

STAFF REPORT
PLANNING COMMISSION

FILE NO.: CP11-039

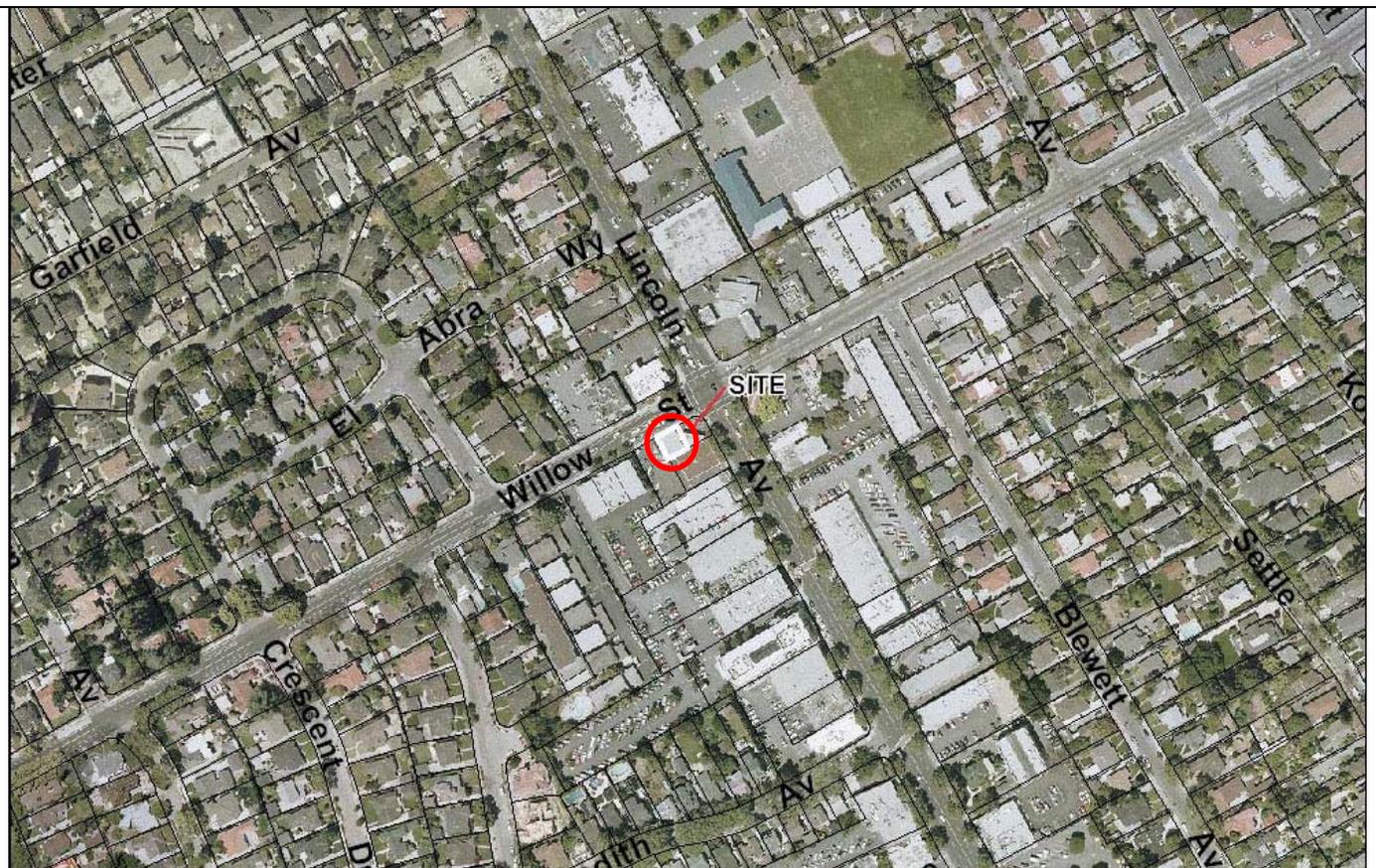
Submitted: 06/13/11

PROJECT DESCRIPTION: Conditional Use Permit to allow a drinking establishment associated with a bona fide public eating establishment with no after-midnight use, in the CP Commercial Pedestrian Zoning District on a 0.04 gross-acre site.

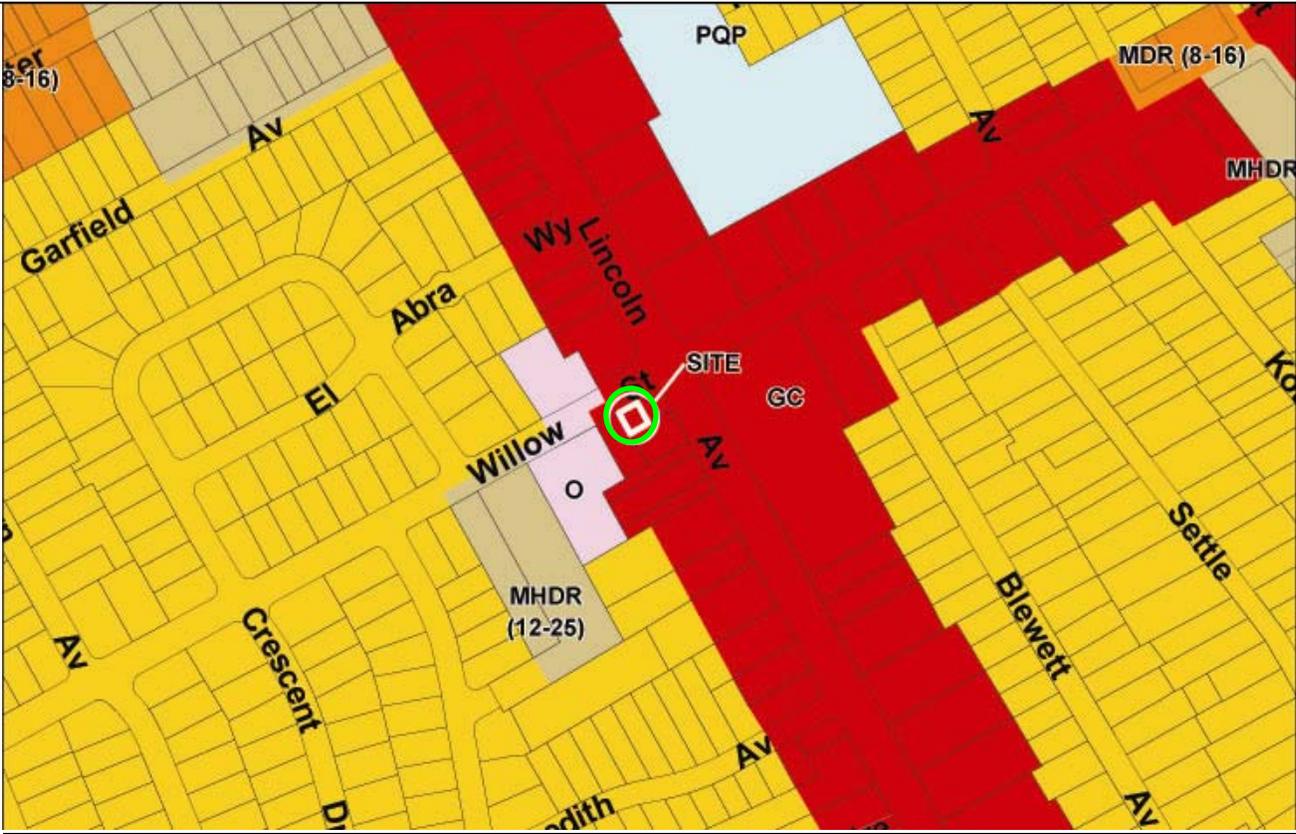
LOCATION: south side of Willow Street, approximately 100 feet west of Lincoln Avenue (1110 Willow Street).

Existing Zoning	CP-Commercial Pedestrian
General Plan	General Commercial
Council District	6
Annexation Date	October 1, 1936
SNI	No
Historic Resource	No
Redevelopment Area	No
Specific Plan	No
NBD	Willow Glen

