

**CITY OF OAKLAND  
AGENDA REPORT**

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND  
2003 NOV 20 PM 6:51

TO: Office of the City Manager  
ATTN: Deborah Edgerly  
FROM: Community and Economic Development Agency  
DATE: December 2, 2003

RE: A Public Hearing and a Resolution denying the Appeal of Planning Commission Approval of a Major Variance to conduct Alcoholic Beverage Sales Commercial Activity VM03-182, at 4822 Telegraph Avenue

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**SUMMARY**

On September 17, 2003, the Oakland Planning Commission approved a Major Variance to conduct Alcoholic Beverage Sales Commercial Activity (Bar without Cabaret Activity) located at 4822 Telegraph Avenue. The appellant (Mr. Larry Bellinger) is appealing the Planning Commission decision. Staff recommends that the City Council adopt the Resolution denying the appeal and upholding the Planning Commission decision.

**FISCAL IMPACT**

Appealing the Oakland Planning Commission decision to approve this application will not cause any fiscal impacts. Appeal fees were paid for staff time required to process the appeal.

**BACKGROUND**

4822 Telegraph Avenue has been the location for a bar (The Bird Kage) since 1975. In mid 2000, the business was taken over by the original owner's wife and daughter. At this time the operation changed formats and allowed younger and larger crowds to occupy the space during hours of operation. Staff began monitoring the facility due to increased community complaints and an increase in police calls for service and criminal activity. Eventually this nuisance activity resulted in the fatal shooting of a patron in December of 2002. The operator voluntarily closed the bar on December 28, 2002. The Deemed Approved legal non-conforming land use status of the property expired 90 days later by operation of law OMC 17.114.050.

The subject applicant (Mr. Jack Cicala), applied for a Major Variance to reopen a bar without cabaret activity. The Oakland Planning Commission approved this application after a public hearing on September 17, 2003. On September 29, 2003 Mr. Larry Bellinger filed an appeal.

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## KEY ISSUES AND IMPACTS

The Planning Commission Staff Report dated September 17, 2003 is attached as Exhibit B.

### Appellant's Grounds for the Appeal and Staff Responses

The issues brought up in the appeal letter are discussed below with the issues in the appeal letter shown in **bold text** and staff response in *italics text*:

1. **The City Planning Department did not closely review the approved application for a Major Variance and give proper weight to the concerns of adjacent neighbors, Carter Middle School and the history associated with the sale of alcoholic beverages, nuisance and crime problems consistent with the 4822 Telegraph location.**

*The Planning Commission heard over two hours of public testimony on this issue.*

*The key issue with this application is that the proposed use is for a bar only, NOT for a cabaret/nightclub/entertainment use. There will be minimal noise nuisance generated by music and patrons. The majority of noise complaints from the previous operator stemmed from the cabaret activity and excessive crowds. The establishment is a stand alone bar for onsite consumption of alcoholic beverages. This premise will be licensed type 48 (bar) therefore, no persons under the age of 21 will be allowed to enter the premise. The bar will only be open between the hours of 11:00 AM and 2:00AM, therefore children on their way to Carter Middle School will not pass by an open bar. Understandably, when they are on their way home from school the facility will be open, but as previously mentioned, minors will have no access. There are no window openings onto the street and no outside bar activities will be permitted.*

2. **Staff incorrectly de-emphasized the location of the proposed Major Variance at 4822 Telegraph and placed the blame for the problems related to the location on the "management style" of the previous tenant. The problems with this location have been documented extensively in Staff Report Attachment "B" and include a petition signed by 39 of the residents within 500 feet of the location. Furthermore, staff overlooked the California State Beverage Control Disciplinary History File.**

*4822 Telegraph Avenue was originally issued a type 48 liquor license in 1975 and operated there with minimal nuisance activity until mid 2000. At this time the business was taken over by the original owner's wife and daughter. The operation then changed formats and allowed for younger and larger crowds to occupy the space during hours of operation. Staff began monitoring the facility at this time due to receiving a multiple community complaints, an increase in police calls for service and an increase in criminal activity. Police records clearly show that the problems with the use began with the previous owners and their method of operation which centered on cabaret activity. The current applicant (Mr. Cicala) managed a bar at 4301 Telegraph Avenue for 12 years. The operation was not*

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*a problem for the community. That applicant's good track record suggests that this use will not be a problem.*

*The petition mentioned above clearly illustrates the community concern in regards to the operation of a cabaret at 4822 Telegraph Ave. The petition states, "The mismanagement of the Bird Kage demonstrated to what degree a facility can disrupt the lives of those who live nearby." This statement supports staff's findings and justification to limit the use to only include alcohol sales and no live entertainment.*

*4301 Telegraph Avenue is the location that Mr. Cicala formerly managed. The appeal cites him as responsible for several ABC violations. The violations cited were issued to the Licensee Mr. Heir Pickle. Therefore Mr. Cicala is not responsible for these violations and staff did not hold them against his application.*

**3. Applicant failed to provide a security plan for effectively managing maximum occupancy of 75 patrons in the 4822 Telegraph location.**

*Under this permit for Alcoholic Beverage Sales Commercial Activity, a security plan is not required unless the application includes the operation of a cabaret.*

**4. The staff report incorrectly states the City Council and Police Department both support the application for a major variance.**

*The position of City Council was stated in error. As the record states, the Council member's position was modified and the position was stated as neutral in the oral staff report at the Planning Commission public hearing. Sgt. L. White has been assigned to supervise the Oakland Police Departments ABAT Unit, therefore his position and that of his staff on all alcohol uses is neutral. The support from the police department for the application was issued from the Area Commander Lt. Green.*

**5. Letter of support from the Oakland Unified School District.**

*Staff received a letter from the Vice Principal of Carter Middle School dated May 30, 2003 in support of the application. At the hearing a representative of the Oakland Unified School District renounced the letter and clarified for the record that the school district does not support a new alcohol use at this location.*

**6. Findings for approval**

*For the record there was a type error in the findings for approval which was corrected at the hearing on September 17, 2003. The modification on staff report page 7 paragraph 1 reads, "does ~~not~~ meet," in regards to the findings for approval. Staff's justification for approval is clearly stated in the attached Staff report VM03-182.*

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**7. Additional information:**

Staff received a letter from the Temescal Merchants Association dated October 21, 2003 (Exhibit D) supporting the Variance and attesting to the character of the applicant, Mr. Jack Cicala. Mr. Cicala also supplied additional information in opposition to the appeal (Exhibit E).

**SUSTAINABLE OPPORTUNITIES**

Economic: Sales taxes or other revenues will be generated for the City

Environmental: No environment opportunities are available

Social Equity: The use will allow for a social venue along a commercial corridor

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff recommends that the City Council adopt the attached resolution denying the appeal and upholding the Planning Commission decision to approve VM03-341.

Respectfully submitted,



\_\_\_\_\_  
CLAUDIA CAPPIO  
Director of Planning, Building Services  
Major Projects & OBRA

Prepared by: Jacob Graef,  
Administrative Analyst II / Planner II  
OPD – ABAT Unit

APPROVED AND FORWARDED TO THE  
CITY COUNCIL:

  
\_\_\_\_\_  
OFFICE OF THE CITY MANAGER

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**ATTACHMENTS:**

- A. Resolution
- B. Copy of the September 17, 2003 Planning Commission staff report and attachments
- C. Copy of the applicants appeal submittal
- D. Letter October 21, 2003
- E. Letter from Jack Cicala

OAKLAND CITY COUNCIL

FILED  
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2003 NOV 20 PM 6:51  
**DRAFT**

RESOLUTION No. \_\_\_\_\_ C.M.S.

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

**RESOLUTION DENYING THE APPEAL AND SUSTAINING THE DECISION OF THE CITY PLANNING COMMISSION IN APPROVING THE APPLICATION FOR A MAJOR VARIANCE TO REOPEN AN ALCOHOLIC BEVERAGE SALES COMMERCIAL ACTIVITY WITHIN 1,000 FEET OF AN SIMILAR USE LOCATED AT 4822 TELEGRAPH AVENUE, OAKLAND**

**WHEREAS**, On September 17, 2003, the Oakland Planning Commission, approved a Major Variance to conduct Alcoholic Beverage Sales Commercial Activity (Bar without Cabaret Activity) located at 4822 Telegraph Avenue; and

**WHEREAS**, On September 29, 2003 Mr. Larry Bellinger filed an appeal of the Planning Commission decision; and

**WHEREAS**, after giving due notice to the Appellant, the Applicant, all interested parties and the public, the Appeal came before the City Council for a public hearing on December 2, 2003; and

**WHEREAS**, the Appellant, the Applicant, supporters of the application, those opposed to the application and interested neutral parties were given ample opportunity to participate in the public hearing by submittal of oral and/or written comments; and

**WHEREAS**, the public hearing on the Appeal was closed by the City Council on December 2, 2003;

**Now, Therefore, Be It**

**RESOLVED:** The requirements of the California Environmental Quality Act (CEQA) of 1970, as prescribed by the Secretary of Resources, and the City of Oakland's environmental review requirements, have been satisfied, and, in accordance the adoption of this resolution is exempt from CEQA under Section 15303 "New Construction or Conversion of Small Structures" of the State CEQA Guidelines.

**FURTHER RESOLVED:** That, the City Council, having heard, considered and weighed all the evidence in the record presented on behalf of all parties and being fully informed of the Application, the City Planning Commission's decision, and the Appeal, finds that the 14.1

**ORA/COUNCIL  
DEC 02 2003**

Appellant has **not** shown, by reliance on evidence already contained in the record before the City Planning Commission, that the City Planning Commission's decision was made in error, that there was an abuse of discretion by the Commission, or that the Commission's decision was not supported by substantial evidence in the record based, in part, on the September 17, 2003 Staff Report to the City Planning Commission (attached as Exhibit "B") and the December 2, 2003, City Council Agenda Report (attached as Exhibit "A") hereby incorporated by reference as if fully set forth herein. Accordingly, the Appeal is denied, the Planning Commission's CEQA findings and decision are upheld, and the Project is approved (the Major Variance).

**FURTHER RESOLVED:** That, in support of the City Council's decision to approve the Project, the City Council affirms and adopts both the September 17, 2003 Staff Report to the City Planning Commission, all attached as Exhibit "B", as well as the December 2, 2003, City Council Agenda Report, attached hereto as Exhibit "A," (including without limitation the discussion, findings, and conclusions) except where otherwise expressly stated in this Resolution.

**FURTHER RESOLVED:** That, the City Council finds and determines that this Resolution complies with CEQA and the Environmental Review Officer is directed to cause to be filed a Notice of Exemption with the appropriate agencies.

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

1. the application, including all accompanying maps and papers;
2. the notice of appeal and all accompanying statements and materials;
3. all final staff reports and other final documentation and information produced by or on behalf of the City, including without limitation and all related/supporting final materials, and all final notices relating to the application and attendant hearings;
4. all oral and written evidence received by the City Planning Commission and City Council during the public hearings on the application and appeal; and all written evidence received by relevant City Staff 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, including, without limitation (a) the General Plan; (b) Oakland Municipal Code (c) Oakland Planning Code; (d) other applicable City policies and regulations; and, (e) all applicable state and federal laws, rules and regulations.

**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, 3<sup>rd</sup> Floor, Oakland CA.; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1<sup>st</sup> floor, Oakland, CA.

**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, \_\_\_\_\_, 2003

**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, WAN, AND  
PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_  
CEDA FLOYD  
City Clerk and Clerk of the  
Council of the City of  
Oakland, California

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## Exhibit B

[Copy of the September 17, 2003 Planning Commission staff  
report and attachments]

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DEC 02 2003

<b>Location:</b>	4822 Telegraph Ave.
<b>Proposal:</b>	To reestablish the sales of alcoholic beverages at an existing bar without cabaret activity within 1,000 feet of another alcoholic beverage sales activities.
<b>Applicant:</b>	Jack Cicala
<b>Owner:</b>	Joseph Bagan
<b>Case File Number:</b>	VM03-182
<b>Planning Permits Required:</b>	Major Variance to re-establish a legal non-conforming bar in a location where the activity has been discontinued for more than 90 days and Alcoholic Beverage Sales Commercial Activity within 1000 feet of other such activities.
<b>General Plan:</b>	Neighborhood Center Mixed Use
<b>Zoning:</b>	C-28/S-18
<b>Environmental Determination:</b>	Exempt 15301, State CEQA Guidelines; minor alterations to existing structures
<b>Historic Status:</b>	Non-historic property (NHP)
<b>Service Delivery District:</b>	II
<b>City Council District:</b>	I
<b>Action to be Taken:</b>	Decision on application based on staff report
<b>For further information:</b>	Contact Case Planner <b>Jacob Graef</b> at 510 777-8672 or by email at JGRAEF@OAKLANDNET.COM.

