

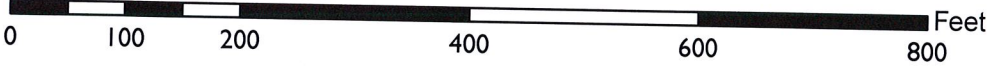
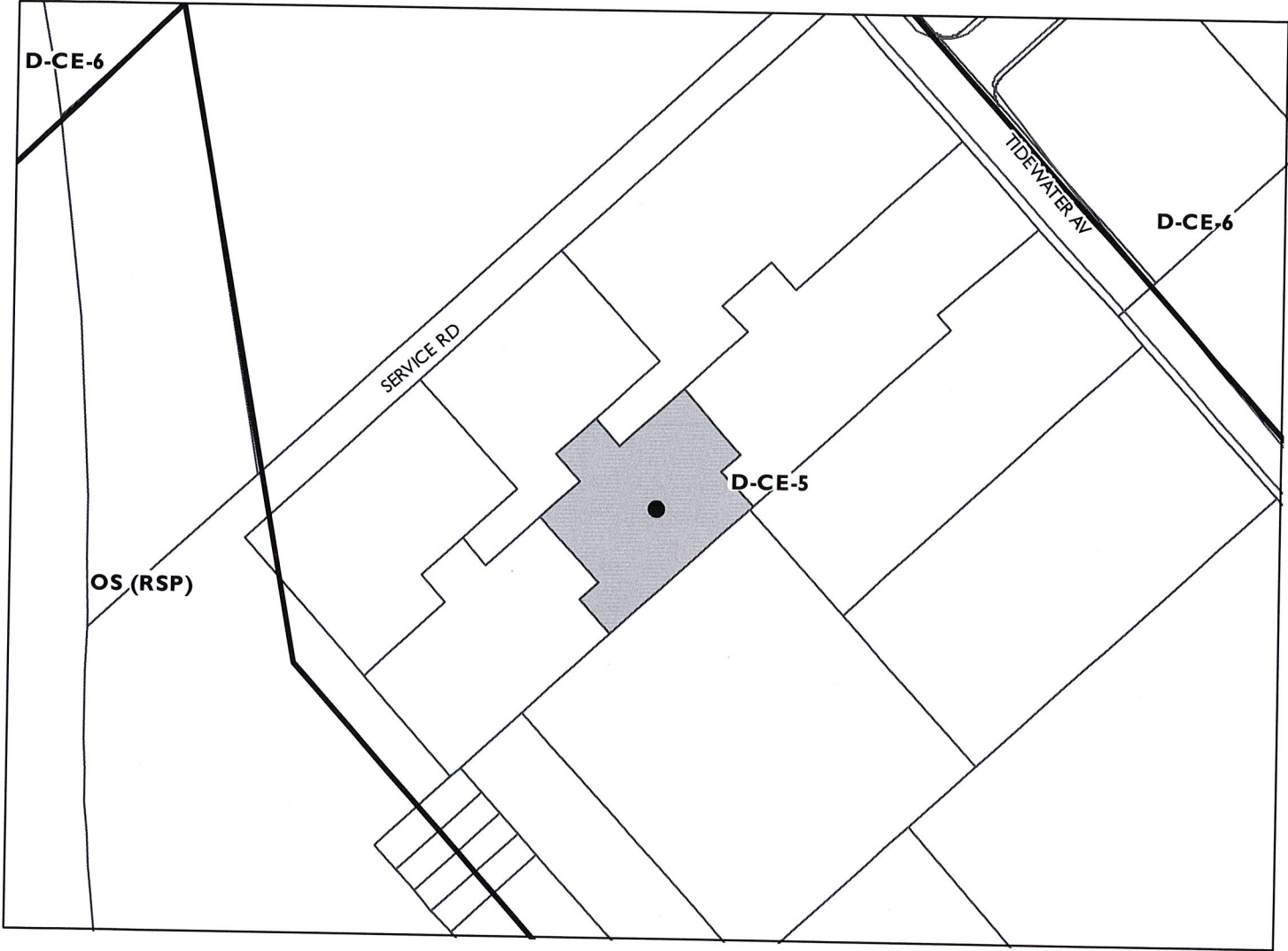
Location:	4721-4723 Tidewater Avenue, Suite C (see map on reverse)
Assessor's Parcel Number:	034 -2300-020-00
Proposal:	To upgrade an approved beer club business operated weekdays with a 4:00 p.m. closing time in a 3,500 square-foot warehouse space by: (1) adding liquor and (2) extending the closing time until 8:00 p.m. The business would continue to operate primarily by drop-shipments with minimal on-site retail sales. (Project would require an ABC license upgrade from type 20 to 21)
Applicant:	Claude Burns / Noble Brewer Beer Company
Phone Number:	(301) 536-1934
Owners:	The Eggen Family Trust
Planning Permits Required:	Revision to amend approvals: Major Conditional Use Permit with additional findings for Alcoholic Beverage Sales Commercial Activity; Findings for Public Convenience or Necessity; Variance for alcoholic beverage sales within 1,000 feet of civic uses (park)
General Plan:	Estuary Plan: Planned Waterfront District 3
Zoning:	D-CE-5 Central Estuary District Zone (Food Industry Cluster/High St. Warehouse Wedge/Tidewater South)
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
Historic Status:	Non historic property
Service Delivery District:	5
City Council District:	5
Date Filed:	October 31, 2016
Finality of Decision:	<i>Appealable to City Council within 10 days</i>
For Further Information:	Contact case planner Aubrey Rose AICP at (510) 238-2071 or arose@oaklandnet.com

SUMMARY

The applicant requests Planning Commission approval to amend a Major Conditional Use Permit and Variance with additional findings for an approved beer club business in a 3,500 square-foot warehouse space, with hours of operation from 12:00 p.m. to 4:00 p.m. only on weekdays. The amendment would include addition of liquor and a later 8:00 p.m. closing time. The business would continue to operate primarily by drop-shipments (send product off-site) with minimal on-site retail sales.

Staff recommends approval of the application, subject to conditions, as described in the report.

CITY OF OAKLAND PLANNING COMMISSION



Case File: PLN14276-R01
Applicant: Claude Burns / Noble Brewer Beer Company
Address: 4721-4723 Tidewater Avenue, Suite C
Zone: D-CE-5

PROPERTY DESCRIPTION

The project site consists of a one-acre property located on the estuary-side of Tidewater Avenue (east of High Street). The property contains a warehouse and a parking lot and is gated. The area consists of warehouses, container storage, wholesale operations, and a waterfront park along the estuary. The park is located within one thousand feet of the subject site but lacks a direct connection.

On November 5, 2014, the Planning Commission approved a Major Conditional Use Permit with additional findings for Alcoholic Beverage Sales Commercial Activity; Findings for Public Convenience or Necessity, and a Variance for alcoholic beverage sales within 1,000 feet of civic uses (park) to allow the establishment of a beer club sales business in the 3,500 square-foot subject space within the warehouse. The business operates primarily by drop-shipments, with minimal retail sales on site. Operation is weekdays from 12:00 p.m. to 4:00 p.m. The business employs two to ten persons. Ten parking spaces are reserved for the business on-site. The business operates under a type 20 license (Off-Sale Beer and Wine) with the Department of Alcoholic Beverage Control (ABC). A type 20 license is more typically associated with food markets selling beer and wine to household customers for home consumption. Zoning clearances indicate that the warehouse has been formerly used by a construction operation office (project space) and an automobile sales office (separate space).

PROJECT DESCRIPTION

The proposal is to amend existing Zoning Approvals to include liquor sales in addition to beer, and an 8:00 p.m. closing time. The business would continue to operate primarily by drop-shipments with minimal on-site retail sales. The project would require the establishment to upgrade its ABC type 20 license to a type 21, described as follows:

OFF SALE GENERAL - (Package Store) Authorizes the sale of beer, wine and distilled spirits for consumption off the premises where sold. Minors are allowed on the premises.

GENERAL PLAN ANALYSIS

The site is located in the Planned Waterfront District 3 (PWD-3) area of the Estuary Policy Plan. The intent of the PWD-3 area is to: "Provide for the continuation of existing industrial uses on properties south of Tidewater Avenue, allowing for their transition to light industrial, research and development, and office uses in a waterfront business park setting." The following Policy relates to this site:

Policy SAF-7.1 South of Tidewater Avenue, provide for continued industrial use, but also encourage new research and development and light industrial activities which are compatible with the adjacent EBMUD Oakport Facility and EBRPD's Martin Luther King Jr. Regional Shoreline Park.

The proposal conforms to this Policy as it is essentially a light industrial operation: a wholesale beverage warehouse operation. As such, it may not be appropriate in a commercial area where space is valuable for retail uses. Furthermore, the enhanced use in an existing warehouse should continue to not negatively impact the regional park. Staff therefore finds the proposal, as conditioned, to conform to the Intent and Policies of the Estuary Policy Plan.

