

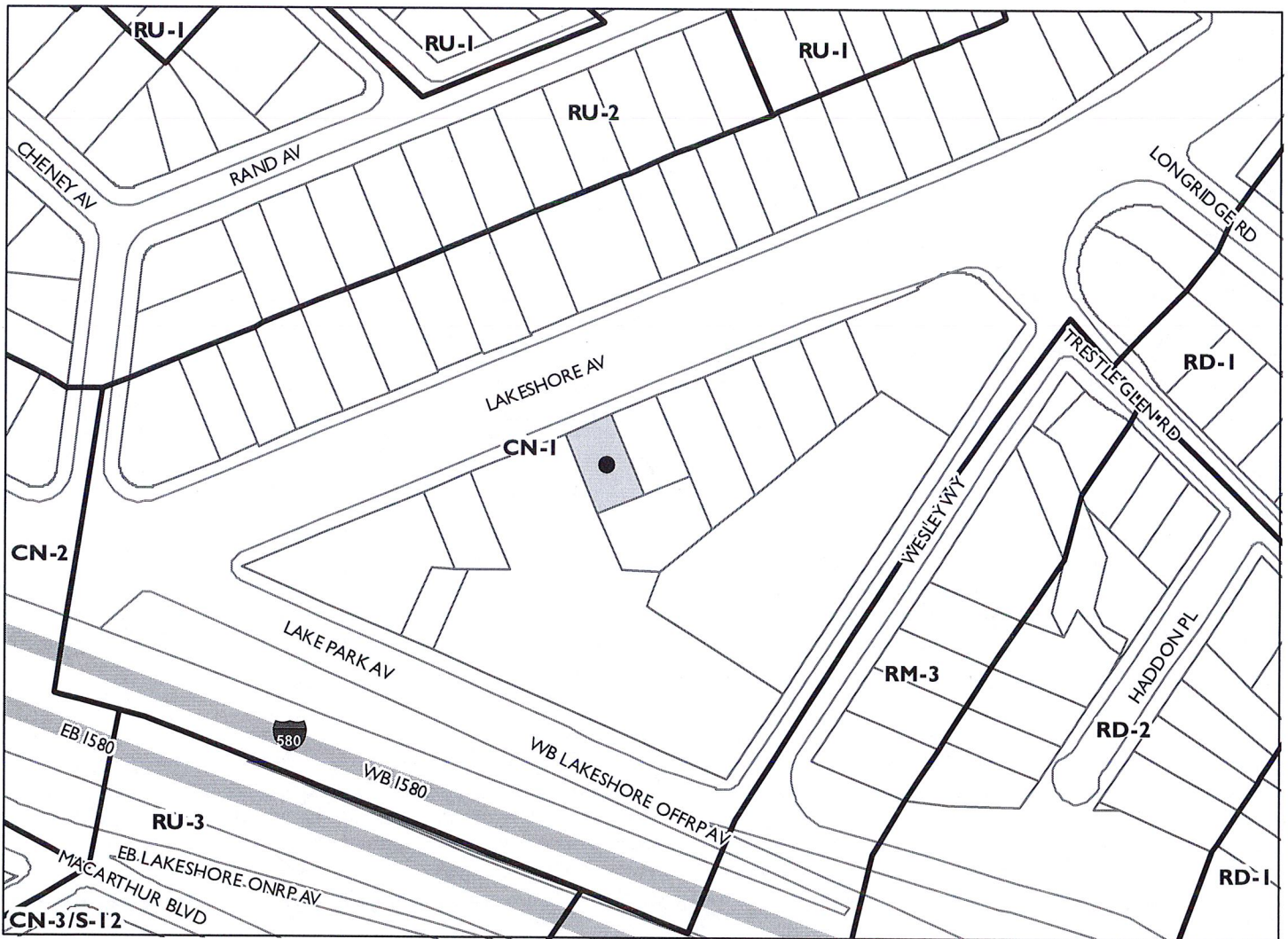
Location:	3260 Lakeshore Avenue (see map on reverse)
Assessor's Parcel Number:	023-0424-024-00
Proposal:	To serve beer & wine for on-site consumption with meals in a limited service restaurant within the hours of 7 am-11 pm (Proposition Chicken)
Applicant/Phone Number:	Elizabeth Wells / (415) 218-0197
Owners:	Elaine and Berry Gilbert
Planning Permits Required:	Major Conditional Use Permit with additional findings to allow an Alcoholic Beverage Sales Commercial Activity; Findings for Public Convenience Or Necessity (PCN) to allow new Alcoholic Beverage Sales in an over-concentrated area; Minor Conditional Use Permit for a Limited Service Restaurant and Café in the CN-1 zone. Variances to allow a new Alcoholic Beverage Sales outside of the Central Business District (1) within 1,000 feet of an existing location and (2) within 1,000 feet of civic uses (parks; school; church) in an over-concentrated area
General Plan:	Neighborhood Center Mixed Use
Zoning:	CN-1 Neighborhood Commercial Zone – 1
Environmental Determination:	Exempt, Section 15301 of the State CEQA Guidelines: Existing Facilities (operations); 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: Dc2+ (contributor, Area of Secondary Importance: Lakeshore Avenue Commercial historic district)
Service Delivery District:	III
City Council District:	2
Date Filed:	July 20, 2016
Staff Recommendation:	To Approve the application with Conditions
Finality of Decision:	<i>Appealable to City Council within 10 days</i>
For Further Information:	Contact case planner Michael Bradley at (510) 238-6935 Or mbradley@oaklandnet.com

SUMMARY

The applicants request a Major Conditional Use Permit with additional findings and Variances to allow sale of alcoholic beverages (beer and wine) at a Limited Service Restaurant (Proposition Chicken) on Lakeshore Avenue.

Staff recommends approval of the application subject to Conditions of Approval as described in this report.

CITY OF OAKLAND PLANNING COMMISSION



Case File: PLN16226
Applicant: Elizabeth Wells
Address: 3260 Lakeshore Avenue
Zone: CN-1

PROPERTY DESCRIPTION

The property consists of a level, commercially zoned lot containing a one-story commercial building of 4,006 square feet with the subject commercial space at 1,231 square feet. The property contains no driveways or parking. The building, constructed of masonry, contains three commercial spaces with façade glazing, awnings and signage. It is at zero lot line along its front and side property lines, abutting the adjacent buildings on the north (left) side. The project space is at the far north (left side). It measures 16 feet in width and most recently contained a produce store which relocated up the block. The south (right side) space is occupied by Peet's Coffee & Tea. The building situated to the east (left) contains a cell phone retail store. The district consists of commercial uses such as retail, services, markets, full and limited service restaurants, a liquor store, and a bar. Several full service restaurants and a few limited service restaurants serve alcoholic beverages. At the edges of the district are residential neighborhoods (to the rear), parks, a school, and a church. Parking is provided on-street in metered spaces and in City parking lots one block west beneath the 580 freeway (metered) and at a garage one block west at 721 Wesley Way (non-metered).

PROJECT DESCRIPTION

The applicant representing Proposition Chicken proposes alcohol sales including beer and wine sales at a limited service restaurant and café similar to their existing facility in San Francisco which also serves beer and wine. Alcoholic beverages would be served in bottles or glasses. The restaurant would be operated as a Limited Service Restaurant. Minors would be admitted at all times. Requested hours of operation would be 7:00 am to 11:00 pm daily with approximately 18-20 employees at various shifts. Entertainment is not contemplated and admission would not be charged. Staff would monitor the site and public right-of-way fronting the site to ensure cleanliness and eliminate nuisances such as noise or loitering, as required by Conditions of Approval. Beer and wine sales at a restaurant requires a type 41 license from the State Department of Alcoholic Beverage Control (ABC).

ON SALE BEER & WINE – EATING PLACE - (Restaurant) Authorizes the sale of beer and wine for consumption on or off the premises where sold. Distilled spirits may not be on the premises (except brandy, rum, or liqueurs for use solely for cooking purposes). Must operate and maintain the licensed premises as a bona fide eating place. Must maintain suitable kitchen facilities, and must make actual and substantial sales of meals for consumption on the premises. Minors are allowed on the premises.

GENERAL PLAN ANALYSIS

The premises are located in a Neighborhood Center Mixed Use area of the General Plan's Land Use & Transportation Element (LUTE). The intent of the area 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."* The property is located in a "Maintain and Enhance" strategy area under the LUTE. The proposal to renovate an existing commercial space and establish a new limited service restaurant at the subject location, enhanced with beer and wine service, conforms to this intent and strategy and to the following LUTE Objective and Policies:

Objective I/C1

Expand and retain Oakland's job base and economic strength

Policy I/C3.2 Enhancing Business Districts

Retain and enhance clusters of similar types of commercial enterprises as the nucleus of distinctive business districts, such as the existing new and uses automobile sales and related uses through urban design and business retention efforts.

