

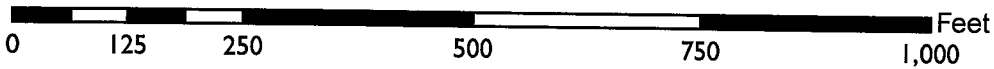
<b>Location:</b>	2000 MacArthur Boulevard (see map on reverse)
<b>Assessor's Parcel Number:</b>	029A-1301-022-00
<b>Proposal:</b>	To revise conditions of approval for a restaurant regarding sale of alcoholic beverages (amend conditions which would allow upgrade of ABC license for beer & wine to include distilled spirits/hard liquor), and, hours of operation (10:00 P.M. closing time would be extended to 10:30 P.M. Thursdays-Saturdays). <i>This is a re-notification</i>
<b>Applicant /</b>	Mr. Phillip Bell
<b>Phone Number:</b>	(510) 435-2118
<b>Owner:</b>	Same
<b>Planning Permits Required:</b>	Revision to Major Conditional Use Permit # CM10-009 approved February 17, 2010 amending Conditions of Approval #30b (ABC license type) & #30d (hours)
<b>General Plan:</b>	Neighborhood Center Mixed Use
<b>Zoning:</b>	CN-1 Neighborhood Commercial Zone
<b>Environmental Determination:</b>	; Exempt, Section 15301 of the State CEQA Guidelines: Existing Facilities (operation); Section 15183: Projects Consistent with a Community Plan, General Plan or Zoning; Exempt, Section 15061(b)(3) of the State CEQA Guidelines: No possibility of significant environmental effect
<b>Historic Status:</b>	Non-historic property
<b>Service Delivery District:</b>	4
<b>City Council District:</b>	5
<b>Date Filed:</b>	November 13, 2014
<b>Finality of Decision:</b>	<i>Appealable to City Council</i>
<b>For Further Information:</b>	Contact case planner <b>Aubrey Rose, AICP</b> at (510) 238-2071 or <a href="mailto:arose@oaklandnet.com">arose@oaklandnet.com</a>

**SUMMARY**

The applicant requests Planning Commission approval of revisions to a 2010 Conditional Use Permit for a full-service restaurant as follows: to change from allowing sale of beer and wine to include distilled spirits (hard liquor), and, to extend the 10:00 P.M. closing time to 10:30 P.M. on Thursdays through Saturdays. This item was previously noticed for the hearing of December 17, 2014, requesting a 1:00 A.M. closing time, and was not heard at that time in order to conduct further outreach and analysis. The request has since been revised with regards to closing time.

Staff recommends approval of extended closing time, and, denial of an amendment that would enable the applicant to upgrade its ABC license to add sale of hard liquor, as described in this report.

# CITY OF OAKLAND PLANNING COMMISSION



Case File: CM10009-R01  
Applicant: Mr. Phillip Bell  
Address: 2000 MacArthur Boulevard  
Zone: CN-1

## **PROPERTY DESCRIPTION**

The property is located on MacArthur Boulevard west of Fruitvale Avenue in the Dimond District. This is a corner lot at Canon Avenue (T-intersection) that contains a single-story commercial building with a restaurant. The restaurant entrance with awning faces the corner; there is a blade sign along the corridor and glazing along both street frontages. The interior features a dining room, commercial kitchen, restrooms, and emergency exits. To the rear of the building is a screened trash enclosure area; a driveway connecting Canon Avenue to the parking lot of 2020 MacArthur Boulevard; and, a landscaped fence at the property line of single-family homes along Veteran Way (50-feet between restaurant and homes). The property does not contain on-site parking spaces.

To the north and east (rear) is a residential neighborhood consisting primarily of single family homes as well as apartments; to the south is the Dimond District; to the west are apartments, small businesses, and senior facilities. The district contains various retail, food, and consumer service establishments including restaurants. There are approximately six other restaurants in the district serving beer and wine; a few of them have up to an 11:00 P.M. closing time (including by ABC restriction). None of them serve distilled spirits (hard liquor). Parking in the district includes street parking (metered and 2-hour stalls) and a public lot west of MacArthur Boulevard.

## **PROJECT DESCRIPTION**

### Background

The property was a beer and wine tavern (no liquor) with entertainment prior to the 1977 City of Oakland alcoholic beverage sales Ordinance. The establishment thus became "deemed approved" (that is, legal nonconforming for alcoholic beverage sales with heightened performance standards). In the 1980s, the property was granted a Conditional Use Permit (CUP) for an upgrade of its State Alcoholic Beverage Sales Control (ABC) license to include distilled spirits (hard liquor). The City subsequently revoked the bar's CUP due to ongoing nuisances, primarily due to noise and parking issues incurred by the rear neighbors. After 1994 the property became a restaurant for a time, then closed. In 2010, the Planning Commission granted a CUP to re-open the restaurant with a full service format and 10:00 P.M. closing time in the CN-1 Zone; this included beer and wine service within 200-feet of a "restricted street" (MacArthur Boulevard) under an ABC license type 41. Neighborhood concern and opposition was expressed at that time. However, staff considered a certain level of typical mixed activity to be acceptable nearby a residential neighborhood abutting a neighborhood commercial zone. Under Conditions of Approval, the restaurant needs to maintain a dinner menu, table service, billing after dining, no beer or wine bottles sales (stricter than ABC regulations), and no serving of liquor. The approval preceded the Planning Bureau's practice of including a "Compliance Review" condition of approval to alcohol-cases, for evaluation including for amendments. Following is the ABC description for a 41:

**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.

Following are the existing approved days and times of operation:

- Monday – Closed
- Tuesday through Saturday - 10:00am to 10:00pm
- Sunday – 11:00am to 7:00pm

Proposal

In 2014 an application was submitted to revise the CUP to also include sale of liquor and a 1:00 A.M. closing time. No other changes were proposed. Following are the 2010 Conditions of Approval currently requested for modification:

**30. Sale of Alcoholic Beverages**

***Ongoing***

**b. Types of Alcohol Permitted**

Beer and wine only may be sold. Should the proprietor desire sale of distilled spirits, an application for a revision to amend this approval must be submitted to and approved by the Planning & Zoning Division.

**d. Hours of Alcohol Sale**

Hours of alcohol sales are limited to no later than 9:45PM.

The upgrade would require a type 47 license with the Alcoholic Beverages Control. Following is the ABC description for a 47:

**ON SALE GENERAL – EATING PLACE - (Restaurant)** Authorizes the sale of beer, wine and distilled spirits for consumption on the licensed premises. Authorizes the sale of beer and wine for consumption off the licensed premises. Must operate and maintain the licensed premises as a bona fide eating place. Must make actual and substantial sales of meals, during the normal meal hours that they are open, at least five days a week. Normal mealtimes are 6:00 a.m. - 9:00 a.m., 11:00 a.m. - 2:00 p.m., and 6:00 p.m. - 9:00 p.m. Premises that are not open five days a week must serve meals on the days they are open. Minors are allowed on the premises.

The item was agendaized for the hearing of December 17, 2014. A Compliance Review did not occur as again that was not yet a Condition of Approval for alcohol cases, as in now standard practice. Public notification for the hearing was met with an unanticipated level of neighborhood interest exceeding that of the 2010 review. As staff was not aware of any neighborhood outreach by the applicant, the hearing date for the item was therefore cancelled in order to provide time to better reach out to the community. The applicant was very cooperative and a community meeting was subsequently held by the applicant on site with staff in attendance. At that time neighbors reiterated their concerns to the existing and proposed operation, reiterating some 2010 and 1980s objections regarding noise and parking issues incurred by abutting residences. Staff noted the potential effects of proposed enhancements for more alcoholic beverage options and later closing time with regards to the proximity of the business to adjacent homes; in other words, "conditions of design." Introduction of hard liquor/distilled spirits and/or a later closing time may render a restaurant more akin to a bar business, which in turn could have different off-site impacts than a restaurant. With this and all information provided regarding the application and given conditions of design, staff does not find sufficient justifications to support the authorization to allow sale of hard liquor. This was imparted to the applicant, along with all alternatives of application fees, and the case essentially was paused for several years. The applicant has since clarified the desire to move the request forward to decision, with a considerable reduction to extended time while maintaining the request for to authorize sale of hard liquor .

**GENERAL PLAN ANALYSIS**

The property is located in a Neighborhood Center Mixed Use area under 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 center 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." A full service restaurant serving beer and wine and having a 10:30 P.M. closing time, subject to conditions, conforms to this

intent. The conformity of the proposal to include liquor sales at this location is discussed in the Key Issues and Impacts section of this report.

### **ZONING ANALYSIS**

The property is located in the CN-1 Neighborhood Commercial Zone. The Intent of the CN-1 Zone is: "To maintain and enhance vibrant commercial districts with a wide range of retail establishments serving both short and long term needs in attractive settings oriented to pedestrian comparison shopping." The proposal requires a revision to Conditions of Approval of a Conditional Use Permit. The existing establishment required a CUP because it involves alcohol sales at a full service restaurant on a "restricted street" deemed to require heightened review under the Ordinance. Because the alcohol-sales related CUP was decided by the Planning Commission and the revision involves an authorization for sale of hard liquor, the item is referred back to the Commission. The proposal is not subject to variances, or for Public Convenience or Necessity because it involves a full service restaurant. A full service restaurant serving beer and wine and having a 10:30 P.M. closing time, subject to conditions, conforms to this intent. The conformity of the proposal to include liquor sales at this location is discussed in the Key Issues and Impacts section of this report.

### **ENVIRONMENTAL DETERMINATION**

The California Environmental Quality Act (CEQA) Guidelines statutorily and categorically exempts specific types of projects from environmental review. Section 15301 of the State CEQA Guidelines categorically exempts projects involving *operation and licensing of existing private facilities*. The proposal sale of alcoholic beverages at a full service restaurant until 10:30 P.M. meets this description: the project would constitute operation of an existing private facility and is therefore exempt under CEQA Guidelines section 15301. Section 15183 of the State CEQA Guidelines, which relates to Projects Consistent with a Community Plan, General Plan or Zoning, and Section 15061(b)(3), for projects that do not have the possibility of significant environmental effects, each serve as a separate and independent bases for CEQA clearance. Hence, these actions are exempt from Environmental Review.

### **KEY ISSUES AND IMPACTS**

In order sell alcoholic beverages with an ABC license, the ABC first verifies that a City Zoning Permit for land use has been approved. For upgrades to the ABC license, the City Zoning Permit must therefore first be amended. To evaluate the proposal to authorize sale of hard liquor and extended hours of operation, staff has reviewed relevant Conditions of Approval as modified by the Planning Commission, as follows:

**27. Maintenance of Full-Service Restaurant**

**30. Sale of Alcoholic Beverages**

**e. 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.

**34. Trash and litter**

The licensees/property owners shall clear the gutter and sidewalks along MacArthur Boulevard 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.

**38. Parking/Signage**

**Ongoing**

- a. The proprietor shall post signage within the premises requesting patrons not park on Canon Avenue or Veteran Way.
- b. The proprietor shall post signage within the premises informing patrons of the presence and location of the City parking lot located on Dimond Avenue one block west of MacArthur Boulevard.
- c. The proprietor shall post signage within the premises indicating their name and telephone number.

**39. Noise**

The proprietor shall ensure noise generated by the restaurant is not audible outside of the building.

Additionally, staff has compared district restaurants serving alcoholic beverages as shown in the following table. These are all full service restaurants and none serve liquor:

<u>Address</u>	<u>Name</u>	<u>ABC</u>	<u>Closing time</u>	<u>Zoning approval</u>	<u>Residential property proximity</u>
2033 MacArthur Blvd	Flower Lounge	41	10:00 P.M.	DA (Deemed Approved – no CUP)	Abutting
2045 MacArthur Blvd	La Hacienda	41	9:00 P.M.	CUP 1981 (Conditional Use Permit)	Upper units/abutting
3537 Fruitvale Ave	Ly Luck	41	9:30 P.M.	DA	50-feet
3434 Fruitvale Ave	Shaan	41	9:30 P.M.	CUP 2008	NA
3400 Fruitvale Ave	Nama	41	9:30 P.M.	DA	NA
3455 Champion St	Bombera	41	10 PM outdoors / 11 PM indoors	CUP 2017	100-feet

There are also approximately one dozen limited service restaurants or cafes that operate in the district with no alcohol service component. As for other types of alcohol outlets in the district, two convenience markets sell alcohol (one including liquor); 2 supermarkets offer full alcohol (that is, including liquor), 1 drug store offers full alcohol, and 2 bars offer full alcohol. The Census Tract (4049) containing the subject site is over-concentrated in terms of ABC licenses in comparison to Countywide rates. Incidentally, much of the district is contained within adjacent Census Tract 4066.02. Police Beat 22X is not over-concentrated in terms of reported crime in comparison to Citywide rates, and the beat does encompass most of the district.

