

STAFF REPORT
PLANNING COMMISSION

FILE NO.: CP10-038

Submitted: 06/25/10

PROJECT DESCRIPTION: Conditional Use Permit for a change of use from an existing church to a drinking establishment in conjunction with a bona fide public eating establishment, with late night use, and an approximately 420 square-foot outdoor dining patio on a 1.2 gross-acre site

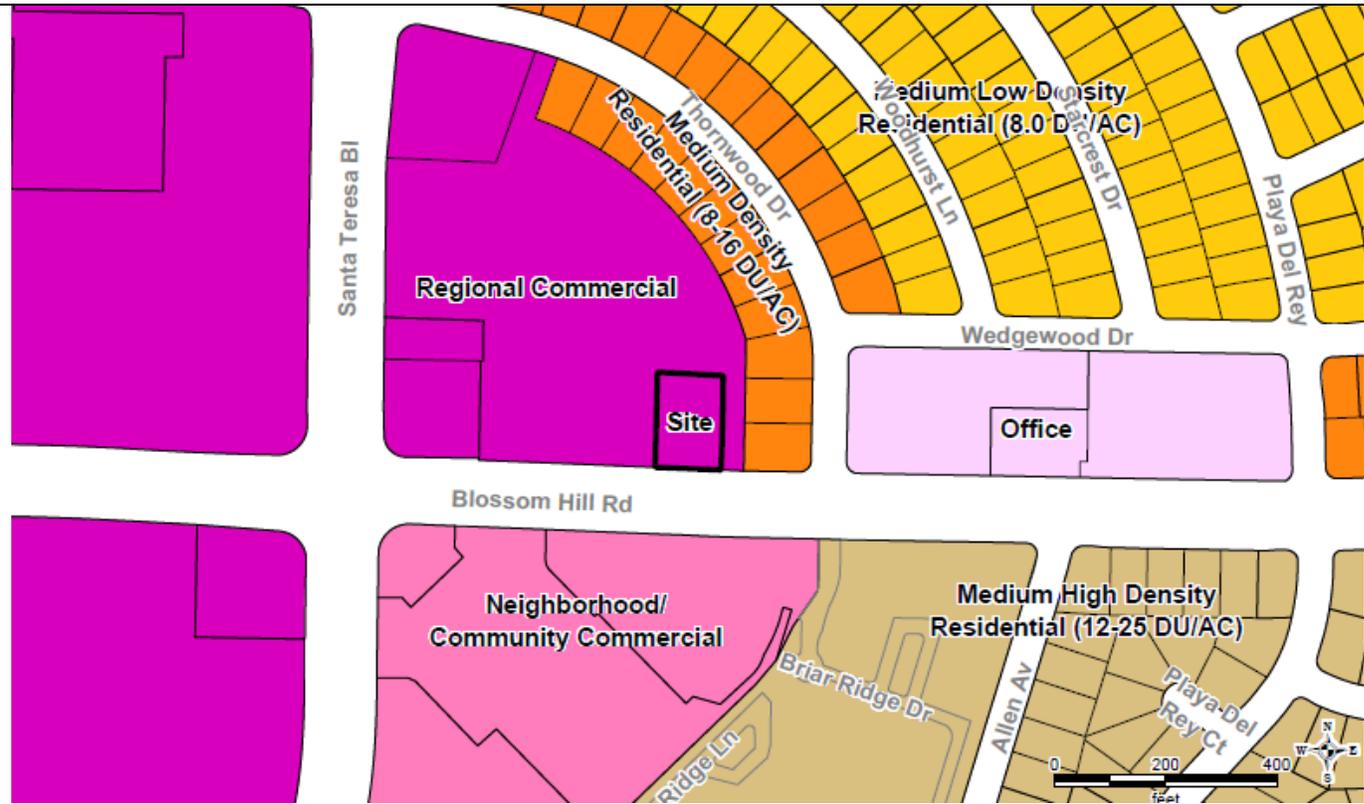
Existing Zoning	CP
General Plan	Regional Commercial
Council District	10
Annexation Date	July 8, 1960
SNI	None
Historic Resource	No
Redevelopment Area	No
Specific Plan	No

LOCATION: The north side of Blossom Hill Road, approximately 610 feet easterly of Santa Teresa Boulevard (859 Blossom Hill Road)

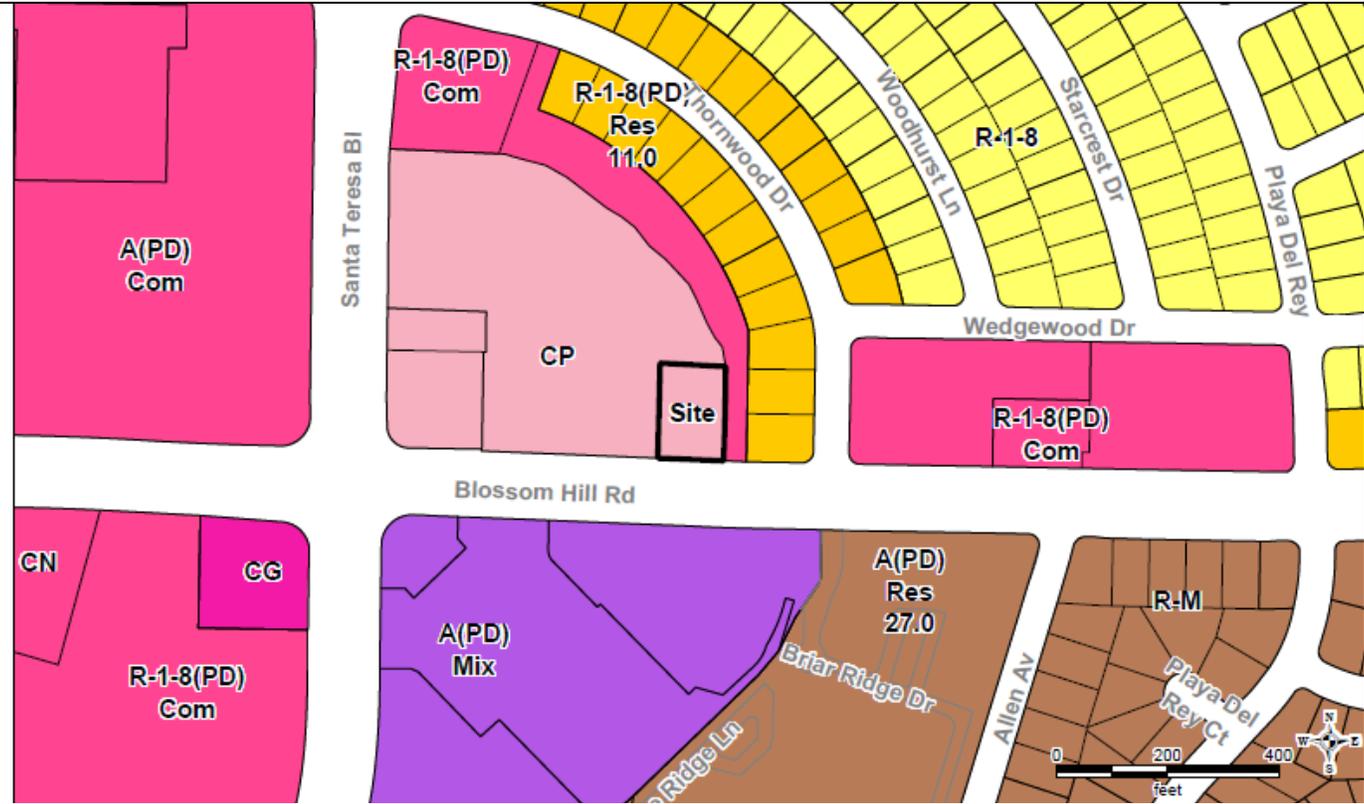
AERIAL MAP



GENERAL PLAN



ZONING



RECOMMENDATION

Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the findings and conditions as stated in the attached draft Resolution for the following reasons:

1. The project conforms to the San José 2020 General Plan:
 - a. The site is designated as Regional Commercial on the Land Use/Transportation Diagram and the proposed use is a retail commercial use within the commercial development. The proposed use is consistent with the General Plan land use designation in that commercial uses including a drinking establishment in conjunction with a bona fide public eating establishment and outdoor dining located in an existing retail tenant space promote commercial activity within the City of San José.
 - b. The proposed use also furthers the City's General Plan Balanced Communities Goals and Policies as well as the City's Economic Development Policies in that the proposed use encourages the development of social and economic uses in all neighborhoods, and encourages sales tax-revenue generation from retail uses.
2. The project, as conditioned, conforms to Council Policy 6-23: Guidelines for Evaluation of Nightclubs and Bars and City Council Policy 6-27: Evaluation of 24-Hour Uses.
3. The proposed project is compatible with the surrounding land uses.
4. The project conforms to the Zoning Ordinance (Title 20).
5. The proposed project conforms to the requirements of CEQA.

BACKGROUND

On June 25, 2010, the applicant, Facchino LaBarbera BH PAD 1 LLC, represented by Leland Hicks, requested a Conditional Use Permit to allow a drinking establishment in conjunction with a bona fide public eating establishment, with late night use, and an approximately 420 square-foot outdoor dining patio in an approximately 6,385 square-foot tenant space in an existing commercial building. The sale of alcohol for on-site consumption is permitted as incidental to the bona fide public eating establishment if it is served to patrons with their meal. To serve alcohol to patrons independent of a meal, a Conditional Use Permit is required for a drinking establishment. Additionally, to operate between the hours of midnight and 6 a.m. (Late Night Use), a Conditional Use Permit is also required.

The proposed outdoor dining area is within 150 feet of residentially zoned property, and therefore is classified as a Special Use in the San José Zoning Ordinance. Because a Conditional Use Permit is a higher-level permit than a Special Use Permit, the Zoning Ordinance has provisions for a the higher level permit to include the conditions for Special Uses such as outdoor dining. The subject building is on an approximately 1.2-acre site that is part of a retail shopping center on approximately 7.4 acres on the north side of Blossom Hill Road, approximately 610 feet easterly of Santa Teresa Boulevard (859 Blossom Hill Road) surrounded by commercial uses including an approximately 40-foot wide drive aisle for loading and unloading activities that is adjacent to the east side of the subject building. This drive aisle separates the building from adjacent residences that front on to Thornwood Drive. Most recently, the tenant space in the commercial building was occupied by a church.

Project Description

The proposed Conditional Use Permit is to allow for the sale of alcohol for on-site consumption in a drinking establishment in conjunction with a bona fide public eating establishment with late night use until 2 a.m., and allow outdoor dining in an approximately 420 square-foot patio area that is adjacent to the west side of the subject tenant space. The interior of the restaurant will contain up to 238 seats. The outdoor dining area will contain up to 28 seats. There is no off-sale of alcohol proposed.

Community Engagement

A community meeting on the project was held on September 1, 2010 at Holiday Inn San José, 399 Silicon Valley Boulevard, San José. One community member attended the meeting. Planning staff and the applicants presented the application and the City's public hearing process to the attendee. Key concerns raised by the attendee at the community meeting, and by members of the public who corresponded with staff by telephone include: inadequate parking to meet the additional customer demand from the bar and outdoor dining uses; noise from patrons and deliveries; potential misbehavior from customers drinking or dining outdoors; and privacy concerns regarding the residential backyards behind the drive aisle next to the building. Planning staff has proposed permit conditions to address these concerns that are discussed later in this report.

ANALYSIS

Analysis for the review of the proposed project includes conformance with: 1) the San José 2020 General Plan; 2) City Council Policy 6-27: Evaluation of 24-Hour Uses; 3) City Council Policy 6-23: Guidelines for Evaluation of Nightclubs and Bars; 4) compatibility with surrounding uses; and 5) compliance with applicable zoning requirements.

General Plan Conformance

The subject site is designated Regional Commercial on the City of San José's 2020 General Plan Land Use/Transportation Diagram. The site is developed as a retail commercial stand-alone building in a shopping center. The proposed use is consistent with the General Plan land use designation in that commercial uses including a drinking establishment and outdoor dining on retail premises in conjunction with a bona fide public eating establishment in an existing retail tenant space promote commercial activity within the City of San José.

The proposed use also furthers the City's General Plan Balanced Communities Goals and Policies as well as the City's Economic Development Policies in that the proposed use encourages the development of social and economic uses in all neighborhoods, and encourages sales tax-revenue generation from retail uses.

City Council Policy 6-27: Evaluation of 24-Hour Uses

City Council Policy 6-27: Evaluation of 24-Hour Uses, is intended to assure compatibility of uses operating between 12:00 A.M. midnight and 6:00 A.M. with surrounding land uses. The Policy states that a sit-down restaurant generally does not have the problematic neighborhood impacts, such as litter and loitering, that might be associated with take-out restaurants; and as such, the 24-hour operation of all restaurants should be reviewed on a case-by-case basis. The applicant proposes to have the restaurant

open until 2 a.m. Staff is including as a condition of approval a limitation on hours of operation for the restaurant of 2 a.m., and a limitation on use of the outdoor dining patio, as well as delivery hours to the building, to between the hours of 7:00 a.m. and 10:00 p.m., seven days a week. Staff is also including the standard conditions related to maintenance of exterior of the restaurant and litter to ensure that the use is a good neighbor to the adjacent residential.

City Council Policy 6-23: Guidelines for Evaluation of Nightclubs and Bars

City Council Policy 6-23 (Policy) discourages drinking establishments (bars) from locating adjacent to or near any existing or planned residential uses or any areas planned for residential uses in the adopted General Plan. The Policy states that new bars outside the Downtown Core should be dispersed and, at a minimum, not be located within 500 feet of an existing bar or any existing school. Bars should be located and oriented in such a manner that would not adversely affect any nearby residential or school uses.

The subject site is adjacent to other commercial uses and buildings within the shopping center and adjacent to existing residences. The closest residential uses are on Thornwood Drive, and their rear property line is approximately 40 feet from the proposed uses. These residential uses are separated from the proposed uses by an existing delivery drive aisle of the shopping center.

The Policy states that new bars are discouraged from locating in areas where there have been above-average police calls for service. According to City records and the San José Police Department, the subject proposal is not located within a census tract that has such a designation (high crime). The Policy states that the most appropriate General Plan land use designations for nightclubs and bars are Commercial, except for Office and Neighborhood/Community Commercial. The subject site is designated Regional Commercial and located in the CP-Commercial Pedestrian Zoning District within approximately 40 feet of residential development. The proposal does not include a nightclub or stand-alone bar. With hours of operations limited to 2 a.m., and restrictions on the outdoor patio and deliveries as recommended by staff, the proposed drinking establishment in conjunction with an eating establishment can be operated in a manner that is compatible with the residential uses.