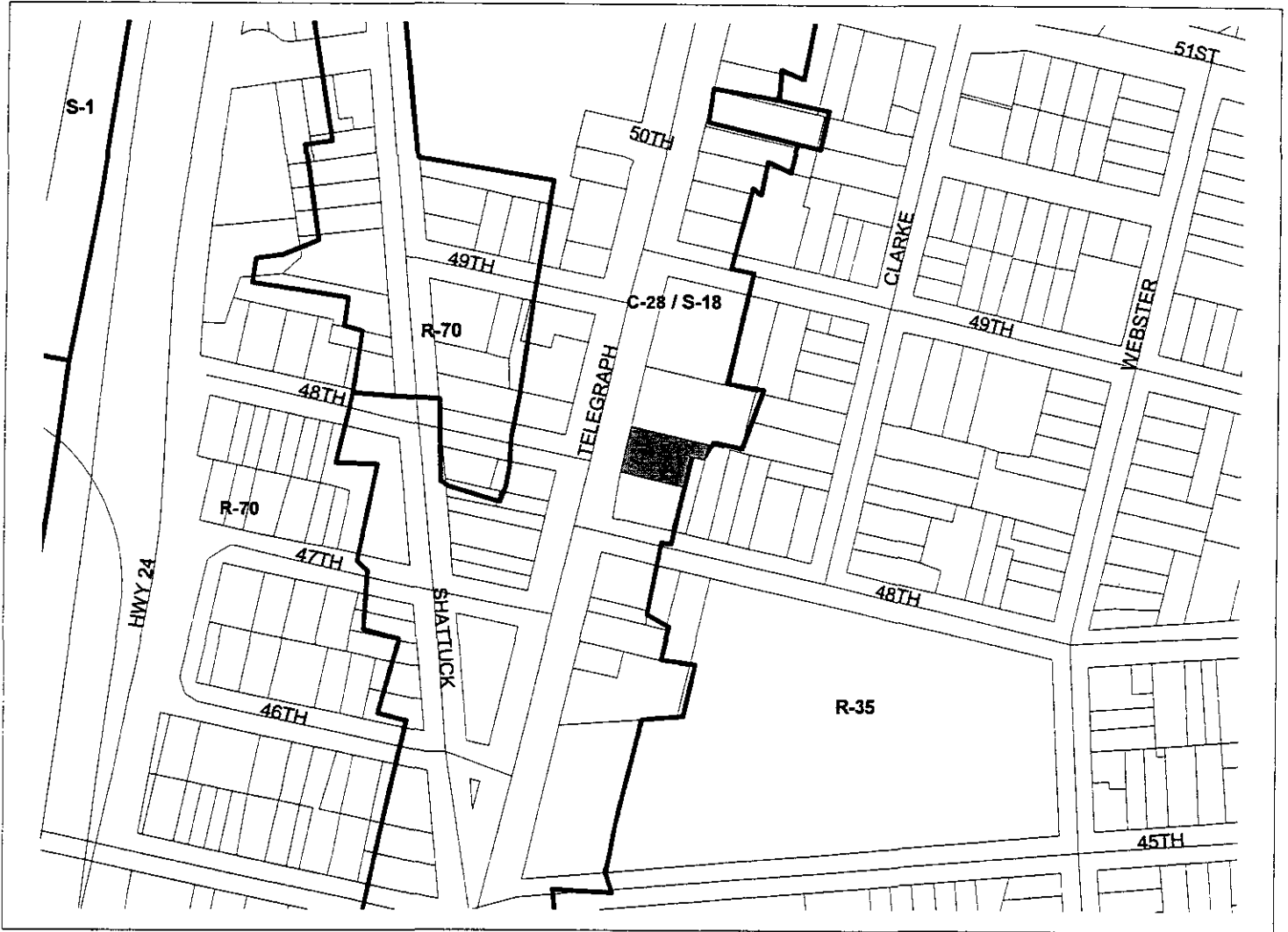
**SUMMARY**

This application is for the relocation of an existing bar (Connolly's) at 4301 Telegraph Ave to 4822 Telegraph Ave (formerly known as the Bird Cage). The hours of the bar would be from 10:00 AM to 2:00 AM seven days a week. The property is located in light commercial and residential area and there are three other alcoholic beverage sales uses within 1,000 feet. The issues in regards to this case relate to the previous operator and the history of nuisance activity from the bar. The nuisance activity stemmed from the cabaret activity and poor management of the facility. Staff has received both positive and negative support for the application, and has concluded that if operated properly, the use will not adversely affect the community. Staff recommends that the Planning Commission affirm the environmental determination and approve the Major Variance and recommended conditions of approval based on the attached findings.

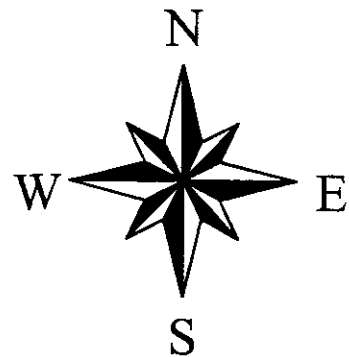
**PROJECT DESCRIPTION**

The applicant proposes to operate a small local bar (1680 square feet) with no live entertainment (cabaret activity). The bar would open from 10:00 AM to 2:00 AM, seven days a week. There is no rear patio access proposed to alleviate unnecessary impacts to neighbors, however it will be maintained as an emergency exit. The facility has the capacity for 75 patrons. Street parking is available along Telegraph Ave.

# CITY OF OAKLAND PLANNING COMMISSION



Case File: VM03-182  
Applicant: Jack Giacomo  
Address: 4822 Telegraph Avenue  
Zone: C-28 / S-18



**PROPERTY DESCRIPTION**

The property is located mid block on Telegraph Ave. along a residential/light commercial corridor. Residential properties are located on the second floor of the structure, to the rear of the structure and new units are currently under construction across the street. The property is developed with wood and brick. There is a small patio in the rear of the structure, which will not be accessed by patrons. The structure also has several building code violations (Attachment E), which are currently under repair. Staff recommends that all building violations be corrected prior to the issuance of occupancy for the bar. The structure has no historical significance. There are three other liquor selling establishments within 1000 feet of the property. They are located at 4901 Telegraph Ave. ("Bigum's Silver Lion), 4875 Telegraph Ave. ("U&L Liquors) and 4815 Telegraph Ave. (New Ho Ho Restaurant)

**GENERAL PLAN ANALYSIS**

This project is located in the Neighborhood Center Mixed Use classification. The intent of this general plan classification is to provide for healthy, vital, and accessible commercial areas that help meet local consumer needs in the neighborhoods. This area calls for neighborhood commercial areas in the neighborhood to be concentrated, neighborhood-oriented and pedestrian oriented, thereby creating activity centers that are accessible and friendly to nearby residents. The desired character of the area includes storefronts, residential, restaurants, social entertainment and uses of a similar or supporting character. This use is consistent with the General Plan land use designation.

Policy N1.1 Commercial development in the neighborhoods should be concentrated in areas that are economically viable and provide opportunities for smaller scale, neighborhood-oriented retail.

Policy N1.6 The City should closely review any proposed new commercial activities that have the potential to create public nuisance or crime problems, and should be monitor those that exist. These may include isolated commercial or industrial establishments located within residential areas, alcoholic beverage sales activities and other entertainment activities.

**ZONING ANALYSIS**

The property is located in the C-28/S-18 Neighborhood Center Zone. The bar use would be classified as an Alcohol Beverage Commercial Sales activity under Section 17.156. This activity is neither permitted outright nor permitted with a Conditional Use Permit in this zone. The activity could only be permitted through the granting of a variance. Pursuant to Section 17.148.020(1), a Major Variance is required because this project involves a specific activity type listed. To approve the proposed project the Variance findings at Section 17.148.050 would need to be made. Section 17.102.210 Use Permit Criteria for Establishments Selling Alcoholic Beverages is also required (See Attached Findings).

**ENVIRONMENTAL DETERMINATION**

State CEQA Guidelines Section 15301, minor alterations to existing structures applies. The proposed activity will only result in minor changes in the use of land that could not significantly

effect the physical environment. Therefore, this project has been determined to be exempt from CEQA review.

## **KEY ISSUES AND IMPACTS**

### **Community Concerns**

Staff has received several protest in regards to the reopening of 4822 Telegraph Ave. as a bar/lounge. The concerns stem from the previous operator who was issued a cabaret permit by the City Managers Office. The cabaret activities in conjunction with poor management by the operator allowed for large unruly crowds, loud music, loitering and other general nuisance activity. On December 21,2002 there was also a homicide associated with the activity occurring at the club that night. The written protests received are attached as follows: 1. Mr. John Flynn (Attachment B) 2. Mr. Michael Santero (Attachment C) 3. Email from [Bharja@oal.com](mailto:Bharja@oal.com) (Attachment D). All attached protest voice similar concerns to nuisance activity associated with the previous operator and how the general livability of the community has improved since the voluntary closure of the club.

The proposed activity will be within a renovated building and the activity will be that of a bar/lounge only. The relocation of Connolly's is due to a desire to occupy this new facility further down Telegraph Ave.. It has been determined and supported by City Council and the Oakland Police Department that 4822 Telegraph Ave. will be an acceptable location for this use.

The proposed bar/lounge will have the capacity to accommodate up to 75 patrons. If operated properly, the proposed addition would provide a greater variety of services while generating minimum nuisance due to the alcohol license restrictions and the hours of operation.

With appropriate conditions regarding hours and inclusion in the Deemed Approved Program (Sec. 17.156) this project will meet all of the Variance Criteria pursuant Section 17.148.020(1), which are attached herein and are hereby incorporated into this report.

Staff has verified that the implementation of land use restrictions to curtail nuisance activity has been extraordinarily effective at other similar locations. It has been proven that restrictions on the hours of operation in reference to the selling of alcoholic beverages will significantly reduce the opportunity for nuisance activity to occur. Staff recommends that the hours for the sale of alcoholic beverages be allowed only between the hours of 11:00 AM and 1:30 AM. Alcohol could only be served during these hours unless limited further by the department of Alcoholic Beverage Control.

Staff has also received positive support for the application from Councilwoman Brunner. She has had contact with the applicant and has concurred that the use will further improve the quality of life and revitalization of the surrounding area.

Staff has also received positive support from the PSA Commander Lt. Green. Lt. Green supports the operation of Connolly's at 4822 Telegraph Ave. based on the fact that at his previous location Mr. Cicala's operation generated minimal if any police calls for service and no nuisance activity. Lt. Green further acknowledged that the operator's management style has a direct correlation to the minimal amount of nuisance activity.