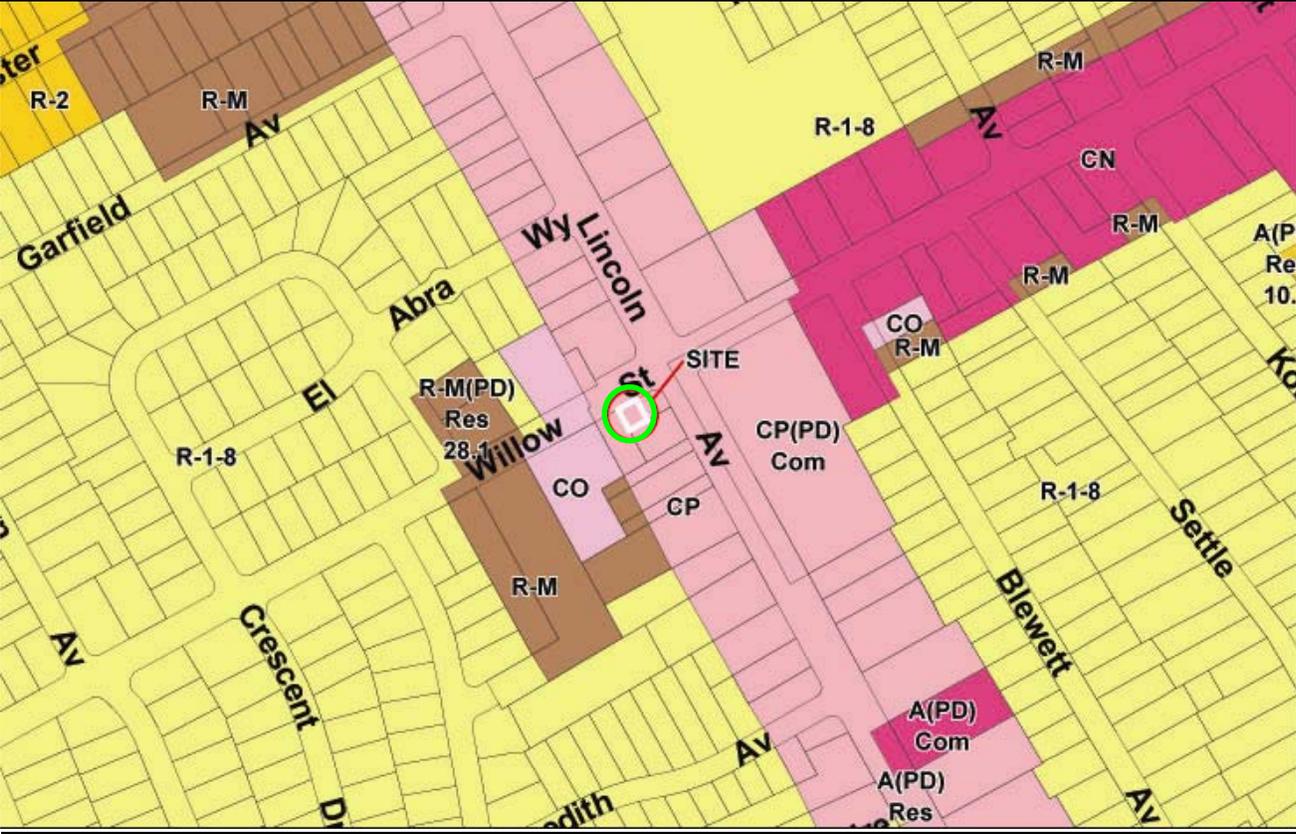
AERIAL MAP



GENERAL PLAN



ZONING



RECOMMENDATION

Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit with the provision to maintain the existing recessed entrance located on Willow Street as is, 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 General Commercial on the Land Use/Transportation Diagram and is located in the Willow Glen Neighborhood Business District (NBD). The proposed use is a drinking establishment associated with a bona fide public eating establishment within an existing commercial building. The proposed use is consistent with the uses expected within the subject General Plan land use designation. A drinking establishment in conjunction with a bona fide public eating establishment will 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 proposed project is compatible with the surrounding land uses in that it will promote business and pedestrian activity within the Willow Glen Neighborhood Business District.
3. The project conforms to the Zoning Ordinance (Title 20).
4. The proposed project will not result in any adverse impacts to the environment.

BACKGROUND

On June 13, 2011, the general contractor, DeMattei Construction, requested a Conditional Use Permit to allow a drinking establishment associated with a bona fide public eating establishment with no after-midnight use 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.

The subject building is on an approximately 0.04-acre site on the south side of Willow Street, just west of Lincoln Avenue (1110 Willow Street). The site is part of the Willow Glen Neighborhood Business District and is surrounded by office uses to the west and commercial uses to the north, east, and south. Most recently, the building was occupied by retail uses.

Project Description

The proposed Conditional Use Permit is to allow a drinking establishment associated with a bona fide public eating establishment in an existing commercial building. The proposed public eating establishment will contain up to 62 seats indoors. There is no off-sale of alcohol or late night hours of operation (hours after midnight) proposed.

ANALYSIS

The primary issues analyzed for the review of the proposed project are: 1) conformance with City Council Policy 6-23: Guidelines for the Evaluation of Bars and Nightclubs, including compatibility with surrounding uses; 2) conformance with parking regulations from the Zoning Code; 3) necessary easements; 4) architectural considerations; 5) legal status of the mezzanine; 6) conformance with the San José 2020 General Plan; and 7) conformance with the California Environmental Quality Act.

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 Neighborhood Business District. Across Lincoln Avenue are additional commercial uses. The closest residential uses are west of subject property, and the nearest residential property line is approximately 160 feet northwest of the subject site.

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 General Commercial and located in the CP-Commercial Pedestrian Zoning District.

Compatibility with Surrounding Uses

The proposed commercial use is compatible with the surrounding commercial uses in that both the proposed use and the proximate commercial uses generally serve the nearby neighborhood areas. The proposed use and nearby commercial uses are expected to mutually benefit from one another's business and customers.

Drinking establishments have the potential to produce higher levels of noise that can potentially create a nuisance to the surrounding uses, particularly on nearby residential uses. The closest residential uses are located approximately 160 feet away from the subject site. The proposal does not include a nightclub or stand-alone bar. Drinking establishments associated with a full-service restaurant typically have fewer noise impacts on the nearby properties because of their focus on the dining experience in addition to any focus on a drinking experience. The proposed use does not involve late-night (between midnight and 6:00 a.m.) or outdoor activity. The applicant has not requested to increase the noise levels in excess of what the performance standards outlined in Table 20-105 of the Zoning Ordinance. The attached draft resolution recommends standard noise and nuisance conditions. Further, staff recommended conditions specify that the drinking establishment shall only operate in conjunction with a public eating establishment.

Given the above-noted scope of the proposed use, coupled with standard conditions recommended in the draft resolution, the proposed drinking establishment in conjunction with an eating establishment can be operated in a manner that is compatible with the residential uses.

Parking Requirements

The subject site was developed with a building on approximately 100 percent of the site area; therefore, no parking is provided on site. As identified on the site plan, the site benefits from parking provided on the property immediately to the west, which is under the same ownership. However, since the parking is located on a separate and distinct property, the parking on that site is not tied to the parking requirements for the subject site.

Section 20.90.210 of the Zoning Ordinance outlines a formula for determining whether additional parking is required when a use with a legal-nonconforming parking situation is changed or expanded. The proposed use qualifies for the exemption under Section 20.90.210, since the building was constructed prior to November 10, 1965 and since the Zoning Ordinance contains a provision allowing certain ground-floor Neighborhood Business District uses to apply a parking ratio of one parking space per 400 square feet of floor area. Given the proposal's conformance with Section 20.90.200 of the Zoning Ordinance, no parking is required for the use.

Necessary Easements

As noted in the parking analysis above, the subject building occupies nearly 100% of the property. Doors currently exist on the perimeter of the building that open towards adjacent properties. The applicant proposes to relocate the door on the east elevation, and a new canopy is proposed on the east elevation. Ingress/egress to the new door on the east elevation requires crossing over the adjacent property to the east (the parcel at the southwest corner of Lincoln Avenue and Willow Street). Similarly, the proposed canopy on the west elevation would cross over the property line. Accordingly, staff is recommending conditions that require the appropriate easements be put in place to allow for the ingress/egress and other encroachments onto the adjacent properties.

Architecture

The building is not listed on the City's Historic Resources Inventory, and staff is not evaluating the architectural changes from a historic preservation perspective. That said, staff is recommending that the recessed front entry be preserved. The applicant is proposing that the recessed front entry be removed. Given exiting requirements in the Building Code, two exits are required for the dining area, thus removal of the existing recessed entryway necessitates the addition of a new exit elsewhere on the westerly half of the dining/drinking area. The applicant is proposing to include a new exit door recess measuring approximately 18 square feet on the westerly corner of the Willow Street frontage to accommodate the required egress.

The existing front recess measures approximately 80 square feet in area, thus retention of the existing front recess results in a net decrease of approximately 60 square feet between the applicant-proposed plan and the retention of the existing recessed entryway. In addition to the 60 square feet, the applicant has expressed concerns that the theme of the restaurant ("The Table") would be impacted by retention of the existing recessed entry because the primary feature of the restaurant, an 18-seat communal table, would be shifted away from the new front windows and into the interior of the tenant space.

The applicant contracted a Historic Preservation consultant, Bonnie Bamburg of Urban Programmers, to comment on the structure and the recessed entryway. The consultant's letter is attached. It indicates that the building, as it exists today, has no historical value, primarily due to the myriad of building alterations that have compromised any historic significance. Staff agrees with that assessment.

The consultant letter contains information specific to the existing recessed entryway. The letter states that "Historically, the recessed entry with slanted windows on each side was created to provide a greater area for merchandise to be displayed, giving rise to the name 'display windows.'" The feature "was also a bit of shelter when entering the store." The consultant letter rightly states that the stucco and foam coverings added to the recessed front entryway have compromised any historical significance of the feature. Staff agrees with this assessment. Nevertheless, the "display window," with its slanted windows on each side, is the only remaining building feature that ties the structure to its past.

According to the consultant letter, the "display window" was a common building feature in areas that had high levels of pedestrian traffic. While modifications to the subject "display window" and the rest of the building have compromised its historic integrity, the "display window" feature itself still connects the building with the time in which it was constructed.

Legal Status of Mezzanine

The existing mezzanine area measures approximately 700 square feet. The applicant is proposing to retain the existing mezzanine and use it solely for storage area. The mezzanine area has a clear height that ranges from 6'1" to 6'5". An initial search of Building Permit records did not reveal permits for the mezzanine area. Given the structure's construction circa 1920, the mezzanine could have been constructed prior to when the City's searchable permit records database can be assumed to be reliable. As such, at the Building Permit stage for the restaurant, the applicant will provide evidence of the mezzanine construction type to the Building Official. Based on that evidence, the Building Official will estimate the year that the mezzanine was constructed. Depending on the estimated year of construction, the Building Official will either 1) require that permits be obtained for the construction in accordance with current applicable codes or 2) require that the applicant demonstrate that the mezzanine construction techniques are adequate to ensure the safety of patrons and employees. For example, if construction techniques show that the mezzanine was constructed circa 1970, Building Permits should be available for review. Since they are not, new permits would need to be obtained. On the other hand, if construction techniques show that the mezzanine was constructed circa 1930, the Building Division permit records are not reliable for that time period. Thus, the applicant would need to demonstrate that the construction is sufficient to ensure the safety of patrons and employees given the loads anticipated for the mezzanine area.