**Analysis: Extended Hours of Operation**

Findings under the Planning Code require consideration be given for alcohol uses operating beyond 10:00 P.M. when located close to bedroom windows of adjacent residences. Given the closing time of other restaurants adjacent to residences in the district, staff can support an extension to closing time of 10:30 P.M. Thursdays through Saturdays subject to a satisfactory six-month compliance review and maintenance of Conditions of Approval including no bottle sales.

**Analysis: ABC Upgrade**

Typically, full service restaurants located on restricted streets may serve beer and wine with a CUP. In fact, no restaurant located on MacArthur or West MacArthur Boulevard anywhere in the City of Oakland serves hard liquor. In a few instances on Foothill and International Boulevards, upgrades to liquor have been granted by the Planning Commission after successful operation, with no residential or other complaints, and with no change of ownership. For the subject site, staff has received correspondence related to issues such as noise and parking associated with the existing operation. Staff noted the potential effects of proposed enhancements for more alcoholic beverage options and later closing time with regards to the proximity of the business to adjacent homes; in other words, "conditions of design." Introduction of hard liquor/distilled spirits and/or a later closing time may render a restaurant more akin to a bar business, which in turn may of course have different off-site impacts than a restaurant. With this information, and given conditions of design featuring proximity of the establishment to residences (including senior facilities), staff believes that findings required to approve the request cannot be made and is therefore not supportive of the proposal.

In conclusion, staff supports a conditioned approval to specific components of the application to the extension of hours but denial of authorization to sale hard liquor.

**RECOMMENDATIONS:**

1. Affirm staff's environmental determination.
2. Approve in part (extended hours) and deny in part (ABC license upgrade) revisions amending the Conditions of Approval of a Major Conditional Use Permit, subject to the attached findings and conditions.

Prepared by:



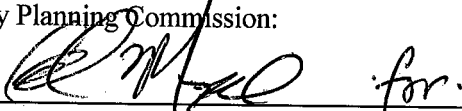
AUBREY ROSE, AICP  
Planner III

Reviewed by:



SCOTT MILLER  
Zoning Manager

Approved for forwarding to the  
City Planning Commission:



DARIN RANELLETTI, Interim Director  
Planning and Building Department

**ATTACHMENTS:**

- A. Findings
- B. Conditions
- C. 2010 Conditional Use Permit staff report (Attachments not included)
- D. Floor plan
- E. Menu
- F. Area photographs
- G. 2014-2015 Correspondences
- H. 2015 Community meeting / Minutes

## Attachment A: Findings

This proposal, in part, meets the required findings under **General Conditional Use Permit Criteria (OMC Sec. 17.134.050)** and **Use Permit Criteria for Establishments Selling Alcoholic Beverages (OMC Sec. 17.103.030(A)(7))** of the **Oakland Planning Code (Title 17)** with regards to a component of the application (extended hours), and, does not meeting required findings for another component of the application (ABC license upgrade) as set forth below. Required findings are shown in **bold type**; explanations as to why findings can be made for certain components of the project are shown in normal type and explanations as to why findings cannot be made for other components of the project are shown in *italicized type*.

### **General Conditional 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 property is located in the CN-1 Neighborhood Commercial Zone. The Intent of the CN-1 Zone is: "To maintain and enhance vibrant commercial districts with a wide range of retail establishments serving both short and long term needs in attractive settings oriented to pedestrian comparison shopping." Given the closing time of other restaurants adjacent to residences in the district, findings can be made to support an extension to closing time of 10:30 P.M. Thursdays through Saturdays subject to a satisfactory six-month compliance review and maintenance of Conditions of Approval including no bottle sales.

*There is not sufficient evidence to support authorization for sales of distilled spirits (hard liquor). Typically, full service restaurants located on restricted streets may serve beer and wine with a CUP. In fact, no restaurant located on MacArthur or West MacArthur Boulevard anywhere in the City of Oakland serves hard liquor. In a few instances on Foothill and International Boulevards, upgrades to liquor have been granted by the Planning Commission after successful operation, with no residential or other complaints, and with no change of ownership. For the subject site, the City has received correspondence related to issues such as noise and parking associated with the existing operation. There are potential effects of with more alcoholic beverage options and later closing times for a business adjacent to homes; in other words, due to "conditions of design." Introduction of hard liquor/distilled spirits and/or a later closing time may render a restaurant more akin to a bar business, which in turn may of course have different off-site impacts than a restaurant. With this information, and given conditions of design featuring proximity of the establishment to residences (including senior facilities), findings required to approve the request cannot be made.*

**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.**

Given the closing time of other restaurants adjacent to residences in the district, findings can be made to support an extension to closing time of 10:30 P.M. on Fridays and Saturdays subject to a satisfactory six-month compliance review and maintenance of Conditions of Approval including no bottle sales.



*There is not sufficient evidence to support authorization for sales of distilled spirits (hard liquor). Typically, full service restaurants located on restricted streets may serve beer and wine with a CUP. In fact, no restaurant located on MacArthur or West MacArthur Boulevard anywhere in the City of Oakland serves hard liquor. In a few instances on Foothill and International Boulevards, upgrades to liquor have been granted by the Planning Commission after successful operation, with no residential or other complaints, and with no change of ownership. For the subject site, the City has received correspondence related to issues such as noise and parking associated with the existing operation. There are potential effects of with more alcoholic beverage options and later closing times for a business adjacent to homes; in other words, due to "conditions of design." Introduction of hard liquor/distilled spirits and/or a later closing time may render a restaurant more akin to a bar business, which in turn may of course have different off-site impacts than a restaurant. With this information, and given conditions of design featuring proximity of the establishment to residences (including senior facilities), findings required to approve the request cannot be made.*

**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.**

Given the closing time of other restaurants adjacent to residences in the district, findings can be made to support an extension to closing time of 10:30 P.M. on Fridays and Saturdays subject to a satisfactory six-month compliance review and maintenance of Conditions of Approval including no bottle sales.

*There is not sufficient evidence to support authorization for sale of distilled spirits (hard liquor). Typically, full service restaurants located on restricted streets may serve beer and wine with a CUP. In fact, no restaurant located on MacArthur or West MacArthur Boulevard anywhere in the City of Oakland serves hard liquor. In a few instances on Foothill and International Boulevards, upgrades to liquor have been granted by the Planning Commission after successful operation, with no residential or other complaints, and with no change of ownership. For the subject site, the City has received correspondence related to issues such as noise and parking associated with the existing operation. There are potential effects of with more alcoholic beverage options and later closing times for a business adjacent to homes; in other words, due to "conditions of design." Introduction of hard liquor/distilled spirits and/or a later closing time may render a restaurant more akin to a bar business, which in turn may of course have different off-site impacts than a restaurant. With this information, and given conditions of design featuring proximity of the establishment to residences (including senior facilities), findings required to approve the request cannot be made.*

**D. That the proposal conforms to all applicable design review criteria set forth in the design review procedure at Section 17.136.070.**

This finding is inapplicable; the exterior is currently Code-compliant and no exterior changes are proposed.

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

The property is located in a Neighborhood Center Mixed Use area under 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 center 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." A full service restaurant serving beer and wine and having a 10:30 P.M. closing time, subject to conditions, conforms to this intent. The conformity of the proposal to include liquor sales at this location is discussed in the Key Issues and Impacts section of this report.

**Use Permit Criteria for Establishments Selling Alcoholic Beverages (OMC Sec. 17.103.030)(A)(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 10:00 p.m. and 7:00 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.**

Given the closing time of other restaurants adjacent to residences in the district, staff can support an extension to closing time of 10:30 P.M. on Fridays and Saturdays subject to a satisfactory six-month compliance review and maintenance of Conditions of Approval including no bottle sales.

**Attachment B: Conditions**

**1. Approved Use**

***Ongoing***

a) The project shall be constructed and operated in accordance with the authorized use as described in the **application, materials and plans dated and submitted November 13, 2014, and staff report, and as amended** by the following conditions. Any additional uses or facilities other than those approved with this permit, as described in the project description and the approved plans, will require a separate application and approval. Any deviation from the approved drawings, Conditions of Approval or use shall require prior written approval from the Director of City Planning or designee.

**b) This action by the City Planning Commission includes both approval ("this Approval") and denial of revisions to amend Conditions of Approval #30b and 30d of a Major Conditional Use Permit for full service restaurant on a restricted street at 2000 MacArthur Boulevard as follows:**

**(1) Extend the closing time to 10:30 P.M. Thursdays through Saturdays.**

**(2) Deny an upgrade to the beer and wine service (ABC license Type #41) to include liquor (Type #47).**

**2. Effective Date, Expiration, Extensions and Extinguishment**

***Ongoing***

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

**3. Scope of This Approval; Major and Minor Changes**

***Ongoing***

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

**4. Conformance with other Requirements**

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

a) The project applicant shall comply with all other applicable federal, state, regional and/or local laws/codes, requirements, regulations, and guidelines, including but not limited to those imposed by the City's Building Services Division, the City's Fire Marshal, and the City's Public Works Agency. 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 of Approval 3.

b) The applicant shall submit approved building plans for project-specific needs related to fire protection to the Fire Services Division for review and approval, including, but not limited to automatic extinguishing systems, water supply improvements and hydrants, fire department access, and vegetation management for preventing fires and soil erosion.

5. Conformance to Approved Plans; Modification of Conditions or Revocation

*Ongoing*

- a) Site shall be kept in a blight/nuisance-free condition. Any existing blight or nuisance shall be abated within 60-90 days of approval, unless an earlier date is specified elsewhere.
- b) The City of Oakland reserves the right at any time during construction to require certification by a licensed professional that the as-built project conforms to all applicable zoning requirements, including but not limited to approved maximum heights and minimum setbacks. Failure to construct the project in accordance with approved plans may result in remedial reconstruction, permit revocation, permit modification, stop work, permit suspension or other corrective action.
- c) Violation of any term, **Conditions** or project description relating to the Approvals is unlawful, prohibited, and a violation of the Oakland Municipal Code. The City of Oakland reserves the right to initiate civil and/or criminal enforcement and/or abatement proceedings, or after notice and public hearing, to revoke the Approvals or alter these **Conditions** if it is found that there is violation of any of the **Conditions** or the provisions of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance. This provision is not intended to, nor does it limit in any manner whatsoever the ability of the City to take appropriate enforcement actions. The project applicant shall be responsible for paying fees in accordance with the City's Master Fee Schedule for inspections conducted by the City or a City-designated third-party to investigate alleged violations of the Conditions of Approval.

6. Signed Copy of the Conditions

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

A copy of the approval letter and **Conditions** shall be signed by the property owner, notarized, and submitted with each set of permit plans to the appropriate City agency for this project.

7. Indemnification

*Ongoing*

- a) To the maximum extent permitted by law, the applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the City of Oakland Redevelopment Agency, the Oakland City Planning Commission and its respective agents, officers, and employees (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, (1) an approval by the City relating to a development-related application or subdivision or (2) implementation of an approved development-related project. The City may elect, in its sole discretion, to participate in the defense of said Action and the applicant shall reimburse the City for its reasonable legal costs and attorneys' fees.
- b) Within ten (10) calendar days of the filing of any Action as specified in subsection A above, the applicant shall execute a Letter Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Letter of Agreement shall survive termination, extinguishment or invalidation of the approval. Failure to timely execute the Letter Agreement does not relieve the applicant of any of the obligations contained in this condition or other requirements or conditions of approval that may be imposed by the City.

8. Compliance with Conditions of Approval

*Ongoing*

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

**Conditions**

9. **Severability**

***Ongoing***

Approval of the project would not have been granted but for the applicability and validity of each and every one of the specified conditions, and if one or more of such conditions is found to be invalid by a court of competent jurisdiction this Approval would not have been granted without requiring other valid conditions consistent with achieving the same purpose and intent of such Approval.

10. **Job Site Plans**

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

At least one (1) copy of the stamped approved plans, along with the Approval Letter and Conditions of Approval, shall be available for review at the job site at all times.

**PROJECT SPECIFIC CONDITIONS**

11. **Prior Approvals**

***Ongoing***

The following Conditions of Approval of #CM10009 shall remain in effect; where significant modifications have been made, such Conditions are removed and replaced with Conditions #12-13:

12. **Sale of Alcoholic Beverages**

**a. Types of Alcohol Permitted**

Beer and wine only may be sold.

