

<b>Location:</b>	<b>4015-4027 Broadway (APN: 012 1000-010-01)</b> <b>(See map on reverse)</b>
<b>Proposal:</b>	To allow for a retail shop to include sales of bottles of alcoholic beverages and a tasting area. Hours 11:00 a.m. to 9:00 p.m. daily.
<b>Applicant / Phone Number:</b>	Ms. Yoko Kumano (510) 250-9559
<b>Owner:</b>	JWFGP, LLC
<b>Planning Permits Required:</b>	Major Conditional Use Permit with additional findings for Alcoholic Beverage Sales Commercial Activity; Variance for Alcohol Activity to establish within 1,000 feet of an existing alcohol outlet and a Civic Activity; Finding for Public Convenience or Necessity to establish in an over-concentrated area
<b>General Plan:</b>	Community Commercial
<b>Zoning:</b>	CC-2 Community Commercial Zone
<b>Environmental Determination:</b>	Exempt, Section 15301 of the State CEQA Guidelines: Existing Facilities (operations); Section 15183: Projects consistent with a community plan, general plan or zoning
<b>Historic Status:</b>	None
<b>City Council District:</b>	1
<b>Staff Recommendation:</b>	Approve with Conditions
<b>Finality of Decision:</b>	Appealable to City Council within 10 days
<b>For Further Information:</b>	Contact case planner <b>Moe Hackett</b> at <b>510-238-3973</b> or <a href="mailto:mhackett@oaklandca.gov">mhackett@oaklandca.gov</a>

**SUMMARY**

On July 26, 2018, the applicant applied for zoning approvals to establish a boutique-style neighborhood retail shop with an emphasis on Japanese housewares and artisanal products, similar to their existing location at 815 Broadway. As with the existing location, the proposed site would include a small selection of alcoholic beverage bottles to-go with weekly on-site instructional tastings. Proposed hours of operation would be 11:00 a.m. to 9:00p.m. (seven days a week).

**PROPERTY DESCRIPTION**

The site is a midblock property containing a two-story mixed use building (apartments over shops) at zero lot line and rear open parking accessed across the abutting corner lot. The ground floor contains three commercial spaces with glazing. The subject space is at the far right (north), formerly containing a restaurant. The surrounding area consists of mixed use properties, dining establishments, Kaiser Hospital, business along Broadway and 40<sup>th</sup> Street, and residential neighborhoods. A convenience store selling liquor, beer and wine formerly operated next door on Broadway at the corner of 40<sup>th</sup> Street.

# CITY OF OAKLAND PLANNING COMMISSION



0 100 200 400 600 800 Feet



Case File: PLN18319  
Applicant: Yoko Kumano  
Address: 4015-4027 Broadway  
Zone: CC-2 /Community Commercial Zone-2  
Height Area: 45 (Commercial Corridor)

**PROJECT DESCRIPTION**

The applicant proposes to establish a general retail shop with an emphasis on Japanese housewares and artisanal products. This would include bottle sales of alcoholic beverages (liquor, beer and wine) and spirits) and instructional tastings. The applicant currently operates a similar shop at 815 Broadway (Umami Mart). The space measures 1,400 square-feet in floor area. The alcohol display would be at the middle of the right side wall and a 52 square-foot rear area utilized for the tasting area, separated by a barrier. The applicant requests operations between the hours of 11 a.m. and 9 p.m. daily. The project would maintain the existing exterior design of the building. Required ABC license types would be as follows:

**21 - 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.

**86 - OFF SALE BEER & WINE - (Package Store)** Authorizes the sale of beer and wine for consumption off the premises where sold. Minors are allowed on the premises.

**GENERAL PLAN ANALYSIS**

The subject property is located within the Community Commercial General Plan Land Use classification. The intent of the area is: “

The following General Plan Land Use Policies and Objectives apply to the proposed project:

Policy I/C3.2 Enhancing Business Districts.

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

Policy I/C3.4 Strengthening Vitality.

The vitality of existing neighborhood mixed use and community commercial areas should be strengthened and preserved.

Neighborhood Activity Centers

Objective N10

Support and create social, informational, cultural, and active economic centers in the neighborhoods.