ZONING ANALYSIS

The site is located in the D-CE-5 Central Estuary District Industrial 5 Zone (Food Industry Cluster/High St. Warehouse Wedge/Tidewater South). The D-CE-5 Zone is intended to: "create, preserve, and enhance areas of the Central Estuary that are appropriate for a wide variety of heavy commercial and industrial establishments.

Uses with greater off-site impacts may be permitted provided they meet specific performance standards.” The proposal to enhance a warehouse operation conforms to this Intent.

The proposal requires a “revision” to amend the approved Major Conditional Use Permit with additional findings for Alcoholic Beverage Sales Commercial Activity; Findings for Public Convenience or Necessity (PCN) to locate in an over-concentrated area (high number of ABC licenses in Census Tract 4073); and Variance for alcoholic beverage sales to establish in an over-concentrated area at a site located within 1,000 feet of civic uses (Martin Luther King Jr. Regional Park), as stipulated by PCN findings. The project site is not located in a high crime police beat (26X) and there are no alcohol outlets located within one thousand feet of the site. These permits are discussed further in the Key Issues and Impacts section of this report.

Staff finds the proposal, as conditioned, to conform to the Planning Code, pursuant to attached Findings.

ENVIRONMENTAL DETERMINATION

The California Environmental Quality Act (CEQA) Guidelines categorically exempts specific types of projects from environmental review. Section 15301 of the State CEQA Guidelines exempts projects involving *operation and licensing of existing private facilities*. The proposal to add liquor to a beer club with wholesale and some retail activity 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, also serves as a separate and independent basis for CEQA clearance. The project adheres to this section, as described above. The project is, therefore, not subject to further Environmental Review.

KEY ISSUES AND IMPACTS

Alcoholic beverage sales establishments can be problematic when they generate nuisances adjacent to civic and/or residential uses at various days and times. In this case, the business is gated, is not adjacent to residences, is not directly related to one civic use (a park), would not have late hours of operation, would have minimal customer visits and no on-site consumption, and has already operated without incident since being established in the last few years since 2014. The reason that the applicant requests another retail license as opposed to a wholesale/warehouse license, even though the business specializes in wholesale drop-shipment, is for the applicant to be allowed by the ABC to sell to clientele lacking their own ABC permit (that is, the ABC requires wholesale customers to hold their own ABC permit, which limits the pool of eligible customers).

The park in the area is along the Estuary and customers would not therefore need to pass by it to reach their destinations. Census Tract 4073 is over-concentrated for ABC licenses; however, those licenses are not located in the vicinity of the site. Other licenses consist of two type 20 licenses, one type 21 license (market with off-sale liquor/beer/wine), one type 40 license (beer tavern), five type 41 licenses (restaurant with beer and wine), and one type 47 license (restaurant with liquor/beer/wine). This warehouse district is especially appropriate for the use which involves a food or beverage product, as opposed to a space in a commercial district that would be valuable for retail. Conditions of approval would ensure that the business continues to operate primarily as wholesale and maintain an early closing time.

In conclusion, with conditions of approval, staff supports the proposal.

RECOMMENDATIONS:

1. Affirm staff's environmental determination.
2. Approve the Amended Zoning Approvals of Major Conditional Use Permit, Additional Findings including Public Convenience or Necessity, and Variance subject to the attached findings and conditions.

Prepared by:



AUBREY ROSE, AICP
Planner III

Approved by:



SCOTT MILLER
Zoning Manager

Approved for forwarding to the
City Planning Commission:



DARIN RANELLETTI, Interim Director
Department of Planning and Building

ATTACHMENTS:

- A. Findings
- B. Conditions of Approval
- C. Photographs (site, area, aerial)
- D. 2014 Staff Report including plans

Attachment A: Findings

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)**, as set forth below. Required findings are shown in **bold** type; explanations as to why these findings can be made are shown in normal type. This proposal does *not* meet all of the required findings under **Findings for Public Convenience or Necessity (OMC Sec. 17.103.030.B.3 & 4)** and findings under **Variance Procedure/Findings Required (OMC Sec. 17.148.050)** are therefore required. Required findings are shown in **bold** type; explanations as to findings that can be made are shown in normal type and that cannot be made are shown in normal type and underlined.

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 revised proposal, adding liquor to beer sales and closing at 8:00 P.M. instead of 4:00 P.M., would continue to meet this required finding as follows:

The location, size, design, and operating characteristics of the proposed project will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood. The site is located in the D-CE-5 Central Estuary District Industrial Zone - 5 (Food Industry Cluster/High St. Warehouse Wedge/Tidewater South). The D-CE-5 Zone is intended to: "create, preserve, and enhance areas of the Central Estuary that are appropriate for a wide variety of heavy commercial and industrial establishments. Uses with greater off-site impacts may be permitted provided they meet specific performance standards." Alcoholic beverage sales establishments can be problematic when they generate alcohol-related nuisances adjacent to civic uses in the daytime and/or residential uses in the evening. In this case, no consumption will occur on site. The operation will primarily involve drop-shipment and is therefore essentially a warehouse operation. There are no residences in the area and the business will have a very early closing time. The area is low in crime and does not contain other alcohol outlets. The park is along the Estuary and customers will not therefore need to pass by it to reach their destinations. Furthermore, the clientele and operation are not anticipated to generate any nuisances whatsoever. This warehouse district is especially appropriate for the use because it involves a warehousing of a food or beverage product (an industrial activity), as opposed to a space in a commercial district that will be valuable for retail. Conditions of approval will ensure that the business operate primarily as wholesale and maintain an early closing time.

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, design, and site planning of the proposed project is appropriate for the surrounding area: the business will primarily involve drop-shipment of product. There are no residences in the area and the business will have a very early closing time. The park is along the Estuary and customers will therefore not need to pass by it to reach their destinations. The area is low in crime and does not contain other alcohol outlets.

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 th

The proposed development will enhance the successful operation of the surrounding area in its functions. This warehouse district is especially appropriate for the use which involves a food or beverage product in comparison to a space in a commercial district that will be valuable for retail.

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

No exterior modifications are proposed and design review is therefore not required.

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

The property is located in the Planned Waterfront District 3 area of the Estuary Plan. The intent of the area is to: "Provide for the continuation of existing industrial uses on properties south of Tidewater Avenue, allowing for their transition to light industrial, research and development, and office uses in a waterfront business park setting." The following Policy relates to the district located South of Tidewater Avenue:

Policy SAF-7.1 South of Tidewater Avenue, provide for continued industrial use, but also encourage new research and development and light industrial activities which are compatible with the adjacent EBMUD Oakport Facility and EBRPD's Martin Luther King Jr. Regional Shoreline Park.

The proposal conforms to this Policy as it is essentially a light industrial operation: a wholesale beverage warehouse operation. As such, it may not be appropriate in a commercial area where space is valuable for retail uses. Furthermore, the enhanced use in an existing warehouse should continue to not negatively impact the regional park.

Use Permit Criteria for Establishments Selling Alcoholic Beverages (OMC 17.103.030(A))

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

The revised proposal, adding liquor to beer sales and closing at 8:00 P.M. instead of 4:00 P.M., would continue to meet this required finding as follows:

There are no other alcohol outlets within one thousand feet of the site and very little on-site retail will occur as the business will primarily engage in wholesale drop-shipments.

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 only civic use within one thousand feet is a regional park that lacks a direct connection to the property; no adverse impacts from the business to the park are anticipated.

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

The proposed project will not interfere with the movement of people in the area. The business will have its own parking lot and very little on-site retail will occur because the business will primarily engage in wholesale drop-shipments.

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;

No exterior changes are proposed. The existing warehouse is of an architectural and visual quality and character which harmonizes with the surrounding area. Any future proposal for exterior modifications will require Design Review.

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

No exterior changes are proposed. Any future proposal for signage will require Design Review.

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

The establishment is not anticipated to generate any customer waste; however, clean-up of any litter is required by conditions of approval.

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.

There are no residences in the vicinity of the site.

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

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

Findings of Public Convenience or Necessity (OMC Sec. 17.103.030(B)(3), (4))

3a. That a community need for the project is clearly demonstrated. To demonstrate community need, the applicant shall document in writing, specifically how the project would serve an unmet or underserved need or population within the overall Oakland community or the community in which the project is located, and how the proposed project would enhance physical accessibility to needed goods or services that the project would provide, including, but not limited to alcohol; and

The revised proposal, adding liquor to beer sales and closing at 8:00 P.M. instead of 4:00 P.M., would continue to meet this required finding as follows:

The business is a unique type of alcohol outlet, specializing in wholesale drop-shipments to club members with minimal retail. This demand for this specialization will sustain the operation, which will not generate nuisances.