Policy I/C3.3 Clustering Activity in “Nodes”.

Retail uses should be focused in “nodes” of activity, characterized by geographic clusters of concentrated commercial activity, along corridors that can be accessed through many modes of transportation

Staff finds the proposal to conform to the General Plan, as conditioned, because beer and wine in conjunction with restaurants attracts customer activity in retail areas.

ZONING ANALYSIS

The premises are located in a Neighborhood Center Mixed Use (CN) Zone, the CN-1 Neighborhood Commercial Zone – 1. The intent of the CN Zones is: *“to create, preserve, and enhance mixed use neighborhood commercial centers. The centers are typically characterized by smaller scale pedestrian oriented, continuous and active store fronts with opportunities for comparison shopping.”* The intent of the CN-1 Zone is: *“to enhance the character of established neighborhood commercial centers that have a compact, vibrant pedestrian environment.”*

Conditional Use Permit

A minor conditional use permit (CUP) is required to establish a limited service restaurant and café in the CN-1 zone. Also, a major CUP is required (decided by the Planning Commission) for alcohol sales in all restaurants that are not full service. The purpose of the CUP review is to address the possibility of nuisance activities that sometimes are associated with alcohol sales outlets, and to mitigate any such concerns (litter, loitering, and noise) through implementation of conditions of approval.

Variances

In addition to a Major CUP to regulate operations, the Planning Code requires a 1,000-foot distance separation between Alcoholic Beverage Sales Commercial Activities. Additionally, premises located in over-concentrated areas (that is, census tracts with liquor licenses exceeding the County median and/or police beats with reported crime rates exceeding the Citywide mean by greater than twenty-percent) shall not be located within 1,000-feet of civic activities (such as parks, schools and churches) and/or in police beats with calls for police service exceeding the Citywide median by greater than twenty-percent. The subject site is in an over-concentrated area as follows: Census Tract 4038 is over-concentrated for number of ABC establishments (however, Police Beat 14Y is not over-concentrated in terms of police calls). The premises are located within 1,000-feet of existing alcoholic beverage sales outlets and civic uses as shown in the following table.

	Address	Distance separation between parcels (approx)	Description
On-sale	4259 Lakeshore Ave.	135 feet	bar (The Cat House) – ABC license type #48/on-sale general
	504 Lake Park Ave.	625 feet	bar (Heart and Dagger Saloon) - #48
Off-sale	3293 Lakeshore Ave.	145 feet	liquor store (Buckingham's) - #21/off-sale general
	3250 Lakeshore Ave.	60 feet	supermarket (Trader Joe's) – #21 retail/pharmacy (Walgreen's) - #20/beer and wine
	3417 Lakeshore Ave.	560 feet	market (Oakland Kosher Foods) – #20

	3256 Grand Ave.	960 feet	Liquor store (Alchemy) - #21
Limited Service Restaurants			
	Address	Distance separation between parcels (approx)	Description
	3271 Lakeshore Ave.	100 feet	restaurant (Chipotle) – beer and wine/#41
	528 Lake Park Ave.	600 feet	restaurant (WingStop) – #41
Civic	Lakeshore at Mandana	775 feet	park (Mandana Park Plaza)
	Lake Park Way	745 feet	park (Splash Pad Park)
	3220 Lakeshore Ave.	860 feet	park (East Shore- Lake Shore Park)
	3518 Lakeshore Ave.	925 feet	church (Lakeshore Avenue Baptist Church)
	3534 Lakeshore Ave.	950 feet	school (Lakeshore Children’s Center)

Variations are thus required for the project. The general purpose of the distance separation is to prevent alcohol outlet types that can be problematic such as liquor stores and bars from locating and proliferating adjacent to residential and civic uses. The issues related to this application for these permits are discussed in the Key Issues And Impacts section of this report.

ENVIRONMENTAL DETERMINATION

The California Environmental Quality Act (CEQA) Guidelines categorically exempts specific types of projects from environmental review. Section 15301 of the State CEQA Guidelines exempts projects involving *operation of existing private...facilities*. The proposal to serve beer and wine at a limited service restaurant located in a commercial district meets this description: the project would constitute operation of an existing facility. The project is therefore exempt from environmental review.

KEY ISSUES AND IMPACTS

For a conditional use permit application staff must consider what potential issues could occur as a result of the project or future use of an approval, and attach appropriate conditions of approval to the activity to ensure it operates compatibly with its surroundings. In this case, the proposal involves alcohol sales within proximity to existing alcohol sales activities (a bar, liquor store, and supermarket are in closest proximity) and civic uses. To justify the operation, the proposal cannot constitute a nuisance to these uses or contribute to a proliferation of alcohol sales around them. Typical problems that can result from alcohol sales include litter, loitering, noise, public intoxication and associated nuisances.

Staff is not aware of any significant community concerns regarding the proposal being expressed at this time.

Alcohol regulations

Staff finds that alcohol regulations are sufficient to control nuisances due to the following factors:

- Consumption of beer and wine would occur on site with food in a newly renovated dining room at a premises admitting children and containing a restroom. As a result, this type of restaurant tends to attract families, which create limited on- or off-site nuisances.

- There would be several requirements attached to the establishment that are more restrictive than requirements applying to other similar establishments located in the district and throughout the City.
- Restaurants rarely require Planning Commission approval; this establishment is being regulated similar to a bar except that it will have an earlier closing time, and food must be served with alcohol sales.
- The ABC often mandates a standard closing time for all restaurants serving alcohol in a given district. Should that time ever become earlier than 11:00 pm for this district, the establishment will be further restricted to that earlier closing time.
- With ABC approvals for a restaurant (license type #41), no off-sale (to go) of alcoholic beverages would be permitted.
- With a license type #41 the ABC does not differentiate between full service and limited service; the Planning Code is, therefore, more restrictive than the ABC in this regard in requiring a CUP for the project.
- Under the Limited Service Restaurant or Café use classification, the Planning Code does not distinguish between restaurant and café and a Major Conditional Use Permit does not distinguish between types of alcohol; therefore, this limited service restaurant is being regulated in the same manner as both a café with a full bar and a stand-alone bar.
- Quantity would be restricted to a minimal sales display area of eight square-feet.
- Should the business be sold, a future operator of similar nature could utilize an approved CUP but would be subject to the same conditions.

Location analysis

The area is over-concentrated for liquor licenses in the Census Tract only and not for crime in the Police Beat; crime is, therefore, not a major concern at this location but potential proliferation adjacent to alcohol outlets and civic uses is still a consideration. Staff finds the reduced distance separation is acceptable due to the following factors:

- While the premises are located on the same block as a bar it would function as a restaurant with different hours of operation and only serve beer and wine with food.
- Area parks are not on the same lengthy block as the restaurant and a school and church are greater distances from the site at nearly 925-feet away.
- The majority of park, school, and church users are not expected to pass by the premises and patrons are not expected to pass directly by the parks, school or church on foot.
- Due to these locations as well as differing hours of use and the primary restaurant nature of the establishment, the potentially undesirable situation where intoxicated patrons pose a nuisance to civic uses is considered very unlikely.

- The proposed activity would differ greatly from a bar or liquor store; required findings especially for a variance could likely not be made for those types of establishments; the character of a restaurant serving beer and wine is very different.
- Conditions of approval (Attachment B) would require the litter clean-up by the establishment and signage to discourage loitering, litter, and noise with a contact telephone number to report transgressions.

In conclusion, staff finds the proposal to not pose a nuisance to civic uses or constitute a proliferation of alcohol outlets in the district. Due to the nature of the operation and setting, staff supports the proposal with the inclusion of conditions of approval.

- RECOMMENDATIONS:**
1. Affirm staff's environmental determination.
 2. Approve the Major Conditional Use Permit, Minor Conditional Use Permit and Variances subject to the attached Findings (Attachment B)

Prepared by:



MICHAEL BRADLEY
Planner II

Approved by:



SCOTT MILLER
Zoning Manager

Approved for forwarding to the
City Planning Commission:



DARIN RANELLETTI
Interim Director
Planning and Building Department

ATTACHMENTS:

- A. Findings for Approval
- B. Conditions of Approval
- C. Plans/photographs

Attachment A: Findings for Approval

This proposal meets the required findings under Conditional Use Permit Procedure/General Use Permit Criteria (OMC Sec. 17.134.050), Special Regulations Applying To Certain Establishments Selling Alcoholic Beverages (OMC Sec. 17.102.210(A)), Findings of Public Convenience or Necessity (OMC Sec. 17.102.210(B)(3)), and Variance Procedure/Findings Required (OMC Sec. 17.148.050) under the Planning Code (Title 17), as set forth below. Required findings are shown in bold type; explanations as to why these findings can be made are in normal type.