**b. Hours of Alcohol Sale**

Hours of alcohol sales are limited to no later than 9:45PM Sundays through Thursdays and 10:30 P.M. Fridays through Saturdays. No new/upgraded ABC license type may be pursued and no distilled spirits (hard liquor) may be sold.

13. **Compliance Review**

***After six months of commencement of activity***

The applicant shall return to the Bureau of Planning to report their progress and to provide for an assessment of compliance with Conditions of Approval. Should any complaints regarding on-sale provision or other issues regarding sale of alcohol be identified, staff may refer the item back to the Planning Commission under a Director's Report. In that case, the applicant shall submit for a Compliance Review, and pay all appropriate fees consistent with the current Master Fee Schedule at that time (currently \$1,310.00). The Compliance Review will be agendaized for an upcoming Planning Commission meeting. The Compliance Review shall provide an opportunity for the Commission and the public to provide comment on the operation and determine whether there is a violation of any term, Conditions or project description relating to the Approvals or if there is violation of any provision of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance or there exists adverse impacts caused. As a result of the hearing, the Commission may direct staff to initiate enforcement proceedings pursuant to Condition of Approval 5C, and/or may impose additional conditions related to the operation.

**APPROVED BY:**

City Planning Commission: \_\_\_\_\_ (date) \_\_\_\_\_ (vote)

<b>Location:</b>	2000 MacArthur Boulevard (APN: 029A-1301-022-00) (see reverse)
<b>Proposal:</b>	To establish a 2,146 square-foot full-service restaurant ("Bay Laurel Restaurant") that would serve beer & wine and close no later than 10:00pm.
<b>Contact Person/ Phone Number:</b>	Lydia Walker (510) 336-2296
<b>Owner:</b>	Phillip Bell Family Trust
<b>Planning Permits Required:</b>	Major Conditional Use Permit with special findings to allow sale of alcoholic beverages at a full-service restaurant located on MacArthur Boulevard, a restricted street (OMC Sec. 17.102.210(B)(2), 17.134.020(A)(2)(a)(viii)); Minor Conditional Use Permit with special findings to allow a Full Service Restaurant Commercial Activity within the C-31 Zone (OMC Sec. 17.48.040(C) & 100, 17.134.020(B))
<b>General Plan:</b>	Neighborhood Center Mixed Use
<b>Zoning:</b>	C-31 Special Retail Commercial Zone
<b>Environmental Determination:</b>	Exempt, Section 15301 of the State CEQA Guidelines: Existing Facilities; Section 15183 of the State CEQA Guidelines: Projects Consistent with a Community Plan, General Plan, or Zoning
<b>Historic Status:</b>	Non-Historic Property; No survey rating
<b>Service Delivery District:</b>	III – Central/Chinatown/Lower Hills
<b>City Council District:</b>	4 - Quan
<b>Date Filed:</b>	January 11, 2010
<b>Action to be Taken:</b>	Approve with conditions
<b>Finality of Decision:</b>	<i>Appealable to City Council</i>
<b>For Further Information:</b>	Contact case planner <b>Aubrey Rose, Planner II</b> at (510) 238-2071 or <a href="mailto:arose@oaklandnet.com">arose@oaklandnet.com</a>

**SUMMARY**

The applicant, Ms. Lydia Walker, on behalf of the property owner, Mr. Phillip Bell, requests Planning Commission approval of one (1) Major Conditional Use Permit and one (1) Minor Conditional Use Permit, both with special findings, to establish a full-service restaurant within the C-31 Special Retail Commercial Zone including sale of beer and wine on MacArthur Boulevard, a restricted street.

Staff recommends approval of the requested permits, subject to Findings for and Conditions of Approval.

(map)

## **PROPERTY DESCRIPTION**

The property is a developed lot located on MacArthur Boulevard at the west end of the Dimond retail district. The lot is situated at the southeast corner of the T-intersection with Canon Avenue, adjacent to a six-way intersection. It measures 3,611 square-feet in area, averaging 44-feet in width by 83-feet in depth. The property contains one single-story building (built 1920) that contains one commercial space measuring 2,146 square-feet in area. Based on historic City and County data, it appears that the building may have originally contained two commercial spaces and housed some type of store. The commercial space contains one entrance oriented diagonally toward the corner with an awning, a blade sign facing MacArthur Boulevard, and glazing consisting of large windows above decorative glass block facing both street frontages. The interior features a dining room to the fore, a kitchen to the rear, and two restrooms. The building contains three (3) emergency exits.

The subject property building is at zero-lot line with the City sidewalk at the front and left sides. At the front of the building is a bus stop; at the left side are a billboard that does not extend above the roofline, a stand-mounted pay telephone, and a street tree along Canon Avenue; at the right side is a gate and narrow walkway between the subject building and the adjacent commercial building; and at the rear property line is a fence with landscaping that acts as screening for the adjacent single-family home fronting Canon Avenue. A trash enclosure area consisting of a chain-link fence is located to the rear of the building. A driveway runs across the rear yard between the trash enclosure and rear fence, connecting Canon Avenue to the parking lot of the liquor store/convenience market located at 2020 MacArthur Boulevard. The property does not contain on-site parking spaces.

To the north (rear) of the property is a mixed housing type residential neighborhood; to the west (left) is a triangular-shaped corner that contains a parking lot to the fore and a commercial building housing a beauty salon to the rear; further to the west is the Altenheim senior housing complex; to the south (facing the property) across MacArthur Boulevard is another multi-unit senior housing facility. To the east (right) is the Dimond retail district centered at MacArthur Boulevard and Fruitvale Avenue. The Dimond district contains various retail, food and service establishments; this includes restaurants, supermarkets, convenience markets, and drug stores, some of which sell alcoholic beverages.

## **PROJECT DESCRIPTION**

### Background

The space was most recently used as a restaurant ("Southern Café") that did not serve alcoholic beverages. Tenant improvements for the restaurant were done with permits circa 1994. A Conditional Use Permit was not obtained for that business, which appears to have closed on approximately September 1, 2008. Previous to that restaurant business, the space was a bar/cabaret (Club E'lusion). That business held Conditional Use and Cabaret Permits which were apparently revoked by the City circa 1992, primarily due to nuisances such as noise and on-street parking congestion that negatively impacted the adjacent neighborhood situated to the rear of the property along Canon Avenue. Other code compliance issues related to the property include overgrowth, trash, poor sidewalk condition, poor fence condition, and graffiti have persisted to-date.

### Proposal

The project is to establish a full-service restaurant including sale of beer and wine under new management within the existing commercial space. The restaurant would specialize in Southern cuisine including seafood. The applicant hopes customers would include residents living within walking distance of the establishment. The kitchen would also be utilized for occasional catering preparation. The project would essentially involve new tenant improvements (interior alterations) to renovate the dining room. The dining room would contain 18



tables and 60 chairs. The restaurant would feature table service. It would be operated by the business owner and a staff of five to six employees. No indoor bar, outdoor drinking/dining, or outdoor smoking is proposed. The establishment would be patrolled by security. The building would be serviced by a cleaning service and examined by pest control. Following are proposed hours of operation:

- Monday – Closed
- Tuesday through Saturday - 10:00am to 10:00pm
- Sunday – 11:00am to 7:00pm

One of the two restrooms would be upgraded for ADA-compliance. No business signage is proposed at this time; however, due to the fact that the building contains a blade sign advertising the previous business, it is expected that the applicant would request Zoning approval for a sign re-face should this request be approved. The business would also require a #41-type license from the California Department of Alcoholic Beverage Control (ABC) to allow a restaurant where minors are allowed and where beer and wine is served, in addition to any Alameda County Environmental Health Department approvals.

## **GENERAL PLAN ANALYSIS**

The project site is located in a Neighborhood Center Mixed Use area under the General Plan's Land Use & Transportation Element (LUTE). The Intent of this classification is: *"to identify, create, maintain and enhance mixed use neighborhood commercial centers. These center 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 Desired Character and Uses are: *"commercial or mixed uses that are pedestrian-oriented and serve nearby neighborhoods, or urban residential with ground floor commercial."* The proposal conforms to this Intent, Desired Character and Use, and following Policy of the LUTE:

### 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 used automobile sales and related uses through urban design and business retention efforts.*

The project to establish a full-service restaurant with beer and wine within a Neighborhood Center Mixed Use area conforms to the LUTE and the Guidelines for Determining Project Conformity ("General Plan Conformity Guidelines"). Staff finds the project to conform to the General Plan.

## **ZONING ANALYSIS**

The project requires a Minor Conditional Use Permit with special findings to establish a full-service restaurant in the C-31 Special Retail Commercial Zone and a Major Conditional Use Permit for the restaurant to service beer and wine due to the fact that the property is located on MacArthur Boulevard, a restricted street. The project site is located within the C-31 Special Retail Commercial Zone. The intent of the C-31 Zone is: *"to create, preserve, and enhance areas with a wide range of retail establishments serving both short and long term needs in attractive settings oriented to pedestrian comparison shopping, and is typically appropriate along important shopping streets having a special or particularly pleasant character."* The space has lost any legal nonconforming status to operate without a Conditional Use Permit in the C-31 Zone as a space greater than 400 square-feet closed for more than one year. Special findings for the Minor Conditional Use Permit ensure that the urban form of the district remains pedestrian-oriented and that retail uses are encouraged and not displaced.

Special findings for the Major Conditional Use Permit ensure that the sale of alcoholic beverages would not pose nuisances to surrounding commercial, residential, and civic uses. Incidental catering preparation activities in the kitchen are allowed as an Accessory Activity; Planning Code requirements for an Accessory Activity are included in draft Conditions of Approval attached to this report (Attachment B).

Pedestrian-oriented retail district

The building and commercial space are pedestrian-oriented and no new construction is proposed. The building is at zero-lot line at front and left sides, and the property does not contain a parking lot. The most recent businesses were not retail and the space contains a kitchen. However, the space could conceivably be converted into retail in the future. As the project does not involve construction of an automobile-oriented design and would not "displace" existing retail uses or preclude future retail uses, special findings can be made to approve the project. Additionally, it is desirable for a neighborhood retail district to include dining establishments for shoppers and adjacent residents.

Alcoholic beverage sales/nuisances

Sale of alcoholic beverages is generally permitted by-right in full-service restaurants under the Planning Code, with the exception of certain 'restricted streets' such as MacArthur Boulevard. Restricted streets are specific commercial corridors deemed to possess potential for negative impacts when restaurants selling alcoholic beverages are present. Therefore, restaurants featuring sales of alcoholic beverages are regulated by a Conditional Use Permit with special findings when located at these locations. All Conditional Use Permit applications involving alcohol are Major cases and therefore require Planning Commission approval. Consideration of areas over-concentrated with alcoholic beverage establishments does not apply to full-service restaurants. Therefore, findings of Public Convenience or Necessity are not necessary to approve the project. Also, City Ordinance no. 75490 (adopted February 1, 2000), a 'no net increase' goal in the number of alcohol outlets, does not apply because full-service restaurants are exempted.

Staff notes the site once housed a problematic alcohol establishment, albeit of a different business type than that which is proposed. Nonetheless, the City has been notified over time of an array of minor code compliance issues. Therefore, staff analyzed the proposal in terms of potential nuisances including but not limited to alcohol-related nuisances in the KEY ISSUES AND IMPACTS section of this report. The City Attorney's Office and Police Department's Alcoholic Beverages Action Team (ABAT) have reviewed this application, too. With conditions of approval, all required findings and special findings can be made for the project as proposed and staff therefore finds the project to be consistent with the Planning Code.

## **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 project involving *operation of existing private structures, facilities*. The proposal to utilize a commercial space located in a commercial district into a restaurant that would include beer and wine service meets this description: the project would constitute operation of an existing private facility only. The project is therefore exempt from Environmental Review.

## **KEY ISSUES AND IMPACTS**

The key issues identified with this application are the potential for nuisances at the site, including but not limited to negative impacts generally associated with establishments engaging in sale of alcoholic beverages. Examples of nuisances are crime, and more specifically: noise and blight. Nuisances can result from over-concentration of alcohol outlets.

Over-concentration

The following table indicates liquor establishments within a 1,000-foot radius of the site located at 2000 MacArthur Boulevard by address, distance from the project site, and license/business type.

