

Location:	278 4th Street
Assessor's Parcel Number:	001 0153009
Proposal:	Appeal of a revision to previously approved Conditional Use Permit to establish an entertainment venue and convert an existing work/live unit within the building into a regular residential dwelling unit. The revision would replace condition #37 of the permit, which states that, prior to commencement of Group Assembly Commercial Activity, "The second means of egress, as indicated on project plans, shall be constructed pursuant to permits" with a condition to either maintain the existing easement for secondary egress through the rear of the building, or construct an alternative second means of egress that has been approved by the Bureaus of Planning and Building.
Applicant:	Chloe Moir (650)283-9012
Owner:	Dan Dunkle
Case File Number:	PLN15132-R01
Planning Permits Required:	Revision to Conditional Use Permit previously approved on September 25, 2015. The prior approval was to establish a Group Assembly Commercial Activity in the C-45 Commercial Zone.
General Plan:	Estuary Policy Plan Waterfront Warehouse District
Zoning:	C-45 Community Shopping Commercial Zone and S-4 Design Review Combining Zone
Environmental Determination:	The proposed operation and the conversion of the work/live unit to a dwelling unit is exempt from the California Environmental Quality Act (CEQA) according to the following sections of the State of California's CEQA Guidelines: 15303 – New Construction or Conversion of Small Structures; and 15183 – Projects Consistent with a Community Plan, General Plan, or Zoning.
Historic Status:	Potentially Designated Historic Property; Within and contributor to an "Area of Primary Importance" (the Waterfront Warehouse Historic District); Office of Cultural Heritage Survey rating of C1+
City Council District:	3
Action to be Taken:	Pending
Finality of Decision:	Appealable to Planning Commission
For Further Information:	Contact Case Planner Case Neil Gray at (510) 238-3878 or by email at ngray@oaklandca.gov

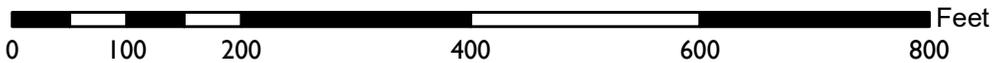
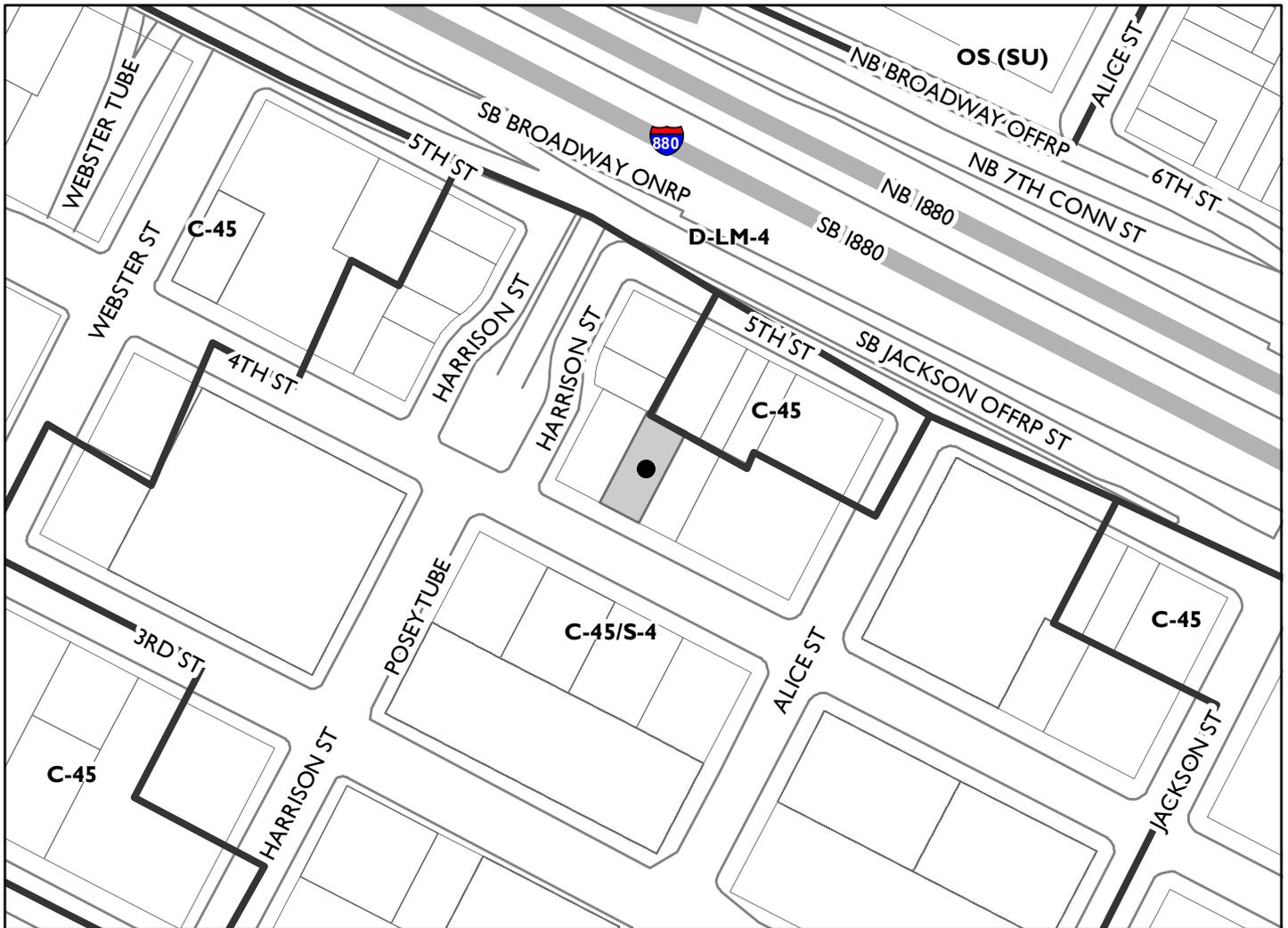
SUMMARY