3b. That the overall project will have a positive influence on the quality of life for the community in which it is located, providing economic benefits that outweigh anticipated negative impacts, and that will not result in a significant increase in calls for police service; and

The operation will allow a business to service clients at any location from its Oakland site, and the operation will not generate nuisances. The overall project will have a positive influence on the quality of life for the

community in which it is located, providing economic benefits that outweigh any possible negative impacts, and will not result in a significant increase in calls for police service.

3c. That alcohol sales are customarily associated with, and are appropriate, incidental, and subordinate to, a principal activity on the lot.

Alcoholic beverage sales are typical for a wholesale warehouse operation.

4a. The proposed project is not within one thousand (1,000) feet of another alcohol outlet (not including Full Service Restaurant Commercial Activities), school, licensed day care center, public park or playground, churches, senior citizen facilities, and licensed alcohol or drug treatment facilities; and

This finding is not met; the site is located in a census tract that is over-concentrated with ABC licenses (census tract 4073), and is located within one thousand feet of a public park, and a variance is therefore required; findings can be made to approve the variance as described in the following section of this Attachment.

4b. Police department calls for service within the "beat" where the project is located do not exceed by twenty percent (20%), the average of calls for police service in police beats Citywide during the preceding one (1) calendar year.

The site is located in a police beat (26X) that is not high in calls for police service (that is, does not exceed by more than twenty percent the average of calls for police service in beats Citywide during the preceding calendar year.

Variance Procedure/Findings Required (OMC Sec. 17.148.050)

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

The revised proposal, adding liquor to existing beer sales and closing at 8:00 P.M. instead of 4:00 P.M., would continue to meet this required finding as follows:

Strict compliance with the distance separation requirements would result in practical difficulty or unnecessary hardship inconsistent with the purposes of the zoning regulations due to unique conditions of design. The site consists of a warehouse located in an industrial district situated between the 880 freeway to the north and the Oakland Estuary to the south. No residences or other civic uses besides a linear regional park along the waterfront exist in the vicinity. The site is located in a census tract that is over-concentrated with ABC licenses, and is located within one thousand feet of the park and a variance is therefore required. Census tract 4073 is over-concentrated for ABC licenses; however, those licenses are not located in the vicinity of the site. Other licenses consist of two type 20 licenses, one type 21 license (market with off-sale liquor/beer/wine), one type 40 license (beer tavern), five type 41 licenses (restaurant with beer and wine), and one type 47 license (restaurant with liquor/beer/wine). The intent of the ordinance is to prevent additional alcohol outlets in high crime or high ABC areas from impacting or further impacting civic uses. In this case, the area is not a high crime area. Also, there are no other alcohol outlets in the area, as stated. The site therefore possesses unique conditions of design: the area does not consist of alcohol outlets, high crime, residential uses, schools, or churches; suite is over one thousand feet from the nearest park as measured along a linear walking route; yet, the Planning Code requires a one thousand foot distance between the property, building, or suite or the project must obtain a variance. The business will not sell liquor and will have a very early closing time. The site is not located in a commercial or residential area, but is located in an industrial area. The civic use, a park, is not a city park in a central location

but is a regional park along the Estuary. The operation will not involve on-site consumption and very little retail so public drinking is highly unanticipated. The site will allow use of warehouse space where food and beverage uses are encouraged rather than use of space in a commercial district that is valuable for retail. The proposal is for an unusual use and location and meets the intent of the ordinance.

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

Strict compliance with the regulation requiring a one thousand foot distance separation between an alcohol outlet in an over-concentrated area and a civic use would deprive the applicant of land use rights exercised by owners of other mixed-zoning properties; several alcohol outlets in the City are allowed to operate under similar circumstances. Other alcoholic beverage sales variances have been granted in the City. For example, a large dance instruction studio in the district was granted an alcohol variance, too, because the over-concentration classification was based on the distant commercial corridor and did not truly reflect the immediate site surroundings. As summarized in the findings, above, the granting of the variance maintains consistency with the purposes of the zoning regulations.

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

Alcoholic beverage warehousing with small amounts of sales is not anticipated to generate off site impacts and will not adversely impact the industrial district or nearby regional park. There are no schools, churches, residences, senior facilities, or drug/alcohol rehabilitation centers anywhere in the vicinity. The one park in the area is not located directly adjacent to the project site, and, consists of a linear park along the Estuary that is lacking in play areas for children.

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

Other alcoholic beverage sales variances have been granted in the City. For example, a large dance instruction studio in the district was granted an alcohol variance, too, because the over-concentration classification was based on the distant commercial corridor and did not truly reflect the immediate site surroundings. As summarized in the findings, above, the granting of the variance maintains consistency with the purposes of the zoning regulations.

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

The variance is for an unmet distance separation, not a facility element, and design review is therefore not required.

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

The proposal conforms in all significant respects with the Oakland General Plan. The property is located in the Planned Waterfront District 3 area of the Estuary Plan. The intent of the area is to: "Provide for the continuation

of existing industrial uses on properties south of Tidewater Avenue, allowing for their transition to light industrial, research and development, and office uses in a waterfront business park setting.” The following Policy relates to the district located South of Tidewater Avenue:

Policy SAF-7.1 South of Tidewater Avenue, provide for continued industrial use, but also encourage new research and development and light industrial activities which are compatible with the adjacent EBMUD Oakport Facility and EBRPD’s Martin Luther King Jr. Regional Shoreline Park.

The proposal conforms to this Policy as it is essentially a light industrial operation: a wholesale beverage warehouse operation. As such, it may not be appropriate in a commercial area where space is valuable for retail uses. Furthermore, the enhanced use in an existing warehouse should continue to not negatively impact the regional park.

- 7. For proposals involving one or two residential dwelling units on a lot: That, if the variance would relax a regulation governing maximum height, minimum yards, maximum lot coverage or building length along side lot lines, the proposal also conforms with at least one of the following criteria:**
- a. The proposal when viewed in its entirety will not adversely impact abutting residences to the side, rear, or directly across the street with respect to solar access, view blockage and privacy to a degree greater than that which would be possible if the residence were built according to the applicable regulation and, for height variances, the proposal provides detailing, articulation or other design treatments that mitigate any bulk created by the additional height; or**
 - b. Over sixty (60) percent of the lots in the immediate vicinity are already developed and the proposal does not exceed the corresponding as-built condition on these lots and, for height variances, the proposal provides detailing, articulation or other design treatments that mitigate any bulk created by the additional height. The immediate context shall consist of the five closest lots on each side of the project site plus the ten closest lots on the opposite side of the street; however, the Director of City Planning may make an alternative determination of immediate context based on specific site conditions. Such determination shall be in writing and included as part of any decision on any variance.**

This finding is inapplicable; the proposal does not involve a house or duplex.

Attachment B: Conditions of Approval

1. Approved Use

The project shall be constructed and operated in accordance with the authorized use as described in the approved application materials, **staff report** and the approved plans **submitted October 31, 2016**, as amended by the following conditions of approval and mitigation measures, if applicable (“Conditions of Approval” or “Conditions”).

2. Effective Date, Expiration, Extensions and Extinguishment

This Approval shall become effective immediately, unless the Approval is appealable, in which case the Approval shall become effective in ten calendar days unless an appeal is filed. Unless a different termination date is prescribed, this Approval shall expire **two calendar years** from the Approval date, or from the date of the final decision in the event of an appeal, unless within such period all necessary permits for construction or alteration have been issued, or the authorized activities have commenced in the case of a permit not involving construction or alteration. Upon written request and payment of appropriate fees submitted no later than the expiration date of this Approval, the Director of City Planning or designee may grant a one-year extension of this date, with additional extensions subject to approval by the approving body. Expiration of any necessary building permit or other construction-related permit for this project may invalidate this Approval if said Approval has also expired. If litigation is filed challenging this Approval, or its implementation, then the time period stated above for obtaining necessary permits for construction or alteration and/or commencement of authorized activities is automatically extended for the duration of the litigation.

3. Compliance with Other Requirements

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

4. Minor and Major Changes

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

5. Compliance with Conditions of Approval

- a. The project applicant and property owner, including successors, (collectively referred to hereafter as the “project applicant” or “applicant”) shall be responsible for compliance with all the Conditions of Approval and any recommendations contained in any submitted and approved technical report at his/her sole cost and expense, subject to review and approval by the City of Oakland.
- b. The City of Oakland reserves the right at any time during construction to require certification by a licensed professional at the project applicant’s expense that the as-built project conforms to all applicable requirements, including but not limited to, approved maximum heights and minimum setbacks. Failure to comply with the conditions of Approval may result in remedial

reconstruction, permit revocation, permit modification, stop work, permit suspension, or other corrective action.

