

CITY OF OAKLAND

AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2011 APR 21 PM 3:00

TO: Office of the City Administrator
ATTN: P. Lamont Ewell, Interim City Administrator
FROM: Community and Economic Development Agency
DATE: May 3, 2011

RE: A Public Hearing and Upon Conclusion Consider Adopting A Resolution Denying the Appeal (A10-324), thereby Upholding the Planning Commission's Decision to Approve a Revision (REV10-018) to a Major Conditional Use Permit and Regular Design Review for a McDonald's at 4514 Telegraph Avenue for Fast-Food and Drive-Through Commercial Activity

SUMMARY

This Revision to a Major Conditional Use Permit (CUP) and Regular Design Review application involves the request of the owners of McDonald's to amend the Conditional Use Permit-Approved Fast Food and Drive-Through Activities at 4514 Telegraph Avenue, at the corner of 45th Street, to demolish and re-build a new building, reroute the Drive-Through and extend Drive-Through operations to 24 hours. On December 1, 2010 the Planning Commission held a public hearing on the proposal. The Commission voted to grant the applicant's request for Revision to the Major Conditional Use Permit and Regular Design Review subject to conditions of approval (see *Attachment B*).

On December 13, 2010, John Gatewood, Christopher Waters, Josh Thorp and 23 other appellants, timely filed an Appeal to the City Council (A10-324) of the Planning Commission's decision to grant the applicant's request for expanded Fast Food and Drive-Through Activities. The Appellants claim that: (1) there was no evidence to support the Planning Commission's granting of the revision to the Major Conditional Use Permit and Regular Design Review application; (2) the Commission's decision was arbitrary and capricious, and expressly conflicted with required findings; (3) it is harmful to the neighborhood; and (4) it is devoid of any factual support and fails to meet the findings required by Oakland Planning Code Sections 17.134.050 and 17.148.050. The detailed appeal is contained in *Attachment A*.

Staff has prepared a resolution for the City Council's consideration that would deny the appeal and uphold the Planning Commission's approval of the project. McDonald's has operated at this site since the 1970's and has two approved Conditional Use Permits. The restaurant is vested and could remain in any case. The choice is between the existing version of McDonald's or the proposed rebuilding of the restaurant with expansion to 24-hour drive-through service. The City Council can also impose additional or revised Conditions on the project and/or modify the project if they choose to deny the appeal and revise the Planning Commission's approval.

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The appellants are also concerned that the McDonald's currently operates a 24 hour drive-through without City permits. The current application legalizes this 24 hour use and code enforcement actions on this issue are being held in abeyance awaiting disposition of this appeal, per standard practice.

FISCAL IMPACT

Approval of the requested expansion of McDonald's would allow for changes in building size and shape, drive-through and driveway configuration and signage. The project remains a private development and as such, would not require public funds. Private development provides a modest positive fiscal impact through increased property taxes, utility user taxes and, potentially, business license taxes, while at the same time generally maintaining the level of municipal services that must be provided.

PROJECT DESCRIPTION

The primary objective of the project is to rebuild and expand the size of the existing one-story 3,028 s.f. McDonald's restaurant building. The new building would be 3,920 s.f. in size, (an approximately 30% increase). The existing building, originally constructed in 1977 and modified in 1991, is of a fairly generic design with white stucco walls, a red tile mansard roof and large "golden arches" signage, and looks like it could be located anywhere. The proposed architectural design is more in keeping with the neighborhood context with a flat roof, mostly brown-colored brick walls (two shades of brown) with textured detailing, large brick columns and a heavy wood trellis along the street frontage (screening the drive-through), some lighter-colored stucco accent wall areas, and more modest and contemporary signage. The landscape improvements would include a low (4' tall) brick wall, with decorative columns to match the building design, along Telegraph Avenue again to screen the drive-through lane.

The existing site has three entrances from Telegraph Avenue and a combined exit from 45th Street with parking areas on both the north and south sides of the building and a drive-through on its north side. The revised site plan includes one entrance/exit and one exit only along Telegraph Avenue and one combined entrance/exit from 45th Street. For purposes of improved site circulation, the building location would be slightly to the north of the existing location, turned lengthwise to increase the building wall along Telegraph Avenue, and the drive-through would be along the Telegraph Avenue side (west side). Site circulation and parking areas would be repaved, and a full landscape plan would be implemented. New signage would be installed on the site. Signs include wall and monument signs, parking area signs and order boards near the drive-through lanes. The existing tall "golden arches" sign would be removed and would not be replaced. As noted in the Summary section above, the applicant is also requesting a change of hours of operation from 6 a.m. – 11 p.m. (reported by application) and to 12 midnight October to March and 1 a.m. April to September (maximum approved in CM90-483) to 24 hours year-round (proposed).

PROPERTY DESCRIPTION

The site is a flat and rectangular corner lot, and consists of 31,416 square feet (0.7 acre) in area. It is located at the corner of Telegraph Avenue and 45th Street, at the southern end of the Temescal shopping district, near Northgate/Koreatown. Shattuck Avenue also connects with Telegraph Avenue near this area. Nearby properties include former Hooper's Chocolates, former Kaspar's Hot Dogs, and various businesses. The restaurant site backs up to a large school playground, and is across 45th Street from a utility company technical facility. No housing is adjacent.

PROPERTY VICINITY

The Temescal shopping district is characterized by one and two story vintage commercial buildings, as well as a newer neighborhood shopping center and a few freestanding modern buildings such as restaurants and automotive service businesses. Residential buildings along and behind the commercial area include two story Victorian houses and apartments, as well as newer condominium buildings. Construction materials in the area context include primarily stucco buildings with glass transoms and tile roof details; brick with wood details, wood shiplap and shingle walls with composite roofs; and other early-to- mid-20th Century materials.

GENERAL PLAN ANALYSIS

The property is located in the Neighborhood Center Mixed Use category of the Land Use and Transportation (LUTE) element of the General Plan. This designation "is intended to identify, create, maintain and enhance mixed use neighborhood commercial centers. These centers are typically characterized by smaller scale pedestrian-oriented, continuous street frontage with a mix of retail, housing, office, active open space, eating and drinking places, personal and business services, and smaller scale educational, cultural, or entertainment uses." The existing and proposed activities within the property are consistent with the Neighborhood Center Mixed Use General Plan designation because they include the "eating and drinking places" mentioned in the LUTE text. While the drive-through aspect of the facility is not considered pedestrian-oriented, and would not be expressly encouraged under the LUTE (nor is it prohibited by the LUTE), it was approved by the previous Conditional Use Permit before the LUTE was adopted and therefore it may remain part of the facility. Telegraph Avenue is a "Growth and Change" corridor under the LUTE designation. Applicable policies include:

- LUTE Policy I/C1.2 states that "Existing Businesses and jobs within Oakland which are consistent with the long-range objectives of this Plan should, whenever possible, be retained."
- Policy I/C3.4 states that "The vitality of existing neighborhood mixed use and community commercial areas should be strengthened and preserved."

- LUTE page 222, addressing Temescal and Upper Telegraph Avenue states that “Recent commercial development along Telegraph Avenue at 51st Street, and interest from the residential and business community, have triggered revitalization of this historic neighborhood. Focus is needed to improve other key properties. Near-term activities will focus on providing assistance for specific properties...façade improvements and...improvements to the area’s physical appearance...”

Staff finds that the proposed redesign and expansion of the existing restaurant is consistent with the intent of the General Plan because, in part, it will expand an eating and drinking establishment, will create both short-term construction jobs and an increase in permanent jobs, and will contribute to revitalization of the neighborhood.

ZONING ANALYSIS

At the time of Planning Commission hearing, the property was located within the C-28 Commercial Shopping District Zone. As of April 15, 2011, the site is zoned substantially the same as CN-2. In C-28 and CN-2, Fast Food Restaurants are designated as Conditionally Permitted Activities that are subject to Planning Commission review. In addition, Drive-Through facilities also require a Conditional Use Permit.

The existing facility has a Major Conditional Use Permit to cover the Fast-Food and Drive-Through facilities and this tear-down and rebuild constitutes a Major Revision (REV) to the permits.

Regular Design Review is also required for new or remodeled facilities in such cases. The proposal is consistent with these requirements. Findings required for approval are set forth in *Attachment B*.

ENVIRONMENTAL DETERMINATION

The Project is exempt from CEQA pursuant to CEQA Guideline sections 15301 (Existing Facilities); 15302 (Replacement or Reconstruction); and/or 15183 (Projects Consistent with Community Plan, General Plan or Zoning), each of which provides a separate and independent basis for CEQA compliance.

KEY ISSUES AND IMPACTS

The appellants’ concerns are shown in standard type in the following analysis under the heading APPELLANTS’ ISSUES, followed in italic paragraphs by staff analysis each commencing with “*Staff reply.*”

APPELLANTS' ISSUES

1. All issues raised in the administrative record for REV10-018, 4514 Telegraph Avenue, Oakland, CA, APN 013-1150-014-00.
2. All issues raised in the letters and correspondence attached as *Attachment "C"* previously submitted by appellants, which are incorporated herein by reference as though set forth in full.
3. All issues raised by or on behalf of the appellants at the Planning Commission hearing dated December 1, 2010.
4. All issues raised by or on behalf of the appellants through the submittal of written correspondence, electronic mail, public comments and/or telephonic, recorded or verbal comments to either the Planning Commission, the staff of the Community and Economic Development Agency, or other staff of the City of Oakland or otherwise documented in the administrative record.

***Staff reply.** The e-mails largely comment about the customers that the existing and planned restaurant bring to Temescal and to crime, gangsters, blight, panhandling, loiterers, with attendant noise and traffic. It is important for the reader to measure these arguments against the actual scale of about a 30% increase in the size of a long-existing McDonald's. The Police Department Crime Prevention staff reviewed the project prior to Planning Commission approval and did not find potential for an increase in blight or crime problems from this well-designed facility. This neighborhood McDonald's Restaurant has operated a drive-through for 33 years and the City's Permit Tracking System and other records show no substantial complaints or patterns of significant impacts. More specific issues are raised and addressed below.*

APPELLANTS' ISSUES

5. In approving the application, REV10-018, for a Revision to previously approved Major Conditional Use Permits (CM77-175 and CM90-483) and Regular Design Review, the Planning Commission substantially erred in its responsibility by issuing a Revision which included a Condition of Approval allowing operation of a 24 hour drive-through restaurant without adequate notice to the community or significant deliberation/rationale of any kind. In addition, this Condition of Approval was granted to an entity which has been operating a 24 hour drive-through restaurant in violation of its existing CUP for some years prior to approval of said hours on December 1, 2010.

This extension of operating hours is a significant change in scope and operating model, and yet was granted:

a.) **Without appropriate deliberation by the Planning Commission**

- Extension of hours was not deliberated at the December 1, 2010 meeting, and was only mentioned briefly by Commissioner Galvez, who voted no on that basis; the

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extension of hours was not mentioned at all in the December 1, 2010 Staff Report "Findings for Approval."

- The most substantive mention of the extended operating hours to be found in the entire Staff Report comes under "Effects on the Neighborhood" in the "Key Issues and Impacts" section of the project description, where the extension of hours is addressed thusly:

"Noise is anticipated to be substantially reduced before 10 p.m. and remain limited before 7 a.m., even with the fulfillment of the applicant's request for 24 hour operation of the drive-through ..."
- The fact that noise will be reduced after hours should be irrelevant to a decision on whether or not the drive-through should be allowed to operate 24 hours. Any noise/traffic/trash or other impact on the neighborhood generated by operation of the after-hours drive-through is a new, additional impact, meriting consideration in its own right. In the absence of a specific applicable code dealing with Fast Food drive-through hours, the burden should fall on the proprietor to show that this extension of services will not have negative effect, and on the Planning Commission to actively solicit feedback from those who may be impacted—residents of the surrounding neighborhood. The Staff Report does not include any evidence of or discussion related to these issues.
- In the absence of any rationale within the Staff Report or associated attachments distributed at the December 1, 2010 meeting, the primary anticipated benefit of extending hours would be creation of jobs, not an insignificant consideration in the current economic climate. This benefit is undermined, however, by the fact that the McDonald's had already been operating a 24 hour drive-through, in violation of its previous CUP, for some years and continuing up until approval of the revised CUP on December 1, 2010.
- At the very least extending the drive-through hours to be open 24 hours a day should have necessitated the need for a Traffic Impact Study if not a full Environmental Impact Study.

Staff reply: *The proposal for late night drive-through service was indeed covered by the Planning Commission (e.g. Commissioner Galvez's comment) and the staff report. The McDonald's Restaurant would create a sound wall between the drive through areas to the sides and rear, which could receive NO sound impacts because they are vacant at night (the utility building, the park and Hooper's empty building; all of these will be occupied during normal hours but not overnight-hours in the future). Likewise, across Telegraph Avenue, the vacant Kaspar's hotdog stand, and active businesses are not likely to be impacted in the middle of the night. Residential uses are beyond a radius which can receive 45 CNEL noise effects in their buildings, which is a standard for noise impact. Ambient noise from*

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Telegraph Avenue itself, the freeways and other sources is usually in this range, approximately 45 CNEL, even without McDonald's. The appellants' appeal and related e-mails do not confirm that anyone actually HEARD or was disturbed by noise from the ongoing (but not currently permitted) McDonald's 24 hour drive-through service. The act of legalizing this overnight service is not likely to increase it or raise noise effects above 45 CNEL as measured in homes.

Regarding traffic impacts, the drive-through overnight hours would occur when Telegraph Avenue and 45th Street are at their lowest traffic levels, usually traffic Level of Service (LOS) A or B (free flow of vehicles). City traffic engineering and police were consulted in preparing the staff report and no significant impacts were identified in the daytime or at night. Traffic Impact Studies and EIR's for such small projects are typically not performed, especially where, as here, there are not unusual or peculiar circumstances. Moreover, this is an existing facility, whose redesign will improve traffic operations. AC Transit in its August 12, 2010 letter supports the revisions, citing, in part, reduced congestion and improving pedestrian safety along Telegraph Avenue. Further discussion is on page 14.

APPELLANTS' ISSUES

b.) Permit was Granted without adequate notification being provided to the key stakeholders -- namely, the residents of the neighborhood.

- At the Planning Commission meeting of December 1, 2010, the Planning Commission attributed the relative lack of opposition to strong community outreach by the applicant. In regards to the neighboring residents, the appellants propose a different, simpler root cause for the "lack of opposition" to the extension of hours: They didn't know about it.
- The only notification to the local residents was a single 8.5" x 11" notice taped to a utility pole. A single copied letter distributed by a local resident in the weeks leading up to the December 1, 2010 meeting generated at least 18 emails strongly in opposition (see Attachment "A"). Only a few of these were included in the materials presented to the Planning Commission on December 1, 2010, and were only mentioned by Case Planner David Valeska in passing as essentially irrelevant to the redesign discussion. Many of these emails specifically cite the anticipated increase in trash, traffic, and noise as cause for opposition, but these concerns were never addressed by the Planning Commission or in the Staff Report in regards to the additional hours of operation.
- The neighboring residents are the primary stakeholders in any discussion regarding late-night commerce, as they will literally have to live with the decision and resulting impacts for years to come. Without their input, any discussion of positive/negative impacts of the proposal is incomplete.

Staff reply. *Public notice was legally sufficient for the public hearing. The public record verified in Planning files shows fulfillment of the legally specified notices including: posting of a 2 by 3 foot yellow public notice sign, standard for public hearings, in the McDonald's windows facing Telegraph Avenue, readable to passers-by. Public notices which were also mailed to owners of property within 300 feet of the property 17 days before the meeting. The staff report was on the City web-page along with the agenda. The hearing was not concealed. In fact, dozens of neighborhood residents attended the public hearing, sent e-mails before the hearing or sent other correspondence, indicating that they had indeed heard about the project. There were also earlier meetings between the applicant's team and representatives of neighborhood groups ULTRA and STAND, in an interactive process with the applicant over months. Therefore, public notice is legally adequate.*

Regarding replies to e-mails, the substantial majority of such comments were addressed in the staff report and staff presentation. The e-mails rarely diverged from the areas discussed in the staff report: drive-through location, noise, litter, late hours.

APPELLANTS' ISSUES

6. In approving the application, REV10-018, for a Revision to previously-approved Major Conditional Use Permits (CM77-175 and CM90-483) and Regular Design Review, the Planning Commission substantially erred in its responsibility, abused its discretion by making findings and conclusions that failed to accurately incorporate the entirety of the administrative record, had no supporting or evidentiary basis, and failed to correctly apply and enforce the existing Oakland Planning Code and established public policy of the City of Oakland.

As stated in the General Plan Analysis of the Planning Commission Staff Report of December 1, 2010, the drive-through element of the current facility is acceptable only because it was established before the LUTE element of the General Plan was enacted. What is not addressed, however, is why it is acceptable that the property be redesigned to highlight this feature in particular—the new design insulates the entire property on all sides with drive-through lanes, making it impossible to enter on foot from either Telegraph Avenue or 45th Street without crossing one or more interior vehicle drives. It is not surprising that the proprietor would want to increase visibility and capacity of the drive-through element—at the December 1, 2010 meeting he estimated that drive-through traffic accounted for 70% of his business. What is surprising is that after meeting with select local groups including ULTRA (Urbanists for a Livable Temescal Rockridge Area) and in full light of current General Plan guidance, the Planning Commission has approved a new design that is actually more antagonistic to pedestrians, increases drive-through impacts on the neighborhood, and weakens the concentration and continuity of the shopping frontage. The appellants feel that this signifies a lack of discretion on the part of the Planning Commission on the most basic level.

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Staff reply. *The drive-through was approved by past CUP's and in REV10-018 is only being repositioned in a more efficient and attractive design. Since the applicant commenced 24 hour operation of the drive-through prematurely, the with-project conditions and existing conditions are essentially the same. Comparing existing conditions and adding the project increases would be a slight expansion of operations from those previously allowed in the CUP's and from what is currently taking place at the site.*

With respect to driveway operations, persons cross commercial driveways throughout Temescal and nearby commercial streets e.g. at small shopping centers and drive-in businesses. The vehicles exiting these driveways are moving at slow speeds. Vehicles moving through a McDonald's drive-through are moving even slower. The appellants provide no information to show problems at the many McDonald's restaurants that have pedestrians crossing slow-speed drive-through lanes. Appropriate signage and paving materials will help delineate the crossings and increase pedestrian safety. The proposed revisions are an improvement to an existing condition, which would remain if the application were not approved. As previously stated, AC Transit supports the revisions, citing, in part, reduced congestion and improving pedestrian safety along Telegraph Avenue. Moreover, the City's Public Works Agency Transportation Services Division supports the application and has no significant concerns with the Project.

APPELLANTS' ISSUES

7. More specifically as noted below, the Planning Commission findings for approval of REV10-018 for a Revision to previously approved Major Conditional Use Permits (CM77-175 and CM90-483) and Regular Design Review, are faulty, contrary to the public interest and not legally sustainable.

A. DESIGN REVIEW

Inadequacy of Planning Commission Finding on Architectural Context

The adopted Planning Commission finding of December 1, 2010 is patently false. Aside from a few outliers, the vast majority of the architectural context on Telegraph Avenue between 51st Street and 40th Street consists of lot-line to lot-line buildings with facades directly at the front property line. The proposed project's architectural component takes up less than 1/4 of its parcel's area, and does not abut the front property line due to the imposition of a drive-through lane directly adjacent to the public right of way.

The relation of the proposed structure to others in the vicinity is also problematic, both in the current context and in the future context of the neighborhood as outlined by the general plan.

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Staff reply. *The new McDonald's façade is indeed different than the two-story commercial blocks to the east which typify many Temescal commercial businesses. However, there is already a McDonald's restaurant on the site which can remain indefinitely. Staff views the design as superior to what is currently on the site and that it meets applicable criteria of City of Oakland Design Guidelines. Prior to the project being heard before the Planning Commission staff worked diligently with the applicant through over a dozen revisions to improve the quality of both the site design and the architectural style of the building, resulting in the project that was approved by the Planning Commission. The proposed McDonald's is an enhancement over what has already been permitted and meets the intents and goals of the City of Oakland to continually try to improve upon the design quality of the urban environment. Since the Planning Commission's decision, staff attempted to facilitate a resolution of the appeal and developed some alternative site designs, but the parties could not agree (see Attachment F).*

Staff notes that the appellant issue of pedestrians crossing a drive-through lane is exaggerated. For instance, both McDonald's restaurants in Alameda have pedestrian doors crossing the drive-through lanes into the restaurants, near the order window. Because traffic is slow or stopped and visibility is planned to be good, both pedestrians and drivers can avoid problems. Pedestrians cross every commercial driveway in Temescal now, so there is precedent.

APPELLANTS' ISSUES

Inadequacy of Planning Commission Finding Regarding Quality & Character of Design

The character of the proposed design is inherently at odds with the goals of private and public investment in the area. Effectively, the design is a do-over of an existing use of the parcel which is in conflict with current LUTE element of the General Plan, which explicitly calls for pedestrian-oriented development in the area.

Telegraph Avenue is a "Growth and Change" corridor under the LUTE designation, but the proposed project does not offer significant growth. In fact the project presents a long-term liability for growth by allowing major investment in new construction of a design which is out of step with long-term goals for the neighborhood. There are long-term consequences for permitting this level of investment in a project which is profitable but underutilizes a 3/4 acre lot. Particularly, it can be expected that this low-density anti-pedestrian design will persist many decades into the future while the rest of the neighborhood grows around it in ways more consistent with the LUTE. In short, the project amounts to complete reconstruction of an anachronism.

Staff reply. *The applicant cannot be compelled to replace the existing 33-year-old restaurant using less than 1/8 of the site with a Temescal-style two-story building out to the sidewalk which would cost much more than a replacement McDonald's. Design findings are based on a context of 2 story Temescal buildings which were built before*

1950 when construction costs were lower and these spaces could out-compete new construction on rent levels for commercial tenants. Staff maintains that the low wall, trellis and pilasters near the sidewalk, around the drive-through, create a visual volume which, in a deconstructed manner, echoes the street wall of Temescal buildings further east on Telegraph Avenue, without literally mimicking them. Staff maintains that design guidelines were meant to be interpreted, and that the findings are met.

APPELLANTS' ISSUES

Inadequacy of Planning Commission Finding For General Plan Consistency

The adopted Planning Commission finding of December 1, 2010 is a product of incomplete analysis and a piecemeal view of the General Plan and Zoning Code, rather than an integrated perspective. The Staff Report readily admits that the LUTE mandates for pedestrian-oriented development are being disregarded. Further, when analyzed together, the General Plan's "Growth and Change" mandate, combined with the C-28 zone's current 35-foot (and pending 60-foot) height limit and dense allowances for lot coverage, the conclusion can only be that the proposed project is of a density and scale that is radically smaller than what the City has envisioned for the future of the Temescal neighborhood along Telegraph avenue.

Staff reply. As noted in the prior response, the shape of the new McDonald's would more fully respond to the Temescal design context than the current 1970's restaurant. Staff notes that the intensity of the Zoning Regulations and General Plan and those of the Design guidelines are not regimentation; e.g. the Temescal shopping center does not follow each point of the appellant's citation, yet it is an effective urban infill development which complements Temescal and is well patronized. The new McDonald's would not prohibit other property owners in the area from building 35 foot or taller buildings at greater densities. In no planning area of the City is each property built out at maximum allowed density, and such neighborhoods could be drab if too uniform.

B. CONDITIONAL USE PERMIT (GENERAL)

APPELLANTS' ISSUES

Inadequacy of Planning Commission Finding For Neighborhood Compatibility

The adopted Planning Commission finding of December 1, 2010 completely ignores requirement in Section 17.134.050.A which states the "location, size, design, and operating characteristics of the proposed development" "will not adversely affect ... appropriate development of abutting properties and the surrounding neighborhood."

Omitting these considerations is unacceptable, particularly considering the project site's current role as the largest component of a pedestrian-averse gap that separates the

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northern end of the Temescal commercial area from new developments to the south. Allowing this project to proceed as permitted will maintain the current interruption in the neighborhood fabric at the 45th Street intersection. This situation inherently threatens the “appropriate development of abutting properties and the surrounding neighborhood” as specified in the code. The corner of 45th Street and Telegraph Avenue is fraught with design that is anathema to the General Plan and LUTE. It is likely that this problem has led to the lower level of investment in new business creation south of 45th Street. Allowing the proposed project to be built without addressing this issue will maintain this disincentive for neighborhood improvements and aesthetic unity.

***Staff reply.** There is clearly nothing in the applicant's proposal that is “adverse,” “averse,” or “threatening” resulting from an improved design for an existing business. Other property owners in the area are free to take advantage of zoning limits in Temescal without depending on McDonald's to abandon a 33-year-old successful business to do the same.*

APPELLANTS' ISSUES

Inadequacy of Planning Commission Finding For Convenient and Functional Environment

The adopted Planning Commission finding of December 1, 2010 focuses on aesthetic improvements that have nothing to do with “convenient access.” While aesthetic improvements to the site could make it a more attractive dining destination, the functional aspects of the redesign are more prohibitive to walk-in patrons than the current design. Previously, drive-through traffic was separated in large part from the facility, both entering and exiting on Telegraph Avenue at the north side of the lot. The proposed site will be closely bordered in front and on both sides by drive-through lanes, and patrons entering from the sidewalk will now have to cross the drive-through and/or other interior traffic lanes in order to enter the restaurant. In addition, the parking spaces are to be reduced from 44 to 21, reducing that particular convenience by more than 50% relative to the existing facility.

***Staff reply:** Walking across a very-low-speed drive-through lane is likely as safe as walking across many of the driveways in Temescal business district. The appellants have asserted but never demonstrated that the design is “prohibitive” for walk-in patrons. Many restaurants, banks, pharmacies and other drive-through facilities in Oakland (including Temescal) have the same design without “prohibitive” effects. Regarding reduction in parking, the 21 spaces shown exceed the parking requirement under the Oakland Planning Code, as noted in the Planning Commission staff report. The reduced parking allows more building frontage and more landscaping, two things that appellants have requested.*

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APPELLANTS' ISSUES**Inadequacy of Planning Commission Finding For Successful Operations of Surrounding Area**

As previously stated above, the adopted Planning Commission finding of December 1, 2010 ignores the functional intention of the redesign, which is clearly to increase drive-through volume, and is therefore misleading.

***Staff reply:** While the redesign may increase the drive-through client service, it also provides an enhanced experience for patrons who dine in the future building and a more attractive image to the streetscape. This building will be a meeting place for local youth sports teams post-game (like many inexpensive restaurants in the City) and will indeed be used for limited social gatherings.*

APPELLANTS' ISSUES**Inadequacy of Planning Commission Finding For General Plan Consistency**

The adopted Planning Commission finding of December 1, 2010 has been demonstrated in rebuttals above to be based on inappropriate interpretations of the General Plan and Zoning criteria, incomplete analysis of impact on the pedestrian experience of the neighborhood, and short-sighted conclusions about the impacts the project may have on the future development of the Telegraph Avenue commercial corridor.

***Staff reply:** The rebuild of McDonald's will not reach ultimate Temescal build out density but will contribute to the development of the area by a \$3 million investment and a more aesthetic modern design. Staff replies on the pedestrian experience are listed above; there are no significant adverse pedestrian effects. Regarding the General Plan consistency, the staff report previously noted that the project is consistent with LUTE Policy I/C1.2 to retain existing businesses and jobs; LUTE Policy I/C3.4, to strengthen neighborhood vitality, and page 222 of LUTE for revitalization and improvement to key properties, to improve facades and the area's physical appearance. The private rebuilding of McDonald's achieves these General Plan objectives without necessitating expenditure of public funds. Note that McDonald's would be one of the largest private investments in Temescal in the past decade, revitalizing Telegraph Avenue frontage in the area.*

C. CONDITIONAL USE PERMIT (FAST FOOD FACILITIES)**APPELLANTS' ISSUES****Inadequacy of Finding For Access, Ingress & Egress for Fast Food Restaurants**

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The adopted Planning Commission finding pre-supposes that the traffic situation at the site has been acceptable since the restaurant's inception, and omits any analysis of the potential impact on traffic from the proposed permit for 24 hour drive-through use. Because the applicant is currently violating their CUP and illegally operating a 24 hour drive-through without a permit, appellants have had the opportunity to see adverse impacts from all-night use.