Compatibility with Surrounding Uses

The proposed commercial uses are compatible with the surrounding commercial uses in that both the proposed uses and the proximate commercial uses generally serve a regional area. As discussed above with respect to conformance with applicable City Council policies, as conditioned, the late night use, outdoor patio use, and drinking establishment use should not have a detrimental impact on the neighboring residential areas because of limitation on the use of the outdoor patio, and limitation on deliveries, as well as the orientation of the use out to the parking area opposite the residential area.

Zoning

The Zoning Ordinance has a parking requirement of 1 space per 40 square feet of net floor area or 1 space per 2.5 seats for drinking establishment and public eating establishment uses. Outdoor dining areas require 1 space per 2.5 seats for any seats in excess of 25 seats. A parking analysis included in the plan set entitled "T.G.I. Friday's, A Restaurant, 859 Blossom Hill Road, San José, CA" dated June 25, 2010 shows that there are 107 parking spaces required for the proposed uses, 391 spaces required for all the uses in the shopping center, and 409 spaces provided in the shopping center, which is sufficient parking for the proposed uses.

Environmental Review

The Director of Planning found the proposed project to be exempt from environmental review under Section 15301(a) of the California Environmental Quality Act (CEQA) Guidelines, which exempts existing facilities involving little or no expansion of use including interior or exterior alterations. The proposed project is exempt because it will be located in an existing commercial building with minor interior and exterior alterations.

Conclusion

Based on the above analysis, staff concludes that the proposed drinking establishment use in conjunction with a bona fide public eating establishment and outdoor dining area, with late night operating hours until 2:00 A.M., are compatible with both existing commercial and residential uses in the surrounding area. As conditioned, the proposed outdoor dining area will be limited to the hours between 7:00 A.M. and 10:00 P.M. seven days a week. This, along with limitations on deliveries should deal with the primary noise generating aspects of the proposed use.

PUBLIC OUTREACH

Staff followed the provisions of City Council Policy 6-30: Public Outreach for the proposed project. Notices of the public hearing for this project were sent to all property owners and tenants within 1,000 feet of the subject property. The Planning Commission Agenda is posted on the City of San José website, which includes a copy of the staff report, and staff has been available to discuss the project with members of the public.

A community meeting on the project was held on September 1, 2010 at Holiday Inn San José, 399 Silicon Valley Boulevard, San José. One community member attended the meeting. Planning staff and the applicants presented the application and the City's public hearing process to the attendee.

Key concerns raised by the attendee at the community meeting and by members of the public who corresponded with staff by telephone include: inadequate parking to meet the additional customer demand from the bar and outdoor dining uses; noise from patrons and deliveries; potential misbehavior from customers drinking or dining outdoors; and privacy concerns regarding the residential backyards behind the drive aisle next to the building. Planning staff has proposed permit conditions to address these concerns including: limiting delivery hours and hours of operation of the outdoor dining patio to occur between 7:00 A.M. and 10:00 P.M.; prohibiting outdoor music; and prohibiting outdoor cooking. To address security concerns regarding operation of the drinking establishment, staff has included a permit condition for implementation of a security management plan.

Project Manager: Jenny Nusbaum **Approved by:**  **Date:** 09-10-10

Owner/Applicant: Facchino LABarbera BH PAD 1 LLC PO Box 26190 San José, CA 95159 Leland Hicks LEH Consultants, LLC 10031 Lamar Avenue Overland Park, KS 66207	Attachments: Resolution Police Memo Planset
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RESOLUTION NO. _____

Resolution of the Planning Commission of the City of San José granting, subject to conditions, a Conditional Use Permit to use certain real property described herein for the purpose of allowing a drinking establishment in conjunction with a bona fide public eating establishment, late night use until 2 a.m. and an approximately 420 square-foot outdoor seating area at an existing tenant space in a shopping center on a 1.2 gross-acre site in the CP Commercial Pedestrian Zoning District located on the north side of Blossom Hill Road, approximately 610 feet easterly of Santa Teresa Boulevard (859 Blossom Hill Road)

FILE NO. CP10-038

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SAN JOSÉ:

WHEREAS, pursuant to the provisions of Chapter 20.430 of Title 20 of the San José Municipal Code, on June 25, 2010, an application (File No. **CP10-038**) was filed for a Conditional Use Permit, for the purposes of allowing a drinking establishment in conjunction with a bona fide public eating establishment, late night use until 2 a.m., and an approximately 420 square-foot outdoor seating area on that certain real property (hereinafter referred to as “subject property”), situate in the CP Commercial Pedestrian Zoning District, located at an existing tenant space in a commercial building in a shopping center on a 1.2 gross-acre site on the north side of Blossom Hill Road, approximately 610 feet easterly of Santa Teresa Boulevard (859 Blossom Hill Road)
San José, and

WHEREAS, the subject property is all that real property described in Exhibit “A,” which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.40 of Title 20 of the San José Municipal Code, this Planning Commission conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing this Planning Commission received and considered the reports and recommendation of the Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this Planning Commission received in evidence a site plan and floor plan for the subject property entitled, “TGI Friday’s, A Restaurant, 859 Blossom Hill Road, San Jose, CA” dated June 25, 2010. Said plan is on file in the Department of Planning,

Building and Code Enforcement and is available for inspection by anyone interested herein, and said development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said hearing was conducted in all respects as required by the San José Municipal Code and the rules of this Planning Commission;

NOW, THEREFORE:

After considering evidence presented at the Public Hearing, the Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. The applicant/owner, Facchino LABarbera BH PAD 1 LLC, is requesting a Conditional Use Permit to allow a drinking establishment in conjunction with a bona fide public eating establishment, late night use, and an approximately 420 square-foot outdoor seating area at an existing tenant space in commercial building in a shopping center on a 1.2 gross-acre site in the CP Commercial Pedestrian Zoning District located on the north side of Blossom Hill Road, approximately 610 feet easterly of Santa Teresa Boulevard (859 Blossom Hill Road) San José.
2. The subject site is zoned CP Commercial Pedestrian.
3. Per Table 20-90 of the San Jose Municipal Code, a Conditional Use Permit is required for drinking establishments.
4. Per Section 20.40.520 of the San Jose Municipal Code, Outdoor Uses within 150 Feet of Residentially Zoned Property, a Special Use Permit is required for outdoor dining that is less than 100 feet from a residential property that is not separated by a public street or nonresidential building.
5. Per Section 20.40.500 of the San Jose Municipal Code, Outdoor no establishment other than office uses, an any Commercial District shall be open between the hours of 12 midnight and 6 a.m. except pursuant to and in compliance with a Conditional Use Permit.
6. The proposed drinking establishment is within a 6,385 square-foot tenant space for on-site consumption.
7. The project does not include the off-sale of alcohol.
8. The proposed outdoor dining use is in a 420 square-foot patio adjacent to the tenant space where the drinking establishment and public eating establishment are located.
9. The outdoor patio is located approximately 115 feet away from the adjacent residential uses with the existing building between it and the residential use.
10. The project includes late night hours until 2:00 A.M.
11. The proposed tenant space is within a commercial building near the south easterly corner of the existing shopping center.
12. The subject tenant space is approximately 40 feet from the closest residential use, which is located on Thornwood Drive.
13. The subject use is separated from the closest residential use by a loading drive aisle.