CONDITIONAL USE PERMIT PROCEDURE/GENERAL USE PERMIT CRITERIA (OMC SEC. 17.134.050)

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 conditional use permit is to establish a limited service restaurant and café in the CN-1 zone and to have on-site consumption of alcoholic beverage sales of beer and wine in the establishment.

The conditional use permit procedure for limited service restaurant and café commercial activities is intended to ensure that commercial areas zoned CN-1 remain pedestrian oriented, that the restaurant activities support the general retail nature of the neighborhood, and that potential impacts are mitigated through conditions of approval. The Lakeshore section of the Neighborhood Center Mixed Use zone, with its variety of retail stores, restaurants, bars and group assembly commercial uses, has become an entertainment and shopping destination. Although there are a variety of different types of businesses in the area, a restaurant activity on the ground floor, in this existing commercial space is appropriate, in part due to the physical configuration of the space and proposed layout.

Alcohol sales as an accessory sales component of the limited service restaurant and café should have little to no impact on the neighborhood character. Staff at the establishment will monitor the site and public right-of-way for noise, loitering, and cleanliness as required by Conditions of Approval. As evidenced by the operating characteristics of the other Proposition Chicken restaurant that serves beer and wine, and as confirmed on plans, the space devoted to sales of beer and wine is very limited. The limited space devoted to alcohol sale further indicates the ancillary nature of such sales, and reduces the potential for nuisance activities that could adversely affect abutting properties and the district.

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 limited service restaurant and café use is consistent with the existing location and setting. The design is both efficient and functional within the context of the CN-1 Zone. The proposal provides a somewhat unique dining experience, which will encourage clients as well as employees to visit the Lakeshore shopping district and to also visit restaurants and shops in the surrounding area.

A produce market was previously located at the subject site, and the building façade including signage and interior are being renovated. The renovation will result in an efficient floor plan and attractive frontage. The frontage will be consistent with other storefronts in the neighborhood.

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 restaurant will contribute to a variety of choices for consumers and will include new jobs. The proposal will bring additional customers to a retail district.

D. That the proposal conforms to all applicable design review criteria set forth in the design review procedure at Section 17.136.050.

The proposal for alcohol sales does not require design review; façade improvements and new signage will be reviewed and approved under a separate small project design review permit.

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

The premises are located in the Neighborhood Center Mixed Use area of the General Plan's Land Use & Transportation Element (LUTE). The intent of the area 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."* The property is located in a "Maintain and Enhance" strategy area under the LUTE. The proposal to renovate an existing commercial space and establish a new limited service restaurant there, including maintaining beer and wine service, conforms to this intent and strategy and to the following LUTE Objective and Policies:

Objective I/C1

Expand and retain Oakland's job base and economic strength.

Policy I/C3.2 Enhancing Business Districts

Retain and enhance clusters of similar types of commercial enterprises as the nucleus of distinctive business districts, such as the existing new and uses automobile sales and related uses through urban design and business retention efforts.

Policy I/C3.3 Clustering Activity in "Nodes".

Retail uses should be focused in "nodes" of activity, characterized by geographic clusters of concentrated commercial activity, along corridors that can be accessed through many modes of transportation.

The proposal conforms to the General Plan.

Limitations on Table 17.33.01: L4. Any Conditional Use Permit (CUP) required in the table or its associated limitations shall conform to the CUP criteria contained in Section 17.134.050 and to each of the following additional criteria:

Findings for Approval

1. That the proposal will not detract from the character desired for the area;

The restaurant will contribute to a variety of choices for consumers and will include new jobs. The proposal will bring additional customers to a retail district.

2. That the proposal will not impair a generally continuous wall of building facades;

The proposal is next to a retail store and another existing limited service restaurant and café. The only exterior alterations are proposed to the signage and the existing storefront and adjacent storefronts will remain without weakening the continuity of the retail facilities. The proposal provides a somewhat unique dining experience, which will encourage clients as well as employees to visit the Lakeshore shopping district and to also visit restaurants and shops in the surrounding area.

3. That the proposal will not weaken the concentration and continuity of retail facilities at ground level, and will not impair the retention or creation of an important shopping frontage;

The proposal is next to a retail store and another existing limited service restaurant and café. The only exterior alterations are proposed to the signage and the existing storefront and adjacent storefronts will remain without weakening the continuity of the retail facilities. The proposal provides a somewhat unique dining experience, which will encourage clients as well as employees to visit the Lakeshore shopping district and to also visit restaurants and shops in the surrounding area.

4. That the proposal will not interfere with the movement of people along an important pedestrian street; and

This finding is met; the establishment will utilize existing premises at zero lot line to the sidewalk with no driveway or parking lot to interrupt pedestrians.

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

The premises are located in the Neighborhood Center Mixed Use area of the General Plan's Land Use & Transportation Element (LUTE). The intent of the area 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."* The property is located in a "Maintain and Enhance" strategy area under the LUTE. The proposal to renovate an existing commercial space and establish a new limited service restaurant there, including maintaining beer and wine service, conforms to this intent and strategy and to the following LUTE Objective and Policies:

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Policy I/C3.3 Clustering Activity in "Nodes".

Retail uses should be focused in “nodes” of activity, characterized by geographic clusters of concentrated commercial activity, along corridors that can be accessed through many modes of transportation.

The proposal conforms to the General Plan.

SPECIAL REGULATIONS APPLYING TO CERTAIN ESTABLISHMENTS SELLING ALCOHOLIC BEVERAGES (OMC SEC. 17.103.030(A))

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

The area consists of commercial establishments including several food and beverage businesses along Lakeshore Avenue as well as Lake Park and Grand Avenues. Food and beverage businesses include formula retail franchises, independents, establishments serving alcoholic beverages, and establishments not engaged in serving alcohol. On-sale alcohol establishments such as restaurants and bars are appropriate for this area and do not create or constitute nuisances such as litter, noise, loitering, or crime when controlled by conditions of approval. As evidenced by visits to other restaurants that serve beer and wine, and as confirmed on plans, the space devoted to sales of beer and wine is very limited, approximately eight square feet of floor space. The limited space devoted to alcohol sale further indicates the ancillary nature of such sales, and reduces the potential for nuisance activities that could adversely affect abutting properties and the neighborhood. The premises are at zero lot line with no driveway or parking lot and has one entrance and exit, so vehicular and pedestrian circulation as well as capacity will not be an issue. Nuisances and capacity will be regulated by conditions of approval.

Alcohol regulations are sufficient nuisance controls due to the following factors:

- Consumption of beer and wine would occur on site with food in a newly renovated dining room at a premises admitting children and containing restrooms. As a result, this type of restaurant tends to attract families, which create limited off-site nuisances.
- There would be several requirements attached to the establishment that are more restrictive than requirements applying to other similar establishments located in the district and throughout the City.
- Restaurants rarely require Planning Commission decision; this establishment is being regulated similar to a bar except that it will have an earlier closing time.
- The ABC often mandates a standard closing time for all restaurants serving alcohol in a given district. Should that time ever become earlier than 11:00pm for this district, the establishment will be further restricted to that earlier closing time.
- Unlike with ABC approvals for a restaurant (license type #41), no off-sale (to go) of alcoholic beverages would be permitted.
- With a license type #41 the ABC does not differentiate between full service and limited service; the Planning Code is, therefore, more restrictive than the ABC in this regard in requiring a CUP for the project.

Findings for Approval

- Under the Limited Service Restaurant or Café use classification, the Planning Code does not distinguish between restaurant and café and a Major Conditional Use Permit does not distinguish between types of alcohol; therefore, this limited service restaurant is being regulated in the same manner as both a café with a full bar and a stand-alone bar.
- Quantity would be restricted to a minimal sales display area of eight square feet.
- Should the business be sold, a future operator of similar nature could utilize an approved CUP but would be subject to its conditions.

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

The premises are located within 1,000 feet of parks, an elementary school, and a church. The majority of park, school, and church users are not expected to pass by the premises due to area configuration and patrons are not expected to pass directly by the parks, school or church on foot (although staff does not find a clear concern with either scenario).

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

This finding is met; the establishment will utilize existing premises at zero lot line to the sidewalk with no driveway or parking lot to interrupt pedestrians.

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

The project consists of signage changes under separate permit to the exterior and an interior remodel which will create minimal exterior alterations and keep the building in line with the character of the Lakeshore shopping district.

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

The project will avoid unduly large or obtrusive signs, bleak unlandscaped parking areas, and an overall garish impression. The project consists of signage changes under separate permit to the exterior and an interior remodel which will create minimal exterior alterations and keep the building in line with the character of the Lakeshore shopping district.