These impacts include overflow of drive-through customers' vehicles onto Telegraph Avenue, impeding the flow of traffic in a way that is particularly dangerous late at night and on weekend nights when drivers tend to use excessive speed and/or operate their vehicles under the influence. The City Traffic Engineer did not submit any written findings or analysis of this potential impact.

Staff reply: *The Planning Commission acted correctly in finding no significant traffic or other impacts from adding overnight hours to the CUP-approved drive-through. Prior to the December 1, 2010 Planning Commission hearing, the Public Works/Transportation staff reviewed the McDonald's Project at 4514 Telegraph Avenue, as approved by the Planning Commission, and found that it would not have a significant impact on traffic/circulation on Telegraph Avenue or 45th Street, or the surrounding area. This is based upon Public Works/Transportation staff's knowledge of the area, site visit, review of submitted plans, familiarity with traffic impact studies for other projects in the area (particularly, AC Transit's Bus Rapid Transit), discussions with AC Transit and other traffic consultants. As previously acknowledged, the overnight operations currently are an existing condition and the expansion and redesign of the facility are not expected to significantly alter the existing traffic/circulation. Likewise, there are no noise impacts, since McDonald's does not use a sound system for drive-through aimed at or which would reach residential areas above the ambient approximately 45 CNEL urban background noise (freeway, etc.). There are no adjacent residential uses next to McDonald's. Hooper's, Kaspar's and certain other commercial buildings are vacant. At night, the school playground and the utility building on 45th Street are each vacant. There are no significant project and/or cumulative noise or traffic impacts.*

APPELLANTS' ISSUES

Inadequacy of Planning Commission Finding on Vacated/Abandoned Facilities

The adopted Planning Commission finding is inadequate because it fails to address the fact that demolishing the McDonald's restaurant, rebuilding it, and reopening it many months later is tantamount to opening an entirely new restaurant. The high-risk period of four years, mentioned in section 17.102.210(D) can be construed to re-start upon the reopening. Factors contributing to the mentioned high-risk period may include: potential pressures of a new and different debt load on the operator, the need to rehire and retrain

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an entirely new staff, and loss of existing clientele during the construction period. Staff fails to address any of these renewed risk factors.

***Staff reply:** Condition 33 in the Planning Commission approval provides that the applicant voluntarily agreed to provide such protection. However, the Planning Commission believed that a McDonald's restaurant, in place for 33 years and owned by a local business that has three other Oakland McDonald's restaurants, is at very low risk of closing after a \$3 million rebuild. The appellants' assertion of risk of closure does not appear valid based on a reasonable observation of the applicant's other 3 Oakland sites or for other McDonald's restaurants in the East Bay. The applicant wants to expand by a quarter in floor area because business in Temescal is good and the future is favorable, no closure is likely.*

D. CONDITIONAL USE PERMIT (DRIVE THROUGH FACILITIES)

APPELLANTS' ISSUES

inadequacy of Planning Commission Finding For Continuous Building Facades

The adopted Planning Commission finding is inadequate and misleading. The proposed design creates no "continuous wall of building facade" along Telegraph Avenue, as the facade of the building is set back from the sidewalk. The C-28 zone calls for no setbacks along commercial corridors. Additionally, the setback proposed is comprised mostly of a drive-through lane which would be directly adjacent to the sidewalk. This potentially creates what would be more accurately described as a "continuous wall of cars" next to pedestrian traffic on the Telegraph Avenue sidewalk, which is in keeping with neither the spirit nor the letter of the C-28 zone description, nor, furthermore, the General Plan's intent for the area.

***Staff reply:** Appellants omit the fact that the new design includes a Craftsman-style trellis system over and around the drive-through, with a low wall, which frames a space like a building, only a few feet from the Telegraph Avenue sidewalk. Staff finds that the Planning Commission did not err in its decision that the approved design was the best available, as over a dozen design options were explored during the application review process.*

APPELLANTS' ISSUES

Inadequacy of Planning Commission Finding Strengthening Commercial Facilities

The adopted Planning Commission finding is incorrect in stating that concentration and continuity of commercial facilities at ground level will be strengthened by the new design, which alters the frontage in two ways: setting the actual building farther back

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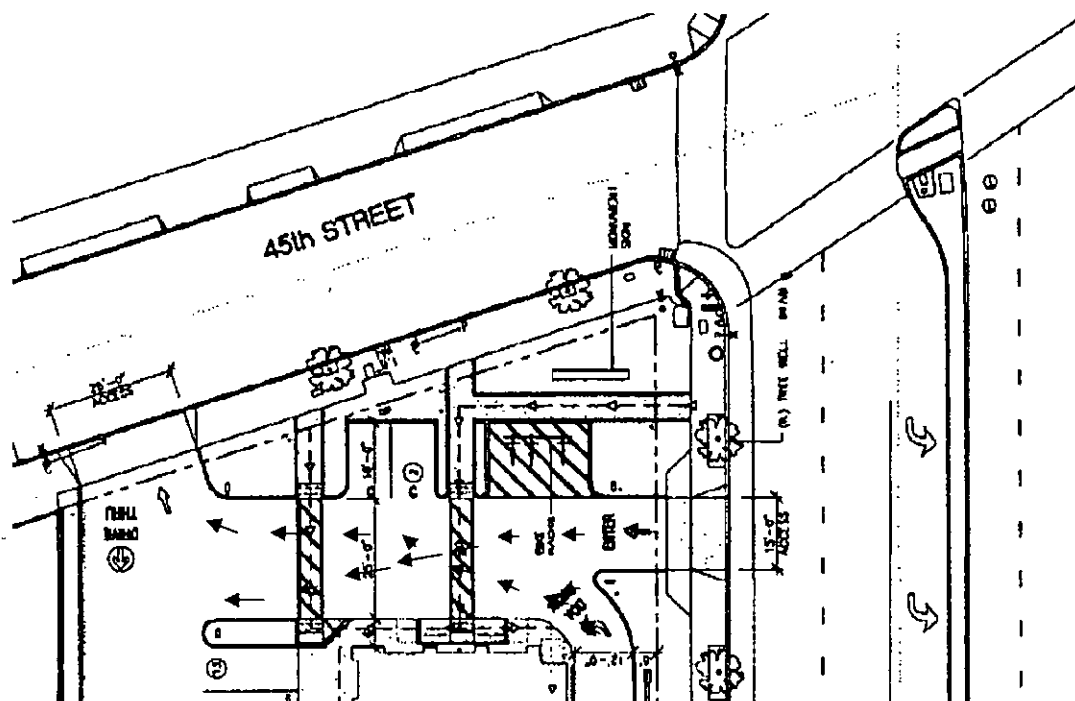
from Telegraph Avenue, and placing a drive-through lane between the sidewalk and building for almost the entire length of the lot, requiring pedestrians to cross it in order to enter the restaurant. The finding is also inadequate because it fails to acknowledge that many of the mentioned “vehicular-oriented businesses” in the area are themselves non-conforming with the General Plan’s outline for the Telegraph Avenue corridor. Further, Staff is incorrect to describe the site as being “at the edge of the Temescal district” in a “transitional” area, when the generally accepted border of Temescal is at 40th Street, over one quarter mile away. The site could be more accurately described as being located “almost perfectly in the middle” of the Temescal business district (40th – 51st Streets). As such, the existing site is part of a gap in the concentration and continuity of commercial facilities at ground level, and the redesign exacerbates this problem.

***Staff reply:** A visual inspection of Telegraph Avenue confirms that McDonalds is near the transition point to lower-intensity frontages on the path to Koreatown/Northgate. However, the appellants misrepresent the McDonald's redesign as being set far back from the street. The Planning Commission approved a design which included a trellis and wall system over the drive-through, a few feet from the Telegraph Avenue sidewalk, which frames a building-like space. The back half of the lot is vacant but the central front part of the lot would be filled with the main McDonalds building and this semi-enclosed drive-through. This is a valid transitional building element along the streetscape.*

APPELLANTS' ISSUES

Inadequacy of Planning Commission Finding on Traffic Circulation

The adopted Planning Commission finding is inadequate as it relies on unsubstantiated assertions based on the existing configuration and fails to consider the specific impacts of the changes to this configuration that are reflected in the proposed design. For instance, the one-way-only entrance on Telegraph Avenue now forces inbound cars to immediately merge with outgoing drive-through traffic as it moves to the rear of the property. No specifics are given as to how this would be handled in order to avoid having waiting vehicles back up on the sidewalk and into Telegraph Avenue. Telegraph at 45th Street is an important (and already problematic) intersection, serving also as the merge point for Shattuck and Telegraph Avenues, yet, as noted in the Staff Report, no input was provided by the Oakland Police Department.



Staff reply: The Planning Commission correctly found that eliminating the 46th Street existing driveway (as supported by AC Transit) and retaining a 45th Street driveway would provide for sufficient traffic flow. Please note that entry from Telegraph is a back-up and alternative, more distant from the order window, than the more smooth entry on 45th Street. Since drive-through window exiting is low-speed the spaces between vehicles will be sufficient for merging entry vehicles to share the driveway. However, the diagram above shows that the driveway is DOUBLE wide and in principle entering cars and drive-through exiting cars pass each other in PARALLEL without having to share a lane. As noted above, this design was also reviewed by City Public Works Transportation Services Division and they concluded that the design is acceptable and not problematic. Staff reviewed several alternative designs which were not as efficient, and continues to find the Planning Commission decision reasonable and supportable.

APPELLANTS' ISSUES

Inadequacy of Planning Commission Finding on Parking

The adopted Planning Commission finding is inadequate as it fails to account for or study traffic overflow at the site during late night drive-through business hours. As the applicant has for some time illegally operated a 24 hour drive-through at the site without a permit to do so, appellants have witnessed after-hours customers' cars overflowing into Telegraph Avenue on multiple occasions. It can be inferred that should the facility be

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empowered with a legal 24 hour operating permit, the owners will no longer feel inhibited about boldly advertising the facility's 24 hour status, thus increasing spillover.

***Staff reply:** Late-night stacking onto Telegraph Avenue is very unlikely. The customer demand for any business drops off substantially after 11 p.m. and further drops by 2 or 3 a.m. At those late hours there is less traffic generated by other businesses, less pedestrian and bus traffic and most families that patronize a family restaurant are in their homes, with children and adults sleeping. The Planning Commission correctly found that this is not a significant impact.*

STAFF SUMMARY

The appellants claim existing and future significant adverse effects on their residences from McDonald's expansion. If major effects of the Temescal McDonald's were not present in the past 33 years since first CUP approval, this small addition will not increase effects to a significant level, as shown by noise and traffic discussion in this report. Like the Planning Commission's review, the staff review finds the differences between the existing McDonald's (which can stay indefinitely under 2 approved CUP's) and the proposal to be negligible, and, indeed, that the proposal has advantages over the existing facility and meets all applicable planning-related requirements.

SUSTAINABLE OPPORTUNITIES

Economic: Approval of the proposed expansion of Fast Food and Drive-Through Activity would allow the applicant to increase economic activity by one-fifth to one-third, providing tax and employment benefits to the City.

Environmental: Preservation of business locations in already developed urban environments reduces pressure to build on agricultural and other undeveloped land.

Social Equity: The applicant, a former local police officer, requests the opportunity to modernize and expand his 4th McDonalds restaurant. The applicant claims that an African American owned business in North Oakland is beneficial to the community, and that social equity requires the permit be granted. Approval would support his request.

DISABILITY AND SENIOR CITIZEN ACCESS

The Building Division of the Community and Economic Development Agency would require any new construction to conform to the Americans with Disability Act (ADA) in all provisions to ensure equal access to the facility.

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STAFF RECOMMENDATION AND RATIONALE

Staff recommends that the City Council adopt the attached Resolution denying the appeal, thereby upholding the Planning Commission's approval of the project for the following reasons: 1) The Planning Commission's decision was based on a thorough review of all pertinent aspects of the project and consideration of the objections raised by the appellant; 2) The project and approval of the project comply with all applicable general plan policies and zoning regulations and review procedures; 3) The appellant has failed to demonstrate that there was an error or abuse of discretion in the Planning Commission's decision or that the Planning Commission's decision is not supported by substantial evidence in the administrative record; and 4) The project meets applicable CEQA exemption requirements and there are no exceptions that could defeat use of the exemption.

ALTERNATIVE CITY COUNCIL ACTIONS

The City Council has the option of taking one of the following alternative actions instead of the recommended action above:

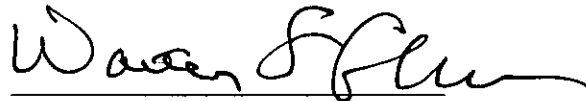
1. Uphold the appeal and reverse the Planning Commission's decision, thereby denying the project. This option would require the City Council to continue the item to a future hearing so that staff can prepare and the Council have an opportunity to review the proposed findings and resolution for denial.
2. Uphold the Planning Commission's decision, but impose additional conditions on the project and/or modify the project (see *Attachment F*, Alternative Site Designs).
3. Continue the item to a future hearing for further information or clarification.
4. Refer the matter back to the Planning Commission for further consideration on specific issues/concerns of the City Council. Under this option, the item would be forwarded back to the City Council with a recommendation after review by the Planning Commission.

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ACTION REQUESTED OF THE CITY COUNCIL

1. Affirm the Planning Commission's environmental determination that the project is exempt from CEQA review pursuant to CEQA Guidelines sections 15301 (Existing Facilities); 15302 (replacement or Reconstruction); and/or 15183 (Projects Consistent with Community Plan, General Plan or Zoning), each of which provides a separate and independent basis for compliance.
2. Adopt the attached Resolution denying the appeal thereby upholding the Planning Commission's approval of the project.

Respectfully submitted,

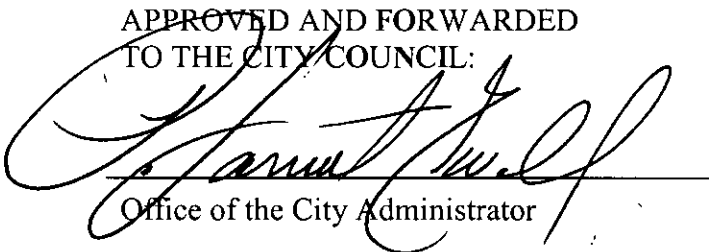


Walter S. Cohen, Director
Community and Economic Development Agency

Reviewed by:
Scott Miller, Zoning Manager

Prepared by:
David Valeska, Planner II

APPROVED AND FORWARDED
TO THE CITY COUNCIL:



Office of the City Administrator

ATTACHMENTS:

- A. Appeal (A10-324) to City Council of the Planning Commission Decision
- B. Adopted Planning Commission Staff Report- December 1, 2010
- C. Correspondence in Opposition
- D. Correspondence in Support
- E. Maps and Photos
- F. Alternative Site Designs

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2011 APR 21 PM 3:00

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

A RESOLUTION DENYING THE APPEAL (CASE NO. A10-324), THEREBY SUSTAINING THE PLANNING COMMISSION'S DECISION APPROVING REVISIONS (REV10-018) TO A MAJOR CONDITIONAL USE PERMIT FOR A MCDONALD'S AT 4514 TELEGRAPH AVENUE FOR FAST FOOD AND DRIVE-THROUGH COMMERCIAL ACTIVITY

WHEREAS; the applicant Ed Smith ("Applicant") owns and operates a Fast Food and Drive-Through Commercial Facility (McDonalds Restaurant) which was built and opened at 4514 Telegraph Avenue approximately thirty-four years ago, and which in 1977 and 1991 received Conditional Use Permits; and

WHEREAS, on September 13, 2010 Mr. Smith filed application REV10-018 to rebuild and expand the facility, including repositioning of the Drive-Through facility and parking, and to expand the activity to 24 hours (Project); and

WHEREAS, on December 1, 2010, at a duly noticed public hearing, the Planning Commission took testimony, closed the hearing and voted to approve the Project ; and

WHEREAS, on December 13, 2010, twenty-three (23) residents timely filed an appeal of the Planning Commission decision to approve the Project; and

WHEREAS, after giving due notice to the Appellants, the Applicant, all interested parties, and the public, the Appeal came before the City Council in a duly noticed public hearing on May 3, 2011; and

WHEREAS, the Appellants, Applicant and all other interested parties were given the opportunity to participate in the public hearing by submittal of oral and written comments; and

WHEREAS, the public hearing on the Appeal was closed by the City Council on May 3, 2011; now, therefore, be it

RESOLVED: The City Council independently finds and determines that this Resolution complies with the California Environmental Quality Act (CEQA), as the Project is exempt from CEQA pursuant to CEQA Guideline sections 15301 (Existing Facilities); 15302 (Replacement or

Reconstruction); and/or, 15183 (Projects Consistent with Community Plan, General Plan or Zoning); each of which provides a separate and independent basis for CEQA compliance; and be it

FURTHER RESOLVED: That the City Council, having independently heard, considered, and weighed all the evidence in the record presented on behalf of all parties and being fully informed of the Application, the Planning Commission's decision, and the Appeal, finds that the Appellant has not shown, by reliance on evidence in the record, that the Planning Commission's decision was made in error, or that there was an abuse of discretion by the Commission, and/or that the Commission's decision was not supported by sufficient, substantial evidence in the record. This decision is based, in part, on the May 3, 2011 City Council Agenda Report and the December 1, 2010 Planning Commission Report, which are hereby incorporated by reference as if fully set forth herein. Accordingly, the Appeal is denied, the Planning Commission's decision approving the Project is sustained and the application is approved; and be it

FURTHER RESOLVED: That, in support of the City Council's decision to deny the appeal of the Project, the City Council affirms and adopts as its findings and determinations the May 3, 2011 City Council Agenda Report and the December 1, 2010 Planning Commission Report [including without limitation the discussion, analysis, findings, conclusions and conditions of approval (each of which is hereby separately and independently adopted by this Council in full)]; and be it

FURTHER RESOLVED: That the record before this Council relating to this Project application and appeal includes, without limitation, the following:

1. the Project application, including all accompanying maps and papers;
2. all plans submitted by the Applicant and his representatives;
3. all final staff reports, decision letters and other documentation and information produced by or on behalf of the City.
4. all oral and written evidence received by the City staff, Planning Commission and City Council before and during the public hearings on the application and appeal;
5. all matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan and the General Plan Conformity Guidelines; (b) Oakland Municipal Code, including, without limitation, the Oakland real estate regulations; (c) Oakland Fire Code; (d) Oakland Planning Code; (e) other applicable City policies and regulations; and, (f) all applicable state and federal laws, rules and regulations; and be it

FURTHER RESOLVED: That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively: (a) Community & Economic Development Agency, Planning & Zoning

Division, 250 Frank H. Ogawa Plaza, Suite 2114, Oakland, CA.; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, CA; and be it

FURTHER RESOLVED: That the recitals contained in this resolution are true and correct and are an integral part of the City Council's decision.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2011

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF
AND PRESIDENT REID

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

LEGAL NOTICE:

ANY PARTY SEEKING TO CHALLENGE THIS FINAL DECISION IN COURT MUST DO SO WITHIN NINETY (90) DAYS OF THE DATE OF THE ANNOUNCEMENT OF THIS DECISION UNLESS A SHORTER PERIOD APPLIES.



CITY OF OAKLAND
REQUEST FOR APPEAL OF DECISION TO
PLANNING COMMISSION OR CITY COUNCIL
(REVISED 8/14/02)

PROJECT INFORMATION

Case No. of Appealed Project: REV10-08-REV10-018
Project Address of Appealed Project: 4514 Telegraph Ave. (APN 013-1150-014-00)

APPELLANT INFORMATION:

Printed Name: John V. Gatewood Phone Number: 510-655-8835
Mailing Address: 360 50th St. Alternate Contact Number: 510-459-8597
City/Zip Code Oakland, CA 94609 Representing:

An appeal is hereby submitted on:

AN ADMINISTRATIVE DECISION (TO THE CITY PLANNING COMMISSION)

YOU MUST INDICATE ALL THAT APPLY:

- Approving an application for an Administrative Project
Denying an application for an Administrative Project
Administrative Determination or Interpretation by the Zoning Administrator
Other (please specify)

Pursuant to the Oakland Municipal and Planning Codes listed below:

- Administrative Determination or Interpretation (OPC Sec. 17.132.020)
Determination of General Plan Conformity (OPC Sec. 17.01.080)
Design Review (OPC Sec. 17.136.080)
Small Project Design Review (OPC Sec. 17.136.130)
Minor Conditional Use Permit (OPC Sec. 17.134.060)
Minor Variance (OPC Sec. 17.148.060)
Tentative Parcel Map (OMC Section 16.304.100)
Certain Environmental Determinations (OPC Sec. 17.158.220)
Creek Protection Permit (OMC Sec. 13.16.450)
Creek Determination (OMC Sec. 13.16.460)
Hearing Officer's revocation/impose or amend conditions (OPC Sees. 15.152.150 & 15.156.160)
Other (please specify)

A DECISION OF THE CITY PLANNING COMMISSION (TO THE CITY COUNCIL)
Granting an application to: OR Denying an application to:

Franchise Realty Interstate Company

(continued on reverse)

L:\Zoning Forms\Fonns - Microsoft Word format\Appeal application (08-14-02).doc 8/14/02

Attachment A: Appeal (A10-324) to City Council of the Planning Commission Decision

(Continued)

A DECISION OF THE CITY PLANNING COMMISSION (TO THE CITY COUNCIL)

YOU MUST INDICATE ALL THAT APPLY:

Pursuant to the Oakland Municipal and Planning Codes listed below:

- Major Conditional Use Permit (OPC Sec. 17.134.070)
- Major Variance (OPC Sec. 17.148.070)
- Design Review (OPC Sec. 17.136.090)
- Tentative Map (OMC Sec. 16.32.090)
- Planned Unit Development (OPC Sec. 17.140.070)
- Environmental Impact Report Certification (OPC Sec. 17.158.220F)
- Rezoning, Landmark Designation, Development Control Map, Law Change (OPC Sec. 17.144.070)
- Revocation/impose or amend conditions (OPC Sec. 17.152.160)
- Revocation of Deemed Approved Status (OPC Sec. 17.156.170)
- Other (please specify) _____

An appeal in accordance with the sections of the Oakland Municipal and Planning Codes listed above shall state specifically wherein it is claimed there was an error or abuse of discretion by the Zoning Administrator, other administrative decisionmaker or Commission (Advisory Agency) or wherein their/its decision is not supported by substantial evidence in the record, or in the case of Rezoning, Landmark Designation, Development Control Map, or Law Change by the Commission, shall state specifically wherein it is claimed the Commission erred in its decision.

You must raise each and every issue you wish to appeal on this Request for Appeal Form (or attached additional sheets). Failure to raise each and every issue you wish to challenge/appeal on this Request for Appeal Form (or attached additional sheets), and provide supporting documentation along with this Request for Appeal Form, may preclude you from raising such issues during your appeal and/or in court.

The appeal is based on the following: *(Attach additional sheets as needed.)*

Please see attached.

Supporting Evidence or Documents Attached. *(The appellant must submit all supporting evidence along with this Appeal Form.)*

*Signature of Appellant or Representative of
 Appealing Organization*

December 13, 2010

Date

Date/Time Received Stamp Below:

8/14/02

Below For Staff Use Only

Cashier's Receipt Stamp Below:

Appeal of Planning Commission Decision to City Council
Case File No. REV10-018; 4514 Telegraph Avenue (APN 013-1150-014-00)

ATTACHMENT "A" Additional Appellants

Max Allstadt (Spoke at December 1st Planning Commission Meeting)
Tim Anderson (Contributed to Appeal Filing Fee)
Jonathan Bair (Contributed to Appeal Filing Fee)
Paul Burt (Emailed in Opposition)
Yolanda Calderon (Emailed in Opposition)
Tom Clifford (Emailed in Opposition)
Colin Dentel-Post (Contributed to Appeal Filing Fee)
Mark Dieter (Contributed to Appeal Filing Fee)
Diana Ghermann (Emailed in Opposition & Contributed to Appeal Filing Fee)
Justin Homer (Contributed to Appeal Filing Fee)
Edith Irons (Contributed to Appeal Filing Fee)
Tamara Johnston (Emailed in Opposition & Contributed to Appeal Filing Fee)
Hiroko Kurihara (Contributed to Appeal Filing Fee)
Joan Lichterman (Contributed to Appeal Filing Fee)
Mick Mize (Emailed in Opposition)
Grace Park-Bradbury (Contributed to Appeal Filing Fee)
Alexander Quine (Contributed to Appeal Filing Fee)
Joyce Roy (Contributed to Appeal Filing Fee)
Rebecca Saltzman (Contributed to Appeal Filing Fee)
Rebecca Schneider (Contributed to Appeal Filing Fee)
Daniel Schulman (Contributed to Appeal Filing Fee)
Josh Thorp (Emailed in Opposition & Contributed to Appeal Filing Fee)
Margi Waid (Contributed to Appeal Filing Fee)
Christopher Waters (Contributed to Appeal Filing Fee)
Jacob Wegmann (Contributed to Appeal Filing Fee)
Hilary Yothers (Contributed to Appeal Filing Fee)

ATTACHMENT "B"

ISSUES RAISED

1. All issues raised in the administrative record for REV10-018, 4514 Telegraph Avenue, Oakland, CA, APN 013-1150-014-00.
2. All issues raised in the letters and correspondence attached as Attachment "C" previously submitted by appellants, which are incorporated herein by reference as though set forth in full.
3. All issues raised by or on behalf of the appellants at the Planning Commission hearing dated December 1, 2010.
4. All issues raised by or on behalf of the appellants through the submittal of written correspondence, electronic mail, public comments and/or telephonic, recorded or verbal comments to either the Planning Commission, the staff of the Community and Economic... Development Agency, or other staff of the City of Oakland or otherwise documented in the administrative record.
5. In approving the application, REV10-018, for a Revision to previously approved Major Conditional Use Permits (CM77-175 and CM90-483) and Regular Design Review, the Planning Commission substantially erred in its responsibility by issuing a Revision which included a Condition of Approval allowing operation of a 24 hour drive-through restaurant without adequate notice to the community or significant deliberation/rationale of any kind. In addition, this Condition of Approval was granted to an entity which has been operating a 24 hour drive-through restaurant in violation of its existing CUP for some years prior to approval of said hours on December 1, 2010. This information is common knowledge in the neighborhood, is attested to by the appellants, and is readily offered by the applicant's employees to customers upon inquiry. It is further evidenced by the age-worn 24 hour signs in place for years prior to December 1, 2010, and still on display now. In addition, the site's 24 hour operation of its drive-through was communicated to Staff by concerned neighbors well in advance of the December 1, 2010 hearing.

This extension of operating hours is a significant change in scope and operating model, and yet was granted:

a.) Without appropriate deliberation by the Planning Commission

- Extension of hours was not deliberated at the December 1, 2010 meeting, and was only mentioned briefly by Commissioner Galvez, who voted no on that basis; the extension of hours was not mentioned at all in the December 1, 2010 Staff Report "Findings for Approval."
- The most substantive mention of the extended operating hours to be found in the entire Staff Report comes under "Effects on the Neighborhood" in the "Key Issues

and Impacts" section of the project description, where the extension of hours is addressed thusly:

"Noise is anticipated to be substantially reduced before 10 pm and remain limited before 7am, even with the fulfillment of the applicant's request for 24 hour operation of the drive-through ..."

