraph Avenue (formerly occupied by Walgreen's). This conversion would result in a total of 135, 2-hour public parking spaces remaining at the project site. There are no proposed changes to uses or buildings previously approved by PUDF95-166, and the related approved Preliminary Planned Unit Development PUD94-219.

As detailed below, staff finds that the project meets all the required Findings (**Attachment A**). Therefore, staff recommends approval of the project subject to the Conditions of Approval (**Attachment B**).

**BACKGROUND**

On April 19, 1995, the City Planning Commission ("CPC") approved Planned Unit Development/Preliminary Development Plan permit PUD94-219 for up to 43,250 square feet of retail floor area at the project site, subject to certain Conditions of Approval. One such Condition, Condition No. 14, requires that all parking spaces at the project site be free of charge and open to the public for a minimum of two (2) hours; that no such spaces shall be designated to any particular retail tenant; and that a minimum of 55 contiguous 2-hour public spaces shall be maintained unless agreed to by the Director of City Planning and representatives of the Temescal Merchants Association. A Final Planned Unit Development PUDF95F-166, consistent with the prior preliminary approval, was approved by the CPC on October 18, 1995. See **Attachment C**.

Since the original PUD approvals in 1995, the project site has been developed into Temescal Plaza, a retail shopping center with various retail tenants across four (4) buildings. In 2008, City staff approved Plaza ownership's request to convert fifteen parking stalls at the northeast corner of the project site from 2-hour public spaces to half-hour public spaces; determining the conversion was consistent with Condition of Approval No. 14(d) via DET08-055 (**Attachment D**). Conversely, in 2012, staff denied a similar request by Plaza ownership to convert 25, 2-hour public spaces to half hour public spaces, citing conflict with Condition Number 14(d) and 14(e), via DET12-038(**Attachment E**). Plaza ownership appealed this denial to the CPC, who subsequently upheld staff's determination.

**PROJECT DESCRIPTION**

The project does not propose any change to uses or buildings approved by PUD94-219 and PUDF95-166. The project proposes conversion of the 15-half hour public spaces approved by DET08-55, to half-hour spaces dedicated for use by the building at 5055 Telegraph Avenue. This conversion comprises just ten percent of the 150 public parking spaces onsite; and would result in a total of 135, 2-hour public parking spaces remaining at the project site. The proposed conversion is requested by Plaza ownership to facilitate reactivation of the vacant building located at 5055 Telegraph Avenue with a new grocery retailer.

**PROPERTY DESCRIPTION**

The subject property consists of two parcels, and totals approximately 3.03 acres in size. The property is bound by 51<sup>st</sup> Street to the north, Telegraph Avenue to the east, 49<sup>th</sup> Street to the South, and Shattuck Avenue to the west. The property is developed with four retail buildings and related surface parking lot

area, while surrounding properties are developed with similar retail commercial uses. Residential uses are located further north, east and south of the property in the adjacent Temescal neighborhood.

**GENERAL PLAN ANALYSIS**

The project site is located within the “Neighborhood Center Mixed Use” General Plan Land Use Designation which is intended to maintain and enhance mixed use neighborhood commercial centers. The proposed conversion of parking spaces will support Plaza ownership’s efforts of reactivating the vacant building space located at 5055 Telegraph Avenue, and the ongoing operation of Temescal Plaza as a neighborhood commercial center serving surrounding neighborhoods. Additionally, the request complies with the following General Plan Policies:

**Land Use and Transportation Element:**

- Policy I/C3-3, Clustering Activity in “Nodes”. The proposed conversion will support ongoing operation of Temescal Plaza as a retail commercial “node” by dedicating parking to a potential future grocery tenant.
- Policy I/C3-4, Strengthening Vitality. The proposed conversion will support the vitality of the existing community commercial center known commonly as Temescal Plaza, and will help establish a potential future anchor tenant that will bring additional patrons to the surrounding commercial area.
- Policy N1.1 Concentrating Commercial Development. The proposed conversion will support the ongoing operation of Temescal Plaza as a concentration of several smaller scale neighborhood-oriented retailers.
- Policy N1.3 Locating Parking Facilities. The proposed conversion will retain 135, 2-hour minimum public parking spaces to serve patrons of Temescal Plaza, and the surrounding neighborhood businesses in the area..