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

The establishment will contain litter receptacles within the premises and the City contains litter receptacles outside along the sidewalk; additionally, conditions of approval require the business to ensure the public right-of-way (sidewalk and gutter) in front and near the restaurant remain free of litter.

7. That where the proposed use is in close proximity to residential uses, and especially to bedroom windows, it will be limited in hours of operation, or designed or operated, so as to avoid disruption of residents' sleep between the hours of ten (10) p.m. and seven (7) a.m. The same criteria shall

apply to all conditional use permits required by subsection B of this section for sale of alcoholic beverages at full service restaurants.

The rear of the building abuts a large commercial parking lot and grocery store with no windows or doors that open from the dining room to face the rear. Closing time will be 11:00pm.

8. That proposals for new Fast-Food Restaurants must substantially comply with the provisions of the Oakland City Planning Commission "Fast-Food Restaurant--Guidelines for Development and Evaluation" (OCPD 100-18).

This finding is inapplicable; the proposal does not involve a fast food restaurant.

PUBLIC CONVENIENCE OR NECESSITY (OMC SEC. 17.103.030(B)(3)

a. That a community need for the project is clearly demonstrated. To demonstrate community need, the applicant shall document in writing, specifically how the project would serve an unmet or underserved need or population within the overall Oakland community or the community in which the project is located, and how the proposed project would enhance physical accessibility to needed goods or services that the project would provide, including, but not limited to alcohol; and

The applicants have submitted documentation as required. The proposal will utilize and enhance a former produce market with a new, popular vendor in a renovated space and building. The premises will serve beer and wine with food as do many area establishments to provide a variety of consumer choices within one district. Variety in this district is important to serve visitors and residents.

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

The project will provide consumer variety, jobs, a gathering place, and involves renovation of the building's façade and interior. As noted elsewhere in the staff report and findings, there is not a substantial risk of anticipated negative impacts or an anticipated significant increase in police calls. As a result, the economic and other benefits outweigh anticipated negative impacts.

c. That alcohol sales are customarily associated with, and are appropriate, incidental, and subordinate to, a principal activity on the lot.

Alcohol sales are a typical component of many limited service restaurants. There are other restaurants in the City, including limited service restaurants, which serve beer and wine and other alcoholic beverages.

ADDITIONAL PUBLIC CONVENIENCE OR NECESSITY FINDINGS (OMC SEC. 17.103.030 (B)(4))

a. The proposed project is not within one thousand (1,000) feet of another alcohol outlet (except full service restaurants), school, licensed day care center, public park or playground, churches, senior citizen facilities, and licensed alcohol or drug treatment facilities; and

This finding is *not* met and a variance is required; the premises are located within 1,000 feet of alcohol outlets (bars and markets), parks, a school, and a church. Variance findings are provided in the following section of this attachment.

b. Police department calls for service within the “beat” where the project is located do not exceed by twenty percent (20%), the average of calls for police service in police beats citywide during the preceding twelve (12) months.

This finding is met: average calls for police service in police beat 14Y did not exceed the citywide average plus twenty percent during the most recent calendar year for which data has been provided.

VARIANCE PROCEDURE/FINDINGS REQUIRED (OMC SEC. 17.148.050(A))

1. That strict compliance with the specified regulation would result in practical difficulty or unnecessary hardship inconsistent with the purposes of the zoning regulations, due to unique physical or topographic circumstances or conditions of design; or, as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution improving livability, operational efficiency, or appearance.

The project requires a variance because it involves alcohol sales at a limited service restaurant in an over-concentrated area, and under the Planning Code an Alcoholic Beverage Sales Commercial Activity can consist of a stand-alone full bar and a Limited Service Restaurant and Café Commercial Activity can consist of a café with food. The project meets neither the distance separation requirement of 1,000-feet to the next closest alcohol outlet (it is located across the street from a bar and three markets selling alcoholic beverages) nor the required of 1,000-foot distance from civic uses (there are parks, a school, and a church in the area).

The area is over-concentrated for liquor licenses in the Census Tract only and not for crime in the Police Beat; crime is, therefore, not a major concern at this location but potential proliferation adjacent to alcohol outlets and civic uses is still a consideration. The variance finding can be made with respect to the deficient distance separation for the following reasons:

- While the premises are located across the street from a bar it would function as a restaurant with different hours of operation and only serve beer and wine with food.
- Area parks are not on the same lengthy block as the restaurant and a school and church are greater distances from the site at nearly 925 feet away.
- The majority of park, school, and church users are not expected to pass by the premises and patrons are not expected to pass directly by the parks, school or church on foot (although staff does not find a clear concern with either scenario).
- Due to these locations as well as differing hours of use and the primary restaurant nature of the establishment, the potentially undesirable situation where intoxicated patrons pose a nuisance to civic uses is considered very unlikely.
- The proposed activity would differ greatly from a bar or liquor store; required findings especially for a variance could likely not be made for those types of establishments; the character of a restaurant serving beer and wine is very different.
- Conditions of approval (Attachment B) would require the litter clean-up by the establishment and signage to discourage loitering, litter, and noise with a contact telephone number to report transgressions.

Findings for Approval

Due to the nature of the operation and setting, the proposal with conditions of approval is justified. As evidenced by operating characteristics of the San Francisco Proposition Chicken restaurant that serves beer and wine, and as confirmed on floor plans, the space devoted to sales of beer and wine is very limited. The limited space devoted to alcohol sale further indicates the ancillary nature of such sales, and reduces the potential for nuisance activities that could adversely affect abutting properties and the neighborhood.

2. That strict compliance with the regulations would deprive the applicant of privileges enjoyed by owners of similarly zoned property; or, as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution fulfilling the basic intent of the applicable regulation;

There are other establishments in the district that serve alcoholic beverages that are not full service restaurants. These establishments also do not meet the regulations for required distance separation between alcohol outlets or civic uses given the area is over-concentrated.

3. That the variance, if granted, will not adversely affect the character, livability, or appropriate development of abutting properties or the surrounding area, and will not be detrimental to the public welfare or contrary to adopted plans or development policy;

The restaurant is not full service and is located across the street from a bar and three markets selling alcoholic beverages and within 1,000 feet of parks, a school, and a church. To allow the restaurant to sell beer and wine for on-site consumption with food while adhering to conditions of approval will not negatively affect pedestrians, patrons of adjacent businesses, park users, or children attending the school. The proposal will attract customers to the retail district.

4. That the variance will not constitute a grant of special privilege inconsistent with limitations imposed on similarly zoned properties or inconsistent with the purposes of the zoning regulations;

There are other similar establishments in the district, not subject to proposed conditions attached to this establishment. Other similar establishments, if approved in the future, will also be subject to such heightened restrictions. Other limited service restaurants in the City of Oakland have been granted approvals, some including similar variances.

5. That the elements of the proposal requiring the variance (e.g., elements such as buildings, walls, fences, driveways, garages and carports, etc.) conform with the regular design review criteria set forth in the design review procedure at Section 17.136.050;

This finding is inapplicable; the variances are required due to insufficient distance separations which are elements not subject to design review.

6. That the proposal conforms in all significant respects with the Oakland General Plan and with any other applicable guidelines or criteria, district plan, or development control map which have been adopted by the Planning Commission or City Council.

The proposal conforms to the General Plan as described in the preceding Conditional Use Permit section of this Attachment under Finding E.

Attachment B: Conditions of Approval

1. Approved Use

The project shall be constructed and operated in accordance with the authorized use as described in the approved application materials, **staff report** and the approved plans dated **July 19, 2016** and submitted on **July 20, 2016**, as amended by the following conditions of approval and mitigation measures, if applicable (“Conditions of Approval” or “Conditions”).

2. Effective Date, Expiration, Extensions and Extinguishment

This Approval shall become effective immediately, unless the Approval is appealable, in which case the Approval shall become effective in ten calendar days unless an appeal is filed. Unless a different termination date is prescribed, this Approval shall expire **two years** from the Approval date, or from the date of the final decision in the event of an appeal, 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 Approval, 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 or other construction-related permit for this project may invalidate this Approval if said Approval has also expired. If litigation is filed challenging this Approval, or its implementation, then the time period stated above for obtaining necessary permits for construction or alteration and/or commencement of authorized activities is automatically extended for the duration of the litigation.

3. Compliance with Other Requirements

The project applicant shall comply with all other applicable federal, state, regional, and local laws/codes, requirements, regulations, and guidelines, including but not limited to those imposed by the City’s Bureau of Building, Fire Marshal, and Public Works Department. Compliance with other applicable requirements may require changes to the approved use and/or plans. These changes shall be processed in accordance with the procedures contained in Condition #4.