- The fact that noise will be reduced after hours should be irrelevant to a decision on whether or not the drive-through should be allowed to operate 24 hours. Any noise/traffic/trash or other impact on the neighborhood generated by operation of the after-hours drive-through is a new, additional impact, meriting consideration in its own right. In the absence of a specific applicable code dealing with Fast Food drive-through hours, the burden should fall on the proprietor to show that this extension of services will not have negative effect, and on the Planning Commission to actively solicit feedback from those who may be impacted—residents of the surrounding neighborhood. The Staff Report does not include any evidence of or discussion related to these issues.
- In the absence of any rationale within the Staff Report or associated attachments distributed at the December 1, 2010 meeting, the primary anticipated benefit of extending hours would be creation of jobs, not an insignificant consideration in the current economic climate. This benefit is undermined, however, by the fact that the McDonald's had already been operating a 24 hour drive-through, in violation of its previous CUP, for some years and continuing up until approval of the revised CUP on December 1, 2010.
- At the very least extending the drive-through hours to be open 24 hours a day should have necessitated the need for a Traffic Impact Study if not a full Environmental Impact Study.

b.) **Without adequate notification being provided to the key stakeholders – namely, the residents of the neighborhood.**

- At the Planning Commission meeting of December 1, 2010, the Planning Commission attributed the relative lack of opposition to strong community outreach by the applicant. In regards to the neighboring residents, the appellants propose a different, simpler root cause for the "lack of opposition" to the extension of hours: They didn't know about it.
- The only notification to the local residents was a single 8.5" x 11" notice taped to a utility pole. A single copied letter distributed by a local resident in the weeks leading up to the December 1, 2010 meeting generated at least 18 emails strongly in opposition (see Attachment "C"). Only a few of these were included in the materials presented to the Planning Commission on December 1, 2010, and were only mentioned by Case Planner David Valeska in passing as essentially irrelevant to the redesign discussion. Many of these emails specifically cite the anticipated increase in trash, traffic, and noise as cause for opposition, but these concerns were never addressed by the Planning Commission or in the Staff Report in regards to the additional hours of operation.

- The neighboring residents are the primary stakeholders in any discussion regarding late-night commerce, as they will literally have to live with the decision and resulting impacts for years to come. Without their input, any discussion of positive/negative impacts of the proposal is incomplete.
6. In approving the application, REV10-018, for a Revision to previously-approved Major Conditional Use Permits (CM77-175 and CM90-483) and Regular Design Review, the Planning Commission substantially erred in its responsibility, abused its discretion by making findings and conclusions that failed to accurately incorporate the entirety of the administrative record, had no supporting or evidentiary basis, and failed to correctly apply and enforce the existing Oakland Planning Code and established public policy of the City of Oakland.

As stated in the General Plan Analysis of the Planning Commission Staff Report of December 1, 2010, the drive-through element of the current facility is acceptable only because it was established before the LUTE element of the General Plan was enacted. What is not addressed, however, is why it is acceptable that the property be redesigned to highlight this feature in particular—the new design insulates the entire property on all sides with drive-through lanes, making it impossible to enter on foot from either Telegraph Avenue or 45th Street without crossing one or more interior vehicle drives. It is not surprising that the proprietor would want to increase visibility and capacity of the drive-through element—at the December 1, 2010 meeting he estimated that drive-through traffic accounted for 70% of his business. What is surprising is that after meeting with select local groups including ULTRA (Urbanists for a Livable Temescal Rockridge Area) and in full light of current General Plan guidance, the Planning Commission has approved a new design that is actually more antagonistic to pedestrians, increases drive-through impacts on the neighborhood, and weakens the concentration and continuity of the shopping frontage. The appellants feel that this signifies a lack of discretion on the part of the Planning Commission on the most basic level.

As is shown below, the report leans very heavily on a.) assertions that are either highly dubious or completely inaccurate, and b.) the longevity of the existing structure as the basis for perpetual exemption from updated City planning objectives.

7. More specifically as noted below, the Planning Commission findings for approval of REV10-018 for a Revision to previously approved Major Conditional Use Permits (CM77-175 and CM90-483) and Regular Design Review, are faulty, contrary to the public interest and not legally sustainable.

Section 17.136.070 f(B)-Regular Design Review Criteria, Nonresidential Facilities:

Required Finding

1. That the proposal will help achieve or maintain a group of facilities which are well related to one another and which, when taken together, will result in a well composed design, with consideration given to site, landscape, bulk, height, arrangement, texture, materials, colors and appurtenances; the relation of these factors to other facilities in the vicinity; and the relation of the proposal to the total setting as seen from key points in the surrounding area. Only elements of design which have some significant relationship to outside appearance shall be considered, except as otherwise provided in section 17.102.030 (B).

Adopted Planning Commission Finding of December 1, 2010

The proposed design fits well into the architectural context of nearby buildings, which emphasize simple shapes and materials, including brick, horizontal roof elements and wood details. The facilities modifications consist of converting from white brick and red roof with light bars, to a more muted brown brick facade with a lowered roof. The drive through would have walls, columns and trellis elements to screen automobile movements, which are absent from the existing conditions. Rather than using a "cookie-cutter" design for the building, the proposed texture, materials, colors and other design elements are above average for facilities of this type and are more customized for this context.

Inadequacy of Planning Commission Finding

The adopted Planning Commission finding of December 1, 2010 is patently false. Aside from a few outliers, the vast majority of the architectural context on Telegraph Avenue between 51st Street and 40th Street consists of lot-line to lot-line buildings with facades directly at the front property line. The proposed project's architectural component takes up less than 1/4 of its parcel's area, and does not abut the front property line due to the imposition of a drive-through lane directly adjacent to the public right of way.

The relation of the proposed structure to others in the vicinity is also problematic, both in the current context and in the future context of the neighborhood as outlined by the general plan.

Required Finding

2. That the proposal will be of a quality and a character which harmonizes with, and serves to protect the value of, private and public investments in the area.

Adopted Planning Commission Finding of December 1, 2010

The remodeled project will enhance Temescal neighborhood's appearance compared with to the status quo. The improvement will retain a restaurant business which draws customers to the Temescal retail area, providing an improvement in quality of materials, design and landscaping from the existing 1977 restaurant design.

Inadequacy of Planning Commission Finding

The character of the proposed design is inherently at odds with the goals of private and public investment in the area. Effectively, the design is a do-over of an existing use of the parcel which is in conflict with current LUTE element of the General Plan, which explicitly calls for pedestrian-oriented development in the area.

Telegraph Avenue is a "Growth and Change" corridor under the LUTE designation, but the proposed project does not offer significant growth. In fact the project presents a long-term liability for growth by allowing major investment in new construction of a design which is out of step with long-term goals for the neighborhood. There are long-term consequences for permitting this level of investment in a project which is profitable

but underutilizes a 3/4 acre lot. Particularly, it can be expected that this low-density anti-pedestrian design will persist many decades into the future while the rest of the neighborhood grows around it in ways more consistent with the LUTE. In short, the project amounts to complete reconstruction of an anachronism.

Required Finding

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

Adopted Planning Commission Finding of December 1, 2010

Policies I/C-1.2 and IC3.4 of the General Plan Land Use and Transportation Element (LUTE) of the General Plan show that this project is compatible with the General Plan. The facility has been analyzed and found to be in conformity with the Zoning Code, design guidelines and the General Plan.

Inadequacy of Planning Commission Finding

The adopted Planning Commission finding of December 1, 2010 is a product of incomplete analysis and a piecemeal view of the General Plan and Zoning Code, rather than an integrated perspective. The Staff Report readily admits that the LUTE mandates for pedestrian-oriented development are being disregarded. Further, when analyzed together, the General Plan's "Growth and Change" mandate, combined with the C-28 zone's current 35-foot (and pending 60-foot) height limit and dense allowances for lot coverage, the conclusion can only be that the proposed project is of a density and scale that is radically smaller than what the City has envisioned for the future of the Temescal neighborhood along Telegraph avenue.

Section 17.134.050 (General Use Permit Criteria):

Required Finding

- 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 development.

Adopted Planning Commission Finding of December 1, 2010

A McDonalds restaurant has been at this location in the Temescal neighborhood for over 30 years. Modifications for the facility will complement and be compatible with surrounding properties in scale, bulk, lot coverage and density. Traffic movements tend to be within the capacity of surrounding streets. Civic facilities and utilities are available for the site.

Inadequacy of Planning Commission Finding

The adopted Planning Commission finding of December 1, 2010 completely ignores requirement in Section 17.134.050_A which states the "location, size, design, and operating characteristics of the proposed development" "will not adversely affect ... appropriate development of abutting properties and the surrounding neighborhood."

Omitting these considerations is unacceptable, particularly considering the project site's current role as the largest component of a pedestrian-averse gap that separates the northern end of the Temescal commercial area from new developments to the south. Allowing this project to proceed as permitted will maintain the current interruption in the neighborhood fabric at the 45th Street intersection.

This situation inherently threatens the "appropriate development of abutting properties and the surrounding neighborhood" as specified in the code. The corner of 45th Street and Telegraph Avenue is fraught with design that is anathema to the General Plan and LUTE. It is likely that this problem has led to the lower level of investment in new business creation south of 45th Street. Allowing the proposed project to be built without addressing this issue will maintain this disincentive for neighborhood improvements and aesthetic unity.

Required Finding

- 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.

Adopted Planning Commission Finding of December 1, 2010

The location of the facility in the Temescal Neighborhood provides convenient restaurant access for residents. The rebuilt facility will be better able to serve the site's function of a restaurant with enhanced design and landscaping.

Inadequacy of Planning Commission Finding

The adopted Planning Commission finding of December 1, 2010 focuses on aesthetic improvements that have nothing to do with "convenient access." While aesthetic improvements to the site could make it a more attractive dining destination, the functional aspects of the redesign are more prohibitive to walk-in patrons than the current design. Previously, drive-through traffic was separated in large part from the facility, both entering and exiting on Telegraph Avenue at the north side of the lot. The proposed site will be closely bordered in front and on both sides by drive-through lanes, and patrons entering from the sidewalk will now have to cross the drive-through and/or other interior traffic lanes in order to enter the restaurant. In addition, the parking spaces are to be reduced from 44 to 21, reducing that particular convenience by more than 50% relative to the existing facility.

Required Finding

- 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.

Adopted Planning Commission Finding of December 1, 2010

Rebuilding and upgrading the restaurant will increase its ability to enhance basic community dining and social gathering functions in the Temescal neighborhood.

Inadequacy of Planning Commission Finding

As previously stated above, the adopted Planning Commission finding of December 1, 2010 ignores the functional intention of the redesign, which is clearly to increase drive-through volume, and is therefore misleading.

Required Finding

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

Adopted Planning Commission Finding of December 1, 2010

Fulfillment of General Plan and Zoning criteria has been demonstrated above in this document. The General Plan LUTE provides for restaurant and other commercial uses in the Temescal area as resources in the community.

Inadequacy of Planning Commission Finding

The adopted Planning Commission finding of December 1, 2010 has been demonstrated in rebuttals above to be based on inappropriate interpretations of the General Plan and Zoning criteria, incomplete analysis of impact on the pedestrian experience of the neighborhood, and short-sighted conclusions about the impacts the project may have on the future development of the Telegraph Avenue commercial corridor.

Section 17.102.210fD): Fast Food Restaurant Findings

Required Finding

3. Access, ingress and egress to Fast Food Facilities shall be limited to commercial arterial streets rather than residential streets. No direct access shall be provided to adjacent residential streets which are less than thirty-two (32) feet in pavement width. Exceptions to either of the requirements may be obtained where the City Traffic Engineer determines that compliance would deteriorate local circulation or jeopardize the public safety. Any such determination shall be stated in writing and shall be supported with findings. Driveway locations and widths and entrances and exits to Fast Food Facilities shall be subject to the approval of the City Traffic Engineer.

Adopted Planning Commission Finding of December 1, 2010

As noted above, this is not a new restaurant site. Access has been from Telegraph Avenue and from 45th Street for over 30 years. 45th Street contains nonresidential facilities near the restaurant and the turning and driving movement alignments to restaurant driveways are distant from residential driveways. The office of the City Traffic Engineer has reviewed the project and has not found a need for modifications.

Inadequacy of Finding

The adopted Planning Commission finding pre-supposes that the traffic situation at the site has been acceptable since the restaurant's inception, and omits any analysis of the potential impact on traffic from the proposed permit for 24 hour drive-through use. Because the applicant is currently violating their CUP and illegally operating a 24 hour drive-through without a permit, appellants have had the opportunity to see adverse impacts from all-night use.

These impacts include overflow of drive-through customers' vehicles onto Telegraph Avenue, impeding the flow of traffic in a way that is particularly dangerous late at night and on weekend nights when drivers tend to use excessive speed and/or operate their vehicles under the influence. The City Traffic Engineer did not submit any written findings or analysis of this potential impact.

Required Finding

- 5. Vacated/Abandoned Fast Food Facilities.** The project sponsor of a proposed Fast Food Facility shall be required to obtain a performance bond, or other security acceptable to the City Attorney, to cover the cost of securing and maintaining the facility and site if it is abandoned or vacated within a prescribed high-risk period ... As used in this code, the words "abandoned" or "vacated" shall mean a facility that has not been operational for a period of thirty (30) consecutive days, except where nonoperation is the result of maintenance or renovation activity pursuant to valid city permits. The defined period of coverage is four (4) years following the obtaining of an occupancy permit. The bond may be renewed annually, and proof of renewal shall be forwarded to the Director of City Planning. The bond amount shall be determined by the city's Risk Manager and shall be adequate to defray expenses associated with the requirements outlined below. Monitoring and enforcement of the requirements set forth in this section shall be the responsibility of the Housing Manager of the Department of Housing Conservation, pursuant to Chapter 8.24 of the Oakland Municipal Code and those sections of the Oakland Housing Code which are applicable.

Adopted Planning Commission Finding of December 1, 2010

This provision is not applicable since it applies to the first four years after opening the facility, and there has been a McDonalds Restaurant here for thirty-three years. A condition of this REV case accepts voluntary compliance in the unforeseen event of a change of use in the future.

Inadequacy of Planning Commission Finding

The adopted Planning Commission finding is inadequate because it fails to address the fact that demolishing the McDonald's restaurant, rebuilding it, and reopening it many

months later is tantamount to opening an entirely new restaurant. The high-risk period of four years, mentioned in section 17.102.210(D) can be construed to re-start upon the re-opening. Factors contributing to the mentioned high-risk period may include: potential pressures of a new and different debt load on the operator, the need to rehire and retrain an entirely new staff, and loss of existing clientele during the construction period. Staff fails to address any of these renewed risk factors.

Section 17.102.290: Drive-through Nonresidential Facilities Findings

Required Finding

A1. That the proposed facility will not impair a generally continuous wall of building facades;

Adopted Planning Commission Finding of December 1, 2010

An existing narrow restaurant in a three-fourths acre open site would be turned 90 degrees and rebuilt/expanded so as to create a more continuous wall of building facade along Telegraph Avenue, more consistent with the Temescal pattern. Pedestrian entry would be provided. The drive-through would be screened and incorporated into the building design like the drive-through lane of certain bank facilities.

Inadequacy of Planning Commission Finding

The adopted Planning Commission finding is inadequate and misleading. The proposed design creates no "continuous wall of building facade" along Telegraph Avenue, as the facade of the building is set back from the sidewalk. The C-28 zone calls for no setbacks along commercial corridors. Additionally, the setback proposed is comprised mostly of a drive-through lane which would be directly adjacent to the sidewalk. This potentially creates what would be more accurately described as a "continuous wall of cars" next to pedestrian traffic on the Telegraph Avenue sidewalk, which is in keeping with neither the spirit nor the letter of the C-28 zone description, nor, furthermore, the General Plan's intent for the area.

Required Finding

A2. That the proposed facility will not result in weakening the concentration and continuity of retail facilities at ground level, and will not impair the retention or creation of a shopping frontage;

Adopted Planning Commission Finding of December 1, 2010

The existing restaurant, which has been in place for 33 years, would be replaced by a building which better strengthens the concentration and continuity of commercial facilities at the ground level. There would be no impairment of shopping frontage. This site is at the edge of the Temescal district near NorthGate, a transitional area characterized by vehicular-oriented businesses.

Inadequacy of Planning Commission Finding

The adopted Planning Commission finding is incorrect in stating that concentration and continuity of commercial facilities at ground level will be strengthened by the new design, which alters the frontage in two ways: setting the actual building farther back from Telegraph Avenue, and placing a drive-through lane between the sidewalk and building for almost the entire length of the lot, requiring pedestrians to cross it in order to enter the restaurant. The finding is also inadequate because it fails to acknowledge that many of the mentioned "vehicular-oriented businesses" in the area are themselves non-conforming with the General Plan's outline for the Telegraph Avenue corridor.

Further, Staff is incorrect to describe the site as being "at the edge of the Temescal district" in a "transitional" area, when the generally accepted border of Temescal is at 40th Street, over one quarter mile away. The site could be more accurately described as being located "almost perfectly in the middle" of the Temescal business district (40th – 51st Streets). As such, the existing site is part of a gap in the concentration and continuity of commercial facilities at ground level, and the redesign exacerbates this problem.

Required Finding

A3. That the proposed facility will not directly result in a significant reduction in the circulation level of service of adjacent streets.

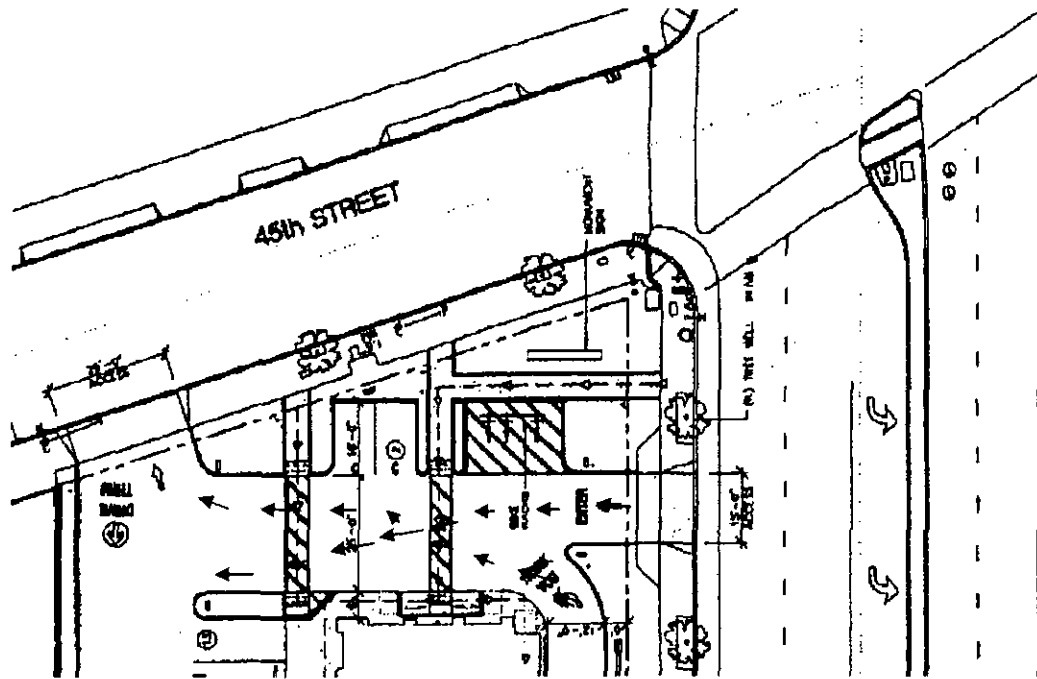
Adopted Planning Commission Finding of December 1, 2010

The existing restaurant has operated driveways from Telegraph Avenue and 45th Street for 33 years, without noticeable reduction in circulation levels of adjacent streets. 45th Street has non-residential uses near the restaurant site at this end of its right-of-way. The relatively small increase in restaurant floor area would not increase the 3/4 acre size of the site, nor would it create a huge increase in vehicle trips to the site.

Inadequacy of Planning Commission Finding

The adopted Planning Commission finding is inadequate as it relies on unsubstantiated assertions based on the existing configuration and fails to consider the specific impacts of the changes to this configuration that are reflected in the proposed design. For instance, the one-way-only entrance on Telegraph Avenue now forces inbound cars to immediately merge with outgoing drive-through traffic as it moves to the rear of the property. No specifics are given as to how this would be handled in order to avoid having waiting vehicles back up on the sidewalk and into Telegraph Avenue.

Telegraph at 45th Street is an important (and already problematic) intersection, serving also as the merge point for Shattuck and Telegraph Avenues, yet, as noted in the Staff Report, no input was provided by the Oakland Police Department.



Required Finding

- B. Standards.** A driveway serving as a vehicle stacking or queuing lane for a drive-through window shall be separated from parking areas and shall not be the only entry or exit lane on the premises. Such facility shall be so situated that any vehicle overflow from it shall not spill onto public streets or the major circulation aisles of any parking lot. Such facility shall have durable, all-weather surface; shall have reasonable disposal of surface waters by grading and drainage; and shall be permanently maintained in good condition.

Adopted Planning Commission Finding of December 1, 2010

The driveways for stacking or queuing lanes for the drive-through windows are separated from parking areas and are not the only entry or exit lanes on the premises. Vehicles not using the drive-through lane can completely bypass that portion of the site and use non-dedicated driveways, as vehicles have done for decades at this site. The overflow does not spill into public streets. The surface will be durable and all-weather, and well drained and maintained as required.

Inadequacy of Planning Commission Finding

The adopted Planning Commission finding is inadequate as it fails to account for or study traffic overflow at the site during late night drive-through business hours. As the applicant has for some time illegally operated a 24 hour drive-through at the site without a permit to do so, appellants have witnessed after-hours customers' cars overflowing into Telegraph Avenue on multiple occasions. It can be inferred that should the facility

be empowered with a legal 24 hour operating permit, the owners will no longer feel inhibited about boldly advertising the facility's 24 hour status, thus increasing spillover.

Location:	4514 Telegraph Avenue (APN 013-1150-014-00)
Proposal:	Expand and revise location and design of an existing fast-food restaurant
Contact Person/Phone Number:	Gary Semling / (707)765-1660
Owner:	Franchise Realty Interstate Co.
Case File Number:	REV10-018
Planning Permits Required:	Revision to previously-approved Major Conditional Use Permits (CM77-175 and CM90-483) and Regular Design Review for an existing Fast Food Restaurant Commercial Activity (McDonalds) to a) expand the building from 3,028 square feet to 3,920 square feet (792 square feet added); b) relocate the building on the site and modify the architectural design; c) replace all building and site signage; d) re-pave and re-landscape; e) expand the hours of operation from 5 a.m. to 11 p.m. to 24 hours per day.
General Plan:	Neighborhood Center Mixed Use
Zoning:	C-28 Commercial Shopping District Zoning District
Environmental Determination:	Categorically Exempt under California Environmental Quality Act (CEQA) Guidelines Section 15302, Modifying existing facilities; 15183, Projects consistent with community plan, general plan or zoning
Historic Status:	Not Potential Designated Historic Property
Service Delivery District:	2
City Council District:	1
Recommendation:	Approve with Conditions
Finality of Action:	Appealable to City Council
For Further Information:	Contact David Valeska at (510) 238-2075 or dvalueska@oaklandnet.com

SUMMARY

The Applicant, Gary Semling, proposes revisions/modifications to an existing McDonalds restaurant building and property located at 4514 Telegraph Avenue. The existing project was developed under Major Conditional Use Permits (CM77-175 and CM90-483) and the new proposal constitutes a revision of the approved permits and also requires Design Review approval.

The proposal includes constructing a new, larger restaurant building, reconfiguring the site circulation, repaving the site, installing new landscaping and new signage. The applicant is also requesting a change of hours of operation from 5 a.m. – 11p.m.(existing) to 24 hours (proposed).

PROJECT DESCRIPTION

The primary objective of the project is to rebuild and expand the size of the existing one-story 3,028 s.f McDonalds restaurant building. The new building would be 3,920 s.f in size (792 s.f larger than the existing building). Whereas the existing building, originally constructed in 1977 and modified in 1991, is of a fairly generic design with white stucco walls, a red tile mansard roof and large “golden arches” signage, and looks like it could be located anywhere, the proposed architectural design is more in keeping with the neighborhood context with a flat roof, mostly brown-colored brick walls (two shades of brown) with textured detailing, large brick columns and a heavy wood trellis along the street frontage (screening the drive-through), some lighter-colored stucco accent wall areas, and more modest signage. The

landscape improvements would include a low (4' tall) brick wall, with decorative columns to match the building design, along Telegraph Avenue.

The existing site has three entrances/exits from Telegraph Avenue and one from 45th Street with parking areas on both the north and south sides of the building and a drive-through on its north side. The revised site plan includes one entrance/exit and one exit only along Telegraph Avenue and one entrance/exit from 45th Street. For purposes of improved site circulation, the building location would be slightly to the north of the existing location, and the drive-through would be along the Telegraph Avenue side (west side). Site circulation and parking areas would be repaved, and a full landscape plan would be implemented. New signage would be installed on the site. Signs include wall and monument signs, parking area signs and order boards near the drive-through lanes. The existing tall "golden arches" sign would be removed and would not be replaced. As noted in the Summary section above, the applicant is also requesting a change of hours of operation from 5 a.m. – 11 p.m.(existing) to 24 hours (proposed).

PROPERTY DESCRIPTION

The site is a flat and rectangular corner lot, and consists of 31,416 square feet (0.7 acre) in area. It is located at the corner of Telegraph Avenue and 45th Street, at the southern end of the Temescal shopping district, near Northgate/Koreatown. Shattuck Avenue also connects with Telegraph Avenue near this area. Nearby properties include former Hoopers Chocolates, former Kaspars Hot Dogs, and various businesses. The restaurant site backs up to a large school playground, and is across 45th Street from a utility company technical facility.

The Temescal shopping district is characterized by one and two story vintage commercial buildings, as well as a newer neighborhood shopping center and a few freestanding modern buildings such as restaurants and automotive service businesses. Residential buildings along and behind the commercial area include two story Victorian houses and apartments, as well as newer condominium buildings. Construction materials in the area context include primarily stucco buildings with glass transoms and tile roof details; brick with wood details, wood shiplap and shingle walls with composite roofs; and other early-to- mid-20th Century materials.

GENERAL PLAN ANALYSIS

The property is located in the Neighborhood Center Mixed Use category of the Land Use and Transportation (LUTE) element of the General Plan. This designation "is intended to identify, create, maintain and enhance mixed use neighborhood commercial centers. These centers are typically characterized by smaller scale pedestrian-oriented, continuous street frontage with a mix of retail, housing, office, active open space, eating and drinking places, personal and business services, and smaller scale educational, cultural, or entertainment uses." The existing and proposed activities within the property are consistent with the Neighborhood Center Mixed Use General Plan designation. While the drive-through aspect of the facility is not considered pedestrian-oriented, and would not be encouraged under the LUTE, it was approved by the previous Conditional Use Permit before the LUTE was adopted and therefore it may remain part of the facility. Telegraph Avenue is a "Growth and Change" corridor under the LUTE designation. Applicable policies include:

LUTE Policy I/C1.2 states that "Existing Businesses and jobs within Oakland which are consistent with the long-range objectives of this Plan should, whenever possible, be retained."

Policy I/C3.4 states that "The vitality of existing neighborhood mixed use and community commercial areas should be strengthened and preserved."

LUTE page 222, addressing Temescal and Upper Telegraph Avenue states that “Recent commercial development along Telegraph Avenue at 51st Street, and interest from the residential and business community, have triggered revitalization of this historic neighborhood. Focus is needed to improve other key properties. Near-term activities will focus on providing assistance for specific properties...façade improvements and...improvements to the area’s physical appearance...”

Staff finds that the proposed redesign and expansion of the existing restaurant is consistent with the intent of the General Plan.

ZONING ANALYSIS

The property is located within the C-28 Commercial Shopping District Zone. In C-28, Fast Food Restaurants are designated as Conditionally Permitted Activities that are subject to Planning Commission review.

The existing facility has a Major Conditional Use Permit and this tear-down and rebuild constitutes a Major Revision (REV) to the permit.

Regular Design Review is also required for new or remodeled facilities in such cases. The proposal is consistent with these requirements. Findings required for approval are set forth in Attachment A.

ENVIRONMENTAL DETERMINATION

The request is Categorical Exempt under Section 15302 of the California Environmental Quality Act Guidelines for reconstruction of existing facilities, and Section 15183, projects consistent with a community plan, general plan or zoning.

KEY ISSUES AND IMPACTS

Issues include potential visual impacts along the streetscape, customer service benefits, neighborhood effects, security and parking/traffic.