This item is an appeal of a revision to a condition applied to a Conditional Use Permit previously approved on September 25, 2015 for an entertainment and performance venue (see **Attachment A** for the appeal). The original condition required the second means of egress mandated by the Building Code be out of a newly installed front door onto 4th Street. The revision allows the applicant to seek approval of an alternative secondary means of egress from the Bureau of Building.

The revision to the condition was approved because egress sufficiency is a Building Code standard and, therefore, within the purview of the Bureau of Building, not the Bureau of Planning. The revised condition of approval assures that the Building Code's health and safety requirements regarding egress are met.

Therefore, staff recommends denial of the appeal.

CITY OF OAKLAND PLANNING COMMISSION



Case File: PLN15132-R01
Applicant: Chloe Moir
Address: 278 4th Street
Zone: C-45/S-4

BACKGROUND

On January 29, 2010, the Bureau of Building approved a conversion of an existing warehouse to one Joint Living and Working Quarter (work/live unit) at 278 4th Street. As part of this approval, the applicant was required to provide a second means of egress because the work/live unit contained a large open area that could be used for assembly activities. This second means of egress was provided by purchasing a five-foot wide easement from the rear of 278 4th Street through 277 5th Street to the 5th Street right-of-way. As a third-party beneficiary to the easement agreement, the easement cannot be extinguished without agreement from the City.

On January 7, 2011 and August 1, 2012, Dan Dunkle received Zoning Clearances to operate an art gallery (Radiance) as part of the work/live unit at 278 4th Street. After receiving complaints that Radiance was operating large events that went beyond the scope of the Zoning approvals, Dan Dunkle applied for a Conditional Use Permit (CUP) and Regular Design Review to operate Group Assembly Commercial Activities for live music and entertainment events, and to convert the work/live unit to a traditional residential unit. The CUP and Regular Design Review permits were approved administratively under PLN15132 on September 25, 2015 (see **Attachment B** for the decision letter), with various conditions, including the following:

37. Second Means of Egress Exiting to 4th Street

Prior to commencement of Group Assembly Activity.