Staff is recommending a condition of approval that requires the applicant to file a Permit Adjustment to update the plan set if it is determined by the Building Official that the mezzanine must be removed or modified. Staff has also included a recommended condition of approval that requires the mezzanine to be used solely for the purpose of storage, should it be authorized to remain by the Building Official.

General Plan Conformance

The subject site is designated General Commercial on the City of San José’s 2020 General Plan Land Use/Transportation Diagram and is located in the Willow Glen Neighborhood Business District. The proposed use is a drinking establishment associated with a bona fide public eating establishment within an existing commercial building. The proposed use is consistent with the uses expected within the subject General Plan land use designation. A drinking establishment in conjunction with a bona fide public eating establishment will 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.

Environmental Review

The Director of Planning found the proposed project to be exempt from environmental review under Section 15303 of the California Environmental Quality Act (CEQA) Guidelines, which exempts the conversion of small structures from one use to another. The proposed change in use qualifies for this exemption 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 with no outdoor dining area, and no after-midnight operating hours, are compatible with both existing commercial and residential uses in the surrounding area. Staff is recommending approval of the proposal, with the condition that the existing recessed entryway be maintained.

PUBLIC OUTREACH

Staff followed the provisions of City Council Policy 6-30: Public Outreach for the proposed project. A sign was posted on-site to notify the public of the proposed development, and notices of the public hearing for this project were sent to all property owners and tenants within 500 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.

Project Manager: Ben Corrales **Approved by:**  **Date:** 07/29/11

<p>Owner/Applicant: LINCOLN AVENUE II LLC 1122 Willow Street, Suite # 201 San Jose, CA 95125</p> <p>Mark De Mattei De Mattei Construction 1794 The Alameda San Jose, CA 95126</p>	<p>Attachments: Resolution Police Memo Letter from Historic Consultant CEQA Exemption Plans</p>
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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 allow a drinking establishment associated with a bona fide public eating establishment with no after-midnight use, in the CP Commercial Pedestrian Zoning District on a 0.04 gross-acre site located on the south side of Willow Street, approximately 100 feet west of Lincoln Avenue (1110 Willow Street).

FILE NO. CP11-039

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 13, 2011, an application (File No. **CP11-039**) was filed for a Conditional Use Permit, for the purposes of allowing a drinking establishment in conjunction with a bona fide public eating establishment, with no after-midnight use, 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 on an approximately 0.04 gross-acre site in the Willow Glen Neighborhood Business District on the south side of Willow Street, approximately 100 feet west of Lincoln Avenue (1110 Willow Street) 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, “Willow Street Restaurant, 1110 Willow Street, San Jose, CA 95125” dated July 18, 2011. 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, De Mattei Construction, is requesting a Conditional Use Permit to allow a drinking establishment associated with a bona fide public eating establishment in the CP Commercial Pedestrian Zoning District on a 0.04 gross-acre site located on the south side of Willow Street, approximately 100 feet west of Lincoln Avenue (1110 Willow Street) San José.
2. Per Table 20-90 of the San Jose Municipal Code, a Conditional Use Permit is required for drinking establishments.
3. Per Section 20.40.500 of the San Jose Municipal Code, no establishment other than office uses, in any Commercial District shall be open between the hours of 12 midnight and 6:00 a.m. except pursuant to and in compliance with a Conditional Use Permit.
4. The proposed drinking establishment in conjunction with a bona fide public eating establishment is within an approximately 1,800 square-foot building. The subject use is proposed as the only tenant in the building.
5. The project does not include the off-sale of alcohol.
6. There are not outdoor uses included in this project.
7. The project does not include after-midnight uses.
8. The subject use is within a commercial building fronting on Willow Street, and the building covers approximately 100 percent of the site area.
9. The building design is such that ingress/egress and proposed canopies will encroach onto adjacent properties. Easements are required as a condition of approval.
10. The subject site is primarily surrounded by other commercial uses. The nearest residential uses are located 160 feet northwesterly from the subject site on the opposite side of Willow Street.
11. The existing and proposed use of the commercial building is consistent with the San José General Plan Land Use/Transportation Diagram designation of General Commercial in that a public eating establishment with an associated drinking establishment are intended uses under the designation.
12. The City allows drinking establishments only through the discretionary Conditional Use Permit process to ensure that the use conforms to City requirements.

13. The proposed project is subject to City Council Policy 6-23: Evaluation of Nightclubs and Bars.
14. The City sent public hearing notices for this project to all property owners and occupants within 500 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.
15. 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 site is designated as General Commercial on the Land Use/Transportation Diagram and is located in the Willow Glen Neighborhood Business District (NBD). The proposed use is a drinking establishment associated with a bona fide public eating establishment within an existing commercial building. The proposed use is consistent with the uses expected within the subject General Plan land use designation. A drinking establishment in conjunction with a bona fide public eating establishment will promote commercial activity within the City of San José.
2. 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.
3. The proposed drinking establishment in conjunction with a bona fide public eating establishment, as conditioned, will not negatively impact surrounding uses.
4. The proposed project complies with all applicable provisions of the Zoning Ordinance, in that it is compatible with surrounding existing uses and meet parking and noise requirements.
5. The proposed project, as conditioned, conforms to City Council Policy 6-23: Evaluation of Nightclubs and Bars, in that the site is adjacent to other commercial uses and buildings.
6. The proposed project is in compliance with the California Environmental Quality Act.

Finally, based upon the above-stated facts and 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 Title 20 of the San Jose Municipal Code, 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 with no after-midnight use and no off-sale of alcohol.
4. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval, may be imposed by the approval authority.
5. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
6. **Conformance with Plans.** The use of this property shall conform to approved plans entitled, "Willow Street Restaurant, San Jose, CA 95125" dated July 18, 2011 on file with the Department of Planning, Building and Code Enforcement, with the following exceptions outlined in Condition #7 regarding a required Permit Adjustment.
7. **Permit Adjustment Required.** Prior to issuance of a Building Permit, the applicant shall receive approval of a Permit Adjustment, subject to the discretion of the Director of Planning, Building, and Code Enforcement, that addresses the following issues:
 - a. The existing front recessed entryway shall be retained, and the new entry door shown on the plans at the westerly side of the Willow Street frontage shall be removed.
 - b. The existing trash enclosures on the adjacent parking lot property shall be equipped with a permanent cover that will prevent rainwater from entering into the trash and recycling bins. The covers shall be constructed of durable materials such as metal or heavy wood.
 - c. Should the mezzanine area require modification in accordance with Condition #11 in this permit (Building Clearance for Issuing Permits), the applicant may incorporate the mezzanine changes into the same Permit Adjustment required for items 7.a and 7.b above, should the changes qualify for such an Adjustment.

8. **Colors and Materials.** All building colors and materials are to be specified on the approved plan set, with the one exception noted in condition #6 above.
9. **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.
10. **Required Easements.** Prior to occupancy of the structure by the restaurant or associated drinking establishment, the owner shall provide a copy of all recorded easements required by and to the satisfaction of the City of San Jose Planning Division, Building Division, and Fire Department. These easements include but are not limited to covenants of easements on adjacent properties for the purpose of providing pedestrian ingress/egress and encroachment of related doors, lighting, and awnings onto said adjacent properties
11. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. The owner will provide evidence of the mezzanine construction type to the Building Official. Based on that evidence, the Building Official will estimate the year that the mezzanine was constructed. Depending on the estimated year of construction, the Building Official will either 1) require that permits be obtained for the construction in accordance with current applicable codes or 2) require that the applicant demonstrate that the mezzanine construction techniques are adequate to ensure the safety of patrons and employees.
 - b. If it is determined that the mezzanine must be permanently removed, or if the mezzanine square footage is modified, the applicant shall obtain approval from the Director of Planning, Building, and Code Enforcement for such modifications through a Permit Adjustment, Building permit, or other Planning or Building permits as deemed necessary by the San Jose Municipal Code or Director of Planning.
12. **Mezzanine Area Limitations.** Should the Building Official determine that the mezzanine area can remain, that area shall be limited to storage only. No restaurant seating, bar seating, or other use of the area is allowed as part of this permit. Should the area be modified to meet height clearances and other Building Code requirements for occupied space, the area cannot be used as anything other than storage without the approval of a Permit Adjustment or other permit deemed necessary by the San Jose Municipal Code or Director of Planning. The Permit Adjustment must complete a parking analysis to determine if additional parking is required in accordance with Section 20.90.210 of the San Jose Municipal Code, as amended.
13. **Hours of Operation.** The subject eating and drinking establishment are allowed to operate between the hours of 6:00 a.m. to midnight, seven (7) days a week
14. **Outdoor Dining Area.** No outdoor dining area is allowed, nor included in this Conditional Use Permit.
15. **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.
16. **No off-sale of Alcohol.** This permit does not allow the off-sale of alcoholic beverages.
17. **Food Service.** Food service shall be available for the patrons during all operating hours.

18. **Nuisance.** The use shall be operated in a manner that does not create a public or private nuisance and that does not adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area or that shall not be detrimental to public health, safety or general welfare. Any such nuisance must be abated immediately upon notice by the City.
19. **Noise.** Any noise generated from the use between the hours of 10:00 p.m. and 8:00 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.
20. **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.
21. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings, fences, and wall surfaces within 48 hours of defacement.
22. **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.
23. **Sewage Fees.** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the applicant shall pay all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits that are due and payable.
24. **Anti Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris.
25. **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. Bottles disposal shall not 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 8:00 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, nor create a nuisance for adjoining businesses.
20. **Lighting.** This permit allows no new exterior lighting except as designated on the plans entitled "Willow Street Restaurant, San Jose, CA 95125" dated July 18, 2011, and shall meet the standards described in the Outdoor Lighting Policy number 4-3, and shall be subject to approval by the Director of Planning, Building, and Code Enforcement.
21. **Changes to the Structure.** Any exterior changes shall require approval by the Director of Planning, Building, and Code Enforcement.