4. Minor and Major Changes

- a. Minor changes to the approved project, plans, Conditions, facilities, or use may be approved administratively by the Director of City Planning
- b. Major changes to the approved project, plans, Conditions, facilities, or use shall be reviewed by the Director of City Planning to determine whether such changes require submittal and approval of a revision to the Approval by the original approving body or a new independent permit/approval. Major revisions shall be reviewed in accordance with the procedures required for the original permit/approval. A new independent permit/approval shall be reviewed in accordance with the procedures required for the new permit/approval.

5. Compliance with Conditions of Approval

- a. The project applicant and property owner, including successors, (collectively referred to hereafter as the “project applicant” or “applicant”) shall be responsible for compliance with all the Conditions of Approval and any recommendations contained in any submitted and approved technical report at his/her sole cost and expense, subject to review and approval by the City of Oakland.
- b. The City of Oakland reserves the right at any time during construction to require certification by a licensed professional at the project applicant’s expense that the as-built project conforms to all applicable requirements, including but not limited to, approved maximum heights and minimum setbacks. Failure to construct the project in accordance with the Approval may result in remedial reconstruction, permit revocation, permit modification, stop work, permit suspension, or other corrective action.
- c. Violation of any term, Condition, or project description relating to the Approval 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 Approval or alter these Conditions if it is found that there is violation of any of the Conditions or the provisions of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance. This provision is not intended to, nor does it, limit in any manner whatsoever the ability of the City to take appropriate enforcement actions. The project applicant shall be responsible for paying fees in accordance with the City’s Master Fee Schedule for inspections conducted by the City or a City-designated third-party to investigate alleged violations of the Approval or Conditions.

6. Signed Copy of the Approval/Conditions

A copy of the Approval letter and Conditions shall be signed by the project applicant, attached to each set of permit plans submitted to the appropriate City agency for the project, and made available for review at the project job site at all times.

7. Blight/Nuisances

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

8. Indemnification

- a. To the maximum extent permitted by law, the project applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the Oakland Redevelopment Successor Agency, the Oakland City Planning Commission, and their respective agents, officers, employees, and volunteers (hereafter collectively called “City”) from any liability, damages, claim, judgment, loss (direct or indirect), action, causes of action, or proceeding (including legal costs, attorneys’ fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called “Action”) against the City to attack, set

aside, void or annul this Approval or implementation of this Approval. The City may elect, in its sole discretion, to participate in the defense of said Action and the project applicant shall reimburse the City for its reasonable legal costs and attorneys' fees.

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

9. Severability

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

The project applicant may be required to cover the full costs of independent third-party technical review and City monitoring and inspection, including without limitation, special inspector(s)/inspection(s) during times of extensive or specialized plan-check review or construction, and inspections of potential violations of the Conditions of Approval. The project applicant shall establish a deposit with the Bureau of Building, if directed by the Building Official, Director of City Planning, or designee, prior to the issuance of a construction-related permit and on an ongoing as-needed basis.

11. Public Improvements

The project applicant shall obtain all necessary permits/approvals, such as encroachment permits, obstruction permits, curb/gutter/sidewalk permits, and public improvement ("p-job") permits from the City for work in the public right-of-way, including but not limited to, streets, curbs, gutters, sidewalks, utilities, and fire hydrants. Prior to any work in the public right-of-way, the applicant shall submit plans for review and approval by the Bureau of Planning, the Bureau of Building, and other City departments as required. Public improvements shall be designed and installed to the satisfaction of the City.

PROJECT SPECIFIC CONDITIONS

12. Sale of Alcoholic Beverages

Prior to commencing activity

a) Additional Permits Required

Necessary ABC permits (license type 41) must be obtained prior to commencement of activity. Only beer and wine may be sold for alcoholic beverages.

Ongoing

b) Operation

The restaurant must operate with an open kitchen at all times beer and wine are sold pursuant to limited service defined by the Planning Code (OMC Sec. 17.10.274).

c) Location and manner

Only on-sale (on-site consumption) is allowed; alcoholic beverages are intended for consumption with meals.

d) Minors

Minors shall be admitted at all times.

e) Hours of Alcohol Sale

The proprietor voluntarily agrees to limit hours of alcohol sales to no later than 11:00 pm or earlier if required by the ABC.

f) Sales display area

Maximum sales display area shall be limited to dimensions equivalent to 44" in width x 29" in height x 24" in depth (eight square feet) and located behind the counter or in another employees-only area.

g) Informational signage

The proprietor shall post inside the dining room signage discourage loitering, litter, and noise with a contact telephone number to report transgressions.

h) Entry

Admission shall never be charged for events or otherwise.

i) Future operators

Any future operators of any restaurant at this premises are subject to the requirements of this Approval.

j) Nuisances

Crime, litter, noise, or disorderliness conduct associated with alcohol sales at the establishment will result in a revocation of the Major Conditional Use Permit or a review to revoke.

k) Police Department

The operator shall register with the Police Department's Alcoholic Beverage Action Team and adhere to their regulations

13. Inclusion of conditions in State Department of Alcoholic Beverage Control license
Prior to signing of State Department of Alcoholic Beverage Control zoning affidavit

The applicant shall submit a letter to staff signed by the applicant addressed to the State Department of Alcoholic Beverage Control stipulating that they wish to include conditions of their ABC license to conform to all of the conditions and requirements in this approval. The letter shall request the ABC restrict its license to only those uses allowed under City permits. The Oakland Planning Commission may, after notice and hearing, revoke this Conditional Use Permit if the Applicant fails to include the above conditions in the ABC license.

14. Conformance with State Department of Alcoholic Beverage Control regulations

Ongoing

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

15. Compliance with City of Oakland special regulations for Alcoholic Beverage Sales Commercial Activities

Ongoing

a) Signage

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

b) Graffiti

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

c) Loitering

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

16. Trash and litter

Ongoing

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

17. Performance standards

Ongoing

The establishment shall adhere to performance standards for noise, odor, and all environmental effects of the restaurant activity as regulated under OMC Chapter 17.120.

18. Design Review

Ongoing

a) Exterior modifications

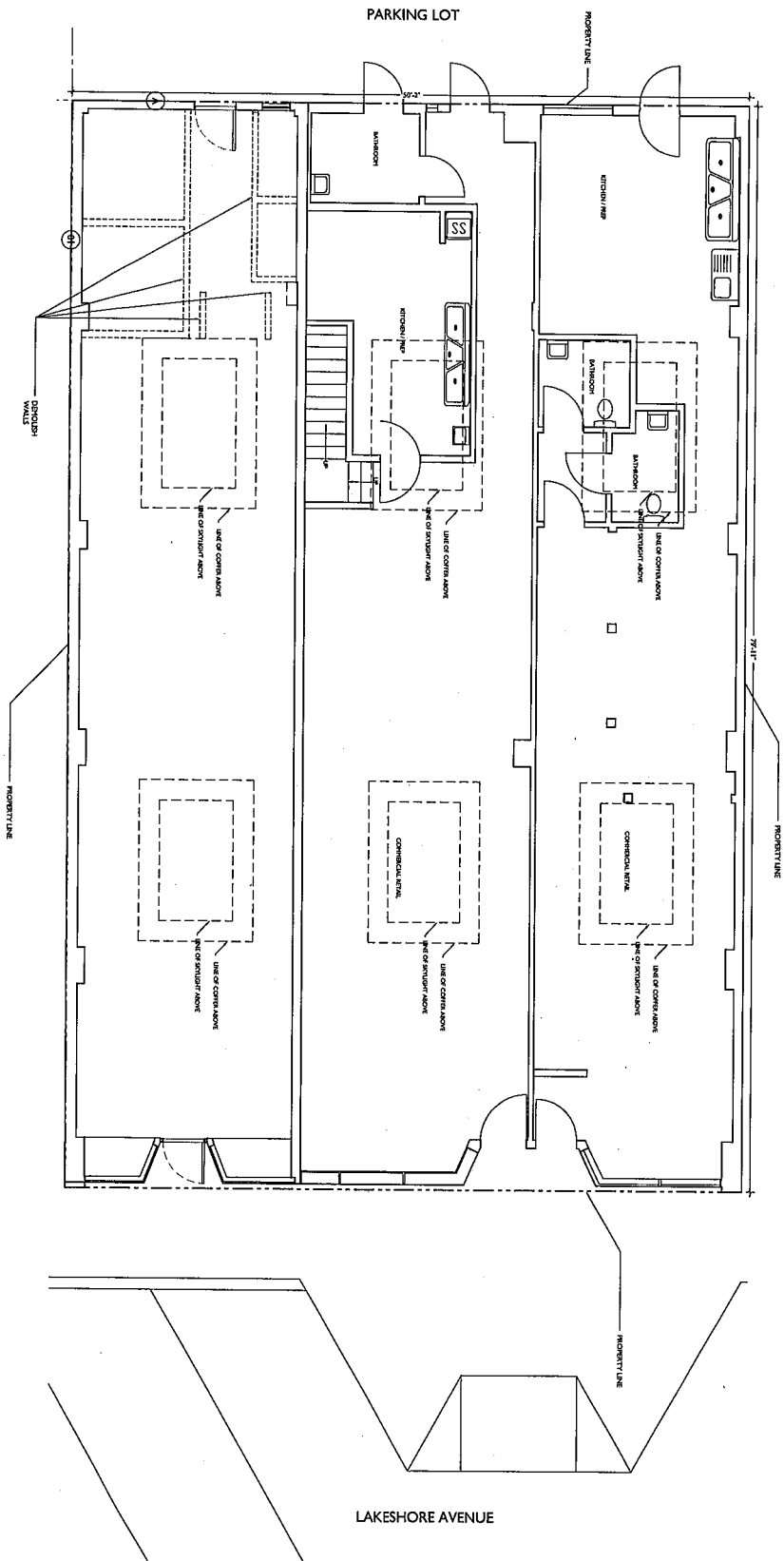
Any exterior modifications including signage to the building must first be approved by the Bureau of Planning.

b) Sidewalk dining

Sidewalk dining, if proposed, requires additional approvals.