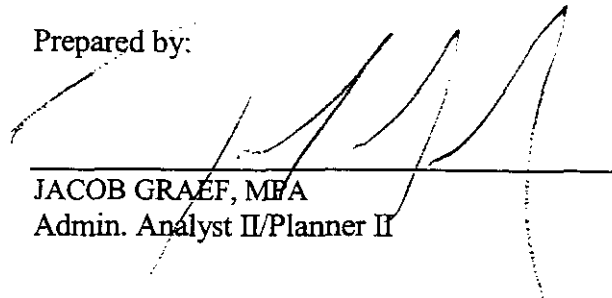
The Oakland Police Departments ABAT unit has determined that this use will create minimal amount of nuisance activity if managed properly. As a part of the Deemed Approved Program ABAT will be responsible for monitoring this location. Through active enforcement and police assistance this use will remain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

**RECOMMENDATIONS:**

Based on the analysis contained within this report, staff believes that the proposed project is an appropriate land use at this location and an appropriate and well designed theater that will further the overall objectives of the General Plan, particularly related to the redevelopment and revitalization of the Telegraph Ave. corridor near and accessible to regional serving facilities. Thus, staff recommends that the Planning Commission:

1. Affirm staff's environmental determination.
2. Approve the Variance subject to the attached findings and conditions.

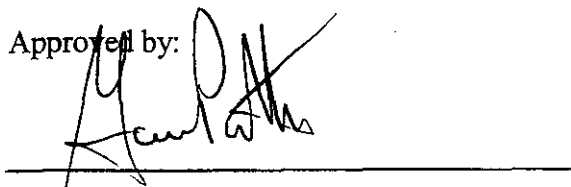
Prepared by:



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JACOB GRAEF, MFA  
Admin. Analyst II/Planner II

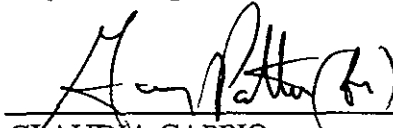
Approved by:



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GARY PATTON  
Deputy Director of Planning and Zoning

Approved for forwarding to the  
City Planning Commission:

  
\_\_\_\_\_  
CLAUDIA CAPPIO  
Director of Development

**ATTACHMENTS:**

- A. Plans and Elevations
- B. Letter August 19, 2003
- C. Email September 10, 2003
- D. Email September 9, 2003
- E. Code Compliance Violations List
- F. Letter May 30, 2003

**FINDINGS FOR APPROVAL:**

This proposal does not meet the required findings for a Major Variance under Section: 17.148.050 (Findings Required) as set forth below. Required findings are shown in **bold** type; explanations as to why these findings cannot be made are in normal type.

**17.148.050 (Findings required).**

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

The proposal if denied, would result in a practical difficulty or unnecessary hardship as the applicant cannot use the facility for other conforming activities (The building is designed to be a bar). The applicant must complete all building repairs and has further the sole investment of his liquor license and its subsequent operation at this location. Currently the applicant is repairing the site for the proposed activity.

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

There are other nonconforming bars along Telegraph Ave. Strict compliance would deprive the applicant of privileges enjoyed by owners of similarly zoned property as other property owners nearby are not constrained by the same zoning restrictions. As conditioned, staff believes that the applicant and his operation will not generate an excessive nuisance activity.

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

As evidenced by previous activity and based on experience with similar activities throughout the city, a nightclub style activity is likely to cause adverse impacts of noise, loitering, parking and will adversely impact the Telegraph Ave. corridor and surrounding neighborhoods. As conditioned the bar /lounge will not attract large crowds and further will not generate the nuisance activity experience by the community due to strict land use restriction..

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

The variance would not grant special privilege as other property owners operate small-scale alcoholic beverage sales commercial activities in the area.

***FINDINGS***



**Section 17.102.210 (A) Special Use Permit Criteria:**

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

The proposal is a relocation of an existing use and will not result in a net increase in such uses and the activity is in conjunction with other desired activities. As conditioned, the activity will not contribute significantly to problems of crime and loitering. Telegraph Ave. and surrounding thoroughfares are capable of supporting the projected traffic without affecting the level of service.

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

Carter Middle School is the only listed site close to the location that the proposal will have a negative affect on. The Vice principle of Carter middle school also extend a letter of support to the applicant (Attachment F).

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

The storefront is between 4800 and 4850 block of Telegraph Ave. that allows for pedestrian traffic. This area is usually congested with pedestrian traffic during the week. As conditioned the applicant will be responsible for maintaining the premise and through this maintenance he will control loitering and ensure pedestrian movement.

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

The building exists and there have been no proposed changes to the existing structure and operator has plans for an interior improvement project prior to opening to the public. The applicant is also required complete all building code violations

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

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

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

As conditioned, there will be one non-flammable trash container installed outside the

***FINDINGS***

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

7. **That where the proposes use is in close proximity to residential uses, and especially to bedroom windows, it will be limited in hours of operation, or designed or operated, so as to avoid disruption of residents' sleep between the hours of ten PM and seven AM.**

As conditioned, the business will open at 11:00 AM and close at 1:30 AM daily. Therefore the business will not be open during the restricted hours. The sale of alcoholic beverages will only be permitted during the hours of 11:00 AM and 1:15 AM. There will be no patron access allowed on the rear patio during hours of operation.

## CONDITIONS OF APPROVAL

### STANDARD CONDITIONS:

**1. Approved Use.**

**a. Ongoing.**

The project shall be constructed and operated in accordance with the authorized use as described in this staff report and the plans submitted on May 5, 2003 and as amended by the following conditions. Any additional uses other than those approved with this permit, as described in the project description, will require a separate application and approval.

**b. Ongoing.**

All City of Oakland Building code violations will be corrected and verified by City Staff prior to the issuance occupancy permit for this use.

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

**a. Ongoing.**

This permit shall become effective upon satisfactory compliance with these conditions. This permit shall expire on September 17, 2004 unless actual construction or alteration, or actual commencement of the authorized activities in the case of a permit not involving construction or alteration, has begun under necessary permits by this date. Upon written request and payment of appropriate fees, the Zoning Administrator may grant a one-year extension of this date, with additional extensions subject to approval by the City Planning Commission.

**3. Scope of This Approval; Major and Minor Changes**

**a. Ongoing.**

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

**4. Modification of Conditions or Revocation**

**a. Ongoing.**

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

**5. Recording of Conditions of Approval**

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

***FINDINGS***

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

**6. Reproduction of Conditions on Building Plans**

***a. Prior to issuance of building permit.***

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

**7. Indemnification**

***a. Ongoing.***

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

**STANDARD CONDITIONS FOR ALCOHOLIC BEVERAGE SALES  
COMMERCIAL ACTIVITY:**

**8. Hours.**

***a. Ongoing.***

Business hours are limited to 11:00 AM to 1:30 AM daily. Alcoholic beverages may be sold onsite only between the hours of 11:00 AM and 1:15 AM. Alcohol sales will commence via an open bar. These hours may be changed after review by the City Planning Commission at a noticed public hearing, **after six months of operation.** Alcohol shall only be sold during these hours unless limited further by the Department of Alcoholic Beverage Control.

**9. Cabaret Activity.**

***a. Ongoing.***

Cabaret activity of any kind will not be permitted on these premises (4822 Telegraph Ave.) A permit for group assembly must be acquired from the City of Oakland in order for this type of activity to commence. In order to maintain the public safety and right to enjoy there property the operator will be cited immediately for any violation of this restriction.

***b. Ongoing***

There will be no patron access to the rear patio during all hours of operation. The rear patio door can only be used in case of emergency.

***FINDINGS***

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

***a. Ongoing.***

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

**11. Compliance with City of Oakland special regulations for Alcoholic Beverage Sales Commercial**

**Activities.**

***a. Ongoing.***

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

***b. Ongoing.***

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

***c. Ongoing.***

No pay phones are permitted outside the building.

***d. Ongoing.***

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

***e. Ongoing***

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

***f. Ongoing***

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

12. Trash and litter

*a. Prior commencement of use and ongoing.*

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

*b. Ongoing*

The licensees/property owners shall clear gutter and sidewalks along Broadway, plus twenty feet beyond the property lines along these streets of litter twice daily or as needed to control litter. In addition to the requirements of B&P Section 25612.5, (sweep or mechanically clean weekly) the licensee shall clean the sidewalk with steam or equivalent measures once per month.

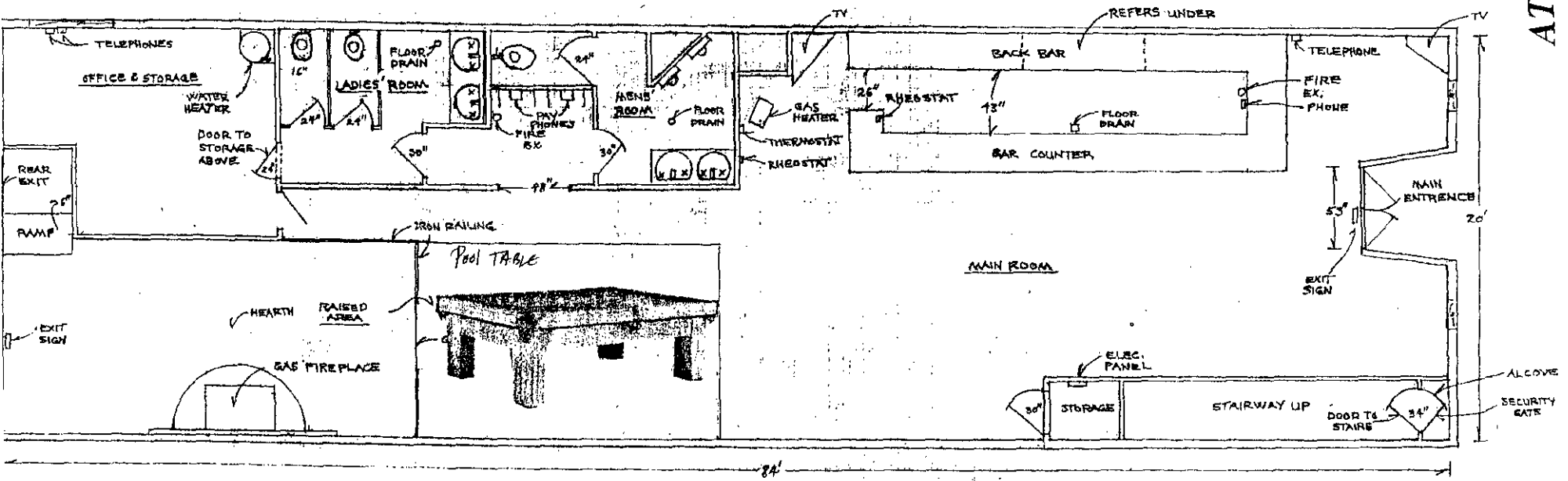
**13. Inclusion of conditions in State Department of Alcoholic Beverage Control license.**

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

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

APPROVED BY: City Planning Commission: \_\_\_\_\_ (date) \_\_\_\_\_ (vote)  
City Council: \_\_\_\_\_ (date) \_\_\_\_\_ (vote)

***FINDINGS***



1822 TELEGRAPH AVE, OAKLAND, CALIF.

AP. NO. 013-1151-018-00

LEGEND ~ SCALE 1/4" = 1'