Potential Visual Impacts Along the Streetscape. The proposed changes would result in an improved appearance over the existing facility. The façade of the building would change to a more muted tone similar to nearby commercial buildings in Temescal. New landscaping would be installed, along with a low (4’ height) decorative brick wall along Telegraph Avenue. The tall Golden Arches sign would be removed and more subtle signs would be placed on and near the building. The new design proposes a floorplan slightly larger than the floorplan approved twice by Conditional Use Permits in the past. By designing the new front drive-through arcade/enclosure with brown brick columns, low wall along the sidewalk and Craftsman style trellises over the automobile lane, the visual impact of drive-through automobiles would be minimized.

Customer Service Benefits. Currently, the restaurant uses decades-old internal seating and external drive-through patterns which do not optimally serve customers. In particular, the new design helps families who depend on dining in their automobiles due to time considerations and to the effort needed to on-load and off-load small children. The new parking, circulation and drive-through makes efficient use of the site and enhances customer convenience.

Effects on Neighborhood. This restaurant has been a part of the neighborhood since 1977. According to the applicants, there have been no reports to staff of nuisance activities on the neighborhood. The new design manages neighborhood impacts, by placing the drive-through lane closer to Telegraph Avenue and

farther from the nearby school/park. The new design also modernizes and enhances the appearance of the building and signs, and adds a generous amount of landscaping.

Noise from the restaurant is expected to be below the thresholds of the General Plan Noise Element, less than 45 cnel/ldn (decibel equivalents) measured inside these residences, less than the sound of classical music playing on a radio. There is substantial roadway and other ambient noise in the area as well near this site. In the past operations were limited by CUP conditions of approval to 5 am to 11 pm. Noise is anticipated to be substantially reduced before 10 pm and to remain limited before 7 am, even with fulfillment of the applicant's request for 24 hour operation of the drive-through lane.

Security. The site and building layout provide for adult supervision for all activities in such facilities. There is no playground. Security response time, including police and fire protection, is measured in minutes at this location.

Officer Blankenship of the Police Department's Crime Prevention Through Environmental Design (CPTED) team reviewed the project and commented in October, 2010. The design should discourage climbing onto the roof, although for a 24-hour drive-through facility the "eyes on the street" extends to the property and helps to deter crime. Landscaping near the building should deter climbing rather than facilitate climbing. Security lighting is provided for building and parking areas.

Parking/Traffic. The current development has 44 parking spaces, and the proposed design would reduced parking to 21 spaces; however, the new parking area would be twice the current requirement, which is 10 spaces (6 spaces originally under a prior Code). In addition, there would be drive-through spaces for 12 vehicles, first split into two lanes, then merged. The driveways have been reconfigured at the recommendation of the Zoning Manager, with one-way entrance from Telegraph Avenue and one-way exit to Telegraph Avenue, and a two-way driveway to 45th Street. This design conforms better to the proposed BRT (Bus Rapid Transit) route on Telegraph Avenue, minimizing traffic conflicts, as confirmed by a letter in file from AC Transit. While Oakland Police Department did not comment on this aspect, staff anticipates that traffic patterns would likely be safer and more convenient as designed. Careful channeling of the driving lanes and appropriate signage would be required.

The applicant prepared more than a dozen alternative site plans including one with the building entry directly on Telegraph Avenue, with the drive-through on the side. None of the alternatives fronting on Telegraph Avenue were found to achieve the objectives of the applicant and other alternatives also had site and street traffic issues. On balance, the current proposal, including the entry-only driveway on Telegraph and the channeling of the drive-through traffic to the left, meets the most objectives for the project and site.

Staff finds that the applicant's current design minimizes visual and traffic impacts and is sensitive to the context in design and landscaping, and is superior design in terms of site circulation. Staff therefore recommends approval of the project, subject to conditions of approval.

RECOMMENDATIONS:

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

Prepared by:

David Valeska, Planner II

Approved by:

SCOTT MILLER
Zoning Manager

Approved for forwarding to the
City Planning Commission:

ERIC ANGSTADT
Deputy Director of CEDA

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 (Code of Civil Procedure Section 1094.6).

ATTACHMENTS:

- A. Findings
- B. Conditions
- C. Plans and Elevations
- D. Applicant Correspondence
- E. Neighbor Correspondence
- F. Landscape Map
- G. Vicinity Map
- H. CM90-483 Staff Report and Conditions

ATTACHMENT A

FINDINGS FOR APPROVAL:

This proposal meets all the required findings as set forth below and which are required to approve your application. Required findings are shown in bold type; reasons your proposal satisfies them are shown in normal type.

Section 17.136.070(B) Regular Design Review Criteria, Nonresidential Facilities:

1. That the proposal will help achieve or maintain a group of facilities which are well related to one another and which, when taken together, will result in a well-composed design, with consideration given to site, landscape, bulk, height, arrangement, texture, materials, colors, and appurtenances; the relation of these factors to other facilities in the vicinity; and the relation of the proposal to the total setting as seen from key points in the surrounding area. Only elements of design which have some significant relationship to outside appearance shall be considered, except as otherwise provided in Section 17.102.030:

The proposed design fits well into the architectural context of nearby buildings, which emphasize simple shapes and materials, including brick, horizontal roof elements and wood details. The facilities modifications consist of converting from white brick and red roof with light bars, to a more muted brown brick façade with a lowered roof. The drive-through would have walls, columns and trellis elements to screen automobile movements, which are absent from the existing conditions. Rather than using a “cookie-cutter” design for the building, the proposed texture, materials, colors and other design elements are above average for facilities of this type and are more customized for this context.

2. That the proposed design will be of a quality and a character which harmonizes with, and serves to protect the value of, private and public investments in the area.

The remodeled project will enhance Temescal neighborhood’s appearance compared to the status quo. The improvement will retain a restaurant business which draws customers to the Temescal retail area, providing an improvement in quality of materials, design and landscaping from the existing 1977 restaurant design.

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

Policies I/C-1.2 and I/C3.4 of the General Plan Land Use and Transportation Element (LUTE) of the General Plan show that this project is compatible with the General Plan. The facility has been analyzed and found to be in conformity with the Zoning Code, design guidelines and the General Plan.

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.

A McDonalds restaurant has been at this location in the Temescal neighborhood for over 30 years. Modifications planned for the facility will complement and be compatible with surrounding properties in scale, bulk, lot coverage and density. Traffic movements tend to be within the capacity of surrounding streets. Civic facilities and utilities are available for the site.

- 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 of the facility in the Temescal neighborhood provides convenient restaurant access for residents. The rebuilt facility will be better able to serve the site's function of a restaurant with enhanced design and landscaping.

- 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.

Rebuilding and upgrading the restaurant will increase its ability to enhance basic community dining and social gathering functions in the Temescal neighborhood.

- D.** That the proposal conforms to all applicable design review criteria set forth in the design review procedure at Section 17.136.070(B) for non-residential facilities.

Fulfillment of design review criteria has been demonstrated above in this document. The rebuilding design reflects several revisions in order to achieve a functional yet aesthetic design.

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

Fulfillment of General Plan and Zoning criteria has been demonstrated above in this document. The General Plan LUTE provides for restaurant and other commercial uses in the Temescal area as resources in the community.

Section 17.102.210(D): Fast Food Restaurant Findings

- 1.** No Fast-Food Restaurant Commercial Activity shall be located within a one thousand (1,000) foot radius of an existing or approved Fast-Food Restaurant, as measured from the center of the front property line of the proposed site, except in the Central Business District..., within the main building of Shopping Center Facilities, and in the C-36 boulevard service commercial zone.

This is not a new restaurant site, but rather a Revision (REV) to a long-time existing facility. The restaurant was established in 1977 before applicable regulations of Section 17.102.210(D) and modified with several Conditional Use Permits thereafter. As an existing restaurant, there is no need to relocate the facility over 1,000 feet from another such restaurant, although there is one nearby.

2. **Fast Food Restaurants with Drive-Through Facilities shall not be located within five hundred (500) feet of a public or private elementary school, park or playground, measured perpendicularly from the street right-of-way.**

This is not a new restaurant site, but rather a Revision (REV) to a long-time existing facility. The restaurant was established in 1977 before applicable regulations of Section 17.102.210(D) and modified with several Conditional Use Permits thereafter. As an existing restaurant, there is no need to relocate the facility over 500 feet from the adjacent park/school playground.

3. **Access. Ingress and egress to Fast Food Facilities shall be limited to commercial arterial streets rather than residential streets. No direct access shall be provided to adjacent residential streets which are less than thirty-two (32) feet in pavement width. Exceptions to either of the requirements may be obtained where the City Traffic Engineer determines that compliance would deteriorate local circulation or jeopardize the public safety. Any such determination shall be stated in writing and shall be supported with findings. Driveway locations and widths and entrances and exits to Fast-Food Facilities shall be subject to the approval of the City Traffic Engineer.**

As noted above, this is not a new restaurant site. Access has been from Telegraph Avenue and from 45th Street for over 30 years. 45th Street contains non-residential facilities near the restaurant and the turning and driving movement alignments to restaurant driveways are distant from residential driveways. The office of the City Traffic Engineer has reviewed the project and has not found a need for modifications.

4. **Trash and Litter. Disposable containers, wrappers and napkins utilized by Fast-Food Restaurants shall be imprinted with the restaurant name or logo.**

This restaurant business has generally followed this practice at this site and other sites throughout the Nation as a corporate policy.

5. **Vacated/Abandoned Fast Food Facilities. The project sponsor of a proposed Fast-Food Facility shall be required to obtain a performance bond, or other security acceptable to the City Attorney, to cover the cost of securing and maintaining the facility and site if it is abandoned or vacated within a prescribed high risk period...The defined period of coverage is four (4) years following obtaining an occupancy permit...(additional provisions set forth at length in the Code).**

This provision is not applicable since it applies to the first four years after opening the facility, and there has been a McDonalds Restaurant here for thirty-three years. A condition of this REV case accepts voluntary compliance in the unforeseen event of a change of use in the future.

Section 17.102.290: Drive-through Nonresidential Facilities Findings

- A.1. **The proposed facility will not impair a generally continuous wall of building facades.**

An existing narrow restaurant in a three-fourths acre open site would be turned 90 degrees

and rebuilt/expanded so as to create more of a continuous wall of building façade along Telegraph Avenue, more consistent with the Temescal pattern. Pedestrian entry would be provided. The drive-through would be screened and incorporated into the building design like the drive-through lane of certain bank facilities.

- A.2.** The proposed facility will not result in weakening the concentration and continuity of retail facilities at ground level, and will not impair the retention or creation of a shopping frontage.

The existing restaurant, which has been in place for 33 years, would be replaced by a building which better strengthens the concentration and continuity of commercial facilities at the ground level. There would be no impairment of shopping frontage. This site is at the edge of the Temescal district near NorthGate, in a transitional area characterized by vehicular-oriented businesses.

- A.3.** The proposed facility will not directly result in a significant reduction in the circulation level of service of adjacent streets.

The existing restaurant has operated driveways from Telegraph Avenue and 45th Street for 33 years, without noticeable reduction in circulation levels of adjacent streets. 45th Street has non-residential uses near the restaurant site at this end of its right-of-way. The relatively small increase in restaurant floor area would not increase the ¾ acre size of the site, nor would it create a huge increase in vehicle trips to the site.

- B.** Standards. A driveway serving as a vehicle stacking or queuing lane for a drive-through window shall be separated from parking areas and shall not be the only entry or exit lane on the premises. Such facility shall be so situated that any vehicle overflow from it shall not spill onto public streets or the major circulation aisles of any parking lot. Such facility shall have durable, all-weather surface; shall have reasonable disposal of surface waters by grading and drainage; and shall be permanently maintained in good condition.

The driveways for stacking or queuing lanes for the drive-through windows are separated from parking areas and are not the only entry or exit lanes on the premises. Vehicles not using the drive-through lane can completely bypass that portion of the site and use non-dedicated driveways, as vehicles have done for decades at this site. The overflow does not spill into public streets. The surface will be durable and all-weather, well drained and maintained as required.

- C.** Dimensions. Each vehicle space comprising a stacking or queuing lane for a drive-through window shall be a minimum of ten (10) feet in width by twenty (20) feet in length. Such a stacking or queuing lane shall have a maximum capacity of eight (8) vehicles.

Since the lane is routed through an extra-large ¾ acre commercial site, a limit of eight vehicles is not necessary. However, the project design does show eight vehicle spaces between order stations and merchandise pickup station, although this drive-through branches into two lanes and thus the cumulative total is a dozen spaces for both lanes. This design promotes efficient drive-through operations and helps prevent impacts off-site.

ATTACHMENT B

The proposal is hereby approved subject to the following Conditions of Approval:

STANDARD CONDITIONS:

1. Approved Use.

Ongoing.

a. The project shall be constructed and operated in accordance with the authorized use as described in this letter and the plans dated September, 2010 and submitted September 13, 2010, and as amended by the following conditions. Any additional uses or facilities other than those approved with this permit, as described in the project description and the approved plans, will require a separate application and approval. Any deviation from the approved drawings, conditions of approval or use shall required prior written approval from the Director of City Planning or designee.

b. This action by the Director of City Planning ("this Approval") includes the approvals set forth below. This approval includes: Revision to previously-approved Major Conditional Use Permits (CM77-175 and CM90-483) and Regular Design Review to a) expand an existing 3,028 square foot Fast-Food Restaurant Commercial Activity (McDonalds Restaurant) to 3,920 square feet (792 square feet added); b) relocate the building on the site and modify the architectural design; c) replace all building and site signage; d) re-pave and re-landscape; e) expand the hours of operation from 5 a.m. to 11 p.m. to 24 hours per day. Conditions of prior permits continue in effect unless there is a difference from REV10-018 conditions, in which case the latter dominate.

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 have been issued, or 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 valid 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-joh or other construction related permit.

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

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

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

Ongoing.

a. The City Planning Department 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 or other corrective action.

b. 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

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 and submitted with each set of permit plans submitted for this project.

7. Indemnification

Ongoing

a. The project applicant shall defend (with counsel reasonably 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 their respective agents, officers, and employees (hereafter collectively called the City) from any claim, action, or proceeding (including legal costs and attorney's fees) against the City to attack, set aside, void or annul, this approval or any related approval by the City. 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. 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 a claim, action or proceeding to attack, set aside, void or annul this Approval or any related approval by the City, the project applicant shall execute a Letter Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations and this condition of approval. This condition/obligation shall survive termination, extinguishment or invalidation of this or any related approval. Failure to timely execute the Letter Agreement does not relieve the project applicant of any of the obligations contained in 7a above, or other conditions of approval.

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 and all applicable

adopted mitigation measures set forth below at its sole cost and expense, and subject to review and approval of the City of Oakland.

9. Severability

Ongoing

Approval of the project would not have been granted but for the applicability and validity of each and every one of the specified conditions and if any 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 approved plans, along with the Approval Letter and Conditions of Approval shall be available for review at the job site at all times.

11. Recycling Space Allocation Requirements

Prior to issuance of a building permit

The design, location and maintenance of recycling collection and storage areas must substantially comply with the provision of the Oakland City Planning Commission "Guidelines for the Development and Evaluation of Recycling Collection and Storage Areas", Policy 100-28. Pursuant to Section 17.118.020 of the Oakland Planning Code, this condition shall apply to new commercial and industrial development that requires a building permit. A minimum of two cubic feet of storage and collection area shall be provided for each dwelling unit and for each 1,000 square feet of commercial space.

Ongoing.

No deviation shall be made from the approved drawings or conditions of approval that alters the project's siting, height, exterior appearance, and/or required new landscaping without prior written approval from the Oakland Planning & Zoning Department.

12. Construction Practices.

During construction.

All work shall apply the "Best Management Practices" (BMPs) for the construction industry, including BMPs for dust, erosion and sedimentation abatement per Section 15.04 of the Oakland Municipal Code, as well as all specific construction-related conditions of approval attached to this project.

13. Days/Hours of Construction Operation

Ongoing throughout demolition, grading and/or construction.

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

- a) Construction activities are limited to between 7:00 AM and 7:00 PM Monday through Friday, except that pile driving and/or other extreme noise generating activities greater than 90 dBA shall be limited to between 8:00 AM and 4:00 PM Monday through Friday.
- b) Any construction activity proposed to occur outside of the standard hours of 7:00 AM to 7:00 PM Monday through Friday for special activities (such as concrete pouring which may require more continuous amounts of time) shall be evaluated on a case by case basis, with criteria including the proximity of residential uses and a consideration of residents' preferences for whether the activity is acceptable if the overall duration of construction is shortened and such construction activities shall only be allowed with the prior written authorization of the Building Services Division.

- c) Construction activity shall not occur on Saturdays, with the following possible exceptions:
 - i) Prior to the building being enclosed, requests for Saturday construction for special activities (such as concrete pouring which may require more continuous amounts of time), shall be evaluated on a case by case basis, with criteria including the proximity of residential uses and a consideration of residents' preferences for whether the activity is acceptable if the overall duration of construction is shortened. Such construction activities shall only be allowed on Saturdays with the prior written authorization of the Building Services Division.
 - ii) After the building is enclosed, requests for Saturday construction activities shall only be allowed on Saturdays with the prior written authorization of the Building Services Division, and only then within the interior of the building with the doors and windows closed.
- d) No extreme noise generating activities (greater than 90 dBA) shall be allowed on Saturdays, with no exceptions.
- e) No construction shall take place on Sundays or Federal holidays.
- f) Construction activities include but are not limited to: truck idling, moving equipment (including trucks, elevators, etc.) or materials, deliveries and construction meetings held on-site in a non-enclosed area.

14. Noise Control

a. Ongoing throughout demolition, grading and/or construction

To reduce noise impacts due to construction, the project applicant shall require construction contractors to implement a site-specific noise reduction program, subject to City review and approval, which includes:

- a) Equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g. improved mufflers, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds, wherever feasible).
- b) Impact tools (e.g. jack hammers, pavement breakers and rock drills) used for project construction shall be hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used where feasible, and this should achieve a reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever feasible.
- c) Stationary noise sources shall be located as far from adjacent receptors as possible and they shall be muffled and enclosed with temporary sheds, incorporate insulation barriers or other measures to the extent feasible.
- d) If feasible, the noisiest phases of construction shall be limited to less than 10 days at a time.

15. Noise Complaint Procedures

a. Ongoing throughout demolition, grading and/or construction

Prior to the issuance of each building permit, along with submission of construction documents, the project applicant shall submit to the City Building Services Division a list of measures to

respond to and track complaints pertaining to construction noise. These measures shall include:

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

16. Announcement Sound System

Ongoing

The project applicant shall operate any sound system to show consideration for neighboring uses after residential and work live structures are constructed on properties across perimeter streets. No sound systems louder than 45 ldn/cnel at any off-site sensitive receptor (e.g. homes) shall operate between the hours of 9 pm and 9 am. No sound systems shall operate which are louder than 65 ldn/cnel at any perimeter street.

17. Pedestrian and Driveway Crossing

Prior to issuance of building permits and ongoing

The applicant shall install and maintain traffic signs on the property at the interface between the pedestrian path from Telegraph Avenue near 45th Street and the drive-through lane near this path, to promote safety, to the satisfaction of the Zoning Manager. This design may include flashing lights, a stop sign or other similar signals. Additional driveways may be required to be so marked if determined necessary by the Zoning Manager.

18. Lighting

Ongoing

The proposed lighting fixtures shall be adequately shielded to a point below the light bulb and reflector and that prevent unnecessary glare onto adjacent properties. All lighting shall be architecturally integrated into the site. Walkway lighting shall not exceed 10 lumens, nor building lighting exceed 30 lumens, as viewed from the nearest property line, without Planning and Zoning approval. No lighting standard shall be over 25 feet tall.

19. Encroachment Permits

Prior to Issuance of Building Permits

The applicant shall obtain any necessary Encroachment Permits for structures placed in the Alice Street right-of-way and comply with the conditions of such permits.

20. Odor Control

Ongoing

The activity shall be operated so that little or no odors are discernible by the average person at the property lines. The use shall be designed and operated to contain fumes and odors within the cooking area.

21. Litter Control Plan.

Prior to Issuance of Building Permits

A Litter Control Plan that ensures that the premises and surrounding 300 feet of the property are kept free of litter and debris shall be submitted to and approved by the Planning and Zoning Division prior to application for a building permit. The plan shall include, but not be limited to:

1. Distribution of proposed locations of litter receptacles on site and in the public right of way. The design and location of litter receptacles shall be consistent and coordinated with the City's street furniture program.
2. A management schedule for keeping the premises and surrounding area free from litter originating from the operation of the commercial activities; and
3. Daily sweeping and trash collection of the premises, the public sidewalk and the gutter area of the public street immediately adjacent to the project.

22. Right-of-way Clean-up.

Ongoing.

The applicant shall clear the sidewalk and gutter areas along Telegraph Avenue and 45th Street and 300 feet beyond the property lines along these streets, of litter and debris at least daily or as needed to control litter. The applicant shall sweep or mechanically clean the sidewalk with steam or equivalent measures at least once per month.

23. Imprinted Disposables.

Ongoing.

Disposable containers, wrappers, bags, and napkins used by this activity shall be imprinted with the establishment name and/or logo.

24. Litter Receptacles.

Prior to operation.

At least four (4) non-flammable external litter receptacles shall be installed outside of the building in a place accessible to employees and the public. The location of any permanent ashtray and litter receptacle shall be reviewed and approved by the Planning and Zoning Division.

25. Trash and Recyclables Enclosure.

Prior to issuance of any building permits.

The applicant shall submit for review and approval by the Planning and Zoning Division, plans showing all trash and recyclables collection areas on the site. The location of the proposed collection areas shall be shown on the building permit plan set. This collection area enclosure shall be screened from the street and adjacent properties by a wall, fence, or dense landscaping with a minimum height of six (6) feet, and with an opaque covered closure. No trash shall be stored outside the designated trash area.

26. Restaurant Hours.

Ongoing.

The hours of lobby operation shall be limited to 6 AM to 11:30 PM; the hours of the drive-through operation may be 24 hours. The City Planning Commission reserves the right to modify the hours of operation after holding a public hearing to consider said modification.

27. **Pay Phones.**
Ongoing.
No external pay phones are permitted on the premises. The applicant shall remove any existing external pay phones prior to issuance of building permits.

28. **No Loitering Signs.**
Prior to issuance of building permits.
The applicant shall post at least five "No Loitering" signs on the building façade and other strategic locations around the site. Signs shall be of a permanent nature and have letters a minimum of 2 inches in height. 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 loitering in the vicinity of 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.

29. **Parking Lot Lighting.**
Ongoing.
The exterior lighting fixtures which serve the parking area shall be equipped with daylight sensors that will automatically turn the lights on at dusk and off at sunrise, and shall be adequately shielded to a point below the bulb and reflector and shall prevent unnecessary glare onto adjacent properties. Generally at least 2 ½ lumens, with an average of at least 5 lumens, but no more than an average of 10 lumens, shall light the entire parking lot.

30. **One-way Driveways.**
Ongoing.
The applicant shall close the existing driveway opposite 45th Street; shall maintain the westerly Telegraph Avenue driveway and the drive-through lane as one-way in; and the easterly Telegraph Avenue driveway as one-way out. The 45th Street driveway may continue to be two-way. The drive-through lane shall have a directional raised curb ("pork chop" design) to the satisfaction of the City Engineer to enforce left-turn only shared with the Telegraph Avenue one-way in driveway. The driving route for the drive-through customers shall be counterclockwise around the building.

31. **Graffiti Removal.**
Ongoing.
Graffiti shall be removed within 72 hours of application. Removal can involve resurfacing of a material and/or color that matches the remaining surface.

32. **Delivery and Loading.**
Ongoing.
The applicant shall ensure that all goods for the facility shall be delivered during between the hours of 7 am and 10 pm. Delivery drivers shall be instructed not to block parking or driveways of neighbors and to the extent possible to use off street parking when available.

33. **Waiver of Bonding for Abandonment or Vacation.**
Prior to commencement of operation.
Since the business has been in operation for 33 years, the usual 4-year requirement to bond for abandonment or vacation of a fast-food restaurant is waived. However, in the event of closure of the restaurant and lack of immediate replacement tenant (within 60 days) the applicant stipulates to voluntarily following the requirements which include, but are not limited to:

1. Enclose the property with a security fence and secure the facility;
2. Post signs indicating that vehicular parking and storage are prohibited on the site (10.16.070 O.T.C. and 22658 C.V.C), and that violators will be cited, and vehicles towed at the owner's expense, and that it is unlawful to litter or dump waste on the site (Sections 374b.5 C.P.C. and 374b C.P.C.). All signs shall conform to the limitations on signs for the specific zone and shall be weatherproof and of appropriate size and standard design for the particular function;
3. Install and maintain security lighting as appropriate and required by the Oakland Police Department;
4. Keep the site free of handbills, posters and graffiti and clear of litter and debris pursuant to Section 8.38.160 of the O.M.C.;
5. Maintain existing landscaping and keep the site free of overgrown vegetation.

34. Drive-through Lane/Pedestrian Crossing

Prior to occupancy of rebuilt facility

The applicant shall submit for Zoning Manager approval a plan to improve the drive-through lane/ pedestrian crossing, including but not limited to marked and raised paving surfaces for the pedestrian paths as a speed-hump. The building permits shall be modified accordingly.

City of Oakland
Community and Economic Development Agency
Zoning Division
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, CA 94612

NOTICE OF EXEMPTION

TO: Alameda County Clerk
1106 Madison Street
Oakland, CA 94612

Project Title: REV10-018
Project Applicant: McDonalds Restaurant c/o Gary Semling (707-765-1660)
Project Location: 4514 Telegraph Avenue, APN 013-1150-014-00
Project Description: Revision to Approved Conditional Use Permits, Design Review for Reconstruction of McDonalds Restaurant Including Fast-Food Drive-through, expanding to 3,920 square feet, on 31,416 Square Foot Lot

Exempt Status: CHECK ALL THAT APPLY

- Statutory Exemptions {Article 18:Section 21080;15260}
Categorical Exemptions {Article 19:Section 21084;15300}
[] Ministerial {Sec.15268}
[] Existing Facilities {Sec.15301}
[] Feasibility/Planning Study {Sec.15262} [XX] Replacement or Reconstruction {Sec.15302}
[] Emergency Project {Sec.15269}
[] Small Structures {Sec.15303}
[] General Rule {Sec.15061(b)(3)}
[] Minor Alterations {Sec.15304}
[] Other: {Sec._____} [XX] Other {Sec.15183}
[] In-fill Development {Sec. 15332}

Reasons why project is exempt: The project is replacement or reconstruction of an existing commercial structure located on the same site with a new structure of substantially the same size, purpose and capacity that also conforms to the applicable General Plan and zoning, and is exempt from environmental review.

Lead Agency: City of Oakland, Community and Economic Development Agency, Zoning Division, 250 Frank H. Ogawa Plaza, Suite 2114, Oakland, CA 94612

Department/Contact Person: David Valeska, Planner II Phone: (415) 238-2075

Signature (Scott Miller, Zoning Manager)

Date:

Pursuant to Section 711.4(d)(1) of the Fish and Game Code, statutory and categorical exemptions are also exempt from Department of Fish and Game filing fees.

*ENVIRONMENTAL DECLARATION
(CALIF. FISH AND GAME CODE SEC. 711.4)

: FOR COURT USE ONLY

NAME AND ADDRESS OF APPLICANT OR LEAD AGENCY :

LEAD AGENCY:
COMMUNITY & ECONOMIC
DEVELOPMENT AGENCY/PLANNING
250 Frank H. Ogawa Plaza
Room 2114
Oakland, CA 94612

APPLICANT: McDonalds
Contact: Gary Semling (707-765-1660)
City of Oakland

: FILING NO.