APPROVED BY:

City Planning Commission: _____ (date) _____ (vote)



1- EXISTING GROUND FLOOR PLAN
 1/4" = 1'-0"

ARCHITECTURAL NOTES
 1. GROUND FLOOR AREA:
 1315 SQ. FT.
 2. TOTAL FLOOR AREA:
 287 SQ. FT. (LESS THAN 4% OF GROUND FLOOR AREA)
 1640 SQ. FT.

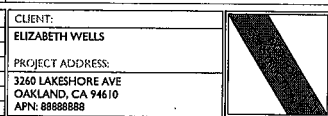


A-1.10

PROJ: PROPOSITION CHICKEN
 CONCEPT DESIGN SET
 SHEET: EXISTING GROUND FLOOR PLAN
 SCALE: AS NOTED @ 24"x36" DATE: 7/19/2016

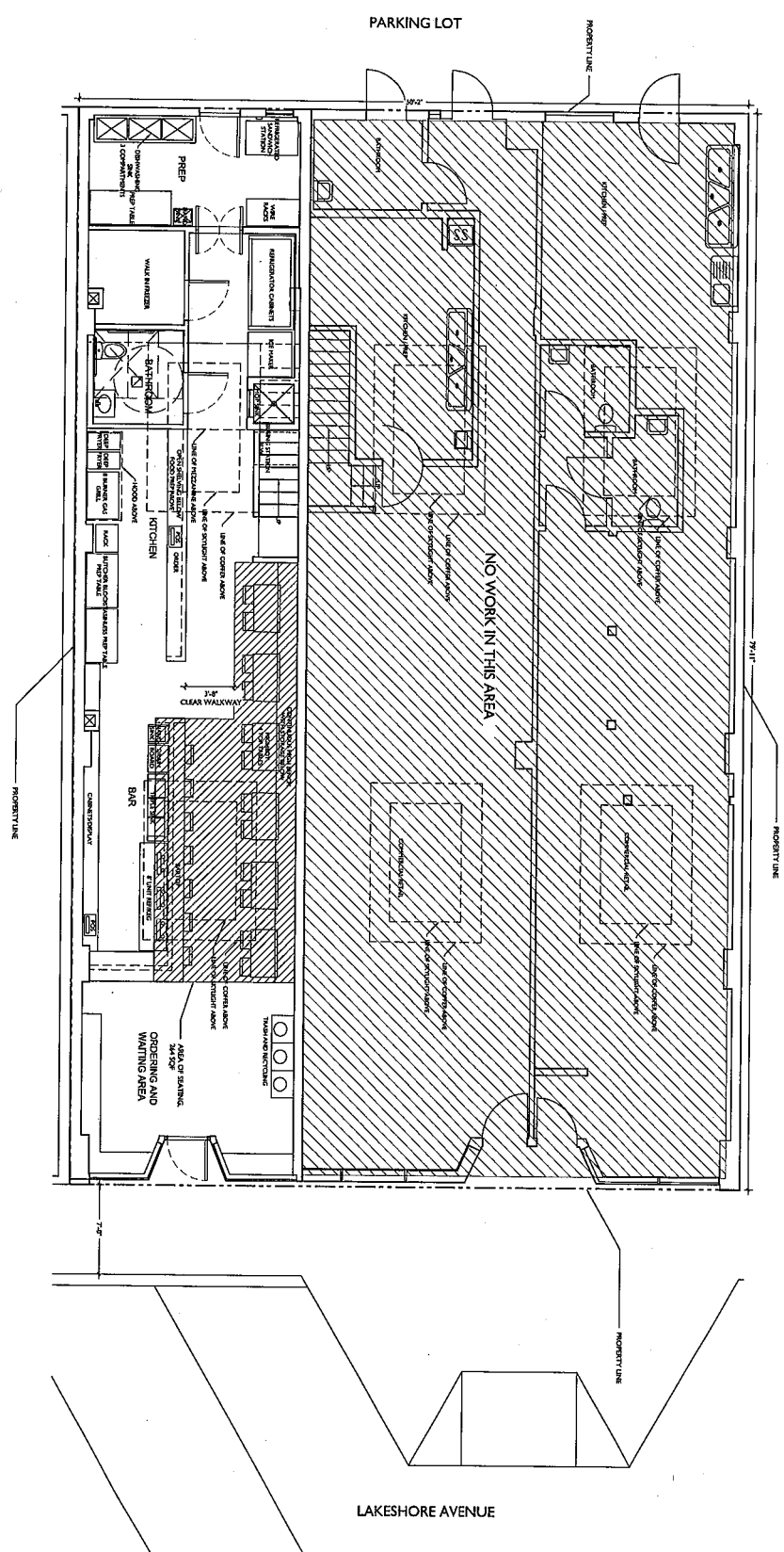
ISSUED: 07/19/16 PERMIT PLAN

CLIENT: ELIZABETH WELLS
 PROJECT ADDRESS:
 3260 LAKESHORE AVE
 OAKLAND, CA 94610
 APN: 88888888



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 (415) 525-3561

McGRIFF
Architects



1 PROPOSED GROUND FLOOR PLAN
 1/4" = 1'-0"

ARCHITECTURAL NOTES

1. EXISTING FLOOR AREA: 17,000 SQ FT
 MEZZANINE AREA (PROPOSED): 375 SQ FT LESS THAN 4' OF GROUND FLOOR AREA
 TOTAL FLOOR AREA (PROPOSED): 17,375 SQ FT