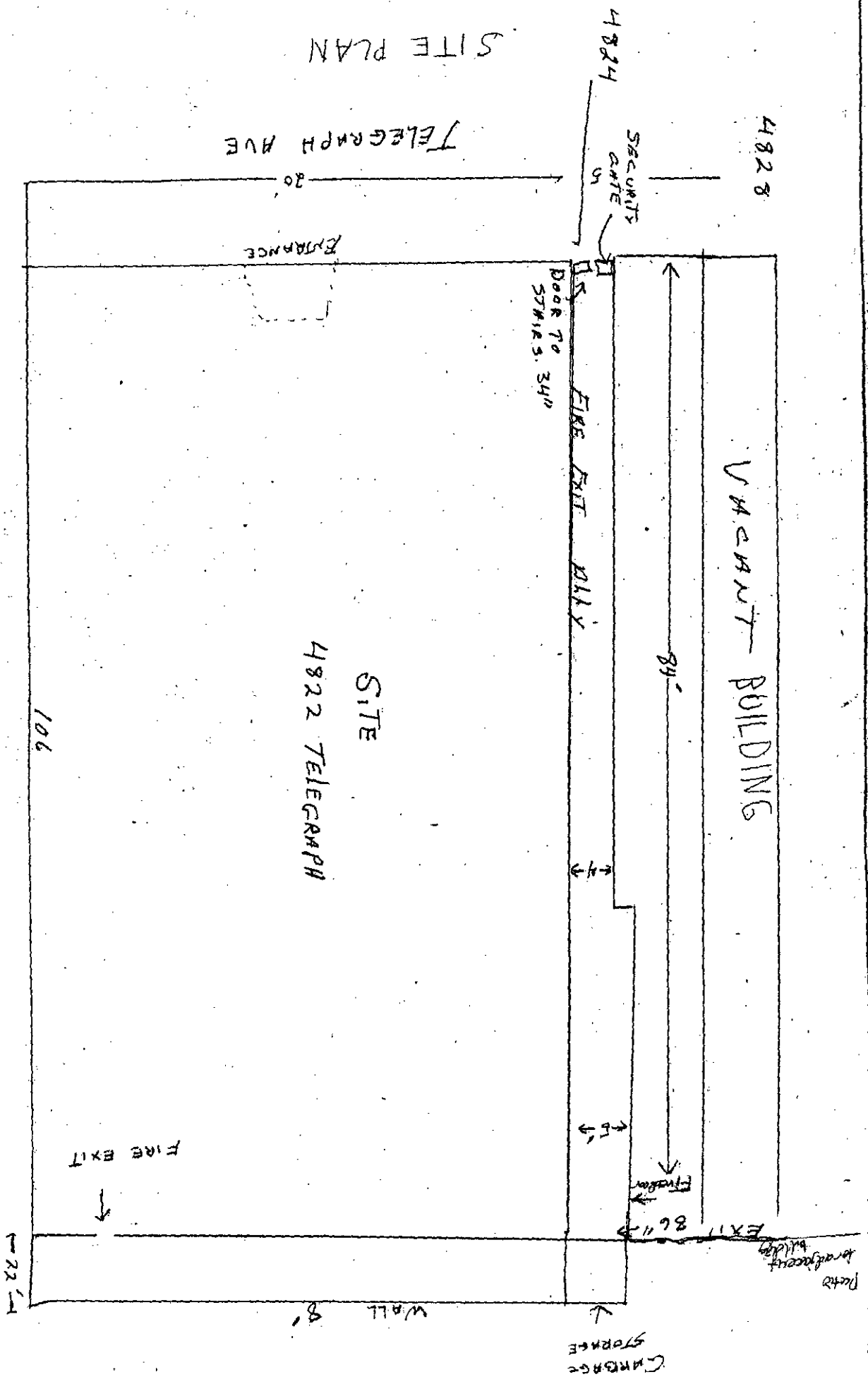
- WINDOWS
- SINKS
- TOILETS
- URINALS
- DOORS

V M 03-182  
**RECEIVED**

MAY 01 2003  
CITY PLANNING COMMISSION  
ZONING DIVISION

LEGEND 1/16" = 10'

# SITE PLAN





AUG 22 2003

Tuesday, August 19, 2003

Dept. of Alcoholic Beverage Control  
Oakland Office

**RE: Application for a pending conditional use permit and ABC license transfer at  
4822 Telegraph Avenue, Oakland, CA 94609. ABC File #8756-Surrendered**

To Whom It May Concern:

We the undersigned are residents, business owners, and property owners who live and/or work near and next to 4822 Telegraph Avenue in Oakland. It has come to our attention that there are plans to install a new bar at 4822 Telegraph Avenue—the site of what used to be the Bird Kage. As people who will be affected by this application in our immediate vicinity, we submit this letter as our voice in opposition to such an application.

We also wish to note that with the exception of the public posting on the premises at 4822 Telegraph Avenue, most residents within a 500' radius (as required by law) and who are potentially to be impacted by this proposed business were not properly notified of the intent by written notice by the applicants, Giacomo J. Cicala and Robert Eldon Weich.

Provisions of the law recognize the rights of both residential and commercial neighbors to be heard in a matter such as this; and our most recent experience with the Bird Kage has taught us that it is essential to be vigilant in such circumstances. We do so in order to maintain both our rights and the dignity of our part of the Temescal district.

The mismanagement of the Bird Kage demonstrated to what degree a facility can disrupt lives those who live nearby. The noise (both inside and outside), the loitering, the interference with parking (blocking driveways) and limiting residential parking, and the vital issue of public safety all contributed to the deterioration of good relations that had existed for years, to a decline in the mood of the vicinity, and to a loss of peace and quiet. The negative financial and health impact that it had on some is also a consideration that cannot be disregarded. No business establishment can expect its neighbors to be supportive when it violates its obligations, and no neighborhood should be expected to have to put up with that again. Those who ran that business and owned that property have forfeited the good will that we would normally like to extend to our residential and commercial neighbors.

We would like you to remember that in the early hours of Sunday, December 21, 2002, Enrique Devers, 21, was shot and killed just outside the Bird Kage during a posthumous 21<sup>st</sup> birthday celebration for Christopher Fletcher, who had been killed on March 10. This tragic incident was sadly all too predictable. Many of us had already called for the closure of the Bird Kage, but our pleas went unheeded. However, this incident did result in the surrender of the liquor license by the owner of the Bird Kage.

**ATTACHMENT B**

As a result of the surrender of the ABC license in December 2002, the business remained closed as a bar for over ninety days. Shortly after the ninety-day period, the City of Oakland Zoning Department rescinded the grandfathered use of the location as a bar. **RECEIVED**  
As a result any future use will require a Major Conditional Use Permit.

**AUG 22 2003**

Dept. of Alcoholic Beverage Control  
Oakland Office

## **CONTENTS OF PROTEST**

1.) Issuance of the license would result in or add to an undue concentration of liquor selling licenses. We would like to note that our immediate neighborhood already has:

1. One liquor-serving establishment:
  - Bigum's Silver Lion at 4901 Telegraph Avenue.  
(ABC File #169918)
2. One liquor-selling business:
  - U&L Liquors at 4875 Telegraph Avenue.  
(ABC File #258500)
3. We further believe that Census Tract 4011 is over concentrated with on-sale liquor establishments. As of February 4, 2003, there were eleven restaurants selling beer and wine (Type 41), three restaurants selling beer, wine and distilled spirits (Type 47), and three bars (Type 48) in this area.

2.) There is one school within 500 feet of the location in question:

- Carter Middle School at 4822 Webster Street

Issuance of the license would result in or add to an undue threat and negative influence on several hundred school children who approach Carter Middle School from several directions, one of which passes immediately in front of the proposed bar.

We believe that it is an unnecessary negative influence for young children to have to pass by a bar that opens at 6:00 am and closes at 2:00 am. This foot traffic is not limited to school hours but after school activities and athletics as well.

Furthermore, those patrons parking to go to the bar heavily impact 48<sup>th</sup> and 49<sup>th</sup> Streets and Telegraph. We feel that it would not be safe for children to encounter inebriated individuals going to their cars or to be accosted by raucous noise, obscenity, and very possible violence and brawling that attended the operation of the Bird Cage in the past.

3.) Recently, Heier Pickel, Inc. (possibly a silent partner with Giacomo J. Cicala and Robert Eldon Welch, the applicants) was found to be in violation of their ABC license for "Sale of Alcoholic Beverage at Unlicensed Location" and denied a license.

This violation raises the issue of how accountable the applicants will be in a new site.

We would like to emphasize that any cabaret, karaoke or entertainment activity at this location will impact the right of nearby residents to the quiet enjoyment of their property.

- 4.) The proposed bar is located within 100 feet of residences and the applicants have failed to establish that the operation of licensed premises would not interfere with the quiet enjoyment of the property by the residents. No absolute guarantees have been offered nor are there any guarantees that the owners could control their business from intruding on the quiet enjoyment of the property by residents.

For three years prior to the closing of the Bird Kage, the residents have been brutalized by the noise, attracted crime, and other commotion that the Bird Kage attracted and caused. We believe that opening another bar will attract such commotion again with the same problems of lack of parking, brawling, drunks weaving out along the streets.

We do not want to go through any similar situation where our complaints were ignored by the City of Oakland.

- 5.) Points one, two, three, and four above support the argument that licensing the premises would create a public nuisance as defined in Penal Code Section 370. Additionally, the neighborhood and residents would be endangered from bar patrons by increased litter, use of residential yards and alcoves of adjacent residences as latrines, drug dealing increase, automobile wheelies and other street entertainment resuming, cars circling the block with subwoofers blaring, etc.
- 6.) There is good reason to believe that licensing the premises will tend to create a law enforcement problem or aggravate an existing police problem. While our neighborhood officers have had no problems with the previous location of this establishment, called Conley's, there is no guarantee that assuming the previous Bird Kage location would not lead to a different problem. The neighborhood of the applicant's previous establishment did not have the residential impact that this location will occasion.

It is not clear whether retaliatory crime might occur because of the forced removal of the Bird Kage from this location.

RECEIVED

AUG 22 2003

Dept. of Alcoholic Beverage Control  
Oakland Office

For all the reasons stated above, we the undersigned respectfully request that you deny any application to establish a bar at 4822 Telegraph Avenue. In addition, we request that you notify us of any other pending application for an Alcoholic Beverage Sales Commercial Activity or any other type of alcoholic beverage sale license at this location so that we may respond to the application in a timely manner.

Please note that copies of this letter are being sent to:

Sgt. Leonard White, Alcohol Beverage Team, OPD

Everest Robillard, District Administrator, Oakland District Office, ABC

Jane Brunner, Oakland City Council

Lt. Lawrence Green, PSA 2 (North Oakland), OPD

Don Lowry, Chairman, Temescal NCPC

**RECEIVED**

**AUG 22 2003**

Department of Alcoholic Beverage Control  
**PROTEST AGAINST ALCOHOLIC  
BEVERAGE LICENSE APPLICATION**

State of California  
GRAY DAVIS, Governor  
Business, Transportation and Housing Agency  
MARIA CONTRERAS-SWEET, Secretary

Please print legibly or type.

I hereby protest the issuance of a license under the Alcoholic Beverage Control Act to:

CICALA, GIACOMO JACK E ROBERT ELDON WELCH  
(Name(s) of Applicant(s))

For premises at:

4822 TELEGRAPH AVE OAKLAND, CA 94609  
(Exact address of proposed premises)

on the grounds that:

SEE ATTACHED LETTER.

RECEIVED

AUG 23 2003

Dept of Alcoholic Beverage Control  
Oakland Office

Willis J. GILDERSEFER  
i. Cathy A. Piccol (Gildersefer Electric) declare under penalty of perjury:  
PRINT (Name of Protestor)  Check here if additional sheets attached

(1) That I am the protestant herein; (2) That I have read the above protest and know the contents thereof; and (3) That the same is true of my own knowledge except as to those matters which are therein stated on information and belief, and as to those matters I believe to be true.

PROTESTANT'S SIGNATURE <u>[Signature]</u>	PROTESTANT'S TELEPHONE NUMBER (optional) <u>(510) 658-0601</u>
SIGNED AT (City and state) <u>OAKLAND, CA 94609</u>	DATE SIGNED <u>Aug 22, 2003</u>
PROTESTANT'S ADDRESS (Street number & name, city, state, zip code) <u>4800A TELEGRAPH AVE</u>	

June 30, 2003

*RE: Application for a pending conditional use permit and ABC license transfer at 4822 Telegraph Avenue, Oakland, CA 94609, ABC File #8756-Surrendered*

**To Whom It May Concern:**

We the undersigned are residents, business owners, and property owners who live and/or work near and next to 4822 Telegraph Avenue in Oakland. It has come to our attention that there are plans to install a new bar at 4822 Telegraph Avenue – the site of what used to be the Bird Kage. As people who will be affected by this application in our immediate vicinity, we submit this letter as our voice in opposition to such an application.

Provisions of the law recognize the rights of both residential and commercial neighbors to be heard in a matter such as this; and our most recent experience with the Bird Kage has taught us that it is essential to be vigilant in such circumstances. We do so in order to maintain both our rights and the dignity of our part of the Tamescal district.

The mismanagement of the Bird Kage demonstrated to what degree a facility can disrupt the lives of those who live nearby. The noise (both inside and outside), the loitering, the interference with parking (blocking driveways), and the vital issue of public safety all contributed to the deterioration of good relations that had existed for years, to a decline in the mood of the vicinity, and to a loss of peace and quiet. The negative financial impact that it had on some is also a consideration that can not be disregarded. No business establishment can expect its neighbors to be supportive when it violates its obligations, and no neighborhood should be expected to have to put up with that again. Those who ran that business and owned that property have forfeited the good will that we would normally like to extend to our residential and commercial neighbors.