- c. Violation of any term, Condition, or project description relating to the Approval is unlawful, prohibited, and a violation of the Oakland Municipal Code. The City of Oakland reserves the right to initiate civil and/or criminal enforcement and/or abatement proceedings, or after notice and public hearing, to revoke the Approval or alter these Conditions if it is found that there is violation of any of the Conditions or the provisions of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance. This provision is not intended to, nor does it, limit in any manner whatsoever the ability of the City to take appropriate enforcement actions. The project applicant shall be responsible for paying fees in accordance with the City's Master Fee Schedule for inspections conducted by the City or a City-designated third-party to investigate alleged violations of the Approval or Conditions.

6. Signed Copy of the Approval/Conditions

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

7. Blight/Nuisances

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

8. Indemnification

- a. To the maximum extent permitted by law, the project applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the Oakland Redevelopment Successor Agency, the Oakland City Planning Commission, and their respective agents, officers, employees, and volunteers (hereafter collectively called "City") from any liability, damages, claim, judgment, loss (direct or indirect), action, causes of action, or proceeding (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul this Approval or implementation of this Approval. The City may elect, in its sole discretion, to participate in the defense of said Action and the project applicant shall reimburse the City for its reasonable legal costs and attorneys' fees.
- b. Within ten (10) calendar days of the service of any Action as specified in subsection (a) above, the project applicant shall execute a Joint Defense Letter of Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Joint Defense Letter of Agreement shall survive termination, extinguishment, or invalidation of the Approval. Failure to timely execute the Letter of Agreement does not relieve the project applicant of any of the obligations contained in this Condition or other requirements or Conditions of Approval that may be imposed by the City.

9. Severability

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

10. Special Inspector/Inspections, Independent Technical Review, Project Coordination and Monitoring

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

11. Public Improvements

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

PROJECT SPECIFIC CONDITION

12. ABC Permit Required

Prior to commencing activity

An ABC permit (license type 21), and any other required ABC license type, must be obtained prior to commencement of activity. The ABC license shall be obtained from existing licenses located within the City of Oakland unless by other agreement with the Bureau of Planning due to lack of availability.

13. Operation

Ongoing

a) Types of Alcoholic Beverages

Alcohol type shall be limited to liquor, beer or similar products (such as ale), or wine.

b) Manner of Operation

Sale will occur primarily (or entirely if desired by the applicant) by wholesale drop-shipment with minimal off-sale retail sales. No on-sale (on-site consumption) is allowed.

c) Alcoholic Beverage Sales Display Area

Sales display area of alcoholic beverages shall be set back from doorways.

d) Other Products

No sale of tobacco-oriented products, lottery tickets, or adult magazines shall be allowed.

e) Hours of Operation

Hours of operation shall be limited to weekdays 12pm to 8pm.

f) Entry

Admission shall never be charged for events or otherwise.

g) Business Signage

Any new or modified business signage requires review and approval by the Bureau of Planning.

h) Advertising Signage

No product advertising signage (such as neon beer signs) or banners (such as happy hour advertisements) may be displayed.

i) Nuisances

Crime, litter, noise, or disorderliness conduct associated with alcoholic beverage sales at the establishment may result in a hearing to consider revocation of the Major Conditional Use Permit or attachment of additional conditions of approval.

j) Loitering

The owner, manager, and employees of this establishment shall make appropriate efforts to discourage loitering from the parking lot and the public right-of-way fronting the premises including calling the police to ask that they remove loiterers 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.

k) Litter

The licensees/property owners shall clear the parking lot and Tidewater Avenue frontage of litter daily.

l) Performance Standards

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

m) Sound Amplification

The amplification other than a small system for use by employees shall be permitted.

n) Graffiti

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

o) Contact Phone Numbers

The establishment shall display signage in the retail office area offering contact numbers for both the business operator and the City (Code Compliance at (510)238-3381 and OPD non-emergency at (510-777-3333)) for the purpose of reporting nuisances.

p) Police Department

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

q) Neighborhood Outreach

The business operator shall be accessible to neighbors wishing to register complaints against the business and shall work to eliminate any nuisances related to the business as reported by neighbors.

r) Neighborhood Crime Prevention Council

The applicant shall be accessible to the NCPC and attend their meeting upon request.

s) Future Modifications

Should any changes to the façade or other changes to the interior be proposed, including removal of the site gate, plans must be reviewed and approved by the Planning & Zoning Division and the Police Department's Alcoholic Beverages Action Team.

14. Future Operators

Ongoing

Any future operators of any warehouse with accessory retail at these premises are subject to the requirements of this approval. Future operators shall register with the Bureau of Planning, Neighborhood Crime Prevention Council, and with ABAT.

15. 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, OMC Sec.17.120, 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 alcoholic beverage sales outlets. The City Conditions of Approval shall be forwarded to the Department of Alcoholic Beverage Control.

APPROVED BY:

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

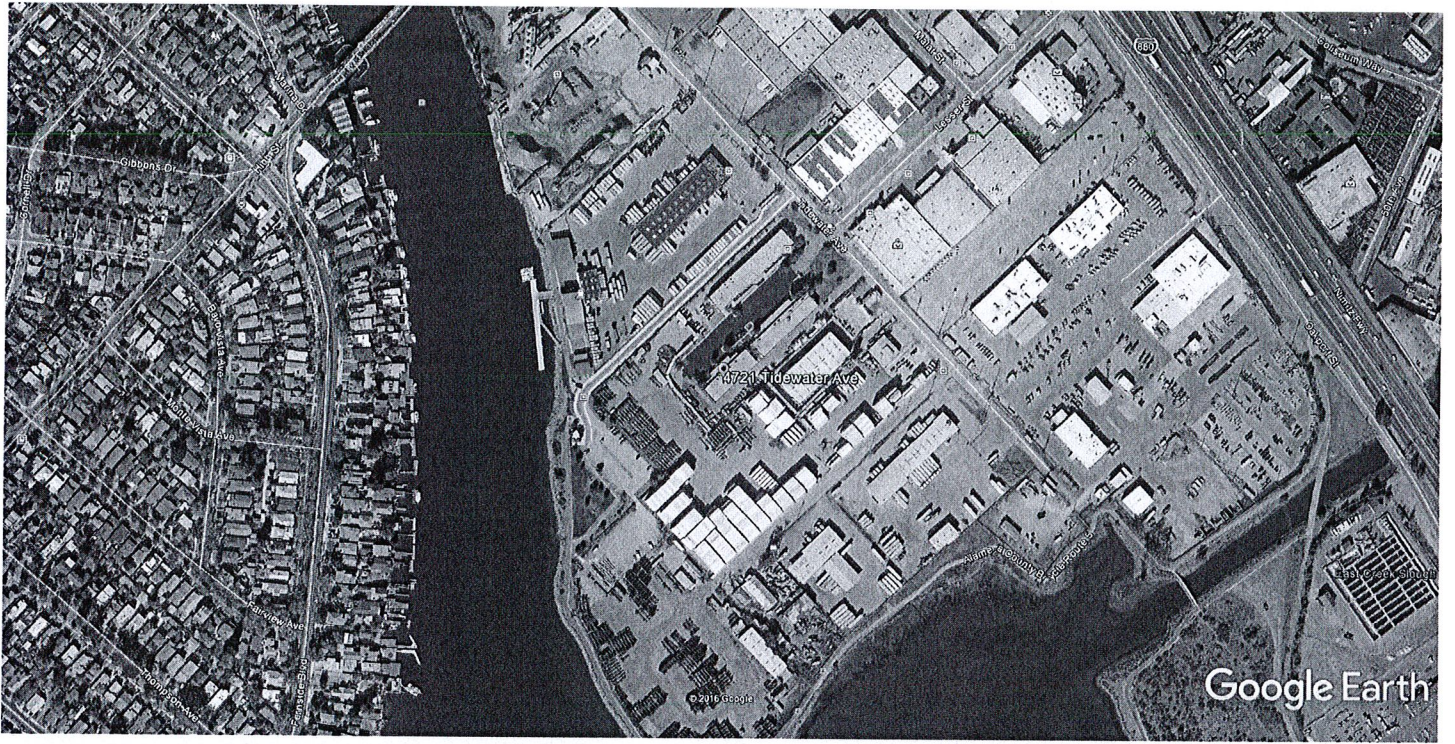


Noble Brewer Suites C and D Front (2)

Attachment C



Noble Brewer Suite C and
Back (1)



Google Earth

feet
meters





Google Earth





Google Earth



Location: 4721-4723 Tidewater Avenue, Suite C (see map on reverse)

Assessor's Parcel Number: 034 -2300-020-00

Proposal: To establish a beer club business operated weekdays with a 4pm closing time in a 3,500 square-foot warehouse space. The business would primarily operate by drop-shipments with minimal retail sales on site. (Project would require an ABC type 20 license.)

