

Case File Number CMDV04-386

October 20, 2004

<b>Location:</b>	<b>5715 Claremont Avenue (See map on reverse)</b>
<b>Assessors Parcel Number:</b>	016-1406-027-00
<b>Proposal:</b>	Façade and Tenant Improvements to an existing commercial building to accommodate General Retail Sales and General Food Sales Activities.
<b>Applicant</b>	Gary Samonsky / Samonsky + Pometta Architects, LLP
<b>Contact Person/Phone Number</b>	Doris Krevsky and Russel Keil (415) 781-5546
<b>Planning Permits Required:</b>	Major Interim Conditional Use Permit for commercial uses permitted by the Mixed Housing Type General Plan designation but not by the R-60 Zone, Regular Design Review for façade improvements and a Minor Variance to exceed 15 square feet of sign area.
<b>General Plan:</b>	Mixed Housing Type Residential
<b>Zoning:</b>	R-60 Medium-High Density Residential Zone, S-4 Regular Design Review Combining Zone, S-18 Mediated Review Combining Zone
<b>Environmental Determination:</b>	Exempt 15301; State CEQA Guidelines, Existing Facilities
<b>Historic Status:</b>	Not a Potentially Designated Historic Property. Survey Rating: F2-II
<b>Service Delivery District:</b>	II
<b>City Council District:</b>	1
<b>Date Filed:</b>	August 6, 2004
<b>Staff Recommendation:</b>	Approve with attached conditions.
<b>Finality of Decision:</b>	<i>Appealable to City Council</i>
<b>For Further Information:</b>	Contact case planner Leigh McCullen at <b>510-238-4977</b> or by email at <a href="mailto:lmccullen@oaklandnet.com">lmccullen@oaklandnet.com</a>

## SUMMARY

As proposed an existing vacant commercial building, located at the corner of Claremont Avenue and Colby Street, would be remodeled to accommodate general food sales and general retail sales activities. Improvements to the building include new storefronts for two tenant spaces, awnings, lighting, signage, and new stucco exterior veneer and parapet roof line.

The Claremont Avenue / Colby Street / Forest Street intersection is characterized by three small scale commercial buildings, including the subject building, with residential development radiating from the intersection along these streets. The subject site is zoned R-60 Medium-High Residential Zone. A Major Conditional Use Permit is required to implement the General Plan Designation of Mixed Housing Type and the general retail and general food sales activities permitted therein. In addition to implementing the Plan, the proposed project will complement the existing commercial base, create attractive tenant spaces for neighborhood serving commercial activities, and will provide an attractive and convenient shopping environment for the surrounding residential neighborhood.

## PROJECT DESCRIPTION

The subject 3,387 square foot, triangular shaped parcel, located at Claremont Avenue and Colby Street, is improved with a one-story, 3,257 square foot vacant commercial building. Three commercial buildings, including the subject building, located at Claremont and Colby create a small commercial node. This use permit would establish general food sales and retail sales within the subject vacant building. The two other two buildings are occupied by neighborhood serving uses such as a coffee shop, record store, and a

laundromat. The existing and proposed commercial uses primarily serve the residential development which extends radially beyond this commercial node along Colby Street, Forest Street and Claremont Avenue.

The proposed floor plan illustrates that the building would be partitioned to create one 1,200 square foot tenant space and one 2,000 square foot tenant space. However, these spaces would be flexible to fulfill the needs of perspective tenants. Due to General Plan restrictions, commercial uses within these spaces would be limited to general retail and general food sales activities. General Retail Sales Commercial Activities include the retail sale or rental of items primarily for personal or household use. General Food Sales Commercial Activities include the retail sale, from the premises, of food or beverages for home consumption, as well as the retail sale of prepared food or beverages for on-premises consumption. Activities allowed under these use classification include retail sales of clothing, books, music, a market offering fresh produce, dairy products and fresh meats, and a full-service restaurant. Fast food restaurants, convenience markets, or liquor stores would not be permitted.