	<b>Address (establishment)</b>	<b>Property separation</b>	<b>ABC license type (business description)</b>
1.	2020 MacArthur Blvd. (2-Star Liquors)	45-feet	21 (off-sale: liquor store)
2.	2033 MacArthur Blvd. (Flower Lounge)	145-feet	47 (off-sale: restaurant)
3.	2042 MacArthur Blvd. (Full Moon)	215-feet	47 (on-sale: restaurant)
4.	2101 MacArthur Blvd. (2101 Club)	360-feet	48 (on-sale: bar)
5.	3449 Fruitvale Ave. (Soon's Lounge)	530-feet	48 (on-sale: bar)
6.	3434 Fruitvale Ave. (Shaan)	725-feet	47 (on-sale: restaurant)
7.	3550 Fruitvale Ave. (Safeway)	735-feet	21 (off-sale: supermarket)
8.	3426 Fruitvale Ave. (Farmer Joe's)	750-feet	21 (off-sale: supermarket)
9.	3400 Fruitvale Ave. (Nama)	825-feet	47 (on-sale: restaurant)
10.	3320 Fruitvale Ave. (CVS/pharmacy)	860-feet	21 (off-sale: drug store)

11. Ly Luck

The table indicates five (5) on-sale (drink on-site) and five (5) off-sale (store) establishments, where four (4) of these establishments are similar to that which is proposed (restaurant with beer and wine). None of these restaurants are known by staff to be problematic. Draft Conditions of Approval for this application attached to this report (Attachment B) require that the establishment to operate as a full-service restaurant, as defined in the Planning Code. Only sale of beer and wine has been requested; should the proprietor desire sale of distilled spirits in addition to beer and wine, a revision to amend the Conditional Use Permit would need to be approved, in addition to proper ABC authorization.

Crime

The Oakland Police Department's statistics indicate 52 crimes were reported within 1,000-feet of the subject property in 90 days ending February 1, 2010 (Attachment E). None of these crimes was associated with the subject establishment, and only four involved alcohol. Furthermore, only 3 crimes were reported within 500-feet of the site in the last 30 days of this period, none involving alcohol. This is not a higher-than-average crime rate in the City, and area restaurants are not known by staff to be a contributing factor. Again, it is not expected that the establishment would contribute to crime if operated as a full-service restaurant, as requested and conditioned.

Nuisances

The property has a history of neighborhood issues such as noise, parking, and blight. Noise and parking (including alleged private parties) were issues while the subject property was operated as a bar and cabaret; however, that is not the land use requested under the current application. Furthermore, only beer and wine would be served, not distilled spirits. However, blight issues have been ongoing. Therefore, the draft Conditions of Approval require that all code compliance issues must be abated for the restaurant to operate, and that no full-scale cabaret would be allowed in the future. Conditions ensure that the business be maintained as a clean, quiet restaurant should ameliorate these concerns.

Staff finds a full-service restaurant with beer and wine in an existing space would not detract from the pedestrian and retail orientation of the district, and would not pose nuisances to adjacent residential neighbors when regulated by Conditions of Approval. Additionally, the applicant has voluntarily agreed to conditions requiring adherence to Deemed Approved Alcoholic Beverage Sale Regulations (OMC Sec. 17.156) and applicable ABC regulations. Finally, The City Attorney's Office and Police Department's Alcoholic Beverages Action Team (ABAT) have reviewed this application and have no comments.

There are no outstanding issues associated with the request. One voice mail message was received by staff, expressing opposition to the project based on concern of noise and parking issues under the bar/cabaret business that ceased operations circa 1992; the proposed operation and draft Conditions of Approval should address these issues. In conclusions, staff recommends approval of the request.

**RECOMMENDATIONS:**

1. Affirm staff's environmental determination.
2. Approve the Major and Minor Conditional Use Permits subject to the attached findings, special findings, and conditions.

Prepared by:

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AUBREY ROSE  
Planner II

Approved by:

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SCOTT MILLER  
Zoning Manager

Approved for forwarding to the  
City Planning Commission:

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WALTER COHEN  
Director  
Community & Economic Development Agency

**ATTACHMENTS:**

- A. Findings for Approval
- B. Conditions of Approval
- C. Floor plan
- D. Photograph
- E. OPD Area Crime Statistics (Map & Table)
- F. Restaurant Menu

## Attachment A: Findings for Approval

This proposal meets the required findings under General Use Permit Criteria (OMC Sec. 17.134.050), C-31 Special Retail Commercial Zone Use Permit Criteria (OMC Sec. 17.48.100), and Use Permit Criteria for Establishments Selling Alcoholic Beverages (OMC Sec. 17.102.210(A)).

### **SECTION 17.134.050 – GENERAL USE PERMIT CRITERIA:**

- A. That the location, size, design, and operating characteristics of the proposed development will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development.**

The project is to establish a restaurant serving beer and wine in a former restaurant space, under new management, located in a retail district (Dimond) along MacArthur Boulevard. The district contains other restaurants, as well as supermarkets, bars, convenience markets, and drug stores, some of which sell alcoholic beverages. The property is located adjacent to a mixed housing type residential neighborhood. Restaurants in the area are not known to be problematic and the proposed use is considered to be compatible with the district and adjacent neighborhood, with conditions attached to avoid nuisances such as noise, parking, and blight to the district and adjacent residential neighbors.

- 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 location and site are appropriate for a restaurant with beer and wine service, as proposed. The restaurant is not directly adjacent to schools, churches, or residential care homes. The property is adjacent to two (2) senior residential facilities but is not expected to generate negative impacts to these centers due to the full-service food-service nature of the business and conditions of approval attached to regulate noise, parking, and blight.

- 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 Dimond district, a C-31 Special Retail Commercial Zone, is a vibrant neighborhood-serving retail district with an array of establishment types that also attracts patrons from outside of the neighborhood. No restaurants serving the cuisine under this proposal currently operate in the district.

- D. That the proposal conforms to all applicable design review criteria set forth in the design review procedure at Section 17.136.070.**

Exterior changes are not proposed and the project is therefore not subject to Design Review.

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

The project site is located in the Neighborhood Commercial Mixed Use area under the General Plan's Land Use & Transportation Element (LUTE). The Intent of the classification is: *"to identify, create, maintain and enhance mixed use neighborhood commercial centers. These center 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 Desired Character and Uses are: *"commercial or mixed uses that are pedestrian-oriented and serve nearby neighborhoods, or urban residential with ground floor commercial."*

The proposal to establish a restaurant in a small retail district conforms to area's Intent, Desired Character and Uses, and the following Policy of the LUTE:

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 used automobile sales and related uses through urban design and business retention efforts.*

**SECTION 17.48.100 – C-31 SPECIAL RETAIL COMMERCIAL ZONE USE PERMIT CRITERIA**

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

The project site is located within the C-31 Special Retail Commercial Zone. The intent of the C-31 Zone is: *"to create, preserve, and enhance areas with a wide range of retail establishments serving both short and long term needs in attractive settings oriented to pedestrian comparison shopping, and is typically appropriate along important shopping streets having a special or particularly pleasant character."* The proposal to establish a restaurant in a former restaurant space with no parking lot located within a pedestrian-oriented retail district, with no exterior changes proposed, which will not detract from the desired character of the Dimond district.

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

The project does not involve new construction or additions to a building, and this finding is met by the existing building

**C. 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;**

This finding is met: the proposal does not involve replacement or loss of a retail establishment or removal of a commercial façade.

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

The proposal does not involve changes to the City sidewalk or otherwise that would hinder pedestrian circulation and this finding is met by the existing site.

- F. That no driveway shall connect directly with the area's principal commercial street unless:**
- 1. Vehicular access cannot reasonably be provided from a different street or other way, and**
  - 2. Every reasonable effort has been made to share means of vehicular access with abutting properties;**

The property's driveway does not connect with the area's principal commercial street, MacArthur Boulevard and no site changes are proposed.

- F. That the amount of off-street parking, if any, provided in excess of the requirements of this code will not contribute significantly to an increased orientation of the area to automobile movement;**

The site does not contain off-street parking.

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

The project site is located in an area with a Strategy Objective of 'Grow and Change' under the LUTE (Strategy Diagram Figure # 3 p. 122) and is a Neighborhood Activity Center located on a Key City Corridor (City Structure Diagram). To establish a restaurant in a commercial space most recently used as a restaurant is an appropriate land use at this location.

**SECTION 17.102.210(A) – USE PERMIT CRITERIA FOR ESTABLISHMENTS SELLING ALCOHOLIC BEVERAGES:**

- 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 restaurants in the district coexist with retail establishment and are not know to displace them. The proposed restaurant featuring on-sale alcoholic beverage service is consistent with the area's character and will not contribute to crime or congestion with conditions of approval.

- 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 restaurant is not adjacent to any civic uses such as schools or parks and is not expected to negatively impact senior facilities located on MacArthur Boulevard.

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

The project will not block the sidewalk in any way.

- 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 does not involve exterior changes.

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

The project does not involve new signage; should the Applicant desire new signage, Design Review will be required.

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

The restaurant will feature table service; staff will manage waste on-site; take-out orders will not be consumed in public and litter will therefore not result.

**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 p.m. and seven 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 business does face residences but will feature food service, will not include a cabaret, and will close no later than 10:00pm.

**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 not applicable; the proposal does not involve a Fast Food Restaurant.



## Attachment B: Conditions of Approval

### 1. Approved Use

#### *Ongoing*

- a) The project shall be constructed and operated in accordance with the authorized use as described in the application materials, staff report, and the plans submitted on **January 10, 2010** and as amended by the following conditions. Any additional uses or facilities other than those approved with this permit, as described in the project description and the approved plans, will require a separate application and approval. Any deviation from the approved drawings, Conditions of Approval or use shall required prior written approval from the Director of City Planning or designee.
- b) This action by the **City Planning Commission** ("this Approval") includes the approvals set forth below. This Approval includes:
  - i) *1 Major and 1 Minor Conditional Use Permit each with special findings to allow the establishment of a full-service restaurant to include sale of alcoholic beverages (beer and wine) in a commercial building located on MacArthur Boulevard, a restricted street, within the C-31 Special Retail Commercial Zone.*

### 2. Effective Date, Expiration, Extensions and Extinguishment

#### *Ongoing*

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

### 3. Scope of This Approval; Major and Minor Changes

#### *Ongoing*

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

### 4. Conformance with other Requirements

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

- a) The project applicant shall comply with all other applicable federal, state, regional and/or local laws/codes, requirements, regulations, and guidelines, including but not limited to those imposed by the City's Building Services Division, the City's Fire Marshal, and the City's Public Works Agency. 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 of Approval 3.
- b) The applicant shall submit approved building plans for project-specific needs related to fire protection to the Fire Services Division for review and approval, including, but not limited to automatic extinguishing systems, water supply improvements and hydrants, fire department access, and vegetation management for preventing fires and soil erosion.

**5. Conformance to Approved Plans; Modification of Conditions or Revocation**

***Ongoing***

- a) Site shall be kept in a blight/nuisance-free condition. Any existing blight or nuisance shall be abated within 60-90 days of approval, unless an earlier date is specified elsewhere.
- b) The City of Oakland reserves the right at any time during construction to require certification by a licensed professional that the as-built project conforms to all applicable zoning requirements, including but not limited to approved maximum heights and minimum setbacks. Failure to construct the project in accordance with approved plans may result in remedial reconstruction, permit revocation, permit modification, stop work, permit suspension or other corrective action.
- c) Violation of any term, Conditions or project description relating to the Approvals is unlawful, prohibited, and a violation of the Oakland Municipal Code. The City of Oakland reserves the right to initiate civil and/or criminal enforcement and/or abatement proceedings, or after notice and public hearing, to revoke the Approvals or alter these Conditions if it is found that there is violation of any of the Conditions or the provisions of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance. This provision is not intended to, nor does it, limit in any manner whatsoever the ability of the City to take appropriate enforcement actions. The project applicant shall be responsible for paying fees in accordance with the City's Master Fee Schedule for inspections conducted by the City or a City-designated third-party to investigate alleged violations of the Conditions of Approval.

**6. Signed Copy of the Conditions**

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

A copy of the approval letter and **Conditions** shall be signed by the property owner, notarized, and submitted with each set of permit plans to the appropriate City agency for this project.