CLASSIFICATION OF ENVIRONMENTAL DOCUMENT:

CLERK'S
USE ONLY

- 1. NOTICE OF EXEMPTION/STATEMENT OF EXEMPTION
[X] A - STATUTORILY OR CATEGORICALLY EXEMPT
\$50.00 (Fifty Dollars) - CLERK'S FEE
[] B - DE MINIMUS IMPACT - CERTIFICATE OF FEE EXEMPTION
\$50.00 (Fifty Dollars) - CLERK'S FEE REQUIRED
2. NOTICE OF DETERMINATION - FEE REQUIRED
[] A - NEGATIVE DECLARATION
\$1,800.00 (Eighteen Hundred Dollars)-
STATE FILING FEE
\$50.00 (Fifty Dollars) - CLERK'S FEE
[] B - ENVIRONMENTAL IMPACT REPORT
\$2,500.00 --(Twenty Five Hundred Dollars) - STATE
FILING FEE
\$50.00 (Fifty Dollars) - CLERK'S FEE
[] C -- Certificate of Fee Exemption
& De Minimis Impact Fee
\$50.00 (Fifty Dollars) - CLERK'S FEE

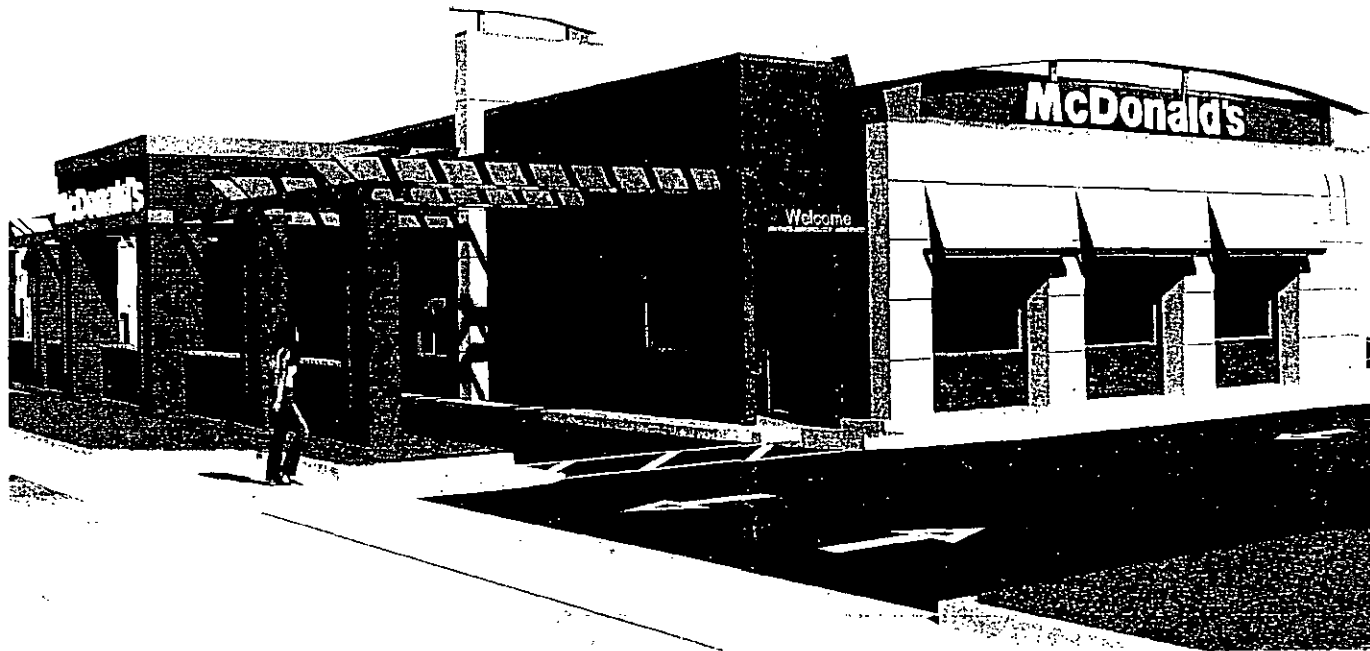
*THIS FORM MUST BE COMPLETED AND SUBMITTED WITH ALL ENVIRONMENTAL
DOCUMENTS FILED WITH THE ALAMEDA COUNTY CLERK'S OFFICE.

FIVE COPIES OF ALL NECESSARY DOCUMENTATION ARE REQUIRED FOR FILING
PURPOSES.

APPLICABLE FEES MUST BE PAID AT THE TIME OF FILING AN ENVIRONMENTAL
DOCUMENT WITH THE ALAMEDA COUNTY CLERK'S OFFICE.

MAKE CHECK PAYABLE TO: ALAMEDA COUNTY CLERK

APPROVED BY: City Planning Commission: December 1, 2010 (date) _____ (vote)
City Council: _____ (date) _____ (vote)



Proposed Improvements - Detail

ATTACHMENT C: PLANS & ELEVATIONS

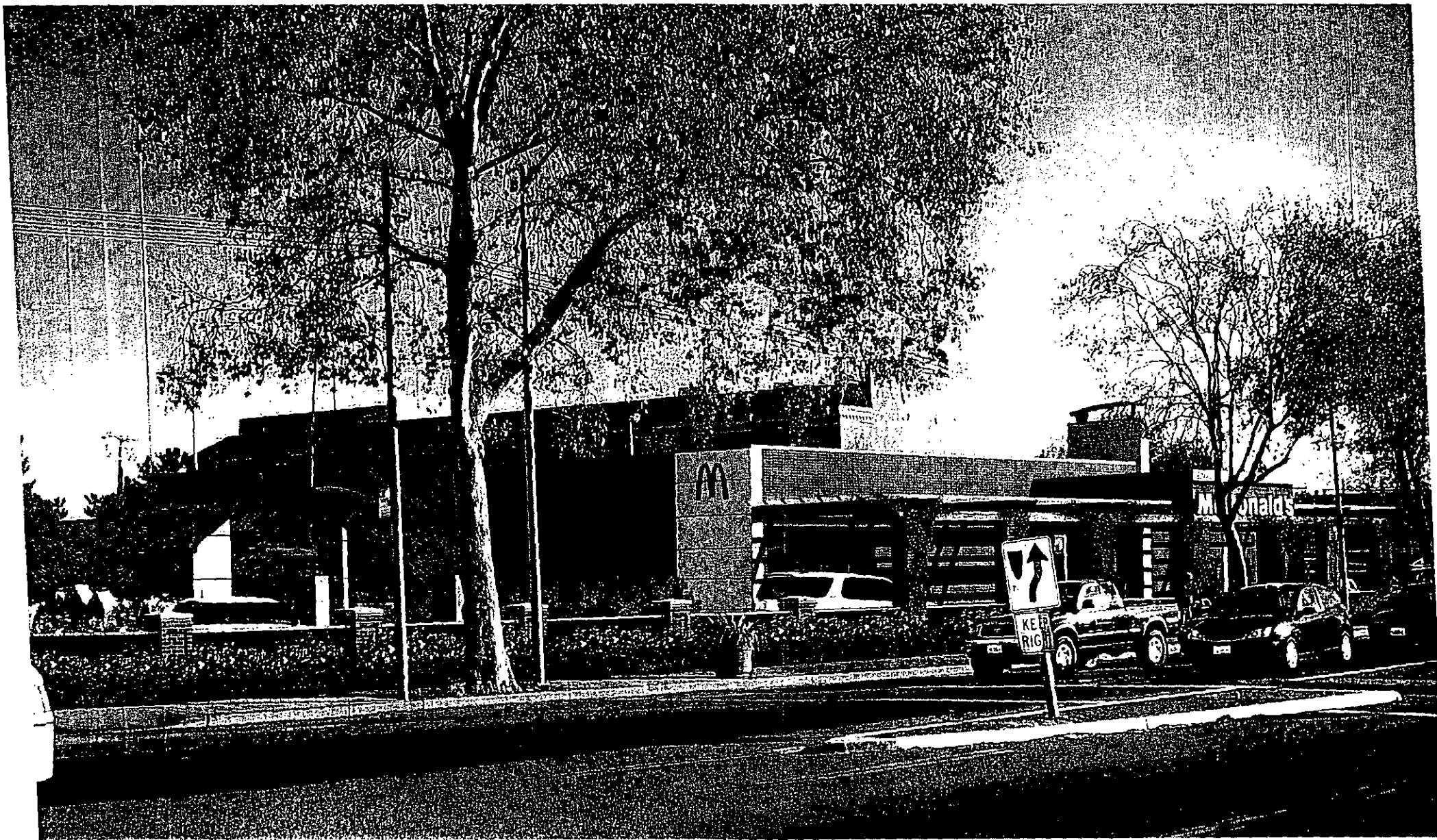
McDonald's

McDonald's
Telegraph Ave. & 45th St.
Oakland, California

Stantec



Proposed Improvements - View From Southwest



Proposed Improvements - View From Northwest



SUPERIOR
Electrical Advertising

1700 West Anaheim Street
Long Beach, California
90813-1195

Phone: 562.495.3808
Facsimile: 562.435.1867
www.superiorsigns.com

Project: _____

Address:
4514 TELEGRAPH AVE,
OAKLAND, CA
94609

Account Manager:
MIKE RATHBUN

Designer:
ALFREDO ZAVALZA 3.50

Scale: AS NOTED

Design No.: 10-09-3076-01

Date: 09.07.10

Rev. No.:

- Revisions:
- REV. 02 09.29.10 (1.00)
 - Update plan sheet & RCE's see architect
 - Sign 3 to be 4'-0" O.A.H. W/ top base

APPROVALS

FOR JOB CHECK _____ DATE _____

Acct. Mgr.

FOR CONSTRUCTION _____ DATE _____

Acct. Mgr.

Design

Production

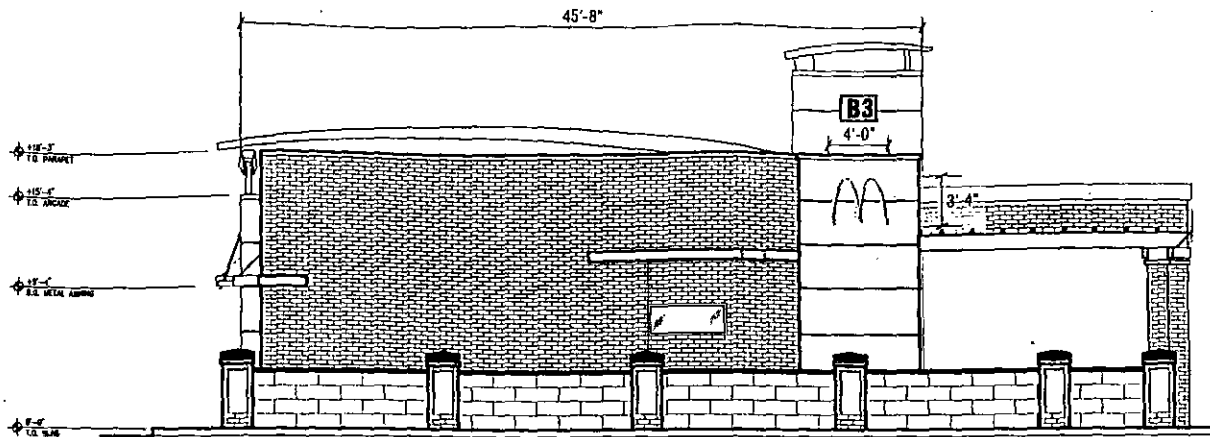
FOR INSTALL ONLY _____ DATE _____

Acct. Mgr.

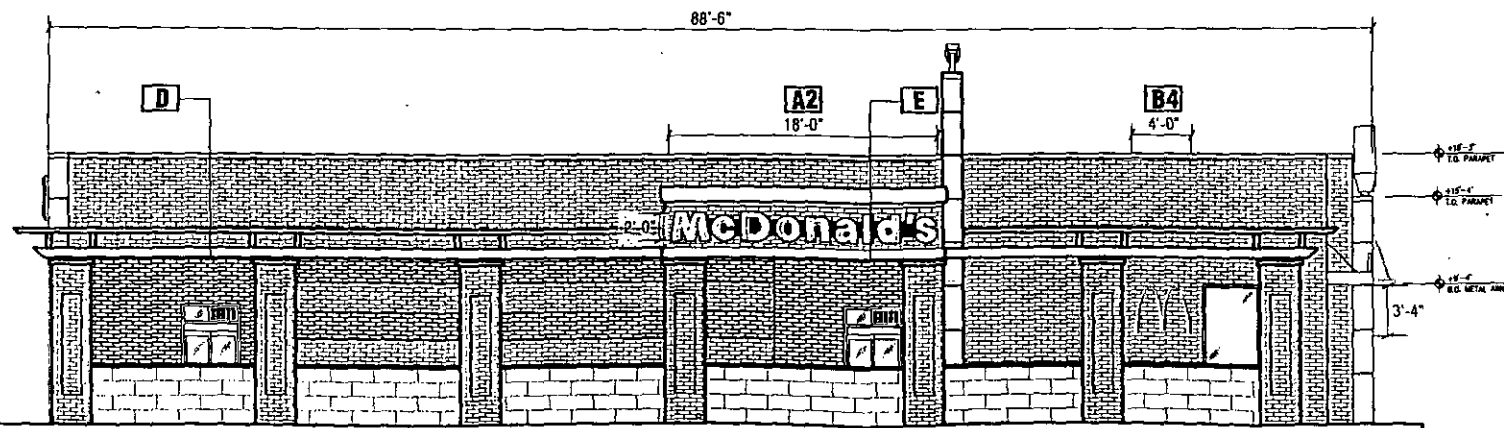
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Note: The colors depicted here are a graphic representation. Actual colors may vary from specifications.



REAR ELEVATION - NORTH
SCALE: 1/8" = 1'-0"



DRIVE-THRU ELEVATION - WEST
SCALE: 1/8" = 1'-0"



SUPERIOR
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Long Beach, California
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Phone: 562.495.3805
Facsimile: 562.435.1867
www.superiorsigns.com

Project:
McDonald's

Address:
4514 TELEGRAPH AVE,
OAKLAND, CA
94609

Account Manager:
MIKE RATKBUN

Designer:
ALFREDO ZAVALZA 3.50

Scale: AS NOTED

Design No.: 10-09-3076-01

Date: 09.07.10

Reg. No.:

Revisions:
R1 AZ #9.18 (1.00)
- Update plot plan & RCE's per architect
- Sign S to be 6'0" OAH W lock base

APPROVALS

FOR JOB CHECK DATE

Acct. Mgr.

FOR CONSTRUCTION DATE

Acct. Mgr.

Design

Production

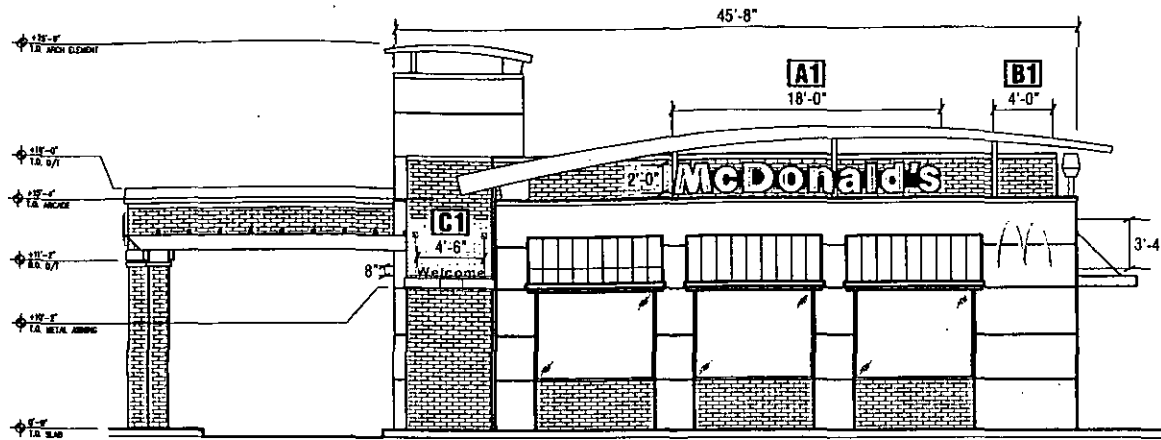
FOR INSTALL ONLY DATE

Acct. Mgr.

Page: 03 Of: 11

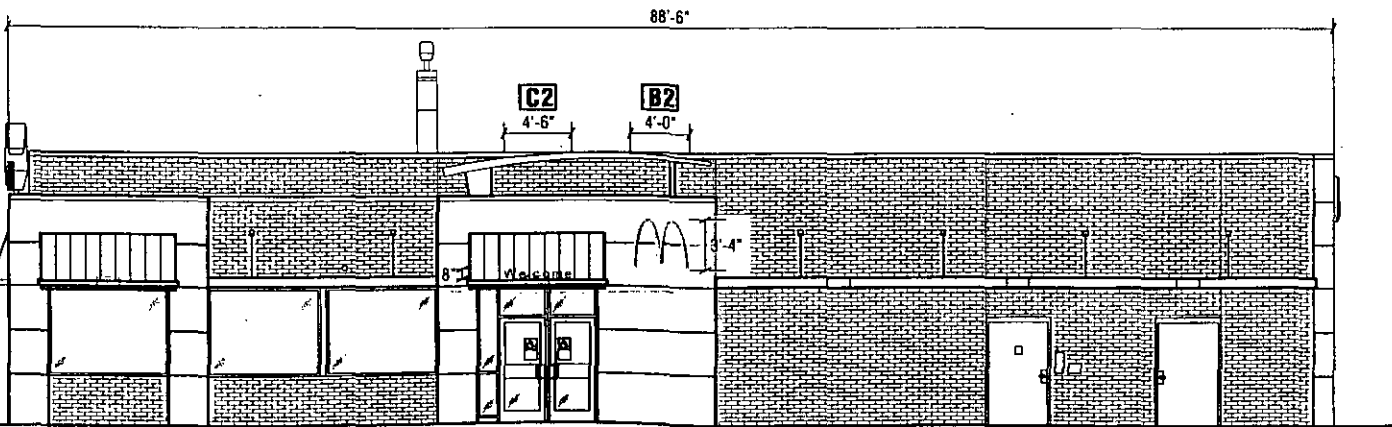
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Note: The coloration here are a graphic representation. Actual colors may vary. See color specifications.



FRONT ELEVATION - SOUTH

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



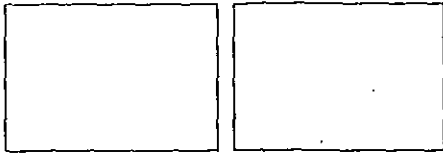
MAIN ENTRANCE ELEVATION - EAST

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



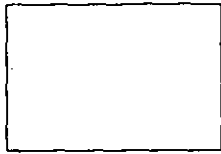
METAL AWNING TRIM, TRELLIS AND COPING

CLEAR ANODIZED ALUMINUM



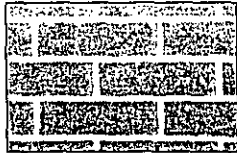
METAL AWNINGS

12' STRIPES
"YELLOW" 3M #3632-25
PANTONE 109C



STUCCO FINISH

BENJAMIN MOORE - SNOW WHITE #2122-70



BRICK VENEER

BELDEN
"RUBIGO RED VELOUR"



BRICK VENEER

BELDEN
"MODULAR MIDLAND BLEND A"



ARCHITECTURAL ROOF CAP ELEMENT

PANTONE 109C

 **McDonald's**

4514 TEPEGRAPH AVENUE
OAKLAND, CA

004-0278

 **Stantec**

Stantec Architecture Inc. | Tel. 707.765.1660
1137 N. McDowell Blvd. | Fax. 707.765.9908
Petaluma, CA U.S.A. 94954 | www.stantec.com

DIMENSION POINT (WITHIN ROW)
 RECORD DATA PER REFERENCE #1
 MEASURED DATA
 CENTERLINE
 --- CHAIN-LINKED FENCE
 STORM DRAIN MANHOLE
 SANITARY SEWER MANHOLE
 TELEPHONE MANHOLE
 --- FIRE HYDRANT
 WATER VALVE
 BACKFLOW PREVENTION DEVICE
 TREES (AS NOTED)
 UTILITY POLE
 X XX - EXISTING ELEVATION
 --- STORM DRAIN LINE
 --- SANITARY SEWER LINE
 --- WATER LINE

APN: 013-1150-015
 ZONED: C-2B

46TH ST.
 FD. PIN IN CITY
 MONUMENT WELL
 AT 47TH ST.

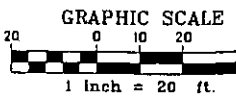
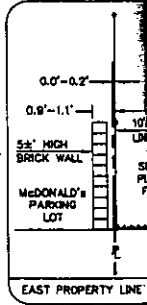
TELEGRAPH AVE.
 (100' R/W)

45TH STREET
 (FORMERLY LINDEN LANE)

(60' R/W)

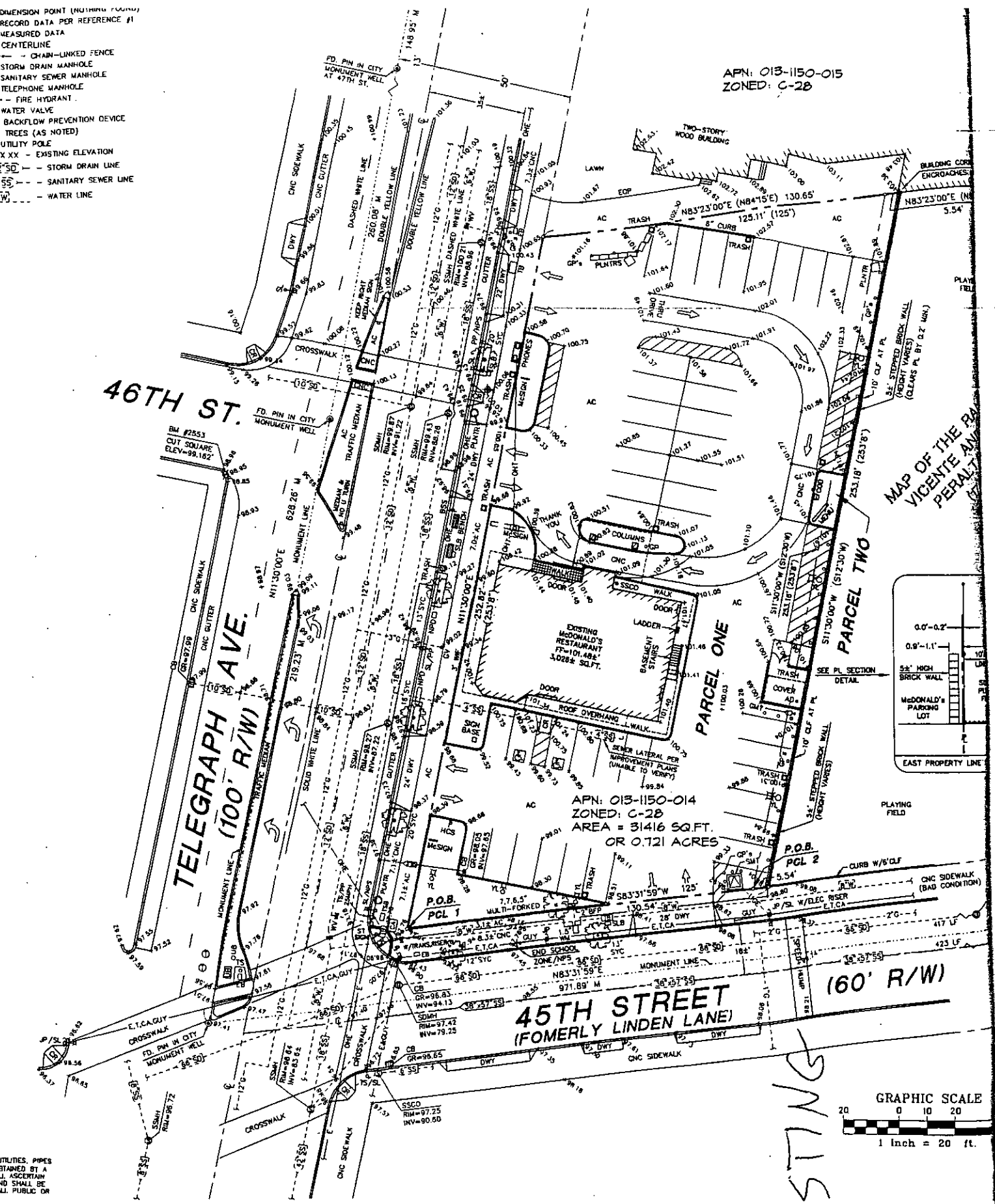
APN: 013-1150-014
 ZONED: C-2B
 AREA = 31416 SQ. FT.
 OR 0.721 ACRES

