

Location:	2000 MacArthur Boulevard
Assessor's Parcel Number:	029A-1301-022-00
Proposal:	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).
Applicant /	Mr. Phillip Bell
Phone Number:	(510) 435-2118
Owner:	Same
Planning Permits Required:	Revision to Major Conditional Use Permit # CM10-009 approved February 17, 2010 amending Conditions of Approval #30b (ABC license type) & #30d (hours)
General Plan:	Neighborhood Center Mixed Use
Zoning:	CN-1 Neighborhood Commercial Zone
Environmental Determination:	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
Historic Status:	Non-historic property
Service Delivery District:	4
City Council District:	5
Date Filed:	November 13, 2014
Finality of Decision:	<i>Appealable to City Council</i>
For Further Information:	Contact case planner Aubrey Rose, AICP at (510) 238-2071 or arose@oaklandnet.com

SUMMARY

On September 6, 2017, the Planning Commission heard this item and decided by straw vote (6-0) to approve the application, including with liquor sales. At that time staff was directed to return with Findings for Approval. Following as Attachment A are the draft Findings for Approval.

RECOMMENDATIONS:

1. Affirm staff's environmental determination.
2. Approve 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, Deputy Director
Planning Bureau

ATTACHMENTS:

- A. Findings for Approval
- B. Conditions of Approval
- C. Planning Commission staff report dated September 6, 2017

Attachment A: Findings for Approval

The Planning Commission finds that this proposal 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)**. Required findings are shown in **bold type**; explanations as to why findings can be made are shown in normal 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 upgraded alcoholic beverage offerings at other restaurants located on restricted streets in the City as well as the closing time of other restaurants in the district, findings can be made to support an upgrade to full liquor and an extension to closing time subject to maintenance of Conditions of Approval including a satisfactory six-month compliance review.

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 upgraded alcoholic beverage offerings at other restaurants located on restricted streets in the City as well as the closing time of other restaurants in the district, findings can be made to support an upgrade to full liquor and an extension to closing time subject to maintenance of Conditions of Approval including a satisfactory six-month compliance review.

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 upgraded alcoholic beverage offerings at other restaurants located on restricted streets in the City as well as the closing time of other restaurants in the district, findings can be made to support an upgrade to full liquor and an extension to closing time subject to maintenance of Conditions of Approval including a satisfactory six-month compliance review.

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 liquor, beer and wine and having a 10:30 P.M. closing time, subject to conditions, conforms to this intent.

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 upgraded alcoholic beverage offerings at other restaurants located on restricted streets in the City as well as the closing time of other restaurants in the district, findings can be made to support an upgrade to full liquor and an extension to closing time subject to maintenance of Conditions of Approval including a satisfactory six-month compliance review.

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 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 approval ("this Approval") 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) Upgrade on-sale of beer and wine to include distilled spirits/hard liquor.
 - (2) Extend the closing time to 10:30 P.M. Thursdays through Saturdays.

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 of Approval

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

Liquor, beer and/or wine or equivalent may be sold. An appropriate license type must be obtained from the ABC.

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.

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)

Location: 2000 MacArthur Boulevard (see map on reverse)
Assessor's Parcel Number: 029A-1301-022-00
Proposal: 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).
This is a re-notification
Applicant / Mr. Phillip Bell
Phone Number: (510) 435-2118
Owner: Same
Planning Permits Required: Revision to Major Conditional Use Permit # CM10-009 approved February 17, 2010 amending Conditions of Approval #30b (ABC license type) & #30d (hours)
General Plan: Neighborhood Center Mixed Use
Zoning: CN-1 Neighborhood Commercial Zone
Environmental Determination: ;
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
Historic Status: Non-historic property
Service Delivery District: 4
City Council District: 5
Date Filed: November 13, 2014
Finality of Decision: *Appealable to City Council*
For Further Information: Contact case planner Aubrey Rose, AICP at (510) 238-2071 or arose@oaklandnet.com

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.

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:

Address	Name	ABC	Closing time	Zoning approval	Residential property proximity
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)