

Location: 5532 San Pablo Ave. (See map on reverse)	
Assessors Parcel Numbers:	015-1308-018-00
Proposal:	Major Conditional Use Permit for alcohol sales at a full service restaurant on a restricted street.
Applicant:	Zoe Naumen
Owner:	Zoe Naumen
Planning Permits Required:	Major Conditional Use Permit
General Plan:	Neighborhood Center Mixed Use
Zoning:	C-35/S-18
Environmental Determination:	Exempt; 15301, State CEQA Guidelines; Existing Facilities
Historic Status:	Non-historic property
Service Delivery District:	2
City Council District:	1
Date Filed:	11/28/05
Last Date for Consideration:	2/15/2006
Support/Opposition:	Support for this project.
Staff recommendation:	Approve application with attached conditions.
For further information:	Contact case planner Jacob Graef (jgraef@oaklandnet.com) at 510-777-8672 .

SUMMARY

The applicant wishes to include alcohol sales (beer and wine) at new restaurant in association with an existing motorcycle workshop and display facility. Based upon the application submitted, staff has determined that the operation meets the requirements for a Full Service Restaurant (Section 17.156.070), but the premise is located on a restricted street (San Pablo Ave.) and therefore a Major Conditional Use Permit is required and due to the unusual design of the facility additional operating restrictions are required.

PROJECT DESCRIPTION

The applicant operates a 4,200 square foot commercial space at 5532 San Pablo Avenue. The primary use of the facility is the motorcycle workshop and display area. The restaurant area is located in a 300 square foot mezzanine and will provide full-meal service (breakfast, lunch and dinner) and would like to include the sale of beer and wine. Proposed hours of operation are Monday through Sunday 10 AM to 9 PM. The applicant will not alter business hours for the restaurant. The applicant has also indicated that the restaurant will employ a person. There will be no cabaret activity associated with this operation.

PROPERTY DESCRIPTION

5532 San Pablo Avenue is a two story commercial structure located near 56th Street. The façade is in the brick with single painted black metal-framed windows. Surrounding uses are small businesses typical of

the commercial area along San Pablo Avenue. There is one alcohol-selling establishment within 1000 feet of 5532 San Pablo Avenue. There is a liquor store located at 5676 San Pablo Avenue.

GENERAL PLAN ANALYSIS

This project is located in the Shopping Commercial Land Use Classification. The intent of Shopping Commercial Classification is to identify, create, maintain and enhance the commercial corridor in this area with good access to transportation and other services. Commercial centers include eating and drinking establishments. This area (north Oakland) suffers from blighted conditions, many vacant buildings, and illegal activities. City initiatives in the area stress code enforcement, police enforcement, historic preservation, and façade improvements for commercial revitalization. There is community support for the improvement of this corridor. Existing business districts should be supported, and neighborhood shopping experiences should be enhanced through business retention and attraction efforts as well as through physical streetscape improvements.

ZONING ANALYSIS

The zoning for this site is (C-35) district shopping commercial zone. The general food sales activity (restaurant) is permitted in this zone. According to Section 17.156.070 "Full-Service Restaurant" means a place which is regularly and in a bona fide manner used and kept open for the serving of at least lunch and dinner to guests for compensation and which has suitable kitchen facilities connected therewith, containing conveniences for cooking an assortment of foods which may be required for such meals. An establishment shall not be considered a "full-service restaurant" if it served alcohol without "meal" service being provided. The Full Service Restaurant shall make actual and substantial sales of "meals" to guests for compensation. Substantial sales shall mean that no less than sixty (60) percent of total revenue shall be generated from food service and no more than forty (40) percent of revenue from the sales of alcohol. The proposed menu is attached as exhibit A.

The operation as proposed does qualify for the Full Service Restaurant exemption in the Zoning Code. However, according to Section 17.102.210 (B) 2, the premise is located on a restricted street (San Pablo Ave.). Therefore a Major Conditional Use Permit is required. Findings for a Conditional Use Permit per Section 17.134.050 and special use permit criteria for alcoholic beverage sales commercial activities per Section 17.102.210 (A), must be made.

ENVIRONMENTAL DETERMINATION

The California Environmental Quality Act (CEQA) Guidelines list projects that are categorically exempt from environmental review. Section 15301 exempts minor changes to an existing structure that do not create any adverse environmental impacts.

KEY ISSUES AND IMPACTS

The applicant has proposed a Full Service Restaurant with the addition of beer and wine sales along the San Pablo Avenue corridor. Historically, alcohol sales have caused nuisance and crime problems in this area. However, if operated properly, the proposed addition would provide a greater variety of services while generating minimum nuisance due to the limited size and the hours of operation.