Applicant: Claude Burns / Noble Brewer Beer Company

Phone Number: (301) 536-1934

Owners: The Eggen Family Trust

Planning Permits Required: Major Conditional Use Permit with additional findings for Alcoholic Beverage Sales Commercial Activity; Findings for Public Convenience or Necessity; Variance for alcoholic beverage sales within 1,000 feet of civic uses (park)

General Plan: Estuary Plan: Planned Waterfront District 3

Zoning: D-CE-5 Central Estuary District Zone (Food Industry Cluster/High St. Warehouse Wedge/Tidewater South)

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

Historic Status: Non historic property

Service Delivery District: 5

City Council District: 5

Date Filed: September 10, 2014

Finality of Decision: *Appealable to City Council within 10 days*

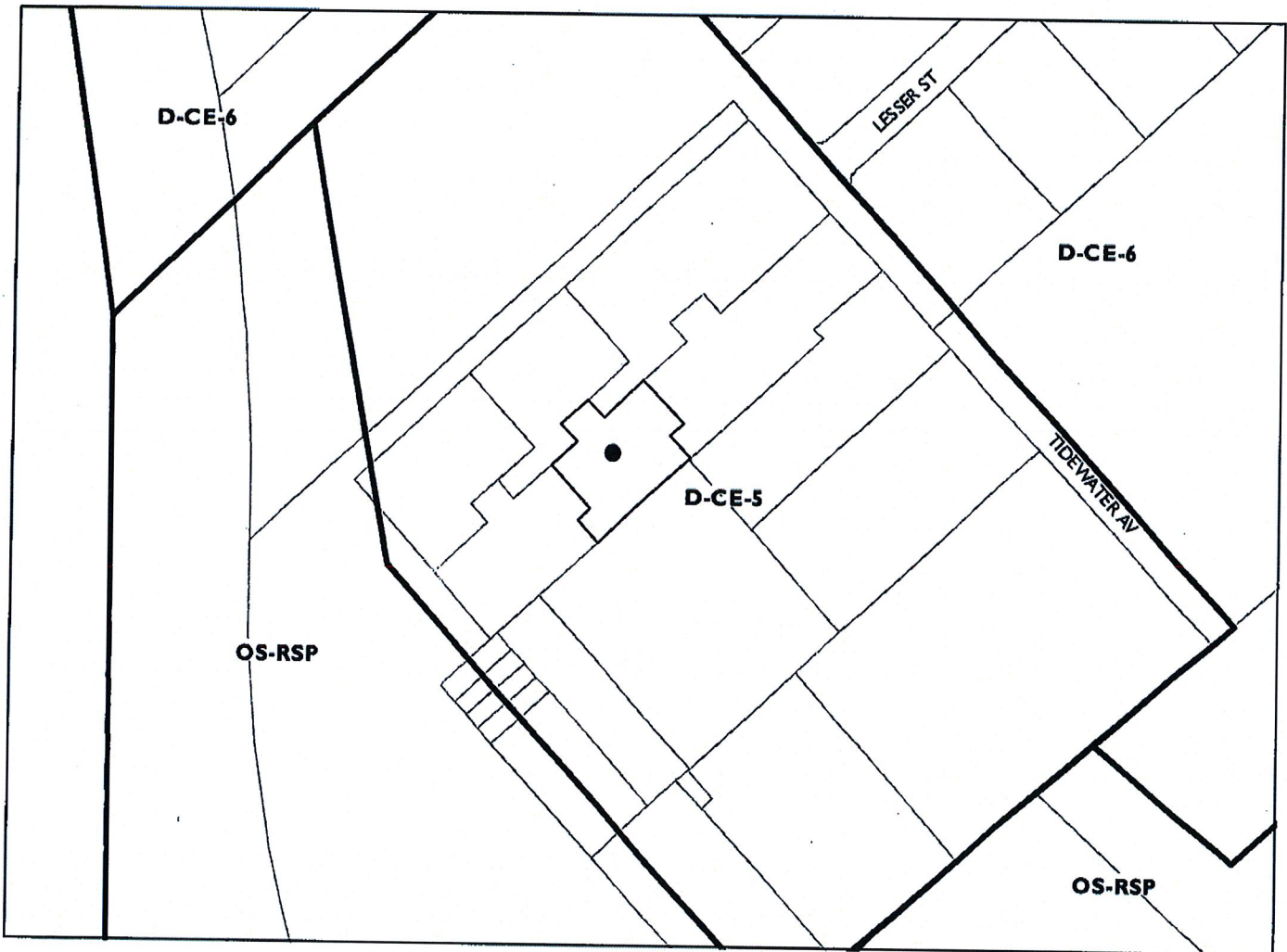
For Further Information: Contact case planner **Aubrey Rose AICP, Planner II** at (510) 238-2071 or arose@oaklandnet.com

SUMMARY

The applicant requests Planning Commission approval of a Major Conditional Use Permit and Variance to establish a beer club business in a 3,500 square-foot warehouse space, with hours of operation from 12pm to 4pm only on weekdays. The business would primarily operate by drop-shipments with minimal retail sales on site.

Staff recommends approval of the application, subject to conditions, as described in the report.

CITY OF OAKLAND PLANNING COMMISSION



Case File: PLN14276
Applicant: Claude Burns / Noble Brewer Beer Company
Address: 4721- 4723 Tidewater Avenue, Suite C
Zone: D-CE-5

PROPERTY DESCRIPTION

The project site is a 1.1 acre lot on Tidewater Avenue with a warehouse and open parking. According to zoning clearance records, the warehouse suites have been leased to various tenants including a construction operation office in the project space as well as an automobile sales office in another space at the building. The area consists of warehouses, open parking, indoor and container storage, wholesale operations, and a waterfront park along the estuary. The park is located within one thousand feet of the subject site but lacks a direct connection. To the north is High Street; to the south is San Leandro Bay; to the east is the 880 freeway; and to the west are the Oakland Estuary and the City of Alameda.

PROJECT DESCRIPTION

The proposal is to allow establishment of a beer club sales business in a 3,500 square-foot warehouse space. The business would primarily operate by drop-shipments with minimal retail sales on site. The club would operate on weekdays only from 12pm to 4pm. The business would initially employ two persons and could increase to ten employees after one year. Ten parking spaces would be reserved for the business in the warehouse's parking lot. The project would require Department of Alcoholic Beverage Control (ABC) license type 20 (Off-Sale Beer and Wine), typically associated with food markets selling beer and wine for home consumption.

GENERAL PLAN ANALYSIS

The site is located in the Planned Waterfront District 3 (PWD-3) area of the Estuary Policy Plan. The intent of the PWD-3 area is to: "Provide for the continuation of existing industrial uses on properties south of Tidewater Avenue, allowing for their transition to light industrial, research and development, and office uses in a waterfront business park setting." Estuary Policy Plan, p. 135. The following Policy relates to this district, located South of Tidewater Avenue:

Policy SAF-7.1 South of Tidewater Avenue, provide for continued industrial use, but also encourage new research and development and light industrial activities which are compatible with the adjacent EBMUD Oakport Facility and EBRPD's Martin Luther King Jr. Regional Shoreline Park.

The proposal is essentially a wholesale food and beverage warehouse operation that may not be appropriate in a commercial area where space is valuable for retail uses. Staff therefore finds the proposal to conform to the intent and Policies of the Estuary Policy Plan.

ZONING ANALYSIS

The site is located in the D-CE-5 Central Estuary District Industrial 5 Zone (Food Industry Cluster/High St. Warehouse Wedge/Tidewater South). The D-CE-5 Zone is intended to: "create, preserve, and enhance areas of the Central Estuary that are appropriate for a wide variety of heavy commercial and industrial establishments. Uses with greater off-site impacts may be permitted provided they meet specific performance standards." The proposal requires a Major Conditional Use Permit with additional findings for Alcoholic Beverage Sales Commercial Activity; Findings for Public Convenience or Necessity (PCN) to locate in an over-concentrated area (high number of ABC licenses in the census tract, 4073); and a Variance for alcoholic beverage sales to locate in an over-concentrated area at a site located within 1,000 feet of civic uses (Martin Luther King Jr. Regional Park), as stipulated by PCN findings. All alcohol uses are regulated as primary uses (although retail would be secondary to warehousing in this operation) and alcoholic beverage sales applications are decided by the Planning Commission. The project site is not located in a high crime police beat (26X) and there are no alcohol outlets located within one thousand feet of the site. These permits are discussed further in the Key Issue and Impacts section of this report.

Staff finds the proposal, as conditioned, to be in conformance with the Planning Code, pursuant to the attached Findings.