The second means of egress, as indicated on project plans, shall be constructed pursuant to permits.

The second means of egress indicated in the project plans is a corridor leading to a new front door facing 4th Street. This condition was included in the approval at the urging of Steven Stephanos, the owner of 277 5th Street, because he wanted the existing easement across his property to be extinguished.

The applicant received his Building Permit for a tenant improvement to accommodate a residential unit on October 16, 2017 (B1615053). After a complaint from Mr. Stephanos that the second means of egress to 4th Street had not been established, a hold was placed on the Building Permit. Citing financial constraints, the applicant filed for a revision to PLN15132 to remove or alter the condition to allow the existing rear easement to the 5th Street right-of-way to be the second means of egress. This revision (PLN15132-R01), approved on September 24, 2021, changed the above condition of approval to the following:

37. Second means of Egress Exiting to 4th Street

Ongoing.

The property owner shall either maintain the existing “Grant of Easement and Agreement” dated August 10, 2010, for secondary egress through the rear of the building or construct an alternative second means of egress that has been approved by the Bureaus of Planning and Building. The second means of egress through the rear of the building shall require approval through the Alternative Means and Methods Request process administered by the Bureau of Building.

Changing this condition effectively placed the decision of how the egress requirement is satisfied on the Bureau of Building. Staff’s reasoning for the change is contained in the “Key Issues and Impacts” Section of this report.

The applicant submitted an Alternative Means and Methods Request (AMMR) to the Bureau of Building on October 16, 2021, to allow the rear easement to be used as a second egress. The Bureau of Building approved this request on October 25, 2021, which included an approval by the Fire Department. The approved AMMR is contained in **Attachment C**.

Mr. Stephanos appealed staff's decision to revise the project condition on November 3, 2021 (APL21022). The appeal is the subject of this report.

This item was originally scheduled for the February 2, 2022, and February 15, 2023, meetings but was removed from those agendas so that the applicant and the appellant could negotiate alternative solutions. Unfortunately, these discussions did not produce a mutually acceptable agreement.

PROJECT DESCRIPTION

The CUP for the Group Assembly Commercial Activity approved under PLN15132 includes live performances, cultural events, parties, and a gallery within an industrial building at 278 4th Street (performance space). The activity was approved with project specific conditions, such as:

- The second egress requirement described in the "Background" section, above.
- Prohibiting outdoor Group Assembly Activities;
- Prohibiting outdoor amplified music;
- Limiting operating hours to between 8:00am and 11:00pm, Sunday through Thursday, and between 8:00am and 12:00am, Fridays and Saturdays; and
- Installing a sign advising patrons to respect neighbors by quietly leaving the establishment.

The assembly activities are also required to meet the noise and other performance standards contained in Chapter 17.120 of the Planning Code.

The appeal that is the subject of this report relates only to the revision of the second egress requirement described in the "Background" section, not the general appropriateness of locating an entertainment venue in the neighborhood or requirements in the Planning Code.

PROPERTY DESCRIPTION

The flat and rectangular property is 43 feet wide and 100 feet deep. The existing brick industrial building covers the entire lot and is a contributor to the Waterfront Warehouse historic district. As mentioned previously, the access easement is adjacent to the rear of the property and goes through 277 5th Street to the 5th Street right-of-way. The neighborhood contains a mix of historic industrial buildings, most of which have been converted to apartments, brew pubs, restaurants, and clubs, and new residential developments with industrial-style facades.

GENERAL PLAN ANALYSIS

For background, this section provides a General Plan analysis of the performance space and new apartment unit. However, the subject of the appeal is the use of an existing rear easement for a second egress, which is a Building Code issue, and not discussed in the General Plan.

The subject site is in the Waterfront Warehouse District of the Estuary Policy Plan. The intent of the Waterfront Warehouse District is to encourage the preservation and adaptive reuse of existing buildings and new infill development that preserve and respect the area's unique character and historic flavor, within a context of commercial and light industrial/manufacturing uses. The desired character is that future development in this area should be primarily Joint Living and Working Quarters (JLWQs), residential, light industrial, warehousing, wholesale, office artist/artisans studios, neighborhood small scale restaurants with manufacturing, assembly, and other uses that are compatible with adjacent uses.