14. The existing and proposed use of the commercial building is consistent with the San José General Plan Land Use/Transportation Diagram designation of Regional Commercial in that drinking establishment uses and outdoor dining uses are intended uses under the designation.
15. The City allows drinking establishments only through the discretionary Conditional Use Permit process to ensure that the use conforms to City requirements.
16. The proposed project is subject to City Council Policy 6-23: Evaluation of Nightclubs and Bars and City Council Policy 6-27: Evaluation of 24 Hour Uses.
17. The City sent public hearing notices for this project to all property owners and occupants within 1,000 feet of the subject property. The Planning Commission Agenda is posted on the City of San José website, which includes a copy of the staff report. Staff has been available to discuss the project with members of the public.
18. Under the provisions of Section 15303 of the State Guidelines for Implementation of the California Environmental Quality Act, this project is found by the Director of Planning to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.

Based on an analysis of the above facts and findings, the Planning Commission concludes and finds that:

1. The proposed project conforms to the City's General Plan.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project, as conditioned, conforms to City Council Policy 6-23: Evaluation of Nightclubs and Bars and City Council Policy 6-27: Evaluation of 24 Hour Uses.
4. The proposed project is in compliance with the California Environmental Quality Act.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features in this title, or as otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service for facilities as are requested.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance of Permit.** Per Section 20.430.290(B), should the permittee fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the applicant:
 - a. Acceptance of the Permit by the permittee; and
 - b. Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the permittee pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit pursuant to Title 20 of the San Jose Municipal Code. The Permit Adjustment must be approved prior to the expiration of this Permit.
3. **Use Authorization.** This Conditional Use Permit authorizes the following uses to be implemented on the property subject to the terms of this permit:
 - a. A public drinking establishment in conjunction with a bona fide public eating establishment.
 - b. Late night hours.
 - c. An outdoor dining area.
4. **Conformance with Plans.** The use of this property shall conform to approved plans entitled, "TGI Friday's, A Restaurant, 859 Blossom Hill Road, San Jose, CA" dated June 25, 2010 on file with the Department of Planning, Building and Code Enforcement.
5. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
6. **Hours of Operation.** The subject eating and drinking establishment are allowed to operate between the hours of 6 a.m. to 2 a.m. seven (7) days a week, with the exception of the outdoor patio.

7. **Outdoor Dining Area.** The outdoor dining area hours of operation shall be between 7:00 A.M. and 10:00 P.M. seven days a week. No cooking shall be allowed in the outdoor dining area.
8. **Maximum Occupancy.** The project operator shall comply at all times with the occupancy limit provided by the San José Fire Department.
9. **Alcohol Service.** Alcohol service shall be limited to those hours and areas allowed and specified in the State Department of Alcoholic Beverages license for this site and use.
10. **Food Service.** Food service shall be available for the patrons during all operating hours.
11. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance. Nor shall the use adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area or be detrimental to public health, safety or general welfare. Any such nuisance must be abated immediately upon notice by the City.
12. **Noise.** Any noise generated from the use between the hours of 10 p.m. and 2 a.m. that is audible by normal hearing within a residential unit with their windows closed shall be reduced to a level such that it is no longer audible, or it will constitute a nuisance.
13. **Ventilation.** Adequate ventilation, including but not limited to mechanical ventilation, shall be provided so that openings to the outside can be closed when the bar is at full capacity.
14. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings, fences, and wall surfaces within 48 hours of defacement.
15. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "TGI Friday's, A Restaurant, 859 Blossom Hill Road, San Jose, CA" dated June 25, 2010 on file with the Department of Planning, Building and Code Enforcement.
16. **Fire Safety.** The applicant shall meet all requirements of the Fire Department at the Building Permit stage, including but not limited to the maximum occupancy of the facility.
17. **Anti Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris.
18. **Cleaning.** Cleaning shall include keeping all publicly used areas along the frontages of the subject building free of litter, trash, cigarette butts and garbage and shall include damp washing as necessary of all exterior walls, walkways, and publicly accessible areas along the project's frontage. Broom cleaning of the adjacent parking lot shall occur before 8:00 a.m. each morning. All visible trash, cigarette butts, and any other materials shall be removed from the adjacent sidewalk and any parking area or loading area within 80 feet of the subject building. Hose washing of the sidewalks and walkways shall occur as necessary to accomplish this task, however, solid waste and bodily fluids shall not be rinsed into the storm drains. For vomit, human excrement, and bodily fluids such as blood, other cleaning methods such as use of sawdust shall be chosen.
 - a. Mechanical equipment used for outside maintenance, including blowers and street sweepers shall not be used between 10:00 p.m. and 7:00 a.m. daily.
 - b. The facility operator shall provide adequate ashtrays along the business frontage to accommodate patrons who wish to smoke outdoors. Patrons smoking outdoors shall not impede pedestrian traffic along the adjacent sidewalk or parking area, nor create a nuisance for adjoining businesses.

17. **Lighting.** This permit allows no new exterior lighting except as designated on the plans entitled “TGI Friday’s, A Restaurant, 859 Blossom Hill Road, San Jose, CA” dated June 25, 2010.
18. **Changes to the Structure.** Any exterior changes shall require approval by the Director of Planning, Building, and Code Enforcement.
19. **Sign Approval.** No new signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning, Building, and Code Enforcement.
20. **Waste Discharge.** The proposed facility must conform to the City of San José industrial waste discharge regulations. Any non-domestic wastewater discharge into the sanitary sewer system will require Source Control Staff to review and approve the final plans. Contact Environmental Engineering Staff at (408) 945-3000 with any questions.
21. **Delivery Hours.** No vehicular deliveries for the subject building are permitted between 10:00 P.M. and 7:00 A.M.
22. **Hours of Glass Recycling.** No outdoor sorting, collection or disposal of glass from the facilities is permitted between 6:30 P.M. and 8:00 A.M.
23. **Security Management Plan.** The operator of the public eating and drinking establishment shall train all management staff in the recognition and prevention of loitering, theft, vandalism, and truancy.
 - a. During active business hours there shall be a minimum of two (2) management personnel on the public eating and drinking establishment premises to manage and secure the premises.
 - b. The public eating and drinking establishment operator shall also provide additional professional security personnel during special events and peak periods of patron activity.
 - c. The Project area shall be served by the shopping center security personnel who secure the common areas as a part of the overall security plan. The operator shall maintain a subscription to the shopping center security program and be bound thereby to participation in whatever level of security the Landlord deems necessary in their reasonable discretion.
24. **Permittee Responsibility.** The permittee shall ensure that the use/s authorized by this Permit is/are implemented in conformance with all of the provisions of this Permit.
25. **Discretionary Review.** The Director of Planning maintains the right of discretionary review of requests to alter or amend structures, conditions or restrictions of this Conditional Use Permit incorporated by reference in this Permit in accordance with the San José Municipal Code.
26. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2 of Chapter 20.430 of Title 20 of the San José Municipal Code, it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of noncompliance; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

ADOPTED and issued this **22nd day of September 2010**, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Chairperson

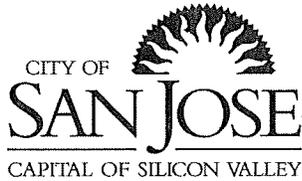
ATTEST:

Joseph Horwedel, Secretary

Deputy

NOTICE TO PARTIES

The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.