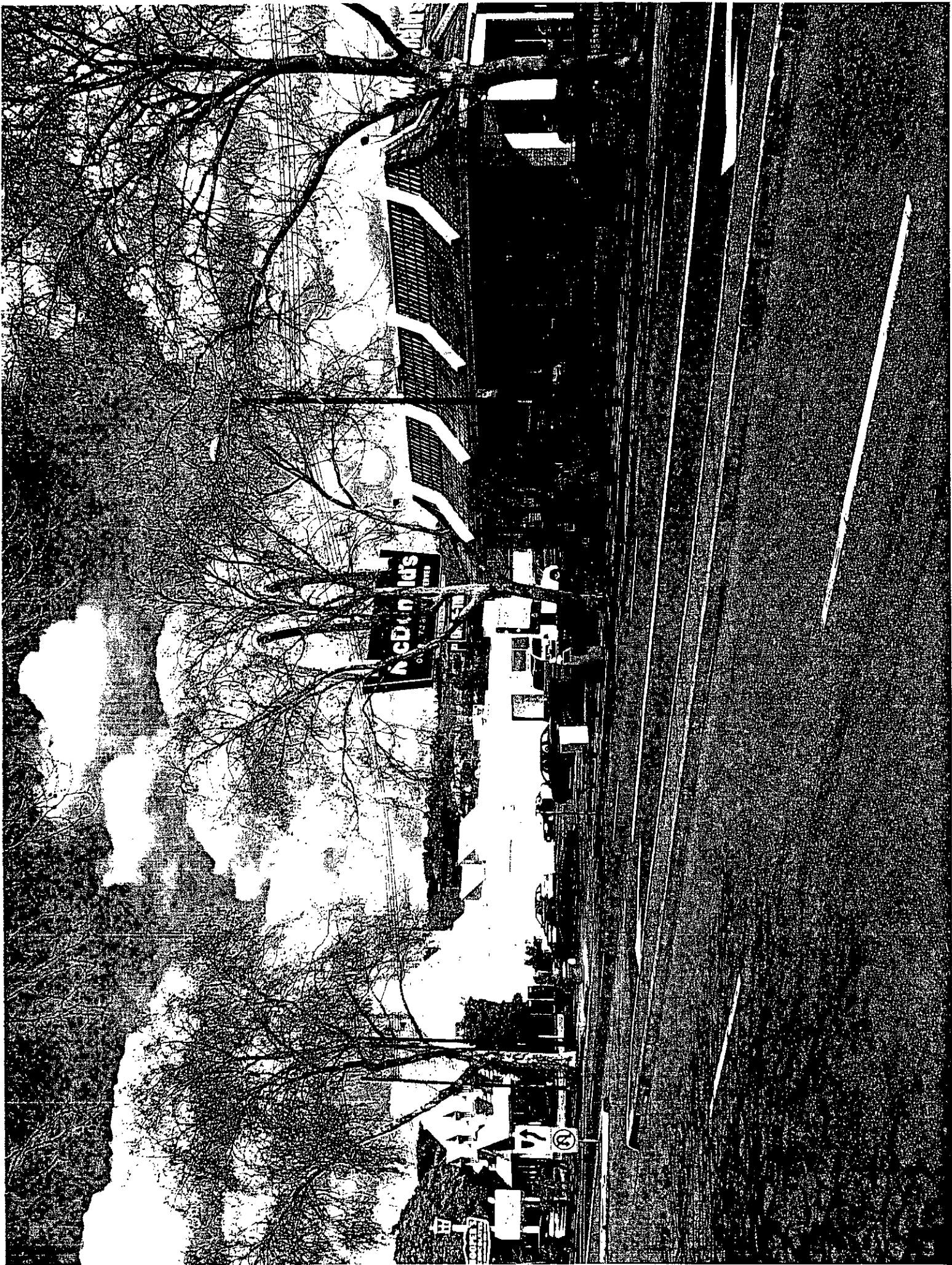
MAP OF THE PARCEL
 VICENTE AND
 PERALTA

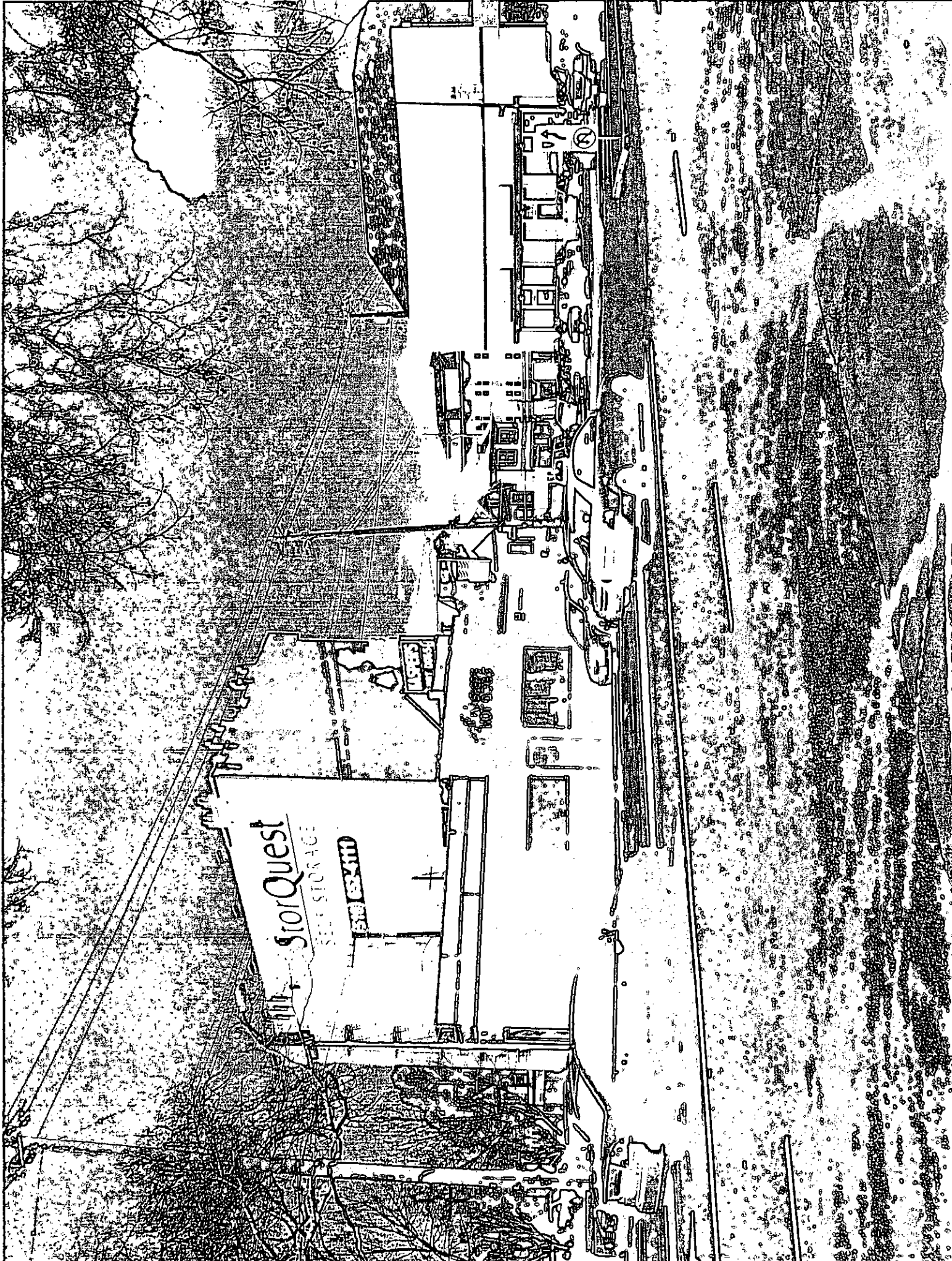


EXISTING

UTILITIES, PIPES
 OBTAINED BY A
 LI. ASCERTAIN
 NO SHALL BE
 LI. PUBLIC OR



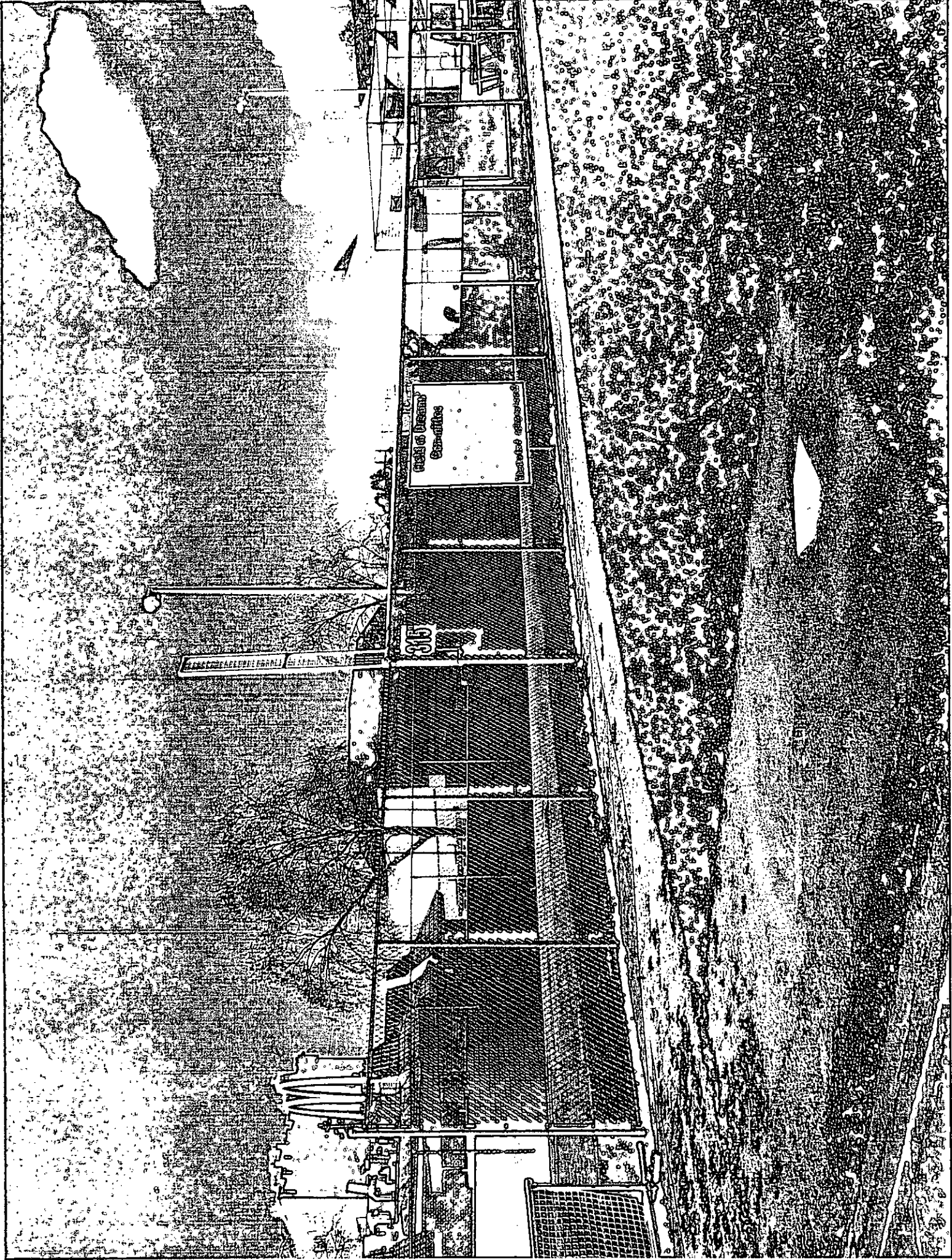




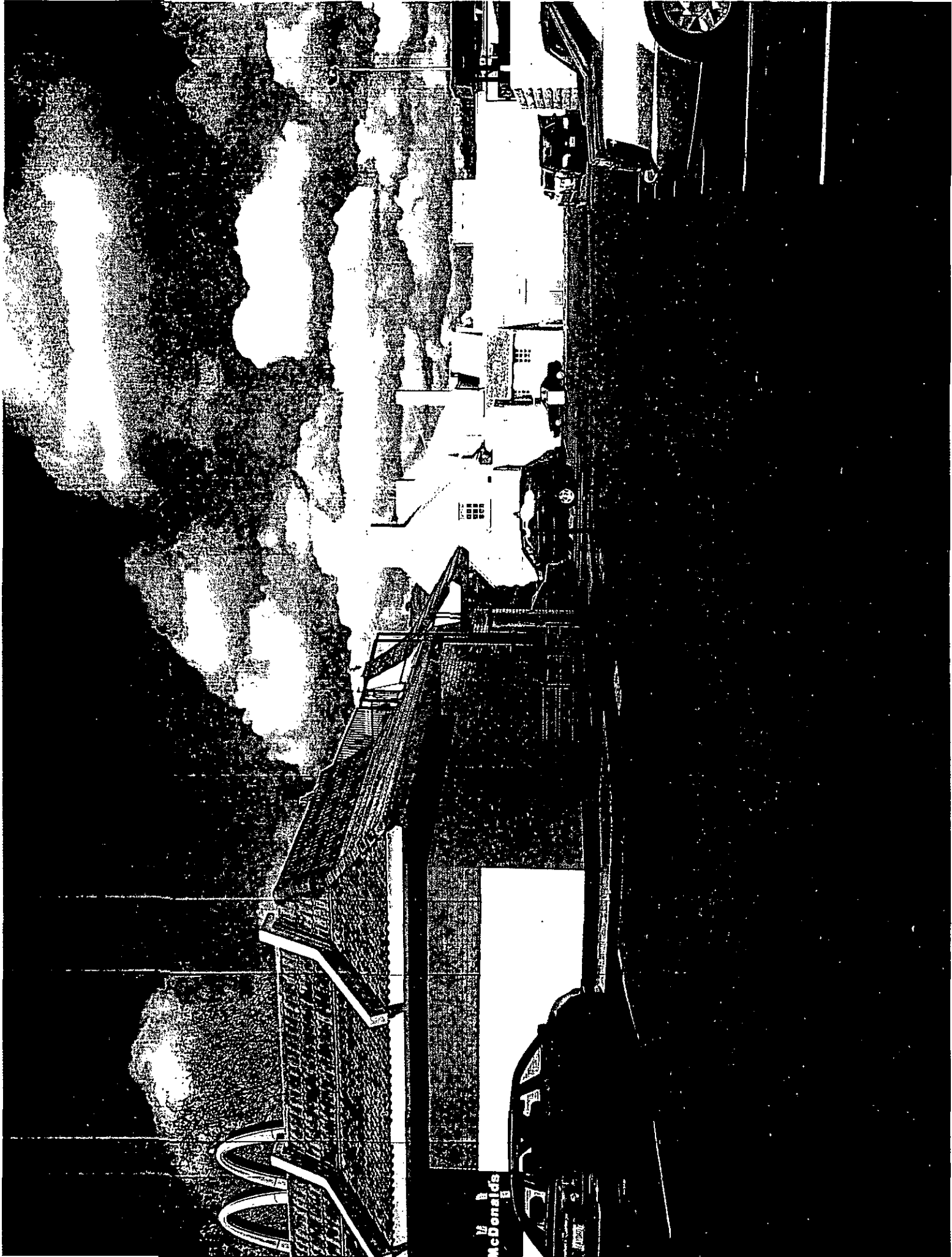
StorQuest

SELF STORAGE

EST. 1984







DEMOLITION OF EXISTING MCDONALDS AT 4514 TELEGRAPH. PROPOSED BUILDING ON A NEW 3,920 S.F. MCDONALDS WITH NEW PARKING AND LANDSCAPE SITE WORK. DRIVE THRU IS CONFIGURED WITH 2 DRIVE LANES MERGING TO A SINGLE DRIVE THRU DESIGNED TO REDUCE DRIVE-THRU TIME. DESIGN OF THE BUILDING IS AN ACUTE CONCEPT TO BREAK UP THE BUILDING. THE DRIVE THRU IS SCREENED WITH A LOW WALL AND LANDSCAPE FROM TELEGRAPH AVE AND COVERED WITH A TRELLIS. THE EXTERIOR MATERIALS IS A COMBINATION OF BRICK AND STUCCO. ALL ROOFTOP MECHANICAL EQUIPMENT IS SCREENED BY A PARAPET. STORMWATER WILL BE FILTERED WITH DOWNSPOUT IN-LINE FILTERS AND A MANHOLE STORM FILTER FOR SITE WATER TREATMENT. EXTENSIVE LANDSCAPE IS PROPOSED FOR TELEGRAPH AVE AND 45TH STREET AND AT THE DRIVE-THRU ENTRY. INCLUDED IS A TREE SURVEY FOR PROTECTION OF EXISTING TREES AT TELEGRAPH AND 45TH STREET.

ATTACHMENT D: APPLICANT CORRESPONDENCE



Alameda-Contra Costa Transit District



August 12, 2010

Planning Commission
Doug Boxer, Chair
City of Oakland
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612

Re: 4514 Telegraph Renovation

Dear Chairman Boxer and Fellow Commissioners:


On behalf of the Service and Operations Planning Department of AC Transit, I am writing to express our support of the proposed reconfiguration of the McDonald's at 4514 Telegraph in Oakland. By eliminating an existing curb cut and redirecting traffic onto 45th Street, not only will the project improve pedestrian safety and reduce congestion on Telegraph Avenue, enhancing route time efficiency, but it will also facilitate the future planning and implementation the Bus Rapid Transit modifications.

James Kachelmeyer and Mark McClure of California Capital and Investment Group met with us last Thursday to discuss the development and its impacts on adjacent AC Transit routes and stops. We shared with them our vision for the existing stop at 45th and Telegraph, as well as the necessary ADA requirements for the unloading of passengers. Not only will these renovations ensure compliance with these requirements and improve passenger access to the store, but they will also enhance the implementation of the planned Bus Rapid Transit service.

As you know, AC Transit, in collaboration with the City of Oakland, is studying Bus Rapid Transit along Telegraph Avenue, including the blocks adjacent to the proposed project at 45th and Telegraph. The proposed reconfiguration would be compatible with proposed BRT improvements. By eliminating a curb cut on Telegraph Avenue and redirecting traffic towards 45th street, both the city and AC Transit would have more flexibility in BRT design. It will also reduce congestion and prevent accidents stemming from unexpected stopping.

In short, the new configuration of the McDonald's at 4514 Telegraph will not only reduce congestion and enhance pedestrian safety along Telegraph Avenue, but it will also improve our current route efficiency and augment the planned implementation of Bus Rapid Transit. As such, we encourage you to approve the project before you.

Respectfully,

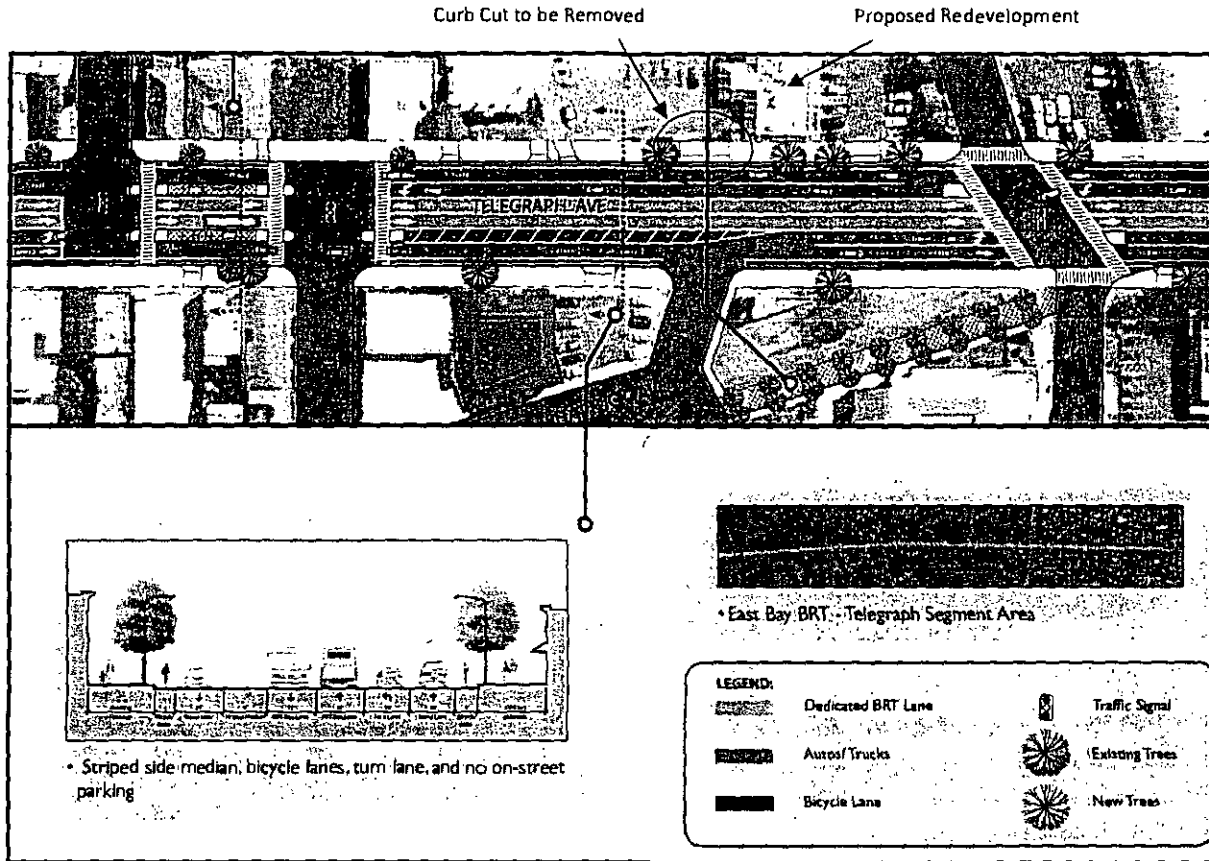

Cory LaVigne
AC Transit

ATTACHMENT E: NEIGHBOR CORRESPONDENCE



Alameda-Contra Costa Transit District

PROPOSED BRT IMPROVEMENTS NEAR 4514 TELEGRAPH REDEVELOPMENT



Valeska, David

From: josh thorp [josh_thorp@hotmail.com]
Sent: Wednesday, October 13, 2010 5:38 PM
To: Valeska, David
Subject: RE: Case File REV10-018

Thanks David,

The primary concern is expansion of the drivethrough hours -- the existing drivethrough coupled with the JackIntheBox drivethrough bring a lot of traffic, noise, panhandling and (especially) garbage to the neighborhood without benefitting other local merchants or residents, and making it 24 hours will obviously exacerbate these problems.

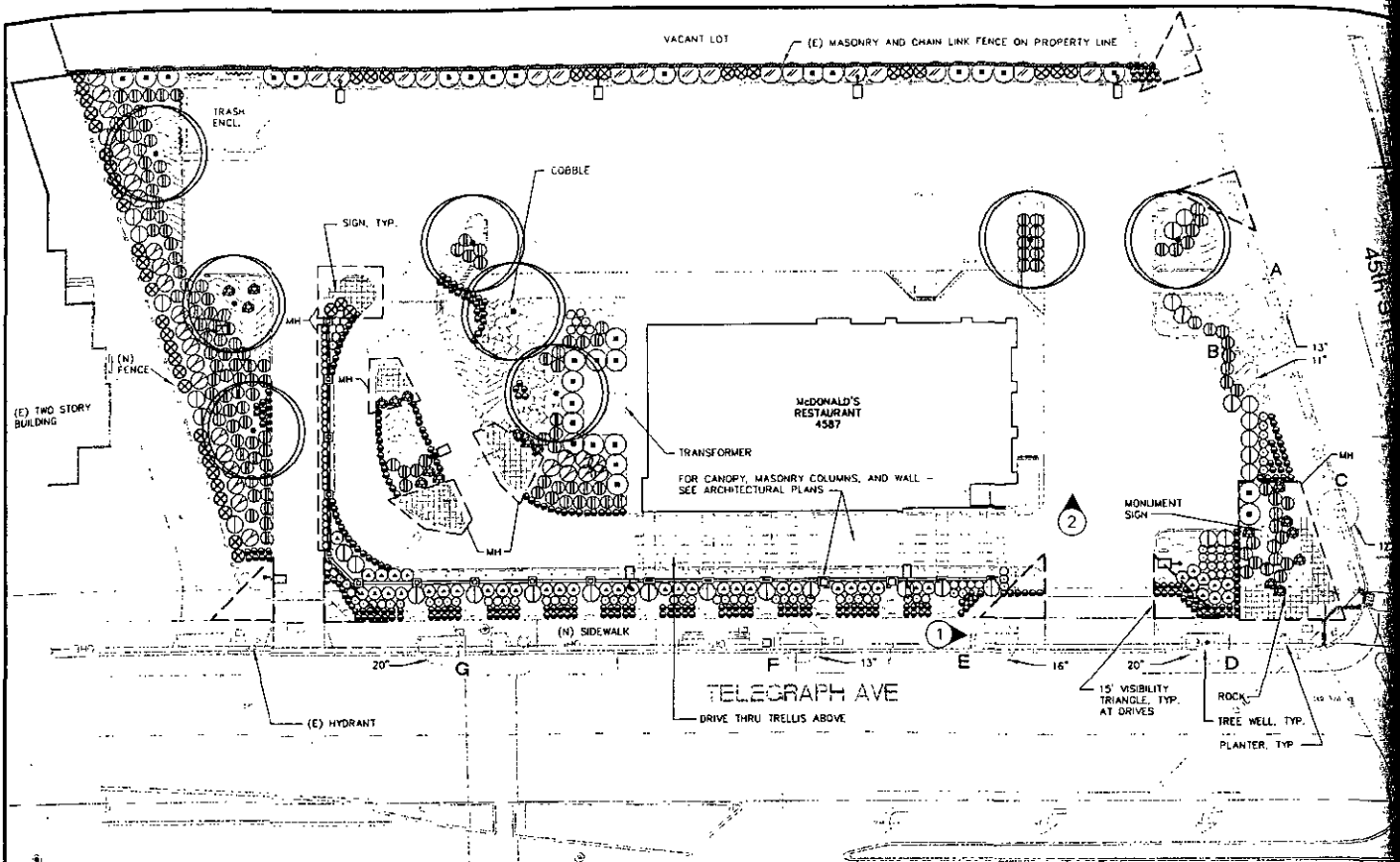
A couple questions:

1. Can you confirm that no final decisions will be made on the 20th?
2. Are you the appropriate contact for submitting letters/petitions etc.?

Much appreciated,

Josh Thorp

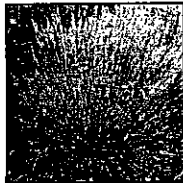
Subject: RE: Case File REV10-018



LAGERSTROEMIA



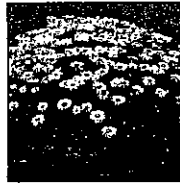
JUNIPERUS



FESTUCA



GUARA



LEUCANTHEMUM



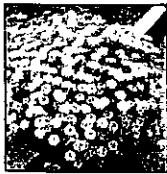
DODONEA



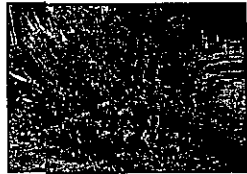
PHORMIUM



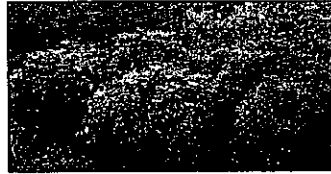
ERIGERON



ALLYSSUM



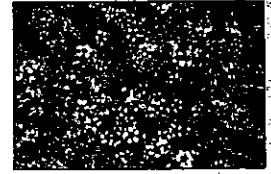
BUDDLEIA



NANDINA



VERBENA



LEPTOSPERMUM

HE

SUSTAINABLE DESIGN CHECKLIST GOING GREEN

- LOW MAINTENANCE PLANTINGS USED OVER 80% OF LANDSCAPE AREA
- REGIONAL/COMMUNITY DESIGN AND CONNECTIVITY
- GROUND COVER DESIGNED TO PROVIDE 100% VEGETATED COVER IN 2-3 YRS ON AT LEAST 50% OF THE LANDSCAPE AREA.
- PLANTS SUPPORT IPM
- NON-INVASIVE PLANTS USED
- PLANTS SELECTED BASED ON AVAILABLE PLANTER AREA
- WATER CONSERVING PLANTING DESIGN
- MULCH DEPTH 3" TO REDUCE EVAPOTRANSPIRATION
- EXISTING PLANTINGS PRESERVED AND PROTECTED
- IRRIGATION DESIGN TO BE WATER CONSERVING

HYDROZONES

THERE ARE TWO HYDROZONES FOR THIS PROJECT. THE UNLABELED HYDROZONE IN THE PLAN VIEW IS A LOW WATER USE ZONE AND THE UM ZONES OUTLINED ARE MODERATE USE HYDROZONE PER THE LATEST WUCOLS RATING

GENERAL NOTES

1. ALL PLANTING AREAS SHALL BE TOP DRESSED WITH A 3" (MINIMUM) DEEP LAYER OF 1/2"-1" WESTERN FIR BARK OR EQUAL
2. REFER TO ARCHITECTURAL AND CIVIL PLANS FOR DESCRIPTIONS OF ELEMENTS NOT IDENTIFIED ON THIS PLAN.
3. OBSERVE THE FOLLOWING UNIFORM SETBACK DISTANCES FOR TREE PLANTING:
 - BETWEEN STREET TREES = 30 FT.
 - DRIVEWAY CUTS AND FIRE HYDRANTS = 7 FT.
 - UTILITY BOXES, MANHOLE AND OTHER UTILITY VAULTS, TELEPHONE AND OTHER UTILITY POLES, GAS AND WATER METER, AND MAINS = 5 FT.
4. ALL SURFACE AND SUB-SURFACE SWALES, DRAINAGE STRUCTURES AND PATTERNS SHALL BE MAINTAINED.
5. A LICENSED LANDSCAPE MAINTENANCE CONTRACTOR WILL BE RETAINED TO PERFORM ROUTINE MAINTENANCE DUTIES.
6. LOCATIONS AND QUANTITIES OF EXISTING LANDSCAPE MATERIALS ARE APPROXIMATE.
7. PLANTER SOIL SHALL BE AMENDED AS DESCRIBED BY A LABORATORY SOIL ANALYSIS

CITY SPECIFIC REQUIREMENTS

- LANDSCAPE DESIGN HAS BEEN DONE TO COMPLEMENT NEIGHBORHOOD STREETSCAPE TREATMENT AND ARCHITECTURE.
- SCREENING OF DRIVE THRU PROVIDED WITH A COMBINATION OF A WALL AND PLANTINGS SEE ARCHITECTURAL DRAWINGS FOR MATERIALS AND DETAILS

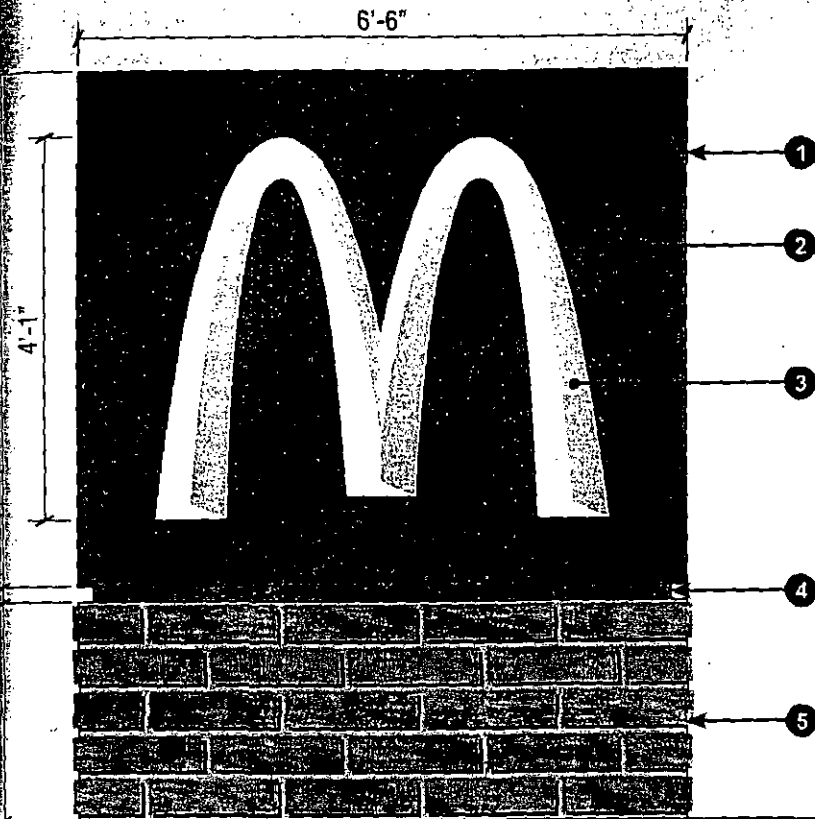
WATER CONSERVATION CONCEPT

A COMBINATION OF DRIP AND BUBBLERS FOR LOW GALLONAGE TARGET IRRIGATION SHALL BE INSTALLED IN ALL PLANTERS. IRRIGATION SYSTEMS SHALL BE EQUIPPED WITH A CONTROLLER CAPABLE OF DUAL PROGRAMMING. PLANTS SHALL BE GROUPED INTO "HYDROZONES" AND IRRIGATED SEPARATELY FROM THOSE WITH DIFFERENT WATER REQUIREMENTS