**7. Indemnification**

***Ongoing***

- a) To the maximum extent permitted by law, the applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the City of Oakland Redevelopment Agency, the Oakland City Planning Commission and its respective agents, officers, and employees (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, (1) an approval by the City relating to a development-related application or subdivision or (2) implementation of an approved development-related project. The City may elect, in its sole discretion, to participate in the defense of said Action and the applicant shall reimburse the City for its reasonable legal costs and attorneys' fees.
- b) Within ten (10) calendar days of the filing of any Action as specified in subsection A above, the applicant shall execute a Letter Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Letter of Agreement shall survive termination, extinguishment or invalidation of the approval. Failure to timely execute the Letter Agreement does not relieve the applicant of any of the obligations contained in this condition or other requirements or conditions of approval that may be imposed by the City.

**8. Compliance with Conditions of Approval**

***Ongoing***

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

**9. Severability**

***Ongoing***

Approval of the project would not have been granted but for the applicability and validity of each and every one of the specified conditions, and if one or more of such conditions is found to be invalid by a court of competent jurisdiction this Approval would not have been granted without requiring other valid conditions consistent with achieving the same purpose and intent of such Approval.

**10. Job Site Plans**

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

At least one (1) copy of the stamped approved plans, along with the Approval Letter and Conditions of Approval, shall be available for review at the job site at all times.

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

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

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

**12. Underground Utilities**

***Prior to issuance of a building permit***

The project applicant shall submit plans for review and approval by the Building Services Division and the Public Works Agency, and other relevant agencies as appropriate, that show all new electric and telephone facilities; fire alarm conduits; street light wiring; and other wiring, conduits, and similar facilities placed underground. The new facilities shall be placed underground along the project applicant's street frontage and from the project applicant's structures to the point of service. The plans shall show all electric, telephone, water service, fire water service, cable, and fire alarm facilities installed in accordance with standard specifications of the serving utilities.

**13. Payment for Public Improvements**

***Prior to issuance of a final inspection of the building permit.***

The project applicant shall pay for and install public improvements made necessary by the project including damage caused by construction activity.

**14. Construction Management Plan**

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

The project applicant shall submit to the Planning and Zoning Division and the Building Services Division for review and approval a construction management plan that identifies the conditions of approval related to construction impacts of the project and explains how the project applicant will comply with these construction-related conditions of approval.

**15. Dust Control**

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

During construction, the project applicant shall require the construction contractor to implement the following measures required as part of Bay Area Air Quality Management District's (BAAQMD) basic and enhanced dust control procedures required for construction sites. These include:

- a) Water all active construction areas at least twice daily. Watering should be sufficient to prevent airborne dust from leaving the site. Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour. Reclaimed water should be used whenever possible.
- b) Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer).
- c) Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
- d) Sweep daily (with water sweepers using reclaimed water if possible) all paved access roads, parking areas and staging areas at construction sites.
- e) Sweep streets (with water sweepers using reclaimed water if possible) at the end of each day if visible soil material is carried onto adjacent paved roads.
- f) Limit the amount of the disturbed area at any one time, where feasible.
- g) Suspend excavation and grading activity when winds (instantaneous gusts) exceed 25 mph.
- h) Pave all roadways, driveways, sidewalks, etc. as soon as feasible. In addition, building pads should be laid as soon as possible after grading unless seeding or soil binders are used.
- i) Replant vegetation in disturbed areas as quickly as feasible.
- j) Enclose, cover, water twice daily or apply (non-toxic) soil stabilizers to exposed stockpiles (dirt, sand, etc.).
- k) Limit traffic speeds on unpaved roads to 15 miles per hour.
- l) Clean off the tires or tracks of all trucks and equipment leaving any unpaved construction areas.

**16. Construction Emissions**

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

To minimize construction equipment emissions during construction, the project applicant shall require the construction contractor to:

- a) Demonstrate compliance with Bay Area Air Quality Management District (BAAQMD) Regulation 2, Rule 1 (General Requirements) for all portable construction equipment subject to that rule. BAAQMD Regulation 2, Rule 1 provides the issuance of authorities to construct and permits to operate certain types of portable equipment used for construction purposes (e.g., gasoline or diesel-powered engines used in conjunction with power generation, pumps, compressors, and cranes) unless such equipment complies with all applicable requirements of the "CAPCOA" Portable Equipment Registration Rule" or with all applicable requirements of the Statewide Portable Equipment Registration Program. This exemption is provided in BAAQMD Rule 2-1-105.
- b) Perform low- NOx tune-ups on all diesel-powered construction equipment greater than 50 horsepower (no more than 30 days prior to the start of use of that equipment). Periodic tune-ups (every 90 days) shall be performed for such equipment used continuously during the construction period.

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

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

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

- a) Construction activities are limited to between 7:00 AM and 7:00 PM Monday through Friday, except that pile driving and/or other extreme noise generating activities greater than 90 dBA shall be limited to between 8:00 a.m. and 4:00 p.m. Monday through Friday.
- b) Any construction activity proposed to occur outside of the standard hours of 7:00 am to 7:00 pm Monday through Friday for special activities (such as concrete pouring which may require more continuous amounts of time) shall be evaluated on a case by case basis, with criteria including the proximity of residential uses and a consideration of resident's preferences for whether the activity is acceptable if the overall duration of construction is shortened and such construction activities shall only be allowed with the prior written authorization of the Building Services Division.
- c) Construction activity shall not occur on Saturdays, with the following possible exceptions:
  - i. Prior to the building being enclosed, requests for Saturday construction for special activities (such as concrete pouring which may require more continuous amounts of time), shall be evaluated on a case by case basis, with criteria including the proximity of residential uses and a consideration of resident's preferences for whether the activity is acceptable if the overall duration of construction is shortened. Such construction activities shall only be allowed on Saturdays with the prior written authorization of the Building Services Division.
  - ii. After the building is enclosed, requests for Saturday construction activities shall only be allowed on Saturdays with the prior written authorization of the Building Services Division, and only then within the interior of the building with the doors and windows closed.
- d) No extreme noise generating activities (greater than 90 dBA) shall be allowed on Saturdays, with no exceptions.
- e) No construction activity shall take place on Sundays or Federal holidays.
- f) Construction activities include but are not limited to: truck idling, moving equipment (including trucks, elevators, etc) or materials, deliveries, and construction meetings held on-site in a non-enclosed area.
- g) Applicant shall use temporary power poles instead of generators where feasible.

**18. Noise Control**

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

To reduce noise impacts due to construction, the project applicant shall require construction contractors to implement a site-specific noise reduction program, subject to the Planning and Zoning Division and the Building Services Division review and approval, which includes the following measures:

- a) Equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds, wherever feasible).
- b) Except as provided herein, Impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electrically powered to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used, if such jackets are commercially available and this could achieve a reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever such procedures are available and consistent with construction procedures.

- c) Stationary noise sources shall be located as far from adjacent receptors as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or use other measures as determined by the City to provide equivalent noise reduction.
- d) The noisiest phases of construction shall be limited to less than 10 days at a time. Exceptions may be allowed if the City determines an extension is necessary and all available noise reduction controls are implemented.

**19. Noise Complaint Procedures**

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

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

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

**20. Interior Noise**

***Prior to issuance of a building permit and Certificate of Occupancy***

If necessary to comply with the interior noise requirements of the City of Oakland's General Plan Noise Element and achieve an acceptable interior noise level, noise reduction in the form of sound-rated assemblies (i.e., windows, exterior doors, and walls), and/or other appropriate features/measures, shall be incorporated into project building design, based upon recommendations of a qualified acoustical engineer and submitted to the Building Services Division for review and approval prior to issuance of building permit. Final recommendations for sound-rated assemblies, and/or other appropriate features/measures, will depend on the specific building designs and layout of buildings on the site and shall be determined during the design phases. Written confirmation by the acoustical consultant, HVAC or HERS specialist, shall be submitted for City review and approval, prior to Certificate of Occupancy (or equivalent) that:

- (a) Quality control was exercised during construction to ensure all air-gaps and penetrations of the building shell are controlled and sealed; and
- (b) Demonstrates compliance with interior noise standards based upon performance testing of a sample unit.
- (c) Inclusion of a Statement of Disclosure Notice in the CC&R's on the lease or title to all new tenants or owners of the units acknowledging the noise generating activity. Potential features/measures to reduce interior noise could include, but are not limited to, the following:
  - a) Installation of an alternative form of ventilation in all units identified in the acoustical analysis as not being able to meet the interior noise requirements due to adjacency to a noise generating activity, filtration of

ambient make-up air in each unit and analysis of ventilation noise if ventilation is included in the recommendations by the acoustical analysis.

- b) Prohibition of Z-duct construction.

**21. Operational Noise-General**

***Ongoing.***

Noise levels from the activity, property, or any mechanical equipment on site shall comply with the performance standards of Section 17.120 of the Oakland Planning Code and Section 8.18 of the Oakland Municipal Code. If noise levels exceed these standards, the activity causing the noise shall be abated until appropriate noise reduction measures have been installed and compliance verified by the Planning and Zoning Division and Building Services.

**22. Construction Traffic and Parking**

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

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

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

**23. Hazards Best Management Practices**

***Prior to commencement of demolition, grading, or construction***

The project applicant and construction contractor shall ensure that construction of Best Management Practices (BMPs) are implemented as part of construction to minimize the potential negative effects to groundwater and soils. These shall include the following:

- a) Follow manufacture's recommendations on use, storage, and disposal of chemical products used in construction;
- b) Avoid overtopping construction equipment fuel gas tanks;
- c) During routine maintenance of construction equipment, properly contain and remove grease and oils;
- d) Properly dispose of discarded containers of fuels and other chemicals.
- e) Ensure that construction would not have a significant impact on the environment or pose a substantial health risk to construction workers and the occupants of the proposed development. Soil sampling and chemical analyses of samples shall be performed to determine the extent of potential contamination beneath all UST's, elevator shafts, clarifiers, and subsurface hydraulic lifts when on-site demolition, or construction activities would potentially affect a particular development or building.
- f) If soil, groundwater or other environmental medium with suspected contamination is encountered unexpectedly during construction activities (e.g., identified by odor or visual staining, or if any

underground storage tanks, abandoned drums or other hazardous materials or wastes are encountered), the applicant shall cease work in the vicinity of the suspect material, the area shall be secured as necessary, and the applicant shall take all appropriate measures to protect human health and the environment. Appropriate measures shall include notification of regulatory agency(ies) and implementation of the actions described in the City's Standard Conditions of Approval, as necessary, to identify the nature and extent of contamination. Work shall not resume in the area(s) affected until the measures have been implemented under the oversight of the City or regulatory agency, as appropriate.

**24. Waste Reduction and Recycling**

The project applicant will submit a Construction & Demolition Waste Reduction and Recycling Plan (WRRP) and an Operational Diversion Plan (ODP) for review and approval by the Public Works Agency.

***Prior to issuance of demolition, grading, or building permit***

Chapter 15.34 of the Oakland Municipal Code outlines requirements for reducing waste and optimizing construction and demolition (C&D) recycling. Affected projects include all new construction, renovations/alterations/modifications with construction values of \$50,000 or more (except R-3), and all demolition (including soft demo). The WRRP must specify the methods by which the development will divert C&D debris waste generated by the proposed project from landfill disposal in accordance with current City requirements. Current standards, FAQs, and forms are available at [www.oaklandpw.com/Page39.aspx](http://www.oaklandpw.com/Page39.aspx) or in the Green Building Resource Center. After approval of the plan, the project applicant shall implement the plan.

***Ongoing***

The ODP will identify how the project complies with the Recycling Space Allocation Ordinance, (Chapter 17.118 of the Oakland Municipal Code), including capacity calculations, and specify the methods by which the development will meet the current diversion of solid waste generated by operation of the proposed project from landfill disposal in accordance with current City requirements. The proposed program shall be implemented and maintained for the duration of the proposed activity or facility. Changes to the plan may be re-submitted to the Environmental Services Division of the Public Works Agency for review and approval. Any incentive programs shall remain fully operational as long as residents and businesses exist at the project site.

**25. Lighting Plan**

***Prior to the issuance of an electrical or building permit***

The proposed lighting fixtures shall be adequately shielded to a point below the light bulb and reflector and that prevent unnecessary glare onto adjacent properties. Plans shall be submitted to the Planning and Zoning Division and the Electrical Services Division of the Public Works Agency for review and approval. All lighting shall be architecturally integrated into the site.

**26. Asbestos Removal in Structures**

***Prior to issuance of a demolition permit***

If asbestos-containing materials (ACM) are found to be present in building materials to be removed, demolition and disposal, the project applicant shall submit specifications signed by a certified asbestos consultant for the removal, encapsulation, or enclosure of the identified ACM in accordance with all applicable laws and regulations, including but not necessarily limited to: California Code of Regulations, Title 8; Business and Professions Code; Division 3; California Health & Safety Code 25915-25919.7; and Bay Area Air Quality Management District, Regulation 11, Rule 2, as may be amended.