ENVIRONMENTAL DETERMINATION

The California Environmental Quality Act (CEQA) Guidelines categorically exempts specific types of projects from environmental review. Section 15301 of the State CEQA Guidelines exempts projects involving *operation and licensing of existing private facilities*. The proposal for a beer club with wholesale and some retail activity 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, also serves as a separate and independent basis for CEQA clearance. The project adheres to this section, as described above. The project is, therefore, not subject to further Environmental Review.

KEY ISSUES AND IMPACTS

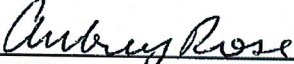
Alcoholic beverage sales establishments can be problematic when they generate alcohol-related nuisances adjacent to civic uses in the daytime and/or residential uses in the evening. In this case, the license is for off-sale of beer, only (no liquor) and no consumption would occur on site. The operation would primarily involve drop-shipment (use classification: General warehousing, Storage and Distribution Industrial Activity). Typically, such an operation would not utilize an ABC type 20 license for a market with off-sale beer and wine; however, specific operational characteristics of the proposed operation (off-sale retail by a non-distributor) require the applicant to obtain a license type 20, as confirmed by staff with the ABC. While a license type 20 can have negative effects such as loitering for public drinking at certain locations, there are no residences in the area and the business would have a very early closing time of 4pm. The area is low in crime and does not contain other alcohol outlets. The park is along the Estuary and customers would not therefore need to pass by it to reach their destinations. Furthermore, the clientele and operation are not anticipated to generate any nuisances whatsoever. Census tract 4073 is over-concentrated for ABC licenses; however, those licenses are not located in the vicinity of the site. Other licenses consist of two 20's, one 21 (market with off-sale liquor/beer/wine), one 40 (beer tavern), five 41's (restaurant with beer and wine), and one 47 (restaurant with liquor/beer/wine). This warehouse district is especially appropriate for the use because it involves a food or beverage product, as opposed to a space in a commercial district that would be valuable for retail. Conditions of approval would ensure that the business operates primarily as wholesale and maintains an early closing time.

In conclusion, with conditions of approval, staff supports the proposal.

RECOMMENDATIONS:

1. Affirm staff's environmental determination.
2. Approve the Major Conditional Use Permit, Findings of Public Convenience or Necessity, and Variance subject to the attached findings and conditions.

Prepared by:



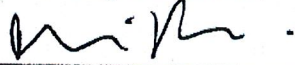
AUBREY ROSE, AICP
Planner II

Approved by:



SCOTT MILLER
Zoning Manager

Approved for forwarding to the
City Planning Commission:



DARIN RANELLETTI, Deputy Director
Department of Planning and Building

ATTACHMENTS:

- A. Findings
- B. Conditions of Approval
- C. Plans/Photographs

Attachment A: Findings

This proposal meets the required findings under **General Conditional Use Permit Criteria (OMC Sec. 17.134.050); Use Permit Criteria for Establishments Selling Alcoholic Beverages (OMC Sec. 17.103.030.A); Findings for Public Convenience or Necessity (OMC Sec. 17.103.030(B)(3)); and Variance Procedure/Findings Required (OMC Sec. 17.148.050)** as set forth below. Required findings are shown in bold type; explanations as to why these findings can be made are 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 location, size, design, and operating characteristics of the proposed project will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood. The site is located in the D-CE-5 Central Estuary District Industrial Zone - 5 (Food Industry Cluster/High St. Warehouse Wedge/Tidewater South). The D-CE-5 Zone is intended to: "create, preserve, and enhance areas of the Central Estuary that are appropriate for a wide variety of heavy commercial and industrial establishments. Uses with greater off-site impacts may be permitted provided they meet specific performance standards." Alcoholic beverage sales establishments can be problematic when they generate alcohol-related nuisances adjacent to civic uses in the daytime and/or residential uses in the evening. In this case, the license is for off-sale of beer, only (no liquor) and no consumption will occur on site. The operation will primarily involve drop-shipment and is therefore essentially a warehouse operation. There are no residences in the area and the business will have a very early closing time. The area is low in crime and does not contain other alcohol outlets. The park is along the Estuary and customers will not therefore need to pass by it to reach their destinations. Furthermore, the clientele and operation are not anticipated to generate any nuisances whatsoever. This warehouse district is especially appropriate for the use because it involves a warehousing of a food or beverage product (an industrial activity), as opposed to a space in a commercial district that will be valuable for retail. Conditions of approval will ensure that the business operate primarily as wholesale and maintain an early closing time.

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, design, and site planning of the proposed project is appropriate for the surrounding area: the business will primarily involve drop-shipment of product. There are no residences in the area and the business will have a very early closing time. The park is along the Estuary and customers will therefore not need to pass by it to reach their destinations. The area is low in crime and does not contain other alcohol outlets.

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 proposed development will enhance the successful operation of the surrounding area in its functions. This warehouse district is especially appropriate for the use which involves a food or beverage product in comparison to a space in a commercial district that will be valuable for retail.

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

ATTACHMENT A

No exterior modifications are proposed and design review is therefore not required.

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

The property is located in the Planned Waterfront District 3 area of the Estuary Plan. The intent of the area is to: "Provide for the continuation of existing industrial uses on properties south of Tidewater Avenue, allowing for their transition to light industrial, research and development, and office uses in a waterfront business park setting." The following Policy relates to the district located South of Tidewater Avenue:

Policy SAF-7.1 South of Tidewater Avenue, provide for continued industrial use, but also encourage new research and development and light industrial activities which are compatible with the adjacent EBMUD Oakport Facility and EBRPD's Martin Luther King Jr. Regional Shoreline Park.

The proposal is essentially a wholesale food and beverage warehouse operation that may not be appropriate in a commercial area where space is valuable for retail uses, and conforms in all significant respects with the Oakland General Plan.

Use Permit Criteria for Establishments Selling Alcoholic Beverages (OMC 17.103.030(A))

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

There are no other alcohol outlets within one thousand feet of the site and very little on-site retail will occur as the business will primarily engage in wholesale drop-shipments.

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 only civic use within one thousand feet is a regional park that lacks a direct connection to the property; no adverse impacts from the business to the park are anticipated.

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

The proposed project will not interfere with the movement of people in the area. The business will have its own parking lot and very little on-site retail will occur because the business will primarily engage in wholesale drop-shipments.

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;

No exterior changes are proposed. The existing warehouse is of an architectural and visual quality and character which harmonizes with the surrounding area. Any future proposal for exterior modifications will require Design Review.

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

No exterior changes are proposed. Any future proposal for signage will require Design Review.

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

The establishment is not anticipated to generate any customer waste; however, clean-up of any litter is required by conditions of approval.

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.

There are no residences in the vicinity of the site.

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

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

Findings of Public Convenience or Necessity (OMC Sec. 17.103.030(B)(3), (4))

3a. That a community need for the project is clearly demonstrated. To demonstrate community need, the applicant shall document in writing, specifically how the project would serve an unmet or underserved need or population within the overall Oakland community or the community in which the project is located, and how the proposed project would enhance physical accessibility to needed goods or services that the project would provide, including, but not limited to alcohol; and

The business is a unique type of alcohol outlet, specializing in wholesale drop-shipments to club members with minimal retail. This demand for this specialization will sustain the operation, which will not generate nuisances.

3b. That the overall project will have a positive influence on the quality of life for the community in which it is located, providing economic benefits that outweigh anticipated negative impacts, and that will not result in a significant increase in calls for police service; and

The operation will allow a business to service clients at any location from its Oakland site, and the operation will not generate nuisances. The overall project will have a positive influence on the quality of life for the community in which it is located, providing economic benefits that outweigh any possible negative impacts, and will not result in a significant increase in calls for police service.

3c. That alcohol sales are customarily associated with, and are appropriate, incidental, and subordinate to, a principal activity on the lot.

Alcoholic beverage sales are typical for a wholesale warehouse operation.

4a. The proposed project is not within one thousand (1,000) feet of another alcohol outlet (not including Full Service Restaurant Commercial Activities), school, licensed day care center, public park or playground, churches, senior citizen facilities, and licensed alcohol or drug treatment facilities; and

The site is located in a census tract that is over-concentrated with ABC licenses (census tract 4073), and, is located within one thousand feet of a park, and a variance is therefore required; findings can be made to approve the variance as described in the following section of this Attachment.

b. Police department calls for service within the "beat" where the project is located do not exceed by twenty percent (20%), the average of calls for police service in police beats Citywide during the preceding one (1) calendar year.

The site is located in a police beat (26X) that is not high in calls for police service.