In the early hours of Sunday, December 21, 2002, Enrique Devers, 21, was shot and killed just outside the Bird Kage during a posthumous 21<sup>st</sup> birthday celebration for Christopher Fletcher, who had been killed on March 10. This tragic incident was sadly all too predictable. Many of us had already called for the closure of the Bird Kage, but our pleas went unheeded. However, this incident did result in the surrender of the liquor license by the owner of the Bird Kage.

As a result of the surrender of the ABC license in December 2002, the business remained closed as a bar for over ninety days. Shortly after the ninety-day period, the City of Oakland Zoning Department rescinded the grandfathered use of the location as a bar. As a result, any future use will require a Major Conditional Use Permit.

**RECEIVED**

**AUG 22 2003**

**Dept. of Alcoholic Beverage Control  
Oakland Office**

In addition to the recent problems created by the Bird Kage, we would like to note that our immediate neighborhood already has:

1. One liquor-serving establishment:
  - Bigum's Silver Lion at 4901 Telegraph Ave. (ABC File #169918)
2. One liquor-selling facility:
  - U&L Liquors at 4875 Telegraph Ave. (ABC File #258500)
3. One school within 600 feet of the location in question:
  - Carter Middle School at 4822 Webster Street

We further believe that Census Tract 4011 is *over concentrated* with on-sale establishments. As of February 4, 2003, there were eleven restaurants selling beer and wine (Type 41), three restaurants selling beer, wine and distilled spirits (Type 47), and three bars (Type 48) in this area.

We would like to emphasize that any cabaret, karaoke or entertainment activity at this location will impact the right of nearby residents to the quiet enjoyment of their property.

For all the reasons stated above, we the undersigned respectfully request that you deny any application to establish a bar at 4822 Telegraph Avenue. In addition, we request that you notify us of any other pending application for an Alcoholic Beverage Sales Commercial Activity or any other type of alcoholic beverage sales license at this location so that we may respond to the application in a timely manner.

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Everest Robillard, District Administrator, Oakland District Office, ABC  
Jane Brunner, Oakland City Council  
Lt. Lawrence Green, PSA 2 (North Oakland), OPD  
Don Lowry, Chairman, Temescal NCPC

RECEIVED

AUG 22 2003

Dept. of Alcoholic Beverage Control  
Oakland Office

Submitted with respect,

Signature	Name (please print)	Street Address

PROTESTANT'S ADDRESS (Street number and name, city, state, zip code)	
4812 Tennyson Avenue	
PROTESTANT'S SIGNATURE	PROTESTANT'S TELEPHONE NUMBER (Optional)
Francis M. Turner	658-5382
SIGNED AT (City and State)	DATE SIGNED
Oakland CA	8/22/03

(1) That I am the protestant herein; (2) That I have read the above protest and know the contents thereof; and (3) That the same is true of my own knowledge except as to those matters which are therein stated on information and belief, and as to those matters I believe to be true.

I, Francis M. Turner, PRINT (Name of Protestor), declare under penalty of perjury:  Check here if additional sheets attach

RECEIVED  
AUG 23 2003  
Dept of Alcoholic Beverage Control  
Oakland Office

SEE ATTACHED LETTER

on the grounds that:

I hereby protest the issuance of a license under the Alcoholic Beverage Control Act to:  
 CICALA, GIACOMO, JACK & ROBERT EDON WELCH  
 (Name(s) of Applicant(s))  
 For premises at:  
 4822 Tennyson Ave  
 (Exact address of proposed premises)  
 OAKLAND, CA 94609

Please print legibly or type.

Department of Alcoholic Beverage Control  
 PROTEST AGAINST ALCOHOLIC  
 BEVERAGE LICENSE APPLICATION



Department of Alcoholic Beverage Control  
**PROTEST AGAINST ALCOHOLIC  
BEVERAGE LICENSE APPLICATION**

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MARIA CONTRERAS-SWEET, Secretary

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on the grounds that:

SEE ATTACHED LETTER.

RECEIVED

AUG 22 2003

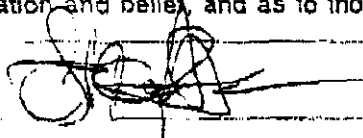
Dept. of Alcoholic Beverage Control  
Oakland Office

Check here if additional sheets attached

I, SEAMUS BYRNE, declare under penalty of perjury:  
PRINT (Name of Protestor)

(1) That I am the protestant herein; (2) That I have read the above protest and know the contents thereof; and (3) That the same is true of my own knowledge except as to those matters which are therein stated on information and belief, and as to those matters I believe to be true.

PROTESTANT'S SIGNATURE



PROTESTANT'S TELEPHONE NUMBER (Optional)

SIGNED AT (City and state)

OAKLAND, CALIFORNIA

DATE SIGNED

8/19/03

PROTESTANT'S ADDRESS (Street number and name, city, state, zip code)

4822 TELEGRAPH AVENUE, OAKLAND CA 94609

RECEIVED

AUG 22 2003

Dept. of Alcoholic Beverage Control  
Oakland Office

June 30, 2003

*RE: Application for a pending conditional use permit and ABC license transfer at 4822  
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Sgt. Leonard White, Alcohol Beverage Team, OPD  
Everest Robillard, District Administrator, Oakland District Office, ABC  
Jane Brunner, Oakland City Council  
Lt. Lawrence Green, PSA 2 (North Oakland), OPD  
Don Lowry, Chairman, Temescal NCPC

RECEIVED

AUG 22 2003

Dept. of Alcoholic Beverage Control  
Oakland Office

Submitted with respect,

Signature	Name (please print)	Street Address
	Christian Alvarez	4802 Telegraph, 94609

## Graef, Jacob

---

**From:** ifilipino@att.net  
**Sent:** Wednesday, September 10, 2003 12:09 AM  
**To:** jgraef@oaklandnet.com  
**Subject:** Bird Kage - Case Number VM03-182

Dear Mr. Graef:

Thank you for returning my call. As I stated earlier, my family lives at 4823 1/2 Clarke Street, behind the bar formerly known as the Bird Kage. I recently became aware that an application is pending before the planning commission to reopen the bar. We oppose granting a major variance for the following reasons:

(1) The music and screams from the bar would constantly wake us up at night, especially my three year old daughter. We have had to call the police numerous times, but the music would only stop temporarily. Even when the music stopped, the noise from the crowds would get louder. Gunshots were often heard.

(2) Allowing the bar to operate under strict conditions will not work because the owners lives in Idaho and cannot properly supervise their tenants. Joseph and Eileen Bagan were unable to effectively respond to the problems at the Bird Kage. As a result, Enrique Devers was shot shortly after leaving the bar on December 21, 2002. The Bagans have demonstrated that they will not be able to prevent the conditions that led to the closing of the Bird Kage and cannot be trusted with another bar in Oakland.

(3) Now that the bar is closed, the neighborhood feels a lot safer. I now walk to Global Video, which is only a couple of blocks away, instead of drive.

(4) Finally, it has been less than a year since Mr. Devers was killed. It is way too soon to reopen the Bird Kage; most of the neighborhood still remembers the shooting. To reopen the bar feels like a slap in the face.

Please relay my family's concerns to the planning commission. Thank you for your help.

Sincerely,

Michael Santero

***ATTACHMENT C***

**Graef, Jacob**

---

**From:** Bharja@aol.com

**Sent:** Tuesday, September 09, 2003 11:22 AM

**To:** jgraef@oaklandnet.com

**Subject:** denied application for alcoholic beverage at 4822 telegraph ave

hi,Jacob i like to oppose application for alcohol sale at 4822 telegraph Ave, we use to have a bar there called bird cage and we have to call police almost every other day,for loud music, car making donut 2oclock in the morning, fighting and also cross the street there is a liquor store with bar open teenagers get the liquor from the store and the bar,drug dealer stand and sale drug,so if you gave permission to this license we have a same problem again so i will appreciate if you denied this request thanks

***ATTACHMENT D***

9/10/2003

## List of Violations

Complaint #: 0207060

Address: 4822 Telegraph Avenue, Oakland, CA

AP No: 013 -1151-018-00

### Dangerous

#### Building:

- ✓ 1. The patio area is NOT to be used as part of the bar occupancy. ✓
- ✓ 2. The wooden lattice over the patio area is not approved and must be removed immediately. ✓
- ✓ 3. The rear exit is insufficient and seriously sub-standard for the occupancy load of the bar.
- ✓ 4. The rear exit is only 29 inches wide in one area and trash containers and a variety of trash and debris obstruct the passageway. ✓
- ✓ 5. There are two grates for ventilation of the sub-area, which are not screened and are a tripping hazard.
- ✓ 6. There are openings in the exterior walls of the building that must be repaired to maintain the weatherproof integrity of the wall.

#### Electrical system:

- ✓ 7. The electrical service and system is not adequate for the amperage demand of the building and has been altered without required permits.
- ✓ 8. 3' clearance for working space is required in front of electrical panel.

#### Plumbing System:

- ✓ 9. The plumbing system has been altered without benefit of permit.

### Unsafe

#### Building:

- ✓ 1. There are two pieces of mechanical equipment (air conditioning unit and evaporative cooler) mounted in the exterior wall of the bar and suspended above the walkway. The suspension structures are dry-rotted and structurally deficient. Openings, other than those which were part of the original structure, are not permitted in this wall. These units must be removed and the exterior finish restored.
- ✓ 2. Window glass is broken and must be replaced.
- ✓ 3. There is a lot of clutter and storage, which impedes clear access to the exit door. Clear and clean the area.
- ✓ 4. There is a storage area above the restrooms and part of the bar that is accessed from the office. This area is packed with combustible materials and must be cleared of all such items.
- ✓ 5. There is evidence of animal entry to the sub-area from the grates in the secondary exit.
- ✓ 6. One of the grates is clogged with debris and must be cleaned.
- ✓ 7. These grates must be screened with corrosion-resistant mesh having openings not smaller than 1/4 inch nor larger than 1/2 inch.
- ✓ 8. Hole in wall, near urinals, requires patching.
9. Fixtures and dispensers must be secured to walls.
- ✓ 10. Stored items must be removed from under lavies.

**ATTACHMENT E**

Complaint #: 0207060

Address: 4822 Telegraph Avenue, Oakland, CA

AP No: 013 -1151-018-00

Electrical Systems:

- ✓11. There are unapproved electrical hookups.
- ✓12. Unprotected switches and outlets and light fixture lacks proper covers.
- ✓13. Exposed wiring.
- ✓14. Loose light fixture at front edge of platform adjacent to dance floor.
- ✓15. Unpermitted uses of various types of electrical cord in all areas of the bar and patio area.

Plumbing and Mechanical Systems:

- ✓16. Urinal is broken and must be replaced.
- ✓17. Remove stored items from around heater.
- ✓18. Remove blanket from the water heater. Pressure and temperature relief valve drain must terminate to the exterior of building (unable to see where the piping terminates due to obstruction of piping).
- ✓19. ABS and PVC drain, waste, and vent piping is not approved for this occupancy.
- ✓20. The flu on the wall-mounted heater is improperly installed.
- ✓21. Continuous waste is installed improperly.
- ✓22. Indirect waste is installed improperly.
- ✓23. The dumpster must be kept closed at all times.

Certain areas were not opened for inspection. Any violation or deficiencies subsequently identified shall become a component part of this report and shall be corrected in an approved manner.

OAKLAND DISTRICT



CARTER MIDDLE SCHOOL  
4521 Webster Street  
Oakland, California 94609  
(510) 879-2140  
FAX (510) 879-2149

May 30, 2003

To Whom It May Concern:

This is in regards to the establishment known as Connelly's moving the new location formerly known as The Bird Cage. We have no problem with them moving into that location; we see it as no hindrance or hazard to our students.

If you need further assistance with this matter please feel free to contact me at the above number.

Respectfully,

A handwritten signature in black ink that reads 'Eric Chism' in a cursive style.