Staff finds the proposal, subject to Conditions of Approval, to conform to the General Plan.

**ZONING ANALYSIS**

The proposed project is in the CC-2 Community Commercial Zone. The intent of the CC-2 Zone is: “to create, maintain, and enhance areas with a wide range of commercial businesses with direct frontage and access along the City's corridors and commercial areas.” The following describes the permits required for the proposal and the reason each permit is required and discusses each permit requested. These items are further discussed in the “Key Issues and Impacts” section of this report.

Major Conditional Use Permit with Additional Findings

Alcoholic Beverages Sales Commercial Activities are conditionally permitted in the CC zone; that is, a Conditional Use Permit is required. All CUPs for alcohol are “major permits” that are decided by the Planning Commission, as with certain critical types of land uses. Additional findings ensure that the use does not contribute to nuisances in the community, including alcohol-related issues and discouragement of further business attraction. Alcohol outlets must locate over one thousand feet from existing outlets, and a Variance is therefore required.

Findings of Public Convenience or Necessity

This proposal also requires findings of Public Convenience or Necessity. These findings, modeled on State law, are required for Alcoholic Beverage Sales in an area that is over-concentrated for these uses. The area is over-concentrated for the quantity of ABC licenses in the Census Tract. Projects in such areas must be one thousand feet from Civic Uses, and a second Variance is therefore also required.

Major Variance

Two Variances are required for the project: to locate an alcohol outlet within one thousand feet of an existing outlet and Civic Uses. Existing outlets within range include a market with beer and wine (7-11 at 4100 Broadway) and a bar (George Kaye’s at 4044 Broadway). A Civic Use within range is an inpatient adolescent drug and alcohol rehabilitation center (Thunder Road at 390 40<sup>th</sup> Street).

Staff finds the proposal, as conditioned, to be in conformance with the Planning Code; this is further discussed in the “Key Issues and Impacts” Section of this report.

**ENVIRONMENTAL DETERMINATION**

The California Environmental Quality Act (CEQA) Guidelines categorically exempts specific types of projects from environmental review. Section 15301 of the State CEQA Guidelines exempts projects involving *operation and licensing of existing private facilities*. The proposal for off-sale of alcoholic beverages from a new retail shop in a former restaurant space meets this description: the project would constitute operation of an existing private facility. Section 15183 of the State CEQA Guidelines relates to Projects Consistent with a Community Plan, General Plan or Zoning. The project adheres to this section, as described above. The project is, therefore, not subject to further Environmental Review.

**KEY ISSUES**

In considering applications for the sale of alcoholic beverages, staff considers factors including, but not limited to, operational characteristics such as closing time, types of alcoholic beverages sold and overall product mix, floor plan, location of the site in relation to the public right-of-way and residential/civic uses, and over-concentration of ABC licenses and/or crime in the area.

Conditional Use Permit

The purpose of the CUP is to consider compatibility of the proposed use with its surroundings and to attach operating conditions relating to ensure the business will not be a nuisance. The applicant will be required to abide by the conditions of the prior permit, such as no advertisements related to alcohol merchandise on the street facing storefront. Furthermore, the business is not anticipated to generate nuisances due to the specialty nature of the alcohol products. The business would have an off-sale ABC license but would not sell items that are similar to a typical liquor store or have late hours (the store proposes a closing time of 9:00 pm). Finally, a condition of approval requires a compliance review by staff within six months of the expansion of alcohol sales. Given the success and complete lack of complaints regarding the applicant’s existing premises also on Broadway, staff does not recommend starting the premises with beer and wine sales only, and later adding liquor (distilled spirits), and is comfortable with the initial proposal for liquor, beer and wine sales.

Public Convenience or Necessity

Staff finds the proposal to offer a unique addition to the array of choices available to shoppers within the district; to create jobs; to generate sales revenue; and to not negatively impact surrounding residential or civic uses. Therefore, findings of Public Convenience or Necessity can be made in order to approve the project.