Variance Procedure/Findings Required (OMC Sec. 17.148.050)

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

Strict compliance with the distance separation requirements would result in practical difficulty or unnecessary hardship inconsistent with the purposes of the zoning regulations due to unique conditions of design. The site consists of a warehouse located in an industrial district situated between the 880 freeway to the north and the Oakland Estuary to the south. No residences or other civic uses besides a linear regional park along the waterfront exist in the vicinity. The site is located in a census tract that is over-concentrated with ABC licenses, and, is located within one thousand feet of the park and a variance is therefore required. Census tract 4073 is over-concentrated for ABC licenses; however, those licenses are not located in the vicinity of the site. Other licenses consist of two 20's, one 21 (market with off-sale liquor/beer/wine), one 40 (beer tavern), five 41's (restaurant with beer and wine), and one 47 (restaurant with liquor/beer/wine). The intent of the ordinance is to prevent additional alcohol outlets in high crime or high ABC areas from impacting or further impacting civic uses. In this case, the area is not a high crime area. Also, there are no other alcohol outlets in the area, as stated. The site therefore possesses unique conditions of design: the area does not consist of alcohol outlets, high crime, residential uses, schools, or churches; the suite is over one thousand feet from the nearest park as measured along a linear walking route; yet, the Planning Code requires a one thousand foot distance between the property, building, or suite or the project must obtain a variance. The business will not sell liquor and will have a very early closing time. The site is not located in a commercial or residential area, but is located in an industrial area. The civic use, a park, is not a city park in a central location but is a regional park along the Estuary. The operation will not involve on-site consumption and very little retail so public drinking is highly unanticipated. The site will allow use of warehouse space where food and beverage uses are encouraged rather than use of space in a commercial district that is valuable for retail. The proposal is for an unusual use and location and meets the intent of the ordinance.

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

Strict compliance with the regulation requiring a one thousand foot distance separation between an alcohol outlet in an over-concentrated area and a civic use would deprive the applicant of land use rights exercised by owners of other mixed-zoning properties; several alcohol outlets in the City are allowed to operate under similar circumstances. Other alcoholic beverage sales variances have been granted in the City. For example, a large dance instruction studio in the district was granted an alcohol variance, too, because the over-concentration classification was based on the distant commercial corridor and did not truly reflect the immediate site surroundings. As summarized in the findings, above, the granting of the variance maintains consistency with the purposes of the zoning regulations.

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

Alcoholic beverage warehousing with small amounts of sales is not anticipated to generate off site impacts and will not adversely impact the industrial district or nearby regional park. There are no schools, churches, residences, senior facilities, or drug/alcohol rehabilitation centers anywhere in the vicinity. The one park in the area is not located directly adjacent to the project site, and, consists of a linear park along the Estuary that is lacking in play areas for children.

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

Other alcoholic beverage sales variances have been granted in the City. For example, a large dance instruction studio in the district was granted an alcohol variance, too, because the over-concentration classification was based on the distant commercial corridor and did not truly reflect the immediate site surroundings. As summarized in the findings, above, the granting of the variance maintains consistency with the purposes of the zoning regulations.

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

The variance is for an unmet distance separation, not a facility element, and design review is therefore not required.

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

The proposal conforms in all significant respects with the Oakland General Plan. The property is located in the Planned Waterfront District 3 area of the Estuary Plan. The intent of the area is to: "Provide for the continuation of existing industrial uses on properties south of Tidewater Avenue, allowing for their transition to light industrial, research and development, and office uses in a waterfront business park setting." The following Policy relates to the district located South of Tidewater Avenue:

Policy SAF-7.1 South of Tidewater Avenue, provide for continued industrial use, but also encourage new research and development and light industrial activities which are compatible with the adjacent EBMUD Oakport Facility and EBRPD's Martin Luther King Jr. Regional Shoreline Park.

The proposal is essentially a wholesale food and beverage warehouse operation that may not be appropriate in a commercial area where space is valuable for retail uses.

7. For proposals involving one or two residential dwelling units on a lot: That, if the variance would relax a regulation governing maximum height, minimum yards, maximum lot coverage or building length along side lot lines, the proposal also conforms with at least one of the following criteria:

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

b. Over sixty (60) percent of the lots in the immediate vicinity are already developed and the proposal does not exceed the corresponding as-built condition on these lots and, for height variances, the proposal provides detailing, articulation or other design treatments that mitigate any bulk created by the additional height. The immediate context shall consist of the five closest lots on each side of the project site plus the ten closest lots on the opposite side of the street; however, the Director of City Planning may make an alternative determination of immediate context based on specific site conditions. Such determination shall be in writing and included as part of any decision on any variance.

This finding is inapplicable; the proposal does not involve a house or duplex.

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 September 10, 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** ("this Approval") includes approval of a Major Conditional Use Permit, Findings of Public Convenience or Necessity, and Variance for an Alcoholic Beverage Sales Commercial Activity (off-sale beer club with wholesale drop shipping) at 4271-4273 Tidewater Avenue, Suite C.

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

ATTACHMENT B

- 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. **ABC Permit Required**

Prior to commencing activity

An ABC permit (license type 20), and any other required ABC license type, must be obtained prior to commencement of activity. The ABC license shall be obtained from existing licenses located within the City of Oakland unless by other agreement with the Bureau of Planning due to lack of availability.

12. **Operation**

Ongoing

a) **Types of Alcoholic Beverages**

Alcohol type shall be limited to beer or similar products (such as ale).

b) **Manner of Operation**

Sale will occur primarily (or entirely if desired by the applicant) by wholesale drop-shipment with minimal off-sale retail sales. No on-sale (on-site consumption) is allowed.

c) **Alcoholic Beverage Sales Display Area**

Sales display area of alcoholic beverages shall be set back from doorways.

d) **Other Products**

No sale of tobacco-oriented products, lottery tickets, or adult magazines shall be allowed.

e) **Hours of Operation**

Hours of operation shall be limited to weekdays 12pm to 4pm.

f) **Entry**

Admission shall never be charged for events or otherwise.

g) **Business Signage**

Any new or modified business signage requires review and approval by the Bureau of Planning.

h) **Advertising Signage**

No product advertising signage (such as neon beer signs) or banners (such as happy hour advertisements) may be displayed.

i) **Nuisances**

Crime, litter, noise, or disorderliness conduct associated with alcoholic beverage sales at the establishment may result in a hearing to consider revocation of the Major Conditional Use Permit or attachment of

Conditions of Approval

additional conditions of approval.

j) Loitering

The owner, manager, and employees of this establishment shall make appropriate efforts to discourage loitering from the parking lot and the public right-of-way fronting the premises including calling the police to ask that they remove loiterers 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.

k) Litter

The licensees/property owners shall clear the parking lot and Tidewater Avenue frontage of litter daily.

l) Performance Standards

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

m) Sound Amplification

The amplification other than a small system for use by employees shall be permitted.

n) Graffiti

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

o) Contact Phone Numbers

The establishment shall display signage in the retail office area offering contact numbers for both the business operator and the City (Code Compliance at (510)238-3381 and OPD non-emergency at (510-777-3333)) for the purpose of reporting nuisances.

p) Police Department

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

q) Neighborhood Outreach

The business operator shall be accessible to neighbors wishing to register complaints against the business and shall work to eliminate any nuisances related to the business as reported by neighbors.

r) Neighborhood Crime Prevention Council

The applicant shall be accessible to the NCPC and attend their meeting upon request.

s) Future Modifications

Should any changes to the façade or other changes to the interior be proposed, plans must be reviewed and approved by the Planning & Zoning Division and the Police Department's Alcoholic Beverages Action Team.

13. Future Operators

Ongoing

Any future operators of any warehouse with accessory retail at these premises are subject to the requirements of this approval. Future operators shall register with the Bureau of Planning, Neighborhood Crime Prevention Council, and with ABAT.

14. Conformance with State Department of Alcoholic Beverage Control Regulations

Conditions of Approval

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, OMC Sec.17.120, 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 alcoholic beverage sales outlets. The City Conditions of Approval shall be forwarded to the Department of Alcoholic Beverage Control.