Memorandum

TO: Jenny Nusbaum
 Planning Department

FROM: Ofc. Christine Zarate #3165
 San Jose Police Vice Unit

SUBJECT: CP10-038
 859 Blossom Hill Rd

DATE: August 31, 2010

Approved _____

Date _____

I have received your request for input regarding TGIF's Restaurant located at 859 Blossom Hill Rd, San Jose, CA. TGIF Restaurant is seeking a Conditional Use Permit for a change of use from an existing church to a public eating establishment and a drinking establishment, to be able to operate after midnight and serve alcohol

Per Business and Professions (B&P) Code Section 23958, the State of California Department of Alcohol Beverage Control shall deny an ABC Application for an ABC License if the issuance of that license would tend to create a law enforcement problem or if it would result in or add to an undue concentration of ABC Licenses, as described in B&P Sections 23958.4 (a)(1) and 23958.4(a)(2). A location can be unduly concentrated because of its criminal statistics and/or its proximity to other ABC Licenses. ABC can issue the license per B&P Sections 23958.4 (b)(1), and 23958.4 (b)(2) if the local governing body determines that the public convenience or necessity would be served. The City of San Jose Planning Department or the Planning Commission are the delegated authorities to grant these exceptions.

The location is not currently in a Strong Neighborhood Initiative area or a Neighborhood Revitalization area.

The location of 859 Blossom Hill Rd is located in San Jose Police Beat Y1. The reported crime statistics as defined by B&P Section 23958.4(c) **are not** over the 20% crime index thus the location **is not** considered unduly concentrated per B&P Section 23958.4 (a)(1).

Police Beat Crime Statistics

Beat	Index Crimes	Arrests	Total	20% Above Average
Y1 (2009)	242	106	348	No
City Average	327	256	583	

Department of Alcohol Beverage Control (ABC) records indicate that 859 Blossom Hill Rd. is in census tract 5120.27. Pursuant to B&P Section 23958.4 (a)(2), the ratio of on-sale retail licenses population in census tract 5120.27 does exceed the ratio of on-sale retail licenses retail licenses to population in the county in which the applicant premises are located.

Authorized and Current ABC Licenses in Census Tract 5120.27

Census Tract	Authorized ABC Licenses as of January 2008		Current ABC Licenses as of May 2010		Unduly Concentrated	
	On - Sale	Off - Sale	On - Sale	Off - Sale	On - Sale	Off - Sale
5120.27	5	3	16	3/1	Yes	Yes

The San Jose Police Department is **neutral** to the issuance of a Conditional Use Permit for a change of use from an existing church to a public eating establishment and drinking establishment with after midnight use.

Please feel free to contact me at 277-4322 if you have any questions.

Ofc. Christine Zarate #3165
 Administrative Officer
 Special Investigations/Vice



TGI FRIDAY'S
A RESTAURANT
859 BLOSSOM HILL ROAD
SAN JOSE, CA
6/25/10

DEVELOPMENT PERMIT NUMBERS:

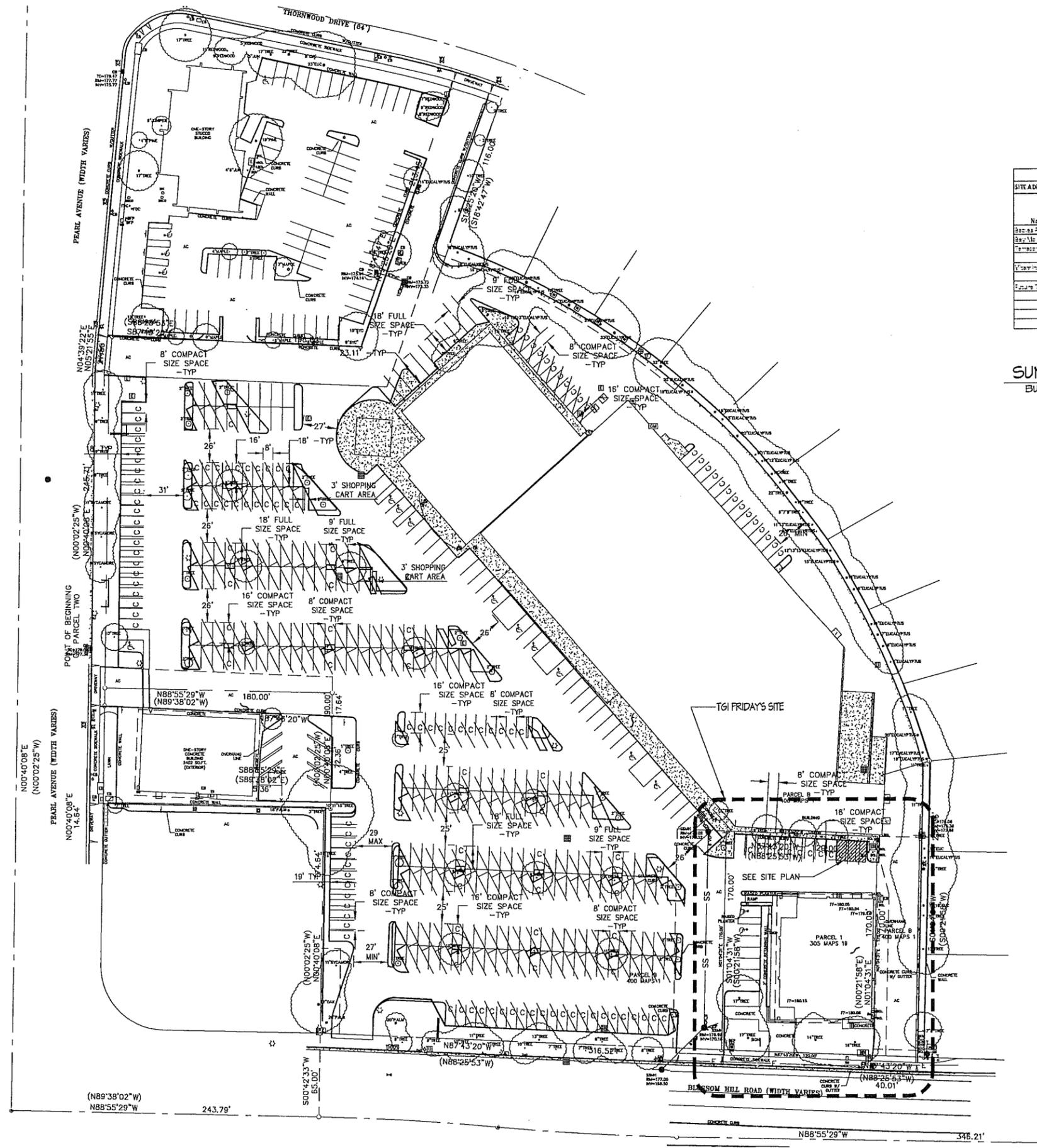
CP 84-07-069
CP 93-11-067
H76 -06-139
PD 72-03-016
PD 72-11-056