**Environmental Justice / Race and Equity:**

- EJ-5.1, New Healthy Food Grocers. The proposed conversion will facilitate reactivation of the vacant building space at 5055 Telegraph Avenue with a grocery retailer that will provide affordable fresh food options to surrounding residential neighborhoods.
- EJ-7.1, Complete Neighborhoods. The proposed conversion will facilitate reactivation of the vacant building space at 5055 Telegraph Avenue with a grocery retailer that provides surrounding neighborhoods with safe and convenient access to fresh foods on a regular basis.
- EJ-7.2 Accessible Neighborhoods. The proposed conversion will facilitate reactivation of the vacant building space at 5055 Telegraph Avenue with a grocery retailer which will further encourage use of existing protected bicycle lanes, and Alameda County Transit’s Bus Route 6 along Telegraph Avenue.

**ZONING ANALYSIS**

The proposal is consistent with the following sections of the Oakland Planning Code (“OPC”):

- OPC Section 17.33.010 regarding the intent of the Neighborhood Center Mixed Use Commercial Zone, which is to “create, preserve, and enhance mixed use neighborhood commercial centers”. The proposal will facilitate Temescal Plaza’s ongoing operation as a neighborhood shopping center through reactivation of a vacant commercial space within the Plaza.

- OPC Section 17.96.010 regarding the purpose and applicability of the S-14 Housing Site Combining Zone. This section of the OPC pertains to sites identified by the City's Housing Element as sites prioritized for residential housing development and only applies to proposed "development projects". As defined by OPC Section 17.96.020, development projects include projects "changing the character of the land from its existing condition" and does not include "the making of improvements, renovations, or updates to an existing building; adding floor area to an existing building ... or the placement of temporary structures". Accordingly, the proposal does not meet the definition of "development project" and retains consistency with OPC Section 17.96.010.
- OPC Section 17.116.080 regarding Required Off-Street Parking for Commercial Activities. This section of the OPC does not require any amount of minimum parking for general retail and/or food sales within the CN zones when located within ½ mile of major transit, as defined by Section 21155 of the Public Resources Code. The project site is located within ½ mile of major transit.

While development and operation of Temescal Plaza are subject to specific parking conditions of approval included as part of PUDF95-166; similar projects constructed today near major transit would not be required to have any required parking minimums. Further, if constructed today and not within ½ a half mile of major transit, a 43,250 square foot retail shopping center would only be required to have one (1) parking space per 1,000 square feet of floor area, or 44 spaces. The subject proposal would result in 135 2-hour public parking spaces remaining at the project site. This is over three (3) times the minimum off-street requirement per the OPC.

## ENVIRONMENTAL DETERMINATION

For purposes of environmental review under the California Environmental Quality Act (CEQA), the project meets the Applicable CEQA Exemptions:

- CEQA Section 15301: Existing Facilities. The project constitutes operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use.
- CEQA Section 15304: Minor Alterations of Land. The project constitutes minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry or agricultural purposes.
- CEQA Section 15183: Projects Consistent with a Community Plan, General Plan or Zoning. No further environmental review is required except to examine project-specific effects that are peculiar to the project and were not adequately analyzed in the prior plan or Zoning EIR. Here, a retail parking lot of this nature was contemplated in the approved plans and zoning. In addition, the number of parking spaces are not changing from the baseline condition; only to which retail use they are applied.
- CEQA Section 15061(b)(3): Common Sense Exemption. The project is covered by the common sense exemption. CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA under this exemption.

**KEY ISSUES AND IMPACTS**

Parking

The approved PUDF95-166 includes specific conditions of approval regarding required off-street parking, to ensure Temescal Plaza’s functionality as a commercial shopping center serving surrounding neighborhoods. As discussed above in “zoning analysis” the project site is centrally located within 1/2 mile of major transit as defined by California State Law. Accordingly, if the project site were redeveloped today, it would not require any amount of minimum off-street parking per OPC Section 17.116.080. Additionally, even if not located within ½ a mile of major transit, a similarly sized retail shopping center project (43,250 sf) would only require 1 off-street parking space per 1,000 sf of floor area, totaling 44 parking spaces. The subject proposal would result in 135, 2-hour public parking spaces remaining at the project site. This is over three (3) times the minimum off-street requirement per the OPC. Therefore, staff does not anticipate any issues or impacts from the proposal.

**RECOMMENDATIONS:**

For approvals:

1. Affirm staff’s environmental determination.
2. Approve the Revision to the Final Planned Unit Development PUDF95-166 COA#14 subject to the attached findings and conditions.