22. **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.
23. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Saturday construction is allowed between the hours of 9:00 a.m. and 5:00 p.m. for permitted work that is inaudible to existing residential uses. Exterior generators, water pumps, compressors and idling trucks are not permitted on Saturdays.
24. **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.
25. **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.
26. **Delivery Hours.** No vehicular deliveries for the subject building are permitted between 12:00 a.m. and 7:00 a.m.
27. **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, and vandalism.
 - a. During active business hours there shall be at least one 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 if necessary to control noise, nuisance, or other conditions of approval or San Jose Municipal Code criteria.
27. **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.
28. **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 **27th day of July 2011**, 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: Ben Corrales
 Planning Department

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

SUBJECT: CP11-039
 The Table

DATE: July 18, 2011

Approved

Date

I have received your request for input regarding The Table, located at 1110 Willow St. ,San Jose, Ca. 95125. The Table is seeking a Conditional Use Permit to allow a drinking establishment associated to a public eating establishment.

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 it's 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 Table is proposed to be located in San Jose Police Beat S3. 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
S3 (2010)	251	129	380	No
City Average	314	258	634	

Department of Alcohol Beverage Control (ABC) records indicate that 1110 Willow Street is in census tract 5023. Pursuant to B&P Section 23958.4 (a)(2), the ratio of on-sale retail licenses population in census tract 5023 **does not** (at this time) exceed the ratio of on-sale retail licenses retail licenses to population in the county in which the applicant premises are located. If this license is approved then it would be exceeded.

Authorized and Current ABC Licenses in Census Tract 5023

Census Tract	Authorized ABC Licenses as of January 2008		Current ABC Licenses as of May 2009		Unduly Concentrated	
	On - Sale	Off - Sale	On - Sale	Off - Sale	On - Sale	Off - Sale
5023	8	4	8/0	4/1	No	Yes

The San Jose Police Department is **neutral** to the issuance of a Conditional Use Permit for a drinking establishment in association to a restaurant at this location. Please feel free to contact me at 277-4322 if you have any questions.

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

**URBAN PROGRAMMERS
HISTORIC PRESERVATION AND URBAN
REVITALIZATION CONSULTANT
10710 RIDGEVIEW AVENUE
SAN JOSE, CA 95127
TELEPHONE 408-254-7171
FAX 408-254-0969**

July 12, 2011

Michael Mulcahy
1122 Willow St., Suite 201
San Jose, CA 95125
<Michael@SDSNEXTGEN.com>

Re: 1110 Willow Street, San Jose

Dear Mr. Mulcahy,

At your request we have investigated the subject property to determine the historical significance of the architecture and the potential for the building as a San Jose City Landmark. This letter is to summarize the findings.

The first step in the investigation was a site visit and recording with photographs. The site visit revealed that the building has been significantly remodeled. Permits issued by the City of San Jose Planning Department in 2001 show plans to "create" a false façade and to replace by removing the show case windows and front door. (AD01-05-587 approved 5-17-01). Photographs of the period prior to the remodeling were not found, however the plans show a very plain façade with a recessed entry. The building is remembered as having horizontal wood siding and being a small bicycle store for over 40 years. The building as it exists today is an exaggerated historicist rendition that is created with architectural foam elements stuck onto the building to give it a grandeur that was never its history. Added are a false parapet, a medallion and decorative bands of relief on the façade, pseudo piers on the ends of the building and textured stucco sheathing. Structural elements inserted in the front that are now covered with stucco giving a heavy appearance to the window systems that breaks the display area and is not original. Treatments of this type- when not based upon factual historical research - should be discouraged as it provides the public with an inaccurate picture of architectural history. The remodeling of this simple retail building completely replaced the historic elements of this small wood frame building and replaced the store-front display windows with a system of contemporary metal frame, energy efficient glazing and has added structural corners covered with stucco which significantly alters the original feeling of the spaces. Although the plans in 2002, were not complete in providing the existing building prior to the remodeling, it is likely that elements of the original building that were removed include transoms above the display windows, horizontal board siding, glass panel door and a squared parapet. Even the dimensions of the window areas appear to be different from the original.

You specifically asked about the recessed entry and its historic value in the case of this building. Historically, the recessed entry with slanted windows on each side was created

to provide a greater area for merchandise to be displayed, giving rise to the name "display windows." This was effective marketing in an era where merchants did not have access to media advertising that is available today and potential customers walked in front of the stores. In some cases it was also a bit of shelter when entering the store- but the recess was mainly to provide additional display area to lure in a customer. The concept was expanded in some buildings to create a separate glass-sided kiosk within a recess that extended the width of the building, and this provided the maximum area for the display of merchandise. These buildings existed along the well trafficked streets and those served by street cars or buses- places where people would gather with time to survey the goods in the windows. In San Jose these buildings were primarily along S. First Street and Santa Clara Street, E. Santa Clara Street and onto The Alameda, the retail cores of San Jose. Suburban areas also developed commercial streets and on the major streets there is some retail architecture.

The recessed entry at 1100 Willow may relate to the former building foot print but it has been altered to the extent that it is not a historic feature independent of the other alterations that have contributed to over-all loss of architectural integrity.

In summary, the 2002, remodeling of the modest building, removed the integrity of this building by severely altering or removing the historic design, materials, feeling, association, and methods of construction that were the c. 1920 retail building. Integrity is essential to identifying historic resources; false (fake) historicism is discouraged by the National Trust for Historic Preservation, the National Park Service and locally, Preservation Action and History San Jose. While such remodeling may serve a purpose to "up-grade or clean up" the perception of an area or "improve" a modest or plain building it is contrary to the philosophy of Historic Preservation and such work removes potential resources from further consideration as historic properties.

It is not beneficial for me to continue with additional research into the users of this building or their importance to the heritage of San Jose. It would be of minor value; because the building is too extensively remodeled to be considered a potential historic resource.

Sincerely,

Bonnie Bamburg

BONNIE L. BAMBURG
Consultant



The photograph above shows the extent of alteration and remodeling to the simple retain building. Virtually all of the original design and materials were removed from the front façade.

Photograph: July 12, 2011

STATEMENT OF EXEMPTION

FILE NO. CP11-039

LOCATION OF PROPERTY south side of Willow Street, approximately 100 feet west of Lincoln Avenue (1110 WILLOW ST)

PROJECT DESCRIPTION Conditional Use Permit to allow a drinking establishment associated with a public eating establishment with no after-midnight use, in the CP Commercial Pedestrian Zoning District on a 0.04 gross-acre site

ASSESSOR'S PARCEL NUMBER 42907024

CERTIFICATION

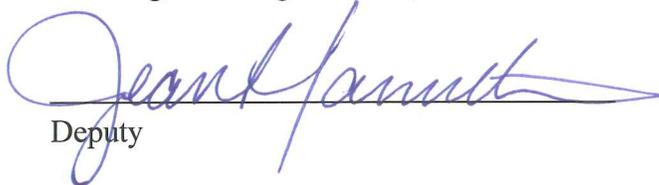
Under the provisions of Section 15303 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

15303 (c) EXISTING FACILITIES

Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The numbers of structures described in this section are the maximum allowable on any legal parcel. Examples of this exemption include, but are not limited to:

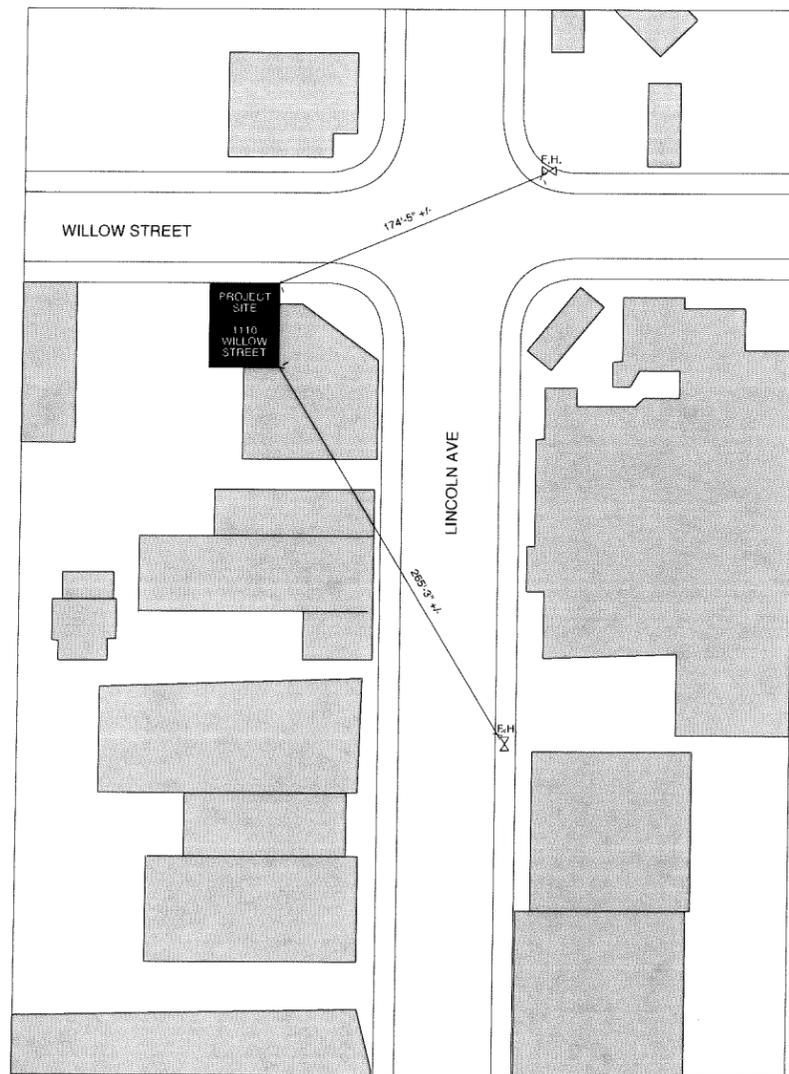
- (c) A store, motel, office, restaurant or similar structure not involving the use of significant amounts of hazardous substances, and not exceeding 2500 square feet in floor area. In urbanized areas, the exemption also applies to up to four such commercial buildings not exceeding 10,000 square feet in floor area on sites zoned for such use if not involving the use of significant amounts of hazardous substances where all necessary public services and facilities are available and the surrounding area is not environmentally sensitive.