Eric Chism  
Vice-Principal

EC:ldc

*ATTACHMENT F*



# FAX COVER SHEET

ANNE MANLEY-CICALA  
PRESIDENTIAL PERFORMANCE REVIEW  
2005-2006  
BENNETT, GALE-04700  
OFFICE: 510.420.0200 / FAX: 510.420.8494  
HOME FAX: 510.420.8494

Send to: <b>JACOB GRAFF</b>	From: <b>JACK CICALA</b>
Attention:	Date: <b>07-22-03</b>
Office Location:	Office Location:
Fax Number: <b>510.777.9682</b>	Phone Number: <b>510.852.0872</b>

- Urgent
- Reply ASAP
- Please comment
- Please review
- For your information

Total pages, including cover:

**2**

Comments:

Re: 4822 Telegraph Ave  
CONNOLLY'S. Please add this to your  
packet info. Thanks

**Jack**

## Exhibit C

[Copy of the applicants appeal submittal]

14.1  
ORA/COUNCIL  
DEC 02 2003

COMPLETE SET  
WITH ALL ATTACHMENTS  
**RECEIVED**

OCT - 1 2003

CITY PLANNING COMMISSION  
ZONING DIVISION

Larry Bellinger  
494 48<sup>th</sup> Street  
Oakland, CA 94609  
(510) 268-9996  
(510) 520-7910

September 29, 2003

TO: Honorable Members of the Oakland City Council

FROM: Larry Bellinger, et al

SUBJECT: Appeal of Planning Commission Decision to Approve Case No. VM03-182

On behalf of my Temescal neighbors, the students, parents, teachers and staff of Carter Middle School and myself, I am appealing the decision to grant a Major Variance to applicant, Jack Cicala, for the re-establishment of Connolly's Bar at 4822 Telegraph Avenue. I am requesting that the City Council reconsider the decision of the Planning Commission made on September 17, 2003 and vote to deny a Major Variance to the applicant, Jack Cicala, for the following reasons:

GENERAL PLAN N1.6

The City Planning Department did not closely review the approved application for a Major Variance and give proper weight to the concerns of adjacent neighbors, Carter Middle School and the history associated with the sales of alcoholic beverages, nuisance and crime problems consistent with the 4822 Telegraph location.

KEY ISSUES AND IMPACTS

Community Concerns

Staff incorrectly de-emphasized the location of the proposed Major Variance at 4822 Telegraph and placed the blame for problems related to the location on the "management style" of the previous tenant. The problems with this location have been documented extensively in Staff Report Attachment "B" and include a petition signed by 39 of the residents within 500 feet of the location. Furthermore, staff overlooked the California Alcoholic Beverage Control Disciplinary History File

**(Attachment 1)** on the applicant's previous location, Connolly's Bar at 4301 Telegraph, which includes Registration # 99046686 reported by the Oakland Police Department as a Violation of Section 24200(a&b) and Section 25658(a) Sale to Minor (Decoy). In addition, while managing at the 4301 Telegraph location, Connolly's Bar, the applicant was also cited and closed for ten days for Registration # 03054657, reported by ABC as a violation of Section 24200(a&b) and Sections 23300, 23355 Sale of A/B at Unlicensed Location. Therefore, the management style of the applicant cannot be cited as a reason for granting the Major Variance at the 4822 Telegraph location.

Applicant failed to provide a security plan for effectively managing maximum occupancy of 75 persons in the 4822 Telegraph location, many of whom will be intoxicated at the premises and when leaving the proposed location to drive vehicles on city streets and in the vicinity of Carter Middle School.

The Staff Report incorrectly states that the City Council and the Police Department both support the application for a major variance at this location. At the Planning Commission Meeting on September 17, 2003, a member of Councilmember Jane Brunner's staff circulated a letter from Ms. Brunner stating that she did not approve of her name being used to support the Major Variance and was neutral. **(Attachment 2)** At the September 17 meeting Sgt. White of the Oakland Police Department ABAT Unit also informed staff that the Oakland Police Department was neutral on the Major Variance. These serious errors created a false impression that this project was greenlighted by responsible City leadership.

Therefore, Staff erred and unduly influenced Planning Commission members' belief in official "support" for the approval of the Major Variance.

#### FINDINGS FOR APPROVAL

Staff report acknowledges that this proposal does not meet the required findings for a Major Variance under Section 17.148.50. Staff explanations for overriding these findings fail to meet the test for approval of the Major Variance.

1. There is no proof that another applicant could not find a suitable use for this location consistent with the General Plan Policy N1.1. It was the applicant, Jack Cicala's, choice to pursue a non-conforming Major Variance to re-establish a bar in a location with full knowledge of strong community opposition to the presence of a business selling alcoholic beverages, only, at 4822 Telegraph.

2. This applicant has no special privilege or right to conduct business in this location. Finding #4 states, "That the variance will not constitute a grant of special privilege inconsistent with limitations imposed on similarly zoned properties or inconsistent with the purposes of the zoning regulations". Mr. Cicala was given special treatment. His credentials, including a fraudulent letter of support from Carter Middle School and Connolly's Bar's ABC disciplinary history were not cross-checked by Staff.
3. Staff has played down significant protests from neighbors affected by the applicant's proposal for a Major Variance to establish a non-conforming bar at 4822 Telegraph Avenue. Applicant disclosed at the September 17 Planning Commission meeting that the location is not soundproofed and that the location has no air conditioning/ventilation capability. Therefore, air can only circulate through the relaxing of restrictions on opening of the front and rear doors to circulate fresh air. The structure does not have a fire sprinkler system. Smokers, who smoke in front of the bar, create annoyance to pedestrians, school children going to and from school and tenants located adjacent to the bar.
4. In light of the problems documented with the granting of the Major Variance, the applicant received special privileges above the rights of Carter Middle School and the residential community affected by the applicant's choice of business at this location.

SECTION 17.102.210 (A) Special Use Permit Criteria:

1. The Major Variance should be denied because past history has demonstrated that the presence of an establishment selling alcoholic beverages in this location has been counterproductive and contributed to a negative impact on the quality of life for residents in this location. During the operation of Connolly's Bar and the Bird Kage Bar on Telegraph Avenue from January 1, 2002 through September 1, 2002, Oakland Police Beat 12X recorded 343 crimes. Since Connolly's Bar and the Bird Kage Bar have been closed from January 1, 2003 through September 1, 2003, Oakland Police Beat 12X reported 300 crimes, a decrease of 14 percent. (**Attachment 3**) Citations of scholarly research provide a strong foundation for the thesis that the density of alcohol outlets is a major contributory factor in the rates of crimes in affected neighborhoods. (**Attachment 4**)

2. The Major Variance should be denied because of the Staff Report finding of a negative effect on Carter Middle School. Furthermore, it has been publicly revealed that the “letter of support” for the bar at 4822 Telegraph, solicited and submitted by the applicant, Jack Cicala, has been exposed as a fraud. **(Attachment 5)** This letter cannot be used to mitigate the finding of a negative effect on Carter Middle School. In an Oakland Tribune story, reported by Laura Casey on Saturday September 27, Oakland School District spokesman, Ken Epstein states that the “Chism letter” does not reflect the school’s or the district’s position on a bar opening close to a middle school. Epstein further elaborated that, “(State Administrator Randolph) Ward has stated that he does not support bars or liquor stores in close proximity of schools.” The Principal of Carter Middle School has stated her opposition to the proposed Major Variance in the strongest terms.  
**(Attachment 6)**

In light of this single fact (Negative effect on Carter Middle School with no mitigating support factors) the application for a Major Variance fails to comply with Special Use Permit Criteria, Item 2, and should be denied outright.

7. There is strong neighborhood opposition to the granting of the Major Variance. As stated in the letter of protest signed and submitted by 39 residents affected by the proposed bar (Staff Report Attachment B), “We further believe that census Tract 4011 is over concentrated with on-sale establishments. As of February 4, 2003, there were eleven restaurants selling beer and wine (Type 41), three restaurants selling beer, wine and distilled spirits (Type 47), and three bars (Type 48) in this area.” The neighbors have made it abundantly clear that they do not want a bar at 4822 Telegraph.

In conclusion, the evidence does not weigh in favor of approval of the Major Variance. We respectfully request that the Oakland City Council members review the merit of our appeal and vote to deny the Approval of a Major Variance in Case No. VMO3-182.

Amendment to Appeal by Larry Bellinger, et al

Addition to Key Issues and Impacts

At the applicant's previous place of business, Connolly's Bar, located at 4301 Telegraph Avenue, a history of code violations was omitted from review by Staff who cited the "management style" of the applicant as a positive factor in approving the Major Variance. We think the record shows serious problems with the way Connolly's was managed and the history of code compliance violations bears witness to this fact. (**Attachment 7**)



**California Department of Alcoholic  
Beverage Control**  
*License Query System Summary  
as of 9/30/2003*

<b>License Information</b>	
<b>License Number:</b> 189031	<b>Status:</b> ACTIVE
<b>Primary Owner:</b> HEIER PICKEL INC	
<b>ABC Office of Application:</b> OAKLAND	
<b>Business Name</b>	
<b>Doing Business As:</b> CONNOLLYS	
<b>Business Address</b>	
<b>Address:</b> 4301 TELEGRAPH AVE <b>Census Tract:</b> 4011.	
<b>City:</b> OAKLAND <b>County:</b> ALAMEDA	
<b>State:</b> CA <b>Zip Code:</b> 94609	
<b>Licensee Information</b>	
<b>Licensee:</b> HEIER PICKEL INC	
<i>Company Officer Information</i>	
... No Active Company Officer Information found ...	
<b>License Types</b>	
1) <b>License Type:</b> 48 - ON-SALE GENERAL PUBLIC PREMISES	
<b>License Type Status:</b> ACTIVE	
<b>Status Date:</b>	<b>Term:</b> 12 Month(s)
<b>Original Issue Date:</b> 08-JUL-1986	<b>Expiration Date:</b> 31-JAN-2004
<b>Master:</b> Y	<b>Duplicate:</b> 0 <b>Fee Code:</b> P40
<b>License Type was Transferred On:</b> PEND <b>To:</b> 403048	
<b>License Type was Transferred On:</b> 17-APR-2003 <b>To:</b> 399617	
<b>Current Disciplinary Action</b>	
... No Active Disciplinary Action found ...	
<b>Disciplinary History</b>	
<b>Violation Date:</b> <b>Reg. Number:</b> 99046686 <b>Cleared On:</b> 21-JUL-1999	
<b>Reporting Agency:</b> OAKLAND P.D.	
1) <b>Charge Date:</b>	<b>Section Violated:</b> 24200(a&b)
<b>Charge:</b> GROUNDS FOR ACTION	
2) <b>Charge Date:</b>	<b>Section Violated:</b> 25658(a)
<b>Charge:</b> SALE TO MINOR (DECOY)	
<b>Proceeding Status:</b> COMPLETE <b>Decision:</b> SUSPENDED	
<b>Suspension Days:</b> 15 <b>Stayed Days:</b> 15 <b>POIC/Fine:</b>	
<b>Suspension Start Date:</b> <b>Suspension End Date:</b>	

*Attachment 1  
page 1*



<b>Violation Date:</b> 25-OCT-2002 <b>Reg. Number:</b> 03054657 <b>Cleared On:</b> 29-MAY-2003
<b>Reporting Agency:</b> ABC
1) <b>Charge Date:</b> 25-OCT-2002 <b>Section Violated:</b> 24200(a&b)
<b>Charge:</b> GROUNDS FOR ACTION
2) <b>Charge Date:</b> 25-OCT-2002 <b>Section Violated:</b> 23300,23355
<b>Charge:</b> SALE OF A/B AT UNLIC'D LOCATION
<b>Proceeding Status:</b> COMPLETE <b>Decision:</b> SUSPENDED
<b>Suspension Days:</b> 10 <b>Stayed Days:</b> POIC/Fine: 1477
<b>Suspension Start Date:</b> <b>Suspension End Date:</b>
<b>Hold Information</b>
. . . No Active Holds found . . .

--- End of Report ---

For a definition of codes, view our [glossary](#).