As proposed, a new cement plaster veneer would be installed over the building's existing cement masonry walls. Thirty seven-foot wide metal-framed glass store fronts, including pedestrian entries and fixed windows, would be installed on each street frontage. The existing mansard roof would be removed and replaced with a cement plaster parapet roof caped in metal. Awnings located over the storefronts, decorative light fixtures, and landscaping will create a pedestrian oriented atmosphere. Overall, the proposed exterior improvements to the building will improve the visual characteristics of the streetscape.

**BACKGROUND**

According the City's Sanborn Maps the existing commercial building located on the subject site was constructed in 1961. According to accounts from neighbors and the applicant, the building has been used as a dental laboratory, a recording studio, and most recently an office for a construction contractor. These activity types range from custom manufacturing to business and communication services. The City does not have zoning clearance records of these activities; therefore staff can not confirm their legality. Under the site's current zoning and general plan designation these activities would not be permitted. The applicant proposed to establish uses that are permitted by the general plan but currently not permitted by the site's zoning designation.

**GENERAL PLAN ANALYSIS**

The General Plan designation for the site is Mixed Housing Type Residential. The Mixed Housing Type Residential Designation is intended to create, maintain, and enhance residential areas characterized by a mix of single family residences, townhouses, small multi-unit buildings, and neighborhood businesses where appropriate. Commercial activities allowed within the Mixed Housing Type designation are limited to general retail and general food sales activities. It is the intent of the General Plan to create opportunities for small scale commercial activities that provide frequently needed services within close proximity to residential development. The proposed project is succinct with the intent of the General Plan in that it will create opportunities for neighborhood servicing commercial uses in an existing commercial building that is located within walking distance of residential development.

"Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations" (the Guidelines) were adopted by the Planning Commission on May 6, 1998. These Guidelines indicate that general retail and food sales activities are expressly permitted in the Mixed Housing Type General Plan designation. However, these activities are not permitted by the site's R-60 zoning classification. The Guidelines states that projects in conformance with the General Plan but not allowed by zoning may be permitted upon the grant of a conditional use permit. The use permit process for general plan conformity

is intended to facilitate implementation of the Plan. The use permit process also provides give the City the authority to impose specific conditions designed to limit potential negative impacts.

The proposed project is consistent with the Mixed Housing Type designation in that it will create new tenant spaces for neighborhood servicing businesses within an existing underutilized commercial building. It further conforms to the following General Plan Policy N1.1 by providing opportunities for small scale, neighborhood oriented retail and N10 by enhancing an existing neighborhood commercial activity center.

**ZONING ANALYSIS**

The site is located within the R-60 Medium-High Density Residential Zone. This zone is intended to create, preserve, and enhance areas for apartment living at relatively high densities in desirable settings, and is typically appropriate to areas having good accessibility to transportation routes and shopping and community centers. The proposed uses, general retail and general food sales, are not permitted in the R-60 Zone. However, the General Plan, adopted in 1998, supercedes zoning. The General Plan, by allowing retail and food sales in the Mixed Housing Type Designation, intended to create and enhance neighborhood oriented activity centers and to provide nodes of commercial services within a short distance of residential development. Consistent with the Plan, the proposed uses would enhance an existing small commercial node and would primarily service the neighboring residents.

The conditional use permit required for this project required review and approval by the Planning Commission because it would establish commercial uses within a residential zone. The findings required to grant a conditional use permit are attached.

Since the subject site is located in a residential zone signage for the building is limited to 15 square feet. This limited amount of signage may not adequately direct patrons into the two tenant spaces. If the site was zoned commercially 97.42 square feet, or 0.5square feet of sign area per every foot of linear street frontage, of sign area would be permitted by the Planning Code. A balance between these two extremes should be applied to the site given that it is zoned residentially but utilized commercially. Per the conditions of approval, a master sign program for the entire site must be submitted to the Zoning Administrator for review and approval prior to the issuance of a sign permit. Signage limitations listed in the condition include one wall mounted sign with a maximum square footage of 20 square feet located on the façade facing the street intersection and one project sign per each entry affixed below the canopies. The wall mounted signs located on the sign elevations that area depicted on the proposed elevation will not be permitted. Sign illumination would be limited to halo and spot lighting. Internal illumination would be prohibited. All signs will be required to be constructed of quality durable materials and to be architecturally integrated into the design of the building. The proposed sign area limitations are designed to supplement the pedestrian oriented nature of the site and to prohibit unnecessary sign clutter.