Prepared by:

*Alexia Rotberg*

\_\_\_\_\_  
Alexia Rotberg  
Planner III

Reviewed by:



\_\_\_\_\_  
Peterson Vollmann  
Acting Development Planning Manager  
Bureau of Planning

Approved for forwarding to the Planning Commission:



\_\_\_\_\_  
Ed Manasse, Deputy Director  
Bureau of Planning

**ATTACHMENTS:**

- A. Findings For Approval
- B. Revised Conditions of Approval PUDF95-166
- C. City Planning Commission (CPC) Approval of Final Planned Unit Development PUDF95F-166,  
October 18, 1995
- D. Zoning Determination DET08-055
- E. Zoning Determination DET12-038

**ATTACHMENT A**  
**FINDINGS FOR APPROVAL**

This proposal meets all the required Planned Unit Development Permit Criteria contained within Section 17.140.080 of the Oakland Planning Code as set forth below and which are required to approve the application. Required findings are shown in bold type; reasons your proposal satisfies them are shown in normal type.

- A. That the location, design, size, and uses are consistent with the Oakland General Plan and with any other applicable plan, development control map, design guidelines, or ordinance adopted by the City Council or Planning Commission;**

The proposal does not affect the location, design, and size of Temescal Plaza as originally approved by PUDF95-166. Accordingly, the project site will retain consistency with the Oakland General Plan and all other applicable plans, and guidelines.

- B. That the location, design, and size are such that the development can be well integrated with its surroundings, and, in the case of a departure in character from surrounding uses, that the location and design will adequately reduce the impact of the development;**

The proposal does not affect the location, design, and size of Temescal Plaza as originally approved by PUDF95-166. Accordingly, the project site will remain well integrated with its surroundings.

- C. That the location, design, size, and uses are such that traffic generated by the development can be accommodated safely and without congestion on major streets and will avoid traversing other local streets;**

The proposal does not affect the location, design, and size of Temescal Plaza as originally approved by PUDF95-166, nor will it affect traffic generated by the project. The proposal is intended to facilitate successful operation of the site by dedicating a small number of parking spaces for use by the business to be located at 5055 Telegraph Avenue.

- D. That the location, design, size, and uses are such that the residents or establishments to be accommodated will be adequately served by existing or proposed facilities and services;**

The proposal does not affect the location, design, and size of Temescal Plaza as originally approved by PUDF95-166. Businesses within Temescal Plaza will continue to be serviced by adequate facilities as discussed in staff's report.

- E. That the location, design, size, and uses will result in an attractive, healthful, efficient, and stable environment for living, shopping, or working, the beneficial effects of which environment could not otherwise be achieved under the zoning regulations;**

The proposal does not affect the location, design, and size of Temescal Plaza as originally approved by PUDF95-166. Accordingly, the project site will remain an attractive, healthful, efficient, and stable environment for shopping and working.

- F. That the development will be well integrated into its setting, will not require excessive earth moving or destroy desirable natural features, will not be visually obtrusive and will harmonize with surrounding areas and facilities, will not substantially harm major views**

**for surrounding residents, and will provide sufficient buffering in the form of spatial separation, vegetation, topographic features, or other devices.**

The proposal does not affect Temescal Plaza's integration into the surrounding area, nor will it destroy any natural features, require any earth moving, or produce impacts to major views.

**ATTACHMENT B**  
**CONDITIONS OF APPROVAL FROM PUDF95-166 (PUD)**

**See revised Condition of Approval Number 14 shown in ~~strikethrough~~ underline**

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 incorporates 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 is ER94-32 be made a part of this approval. Revised site plans showing no exiting onto 51<sup>st</sup> Street per Mitigation Measure No. 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 PG&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 the 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.
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 Sections 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 provisions 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 store front 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 reasonably 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, except for 15 spaces fronting the building on

the northeast corner of the property and Telegraph Avenue to the north of the curb cut, and a sign to that effect shall be installed at the entrances on Telegraph Avenue, Shattuck Avenue, 49<sup>th</sup> and 51<sup>st</sup> 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 reasonably good effort to obtain approval from Temescal Neighborhood Together (TNT) prior to submitting said plans to the Director of City Planning.