EXISTING CONDITIONS



ATTACHMENT F: LANDSCAPE MAP & SIGNS



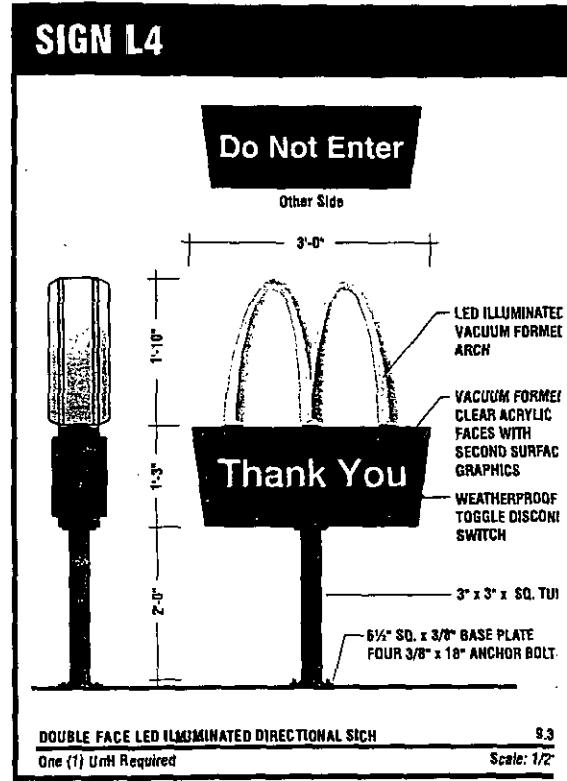
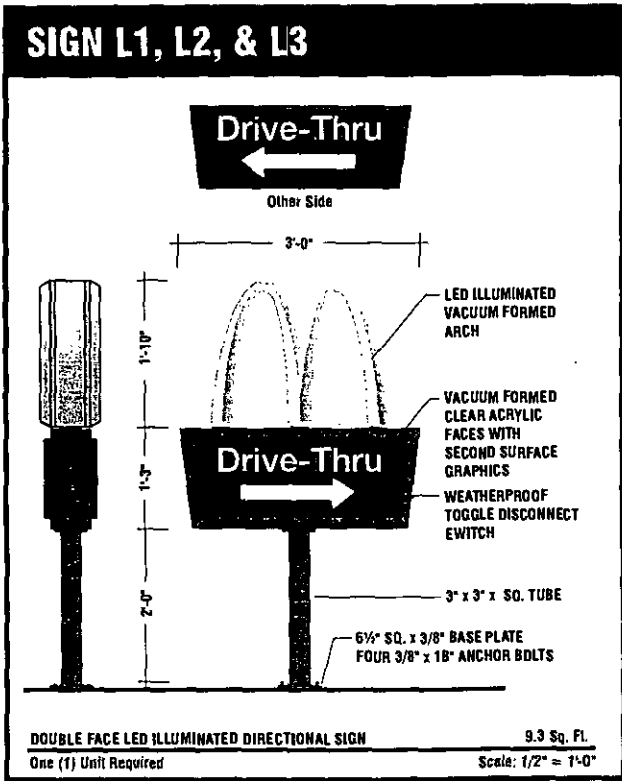
FRONT VIEW

ILLUMINATED D/F MONUMENT SIGN

RED

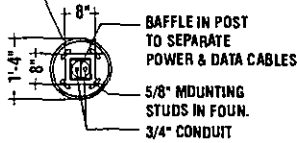
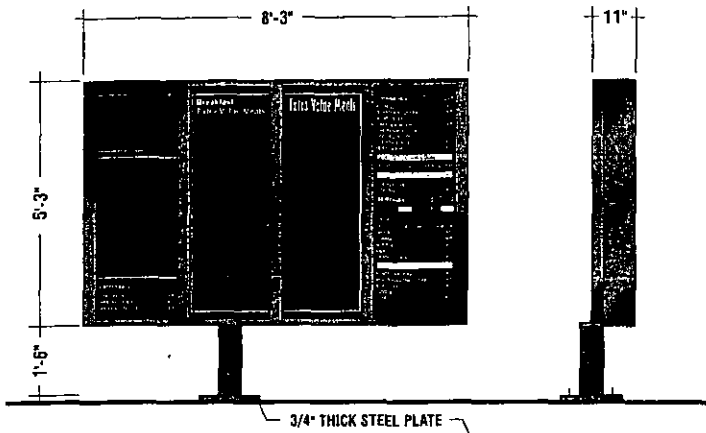
aluminum cabinet painted McDonald's red
 ed via T12 "Daylite" fluorescent lamps.
 n routed logo and copy painted McDonald's Red.
 vacuum formed prismatic translucent yellow
 037.
 painted McDonald's red.
 base with brick veneer to match building &
 floore HC-77 Alexandria Beige

**** ALL FOOTINGS BY THE GENERAL CONTRACTOR ****
(for signs on this page)



**** ALL FOOTINGS BY THE GENERAL CONTRACTOR ****
(for signs on this page)

SIGN G1 & G2

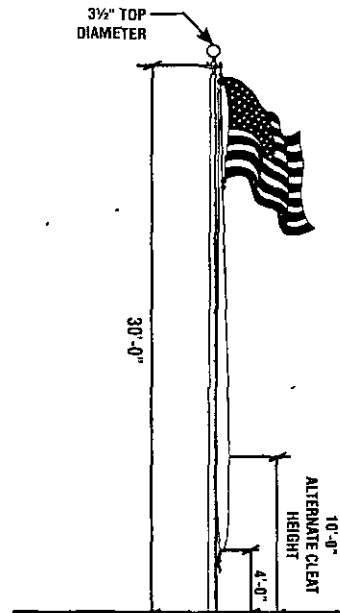


SPECIFICATIONS:
LOAD FOR 3 COLUMN SECTION 3.2 AMPS
LOAD FOR SINGLE COLUMN SECTION 1.6 AMPS
CIRCUITS: (1) 110 / 60 M2 DEDICATED SIGN CIRCUIT

FLORIDA PLASTICS STATIC ILLUMINATED MENUBOARD
Two (2) Unit/Unit Required

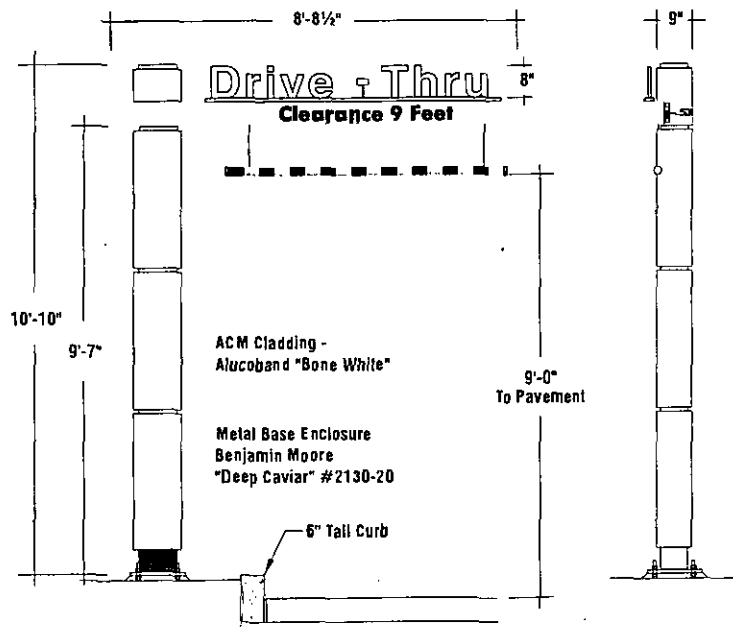
43.31 Sq. Ft.
Scale: 1/4" = 1'-0"

SIGN H



FLAG POLE
One (1) Unit Required

SIGN J



CLEARANCE SIGN
One (1) Unit Required

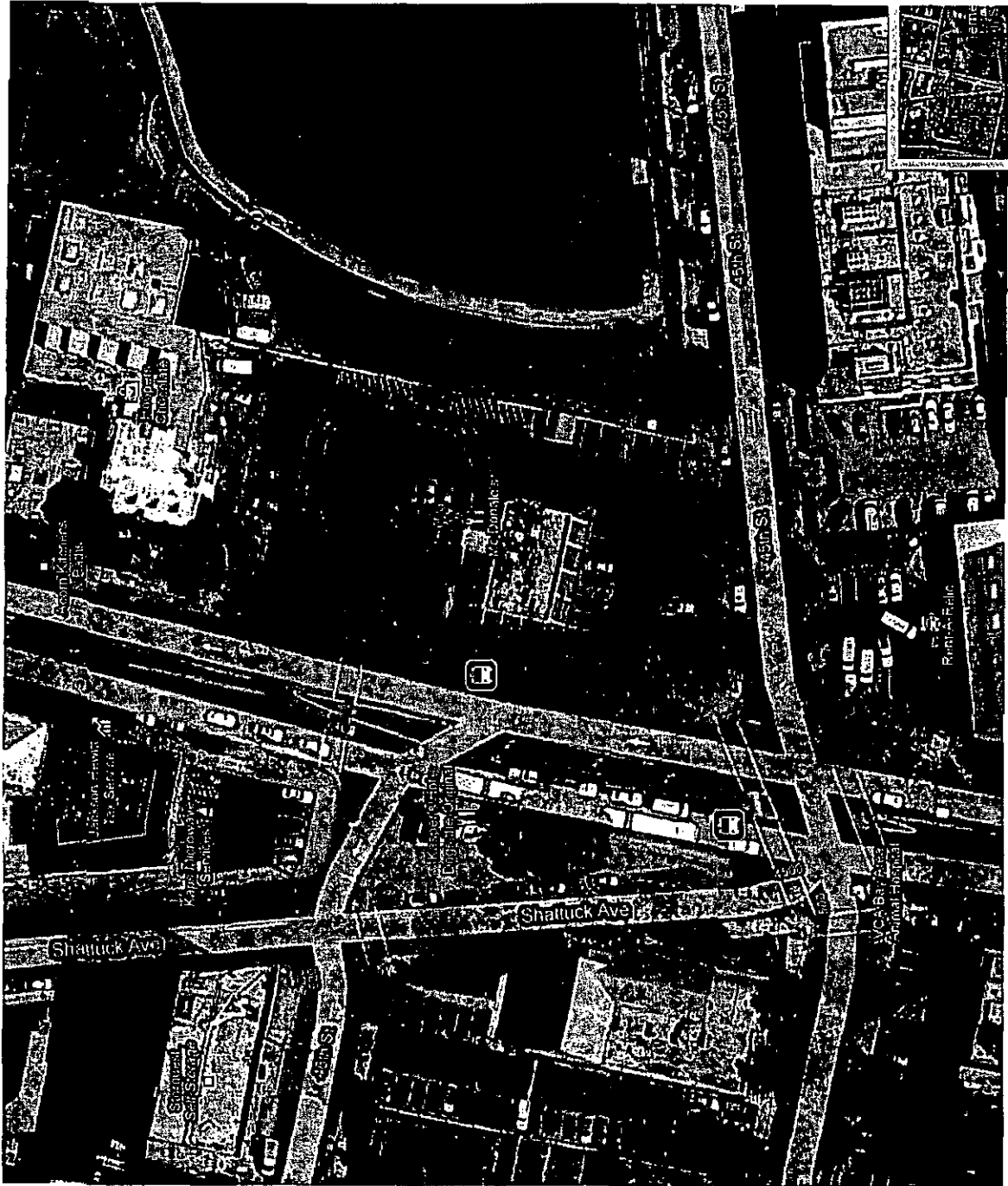
Scale: N.T.S.

SIGN K



SINGLE FACE NON-ILLUMINATED
One (1) Unit Required

Scale: N.T.S.



ATTACHMENT G: VICINITY MAP (PHOTO)

McDonald's Rebuild
L/C # 004-0278
4514 Telegraph Avenue
Oakland, California

ZONING REPORT

City Planning Department
 City Planning Commission

CASE FILE: CM90-483

APPLICANT(s): CARTER, Ron W.

REPORT DATE: January 23, 1991

Owner Buyer Lessee Agent

FILING DATE: December 12, 1990

LOCATION: 4514 Telegraph Avenue

LAST DATE FOR CONSIDERATION: January 23, 1991

APPLICATION: Major Conditional Use Permit

PROPOSAL: To expand an existing Fast Food Restaurant from 2,040 to 2,875 square feet

SUPPORT:

OPPOSITION: Temescal Neighbors Together (TNT)

STAFF RECOMMENDATION: Approve
 Conditions Attached

COMMISSION ACTION: Approved
Vote: 5 ayes, 0 noes
Date: January 23, 1991

ZONING: C-45 Community Shopping Commercial

ENVIRONMENTAL STATEMENT:

EIR Negative Declaration Categorically Exempt: Section 15301(e)(1) California Administrative Code

PROPERTY DESCRIPTION: Approximately 33,143 square foot corner lot containing a 2,040 square foot single story, prototypical McDonald's Fast Food Restaurant Drive/Through Facility with brick walls and a brown cement tile mansard roof; extensive parking lot containing 43 parking spaces with landscaped strips off Telegraph Avenue and planters throughout the parking lot; three driveways access the site from Telegraph; one from 45th Street; surrounding commercial-ly developed sites include (south) Reed Brothers Locksmith's, (north) Bocper's canales, and across Telegraph -- Kasper's Hot Dogs, Berrola's Restaurant and Jack-in-the-Box; Carter Middle School adjacent to the east; Pacific Bell Exchange to the south.

DISCUSSION: The applicant proposes to expand an existing 2,040 square foot McDonald's Fast Food Restaurant by adding 835 square feet to provide 18 additional seats in the restaurant, two additional restrooms, with handicapped access, and an expanded freezer/cooler storage facility. The addition is primarily intended to improve present operations of the facility. As a result of the addition, the adjacent parking lot design will be modified to

ATTACHMENT H: CM90-483 STAFF REPORT & CONDITIONS

include seven new standard sized parking spaces and a reduced driveway width from the existing 40 feet to 25 feet. The addition itself consists of an 11-15 foot wide, 65 foot long building extension along the southern side of the restaurant.

Since 1978, a Major Conditional Use Permit has been required to establish a new Fast Food Restaurant and/or Drive-Through Facilities in Oakland, or to expand an existing Fast Food Facility beyond 20% of the floor area. The McDonald's Restaurant on this site predates the adoption of the Fast Food Use Permit. Pursuant to revised Fast Food Regulations adopted by the City Council on February 21, 1989, Fast Food Restaurant additions are subject to Sections 7023a and e, as well as the mandatory Fast Food Guidelines (OCPD 100-18). A review of the case file for the existing site indicates that the facility was granted a Minor Conditional Use Permit for the drive-through in 1977 without any Conditions of Approval addressing impacts associated with the operation of a Fast Food. The imposition of such conditions for all Planning permits in Oakland is now a standard procedure: this current application therefore provides the City an opportunity to address concerns expressed by neighborhood groups and to incorporate appropriate performance standards/conditions of approval.

At the Planning Commission hearing on January 9, 1991, Temescal Neighbors Together (a neighborhood group) presented written testimony regarding specific conditions of approval they would like attached to the Major Use Permit, if the Commission chooses to grant this use permit. These conditions relate to litter and loitering control and noise abatement, which are standard conditions of approval now routinely imposed on Fast Food Restaurant facilities.

Staff has reviewed the proposal and considers the actual expansion of the food service activity -- 18 seats -- to be of minor significance in terms of the present operations of the facility and insufficient to generate major impacts of itself. The most notable change would be the reduction of the width of the driveway abutting the addition, from 40 to 25 feet. However, the City Traffic Engineer has reviewed the site/circulation plan and deems the new width adequate for two way access and maneuvering into/out of parking spaces. To further improve upon the parking/circulation plan he suggests elimination of the two parking spaces nearest the driveway entrance. This would reduce the total number of parking spaces to 41. The current parking requirement for Fast Food Restaurants in the C-45 Zone is one space for every 450 square feet of floor area; thus the parking requirement for the restaurant, with the addition, is 6.3 spaces. Given that there are 43 spaces provided, the suggested reduction will not have a deleterious effect on the operations of the facility, or in any way violate current City parking standards.

On January 15, 1991, the City Council enacted a six-month moratorium on the granting of Conditional Use Permits for Fast Food Restaurants on Telegraph Avenue northerly of the 580 Freeway. While the applicant's site is within this area, the applicant's current use permit application was excluded from

the moratorium. Consequently, the use permit application currently under consideration can proceed to a final decision unrestricted by the moratorium.

With appropriate Conditions of Approval, the applicant's proposal will meet all of the required criteria of Section 7023 a and e (Special Regulations for Fast Food Restaurants), Section 9204 (General Use Permit Criteria), as well as the Guidelines for ... Fast Food Restaurants (OCPD 100-18) for the following reasons (citations relate to referenced subsections):

SECTION 7023(a)

1. The proposal will not contribute to an undue proliferation of Fast Food Restaurants because it entails relatively minor expansion of the service area of an existing Fast Food facility.
2. There are two schools in the vicinity of the site, Carter Middle School (adjacent) and Emerson Grammar School, two blocks east between Shafter, Lawton, 45th and 49th Streets. However, given the size of the addition, staff does not anticipate that the proposal will generate operating characteristics that would adversely affect either school. Reported impacts of excessive littering and loitering and noise are not, exclusively related to the patronage of students from nearby schools. In any event, the adverse impacts are reportedly occurring on the restaurant site, and not within the school facility. Conditions of approval to control such impacts are proposed to address these issues. No religious facilities or recreation areas abut the site.
3. The proposal is located along a major commercial arterial, and not a pedestrian-oriented or residential street, and will not interfere with the movement of people along Telegraph Avenue.
4. The selected colors and materials proposed for the addition will be consistent with the design of the existing structure and are of an architectural and visual quality that will continue to harmonize with the character of the existing commercial area along that expanse of Telegraph Avenue.
5. The proposal includes the relocation of two existing wall and roof signs (4.5 x 4 feet and 17 x 2 feet, respectively) which are neither large, obtrusive or garish. No changes are proposed to existing landscaping.
6. With appropriate conditions of approval, the existing number of litter receptacles shall be increased in proportion to the number of new seats to be added through the expansion, according to City standards.
7. The proposal is not in close proximity to residential uses.

8. With appropriate Conditions of Approval, the proposal will substantially comply with the Guidelines for Fast Food Restaurants.

SECTION 7023(e)

- 1/2. The proposal is to expand an existing Fast Food Restaurant and not to establish a new facility.
3. The proposal has primary access from three points along Telegraph Avenue and only one driveway off 45th Street. Telegraph Avenue is a major commercial arterial in Oakland.
4. With appropriate Conditions of Approval, disposable containers, wrappers and napkins utilized by the restaurant shall be imprinted with the restaurant's name or logo.
- 5/6. The restaurant has been in operation continuously since 1977: therefore, the requirement for a performance bond (or other security) to maintain/secure the site within a prescribed high risk period of four (4) years, does not apply.

SECTION 9204

- (a) Because the addition will be integrated into the existing facility relative to architectural design, colors and materials, it will not adversely affect the livability of abutting properties or viability of adjacent commercial activities. The proposal is not expected to adversely affect civic facilities or utilities, traffic generation or circulation, or the capacity of surrounding streets.
- (b) Same as above. The location and design of the proposed addition will provide a convenient functional and attractive commercial facility to the Upper Telegraph Avenue commercial area.
- (c) The addition will facilitate improved operations of the existing restaurant and thereby enhance the successful operation of the Upper Telegraph Commercial area and its basic community functions.
- (d) The proposal does not conflict with any City plans for the area.

Fast Food Guideline (100-18)

With appropriate Conditions of Approval the proposal will comply with these guidelines relative to appearance, access and circulation, parking, landscaping, screening and buffering, signs and advertising, performance standards, trash and litter, lighting, loitering and storage.

Case File: CM90-483
Page -5-

RECOMMENDATION: This proposal should be approved subject to the attached Conditions of Approval.

Attachments: Location Map
Correspondence from Temescal Neighbors
Together (dated January 9, 1991)

F-259 1CM90483.GAA

CONDITIONS OF APPROVAL ATTACHED TO AND MADE A PART OF ZONING CASE NO. CM90-483.

1. That the proposal be constructed in accordance with plans submitted with this application dated December 12, 1990.
- X 2. That a color/materials board for the proposed addition and rear unpainted concrete block wall be submitted to the Director of City Planning for review and approval, prior to issuance of Building permits for this proposal.
3. That the landscaped areas noted on the site plan and concrete planters in the parking area be permanently maintained with healthy planting material, and whenever necessary be replanted with suitable vegetation.
- X 4. That the applicant submit a program to discourage loitering to the Director of City Planning for approval, prior to issuance of a Certificate of Occupancy for the restaurant addition; that such program specifically discourage loitering by students on the facility premises between 7:30 a.m. to 3:00 p.m. during the school year except during the lunch break (12:00 noon to 1:00 p.m.). The approved loitering program shall be implemented concurrent with operation of the restaurant addition but shall apply to the entire facility.
- X 5. That the applicant submit a litter control plan for approval by the Director of City Planning to keep the premises and surrounding one block area free of litter; that the plan should include, but not be limited to:
 - (a) daily sweeping and trash collection of the premises, sidewalk and gutter area along its street frontage;
 - (b) steam cleaning of the sidewalk area abutting the site as required;
 - (c) a Litter Container Plan showing the distribution of litter receptacles on the site and in the public right-of-way. Receptacles shall be provided at a ratio of one for every four parking spaces and/or every 10 seats whichever is greater. Such facilities should be located at pedestrian and vehicular exits from the site, adjacent to exits from the facility and next to any outdoor setting. Litter receptacles shall be securely located;
 - (d) a Litter Management Plan consisting of policies to be followed by employees in keeping the premises and prescribed area free of trash, and employee work schedules which assign such responsibilities to employees; a contractual arrangement with a private firm to clean the premises and the surrounding one block area of litter generated by the business may be required.
 - (e) a separate trash and garbage area of at least 150 square feet which shall be totally enclosed, screened and/or landscaped.

- X 6. That disposable containers, wrappers and napkins utilized by the restaurant be imprinted with the restaurant's name or logo.
- X 7. That street trees be approved to the satisfaction of the Director of Parks and Recreation.
Copy → of letter
8. That there be no exterior vending machines on the site.
9. That the proposal be subject to special requirements regarding permit revocation specified in Section 9208 of the Zoning Regulations.
10. That the hours of operation shall be limited to those hours between 6:00 a.m. and midnight from October through March of each year and limited to those hours between 6:00 a.m. and 1:00 a.m. the next day from April through September of each year. That these operating hours may only be changed with the express written consent of the City Planning Commission, through administrative procedures outlined in the Zoning Regulations.
- X 11. That the applicant develop a neighborhood liaison program, including a schedule of meeting dates, with representatives of commercial establishments/groups, schools within a 1,000 feet of the site, neighborhood residents and interested parties. That the liaison program be used to pinpoint, discuss and resolve concerns of all affected parties, including the applicant; that minutes of such meetings be routinely submitted to the Director of City Planning for review and inclusion in the case file. Finally, that the liaison program be approved by the Director of City Planning prior to issuance of a Certificate of Occupancy for the proposal.
- X 12. That regarding the circulation/parking plan submitted with the application, the two spaces nearest the driveway which provides direct access to the addition (off Telegraph Avenue) be eliminated for greater ease of circulation; that plans showing this modification be submitted to the Director for review and approval, prior to issuance of Building permits for this proposal.
13. That a copy of the conditions of approval be posted alongside the necessary business license and be visible at all times to employees and the general public.
14. That a copy of the approved Conditions of Approval be recorded with the Alameda County Recorder in form approved by the Director of City Planning; proof of such recordation shall be provided to the Director of City Planning prior to the commencement of the approved use.

15. That this permit shall become effective upon satisfactory compliance with the above conditions. Failure to obtain required building permits by January 31, 1992, shall invalidate this approval, provided further, that upon written request the Director of City Planning may grant a one year extension of this date, with additional extensions subject to approval by the City Planning Commission.
16. That the name of the restaurant owner/manager be conspicuously posted in the public area of the restaurant including the address and/or telephone number where these individuals may be contacted.

January 23, 1991

5 ayes, 0 noes

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

Appeal of Planning Commission Decision to City Council
Case File No. REV10-018; 4514 Telegraph Avenue (APN 013-1150-014-00)

ATTACHMENT "C" Supporting Documentation

Emails in opposition received prior to December 1, 2010 by Case Planner
David Valeska

Emailed Nov. 23, 2010

Dear Mr. Valeska:

I am writing to express my strong opposition to the proposed expansion of the McDonald's at 44th and Telegraph. Every time I walk by it, I wish that it would go away completely due to the garbage that is all around there, the annoying and sometimes menacing behavior of the people who frequent the place, and the general blighted look it gives to our neighborhood. The large parking lot there attracts criminal elements, loiterers, loud music, and panhandlers, and detracts from the character of the neighborhood. It would be much better to require that McDonalds have no drive-thru at all and build retail or something more interesting on the parking lot space. But at the very least, please do not *expand* the McDonald's!

Tamara Johnston
4905 Lawton Avenue
Oakland, CA 94609

Emailed Nov. 29, 2010

Dear Mr. Valeska,

I'm writing to voice my strong opposition to the request by McDonald's to legally run their drive-through 24 hours a day and expand their facilities.

McDonald's is a negative presence in the neighborhood already, bringing litter, noise, pollution, and traffic. Increasing their operating hours or facility size will only make these problems worse.

Temescal is undergoing tremendous growth and revitalization that's wonderful to witness, and I know many of my neighbors share this excitement. From the perspective of longer-term development, locally-owned businesses keep more tax dollars in Oakland and make a positive contribution to the community and the values it supports. McDonald's has an antagonistic influence on continuing revitalization for the reasons stated above.

Sincerely,

Diana Ghermann
533 44th Street
Oakland, CA 94609

Emailed Nov. 29, 2010

David Valeska,

I am writing to voice my opinion that the expansion of the Macdonald's in my neighborhood (Reference case file #REV10-018) There is already enough garbage, noise, traffic and general negative environmental affects generated from the fast food businesses, specifically the Macdonald's. I feel the expanded 24-hour would only worsen these problems in my beautiful neighborhood. Please do not allow the expansion of the Macdonald's on Telegraph in Temescal. Thank you for your work and time.

Rob Dario
5006 Telegraph Avenue, #5
Oakland, CA 94609

Emailed Nov. 24, 2010

I oppose the expansion of the McDonald's at 45th and Telegraph for the following reasons:

1. Even at its current size, the amount of litter that can be attributed to that McDonald's is too much. I live over ten blocks away and have to clean up McDonald's litter from in front of my home at least once a week. Not too mention, the amount I see (and dispose of when a sidewalk trashcan is nearby) as I walk my kids to school each day.
2. The Temescal shopping and dining district along Telegraph is thriving and an expanded McDonald's would only create more car traffic that would annoy potential customers of other merchants and not increase foot traffic that is so desired by the merchants and the community.
3. If the city allows McDonald's to expand it sends a clear message to the great number of high school kids nearby that the city endorses and encourages them to eat McDonald's, which is not the message I want to send as a member of the Oakland community.