A residential unit and a small-scale entertainment and performance space meets this intent and is appropriate at the subject location. As conditioned, the activity has been determined to be compatible with adjacent activities.

ZONING ANALYSIS

Like the “General Plan Analysis” section, above, this section provides a zoning analysis for background purposes only. The subject of the appeal is the rear easement, which is a Building Code issue, and not discussed in the Planning Code. Note also that the site is in the C-45 Zone and has not been rezoned to implement the policies in the Estuary Policy Plan, but its regulations still apply for this project.

The proposed performance space falls into the Group Assembly Commercial Activity as described in Section 17.10.380 of the Planning Code:

17.10.380 - Group Assembly Commercial Activities.

Group Assembly Commercial Activities include the provision of instructional, amusement, and other services of a similar nature to group assemblages of people. This classification does not include any activity classified in [Section 17.10.160](#) Community Assembly Civic Activities, [Section 17.10.170](#) Recreational Assembly Civic Activities, or [Section 17.10.180](#) Community Education Civic Activities. Examples of activities in this classification include, but are not limited to, the following:

- Yoga, martial arts, driving school, job training, and other instructional classes in facilities with three thousand (3,000) square feet or more of classroom or instructional space;
- Drive-in theaters;
- Theaters or venues with three thousand (3,000) square feet or more of performance, lobby space, and audience floor area;
- Temporary carnivals, fairs, and circuses;
- Cabarets, night clubs, dance halls, adult entertainment, and pool halls;
- Banquet halls;
- Fitness clubs with three thousand (3,000) square feet or more of floor area.

This classification also includes certain activities accessory to the above, as specified in [Section 17.10.040](#).

Section 17.56.060 of the Planning Code states that Group Assembly Commercial Activities require a Conditional Use Permit in the C-45 Zone. Per Chapter 17.136 of the Planning Code, Regular Design Review approval was required to create a new residential dwelling unit. Finally, the proposal required a Variance because there are no parking spaces on the site to accommodate the new dwelling unit.

The findings to approve these permits and how they were met are contained in the 2015 decision letter (see **Attachment B**).

ENVIRONMENTAL DETERMINATION

The operation of the performance space and the conversion of the work/live unit to a dwelling unit was determined to be exempt from the California Environmental Quality Act (CEQA) according to the following sections of the State of California’s CEQA Guidelines: 15303 – New Construction or Conversion of Small Structures; and 15183 – Projects Consistent with a Community Plan, General Plan, or Zoning.

KEY ISSUES AND IMPACTS

The proposed revision to Condition of Approval #37 of the September 25, 2015, decision letter was approved because egress requirements are in the Building Code, and therefore in the purview of the Bureau of Building, not the Bureau of Planning. Therefore, the condition was revised to allow the property owner

to seek approval from the Building Bureau of an acceptable and safe mode of secondary egress, which may include use of the existing easement at the rear of the building or an alternative second egress to the public right-of-way. The replacement condition assures that Building Code's health and safety requirements regarding egress are met.

The following addresses the issues contain in the appeal (see **Attachment A** for the full appeal). The appellants issues are in **bold** and staff responses are in normal font.

Appellant Issue #1: Such egress violates the fire code and the building code requirements for secondary egress for the use and occupancy of the subject property once converted to a public assembly space and entertainment venue pursuant to the CUP. The existing plans on file in connection with the original approved CUP contain notations reflecting the legal requirements prohibiting use of the rear exit. Appellant does not have access to the plans so as to attach them to this appeal. But he requests that they be made available for the hearing on this appeal.

The revised condition provides the option to the Bureau of Building to approve a second egress either through the existing easement or some other method. An assessment of the legality of the rear exit for the purpose of egress (or any other method) is in the purview of the Bureau of Building during the review of the Building Permit application.

The Bureau of Building has reviewed the plans for using the existing rear easement as a secondary means of egress for the assembly use and has determined it consistent with the Building Code through the AMMR process (see **Attachment C**).