**ENVIRONMENTAL DETERMINATION**

The California Environmental Quality Act (CEQA) Guidelines lists projects that qualify as categorical exemptions from environmental review. The project falls under the category exemption listed in Section 15301, which relate to modifications to existing structures.

**KEY ISSUES AND IMPACTS**

**Parking**

The Rockridge area suffers from a deficiency in parking particularly along streets within walking distance of College Avenue and BART. College Avenue, with its successful mixture of commercial uses spanning across approximately 6 blocks, draws patrons from outside of the immediate residential neighborhood and neighbors residing within walking distance. College Avenue therefore acts as a trip generator by appealing to patrons who either drive and park on the surrounding streets or take public transportation. Vehicular congestion is often a sign of a successful commercial district and is often found in conjunction with a successful pedestrian oriented neighborhood.

The subject site is located approximately four blocks from the College Avenue shopping district and is separated from College Avenue by residential development. The three commercial buildings, including the subject building, constitute a small commercial node which attracts residents from the surrounding neighborhood. Given its small scale, this commercial node tends to not attract consumers from outside of the immediate neighborhood. Therefore, it is unlikely that the small commercial spaces proposed for the subject building would drastically impact the existing parking demands of the neighborhood.

According to the City's Sanborn Maps, the building was constructed in approximately 1961. Parking regulations for the City were established in 1965. Buildings constructed prior to 1965 are considered nonconforming in terms of parking and are not required to provide parking per current standards. Therefore, parking is not required for this project. Further, since the building footprint occupies nearly the entire site, parking can not be provided on the site. If this project involved new construction parking for a restaurant would be required at a ratio of one space per 200 square feet of floor area. Parking would not be required for retail uses since the floor area is less than 5,000. In considering the possible parking demands of the proposed activities it is likely that a restaurant would generate the most parking demand. The California Building Code requires 15 square feet of floor area for every customer seat within a restaurant. Based on this requirement the 2,000 square foot tenant space could seat up to 133 diners. Allowing 133 diners at one time may affect parking within the neighborhood. In balancing the fact that on-site parking can not be provided, nor is it required, and the fact that a large-scale restaurant could have potential impacts, the proposed conditions of approval would limit the seating capacity of a restaurant to 49. This should effectively limit the number of diners at any given time which will limit parking demand while accommodating the desires of the applicants. Since this area is not a destination shopping district the proposed small scale commercial uses, as limited by the conditions of approval, should not dramatically alter neighborhood parking demands.

**Noise and Odors**

Commercial activities can create noise and odors that are incompatible with residential development. Proposed conditions would limit hours of operation, require that windows along Colby Street be fixed, require deliveries be made to the Claremont Avenue entrances only, limit the location of outdoor seating away from dwelling located on Colby, require that lighting be designed to prevent glare onto neighboring properties, and other conditions designed to limit impacts.

**Design**

The subject building is currently featureless in its architectural characteristics. The buildings cement masonry exterior walls are only minimally articulated with small clerestory windows covered with metal bars. Proposed exterior modifications to the building have been designed to create an "eyes on the street" presence by connecting the activities inside the space to activities on the street and sidewalk. The placement and design of signage, awnings and lighting and new street trees will foster a sense of pedestrian orientation and will encourage people to walk to the site. The overall concept of the design will help establish a relationship between the neighboring residents and the commercial spaces.

**NEIGHBORHOOD COMMENT**

Neighbors have express concerns regarding potential impacts upon adjacent properties. These concerns include parking, lighting and noise. The proposed conditions of approval, including limiting restaurant seating capacity and limiting hours of operation, have been crafted to address these concerns and other possible impacts. Some members of the community have also expressed interest in the site being redeveloped with a new mixed use building. The currently proposal however only involves the reuse of the existing building and not the construction of a new building. The proposed project will not negate a future mixed use development and can actually act as an interim use until such time that the property owners choose to construct a new building on the site.