Joseph Horwedel, Director
Planning, Building and Code Enforcement

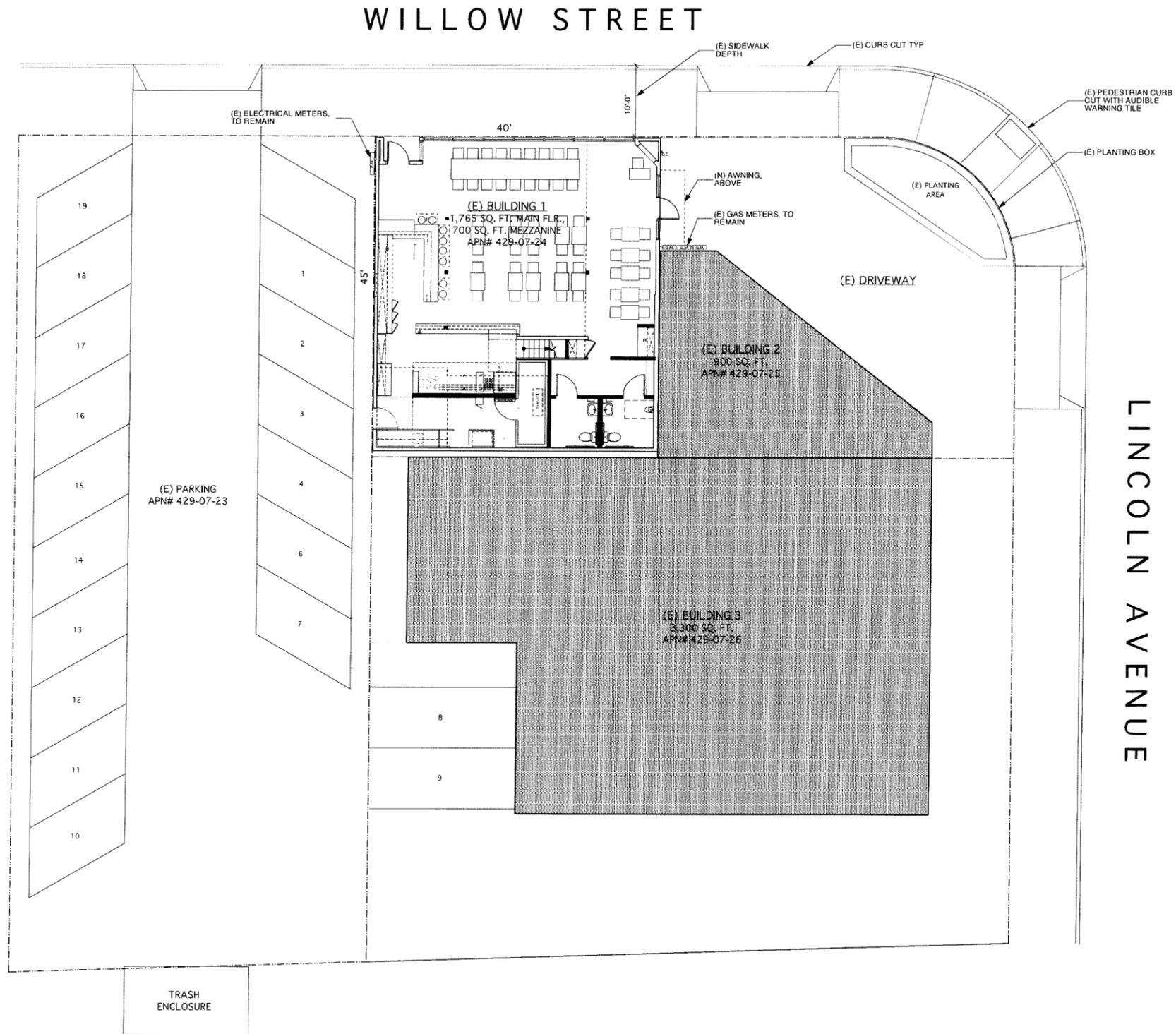

Deputy

Date July 12, 2011

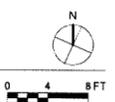
Project Manager: Ben Corrales



2 VICINITY PLAN
G0.1 Scale: 1" = 50'



1 SITE PLAN
G0.1 Scale: 1/8" = 1'-0"



MARK ENGLISH architects
250 Columbus Avenue Suite 200
San Francisco, California
94133
T 415.391.0186
E mark@markenglisharchitects.com
W www.markenglisharchitects.com

WILLOW STREET RESTAURANT
1110 WILLOW STREET
SAN JOSE CA 95125
PROJECT NUMBER: T-03



LINCOLN AVENUE

SITE PLAN

CLIENT APPROVAL SIGNATURE: _____

REVISIONS:

NO.	DATE	DESCRIPTION
07.19.2011	PLANNING	

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SCALE:	1/4" = 1'-0"

G0.1

WILLOW STREET RESTAURANT

1110 WILLOW STREET
SAN JOSE CA 95125

PROJECT NUMBER: T-03



EXISTING FLOOR PLANS

CLIENT APPROVAL SIGNATURE:

REVISIONS

NO.	DATE	DESCRIPTION
07.19.2011	PLANNING	

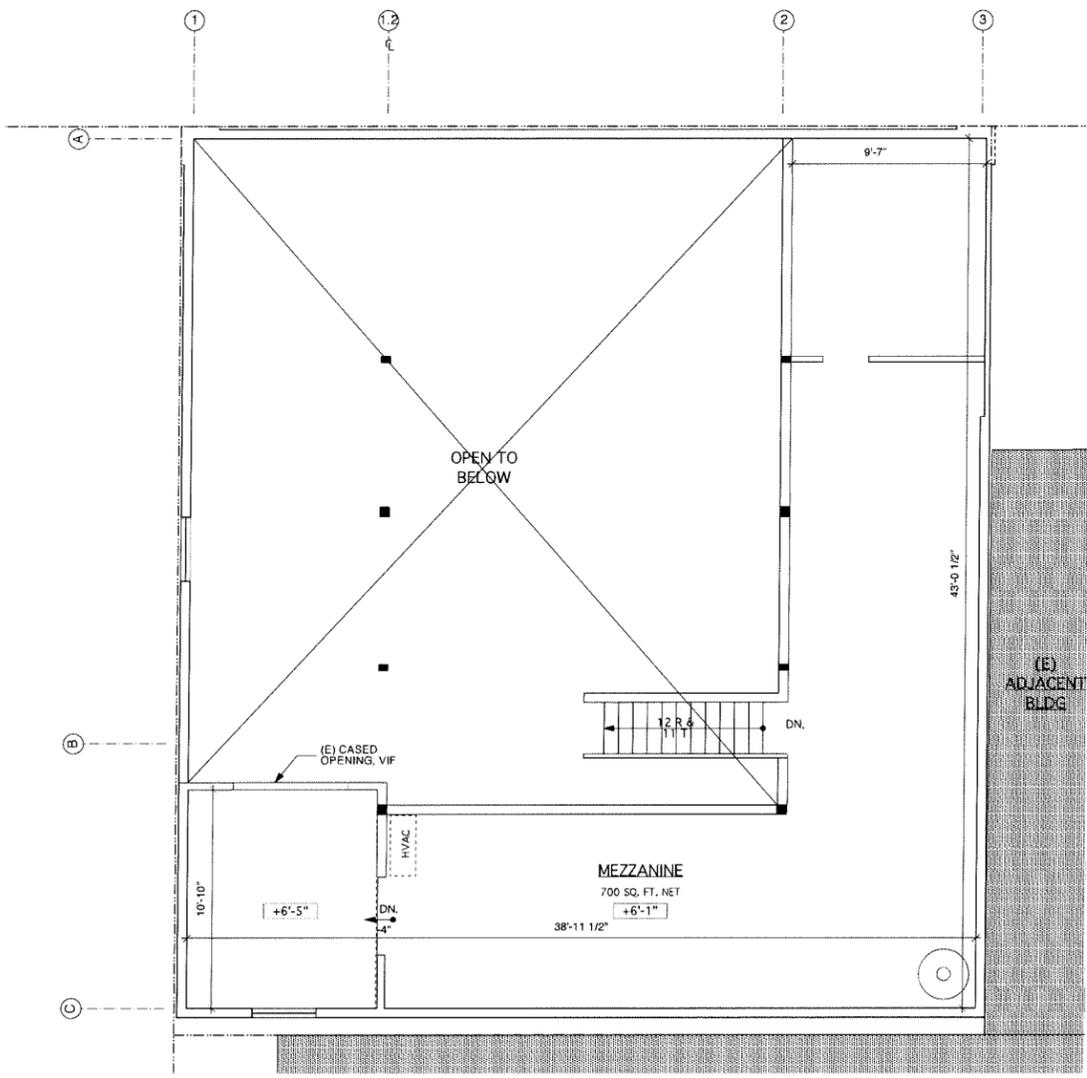
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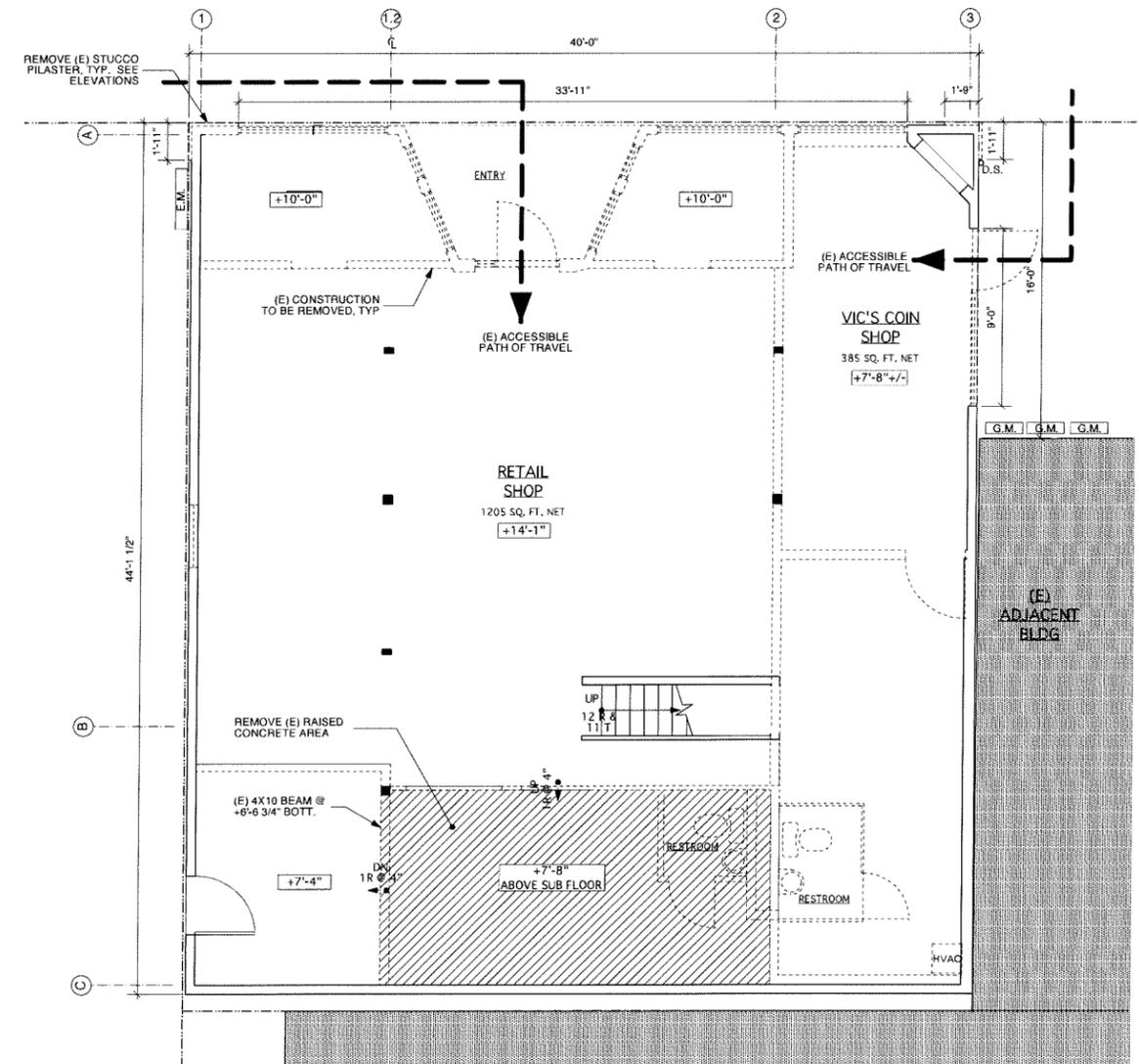
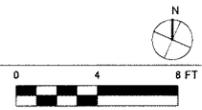
A1.1

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2 EXISTING MEZZANINE FLOOR PLAN
A1.1 Scale: 1/4" = 1'-0"



1 EXISTING GROUND FLOOR PLAN
A1.1 Scale: 1/4" = 1'-0"



WILLOW STREET RESTAURANT

1110 WILLOW STREET
SAN JOSE CA 95125

PROJECT NUMBER: T-03



Mark English

EXISTING ELEVATIONS

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1	07.19.2011	PLANNING

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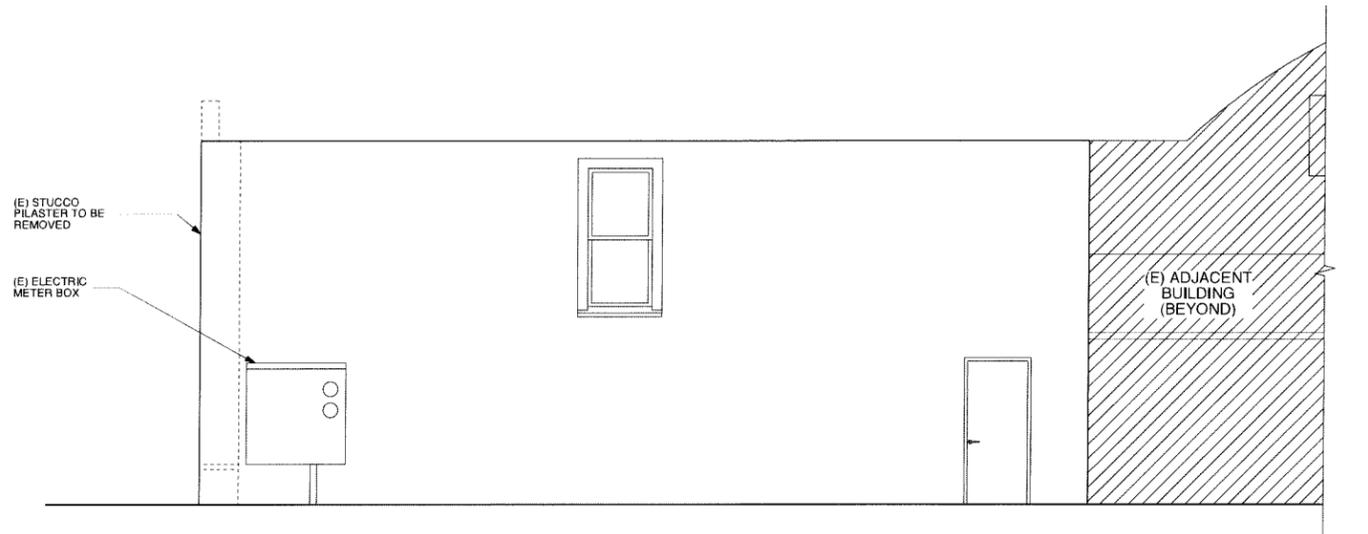
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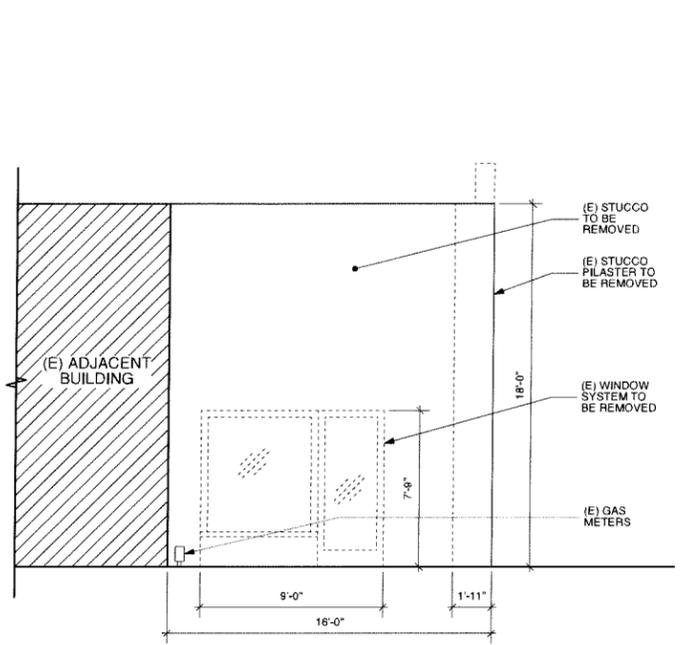
A1.2