**SPECIFIC CONDITIONS**

**27. Maintenance of Full-Service Restaurant**

***Ongoing***

The establishment must operate as a full-service restaurant to sell alcohol. To that end, the following requirements must be adhered to:

- a. The monthly gross sales of alcoholic beverages shall not exceed 40-percent of gross sales during the same period. The licensee shall at all times maintain records which reflect separately the gross sale of food and the gross sale of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the Department on demand.
- b. The premises shall be maintained as a bona fide eating place and shall provide a menu containing an assortment of foods normally offered in such restaurants.
- c. The premises shall be equipped and maintained in good faith and shall possess, in operative condition, such convenience for cooking foods such as a stove, ovens, broilers, or other devices as well as pots, pans or containers which can be used for cooking or heating foods on the type heating device employed.
- d. The premises shall possess the necessary utensils, table service, and condiment dispensers with which to serve meals to the public.
- e. The licensee shall comply with the provisions of Section 23038 B&P, and acknowledge the incidental, sporadic or infrequent sales of meals or a mere offering of meals without actual sales shall not be deemed sufficient to consider the premises in compliance with the aforementioned code section.

**28. City Business Tax License**

***Prior to commencing activity***

The business shall obtain a Business Tax License from the City's Business Tax License Office.

**29. Other agencies**

***Prior to commencing activity***

All permits required of other agencies including but not limited to Alameda County Environmental Health Department shall be obtained.

**30. Sale of Alcoholic Beverages**

***Ongoing***

**a. Location and manner of alcohol consumption**

Alcohol sale is on-sale, for on-site consumption only, and is intended to be served with meals.

**b. Types of Alcohol Permitted**

Beer and wine only may be sold. Should the proprietor desire sale of distilled spirits, an application for a revision to amend this approval must be submitted to and approved by the Planning & Zoning Division.

**c. Additional Permits Required**

Necessary ABC permits must be obtained prior to commencement of activity.

**d. Hours of Alcohol Sale**

Hours of alcohol sales are limited to no later than 9:45PM.

**e. 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.

**31. 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. 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.

**32. 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.

**33. 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. Pay Phones**

No new pay phones are permitted outside the building.

**d. 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.

**e. Securing Site**

Applicant shall conform to Ordinance 12390 related to securing sites after hours to discourage loitering and crime in parking lots.

**f. Deemed Approved Alcoholic Beverage Sale Regulations**

The applicant and proprietor voluntarily agree to conform to the Oakland Planning Code Deemed Approved Alcoholic Beverage Sale Regulations (OMC Sec. 17.156).

**34. Trash and litter**

***Ongoing***

The licensees/property owners shall clear the gutter and sidewalks along MacArthur Boulevard 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.

**35. Signage**

***Prior to constructing signage***

The design for signage must be approved by the Planning & Zoning Division.

**36. Tenant improvements/building occupancy**

***Prior to commencing restaurant activity***

Any required Building and Fire Department Permits must be obtained and finalized.

**37. Property conditions/Code Compliance**

***Prior to commencing restaurant activity and ongoing***

All Code Compliance issues shall be abated and this abatement maintained including but not limited to the following issues: trash, poor sidewalk condition, poor fence condition, and graffiti.

**38. On-street parking**

***Ongoing***

The operator shall ensure that no guest parking occurs on Canon Avenue beyond the commercial properties located at the intersection of MacArthur Boulevard.

**39. Noise**

***Ongoing***

The proprietor shall ensure noise generated by the restaurant is not audible outside of the building.

**40. Cabaret**

***Ongoing***

The proprietor shall not establish a cabaret unless permits are obtained for a small cabaret, only, featuring music not audible from outside of the building.

**41. Accessory activity: Catering preparation**

***Ongoing***

Catering production must be subordinate to the restaurant and adhere to Planning Code Sec. 17.10.040(F) for Accessory Activities.

**42. Private parties**

***Ongoing***

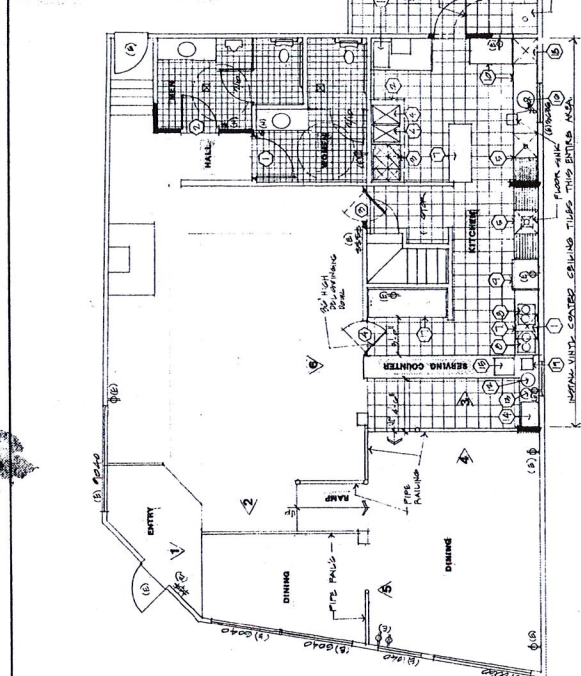
Private parties shall adhere to all conditions.

**APPROVED BY:**

City Planning Commission: \_\_\_\_\_ (date) \_\_\_\_\_ (vote)

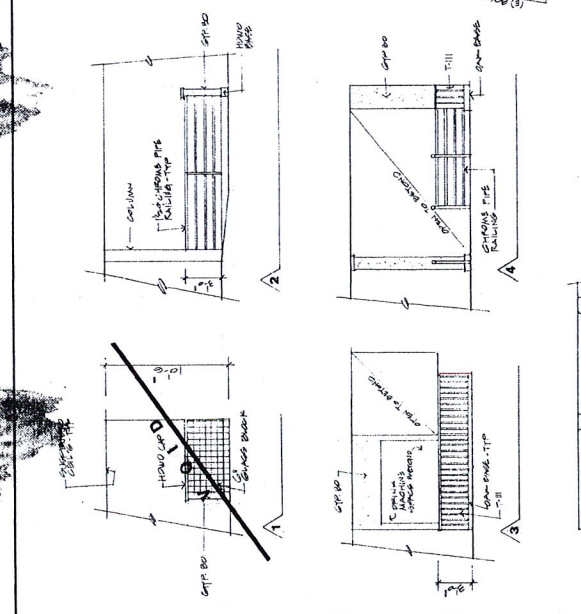
**NOTES:**

1. ELECTRICAL CONTRACTOR TO VERIFY ALL WIRING AND ELECTRICAL PANELS ARE UP TO DATE AND TO BE REPLACED AS NECESSARY. ALL WIRING TO BE INSTALLED IN ACCORDANCE WITH THE LATEST EDITION OF THE NATIONAL ELECTRICAL CODE (NEC).
2. ALL WORK TO BE DONE IN ACCORDANCE WITH THE LATEST EDITION OF THE CALIFORNIA MECHANICAL CODE (CMC).
3. ALL WORK TO BE DONE IN ACCORDANCE WITH THE LATEST EDITION OF THE CALIFORNIA PLUMBING CODE (CPC).
4. ALL WORK TO BE DONE IN ACCORDANCE WITH THE LATEST EDITION OF THE CALIFORNIA FIRE AND SAFETY CODE (FSC).
5. ALL WORK TO BE DONE IN ACCORDANCE WITH THE LATEST EDITION OF THE CALIFORNIA BUILDING CODE (CBC).
6. ALL WORK TO BE DONE IN ACCORDANCE WITH THE LATEST EDITION OF THE CALIFORNIA HEALTH AND SAFETY CODE (HSC).
7. ALL WORK TO BE DONE IN ACCORDANCE WITH THE LATEST EDITION OF THE CALIFORNIA ENVIRONMENTAL HEALTH AND SAFETY CODE (EHSC).
8. ALL WORK TO BE DONE IN ACCORDANCE WITH THE LATEST EDITION OF THE CALIFORNIA LABOR CODE (LSC).
9. ALL WORK TO BE DONE IN ACCORDANCE WITH THE LATEST EDITION OF THE CALIFORNIA PENAL CODE (PC).
10. ALL WORK TO BE DONE IN ACCORDANCE WITH THE LATEST EDITION OF THE CALIFORNIA CIVIL CODE (CC).
11. ALL WORK TO BE DONE IN ACCORDANCE WITH THE LATEST EDITION OF THE CALIFORNIA EVIDENCE CODE (EC).
12. ALL WORK TO BE DONE IN ACCORDANCE WITH THE LATEST EDITION OF THE CALIFORNIA GOVERNMENT CODE (GC).
13. ALL WORK TO BE DONE IN ACCORDANCE WITH THE LATEST EDITION OF THE CALIFORNIA EDUCATION CODE (EC).
14. ALL WORK TO BE DONE IN ACCORDANCE WITH THE LATEST EDITION OF THE CALIFORNIA FINANCIAL CODE (FC).
15. ALL WORK TO BE DONE IN ACCORDANCE WITH THE LATEST EDITION OF THE CALIFORNIA FISH AND GAME CODE (FGC).
16. ALL WORK TO BE DONE IN ACCORDANCE WITH THE LATEST EDITION OF THE CALIFORNIA FOOD AND DRUG CODE (FDC).
17. ALL WORK TO BE DONE IN ACCORDANCE WITH THE LATEST EDITION OF THE CALIFORNIA HUMAN RESOURCES CODE (HRC).
18. ALL WORK TO BE DONE IN ACCORDANCE WITH THE LATEST EDITION OF THE CALIFORNIA INDEMNITY AND LIABILITY CODE (ILC).
19. ALL WORK TO BE DONE IN ACCORDANCE WITH THE LATEST EDITION OF THE CALIFORNIA JUDICIAL BRANCH CODE (JBC).
20. ALL WORK TO BE DONE IN ACCORDANCE WITH THE LATEST EDITION OF THE CALIFORNIA LEGISLATIVE BRANCH CODE (LBC).
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30. ALL WORK TO BE DONE IN ACCORDANCE WITH THE LATEST EDITION OF THE CALIFORNIA LEGISLATIVE BRANCH CODE (LBC).



**EQUIPMENT SCHEDULE**

NO.	DESCRIPTION	MFR.	MODEL #	GAS	ELECTRICAL	REMARKS
1	MULTIFUNCTIONAL PAN	ANYCO	MAC 100	•	•	•
2	EXHAUST FAN	RAMCO	RAM-9	•	•	•
3	GRIDDLE	RAMCO	RAM-9	•	•	•
4	FRYER	RAMCO	RAM-9	•	•	•
5	TOASTER	RAMCO	RAM-9	•	•	•
6	TOASTER	RAMCO	RAM-9	•	•	•
7	TOASTER	RAMCO	RAM-9	•	•	•
8	WAFFLE IRON	RAMCO	RAM-9	•	•	•
9	ICE MACHINE	RAMCO	RAM-9	•	•	•
10	EXHAUST FAN	RAMCO	RAM-9	•	•	•
11	ICE TEA JAR	RAMCO	RAM-9	•	•	•
12	DRINK DISPENSER	RAMCO	RAM-9	•	•	•
13	COFFEE MACHINE	RAMCO	RAM-9	•	•	•
14	CARDON DISPENSER	RAMCO	RAM-9	•	•	•
15	DRINK MACHINE	RAMCO	RAM-9	•	•	•
16	DRINK MACHINE	RAMCO	RAM-9	•	•	•
17	HAND SINK	RAMCO	RAM-9	•	•	•



**FLOOR PLAN LEGEND**

- EQUIPMENT TO BE REMOVED OR RELOCATED
- EQUIPMENT TO BE INSTALLED
- (R) RELOCATED
- (N) NEW
- (E) EXISTING
- (D) DEMOLISHED
- (X) EXISTING PAN

**INTERIOR ELEVATIONS**

*Southern Café*  
AT 2000 MACARTHUR

**ATTACHMENT E**

## Sandwiches

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**Shrimp Po'Boy** 10.95  
Our Cajun mayo spread on a French roll, topped with lettuce and tomato.

## Salads

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**Fried Chicken Salad** 10.95  
Boneless crispy chicken breast, romaine lettuce, tomato, red onion, shredded cheddar and crispy bacon.