With appropriate conditions regarding hours and inclusion in the Deemed Approved Program (Sec. 17.156) this project will meet all of the Use Permit Criteria pursuant Section 17.134.050, which are attached herein and are hereby incorporated into this report.

Staff has verified that the implementation of land use restrictions to curtail nuisance activity has been extraordinarily effective at other similar locations. It has been proven that restrictions on the hours of operation will significantly reduce the opportunity for nuisance activity to occur. The applicant currently operates on Monday through Sunday 10 AM to 9 PM. Staff recommends that the hours of operation stay the same, but the sale of alcoholic beverages be allowed only between the hours of 10:00 AM and 9:00 PM. Alcohol could only be served during these hours unless limited further by the department of Alcoholic Beverage Control.

The Oakland Police Departments ABAT unit has determined that this use will create minimal if any nuisance activity. As a part of the Deemed Approved Program ABAT will be responsible for monitoring this location. Through active enforcement and police assistance this use will remain safe and successful.

RECOMMENDATIONS:

Based on the analysis contained within this report, and elsewhere within the administrative record, staff believes that the proposed project is an appropriate land use at this location and an appropriate and well designed restaurant that will further the overall objectives of the General Plan, particularly related to the redevelopment and revitalization of under-used parcels in the Fruitvale district near and accessible to regional serving facilities. Thus, staff recommends that the Planning Commission:

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

Prepared by:

Jacob E. Graef, MPA
Admin. Analyst II/Planner II

Approved by:

GARY PATTON
Deputy Director of Planning and Zoning

Approved for forwarding to the
City Planning Commission:

CLAUDIA CAPPIO
Director of Development

ATTACHMENTS:

- A. Restaurant Menu
- B. Layout

FINDINGS FOR APPROVAL:

Section 17.134.050 (General Use Permit Criteria):

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

The proposed activity will be compatible with the adjacent and surrounding land uses. As approved, the activity with limited operating hours and inclusion in the Deemed Approved Program (Section 17.156) this operation will not adversely affect livability or appropriate development of the area.

- 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 existing development will provide a convenient and functional living, working and shopping environment by providing restaurant services, alcoholic beverages and retail services to visitors and to workers in the San Pablo Ave. area.

- 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 basic community functions, and will provide an essential service to the community by providing food service close to public transit and the major thoroughfares of San Pablo Ave.

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

The proposal conforms to all design criteria. The building exists and there have been no proposed changes to the existing structure.

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

The proposal conforms to the Oakland General Plan. It will promote development in this mixed-use urban area. This target area suffers from blighted conditions, many vacant buildings, and illegal activities, with serious implications regarding safety and attracting business and other positive activities. Crime prevention and commercial revitalization are pinnacle goals for this area, therefore the capital improvements and monitoring by the Oakland Police Departments ABAT Unit will encourage and maintain a safe and prosperous development.

Section 17.102.210 (A) Special Use Permit Criteria:

FINDINGS

- 1. That the proposal will not contribute to undue proliferation of such uses in a 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 proposal will not result in a net increase in such uses and the activity is in conjunction with other desired activities. As conditioned, the activity will not contribute significantly to problems of crime and loitering. San Pablo Avenue is capable of supporting the projected traffic without affecting the level of service.

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

There are is a church within 600 feet of the site, but with appropriate land use restrictions in regards to hours of operation and the exclusion of cabaret activity the proposal will not have a negative affect on them.

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

The storefront is on the corner of 56th Street and San Pablo Ave. that allows for pedestrian traffic. This area is usually congested with pedestrian traffic during the week. As conditioned the applicant will be responsible for maintaining the premise and through this maintenance he will control loitering and ensure pedestrian movement.

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

The building exists and there have been no proposed changes to the existing structure.

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

The building exists and there have been no proposed changes to the existing structure.

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

As conditioned, there will be one non-flammable trash container installed outside the entrance of the store and litter will be removed from the sidewalk and gutter in front of and to twenty feet beyond the premises along San Pablo Ave.

- 7. That where the proposes 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 PM and seven AM.**

As conditioned, the business will open at 10:00 AM and close at 9:00 PM Monday through Sunday. Therefore the business will not be open during the restricted hours.

CONDITIONS OF APPROVAL

STANDARD CONDITIONS:

1. Approved Use.

a. Ongoing.

The project shall be constructed and operated in accordance with the authorized use as described in this staff report and the plans submitted on November 28, 2005 and as amended by the following conditions. Any additional uses other than those approved with this permit, as described in the project description, will require a separate application and approval

2. Effective Date, Expiration, and Extensions

a. Ongoing.