Variance

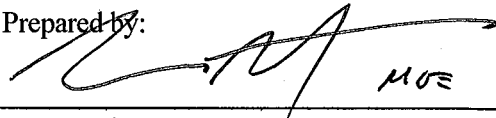
The intent of the Ordinances that are requiring Variances for this proposal are met; the retail nature of the shop, as opposed to convenience or liquor stores, would not generate the types of impacts historically associated with certain premises, and would not negatively affect the youth rehab center in the area. Furthermore, the area is not high in crime. Lastly, attached Conditions of Approval impose various requirements, such as controls on litter, noise, and hours of operation, to maintain the compatibility of the business with the surrounding neighborhood commercial area.

In terms of outreach, the applicant presented the project to the area's Neighborhood Crime Prevention Council (NCPC). In conclusion, staff recommends approval of the project, subject to conditions of approval.

**RECOMMENDATIONS:**

1. Affirm staff's environmental determination.
2. Approve the Major Conditional Use Permit and Variances subject to the attached findings and conditions.

Prepared by:



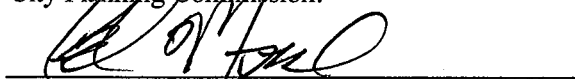
Moe Hackett  
Planner II

Reviewed by:



ROBERT D MERKAMP  
Acting Zoning Manager

Approved for forwarding to the  
City Planning Commission:



EDWARD MANASSE,  
Interim Deputy Director  
Department of Planning and Building

**LEGAL NOTICE: The decision of the City Planning Commission is final and not administratively appealable. Any party seeking to challenge such decision in court must do so within ninety (90) days of the date the decision is announced, unless an earlier date applies**

**ATTACHMENTS:**

- A. Findings
- B. Conditions of Approval
- C. Plans with photographs

## **A. FINDINGS FOR APPROVAL**

This proposal meets the required findings under General Use Permit Criteria (OMC Sec. 17.134.050), Use Permit Criteria for Establishments Selling Alcoholic Beverages (OMC Sec. 17.103.030(A))

PCN and Variance Findings (OMC Sec. 17.148.050) under the Oakland Planning Code (Title 17), as detailed below and elsewhere in the Report.

### **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 proposal will expand alcohol sales an already established boutique style neighborhood retail shop with an emphasis on Japanese housewares, artisanal products and small production alcohol items within the retail store. The alcohol component will focus on primarily off-premise bottle sales and weekly instructional tastings. The additional customers will benefit adjacent businesses on the block and the neighborhood. The expansion of the shop will further increase the diversity of retail options along Broadway. The specialty store along this Broadway corridor of North Oakland will serve pedestrians, visitors to the shopping and dining in the area, and residents.

Furthermore, the applicant has consulted with OPD ABAT Division and incorporated comments into the floor plan. As such, display areas are where they can be easily monitored by staff and store employees will be trained on alcoholic beverage sales related safety measures. With the recommended conditions of approval relating to loitering, noise, hours of operation, security, and trash, the activity is not expected to contribute to nuisances in the commercial district. Finally, a compliance review will be performed six months after the expansion of the alcohol sales.

**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 expanded activity will occupy a commercial space and will serve as a clean comfortable place to purchase gourmet alcoholic beverages and increase comparison shopping to residents and consumers.

**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 activity will generate consumer interest in the area, benefitting other local businesses and, as conditioned, will be managed to avoid nuisances that are sometimes related to alcoholic beverage sales.

**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 not applicable; no development is 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.**

See General Plan analysis, above in the Report, hereby incorporated by reference.

**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 area is not over-concentrated for ABC licenses and crime. In accordance with the City Council's 2000 resolution for a "no net increase" goal, the applicant has obtained an ABC license from the California Department of Alcohol Beverage Control Lic. #5515674 therefore, is not considered to be a significant issue with adoption of the recommended conditions of approval, as this proposal represents a virtual swap of a previously existing liquor license on the same block .

**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 site does not abut any churches, schools, parks or playgrounds within 1,000 feet; it is in an urban area surrounded by commercial and mixed-use buildings typical of a metropolitan downtown.

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

The site is accessible through one pedestrian entrance along Broadway and no construction or outdoor seating is proposed. Therefore, there will be no effect to pedestrian access in the area.

**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 construction is proposed; the activity will take place in an existing building.

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

The conditions of approval will ensure tenant signage appropriate for the neighborhood commercial area. The conditions also require that advertising signage is not located near the storefront windows.