**Grilled Chicken Salad** 10.95  
Boneless chicken breast, romaine lettuce, tomato, red onion and beets.

**House Salad** 3.95  
Iceberg lettuce, red cabbage, carrots, croûtons and beets.

## Kid Zone For children ages 12 and under.

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Items come with either fries or mac'n'cheese.

**Chicken Legs** 6.95  
Two fried chicken legs.

**Hamburger Sliders (2)** 6.95  
Served with mayo. Add cheese - .50 extra

**Grilled Cheese Sandwich** 6.95

## à la Carte

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**Short Ribs of Beef** 11.95  
Cooked tender and smothered in our seasoned brown gravy.

**Oxtails** 11.95  
Slow cooked and smothered in our seasoned brown gravy.

**Liver & Onions** 8.95  
Cooked to order, served with our famous gravy and crispy bacon.

**Meatloaf** 7.95  
Carefully prepared using our family recipe.

**Fried Chicken (3 pcs)** 8.95  
All white meat add 1.50

**Baked Chicken (3 pcs.)** 8.95  
All white meat add 1.50

**Chicken Wings** 8.95  
Four generous pieces of our perfectly seasoned fried chicken wings.

**Breaded Pork Chops** 9.95  
Two pork chops fried to perfection using our family recipe. Add gravy - 1.00 extra

**Chitterlings** 12.95  
Served only on Friday & Saturday.

**Fried Catfish** 10.95

**Fried Red Snapper** 10.95  
Fried in our special seasonings.

**Fried Prawns** 10.95  
Six prawns battered, seasoned and fried.

**Fried Oysters** 10.95

## Entrées

All of our entrées include  
your choice of 3 sides:

- Mac & Cheese
- Rice with Gravy
- Yams
- Mashed Potatoes
- Corn
- Green Beans
- Cabbage
- Collard Greens
- Black-eyed Peas
- Red Beans



## Beef

### Short Ribs of Beef 17.95

Cooked tender and smothered in our seasoned brown gravy.

### Oxtails 17.95


*Customer favorite!* Slow cooked and smothered in our seasoned brown gravy.

### Liver & Onions 14.95

Cooked to order, served with our famous gravy and crispy bacon.

### Meatloaf 14.95

Carefully prepared using our family recipe.



## Poultry

### Fried Chicken (3 pcs.) 15.25

### Baked Chicken (3 pcs.) 15.25

Don't miss out on the best chicken in the Bay!

All white meat - 1.50 extra

Two breasts = white meat.

One breast & Two wings = white meat

### Chicken Wings 13.95

Four generous pieces of our perfectly seasoned fried chicken wings.

### Turkey Meatloaf 14.95

Carefully prepared using our family recipe.




## Pork

### Breaded Pork Chops 15.95

Two pork chops fried to perfection using our family recipe. Add gravy - 1.00 extra

### Chitterlings 18.95

Served Fridays & Saturdays only.



## Seafood

### Seafood Platter 21.95

Red Snapper, Prawns and Oysters

Add Catfish - 3.00 extra

### Fried Catfish 16.95

Fried in our special seasonings.

### Blackened Salmon 16.95

Pan-seared in Cajun seasonings.

### Fried Red Snapper 16.95

Fried in our special seasonings.

### Fried Prawns 16.95

Six prawns battered, seasoned and fried.

### Fried Oysters 16.95

Fried in our special seasonings.



## Veggie

### Vegetable Plate 13.75

Your choice of any five sides.

## Sides

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Macaroni & Cheese	4.00
Rice with Gravy	3.00
Yams	4.00
Corn	3.50
Cabbage	4.00
Collard Greens	4.00
Black-eyed Peas	3.50
Red Beans	3.50
Cornbread Dressing	4.50
Gravy	3.00

## Desserts

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Peach Cobbler	4.50
À la mode - add 1.00	
Banana Pudding	4.00
À la mode - add 1.00	
Red Velvet Cake	4.50
Sweet Potato Pie	3.50
Pecan Pie	3.75
Scoop of Vanilla	1.50

## Beverages

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Fresh Squeezed Lemonade	
Regular 2.50   Jumbo 4.00	
Fountain Drinks	2.25
Coke, Diet Coke, Sprite, Strawberry, Fruit Punch, Orange	
Iced Tea	2.50
Orange Juice	3.00
Apple Juice	3.00
Coffee	2.50
Hot Tea	2.50
Milk	2.50



Wed-Sat: 11am-9pm | Sun: 12pm-8pm

(510) 336-2013

[info@southerncafe2000.com](mailto:info@southerncafe2000.com)

[www.southerncafe2000.com](http://www.southerncafe2000.com)

2000 MacArthur Blvd.

Oakland, CA 94602

*We reserve the right to refuse service to anyone.  
Parties of 6 or more will be charged 20% gratuity*



Enter an address : (Ex. 1300 Broadway, Oakland, CA) and click search

2000 MACARTHUR BLVD, oakland, ca Search



3754 Canon Ave  
Oakland, California  
View on Google Maps

**ATTACHMENT F**

Enter an address : (Ex. 1300 Broadway, Oakland, CA) and click search

2000 MACARTHUR BLVD, oakland, ca Search



Enter an address : (Ex. 1300 Broadway, Oakland, CA) and click search

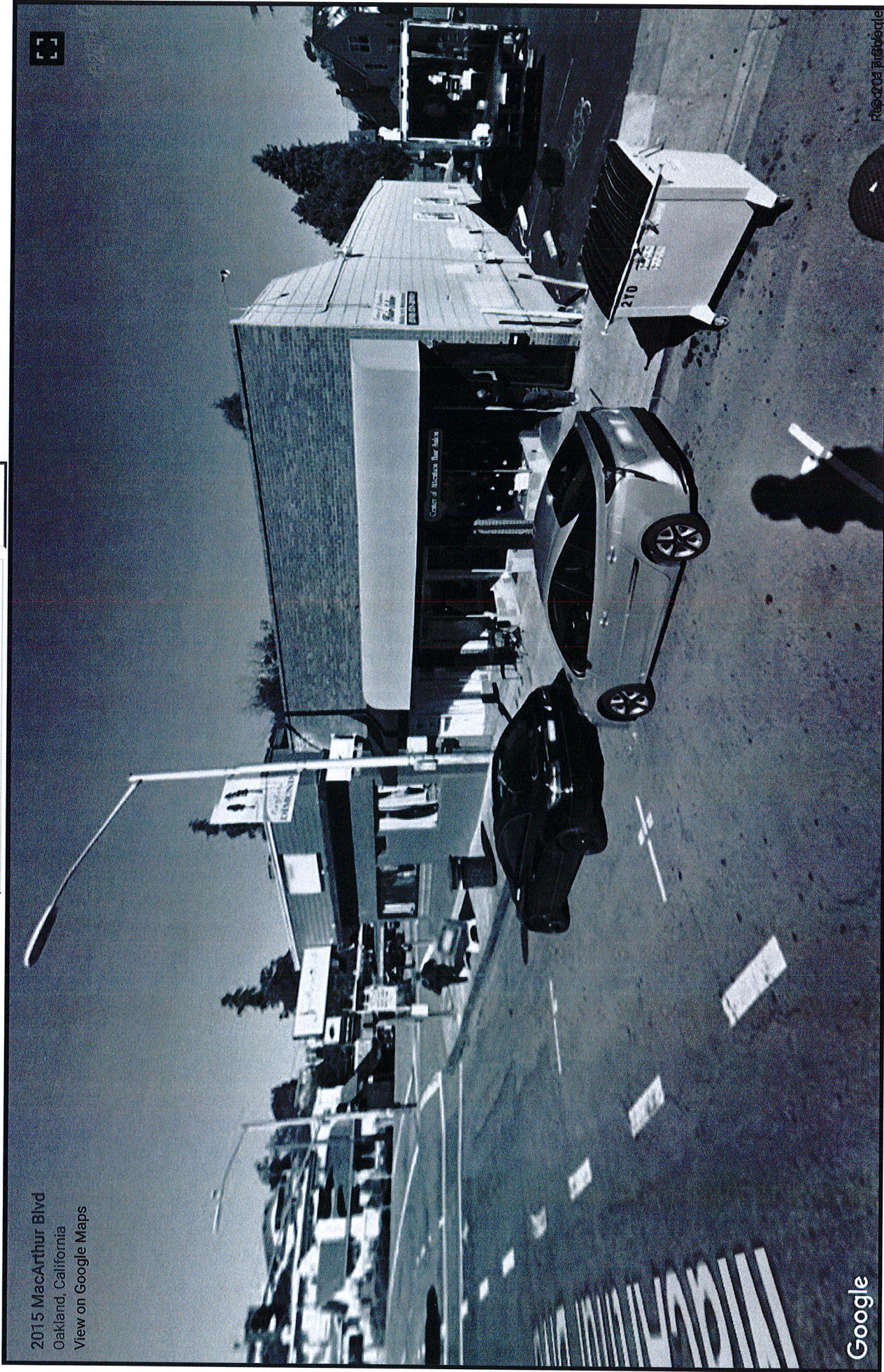
2000 MACARTHUR BLVD, oakland, ca Search



Enter an address : (Ex. 1300 Broadway, Oakland, CA) and click search

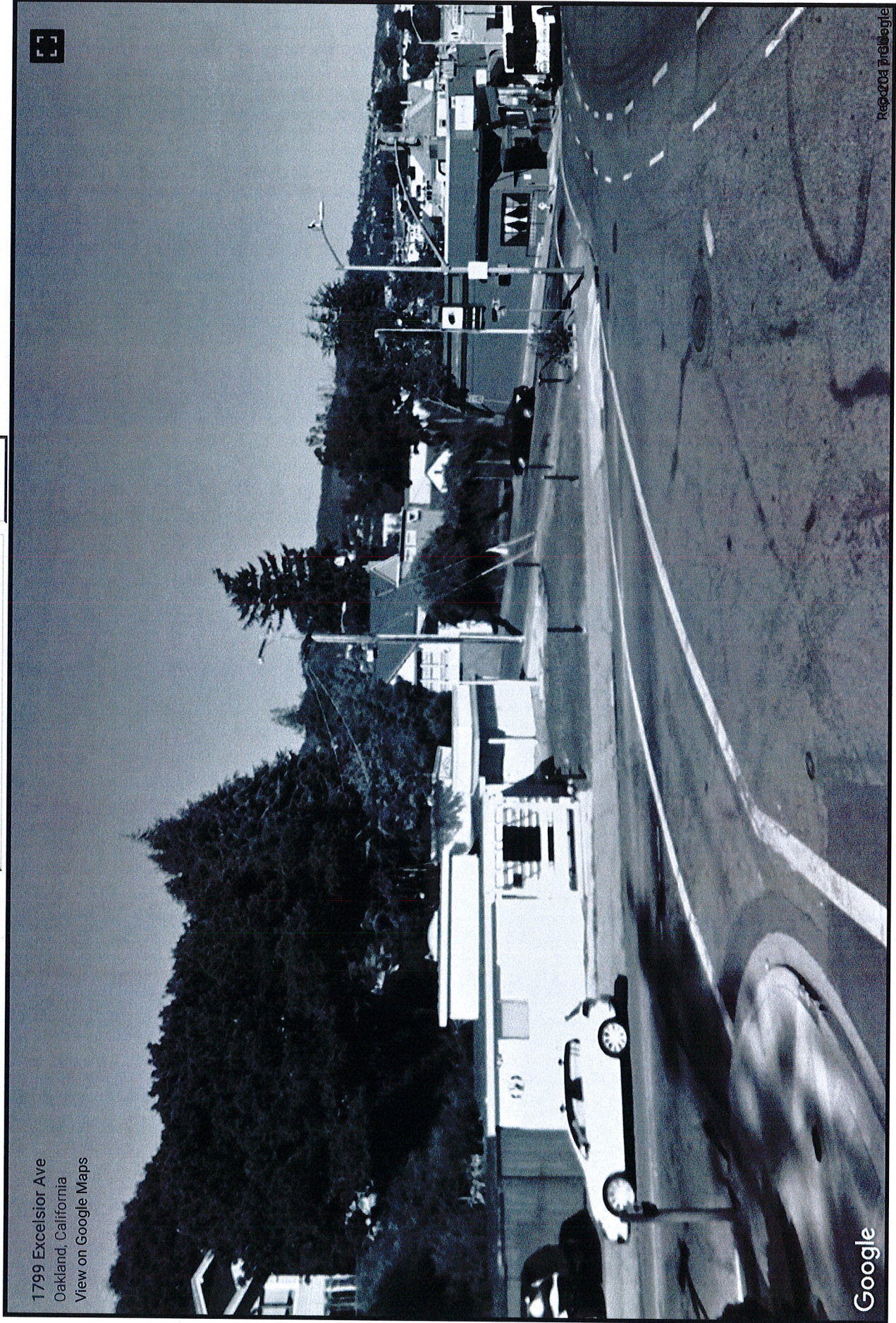
2000 MACARTHUR BLVD, oakland, ca

Search



Enter an address : (Ex. 1300 Broadway, Oakland, CA) and click search

2000 MACARTHUR BLVD, oakland, ca



1799 Excelsior Ave  
Oakland, California  
View on Google Maps

Google

Reproduced by Google

Enter an address : (Ex. 1300 Broadway, Oakland, CA) and click search

2000 MACARTHUR BLVD, oakland, ca

Search



Google

## Rose, Aubrey

---

**From:** Jim Robins <[REDACTED]>  
**Sent:** Sunday, November 30, 2014 9:03 PM  
**To:** Rose, Aubrey  
**Subject:** CM10009-R01

Good morning Ms. Rose,

I am writing out of significant concern regarding the proposed revision to the conditional use permit at 2000 MacArthur Blvd. While I clearly respect the right of business owners to improve their businesses, I completely oppose the extension of the closing time to 1am and addition of liquor to the license.