**CONCLUSION**

The rehabilitation of an existing underutilized vacant building will not only have positive aesthetic impacts to the surrounding streetscape but will also create new opportunities for neighborhood serving commercial uses. Creating neighborhood oriented retail establishments has positive impacts upon a community by providing additional locations for neighbors to meet and interact. As limited by the conditions of approval, the proposed project will enhance the surrounding neighborhood.

**RECOMMENDATIONS:**

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

Prepared by:

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Leigh McCullen  
Planner II

Approved by:

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GARY PATTON  
Deputy Director of Planning and Zoning

Approved for forwarding to the  
City Planning Commission:

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Claudia Cappio  
Director of Development

**ATTACHMENTS:**

- A. Plans

**FINDINGS FOR APPROVAL:**

This proposal meets the required findings under Conditional Use Permit findings (Section 17.134.050), Special Use Permit Findings (Section 17.102.212). Required findings are shown in **bold** type; explanations as to why these findings {can *or* cannot} be made are in normal type.

**Section 17.134.050 (General Use Permit Criteria):**

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

The subject 3,387 square foot, triangular shaped parcel, located at Claremont Avenue and Colby Street, is improved with a one-story, 3,257 square foot vacant commercial building. The three commercial building located at Claremont and Colby create a small commercial node. Two of the existing buildings are occupied by neighborhood serving uses such as a coffee shop, record store, and a laundromat. These commercial uses primary serve the residential development which radial extends beyond this commercial node along Colby Street, Forest Street and Claremont Avenue.

The proposed floor plan illustrates that the subject one-story building would be partitioned to create one 1,200 square foot tenant space and one 2,000 square foot tenant space. Due to General Plan restrictions, commercial uses within these spaces would be limited to general retail and general food sales activities. The small size of the tenant spaces and the proposed uses would be compatible with the commercial activities found with the other two commercial buildings at Claremont and Colby.

Although it is unlikely that the small commercial spaces proposed for the subject building would drastically impact the existing parking demands of the neighborhood conditions of approval would limit the size of tenant spaces for restaurants limit parking demand. Other conditions of approval would limit other potential impacts, such as noise and odor.

- B. That the location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrant.**

As proposed an existing vacant commercial building, located at the corner of Claremont Avenue and Colby Street, would be remodeled to accommodate general food sales and general retail sales activities. Improvements to the building include new storefronts for two tenant spaces, awnings, lighting, signage, and new stucco exterior veneer and parapet roof line.

The Claremont Avenue / Colby Street / Forest Street intersection is characterized by three small scale commercial buildings, including the subject building, with residential development radiating from the intersection along these streets. The proposed project will supplement the existing commercial base, create attractive tenant spaces for neighborhood serving commercial activities, and will provide an attractive and convenient shopping environment for the surrounding residential neighborhood.

***FINDINGS***

- C. That the proposed development will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or**

**region.**

The intersects of Claremont Avenue, Colby Street and Forest Street have historically support small scale neighborhood oriented commercial uses. The rehabilitation of the subject building would enhance this established commercial node. Creating addition tenant spaces for uses that serve immediate neighbors often has a positive impact upon surrounding development and provides additional places for neighbors to meet and interact.

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

See attached findings.

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

The General Plan designation for the site is Mixed Housing Type Residential. The Mixed Housing Type Residential Land Use Classification is intended to create, maintain, and enhance residential areas characterized by a mix of single family residences, townhouses, small multi-unit buildings, and neighborhood businesses where appropriate.

“Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations” (the Guidelines) were adopted by the Planning Commission on May 6, 1998. These Guidelines indicate that general retail and food sales activities are expressly permitted in the Mixed Housing Type General Plan designation. However, these activities are not permitted by the site’s R-60 zoning classification. The Guidelines states that projects in conformance with the General Plan but not allowed by zoning may be permitted upon the grant of a conditional use permit. The use permit process for general plan conformity is intended to facilitate implementation of the Plan. The use permit process also provides give the City the authority to impose specific conditions designed to limit potential negative impacts.