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SHT. 4	FLOOR PLAN
SHT. 5	DETAILS

CP 10-038

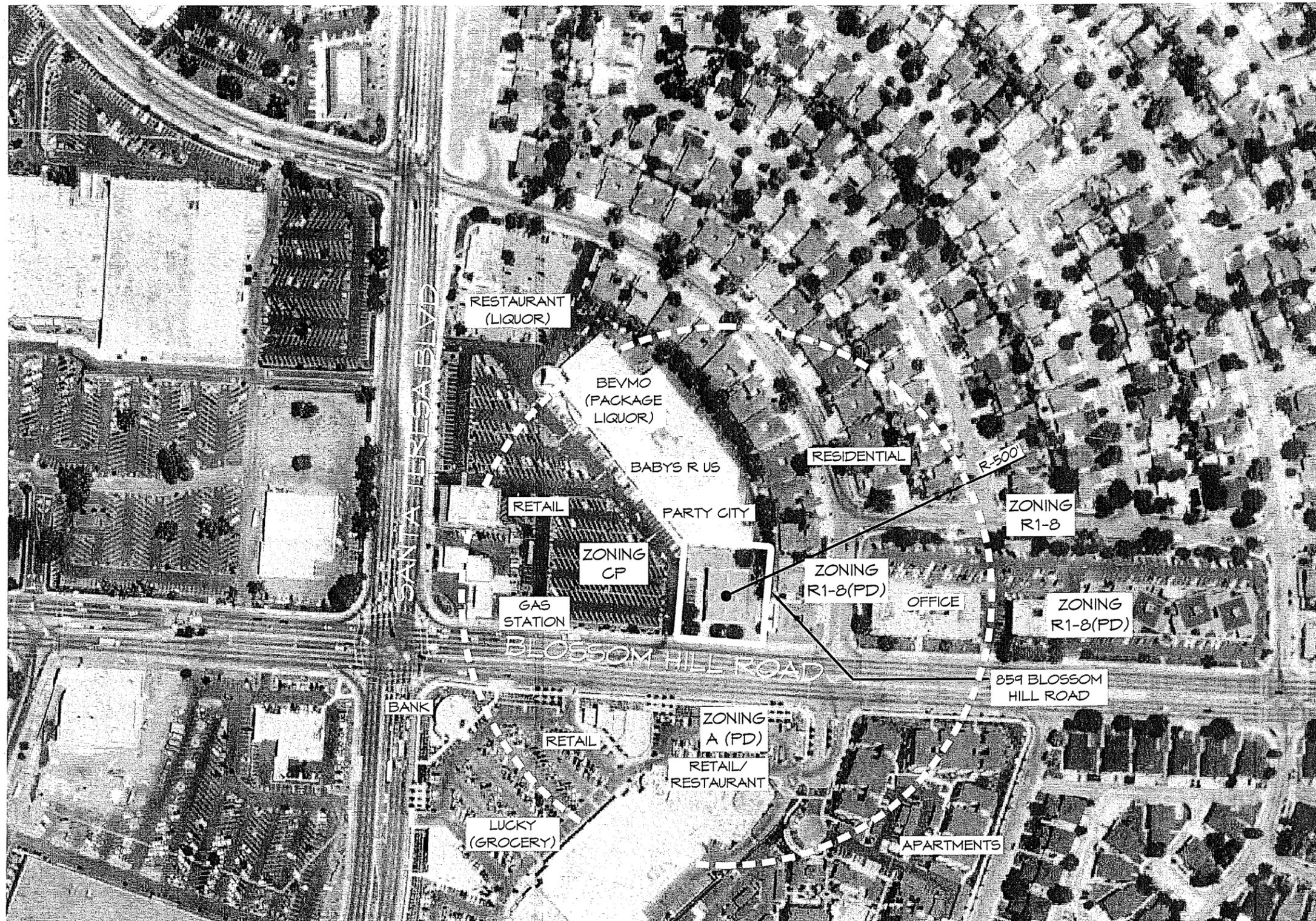
CS.



PARKING ANALYSIS FORM									
SITE ADDRESS: 805-879 BLOSSOM HILL RD., 5092 SANTA TERESA BLVD.					APN: 464-35-027, 032, 033				
Name of Business:	Address/	Use	Gross Square	85% of Gross	No. of	Parking Ratio	Spaces	Required	Required
	Space		Footage or	Square Footage	(if applicable)		Required	Spaces	Spaces
			Neting Area					Provided	Unmet
Bar & US Party Ctr	805	Rest	28,848	24,521	N/A	1,700	256.75	207	
Bay's	871	Rest	30,450	25,883	N/A	1,700	22.7	25	
Restaurant	872	Office	2,892	2,457	N/A	1,200	8.9	9	
11' x 17' Storage Shed	5592.5'	Rest	5,402	4,592	N/A	1,700	32.9	25	
Storage Shed	878	Office	5,555	4,722	267		105.6	107	
							Total Spaces Required	391	
							Total Spaces Provided	429	
							Surplus	38	

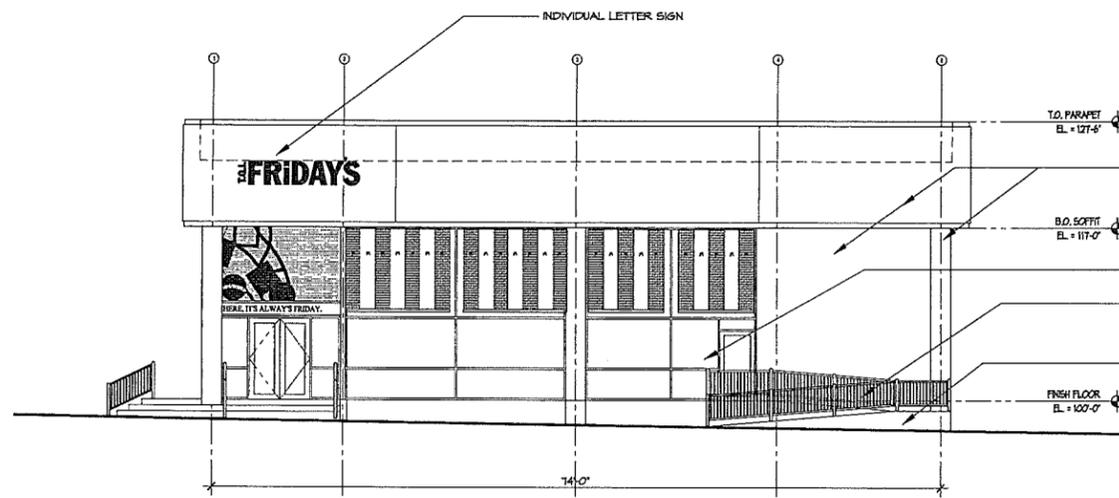
SUMMARY
 BUILDING AREA
 EXISTING - 8,548 SQUARE FEET
 PROPOSED - 6,395 SQUARE FEET

DEVELOPMENT SITE PLAN
 SCALE: 1" = 40'