Appellant Issue #2: Compelling the appellant to provide egress for a public entertainment venue over his property by means of the existing easement constitutes an illegal taking without just compensation by the City. Moreover, any requirements by the City imposed for its benefit as third party beneficiary under the easement, and which increase the cost or burden on appellant or which impact the value of his property, give rise to an illegal taking without just compensation.

City Response to Issue #2: With approval of the revised condition #37, the City has not compelled the appellant to provide egress for a public entertainment venue by a specific means, because the revision to the CUP condition allows the option of either maintaining the existing easement or building a new front egress door.

It is important to note that the subject rear easement was executed with the agreement of both property owners for the purpose of providing "emergency egress for the benefit of the occupants, tenants, invitees, and guests" of the 278 4th Street building.

Appellant Issue #2a: Egress for a public entertainment venue will overburden the easement. The easement was given for egress for a far lower occupancy, private live/work use. A copy of the easement is attached. The use approved by the amendment to the CUP will impose increased risk and liability, reducing the value of the appellant's property and increasing the cost to insure it as a result of the increased risk arising out of use of the property as an exit for a high-capacity public entertainment venue.

City Response to Issue #2a: The subject of this appeal is the use of an existing rear easement for a second egress, and not the Conditional Use Permit (CUP) and Regular Design Review to operate Group Assembly Commercial Activities for live music and entertainment events and convert the work/live unit to a traditional residential unit, which were approved administratively on September 25, 2015, under case PLN15132. The revision to the CUP (PLN15132-R01), approved on September 24, 2021, and the subject of this appeal, does not approve a use; it instead requires that the use approved under the original

PLN15132 case file also be consistent with the Building Code by providing emergency egress, either through the existing easement area or by constructing an alternative means of egress. The decision regarding whether the easement is sufficient for the assembly activities has been made by the Bureau of Building through the AMMR process (see **Attachment C** for the approved AMMR). Also, see response to Issue #2.

Appellant Issue #2b: The new use will limit appellant’s ability to use his property. As a public emergency egress the appellant’s property will have to be improved to satisfy the requirements for public egress, including ADA requirements. Such improvements will reduce the portion of the appellant’s property (a commercial/light industrial lot) left available for his use as compared with the existing use of the easement which does not. The City’s requirement or authorization of such improvements would constitute an illegal taking of appellant’s property without just compensation.

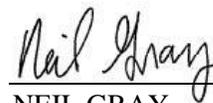
Appellant Issue #2c: The City cannot require the appellant to construct such improvements. There is no legal authority for it to do so. The City also lacks any such authority under the easement, as it is only a third-party beneficiary of the easement, not a holder of the easement. But if the City were to require appellant to construct such improvements that would be an illegal taking without just compensation.

Appellant Issue #2d: If the public egress is not ADA compliant, the egress would be unlawful, exposing appellant to risk and liability as a result. That, too, would constitute an illegal taking without just compensation. Finally, the City would also be liable to the appellant if he has to construct improvements himself to avoid such risk as a result of the City’s approval of the amendment to the CUP.

City Response to Issues #2b – 2d: The approved AMMR from the Bureau of Building does not state that improvements are required to comply with the Americans with Disabilities Act (ADA). The appellant has shown no evidence that the secondary egress would be noncompliant with the ADA.

RECOMMENDATION: Deny the appeal of the approval of the revised condition of approval contained in PLN15132-R01.

Prepared by:



NEIL GRAY
Planner IV

Reviewed by:



ROBERT MERKAMP
Zoning Manager
Bureau of Planning

Approved for forwarding to the Planning Commission:



ED MANASSE
Deputy Director
Bureau of Planning

ATTACHMENTS:

- A. Appeal filed on November 3, 2021, including the recorded easement
- B. September 25, 2015, Decision Letter
- C. Alternative Means and Methods Request approval