- b. All spaces shall be available to all customers (except for required disabled parking spaces and the 15 spaces fronting the building on the northeast corner of the property and Telegraph Avenue to the north of the curb cut).
  - c. The owner of the shopping center shall have the right to limit the duration of parking by restricting parking to 2 (two) hours or greater and all parking restrictions shall be enforced. If there is such a restriction on duration, that restriction shall apply to all parking stalls except those 20 spaces north of Store A and the first 13 spaces on the east side of 49<sup>th</sup> Street entry per site plans submitted 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 site 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 needed.
  - 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) 50<sup>th</sup> Steet 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 graffiti.
  16. There shall be no exterior pay telephones along the public right-of-way. pay telephones shall be allowed only upon the 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 the issuance of building permits; that such a plan include a planting schedule detailing plant types and locations and a system for irrigation of plantings; that the plantings include the provision of 15 gallon size coast live oak trees as shown on the landscaping plan submitted on February 27, 1995; that all final building permit inspection; and that all landscaping be permanently maintained in a neat, safe and healthy condition.
  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 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 the 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 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.
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 51<sup>st</sup> 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.

**ATTACHMENT C**

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  $\pm 43,250$   
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  $\pm 4,500$  sq. ft. commercial building,  $\pm 15$  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)

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

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.

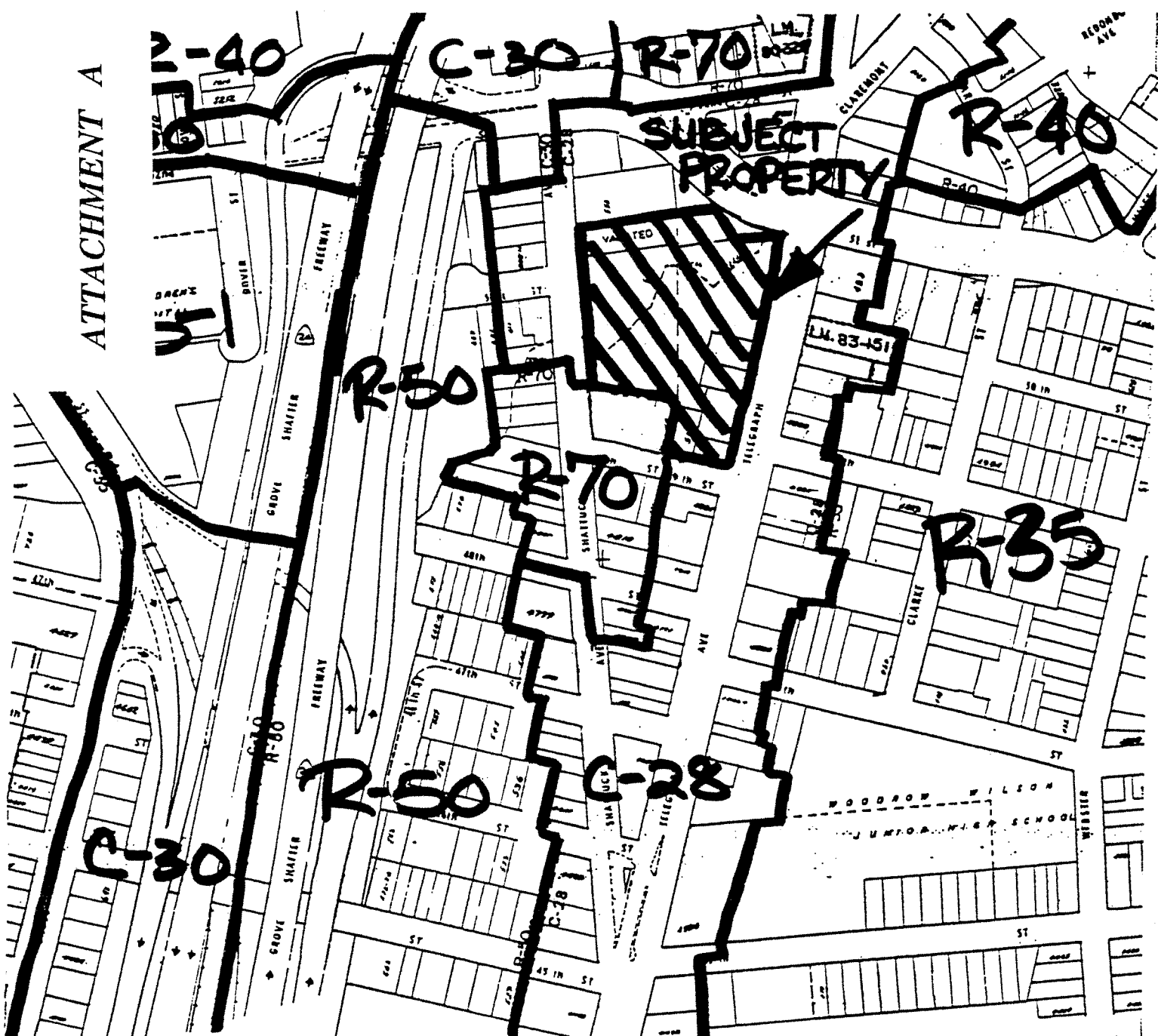
**FINDINGS:** The Final Development Plan is in substantial compliance with the previously approved Preliminary P.U.D. with regard to site design, height, location of buildings, signs and required parking, and with the conditions of approval and mitigation measures.