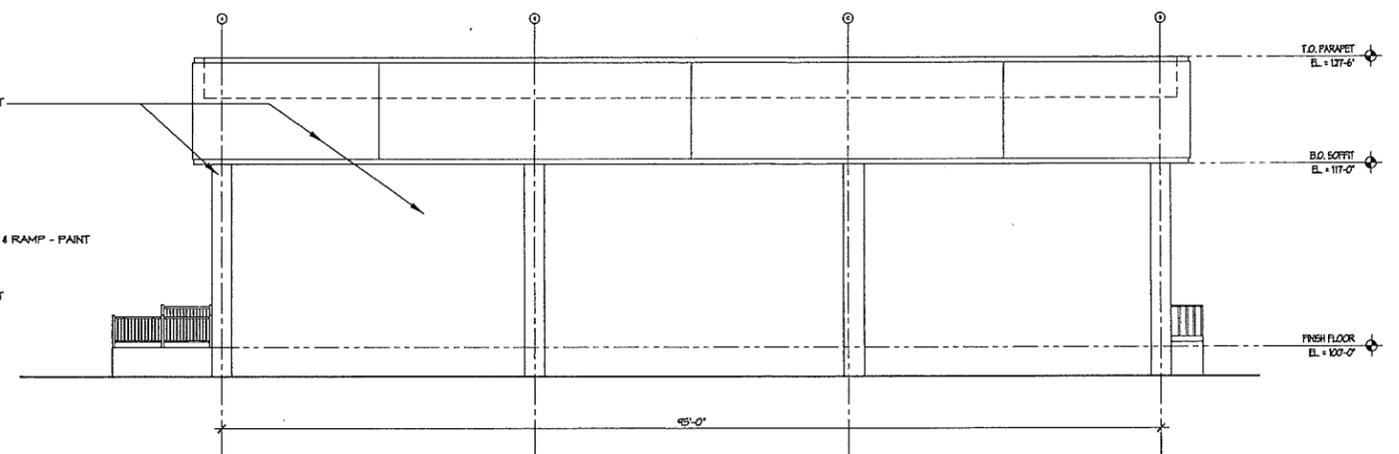


PROPOSED USE:
 TGIFRIDAY'S
 (A RESTAURENT/BAR WITH AFTER MIDNIGHT
 OPERATIONS)
ALCHOLIC BEVERAGE LICENSE
 TYPE 47 ON SALE GENERAL FOR
 BONAFIDE PUBLIC EATING PLACE
 LICENSE NUMBER 47-364572

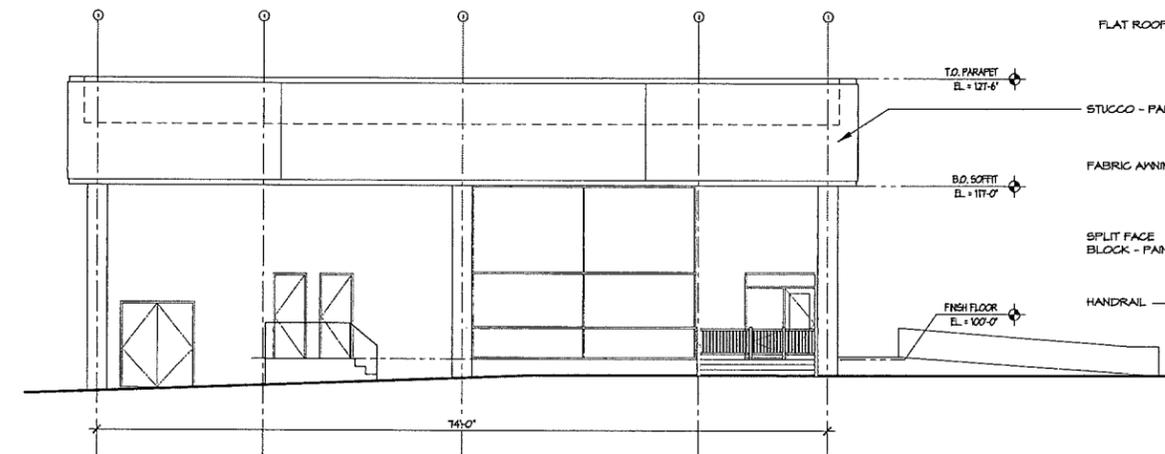




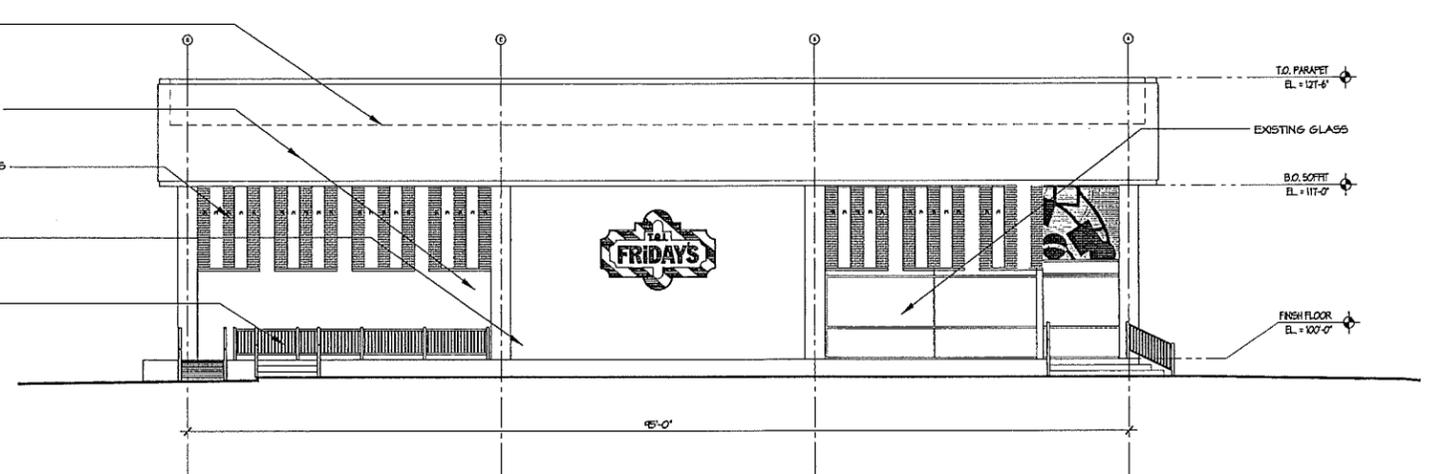
SOUTH ELEVATION
SCALE 1/8" = 1'-0"