CITY OF OAKLAND
APPEAL FORM
FOR DECISION TO PLANNING COMMISSION, CITY
COUNCIL OR HEARING OFFICER

PROJECT INFORMATION

Case No. of Appealed Project: PLN15132-RO1

Project Address of Appealed Project: 278 4th St.; APN 001-0153-009

Assigned Case Planner/City Staff: Neil Gray

APPELLANT INFORMATION:

Printed Name: Stephen Stephanos/277 5th St. LLC Phone Number: 925-260-1503

Mailing Address: 808 Rosedale Ave. Alternate Contact Number: 925-938-3835; 925-402-8053

City/Zip Code Lafayette, CA 94549 Representing: 277 5th St. LLC

Email: pmstephanos@comcast.net; hussein@ramseylawgroup.com

An appeal is hereby submitted on:

AN ADMINISTRATIVE DECISION (APPEALABLE TO THE CITY PLANNING COMMISSION OR HEARING OFFICER)

YOU MUST INDICATE ALL THAT APPLY:

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

Please identify the specific Administrative Decision/Determination Upon Which Your Appeal is Based Pursuant to the Oakland Municipal and Planning Codes listed below:

- Administrative Determination or Interpretation (OPC Sec. 17.132.020)
- Determination of General Plan Conformity (OPC Sec. 17.01.080)
- Design Review (OPC Sec. 17.136.080)
- Small Project Design Review (OPC Sec. 17.136.130)
- Minor Conditional Use Permit (OPC Sec. 17.134.060)
- Minor Variance (OPC Sec. 17.148.060)
- Tentative Parcel Map (OMC Section 16.304.100)
- Certain Environmental Determinations (OPC Sec. 17.158.220)
- Creek Protection Permit (OMC Sec. 13.16.450)
- Creek Determination (OMC Sec. 13.16.460)
- City Planner's determination regarding a revocation hearing (OPC Sec. 17.152.080)
- Hearing Officer's revocation/impose or amend conditions (OPC Sec. 17.152.150 &/or 17.156.160)
- Other (please specify) Revisions to CUP previously approved on Sept. 25, 2015

(Continued on reverse)

(Continued)

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

YOU MUST INDICATE ALL THAT APPLY:

Pursuant to the Oakland Municipal and Planning Codes listed below:

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

FOR ANY APPEAL: An appeal in accordance with the sections of the Oakland Municipal and Planning Codes listed above shall state specifically wherein it is claimed there was an error or abuse of discretion by the Zoning Administrator, other administrative decisionmaker or Commission (Advisory Agency) or wherein their/its decision is not supported by substantial evidence in the record, or in the case of Rezoning, Landmark Designation, Development Control Map, or Law Change by the Commission, shall state specifically wherein it is claimed the Commission erred in its decision. The appeal must be accompanied by the required fee pursuant to the City's Master Fee Schedule.

You must raise each and every issue you wish to appeal on this Appeal Form (or attached additional sheets). Failure to raise each and every issue you wish to challenge/appeal on this Appeal Form (or attached additional sheets), and provide supporting documentation along with this Appeal Form, may preclude you from raising such issues during your appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented to the decision-maker prior to the close of the public hearing/comment period on the matter.

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

See attachment

Supporting Evidence or Documents Attached. *(The appellant must submit all supporting evidence along with this Appeal Form; however, the appeal will be limited evidence presented to the decision-maker prior to the close of the public hearing/comment period on the matter.)*

(Continued on reverse)

(Continued)

S. S. Stephens

Signature of Appellant or Representative of
Appealing Organization

October 4, 2021

Date

TO BE COMPLETED BY STAFF BASED ON APPEAL TYPE AND APPLICABLE FEE

APPEAL FEE: \$ _____

Fees are subject to change without prior notice. The fees charged will be those that are in effect at the time of application submittal. All fees are due at submittal of application.

Below For Staff Use Only

Date/Time Received Stamp Below:

Cashier's Receipt Stamp Below:

Attachment to Appeal Form for Appeal of Project No. PLN15132-RO1

The amendment to the CUP to allow the property owner the alternative to maintain egress through the rear of the building and by means of an easement over the appellant's property is unlawful.