I urge the city of Oakland to not allow the expansion of the 45th and Telegraph McDonald's.

Sincerely,
Doug Black
4105 Emerald Street
Oakland, CA 94609

Emailed Nov. 23, 2010

Dear Mr. Valeska:

Case File Number: REV10-018

I live in Temescal at 44th Street & Shafter Avenue and have resided here for 26 years since 1984.

I will list here my objections to the proposal to expand the McDonalds at 45th Street and to request a permit for a 24-hour drive through:

- I concur with my neighbors that this proposal is not in the best interest of our neighborhood;
- The noise levels, traffic due to the drive through, and the garbage strewn all through and around the neighborhood all the way to Oakland Tech and Broadway and 51st Street, are not acceptable and need to be eradicated. The proposed expansion will only increase these damaging effects to the neighborhood and provide more of a platform for attracting petty crime, panhandling and generally gathering of nuisance people and the garbage they leave behind.

I strongly urge you to vote no on this proposal. Thank you.

Cristina Gerber
44th Street Resident

Emailed Nov. 23, 2010

Hello David,

A neighbor forwarded your contact information to me. I'm writing in opposition of the expansion of the McDonalds at 45th and Telegraph.

Part of what makes the Temescal great is all of the locally owned, community businesses. McDonald's certainly have their place in the world, but such a franchise is also in direct conflict with the homegrown spirit of my neighborhood.

Worse, is the kind of business a 24 hour fast food drive through attracts. The increased traffic, and extra garbage, and late night crowds are terrible in their own right. What is worse, is these things also negatively affect other businesses and patrons in the surrounding area. I believe allowing McDonalds to expand would add an unsightly tinge to an otherwise lovely area. I live at 5006 Telegraph, Apt #5 and would be displeased to see the local McDonalds expand.

Best Regards,
-- Paul Burt_

Emailed Nov. 27, 2010

My name is Robert Temple and I live at 552 47th St. I am writing to strongly oppose plans for McDonalds expansion and plans to stay open 24 hours. I believe that McDonalds is a blight on our neighborhood serving unhealthy food and helping cause litter and noise that extend all the way to my street, a few blocks away! I see no benefit to McDonalds being here and certainly none from expansion of space or hours

Robert Temple
552 47th St

Emailed Nov. 27, 2010

David Valeska:

I live a block away from McDonald's and saw a posting on the street about the proposal. I would like to know more about it and want to join in voicing my opposition to their planned expansion and 24 hour drive-thru.

I am against this proposal because:

- I get to pick up trash in my front yard and on sidewalk almost daily that originates from McDonald's or one of the other fast food chains in the area.
- Drive-thrus and large, paved suburban style parking lots served by multiple "mid-block" driveways onto Telegraph Avenue, such as McDonald's do really not belong in the fabric of our Temescal neighborhood. Period. And they make traffic worse.
- My residence is one lot away from rear of Jack in the Box's 24 hour drive-thru (across from McDonald's). Noise is generated from running engines and from voices on the menu board intercom throughout the night - which - depending on distance away and sound insulation of walls and windows can be real issue when trying to sleep. I cannot imagine McDonald's proposal to be any different in creating additional noise, especially at night.
- Local merchants, businesses, and residents do not benefit from more drive through traffic at McDonald's. Expanding on fast food operations is not what's good for this neighborhood, however, would it not be great if Kasper's Hot Dog building right across from McDonald's could reopen.

Sincerely,
Stefan Menzi

Stefan Menzi, Architect AIA
526 44th Street
Oakland, CA 94609

Emailed Nov. 24, 2010

Hello,

I live at Ruby and 40th near Telegraph, and I think Temescal has enough fast food (and associated garbage, noise, traffic) already.

The McDonald's at 45th and Telegraph is proposing to both expand their facility and get permitted for a 24-hour drive-through. (case file #REV10-018)

The way in which the drive thru is situated creates a driving hazard all day, everyday. I can tell you there are FOUR solid yellow lines that are illegally crossed so many times a day that they rub away. It is a very dangerous intersection with young kids and teenagers crossing to go to the nearby schools and often almost getting hit by cars. I also don't appreciate that they are so close to the middle and high schools.

Emailed Nov. 24, 2010

I am opposed to the plan of a 24h Drive through Mc Donalds because it will bring people to the neighbourhood at night . possibly making it unseafar. I walk my dogs late at night and it often is feeling unsafe already. The garbage is very annoying, dont want to increase that. But mainly I am concerned about undesirable late night/early morning traffic and more people in the neighbourhood at undesirable times of the night.

Thanks, Best Tatjana Kopp

Tatjana Kopp
Flying Carpet Restoration Service
Tel.510-654 3250
4520 Webster St.
Oakland, CA 94609

Emailed Nov. 24, 2010

My Name Is Elizabeth Bellizzi and I live at 3912 Ruby Street in Oakland CA, 94609. I strongly oppose the proposal of McDonalds expansion and extension to be permitted for a 24-hour drive-through.

The existing drive-through brings a lot of traffic, noise, panhandling; and (especially) garbage to the neighborhood without benefitting other local merchants or residents, and increasing hours and capacity will obviously exacerbate these problems.

Emailed Nov. 24, 2010

Mr. Valeska - I just heard about the proposed expansion of McDonalds at 45th and Telegraph (including 24-hour drive-through), and I want to let the Oakland Planning Commission know my partner and I oppose the plan.

As Temescal residents for over a decade, living at 4145 Opal Street, my partner and I have been very happy to see and participate in the improvement of our neighborhood, including the now-vibrant Telegraph corridor.

In our view, expanding McDonald's is exactly what our neighborhood does NOT need. The expansion and proposed 24-hour drive-through will make worse existing problems of traffic, noise, garbage, panhandling, and smell - and the increased volume of their business will not be of advantage either to the neighboring business community or local residents.

The commercial success of the Temescal business district is based on these independent businesses - not on McDonald's. Not every business can be a Bakesale Betty, but this proposed expansion is a step in exactly the wrong direction for the future of our neighborhood.

Thank you for your consideration.

Rick Mead and Mark Marion

Emailed Nov. 24, 2010

Hello,

I am a homeowner in the area, and not only do I oppose any expansion, I resent the existence of so many fast food chains on our stretch of Telegraph. It adds to traffic, noise, loitering, and probably mugging...etc.

I personally avoid McDonald's, and will encourage my guests to do so as well. An expansion would encourage me to boycott more aggressively.

Thank You,

Rebecca Weinstein
4831 Webster St
Oakland, CA

Emailed Nov. 24, 2010

Re: Case File #REV10-018

Dear Mr. Valeska,

We are completely opposed to any expansion of the McDonalds in our neighborhood for many reasons, mainly:

- Idling cars creating toxic fumes in the drive-through
- Garbage flying around our house from McDs and other fast-food chains
- It attracts gangsters and panhandlers to the area

Let's promote more healthy grocery stores and restaurants! They are so much better for our community!

Hopefully you can halt this expansion, as it would deteriorate our surroundings here in Temescal.

Thank you,
Yolanda Calderon
476 - 41st Street
Oakland CA 94609

Emailed Nov. 24, 2010

Dear Mr. Valeska,

In reference to case file #REV10-018, I was saddened to hear of plans to expand the McDonalds at 45th and Telegraph; I think the restaurant brings nothing good to the neighborhood, and would not like to see it expanded.

Besides being unhealthy food that is part of an unpleasantly global food chain (and thus the antithesis of local), this particular location is placed right next to a school, which attracts children at the end of their school day. Making it MORE attractive to them by providing more space sends the wrong message to the community; we're supposed to be supporting healthy food choices for our communities, not supporting unhealthy ones.

I vigorously oppose any plans to expand the McDonalds at 45th and Telegraph.

Sincerely,

Mick Mize

5006 Telegraph Ave, #5

Oakland, CA 94609

Emailed Dec 1, 2010

Dear Mr. Valeska:

I am writing to express my strong opposition to the proposed expansion of the McDonald's at 44th and Telegraph.

Every time I walk by it, I wish that it would go away completely due to the garbage that is all around there, the annoying and sometimes menacing behavior of the people who frequent the place, and the general blighted look it gives to our neighborhood. The large parking lot there attracts criminal elements, loiterers, loud music, and panhandlers, and detracts from the character of the neighborhood. It would be much better to require that McDonalds have no drive-thru at all and build retail or something more interesting on the parking lot space. But at the very least, please do not *expand* the McDonald's!

Tamara Johnston
4905 Lawton Avenue
Oakland, CA 94609

Emailed Oct 13, 2010

From: josh thorp [mailto:josh_thorp@hotmail.com]
Sent: Wednesday, October 13, 2010 5:38 PM
To: Valeska, David
Subject: RE: Case File REV10-018

Thanks David,

The primary concern is expansion of the drivethrough hours -- the existing drivethrough coupled with the JackIntheBox drivethrough bring a lot of traffic, noise, panhandling and (especially) garbage to the neighborhood without benefitting other local merchants or residents, and making it 24 hours will obviously exacerbate these problems.

Valeska, David

From: Mark McClure [mmcclure@californiagroup.com]
Sent: Thursday, September 30, 2010 4:19 PM
To: Miller, Scott
Co: Valeska, David
Subject: FW: McDonald's @ 4514 Telegraph Ave.

Scott,

We will be meeting with Dahn Van Laarz from STAND on October 12th to give that "community group" an opportunity to comment on the project before the PC meeting.

(Please see email chain below)

... just wanted to keep you in the loop.

Thanks again for your support,

Best,

MM



CALIFORNIA
CAPITAL & INVESTMENT
GROUP

Mark McClure
Partner
mmcclure@californiagroup.com

CALIFORNIA CAPITAL & INVESTMENT GROUP
The Rotunda Building
300 Frank Ogawa Plaza, Suite 340 | Oakland, CA 94612
Office 510.268.8500x32 | Facsimile 510.834.5380

Commercial Brokerage | Development | Asset Management | Lending | Government Affairs

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From: Shannon Noe
Sent: Thursday, September 30, 2010 3:54 PM
To: Mark McClure
Subject: FW: McDonald's @ 4514 Telegraph Ave.

Attachment D: Correspondence in Support

10/1/2010



CALIFORNIA
CAPITAL & INVESTMENT
GROUP

Shannon Noe
Executive Coordinator
snoe@californiagroup.com

CALIFORNIA CAPITAL & INVESTMENT GROUP
The Rotunda Building
300 Frank Ogawa Plaza, Suite 340 | Oakland, CA 94612
Office 510.268.8500 Ext.34 | Facsimile 510.225.3954

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From: STAND [<mailto:standnorthoakland@gmail.com>]
Sent: Thursday, September 30, 2010 12:06 PM
To: Shannon Noe
Subject: Re: McDonald's @ 4514 Telegraph Ave.

Shannon,

I contacted the Chairman of the STAND Steering Committee, Dahn Van Laarz and he would be happy to be part of a meeting with Mr. McClure. Dahn will, however, be unavailable next week. The following two weeks (Oct. 12 - 22) are good though. Late afternoon, early evening is best. Please let us know what date(s) and time(s) are best for Mr. McClure.

Thank You for the invitation,

Bomey Smith
STAND, Secretary

On Mon, Sep 20, 2010 at 1:40 PM, Shannon Noe <snoe@californiagroup.com> wrote:



Alameda-Contra Costa Transit District



August 12, 2010

Planning Commission
Doug Boxer, Chair
City of Oakland
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612

Re: 4514 Telegraph Renovation

Dear Chairman Boxer and Fellow Commissioners:

On behalf of the Service and Operations Planning Department of AC Transit, I am writing to express our support of the proposed reconfiguration of the McDonald's at 4514 Telegraph in Oakland. By eliminating an existing curb cut and redirecting traffic onto 45th Street, not only will the project improve pedestrian safety and reduce congestion on Telegraph Avenue, enhancing route time efficiency, but it will also facilitate the future planning and implementation the Bus Rapid Transit modifications.

James Kachelmeyer and Mark McClure of California Capital and Investment Group met with us last Thursday to discuss the development and its impacts on adjacent AC Transit routes and stops. We shared with them our vision for the existing stop at 45th and Telegraph, as well as the necessary ADA requirements for the unloading of passengers. Not only will these renovations ensure compliance with these requirements and improve passenger access to the store, but they will also enhance the implementation of the planned Bus Rapid Transit service.

As you know, AC Transit, in collaboration with the City of Oakland, is studying Bus Rapid Transit along Telegraph Avenue, including the blocks adjacent to the proposed project at 45th and Telegraph. The proposed reconfiguration would be compatible with proposed BRT improvements. By eliminating a curb cut on Telegraph Avenue and redirecting traffic towards 45th street, both the city and AC Transit would have more flexibility in BRT design. It will also reduce congestion and prevent accidents stemming from unexpected stopping.

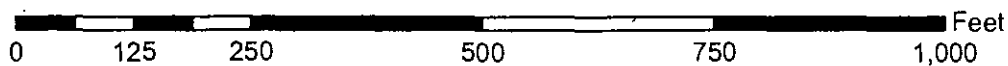
In short, the new configuration of the McDonald's at 4514 Telegraph will not only reduce congestion and enhance pedestrian safety along Telegraph Avenue, but it will also improve our current route efficiency and augment the planned implementation of Bus Rapid Transit. As such, we encourage you to approve the project before you.

Respectfully,

Cory LaVigne
AC Transit

ATTACHMENT E: NEIGHBOR CORRESPONDENCE

CITY OF OAKLAND PLANNING COMMISSION



Case File: REV10-018
Applicant: Gary Semling
Address: 4514 Telegraph Avenue
Zone: C-28

Attachment E: Maps and Photos

Memorandum

To: Eric Angstadt, Planning Director / City of Oakland, CEDA, Planning Department
From: Ed Manasse, Planner V / City of Oakland, CEDA, Strategic Planning Division
Date: April 20, 2011
Re: New McDonald's restaurant at 4514 Telegraph Ave. – Design Alternatives Study

As you requested, I met with the McDonald's design team and restaurant branch owner on March 4, 2011, to discuss the feasibility of a series of site plan alternatives I had developed for the proposed new McDonald's restaurant at 4514 Telegraph Ave. The following is a brief summary of the two main site plan alternatives we discussed and the reasons the McDonald's design team and owner said that they would not be feasible:

Site Plan Alternative 1

Site Plan "Alternative 1" would involve locating the restaurant pad to the north side of the lot and having the drive-through access point from 45th Street. The distinctive feature of "Alternative 1" would be the incorporation of a landscaped plaza at the corner of 45th Street and Telegraph Ave. (see Attachment F1).

The McDonald's design team and owner appeared somewhat intrigued by this alternative, but then pointed out, in their opinion, the following design "flaws":

- The trash enclosure would be inaccessible to the garbage company's large trucks in the location shown on this alternative site plan;
- The number of parking spaces would be reduced from the proposed 21 to 11 or 12;
- Customers would be confused by the lack of access to the drive-through lane directly from Telegraph Ave.

Site Plan Alternative 2

Site Plan "Alternative 2" would involve locating the restaurant pad right at the corner of 45th Street and Telegraph Ave., and having the drive-through access point directly from Telegraph Avenue at the north end of the lot. The distinctive feature of "Alternative 2" would be the incorporation of a prominently placed outdoor seating area at the corner of 45th Street and Telegraph Ave. (see Attachment F2).

The McDonald's design team and owner pointed out, in their opinion, the following design "flaws" with "Alternative 2":

- The four parking spaces shown off of the drive-through lane are not feasible due to unsafe maneuvering patterns;
- The number of parking spaces would be reduced from the proposed 21 to 10;
- Customers walking to or from the parking lot would have to cross the drive-through lane to access the restaurant entrance. This would put the path of travel for both pedestrians and ADA wheelchairs users in danger of collision with the drive-through autos.

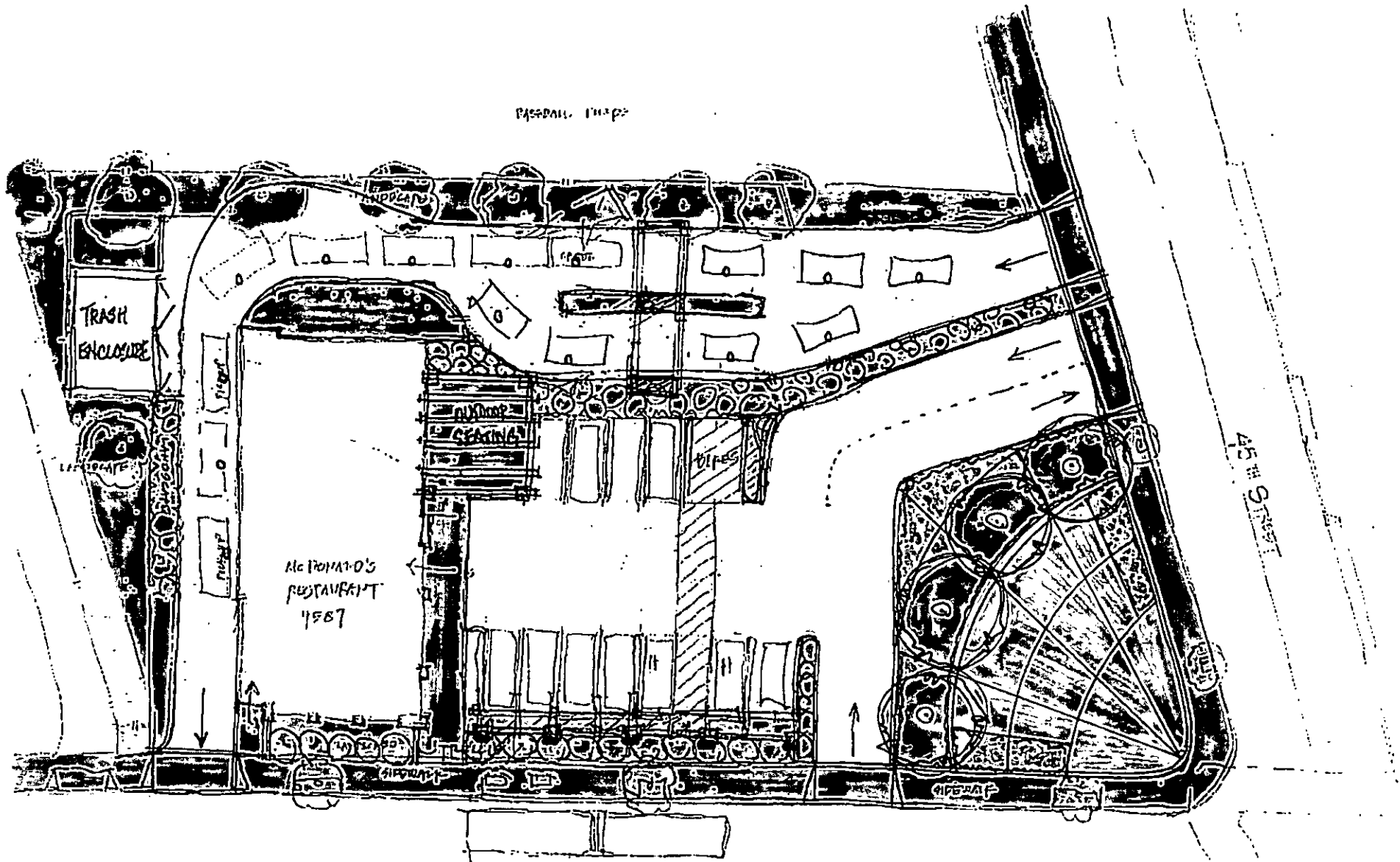
Sincerely,



Edward Manasse

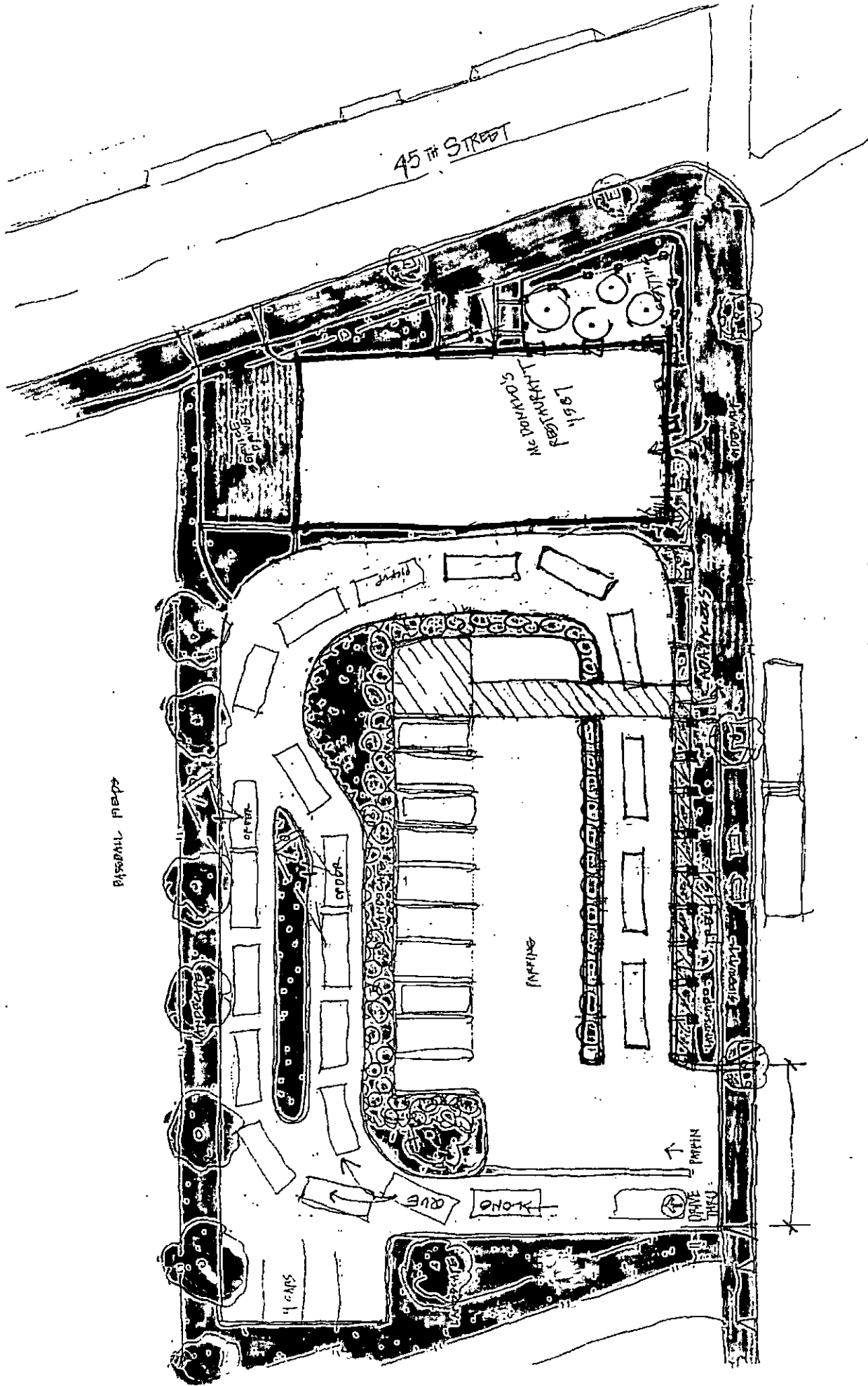
Attachment F: Alternatives

Basement Floor



TELEGRAPH AVE

Attachment F1, 4514 Telegraph Avenue



TELEGRAPH AVE

Attachment F2, 4514 Telegraph Avenue

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2011 APR 21 PM 3:01

APPROVED AS TO FORM AND LEGALITY

Mark P. Walsh
DEPUTY CITY ATTORNEY

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

A RESOLUTION DENYING THE APPEAL (CASE NO. A10-324), THEREBY SUSTAINING THE PLANNING COMMISSION'S DECISION APPROVING REVISIONS (REV10-018) TO A MAJOR CONDITIONAL USE PERMIT FOR A MCDONALD'S AT 4514 TELEGRAPH AVENUE FOR FAST FOOD AND DRIVE-THROUGH COMMERCIAL ACTIVITY

WHEREAS, the applicant Ed Smith ("Applicant") owns and operates a Fast Food and Drive-Through Commercial Facility (McDonalds Restaurant) which was built and opened at 4514 Telegraph Avenue approximately thirty-four years ago, and which in 1977 and 1991 received Conditional Use Permits; and

WHEREAS, on September 13, 2010 Mr. Smith filed application REV10-018 to rebuild and expand the facility, including repositioning of the Drive-Through facility and parking, and to expand the activity to 24 hours (Project); and

WHEREAS, on December 1, 2010, at a duly noticed public hearing, the Planning Commission took testimony, closed the hearing and voted to approve the Project; and

WHEREAS, on December 13, 2010, twenty-three (23) residents timely filed an appeal of the Planning Commission decision to approve the Project; and

WHEREAS, after giving due notice to the Appellants, the Applicant, all interested parties, and the public, the Appeal came before the City Council in a duly noticed public hearing on May 3, 2011; and

WHEREAS, the Appellants, Applicant and all other interested parties were given the opportunity to participate in the public hearing by submittal of oral and written comments; and

WHEREAS, the public hearing on the Appeal was closed by the City Council on May 3, 2011; now, therefore, be it

RESOLVED: The City Council independently finds and determines that this Resolution complies with the California Environmental Quality Act (CEQA), as the Project is exempt from CEQA pursuant to CEQA Guideline sections 15301 (Existing Facilities); 15302 (Replacement or

Reconstruction); and/or, 15183 (Projects Consistent with Community Plan, General Plan or Zoning); each of which provides a separate and independent basis for CEQA compliance; and be it

FURTHER RESOLVED: That the City Council, having independently heard, considered, and weighed all the evidence in the record presented on behalf of all parties and being fully informed of the Application, the Planning Commission's decision, and the Appeal, finds that the Appellant has not shown, by reliance on evidence in the record, that the Planning Commission's decision was made in error, or that there was an abuse of discretion by the Commission, and/or that the Commission's decision was not supported by sufficient, substantial evidence in the record. This decision is based, in part, on the May 3, 2011 City Council Agenda Report and the December 1, 2010 Planning Commission Report, which are hereby incorporated by reference as if fully set forth herein. Accordingly, the Appeal is denied, the Planning Commission's decision approving the Project is sustained and the application is approved; and be it

FURTHER RESOLVED: That, in support of the City Council's decision to deny the appeal of the Project, the City Council affirms and adopts as its findings and determinations the May 3, 2011 City Council Agenda Report and the December 1, 2010 Planning Commission Report [including without limitation the discussion, analysis, findings, conclusions and conditions of approval (each of which is hereby separately and independently adopted by this Council in full)]; and be it

FURTHER RESOLVED: That the record before this Council relating to this Project application and appeal includes, without limitation, the following:

1. the Project application, including all accompanying maps and papers;
2. all plans submitted by the Applicant and his representatives;
3. all final staff reports, decision letters and other documentation and information produced by or on behalf of the City.
4. all oral and written evidence received by the City staff, Planning Commission and City Council before and during the public hearings on the application and appeal;
5. all matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan and the General Plan Conformity Guidelines; (b) Oakland Municipal Code, including, without limitation, the Oakland real estate regulations; (c) Oakland Fire Code; (d) Oakland Planning Code; (e) other applicable City policies and regulations; and, (f) all applicable state and federal laws, rules and regulations; and be it

FURTHER RESOLVED: That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively: (a) Community & Economic Development Agency, Planning & Zoning

Division, 250 Frank H. Ogawa Plaza, Suite 2114, Oakland, CA.; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, CA; and be it

FURTHER RESOLVED: That the recitals contained in this resolution are true and correct and are an integral part of the City Council's decision.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2011

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF AND PRESIDENT REID

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

LEGAL NOTICE:

ANY PARTY SEEKING TO CHALLENGE THIS FINAL DECISION IN COURT MUST DO SO WITHIN NINETY (90) DAYS OF THE DATE OF THE ANNOUNCEMENT OF THIS DECISION UNLESS A SHORTER PERIOD APPLIES.