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

Conditions of approval require trash cans and litter clean-up both on-site and in the public right-of-way.

**7. That where the proposed use is in close proximity to residential uses, and especially to bedroom windows, it will be limited in hours of operation, or designed or operated, so as to avoid disruption of residents' sleep between the hours of ten p.m. and seven a.m. The same criteria shall apply to all conditional use permits required by subsection B of this section for sale of alcoholic beverages at full-service restaurants.**



The proposed activity will operate between 11:00 am and 9:00 pm, hours appropriate to a vibrant commercial corridor and consistent with adjacent businesses. There will be no open doors or windows during business hours.

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

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

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

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

The applicant has submitted written documentation to demonstrate that no other similar activity exists in the area and offers the community a specialty/artisanal boutique style business that enhances the commercial node. Further, a strong retail presence in the East Bay's most significant downtown is critical to the growth of the region.

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

The project will increase business tax and consumer selection, and is not anticipated to result in related nuisances given the format of the location and surrounding area.

**c. That alcohol sales are typically a part of this type of business in the City of Oakland (for example and not by way of limitation, alcohol sales in a laundromat would not meet this criteria).**

The sale of alcoholic beverages is typical of a small gourmet specialty store in Oakland.

**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 and a Variance is required as included in this report; the site is within one thousand feet of two off sale alcohol businesses and a health care civic activity, as described in Variance Finding #1.

**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.**

This finding is met; Police Beat 12x is well below the Citywide average for service calls within the beat.

**SECTION 17.148.050 – VARIANCE FINDINGS:**

**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 proposal requires a Variance for relief of the 1,000-foot separation requirement from nearby off sale ABC outlets and a health care civic activity, i.e., the proposal is within 190 feet of Kaye's lounge / Bar, 305 feet of 7-Eleven (edge of parking lot), 650 feet of Thunder Road, and about 150 feet walking distance from Golden Road (although the site directly abuts the rear property-line with no direct access). All of these sites except Thunder Road sell alcohol.

The intent and purpose of the ordinance requiring distance separations between certain uses is to ensure neighborhoods, with high crime rates, are not saturated with activities that generate off-site impacts such as littering, public intoxication, drinking, urination, noise, crime or violence. When analyzing the proposed activity, it satisfies the intent and purpose of the Planning Code separation requirement. In this case, it is unlikely that these nuisances will occur due to the proposed operational characteristics, such as hours of operation, specialized product mix and educational/instructional classes.

With use Variances, such as that proposed, "conditions of design" encompasses specific operational elements of a project; that is, business practices as they relate to land use impacts. Here, there are distinctions between the proposed use, a boutique retail shop and a liquor store or bar. The proposal has carefully considered its business operations to minimize its effect by proposing operating hours that reflect a small retail store. Conditions of approval will further limit nuisances due to the expansion of the alcohol sales. As stated in previous findings, the applicant has previously worked with city staff, OPD, and ABAT to implement crime prevention techniques which will be incorporated into this project.

**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;**

A similar Variance was granted for a limited service restaurant to serve and sell bottles of beer and wine at 320 -330 40<sup>th</sup> Street.

**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;**

See Conditional Use Permit Findings, above.

**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;**

As previously stated, similar Variances have been granted for projects that did not meet the distance separation requirement.

**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 relief from the distance separation requirement to an existing ABC outlet and health care activities and design review is, therefore, not applicable.

**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.**

See General Plan Analysis, above in the Report, hereby incorporated by reference.

**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 (see illustration I-4b); 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 not applicable; the project does not involve a house or duplex.

## **B. STANDARD CONDITIONS:**

### **1. Approved Use**

The project shall be constructed and operated in accordance with the authorized use as described in the approved application materials, and the approved plans dated **July 26<sup>th</sup>, 2018**, as amended by the following conditions of approval (“Conditions of Approval” or “Conditions”).