A-1.1.1

PRO: PROPOSITION CHICKEN
 CONCEPT DESIGN SET

SHEET: PROPOSED GROUND FLOOR PLAN

SCALE: AS NOTED @ 24"x36" | DATE: 7/19/2016

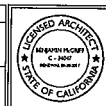
ISSUED: 07/19/16 PERMIT PLAN

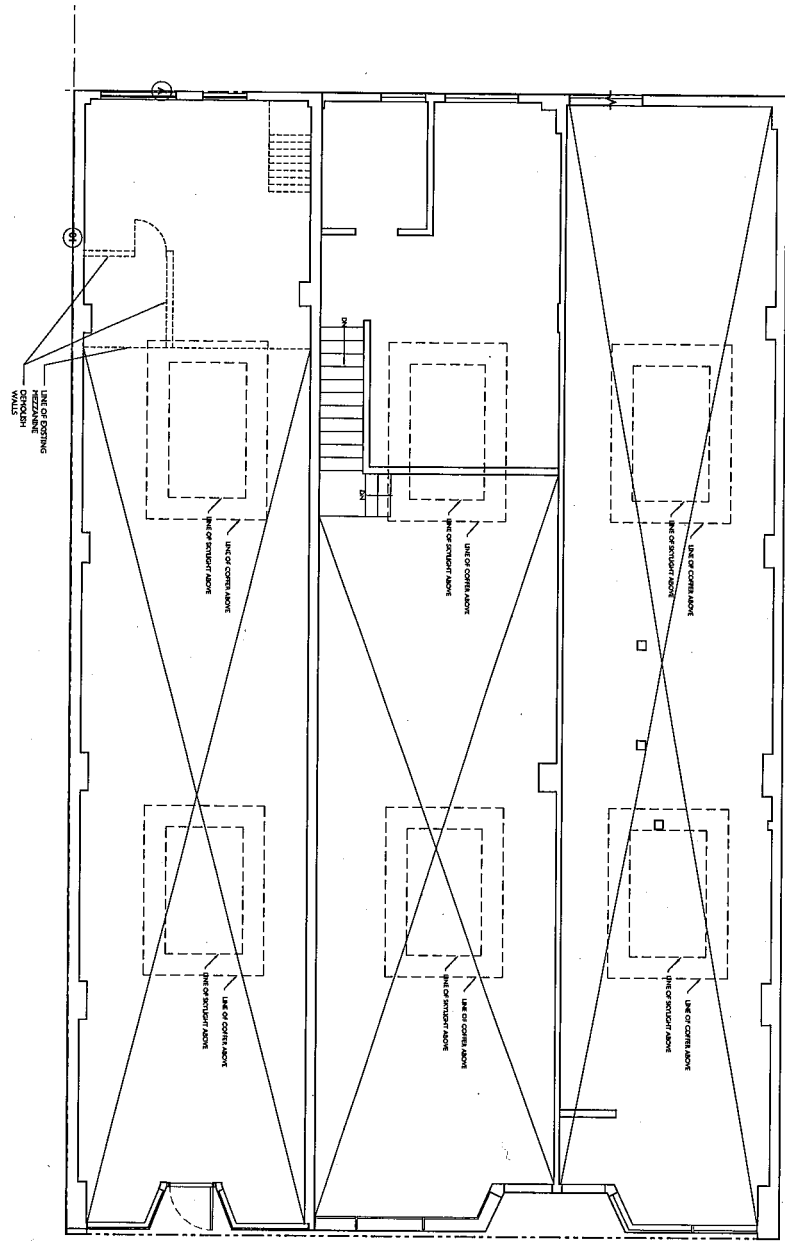
CLIENT: ELIZABETH WELLS

PROJECT ADDRESS: 3260 LAKESHORE AVE
 OAKLAND, CA 94610

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 1475 15TH STREET
 SAN FRANCISCO, CA 94103

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 (415) 525-3561





1- EXISTING MEZZANINE PLAN
1/4" = 1'-0"

ARCHITECTURAL NOTES
 1. GROUND FLOOR AREA
 MEZZANINE AREA:
 277 SQ FT (LESS THAN) OF GROUND FLOOR AREA
 TOTAL FLOOR AREA:
 1849 SQ FT



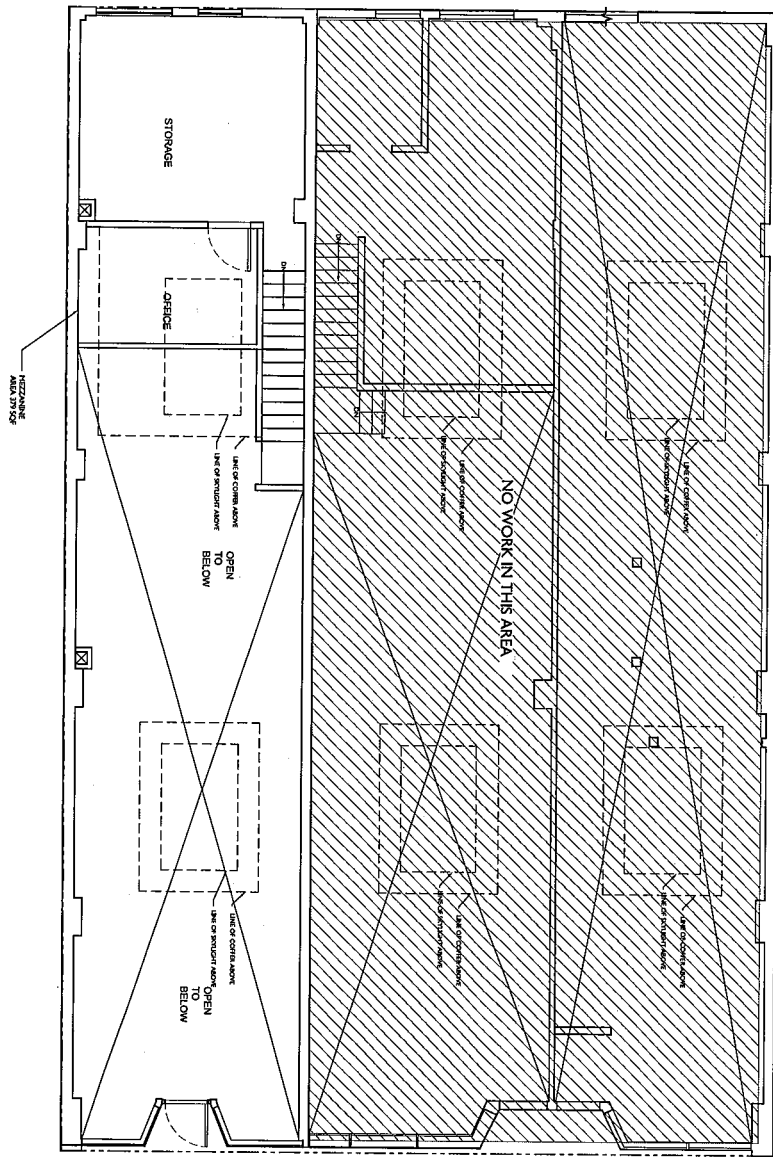
SHEET NO: A-1.20	PROJ: PROPOSITION CHICKEN CONCEPT DESIGN SET	ISSUED: 07/19/16 PERMIT PLAN
	SHEET: EXISTING MEZZANINE PLAN	
SCALE: AS NOTED @ 24"x36" DATE: 7/19/2016		

CLIENT: ELIZABETH WELLS
PROJECT ADDRESS: 3260 LAKESHORE AVE OAKLAND, CA 94610 APN: 88888888

REGISTERED ARCHITECT
 STATE OF CALIFORNIA
 No. 10000
 C-1000

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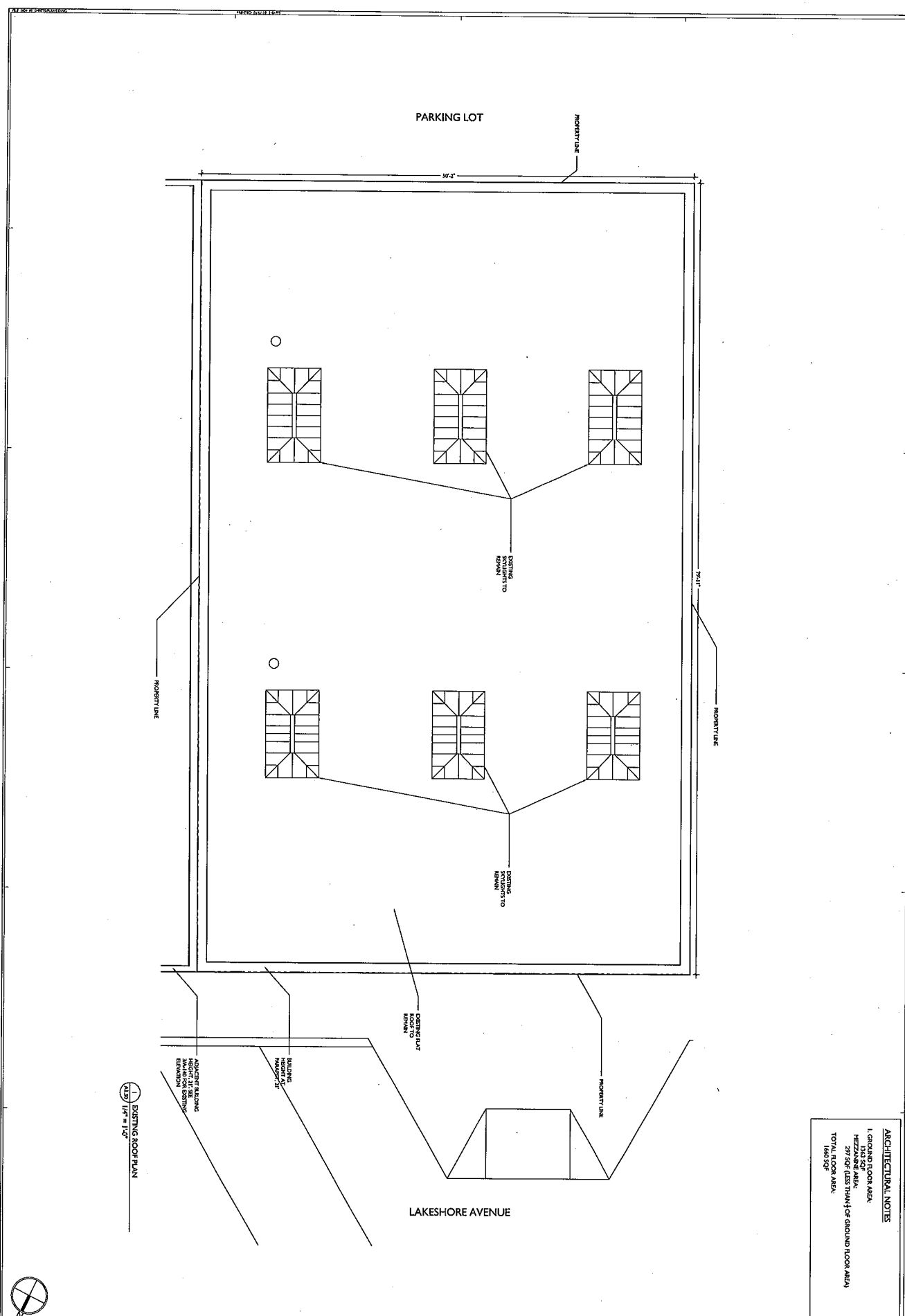


1. PROPOSED MEZZANINE PLAN
 1/4" = 1'-0"

ARCHITECTURAL NOTES
 1. GROUND FLOOR AREA: 1383 SQ. FT.
 MEZZANINE AREA (PROPOSED): 1777 SQ. FT. (AS SHOWN ON GROUND FLOOR AREA)
 TOTAL FLOOR AREA (PROPOSED): 3160 SQ. FT.