I am a neighbor and business owner at 3725 Canon Ave, within 250 ft of the Southern Cafe. I also run a licensed business out of my home and start work at the crack of dawn Mon-Friday.

My concerns and opposition are based on both past actions by Mr Bell as well as serious concerns about noise, safety/crime parking, public health, and inconsistency with other local businesses. Many of my neighbors who have lived in the neighborhood longer than I (I have been here since 2000), and they recall Mr Bell's last late night business at the 2000 MacArthur location. That bar ran without proper licenses for many years, was the focus of significant community friction, was cited with numerous zoning infractions, and regularly was the site of fights, loud drunken late night behavior, and was considered a blight. The bar was closed down for numerous reasons, including those cited above. In the intervening 15 years, the neighborhood has changed and most of the homes are now owned by young families - many of whom have children younger than 5. Many others have elementary and middle school students at Glenview and Edna Brewer. The residents and most of the business have been working hard to address blight, increase safety, make the neighbor safe for children, and reduce the noise, litter, and crime. The 2 Star Market recently agreed to close their parking lot after 11pm to two way traffic in order to reduce noise and improve safety.

Our efforts have been successful and the Dimond/Glenview is a safer place to live and is a thriving and diverse neighborhood. I support Mr Bell's desire to keep the Southern Cafe competitive and I applaud the work he has done to make the restaurant a destination. That said, extending the closing time beyond 10:00pm and allowing liquor on premises is in stark contrast with keeping our neighborhood safe and clean. We already have significant issues with the Southern Cafe related to chronic litter on the street from take out and overflowing trash bins, chronic illegal parking, and a general lack of available parking during the current hours of operation. As a long time resident and business owner in close proximity to the Southern Cafe (2000 MacArthur), I implore you to look at the previous records related to zoning and planning infractions for Mr Bell and the premises, consider consistency with other businesses and nearby homes, and deny the request to amend the current CUP.

Thank you,  
Jim Robins

--  
Jim Robins, Principal/Senior Ecologist  
**Alnus Ecological**  
3725 Canon Avenue  
Oakland, Ca 94602  
c/ 510.332.9895  
f/ 510.280.9214  
[www.alnus-eco.com](http://www.alnus-eco.com)

**ATTACHMENT G**

## Rose, Aubrey

---

**From:** cordelynn baumeister <[REDACTED]>  
**Sent:** Tuesday, December 02, 2014 10:41 AM  
**To:** Rose, Aubrey; Jim Robins  
**Cc:** Stoffmacher, Bruce  
**Subject:** Re: CM10009-R01

Aubrey Rose

We are on the same page as my next door neighbor Jim Robins except for the liquor lincese. As far as parking I have called and complained it is still on going problem. Between now and the hearing we will document the parking problem and any other issues. I also believe that current owner allowing the first southern cafe (cash only) to operate for 7+ years 1999 to July 2005 without a business license, health inspections or required trash pick-up should be taken into consideration. The cafe was shut down by The City of Oakland after I called abut there trash not being picked up. We will be putting a petition out. So far all of my neighbors that I have spoken to do not want the Southern Cafe to become a Bar. David Coleman and Cordelynn Baumeister 18 year residents of 3733 Canon Ave (510) 336-0974.  
David Coleman



## Rose, Aubrey

---

**From:** Janet Whittick <[REDACTED]>  
**Sent:** Friday, January 16, 2015 3:37 PM  
**To:** Rose, Aubrey  
**Cc:** cordelynn baumeister; Jim Robins; Robert Silverman; Gallo, Noel; Burgos Claudia (was Jimenez)  
**Subject:** Re: Southern Cafe Parking

I sometimes take pictures of the illegal parking. It happens so regularly that I tend to get despondent about it all, but will try to keep a good record going forward. I have often had people verbally threaten me after asking them to move their vehicle when it is blocking my garage. I have never once seen a parking enforcement officer on our block, but think that would go a long way towards easing the problem. If nothing else, it would generate a lot of revenue for the city.

Janet Whittick  
3719 Cañon Ave

## Rose, Aubrey

---

**From:** Robert Silverman <[REDACTED]>  
**Sent:** Sunday, March 29, 2015 9:19 PM  
**To:** Rose, Aubrey; 'cordelynn baumeister'  
**Cc:** 'Jim Robins'  
**Subject:** RE: 2000 MacArthur Blvd / Southern Cafe | Traffic Problems  
**Attachments:** 20150329\_5\_15PM\_A.JPG; 20150329\_5\_15PM\_B.JPG; 20150329\_SouthernCafe\_LiveJazz.jpg

Aubrey,

I know you have already received numerous pictures about constant parking and traffic issues around 2000 MacArthur, but the problem continues unabated. The parking and congestion issues are particularly odious on Sunday evenings between 5pm and 8 pm when the Southern Café hosts live jazz concerts in the restaurant. See the attached fly which was mailed to me a few days ago.

Let me point out that the live jazz music is amplified, and the music is quite audible up on Canon Avenue more than a block away from the premises. As far as I know, no Special Events permit has ever been issued, so aren't these live jazz events in violation of the City of Oakland Municipal Code?

In any case, I took the two attached photos today at 5:15 pm on Canon Avenue immediately adjacent to the Southern Café.

Thanks in advance for your assistance,

Robert Silverman





7-11 FUTURE  
101 672-4227

VETERAN

INC

Fried Chicken  
Baked Chicken  
Turkey Wings  
Blackened Salmon  
Fried Catfish  
Fried Prawns

Short Ribs of Beef  
Oxtails  
Seafood Gumbo  
Red Velvet Cake  
Pecan Pie  
Peach Cobbler

Every Sunday & 3rd Thursday  
5pm-8pm

# Live Jazz

BRING THIS  
FLYER & SAVE  
**10%**  
WHEN YOU  
DINE WITH US!

 Southern Café  
AT 2000 MACARTHUR

Tel 510.336.2013  
2000 MacArthur Blvd.  
Oakland, CA 94602

**MEETING SUMMARY**  
2000 block MacArthur Blvd. /  
Canon Ave. / Veteran Way

**Monday, April 27, 2015**

**7:00 - 8:25 pm**

Southern Café  
2000 MacArthur Blvd.

**Host:** Phillip Bell, Courtney Bell, Leonard(?) also representing Southern Café

**Neighbors present:** 5 from Canon Ave., 2 from E. 38<sup>th</sup> St., 3 from La Hacienda Restaurant (2045 MacArthur)

**Facilitator / Recorder:** Hoang Banh, OPD Neighborhood Services

### **Two Star Market**

Much improved: gate at Canon exit, lighting, cameras, repaving and restriping lot, sweeping, signage, telling customers to turn down/off car radios, Abdo (store owner) now lives on Veteran Way

Neighbors, especially David lets them know when there's broken glass (from bottles)

Needs improvement: Litter and little liquor bottles, especially in alley behind 2000-2010 MacArthur

Still concerned that 2am closure is attracting those who loiter, make noise, and could be dangerous at night: homicide 2 ½ years ago, 2010 MacArthur salon window shot out overnight in April 2014, recent shooting about 1 block away closer to Altenheim to be confirmed.

### **Southern Cafe**

#### Litter

- Southern Café customers are eating in their cars and throw take out containers (e.g. ox tail bones, mac and cheese) on the street on Canon, Veteran Way at all hours (worse Friday and Saturday)

**Next step:** Neighbors will let Phillip know where the Southern Cafe take out containers get dumped; Phillip or staff will pick up litter.

#### Parking

- Red zone illegal parking on both sides of Canon at MacArthur
- 3-point turns in tight space (Canon at MacArthur), almost backing up into pedestrian in crosswalk, almost daily occurrence
- Limited parking on Canon Ave. because of park visitors, merchant employees and patrons
- Some people can't get out of their driveway on Canon because cars partially or fully block driveways, especially nights, Sundays and holidays Parking in Adell Court loading zone across the street
- Jaywalking and illegal turns at MacArthur / Excelsior / E. 38<sup>th</sup> / Canon due to long light and impatience

Possible solutions:

- PW request to brighten red zone and paint "No Parking, Tow Away Zone" on both sides of Canon at MacArthur <http://seeclifix.com/issues/1530997-southern-cafe-patron-illegal-parking-canon-avenue>

- Cones in red zones?

**Next step:** Hoang will ask OPD Traffic if Southern Café can do that.

**ATTACHMENT H**

- Encourage regular customers to park elsewhere and more appropriately: Excelsior, E 38<sup>th</sup>, parking lots  
**Next step:** Phillip create flyer, ideally with map as well
- PW request to paint "Parking T's" on Canon Ave. (sample from 900 block Adams St., Albany  
<https://www.google.com/maps/@37.888753,-122.299452,3a,75y,165.34h,89.24t/data=!3m4!1e1!3m2!1sxE2vFGkutVHuiGHuy235hA!2e0!6m1!1e1>)  
**Next step:** Encourage neighbors to vote & comment on service request  
<http://seeclickfix.com/issues/1544198-street-issue-other-than-pothole>
- Residential parking permit: might not solve issues on Canon because problem is on nights, weekends, and holidays when permit restrictions are not in effect.
- Long term solution to prevent jaywalking and traffic violations: Round-a-bout at MacArthur/Excelsior/E. 38<sup>th</sup> /Canon from "Fruitvale Alive" plan needs money
- Lease parking: Dale, owner of Dorfman canine building, not interested in leasing out parking lot.
- Merchant parking permit to park in Bienati lot (behind Peet's Coffee) longer than 4 hours  
**Next step:** David and Brandon to contact Michael Ford, PW Parking Assets Manager, about possibilities for Bienati lot

#### Update on Southern Café application for liquor license and extended hours

Since minimum wage went up, servers making more, and kitchen staff now want raise, too. Southern Café already has beer and wine license.

Phillip says liquor license (State of California Alcohol Beverage Control) allows him to do catering.

New closing time proposed: 11pm, maybe just 3 days a week.

City planning dept. must approve major conditional use permit for liquor license and extended hours.

#### Concerns:

- One Canon Ave. neighbor expressed concerns from past bars: noise, public urination late at night.
- Another Canon Ave. neighbor said there are already have bars in the neighborhood, so don't see need for anymore.
- Yet another Canon neighbor not concerned about hard liquor, but very concerned about the time. He enjoys Sunday evening jazz, but not Thursday (Phillip no longer has music Thursday).
- Couple from E. 38<sup>th</sup> St. has problem with alcohol; concerned parking, noise, and litter will be amplified with hard liquor.

#### Consensus:

- Neighbors were in consensus that past 9pm is a problem.
- There are many families with children, and they go to sleep early.

#### Quick poll:

- Full liquor license and keep time at 9pm: 6 residents favor
- Full liquor license and allow closure at 10pm on Friday and Saturday: 3 residents in favor
- La Hacienda Restaurant did not want to comment or vote because they do not live in the neighborhood.

#### Suggestion:

He suggested a trial period for 11pm close.

Phillip says if issues arise (parking, noise, litter, etc.) then he will make changes, e.g. close at 9pm.

**Next step:** David to ask planner Aubrey Rose about timeline for Planning Commission.

**Next step:** Neighbors can call or email planner Aubrey Rose, [arose@oaklandnet.com](mailto:arose@oaklandnet.com) individually. When it goes to Planning Commission, neighbors will be notified by mail; block captains will also email to their lists.