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

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

### **3. Compliance with Other Requirements**

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

### **4. Minor and Major Changes**

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

### **5. Compliance with Conditions of Approval**

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

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

**6. Signed Copy of the Approval/Conditions**

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

**7. Blight/Nuisances**

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

**8. Indemnification**

a. To the maximum extent permitted by law, the project applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the Oakland Redevelopment Successor Agency, the Oakland City Planning Commission, and their respective agents, officers, employees, and volunteers (hereafter collectively called "City") from any liability, damages, claim, judgment, loss (direct or indirect), action, causes of action, or proceeding (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul this Approval or implementation of this Approval. The City may elect, in its sole discretion, to participate in the defense of said Action and the project applicant shall reimburse the City for its reasonable legal costs and attorneys' fees.

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

**9. Severability**

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

**Project Specific Conditions: Alcohol Beverage Sales Activities**

**10. Sale of Alcoholic Beverages**

*Ongoing*

**a. Hours of Operation**

Hours of operation are limited to between 11:00 AM and 9:00 PM daily.

**b. Types of Alcoholic Beverages Sold**

Alcoholic beverage sale includes off-sale of beer, wine, and distilled spirits for off-premise consumption, as well as on-site tasting of products sold.

**d. Additional Permits Required**

Necessary ABC permit (license types #21 and 86) must be obtained prior to commencement of activity. The license must be purchased from an existing license located within the City of Oakland if available or through the California ABC priority application process for new licenses issued in Alameda County.

**e. Floor Plan/Displays**

- 1) The displays are to be located at the greatest possible distance from the entrance.
- 2) Display of alcoholic beverages and advertising of alcoholic beverages shall not be visible through façade glazing (front windows).

**f. Nuisances**

The applicant shall obey all local and state laws relating to crime, litter, noise, or disorderly conduct.

**g. Signage**

- 1) Within 30 days of the date of decision, at least one sign (one square foot maximum) shall be posted and maintained in a legible condition at each public entrance to the building prohibiting littering and loitering. Required signage prohibiting open containers and drinking in public shall also be maintained in legible condition near each public entrance. The "No Open Container" signs are available from the cashier located on the second floor of 250 Frank H. Ogawa Plaza.
- 2) Loitering and noise would be discouraged by "No loitering" signage at the entrance of the store. Signage would be located in the parking lot stating that no drinking in the lot or public right-of-way is permitted. A contact phone number for a manager shall be located on signage within the store available to the public.

**h. Graffiti**

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

**i. Pay Phones**

No pay phones are permitted outside the building in any area controlled by the Applicant.

**j. Loitering**

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

**k. Trash and Litter**

The licensees/property owners shall clear the site and the gutter and sidewalks along 40<sup>th</sup> Street and Webster Street 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.

**l. Securing Site**

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

**m. Exterior Illumination**

The front of the store and parking lot shall be illuminated during the evening.

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

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

**o. Staff training program**

The operator shall require new employees to complete a staff training program that includes training in the conditions of approval and ABC statutes and regulations.

**p. Staff to monitor site**

An employee or store manager shall be located at or near the checkout counter at all times that they are operated. Staff or store manager shall regularly monitor the store and parking lot to discourage all nuisances in the parking lot and off-site in the public right-of-way fronting the property including but not limited to discouraging loitering, littering, noise, graffiti, public drinking/intoxication/urination/violence, and noise.

**11. Inclusion of conditions in State Department of Alcoholic Beverage Control license**

*Prior to signing of State Department of Alcoholic Beverage Control zoning affidavit*

The applicant shall submit a letter to staff signed by the applicant addressed to the State Department of Alcoholic Beverage Control ("ABC") agreeing to execute a Petition to Condition License in accordance with Section 23800, et. seq. of the ABC Act that they wish to include as conditions of their ABC licenses those conditions and requirements in this approval which are under the jurisdiction of the ABC. The letter shall request the ABC condition its license to those uses allowed under City permits which are also under the jurisdiction of the ABC. If the Applicant fails to make such request to the ABC to include the above conditions in its Petition to Condition License, staff may initiate enforcement proceedings pursuant to Condition of Approval 5C, including revocation.

**12. Conformance with State Department of Alcoholic Beverage Control regulations**

*Ongoing*

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

**13. Compliance Review**

Six months after the ABC license has been issued (or temporary Certificate of Occupancy if one is issued), the applicant shall meet with the Zoning staff to review any complaints or other known issues that have arisen during the first 6 months of operation under this permit. If Zoning or Code Compliance staff are aware of complaints that would indicate significant non-compliance with any Conditions of Approval, the applicant shall submit for, and pay all appropriate fees consistent with the Master Fee Schedule, and such review will be concluded in the process provided for under Oakland Planning Code, which may include referral to the Planning Commission. The same process shall be repeated at 12 months after the Certificate of Occupancy is issued.