Attachment 1  
page 2



CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

JANE BRUNNER  
Councilmember  
District 1

(510) 238-7001  
FAX (510) 238-6910  
TDD: (510) 238-7413

September 17, 2003

Re: Case File # VM03-182 – Application to reestablish alcoholic beverage sales at 4822  
Telegraph Avenue

To Members of the Planning Commission:

I want to clarify the statement attributed to me in the staff report on the application to reestablish alcoholic beverage sales at 4822 Telegraph Avenue. I have not told city staff that I support the bar. Because this issue is appealable to the City Council I have not taken a position.

In Planning Commission matters that are appealable to the City Council I will usually limit my involvement to offering to help to mediate a solution if both parties want to talk. I will take a position after the planning commission and the community has had a chance to review the matter, and it is slated to come to the City Council on appeal.

I have requested that the city staff who wrote the staff report make it very clear to the planning commission tonight that I have not taken a position of support or opposition to this variance.

Sincerely,

A handwritten signature in black ink that reads "Jane Brunner". The signature is written in a cursive, flowing style.

Jane Brunner  
Councilmember District #1

JB: zow

Attachment 2



Crime Beats : 12X

1 : 6,561

3,548 x 3,013 (ft)

Select Crime

Com. Beats: 12X or Pol. Dist: - All -

Area: Homicide: 187 PC

From: Jan 1 2002 To: Sep 1 2002

Report Map Repo

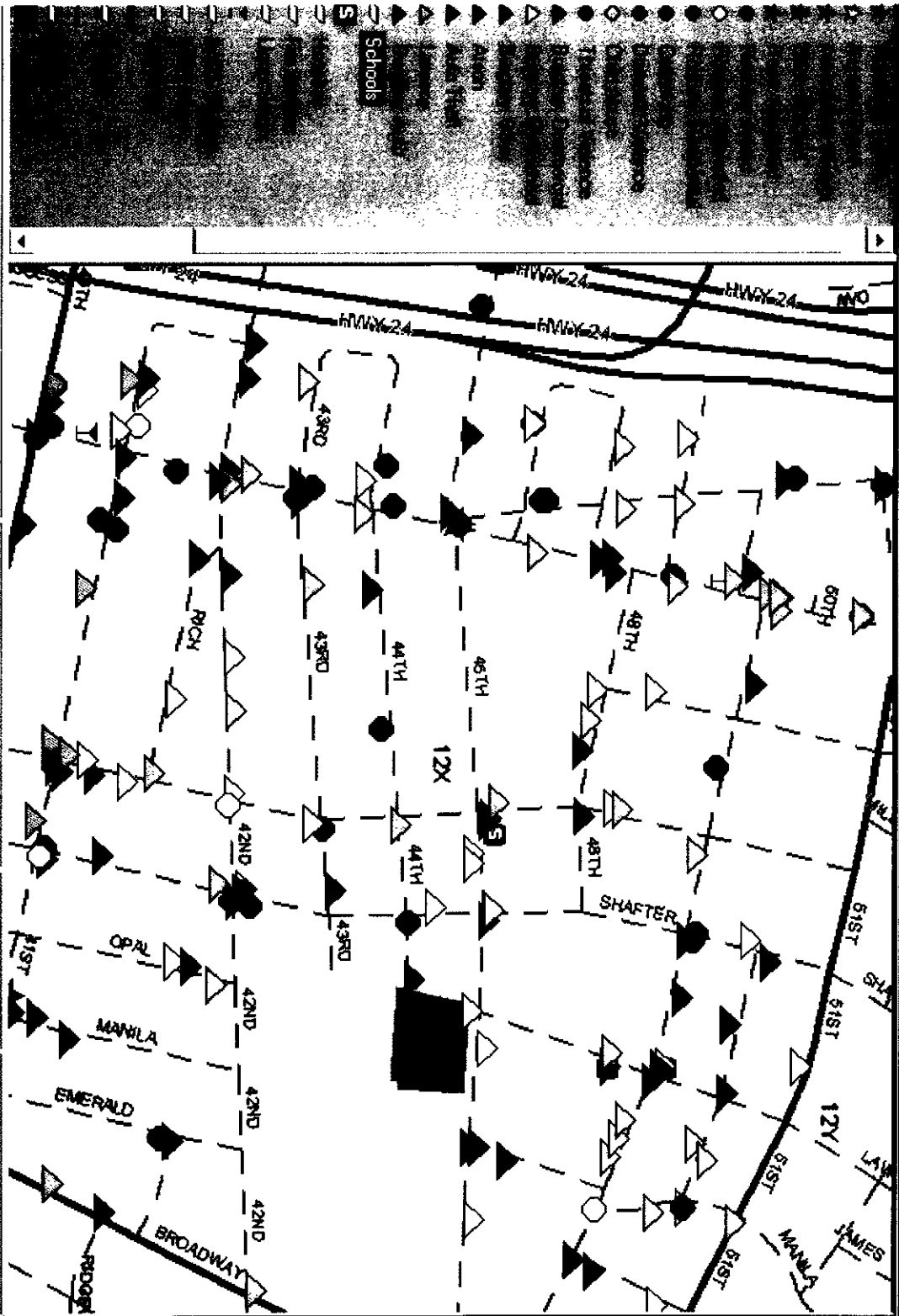
Zoom Address

Ex: 370 E 21st St

Go!

343 Total CRIMES

CrimeWatch: Help



Unity Beats : 12X

1 : 6,561

3,548 x 3,013 (ft)

Select Crimes

Com. Beats: 12X or Pol. Dist: - All -

-----  
Homicide: 187 PC

From: Jan 1 2003 To: Sep 1 2003

Report Map Repo

Zoom Address

EX: 370 E 21st St

Go!

300 Total CRIMES

## The Facts

- The number of alcohol outlets is related to violent assaults. One study showed that each additional alcohol outlet was associated with 3.4 additional assaults per year. Scribner, R., Mackinnon, D. & Dwyer, J.: "The risk of assaultive violence and alcohol availability in Los Angeles County." *American Journal of Public Health* (85) 3: 335-340. 1995.
- Alcohol outlet density has been shown to be the single most important environmental factor explaining why violent crime rates are higher in certain areas of the city than in others. LaBouvie, E. & Ontkush, M.: "Violent crime and alcohol availability: relationships in an urban community." *Journal of Public Health Policy* 19(3):303-318. 1998.
- There are a greater number of alcohol-related injury crashes in cities with higher outlet densities. A 1% increase in outlet density means a .54% increase in alcohol-related crashes. Thus, a city of 50,000 residents with 100 alcohol outlets would experience an additional 2.7 crashes for each new outlet opened. Scribner, R., Mackinnon, D. & Dwyer, J.: "Alcohol outlet density and motor vehicle crashes in Los Angeles County cities." *Journal of Studies on Alcohol* (44): 447-453, July 1994.
- Blocks that have more bars have higher crime rates for murder, rape, assault, robbery, burglary, grand theft and auto theft. Adding one bar to a block would result in 3.38 crimes committed on that block in a year. It would increase the risk of murder taking place on that block by 5%, and increase the risk of having a violent crime of any type by 17.6%. Runceck, D. & Maier, P. "Bars, blocks and crimes revisited: linking the theory of routine activities to the empiricism of 'hot spots.'" *Criminology* (29) 4: 725-753. 1991.
- The level of drinking, drinking participation, and participation in binge drinking are all significantly higher among all college students when a greater number of outlets licensed to sell alcoholic beverages exist near campus. This is particularly true for underage drinking. Chaloupka, F. & Wechsler, H. "Binge drinking in college: the impact of price, availability and alcohol control policies." *Contemporary Economic Policy*, vol. xiv, October 1996.
- Freedom from unwanted interruptions in one's house or place of business are fundamental legal rights. A basic tenet of law is the right to the "quiet enjoyment" of one's own property. High densities of alcohol outlets cause noise, traffic, loitering, and other disturbances of the public peace. *Preventing Problems Related to Alcohol Availability: Environmental Approaches*. U.S. DHHS Pub No. (SMA) 99-3298.

  
<http://www.alcoholpolicysolutions.net/index.htm>

Attachment 4

OAKLAND

DISTRICT



CARTER MIDDLE SCHOOL  
4521 Webster Street  
Oakland, California 94609  
(510) 879-2140  
FAX (510) 879-2149

May 30, 2003

To Whom It May Concern:

This is in regards to the establishment known as Connelly's moving the new location formerly known as The Bird Cage. We have no problem with them moving into that location; we see it as no hindrance or hazard to our students.

If you need further assistance with this matter please feel free to contact me at the above number.

Respectfully,

A handwritten signature in cursive script that reads 'Eric Chism'.

Eric Chism  
Vice-Principal

EC:lde

Attachment 5

**ATTACHMENT F**

OAKLAND DISTRICT



CARTER MIDDLE SCHOOL  
4521 Webster Street  
Oakland, California 94609  
(510) 879-2140  
FAX (510) 879-2149

September 19, 2003

To Whom It May Concern:

The purpose of this letter is to clarify the position of the current administration of Carter Middle School regarding the opening of a bar on Telegraph Avenue formally known as *The Bird Kage*.

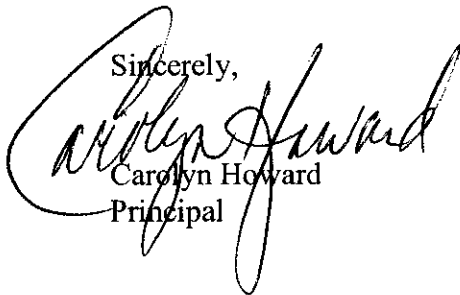
Last year, I was approached by one of the proponents about the re-opening of the bar. I emphatically stated that I did not support their efforts and expressed my disapproval of their solicitation.

I was never aware that Eric Chism, an assistant principal at the time, had written a letter of support for the bar. Mr. Chism operated in isolation and did not have the authority to represent the school. As far as I know, there was never a discussion with staff or families of Carter students about the opening of the bar. This topic was never discussed at any of our meetings.

Mr. Chism no longer works at Carter. He misrepresented Carter school. My position and the position of the current administration of the school remains the same. We do not in any way support any efforts to reopen the bar.

Please feel free to contact me at the number above.

Sincerely,

A large, stylized handwritten signature in black ink that reads 'Carolyn Howard'. The signature is written over the printed name and title.

Carolyn Howard  
Principal

Attachment 6

PTS309-01

UPDATE/QUERY COMPLAINT INSPECTION HISTORY 9/30/03 11:39:37

NEXT OPTION: 503

Cmplnt# 0300952 Code ALL  
Address 4301 TELEGRAPH  
Existing Use

Cmplnt Disp: AB 08/11/03  
AV Suite: Parcel: 013 -1095-005-0

Descr: INTERIOR IN BAR HAS MANY VIOLATIONS PER HEALTH DEPARTMENT - PERMITS  
REQUIRED - PILES OF TRASH & BROKEN GLASS ON SIDEWALK-43RD STREET SIDE  
Notice:

No	Code	Insp Date	A	Scheduled Date	By	Division	Dst	By	Vio*	Rsl*	Start Time	End Time	Total Time	Trv	Mlg
06	OMC	08/11/03	P	08/07/03	MAM	CO-INSP	02	SXB	20	98	13:15	13:45	:30	1.	
BLIGHT ABATED, OPERATION CLOSED, WORKING W/CO HEALTH & ABC															
05	OMC	08/08/03	P	08/04/03	PTS	CO-INSP	02	JXH		80					
RESCHEDULED															
04	OMC	07/31/03	P	07/30/03	PTS	CO-INSP	02	GG		82	9:00	9:10	:10		
Reinsp generated from insp result 81 on 07/18/03															
03	OMC	07/18/03	P	07/03/03	GG	CO-INSP	02	GG	16	81	13:00	13:01	:01		
Auto scheduled from 64 result on 06/23/03															

F1=Hlp F3=Ext F5=Chg F7=Fwd F8=Bck F11=End F12=Prv F24=Com

*Attachment 7*



PTS309-01

UPDATE/QUERY COMPLAINT INSPECTION HISTORY

9/30/03 11:39:03

NEXT OPTION: 503

Cmplnt#, 0002794 Code ALL  
Address 4301 TELEGRAPH  
Existing Use

Cmplnt Disp: NA 03/29/00  
AV Suite: Parcel: 013 -1095-005-0

Descr: BANDS PLAYING ON WEEKENDS WITHOUT A PERMIT. SELLING OF ALCOHOL.