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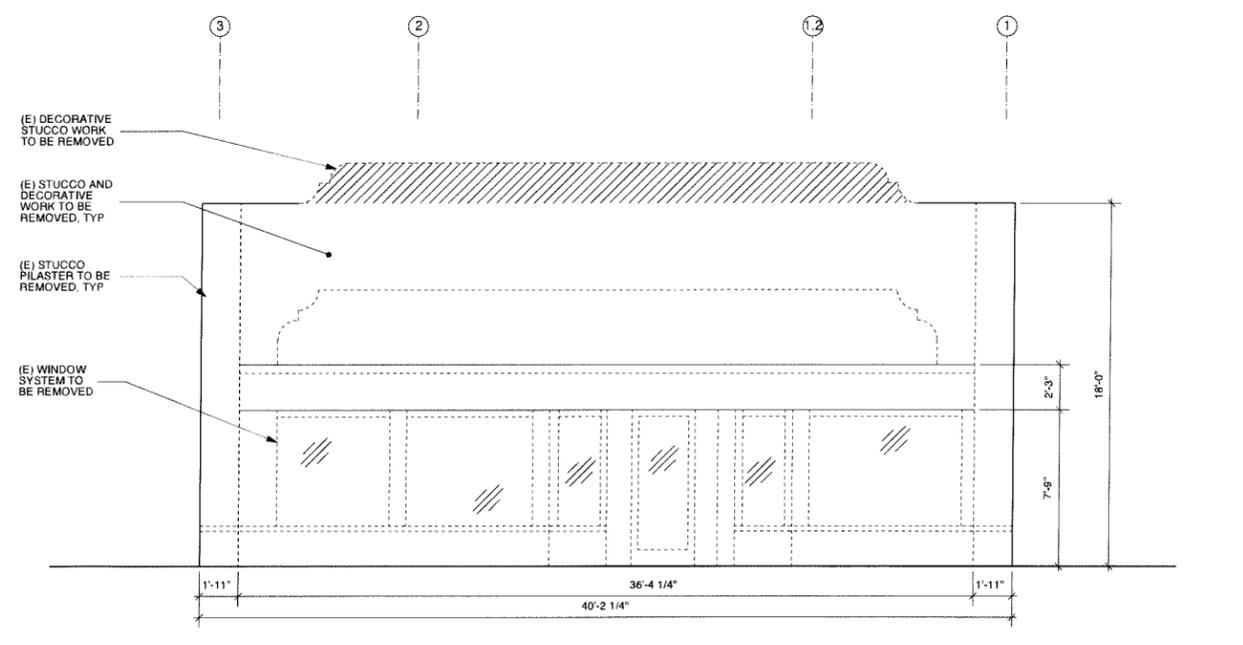
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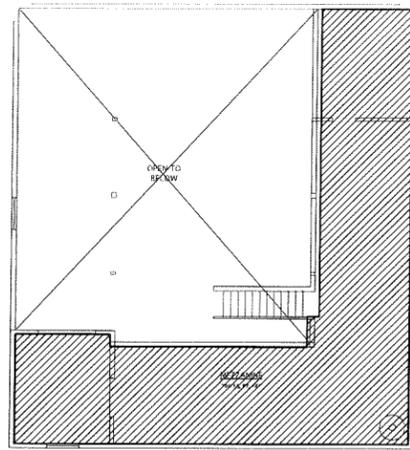
3 EXISTING WEST ELEVATION
Scale: 1/4" = 1'-0"



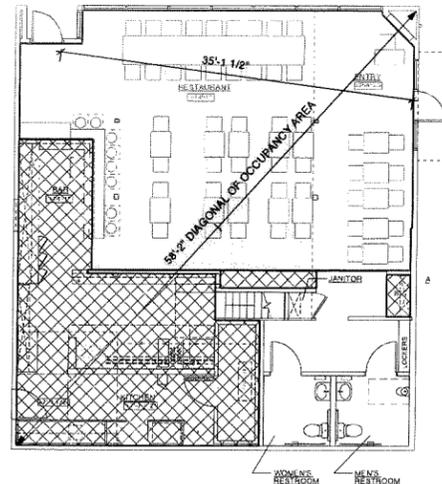
2 EXISTING EAST ELEVATION
Scale: 1/4" = 1'-0"



1 EXISTING NORTH (STREET) ELEVATION
Scale: 1/4" = 1'-0"



2 OCCUPANCY CALCULATION
A2.1 NTS



OCCUPANCY CALCULATION

AREA	SQUARE FEET	OCCUPANCY FACTOR *	OCCUPANTS
RESTAURANT	879.5	15 NET	59
BAR & KITCHEN	513.1	200 GROSS	3
MEZZANINE STORAGE	700	300 GROSS	3
MAXIMUM OCCUPANCY			65

* PER CBC TABLE 1004.1.1

EGRESS SEPARATION CALCULATION

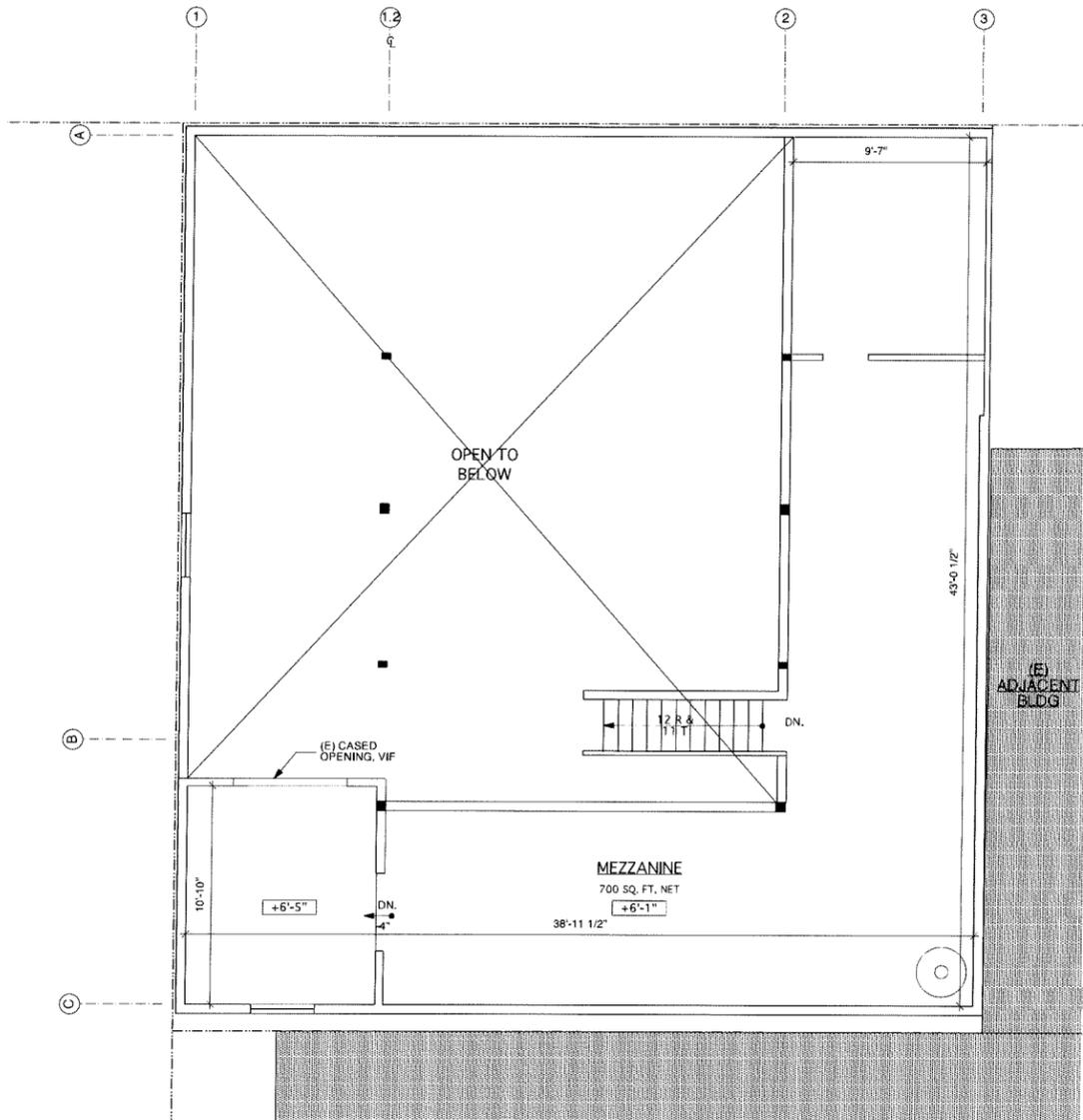
TOTAL DIAGONAL OF OCCUPIED AREA	58'-2"
1/2 OF DIAGONAL (REQUIRED SEPARATION)	29'-1"
DISTANCE BETWEEN PRIMARY AND 2ND MEANS OF EGRESS (PROVIDED SEPARATION)	35'-1 1/2"

NOTES:

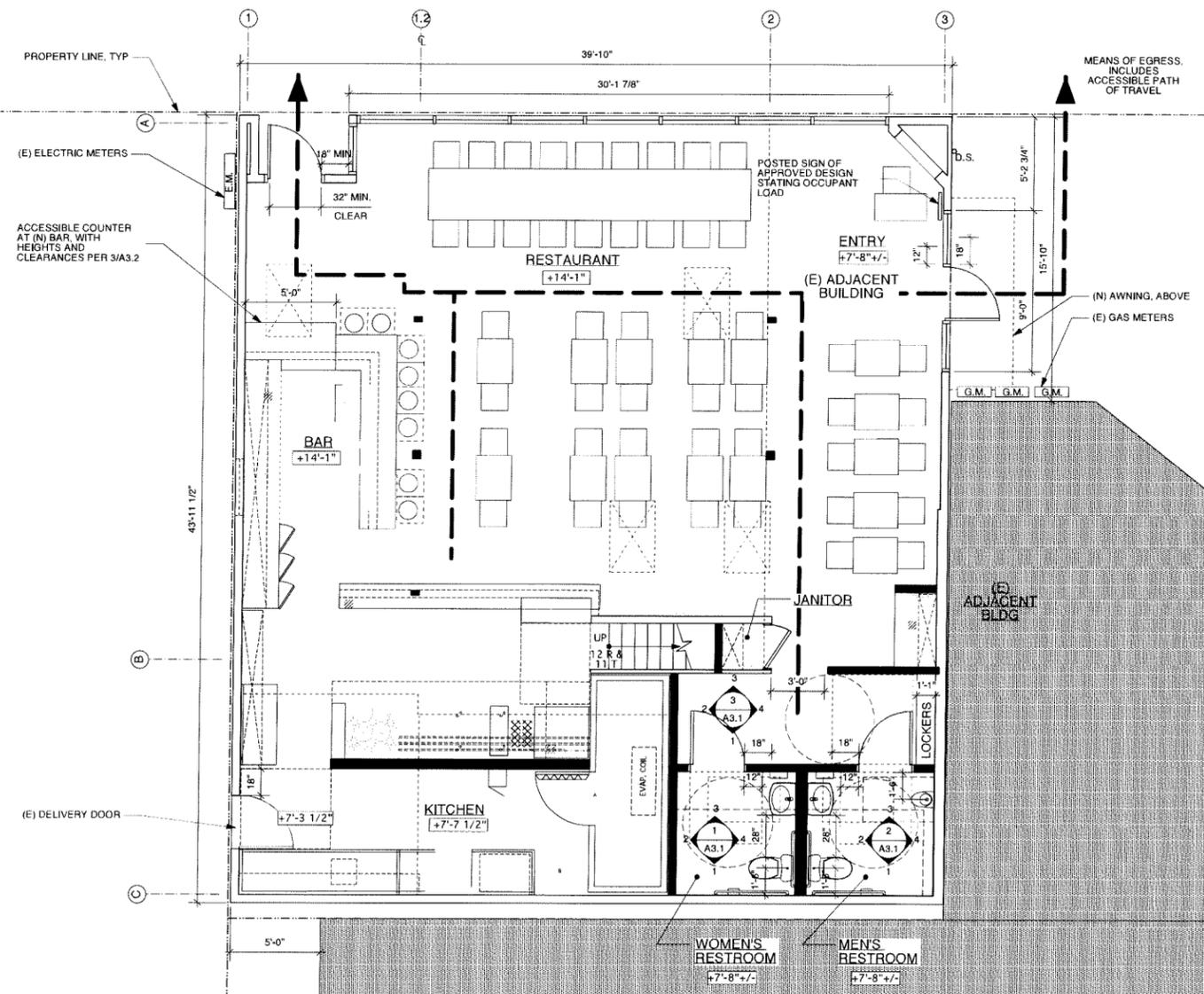
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LEGEND

- ACCESSIBLE SEATING AREA 30" X 48" MIN. TYP
- EGRESS ROUTE, INCLUDES ACCESSIBLE PATH OF TRAVEL, 3'-0" MIN. WIDTH, TYP



2 PROPOSED MEZZANINE FLOOR PLAN
A2.1 Scale: 1/4" = 1'-0"



1 PROPOSED GROUND FLOOR PLAN
A2.1 Scale: 1/4" = 1'-0"

MARK ENGLISH architects
WILLOW STREET RESTAURANT

250 Columbus Avenue, Suite 200
San Francisco, California
94133

T 415.391.0168
E mark@markenglisharchitects.com
W www.markenglisharchitects.com

1110 WILLOW STREET
SAN JOSE CA 95125

PROJECT NUMBER: T-03



Mark English

PROPOSED FLOOR PLANS

CLIENT APPROVAL SIGNATURE: _____

REVISIONS:

NO.	DATE	DESCRIPTION
07.19.2011	PLANNING	

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A2.1

WILLOW STREET RESTAURANT

1110 WILLOW STREET
SAN JOSE CA 95125

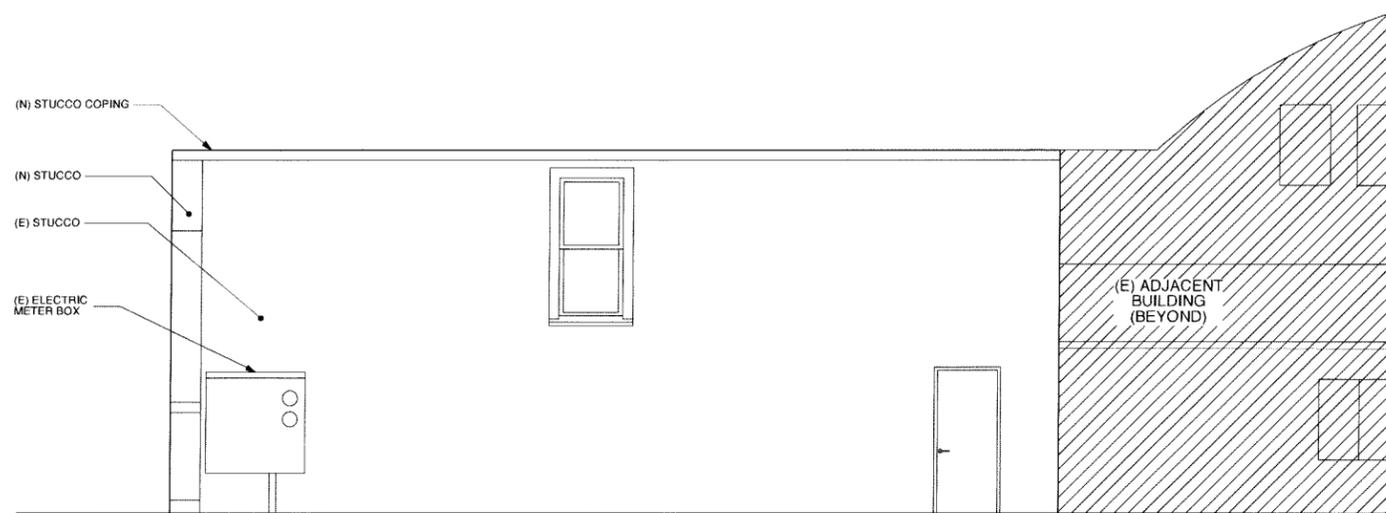
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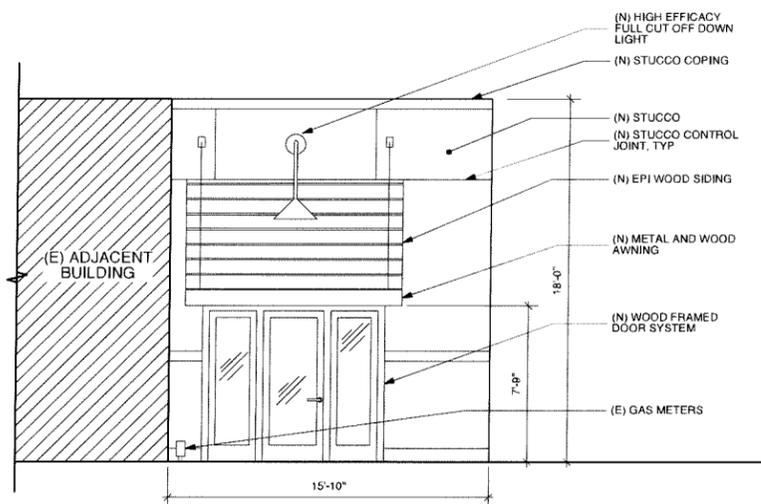
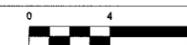
Mark English

NOTES:

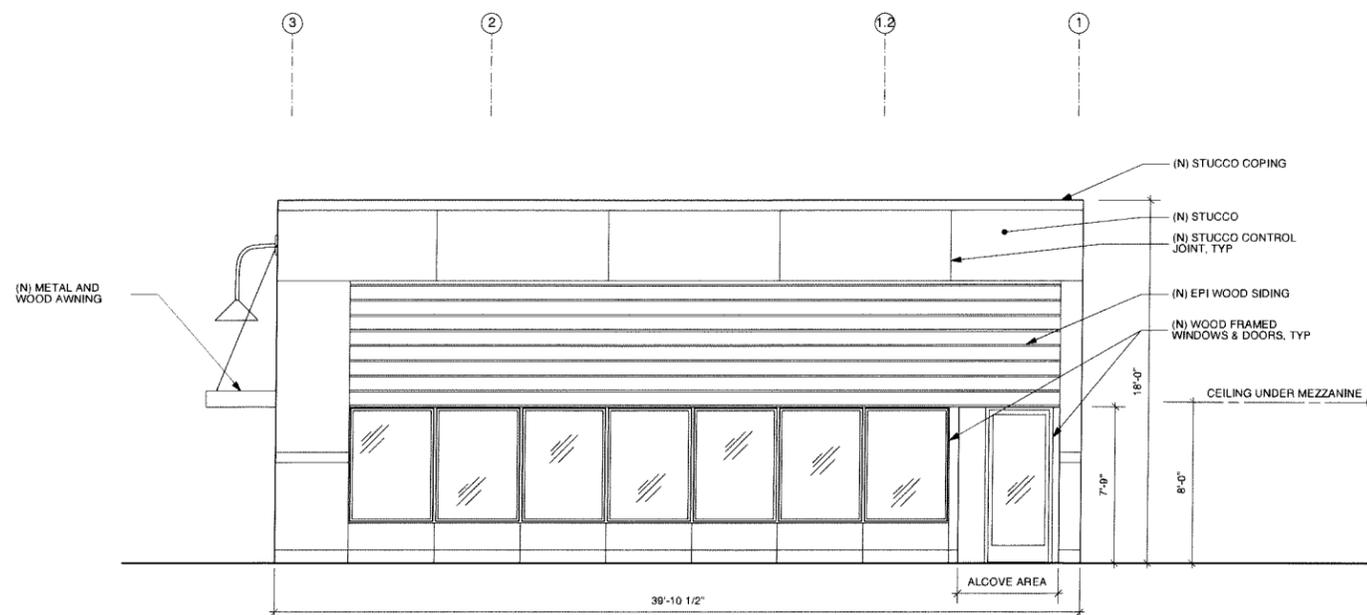
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1 PROPOSED WEST ELEVATION
Scale: 1/4" = 1'-0"



2 PROPOSED EAST ELEVATION
Scale: 1/4" = 1'-0"



1 PROPOSED NORTH (STREET) ELEVATION
Scale: 1/4" = 1'-0"



PROPOSED EXTERIOR ELEVATIONS

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A2.2