1. Such egress violates the fire code and the building code requirements for secondary egress for the use and occupancy of the subject property once converted to a public assembly space and entertainment venue pursuant to the CUP. The existing plans on file in connection with the original approved CUP contain notations reflecting the legal requirements prohibiting use of the rear exit. Appellant does not have access to the plans so as to attach them to this appeal. But he requests that they be made available for the hearing on this appeal.

2. Compelling the appellant to provide egress for a public entertainment venue over his property by means of the existing easement constitutes an illegal taking without just compensation by the City. Moreover, any requirements by the City imposed for its benefit as third party beneficiary under the easement, and which increase the cost or burden on appellant or which impact the value of his property, give rise to an illegal taking without just compensation.

- Egress for a public entertainment venue will overburden the easement. The easement was given for egress for a far lower occupancy, private live/work use. A copy of the easement is attached. The use approved by the amendment to the CUP will impose increased risk and liability, reducing the value of the appellant's property and increasing the cost to insure it as a result of the increased risk arising out of use of the property as an exit for a high capacity public entertainment venue.
- The new use will limit appellant's ability to use his property. As a public emergency egress the appellant's property will have to be improved to satisfy the requirements for public egress, including ADA requirements. Such improvements will reduce the portion of the appellant's property (a commercial/light industrial lot) left available for his use as compared with the existing use of the easement which does not. The City's requirement or authorization of such improvements would constitute an illegal taking of appellant's property without just compensation.
- The City cannot require the appellant to construct such improvements. There is no legal authority for it to do so. The City also lacks any such authority under the easement, as it is only a third party beneficiary of the easement, not a holder of the easement. But if the City were to require appellant to construct such improvements that would be an illegal taking without just compensation.
- If the public egress is not ADA compliant, the egress would be unlawful, exposing appellant to risk and liability as a result. That, too, would constitute an illegal taking without just compensation. Finally, the City would also be liable to the appellant if he has to construct improvements himself to avoid such risk as a result of the City's approval of the amendment to the CUP.

Recording Requested By
and When Recorded Mail to:

Daniel Dunkle
Radiance
278 - 4th Street
Oakland, CA 94607



2010295269 10/08/2010 04:01 PM
OFFICIAL RECORDS OF ALAMEDA COUNTY
PATRICK O'CONNELL
RECORDING FEE: 36.00



8 PGS

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GRANT OF EASEMENT AND AGREEMENT

THIS AGREEMENT, made this 10th day of August 2010, by and between Stephen Stephanos, hereinafter referred to as "Grantor", and Melvin P. Cavallero, as Trustees of The Melvin P. Cavallero Trust and its tenant, Dan Dunkle and his company, currently known as Radiance, hereinafter referred to jointly as "Grantee".

WHEREAS, The Cavallero Trust is the owner of the real property located at 278 - 4th Street in Oakland, California ("the Building"), described further as follows:

Beginning at a point on the northern line of 4th Street, distant thereon Westerly, 165 feet from the intersection thereof, with the western line of Alice Street; running thence westerly along said line of 4th Street, 43 feet; thence at right angles northerly, 100 feet; then at right angles easterly, 43 feet; thence at right angles southerly, 100 feet to the point of beginning. Being LOT 27, and the western 10 feet of Lot 26, and the eastern 8 feet of Lot 28, in Block 39, as said lots and block are shown on "Kellersberger's Map of Oakland", on file in the office of the County Recorder of Alameda County; and

WHEREAS, the Building is occupied in part by Radiance and its employees, and visited by the guests and invitees and customers of Radiance; and

WHEREAS, Radiance wishes to undertake a renovation of a portion of the Building, such as would require additional emergency egress for the occupants of the Building; and

WHEREAS, in connection with said renovation, Grantee desires to acquire a certain easement in a portion of Grantor's property, commonly known as 277 - 5th Street in Oakland, California (the "Land"), and described further as "Lot 10 and 11, in Block 39, according to "Kellersberger's Map of Oakland", on file in the office of the County Recorder of said Alameda County," which easement is depicted as such in Exhibit A, for the benefit of Grantee and its

tenants and invitees to use as an emergency egress path (referred to herein as "Easement Area");
and