**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



ATTACHMENT A

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	

REVISION:

JOB TITLE:

**TEMESCAL  
PLAZA**

TELEGRAPH AVE  
& 51ST STREET  
OAKLAND, CA

OWNER:

**BERKELEY FARMS**  
4350 SAN JACOB AVE.  
EMERYVILLE, CA 94608

SHEET TITLE:

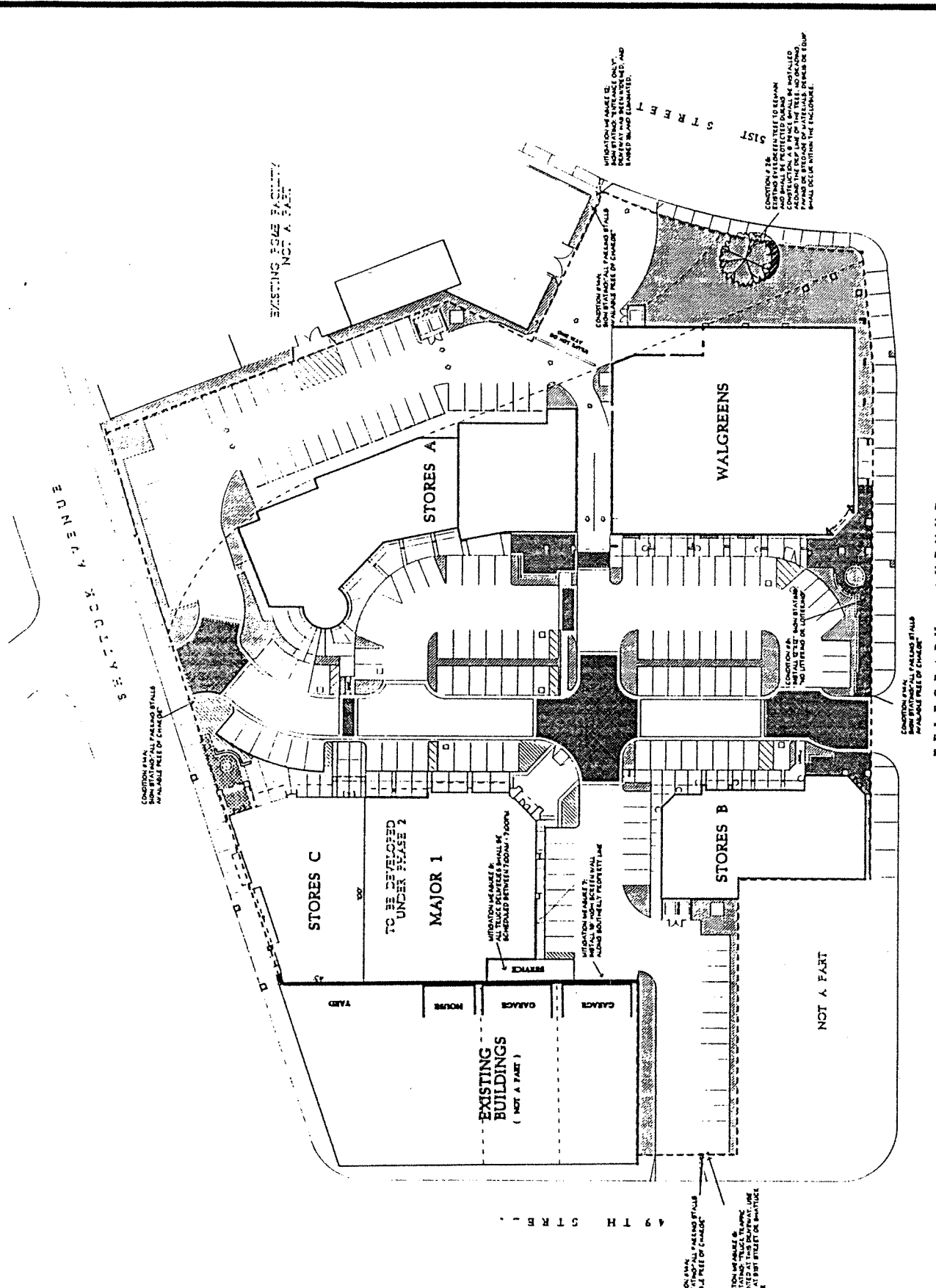
**FINAL SITE PLAN  
FOR PUD**

DATE: 9/1/85

JOB No. 93108

SHEET:

**A1.1**



1" = 20'

**ATTACHMENT B**

# ATTACHMENT C



1111 CALIFORNIA  
SAN FRANCISCO, CA 94108

REVIS

JOB T

TEMESCAL  
PLAZA

TELEGRAPH AVE  
& EAST STREET  
OAKLAND, CA

OWNER:

BERKELEY FARMS  
4550 SAN PABLO AVE.  
EMERYVILLE, CA 94608

SHEET TITLE:

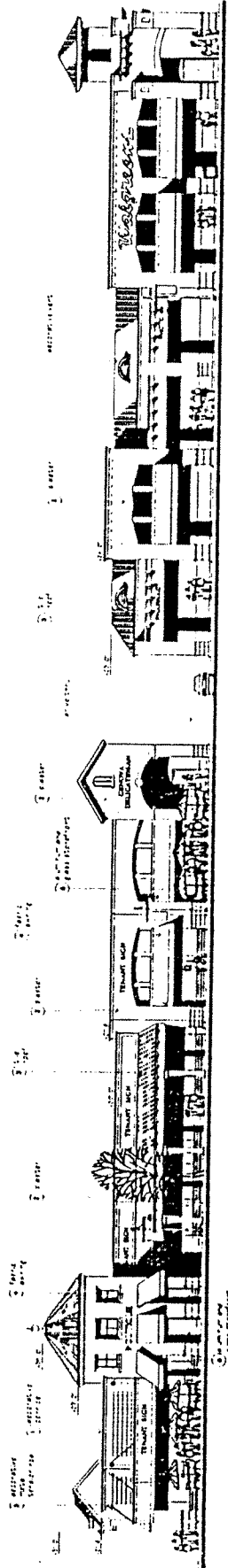
ELEVATIONS

DATE: 2/22/95

JOB No. 93308

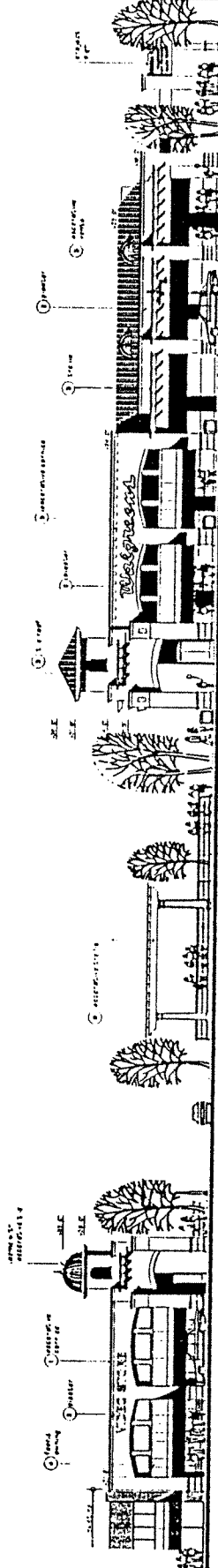
SHEET:

4 of 9



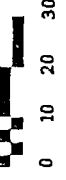
## SOUTH ELEVATION

stores A & walkways from parking area 1/4"=10"



## EAST ELEVATION

stores B & walkways from telegraph avenue 1/4"=10"



# ATTACHMENT C



DATE: 2/22/95  
JOB No: 93108  
SHEET:

REVISION:

JOB TITLE:

## TEMESCAL PLAZA

TELEGRAPH AVE  
4101 1ST STREET  
OAKLAND, CA

OWNER:

BERKELEY FARMS  
4530 SAN PABLO AVE  
EMERYVILLE, CA 94508

SHEET TITLE:

ELEVATIONS

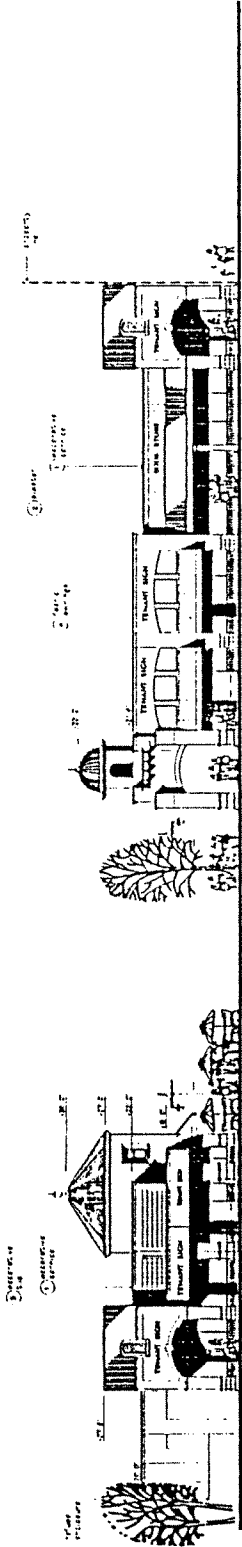
DATE: 2/22/95

JOB No: 93108

SHEET:

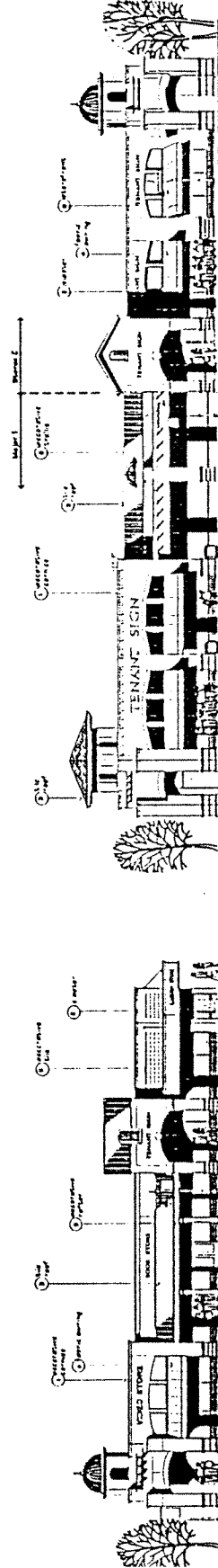
5

of



### WEST ELEVATION

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

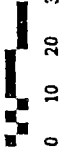


### NORTH ELEVATION

stores B from parking area 1"=10'

### NORTH ELEVATION

Major I & store C from parking area 1"=10'



0 10 20 30

# ATTACHMENT C



REVIS

JOB TITLE

**TEMESCAL  
PLAZA**

TELEGRAPH AVE  
& WEST STREET  
OAKLAND, CA

OWNER:

BERKELEY FARMS  
4550 SAN PABLO AVE.  
EMERYVILLE, CA 94608

SHEET TITLE:

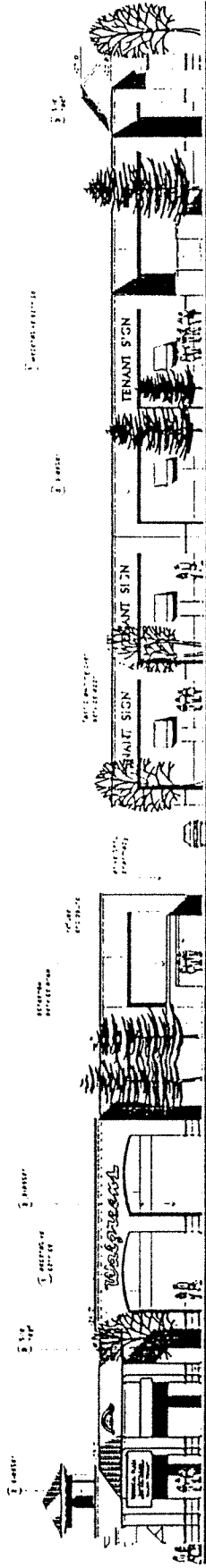
ELEVATIONS

DATE: 2/22/95

JOB No. 93108

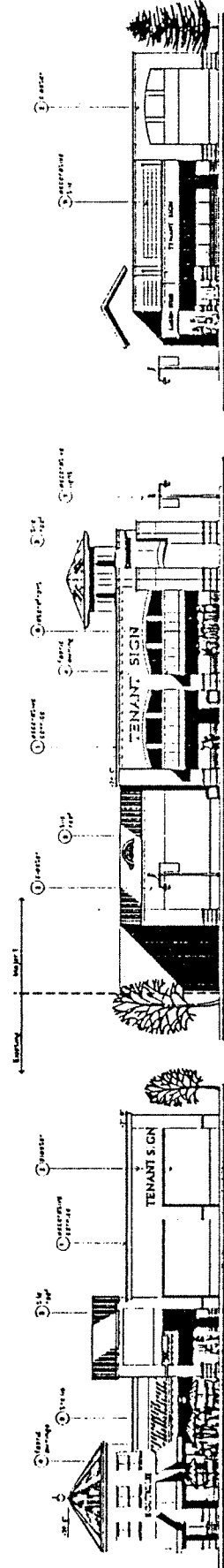
SHEET:

6 of



## NORTH ELEVATION

Walgreens & signs A from East Street 1"=10'



## EAST ELEVATION

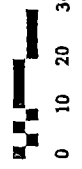
signs A from drive thru 1"=10'

## EAST ELEVATION

Major 1 from parking area 1"=10'

## WEST ELEVATION

signs B from parking area 1"=10'



OCT  
11 1995

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

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

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)

**ATTACHMENT D**



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

**ATTACHMENT E**

*By Overnight Courier*

February 1, 2013

Walgreen Co.  
200 Wilmot Road  
Deerfield, IL 60015  
Attention: Law Department

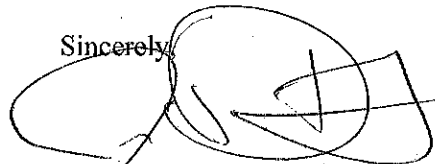
RE: Walgreens Store # 1625, 5055 Telegraph, Oakland, CA

Dear Tenant:

By hearing on December 5, 2012, the City of Oakland Planning Commission denied Landlord's appeal of the City Planning Division's July 3, 2012 refusal to permit Landlord to convert an additional twenty-five two-hour parking spaces to thirty-minute parking spaces. The Planning Commission's decision is not appealable. I have enclosed copies of the decisions. As a result, Landlord has been unable to designate the "Additional Restricted Parking" contemplated under the Third Amendment to Lease, dated January 16, 2012. However, Landlord reserves the right to designate such Additional Restricted Parking at a later date.

Please contact me directly if you wish to discuss any of the above matters.

Sincerely,

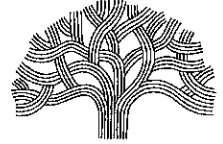


John P. Dobrovich  
Director of Real Estate /  
Assistant General Counsel  
Leslie Rudd Investment Company  
1275 Inglewood Avenue  
St. Helena, CA 94574  
707-948-2688  
*John.Dobrovich@LRICO.com*

cc: Todd Frank (*todd.frank@walgreens.com*)  
cc: Daniel B. Perlin (*dan.perlin@walgreens.com*)

Enclosure

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

Sent via U.S. Mail and Electronic Mail

December 7, 2012

Josh Reed  
LRICO Services  
1275 Inglewood Avenue  
St. Helena, CA 94574

**RE: Case Files: A12-130, 5095 Telegraph Avenue (APN 013-1154-009-05)**

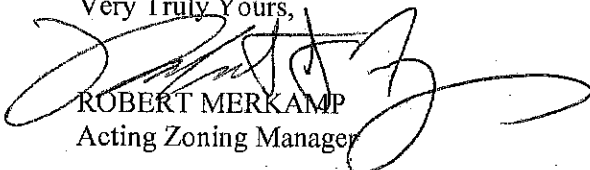
Dear Mr. Reed:

The above application was unanimously **DENIED** at the City Planning Commission meeting on **December 5, 2012**. The Commission's action is indicated below. This action is final.

1. **Adoption/approval of the CEQA Findings.**
2. **Denial of Appeal of Zoning Manager Finding Noncompliance with Conditional Use Permit**

This Action of the Planning Commission is effective immediately and is not appealable to the City Council. If you have any questions, please contact the case planner David Valeska, Planner II, by phone at (510) 238-2075 or [dvaleska@oaklandnet.com](mailto:dvaleska@oaklandnet.com).

Very Truly Yours,

  
ROBERT MERKAMP  
Acting Zoning Manager

Cc: Ray Derania, Building Services Division  
Bill Quesada, Inspection Services  
Temescal Merchants Association, S. Waite/C. Busby

**LEGAL NOTICE:** This action of the Oakland City Planning Commission is final. Any party seeking to challenge such decision in court must do so within ninety (90) days of this decision letter, unless a different date applies.

I certify that on December 7, 2012 this decision letter, relating to A12-130, 5095 Telegraph Avenue, was placed in the U.S. mail system, postage prepaid for first class mail, and sent to Applicant Josh Reed and other persons listed on the preceding initialed and dated page.

VERSEA M. HATMAN *Versea M. Hatman*  
(NAME & SIGNATURE OF PERSON PLACING IN MAIL)

December 7, 2012  
(DATE)



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 \_\_, 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.

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\det12038\temescal