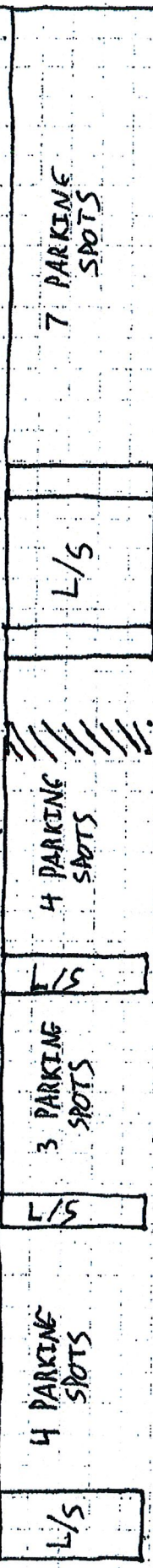
APPROVED BY:

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

Conditions of Approval

LANDSCAPING

SIDEWALK



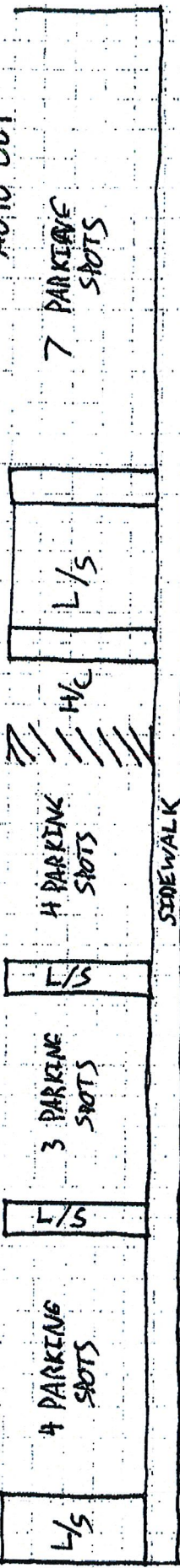
AUTO IN



AUTO OUT



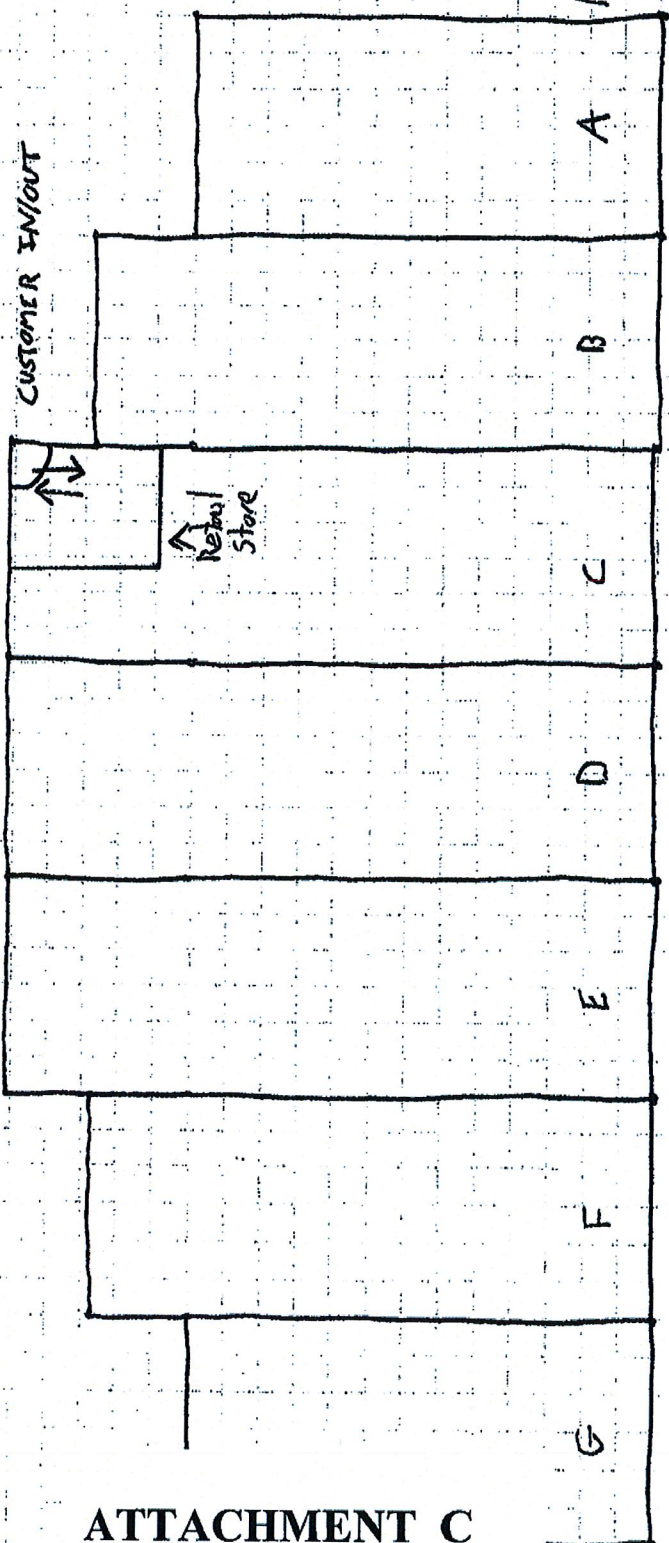
← BUFFER FOR H/C SLOT



CUSTOMER IN/OUT

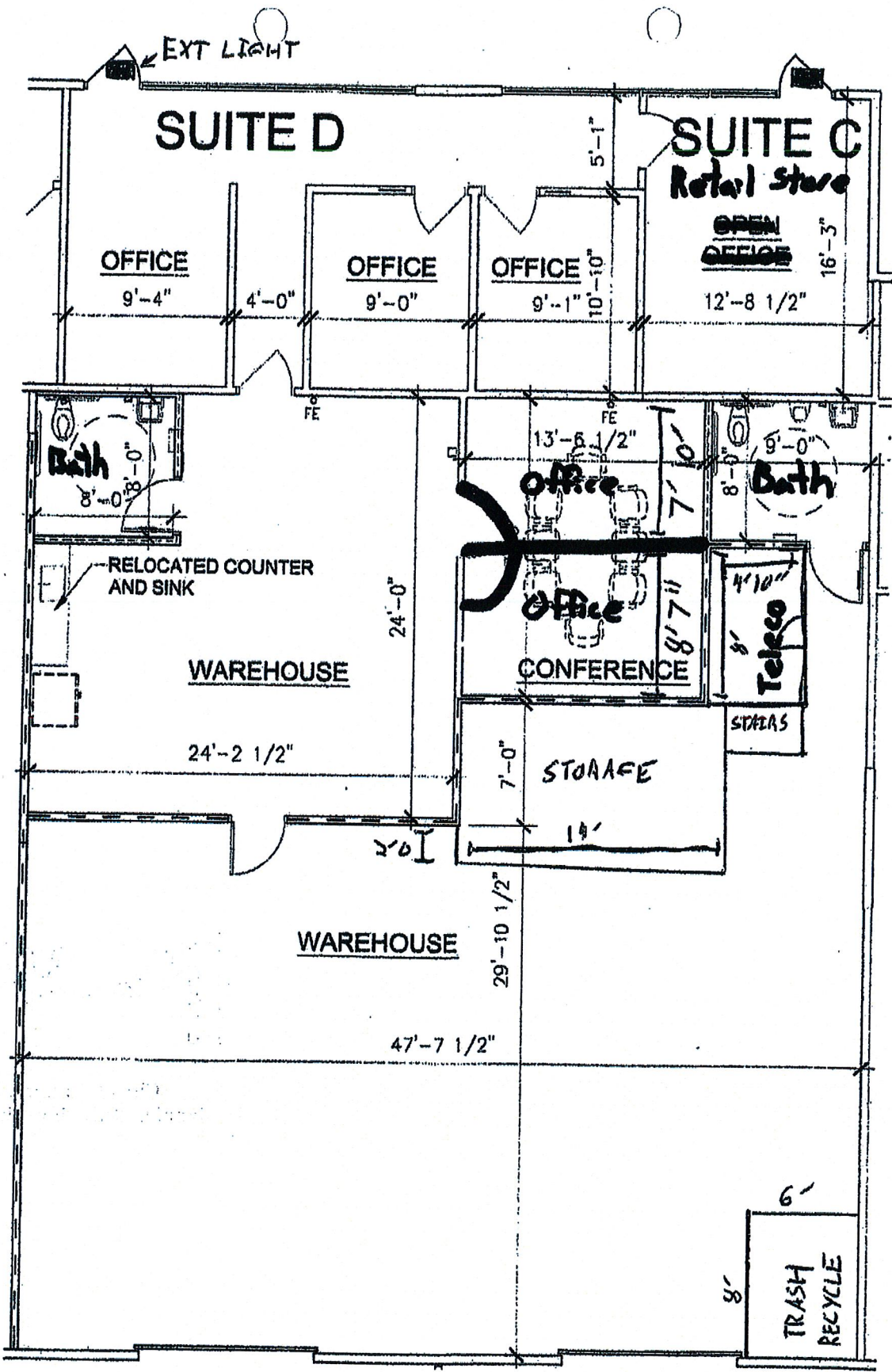


↑ Retail Store



CLAUDE BURNS
301-536-1934

ATTACHMENT C



scale: 1/8"=1'-0"



4721 Tidewater Avenue
OAKLAND, CA

ICS - Floor Plan
schema: 6

SNR00-6104-20
10-03-2009

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CLAUDE BURNS 9/4/14



Full View of Property

Parking Lot View Towards Back

Shipping
Containers Isolate
Medical Park from Regional Park