APPROVED BY:

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





Yoko Kumano and Kayoko Akabori  
Umami Mart  
815 Broadway  
Oakland, CA 94607  
(510) 250-9559

**RECEIVED**  
**SEP 18 2018**  
**CITY OF OAKLAND**  
**BUREAU OF PLANNING**

September 17, 2018

**Re: General Statement for PLN18319 at 4027 Broadway**

To Whom it May Concern:

We have been in business in Old Oakland since 2012 and look forward to the opportunity to operate our retail store Umami Mart in Temescal.

We had the pleasure of presenting our project at the Temescal Steering Committee Meeting on July 18, 2018 where we described our plans to move our six year old business to the neighborhood, the scope of the project, and the timeline (we hope to open in the spring of 2019). We are pleased to have the support of Sue Marksearch, the head of the Temescal Steering Committee; Patricia Rose, the Temescal Neighborhood Services Coordinator at the Oakland Police Department; and Beat 12X's Officer David Mac (Oakland Police Officer No. 9421). Several Umami Mart customers were present at the meeting and the general response was positive. We have also received the support of many local small business owners and city officials about our move, who have written Letters of Support to our planner Maurice Hackett at the City of Oakland.

Umami Mart was one of the first retail stores to revitalize its district as a retail destination, selling Japanese speciality housewares and gourmet specialty beverages such as Japanese whisky, *shochu* (distilled spirit), beer and sake in Old Oakland. We will continue to educate and serve our community about Japanese culture, food, and drinks through conversation and events.

The location on Broadway, between 40th and 41st, is in a developing area and we believe that our retail business will complement the neighborhood alongside Clove and Hoof, Copper Spoon, Bernal Cutlery, and Teni Kitchen. We believe that Umami Mart will be a great addition alongside businesses that share an interest in gourmet cuisine and culture.

We are excited to become a part of this vibrant community.

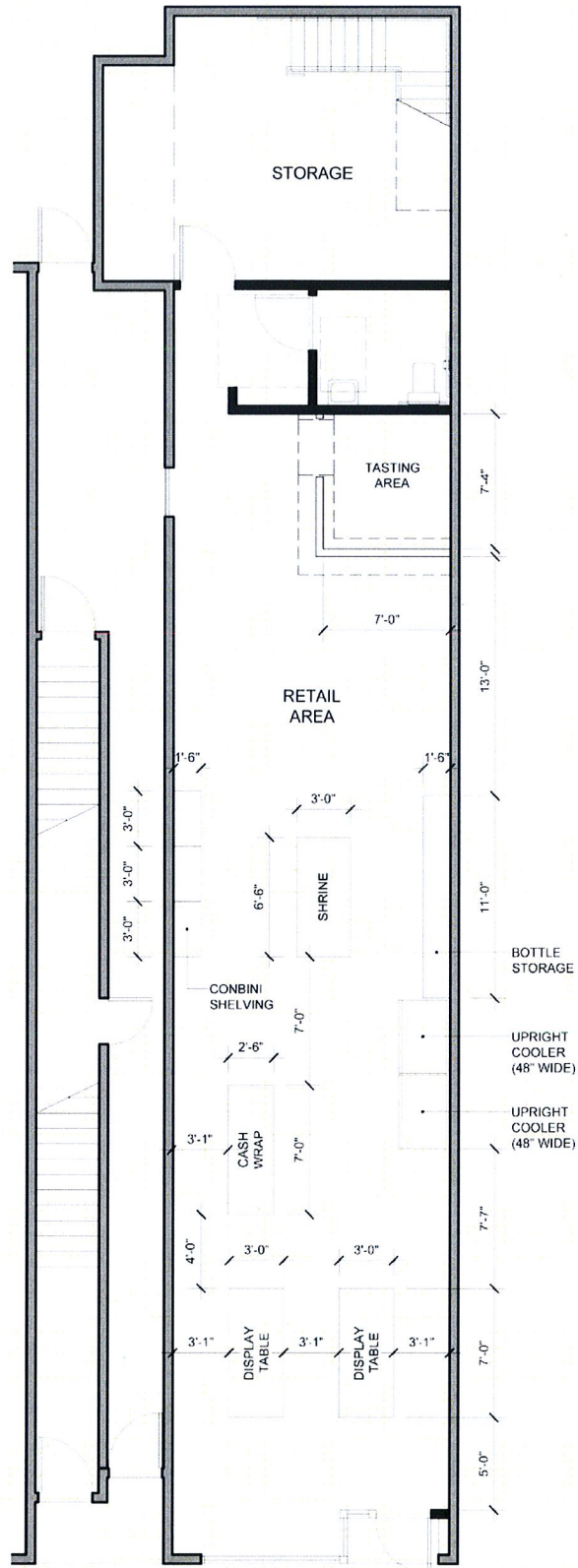
Thank you,  
Yoko Kumano and Kayoko Akabori  
Co-Owners of Umami Mart