This permit shall become effective upon satisfactory compliance with these conditions. This permit shall expire on February 25, 2007 unless actual construction or alteration, or actual commencement of the authorized activities in the case of a permit not involving construction or alteration, has begun under necessary permits by this date. Upon written request and payment of appropriate fees, the Zoning Administrator may grant a one-year extension of this date, with additional extensions subject to approval by the City Planning Commission.

3. Scope of This Approval; Major and Minor Changes

a. Ongoing.

The project is approved pursuant to the Planning Code only and shall comply with all other applicable codes and requirements imposed by other affected departments, including but not limited to the Building Services Division and the Fire Marshal. Minor changes to approved plans may be approved administratively by the Zoning Administrator; major changes shall be subject to review and approval by the City Planning Commission.

4. Modification of Conditions or Revocation

a. Ongoing.

The City Planning Commission reserves the right, after notice and public hearing, to alter Conditions of Approval or revoke this conditional use permit if it is found that the approved facility is violating any of the Conditions of Approval or the provisions of the Zoning Regulations.

5. Recording of Conditions of Approval

a. Prior to issuance of building permit or commencement of activity.

The applicant shall execute and record with the Alameda County Recorder's Office a copy of these conditions of approval on a form approved by the Zoning Administrator. Proof of recordation shall be provided to the Zoning Administrator.

6. Reproduction of Conditions on Building Plans

a. Prior to issuance of building permit.

These conditions of approval shall be reproduced on page one of any plans submitted for a building permit for this project.

7. Indemnification

a. Ongoing.

The applicant shall defend, indemnify, and hold harmless the City of Oakland, its agents, officers, and employees from any claim, action, or proceeding (including legal costs and attorney’s fees) against the City of Oakland, its agents, officers or employees to attack, set aside, void or annul, an approval by the City of Oakland, the Office of Planning and Building, Planning Commission, or City Council. The City shall promptly notify the applicant of any claim, action or proceeding and the City shall cooperate fully in such defense. The City may elect, in its sole discretion, to participate in the defense of said claim, action, or proceeding.

STANDARD CONDITIONS FOR ALCOHOLIC BEVERAGE SALES COMMERCIAL ACTIVITY:

8. Hours.

a. Ongoing.

Business hours are limited to 10:00 AM to 9:00 PM Monday through Sunday. Alcoholic beverages may be sold only between the hours of 11:00 AM and 9:00 PM. These hours may be changed after review by the City Planning Commission at a noticed public hearing, **after six months of operation.** Alcohol shall only be sold during these hours unless limited further by the Department of Alcoholic Beverage Control.

9. Conformance with State Department of Alcoholic Beverage Control regulations

a. Ongoing.

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

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

a. Ongoing.

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

b. Ongoing

There will be no cabaret activity allowed. If the applicant wishes to add cabaret activity they must reapply for a modification to this conditional use permit.

c. Ongoing.

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

d. Ongoing.

No pay phones are permitted outside the building.

e. Ongoing.

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.

f. Ongoing

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

g. Ongoing

The applicant shall conform to the Oakland Zoning Code Chapter 17.156 Deemed Approved Alcoholic Beverage Sale Regulations.

h. Ongoing

The storage of alcoholic beverages must be located in the designated restraint. No Alcoholic beverages will be stored in any other part of the facility.

i. Ongoing

There will be no offsite sale or consumption of alcoholic beverages.

j. Ongoing

Alcohol sales and consumption will only take place in the area designated by the Department of Alcoholic Beverage Control as the licensed premise.

k. Ongoing

All meals and beverages consumed on-site shall be served on NON-disposable dishes. All utensils used by patrons will also be Non-disposable.

11. Trash and litter

a. Prior commencement of use and ongoing.

The applicant/property owner shall install and maintain at least one, non-flammable trash can, located near the entrance of the store.

b. Ongoing

The licensees/property owners shall clear the parking lot and gutter and sidewalks along San Pablo Ave. plus twenty feet beyond the property lines along these streets 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.

12. Inclusion of conditions in State Department of Alcoholic Beverage Control license.

a. Prior to signing of State Department of Alcoholic Beverage Control zoning affidavit.

The applicant shall submit a letter to staff signed by the applicant addressed to the State Department of Alcoholic Beverage Control stipulating that they wish to include conditions of their ABC license. The Oakland Planning Commission may, after notice and hearing, revoke this Conditional Use Permit if the applicant fails to include the above conditions in the ABC license.

APPROVED BY: City Planning Commission: _____ (date) _____ (vote)
City Council: _____ (date) _____ (vote)

CONDITIONS OF APPROVAL