A-1.21 SHEET NO.	PROJ: PROPOSITION CHICKEN CONCEPT DESIGN SET	ISSUED: 07/19/16 PERMIT PLAN	CLIENT: ELIZABETH WELLS		McGRIFF ARCHITECTS 1475 15TH STREET SAN FRANCISCO, CA 94103 info@mcgriffarchitects.com (415) 525-3561
	SHEET: PROPOSED MEZZANINE PLAN	SCALE: AS NOTED @ 24"x36" DATE: 7/19/2016	PROJECT ADDRESS: 3260 LAKESHORE AVE OAKLAND, CA 94610 APN: 88888888		



ARCHITECTURAL NOTES

1. GROUND FLOOR AREA
 2. REZONING AREA
 3. TOTAL FLOOR AREA
 4. TOTAL FLOOR AREA

A-1.30

PROJ: PROPOSITION CHICKEN
 CONCEPT DESIGN SET

SHEET: ROOF PLAN

SCALE: AS NOTED @ 24"x36" DATE: 7/19/2016

ISSUED: 07/19/16 PERMIT PLAN

CLIENT: ELIZABETH WELLS

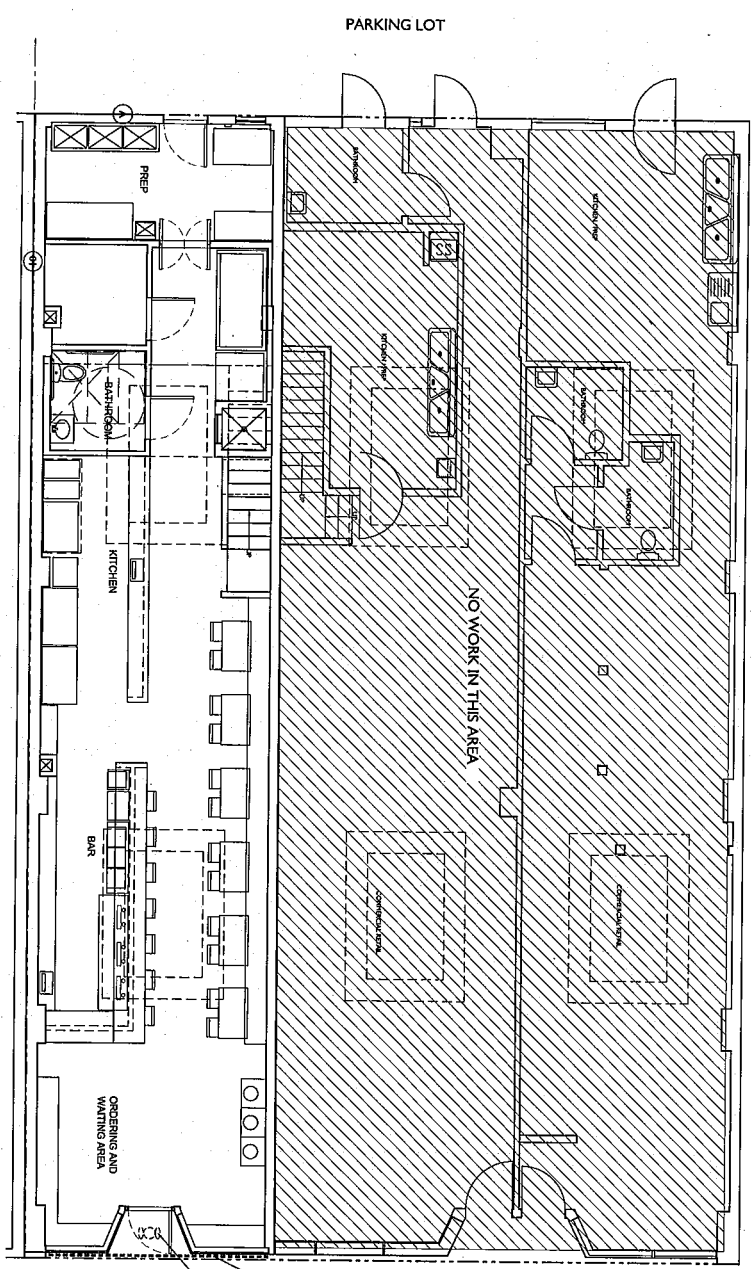
PROJECT ADDRESS:
 3260 LAKESHORE AVE
 OAKLAND, CA 94610
 APN: 88888888



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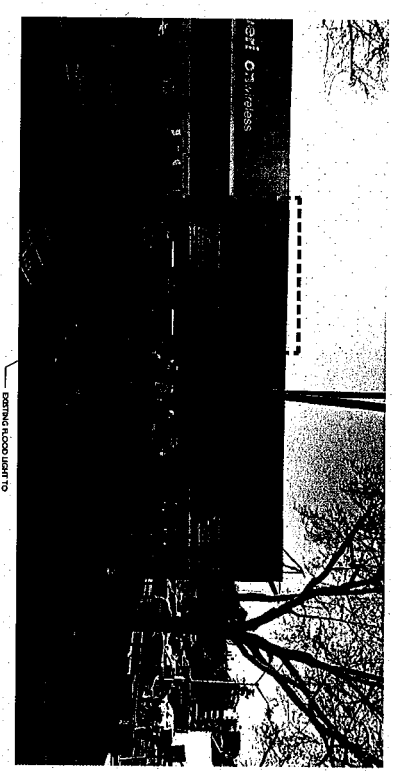




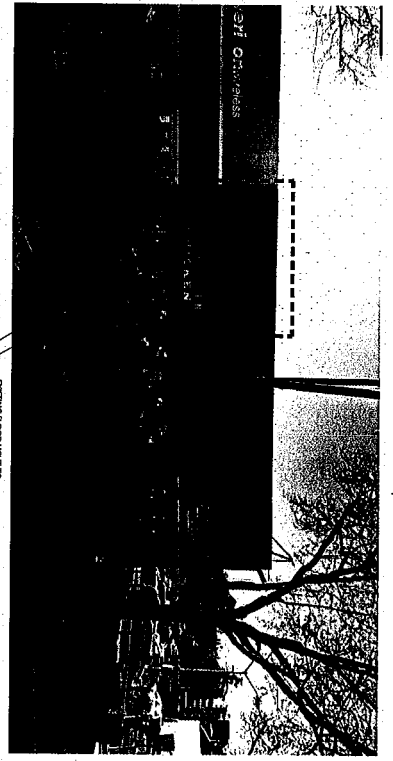
PARKING LOT

LAKESHORE AVENUE

PROPOSED EXTERIOR SIGNAGE AND LIGHTING FLOOR PLAN
1/4" = 1'-0"



EXISTING FLOOR LIGHT TO REMAIN
1. PROPOSED EXTERIOR SIGNAGE ELEVATION
1/4" = 1'-0" NOT TO SCALE



EXISTING FLOOR LIGHT TO REMAIN / NEW PAINTED WOOD SIGN
1. PROPOSED EXTERIOR SIGNAGE ELEVATION
1/4" = 1'-0" NOT TO SCALE

<p>A-1.40</p>	<p>PROJ: PROPOSITION CHICKEN CONCEPT DESIGN SET</p>	<p>ISSUED: 07/19/16 PERMIT PLAN</p>	<p>CLIENT: ELIZABETH WELLS</p>		<p>McGRIFF ARCHITECTS 1475 15TH STREET SAN FRANCISCO, CA 94103 Info@mcgriffarchitects.com (415) 525-3561</p>	
	<p>SHEET: SIGNAGE AND LIGHTING PLAN</p>	<p>SCALE: AS NOTED @ 24"x36" DATE: 7/19/2016</p>	<p>PROJECT ADDRESS: 3260 LAKESHORE AVE OAKLAND, CA 94610</p>			