**Attachment C**





# Floor Plan for 4027 Broadway



**PROPOSED GROUND  
FLOOR PLAN**  
SCALE: 3/16" = 1'-0"  
4027 BROADWAY  
OAKLAND CA  
03 JULY 2018





## Photos of Umami Mart at its current location at 815 Broadway

*Umami Mart at 815 Broadway, Est. 2012. The look and feel in the 4027 space will be similar.*

Umami Mart Exterior



Umami Mart Interior





Kitchen and homewares at Umami Mart



Sake for our monthly sake club







Sake, beer and Japanese whisky will be displayed similarly to the existing store.



Owners Yoko Kumano and Kayoko Akabori, in Umami Mart



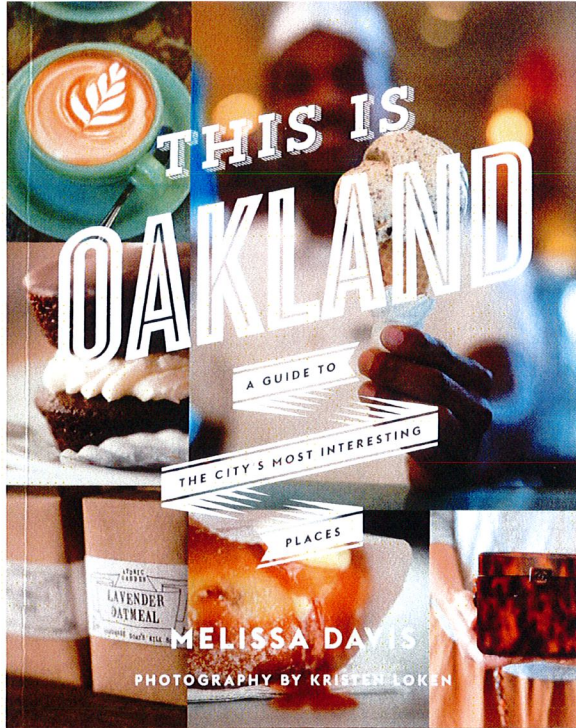




## Umami Mart in the Press

Umami Mart featured in the book

[This is Oakland: A Guide to the City's Most Interesting Places](#)







Umami Mart featured on [New York Times](#)

# The New York Times

## 36 Hours in Oakland, California

By FRED A MOON DEC. 3, 2015



9. **THE NEW OLD TOWN** 5 P.M.

At Umami Mart, a sublime Japanese kitchen and barware shop, food, drink and design intersect. Its Bottle Shop, which focuses exclusively on Japanese beer, sets it apart. Umami Mart's sake club, Sake Gumi, delivers two bottles of sake, along with tasting notes and pairing suggestions (\$29, or \$75 monthly). Afterward, head to Swan's Market, a historic "housewives' market," with an exceptional food court, from the Japanese set lunches at B-Dama to The Cook and Her Farmer's mind-blowing oyster po' boy. Miss Ollie's is an Afro-Caribbean restaurant where the jerk shrimp are big and scorchingly spicy (\$12.50) and the skillet-fried chicken (a generous portion for \$17.75) is among the best in the Bay Area.