The proposed project is consistent with the Mixed Housing Type designation in that it will create new tenant spaces for neighborhood servicing businesses within an existing underutilized commercial building. It further conforms to the following General Plan Policy N1.1 by providing opportunities for small scale, neighborhood oriented retail and N10 by enhancing an existing neighborhood commercial activity center.

**Section 17.136.070 (Design Review Criteria):**

**1. That the proposed design will create a building or set of buildings that are well related to the surrounding area in their setting, scale, bulk, height, materials, and textures;**

The subject building is currently featureless in its architectural characteristics and does not enhance the visual aesthetics of the streetscape. The buildings cement masonry exterior walls are only minimally articulated with small clerestory windows covered with metal bars. As proposed, a new cement plaster veneer would be installed over the existing cement masonry walls. Thirty seven-foot wide metal-framed glass store fronts, including pedestrian entries and fixed windows, would be installed on each street frontage.

***FINDINGS***

The existing mansard roof would be removed and replaced with a cement plaster parapet roof capped in metal. Awning located over the storefronts, decorative light fixtures, and landscaping will create a

pedestrian oriented atmosphere. Overall, the proposed exterior improvements to the building will improve the visual characteristics of the streetscape.

**2. That the proposed design will be sensitive to the topography and landscape.**

The subject site does not contain any topographic features or landscaping. The existing building currently covers the majority of the subject site. Therefore, there is little opportunity for onsite landscaping. Per the conditions of approval street trees will be installed.

**3. That if situated on a hill, the design and massing of the proposed buildings relates to the grade of the hill.**

The building is not situated on a hill.

**4. That the proposed design conforms in all respects with the Oakland Comprehensive Plan and with any applicable district plan or development control map which has been adopted by the City Council.**

The exterior alterations would improvement the viability of the proposed commercial spaces and improve the visual quality of the streetscape. The project is therefore consistent with the Mixed Housing Type designation in that it will create new attractive tenant spaces for neighborhood servicing businesses within an existing underutilized commercial building.

**SECTION 17.01.100B – MINOR CONDITIONAL USE PERMIT FINDINGS FOR PROPOSALS CLEARLY IN CONFORMANCE WITH GENERAL PLAN BUT NOT PERMITTED BY ZONING REGULATIONS**

**A. That the proposal is clearly appropriate in consideration of the characteristics of the proposal and the surrounding area.**

As proposed an existing vacant commercial building, located at the corner of Claremont Avenue and Colby Street, would be remodeled to accommodate general food sales and general retail sales activities. The Claremont Avenue / Colby Street / Forest Street intersection is characterized by three small scale commercial buildings, including the subject building, with residential development radiating from the intersection along these streets. The proposed project will supplement the existing commercial base, create attractive tenant spaces for neighborhood serving commercial activities, and will provide an attractive and convenient shopping environment for the surrounding residential neighborhood.

**B. That the proposal is clearly consistent with the intent and desired character of the relevant land use classification or classifications of the General Plan and any associated policies.**

The General Plan, by allowing retail and food sales in the Mixed Housing Type Designation, intended to create and enhance neighborhood oriented activity centers and to provide nodes of commercial services within a short distance of residential development. Consistent with the Plan, the proposed uses would enhance an existing small commercial node and would primary service the neighboring residents.

**C. That the proposal will clearly promote implementation of the General Plan.**

***FINDINGS***

The General Plan designation for the site is Mixed Housing Type Residential. The Mixed Housing Type Residential Land Use Classification is intended to create, maintain, and enhance residential areas

characterized by a mix of single family residences, townhouses, small multi-unit buildings, and neighborhood businesses where appropriate.

“Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations” (the Guidelines) were adopted by the Planning Commission on May 6, 1998. These Guidelines indicate that general retail and food sales activities are expressly permitted in the Mixed Housing Type General Plan designation. However, these activities are not permitted by the site’s R-60 zoning classification. The Guidelines states that projects in conformance with the General Plan but not allowed by zoning may be permitted upon the grant of a conditional use permit. The use permit process for general plan conformity is intended to facilitate implementation of the Plan. The use permit process also provides give the City the authority to impose specific conditions designed to limit potential negative impacts.

The proposed project is consistent with the Mixed Housing Type designation in that it will create new tenant spaces for neighborhood servicing businesses within an existing underutilized commercial building. It further conforms to the following General Plan Policy N1.1 by providing opportunities for small scale, neighborhood oriented retail and N10 by enhancing an existing neighborhood commercial activity center.

**SECTION 17.148.050(a) - MINOR VARIANCE FINDINGS:**

- A. 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.**

Although zoned residentially the subject site is improved with a commercial building. The sign limitations for residential zones are extremely restrictive and are really only applicable to home offices and not commercial development. The zoning classification of the site represents a unique hardship in providing signage that is adequate to direct customers into the two proposed tenant spaces. The conditions of approval are designed to limits unnecessary sign clutter while providing adequate signage for the commercial spaces.

- B. 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.**

Sign restrictions in residential zones are intended to limited signage for home occupations. Strict compliance with the zoning regulations would result in inadequate signage for two commercial spaces.

- C. 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.**

***FINDINGS***

The proposed conditions of approval are designed to limits unnecessary sign clutter while providing adequate signage for the commercial spaces.

- D. 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.**

Since the subject site is located in a residential zone signage for the building is limited to 15 square feet. This limited amount of signage may not adequately direct patrons into the two tenant spaces. If the site was zoned commercially 97.42 square feet, or 0.5square feet of sign area per every foot of linear street frontage, of sign area would be permitted by the Planning Code. A balance between these two extremes should be applied to the site given that it is zoned residentially but utilized commercially. The conditions of approval will ensure that the proposed signage is consistent with signage allowed for sites utilized for similar commercial purposed and that the signage is design to be incorporated into the overall pedestrian oriented nature of the site.

- E. For proposals involving one or two dwelling units on a lot: That the elements of the proposal requiring the variance (e.g. elements such as buildings, walls, fences, driveways, garages and carports, etc.) conform with the design review criteria set forth in the design review procedure at Section 17.136.070.

Not applicable.

- F. For proposals involving one or two dwelling units on a lot and not requiring design review or site development and design review: That all elements of the proposal conform to the "Special Residential Design Review Checklist Standards and Discretionary Criteria" as adopted by the City Planning Commission.

Not applicable.

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

- a. The proposal when viewed in its entirety will not adversely impact abutting residences to the side, rear, or directly across the street with respect to solar access, view blockage and privacy to a degree greater than that which would be possible if the residence were built according to the applicable regulation and, for height variances, the proposal provides detailing, articulation or other design treatments that mitigate any bulk created by the additional height; or
- b. Over 60 percent of the lots in the immediate vicinity are already developed and the proposal does not exceed the corresponding as-built condition on these lots and, for height variances, the proposal provides detailing, articulation or other design treatments that mitigate any bulk created by the additional height. The immediate context shall consist of the five closest lots on each side of the project site plus the ten closest lots on the opposite side of the street (see Illustration I-4b); however, the Director of City Planning may make an alternative determination of immediate context based on specific site conditions. Such determination shall be in writing and included as part of any decision on any variance.

Not applicable

***FINDINGS***

**CONDITIONS OF APPROVAL**

**STANDARD CONDITIONS:**

- 1. Approved Use.
  - a. Ongoing.

The project shall be operated in accordance with the authorized use as described in the staff report dated October 20, 2004 and the use described in the application and the site plan and building elevations dated August 6, 2004. Any additional uses other than those approved with this permit, as described in the project description, will require a separate application and approval.

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

**a. Ongoing.**

This permit shall become effective upon satisfactory compliance with these conditions. This permit shall expire on October 20, 2005, 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, any applicable codes, requirements, regulations, guidelines or causing a public nuisance.