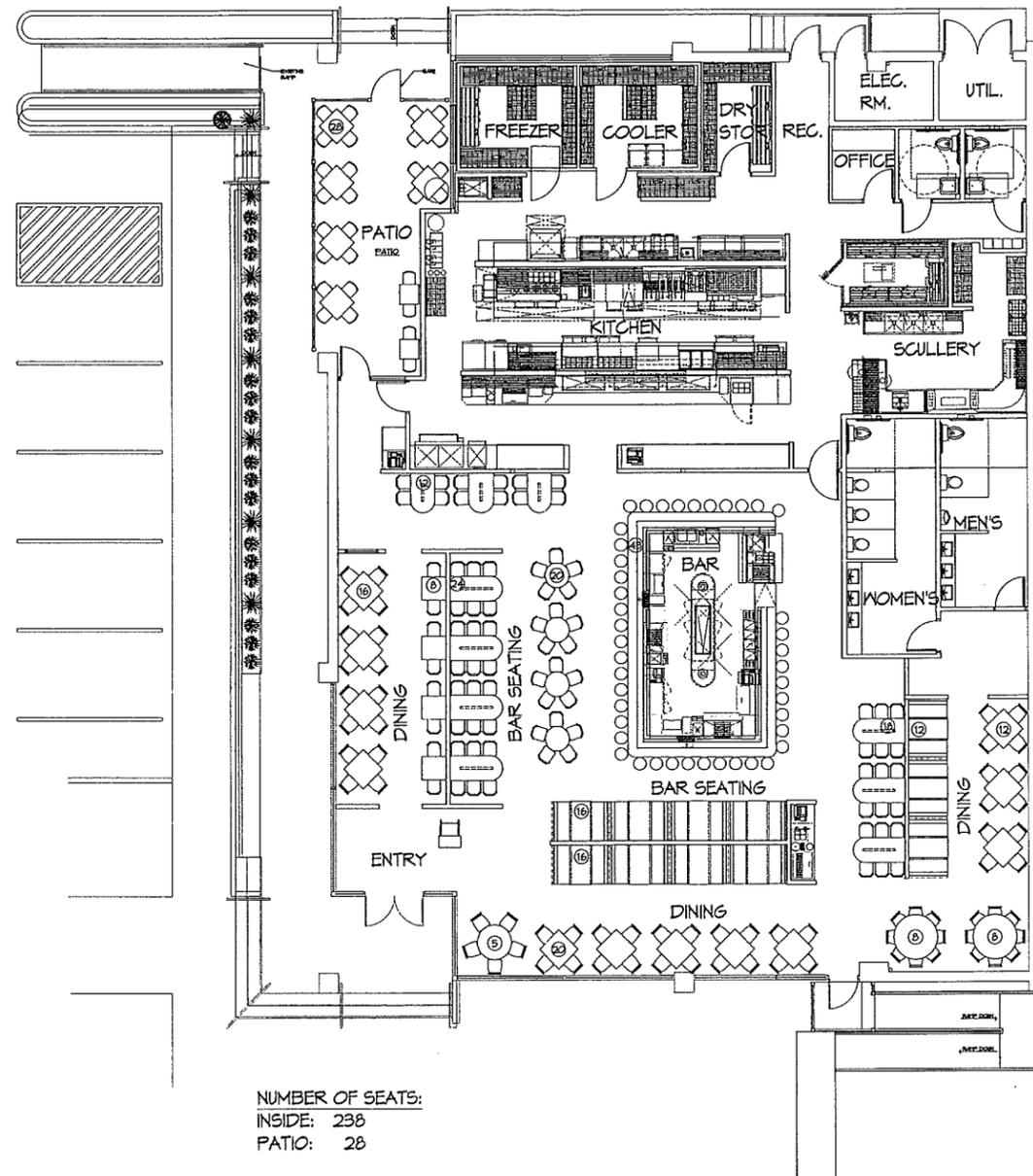
EAST ELEVATION
SCALE 1/8" = 1'-0"



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



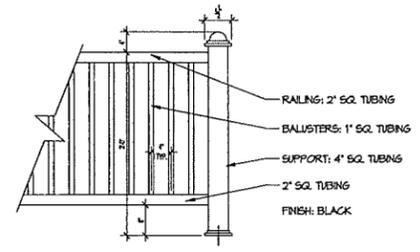
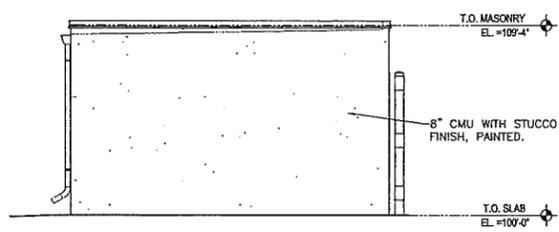
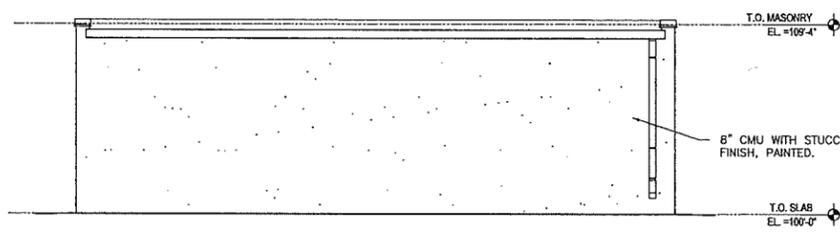
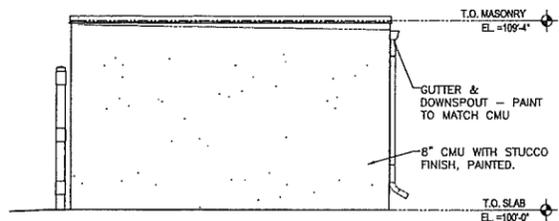
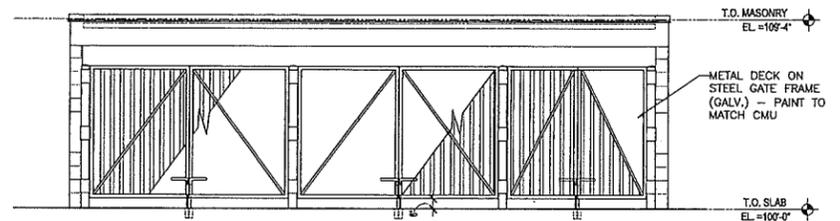
WEST ELEVATION
SCALE 1/8" = 1'-0"



NUMBER OF SEATS:
 INSIDE: 238
 PATIO: 28

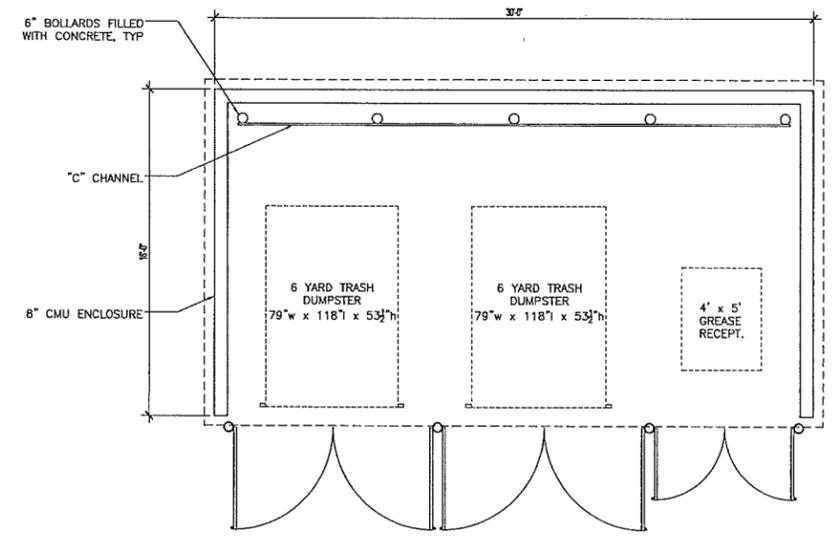


FLOOR PLAN
 SCALE 1/8" = 1'-0"



TRASH ENCLOSURE - ELEVATIONS
SCALE: 1/4" = 1'-0"

RAILING DETAIL
SCALE: 3/4" = 1'-0"



TRASH ENCLOSURE - PLAN
SCALE: 1/4" = 1'-0"