Notice:

Station	CO-INSP	Dist:	02	Primary	Insp	RA	Total Insp Hours			Total	Trv			
							Performed	Start	End			Time	Time	Time
No	Code	Date	P	Date	By	Division	Dst	By	Vio*	Rsl*	Time	Time	Time	Mlg
01	OMC	03/29/00	A	03/28/00	JS	CO-INSP	02	RA	20	97	14:15	14:21	:06	1.

F1=Hlp F3=Ext F5=Chg F7=Fwd F8=Bck F11=Fnd F12=Prv F24=Com

*Attachment?*

PTS309-01 UPDATE/QUERY COMPLAINT INSPECTION HISTORY 9/30/03 11:39:37

NEXT OPTION: 503

Cmplnt# 0300952 Code ALL Cmplnt Disp: AB 08/11/03  
Address 4301 TELEGRAPH AV Suite: Parcel: 013 -1095-005-0  
Existing Use

Descr: INTERIOR IN BAR HAS MANY VIOLATIONS PER HEALTH DEPARTMENT - PERMITS  
REQUIRED - PILES OF TRASH & BROKEN GLASS ON SIDEWALK-43RD STREET SIDE  
Notice:

Station	CO-INSP	Dist:	02	Primary Insp	GG	Total Insp Hours	1:01							
		Insp	A	Scheduled	Performed	Start	End	Total Trv						
No	Code	Date	P	Date	By	Division	Dst	By	Vio*	Rsl*	Time	Time	Time	Mlg
02	OMC	06/23/03	P	06/06/03	GG	CO-INSP	02	GG	20	64	13:45	13:55	:10	
Auto scheduled from 62 result on 02/18/03														
01	OMC	02/18/03	A	02/11/03	ND	CO-INSP	02	GG	20	62	15:10	15:20	:10	

F1=Hlp F3=Ext F5=Chg F7=Fwd F8=Bck F11=Fnd F12=Prv F24=Com

*Attachment 7*

Complaint#: 0002794

Filed: 03/28/00 Rcvd by: JS Station\* CLERICAL Source\* 2 TELEPHONE CALL  
Address: 4301 TELEGRAPH AV Suite: Parcel: 013 -1095-005-00  
Responsible Station\* CO-INSP Dist: 02 Primary Inspector RA Alternate  
Existing Use\* Parcel Condition: X  
Descr: BANDS PLAYING ON WEEKENDS WITHOUT A PERMIT. SELLING OF ALCOHOL.

Notice:

Owner: AN YOON H & HYUN S Tel:  
Address: 105 FAIRVIEW AV PIEDMONT CA Zip: 94610

Agent:

Complainant:

Complainant Response Requested? (Y/N): N Response: Tel:  
Ltr/Tel/Oth:

Current

* Violation Types*	Station*	Dist	Last Action	Date	By	Dispositio
_ OMC 20	CO-INSP	02				NA 03/29/0

*Not Assigned*

F2=Bookmark F3=Ext F24=Com ENTER=Next Selection

Bottom

*Attachment 7*

Complaint#: 0300952

Filed: 02/11/03 Rcvd by: ND Station\* CLERICAL Source\* 2 TELEPHONE CALL  
 Address: 4301 TELEGRAPH AV Suite: Parcel: 013 -1095-005-00  
 Responsible Station\* CO-INSP Dist: 02 Primary Inspector GG Alternate  
 Existing Use\* Parcel Condition: X  
 Descr: INTERIOR IN BAR HAS MANY VIOLATIONS PER HEALTH DEPARTMENT - PERMITS  
 REQUIRED - PILES OF TRASH & BROKEN GLASS ON SIDEWALK-43RD STREET SIDE

Notice:

Owner: AN YOON H & HYUN S

Tel:

Address: 105 FAIRVIEW AV

PIEDMONT CA

Zip: 94610

Agent:

Complainant:

Tel:

Complainant Response Requested? (Y/N): Y Response:

Ltr/Tel/Oth:

Current

* Violation Types*	Station*	Dist	Last Action	Date	By	Dispositio
_ OMC 20 16	CO-INSP	02	Ntc of Viol - No F	07/03/03	GG	AB 08/11/0

*closed Violation*

F2=Bookmark F3=Ext F24=Com

ENTER=Next Selection

Bottom

*Attachment 7*

## Exhibit D

[Letter October 21, 2003]

## TEMESCAL MERCHANTS ASSOCIATION

TELEGRAPH AVENUE • 40TH - 55TH STREET • OAKLAND, CALIFORNIA

Councilmember Jane Brunner  
One Frank Ogawa Plaza, 2nd Floor  
Oakland CA 94612

October 21, 2003

Dear Councilmember Brunner:

I am writing to ask your support for the approval of the application by Mr. Jack Cicala with regard to the reopening of his business, Connolly's Bar on Telegraph Ave.

Connolly's Bar has been a neighborhood establishment in Temescal since 1988; and Mr. Cicala is a resident in the neighborhood and a member of the Temescal Merchants Association. It has now been several months since he applied for the required permits to move his established business a few blocks into recently vacated space at 4822 Telegraph Avenue, formerly the site of the Bird Kage.

As I understand it the complaints voiced in opposition to Connolly's relocating to this site have to do with fears that the noise and violence associated with the Bird Kage will resume at the reopened Connolly's. I can understand such concerns from people who live in proximity to the former Bird Kage since the situation was discussed at our merchants meetings a number of times. We are well aware that in the end it took a shooting at the site to finally have it closed down. However, the last years of the Bird Kage were the result of incompetence, mismanagement and utter disregard for the concerns of neighbors by the last owners of the Bird Kage. In fact the Bird Kage, under the original ownership of Charlie Hardy, was for many years a well-run and respected Bay area Jazz venue; some would even say a unique cultural asset for Oakland, now sadly gone. The last unfortunate years of the Bird Kage and the irresponsibility of those who managed it during that time should not be permitted to ruin the reputation of the former owner, nor prevent Mr. Cicala from moving into that site.

I understand that Lt. Lawrence Green of the Oakland Police Department (PSA 2 North Oakland) reports that police records do not reveal criminal activity or unusual level of complaints associated with Connolly's Bar over the years; nor does our very active local Neighborhood Crime Prevention Council object to the relocation of Connolly's.

It seems quite unfair to me that an established, reputable business, whose owner lives in the neighborhood has had to suspend the business which is his livelihood for more than ten months in order to move his enterprise two blocks! There surely must be matters of more moment than this for the Oakland City Council to be addressing.

Thank you for your time and consideration of this issue.

Sincerely,

Carlo Busby  
President, Temescal Merchants Association  
c/o SAGRADA  
4926 Telegraph Ave., Oakland 94609  
510-653-7196

cc: Jack Cicala

Exhibit E

[Letter from Jack Cicala]

14.1  
ORACOUNCIL  
DEC 02 2003

# Cicala

Case File Number VM03-182

Jack Cicala and Anne Cicala are the operators of Connolly's Bar located at 4301 Telegraph Avenue. They wish to operate their neighborhood bar at a new location, 4 blocks away at 4822 Telegraph Avenue. There is some opposition and we will take this time to explain why the opposition is faulty and should not control this application. It should also be noted that this establishment is a local bar and not night club. Thus, for many of the complaints they are ill conceived, because they relate to a night club, which has many features, not present with the establishment here under review.



The Cicalas are a family, which has operated a family business, a neighborhood bar on Telegraph Avenue this area for 12 years. Jack and Anne also have a son, Bobby who will participate in the operation of the business. They are working people who are asking they be allowed to continue their tradition on the same street that they have known for 12 years and to service the people who have known them.

The most important issue before the City Council is who are the people who will run the business establishment. All matters of business concerns people. When Jack and Anne operated Connolly's from 1991 until the present they operated it in a fashion that made them proud and the neighborhood happy. It was a place that offered the neighborhood a place to have a good time but not in a raucous manner. There were few calls for rowdy patrons, and those were not the fault of Jack and Anne's operation of the establishment.



**CONFIDENTIAL**

In making all decisions regarding city planning there can be difficult issues. In this situation the City Planning Commission has considered all of those thorny issues and has passed the application. Thus, at this time it is the City Council, which has to decide whether the staff evaluation and the Planning Commission were faulty in their consideration of the application so as to dictate a different conclusion.

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Connolly's has been a part of this neighborhood since 1939. As part of the neighborhood it has been a good neighbor and a good business. It has made its fair share of contributions and supported the neighborhood as a member of the Temescal Neighborhood Merchants' Association. It has shown it cared and took appropriate steps to insure the social and financial health of the area.

The location of the business has become the most important issue for consideration, because it has been implied that if the previous operators were of such a character so as to have to surrender their license, the new owners will be of the same cloth, because the business is in the same location. This is patently unfair, and the logic is incredibly faulty. The address and the building is no more than a shell out of which a business operated by the Cicalas will be run. There is no more likelihood that Connolly's will be like the Birdkage, than buying Tiger Wood's Buick will make better golfers of us all. As with the Buick, 4822 *Telegraph* is merely a vehicle. It is, in each instance, the operator who will make the difference.

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The chief opposition in this case seems to be a number of petitions put forth to ostensibly illustrate the neighborhood's objection. These petitions must

be challenged, because of a number of inappropriate assertions. First of all each says the same thing. These are no petitions by individuals but rather a campaign, which relies on the effort of one individual. This fact is important, because some of the very signatories have now withdrawn their support from the opposition. This suggests to me, that the petition was not explained as it should have been, and after hearing the true story they decided differently. Thus, all that can be said about the petitions is that they exist, and were apparently explained in a faulty manner. Additionally, each petition presents a history about the previous owners. In the petition the following is stated: **“The mismanagement of the Bird Kage demonstrated to what degree a facility can disrupt the lives of those who live nearby.”** We agree with the statement, but assert we have the right not to be judged by those individuals and to rest on our on reputation. At another point in the petition it is stated: **“Many of us had already called for the closure of the Bird Kage, but our pleas went unheeded”**. Again such references are inappropriate for consideration here. No one has ever called for the closure of Connolly’s. Do we have to labor under another’s history? We ask not.

The Cicalas have taken steps to insure the neighborhood, because of its past experience with the Bird Kage, will not have to suffer through the same thing again. There are lists of restrictions, which have been placed on the establishment that will operate as curbs to many if not all of the concerns expressed in the documents submitted to the council. These will operate by being applied through the ABC as well as the zoning and planning restrictions placed by the City. There were inspections made which listed a variety of needed corrections at the new location. All such corrections have been made. In addition, there have been extensive renovations made to improve the physical plant, which will enhance the experience at the new location. All such improvements have been approved by the appropriate building departments, including the Environmental Health Department.

It has been pointed out that the previous location of Connolly’s, operated by the Cicala’s, had various violations, which were directed to be fixed that were not. At the time the list was presented regarding Connolly’s the lease was to soon expire thus, there was no need correct conditions which were no longer needed, because of the anticipated move down the street. Additionally the money, which would have been used, was already allocated for renovating the “new” location, which renovations were completed.

There are a number of misconceptions being put before the council that need to be corrected. A substantial number of written materials have used the word, "reopening". "Reopening," suggests that the previous owners will be re-establishing their earlier operation. Such is far from the truth. This is an established business of 62 years re-establishing at a new location. It is in no way associated with the previous business and to imply otherwise is unforgivable and fraudulent.



We request that the application be again approved and the City Planning decision be upheld. All that has been asked of Connolly's it has provided. There are no other requests, of which we are aware, that have not been satisfied. Lastly, in the unlikely event the expressed fears should come true; the right to operate can always be rescinded. We only ask to be given a chance to operate on our own reputation and not the reputation of others.

**Jack and Anne Cicala**

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DEC 02 2003