**5. Recording of Conditions of Approval**

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

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

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

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

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

***CONDITIONS OF APPROVAL***

**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.

**PROJECT SPECIFIC CONDITIONS**

**8. Hours of Operation**

**a. Ongoing.**

Retail Sales: 10:00 a.m. to 9:00 p.m.  
General Food Sales: 7:00 a.m. to 10 p.m.  
Outdoor Seating Area: 9:00 a.m. to 8:00 p.m.

**9. Seating Capacity**

**a. Ongoing.**

The seating capacity of a restaurant shall not exceed 49 seats.

**10. Loading, Unloading and Trash Pick-up**

**a. Ongoing.**

Loading, unloading and trash pick-up shall be limited to the Claremont Avenue street frontage and entryways. There shall be no loading, unloading or trash pick-up on Colby Street.

**11. Trash Enclosure**

**a. Ongoing.**

Prior to the issuance of a tenant improvement permit the floor plan shall be revised to provide for a trash enclosure within the existing building footprint. This area shall be accessed via the Claremont Avenue building side only.

**12. Exhaust Fans**

**a. Ongoing**

Any proposed exhaust fan for a kitchen shall be designed so that fumes from the fan are directed away from Colby Street.

**13. Litter Removal**

**a. Ongoing.**

The facility and appurtenant open spaces shall be improved, operated and maintained such that they are free of trash, litter and graffiti at all times. All trash shall be stores in receptacles, with lids closed when not in use, shall be screened from public view. The grounds of the facility shall be inspected and cleared of trash and debris a minimum of two times daily.

**14. Lighting Plan**

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

***CONDITIONS OF APPROVAL***

A lighting plan shall be submitted to the Zoning Administrator for review and approval. The lighting plan shall show the location and design of all proposed exterior lighting fixtures. The light fixed shall be architecturally integrated into the design of the building. The plan shall include a cut sheet of a light fixtures detailing that each light will be adequately shielded to a point below the light bulb and reflector to prevent glare onto adjacent properties

**15. Landscaping**

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

A landscape plan shall be submitted to the Zoning Administrator for review and approval. The plan shall include size, species and types of all plant materials proposed. Per the review and approval of the Tree Division of the Office of Parks and Recreation, A minimum one 24” box street tree shall be planted for every 25 feet of street frontage unless modified by the requirements of the Tree Division.

**16. Building Colors and Materials**

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

The building plan sets shall indicate the final building colors and materials to be used for all exterior finishes.

**17. Outdoor Seating**

**a. *Ongoing.***

The location and any outdoor seating fixtures located in the public right-of-way shall be subject to review and approval by the Zoning Administrator and any other applicable City Agency. Outdoor seating shall be limited to Claremont Avenue and the first 45 feet of street frontage along Colby Street measure from the Claremont Avenue intersection.

**18. Bicycle Parking**

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

The applicant shall coordinate with the Oakland Public Works Agency to design and locate a bicycle parking facility. The building plan sets shall include the location and design of the bicycle parking facility as approved by Public Works.

**19. Signage**

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

A master sign program shall be submitted to the Zoning Administrator for review and approval. The following sign standards shall be included in the program:

- Number and Location of Signs  
one wall mounted sign with a maximum square footage of 20 square feet located on the façade facing the street intersection  
one projecting wall mounted sign per each entry affixed below the canopies
- Illumination  
Illuminated signs shall be back-lit (“halo”) or externally illuminated (“spot lit”)  
Internal illumination is prohibited
- Design  
All signs shall be constructed of quality durable materials and must be architecturally integrated into the design of the building

***CONDITIONS OF APPROVAL***

**20. Window Openings**

**a. *Ongoing***

All windows on the Colby Street façade shall be fixed.

**21. Permitted Activities**

**a. *Ongoing***

**Permitted uses are limited to General Food Sales Activities and General Retail Sales Activities as defined by the Oakland Planning Code.**

***CONDITIONS OF APPROVAL***