WHEREAS, the Cavallero Trust has consented to cooperate with the renovation of the Building and the obtaining of this easement, for the benefit of Dunkle, Radiance, and its occupants and invitees; and

WHEREAS, the owner of the Land has agreed to grant this easement on the terms and conditions as set forth herein;

NOW, THEREFORE, in consideration of the terms and conditions as set forth in this Agreement, the parties hereby agree as follows:

1. Grantor hereby grants to Grantee a nonexclusive terminable easement across the Land located as described in Exhibit A, for so long as the Easement Area is used exclusively for the purpose of providing emergency egress for the benefit of the occupants, tenants, invitees and guests of the Building. Grantor expressly reserves for itself, its successors and its assigns, the right to use the Easement Area or to grant other easements or licenses at the same location, so long as said uses do not unreasonably interfere with the rights herein granted.

2. Grantor also grants to Grantee the right to install fire doors in the Building that will swing open onto the Easement Area, to be used for emergency egress only.

3. Grantor also grants to Grantee the right to install a gate into the fence surrounding the Land, at the location where the Easement Area meets the fence, for use by the Building's occupants, tenants and invitees and guests, for emergency egress from the Easement Area on to the public street.

4. The City of Oakland is deemed to be a third-party beneficiary of this Agreement, with the right to enforce the rights and obligations set forth herein, at its sole discretion. This Agreement does not waive the City of Oakland's ability to enforce other applicable ordinances, resolutions, regulations or conditions of approval. In addition, the owners mutually waive the protections of Civil Code §1542, regarding waiver of unknown claims, and expressly waive and release any rights or benefits arising thereunder.

5. This Grant of Easement may be terminated by the Grantor at its sole election, upon 90 days written notice to the Grantee, contingent upon the written consent of the City of Oakland. Said notice shall be to the Cavallero Trust and to Radiance, at the most recent address provided to Grantor, and shall also be provided to the City of Oakland, Community & Economic Development Agency. Grantee hereby acknowledges that in the event of said termination of this Grant of Easement, Grantee shall be required to provide alternate emergency egress from the

Building, and Radiance hereby agrees to pay any expenses and undertake any tasks required to comply with such requirement.

6. The benefits of this Grant of Easement shall run with the land, and shall be transferable to any successor owner of the Building, or the Radiance business, or any future occupant or tenant of the Building. In such event, Grantee shall promptly notify Grantor of the identity and contact information of the new occupant or owner.

7. In consideration of this Grant of Easement, Radiance shall pay to the owner of the Land the sum of \$100 per month, commencing on the first day of the first month after Radiance installs the emergency egress door on to the Easement Area. Radiance shall have the right to prepay said consideration in one-year amounts, and if the Grant of Easement is terminated during any such period of prepaid consideration, Grantor shall promptly refund to Grantee any unused portion of said payment.

8. The City of Oakland, its officials, officers, employees, agents, representatives and volunteers, and each of them, shall be indemnified and held harmless from any actions, suits, claims and demands brought by any persons, corporations, or other entities for or on account of any bodily injury, disease or illness including death, damage to property, real or personal, or damages of any nature, arising in any manner out of construction or maintenance of the private improvements within the private easement or arising in any manner from the private improvement itself, or sustained as a result of the failure to maintain and/or repair said private improvements; and The City of Oakland shall not be responsible in any manner for the installation, maintenance, repair, restoration, or replacement of the private improvement nor any incidental private improvements within or adjoining the private easement, including but not limited to landscaping, fencing and associated accouterments.

9. Grantee shall maintain the Easement Area together with any improvements constructed or installed thereon by Grantee or associated with Grantee's use of the Easement Area. The operation and maintenance of such improvements and of the Easement Area shall be at Grantee's sole cost and expense. The City of Oakland shall not be responsible in any manner for the determination and apportionment of responsibilities associated with the conditions of this indenture nor for the resolution of allegations and adjudication of disputes between these owners and others.

10. This Easement is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases and licenses, easements, and rights of way pertaining to the Land, whether or not of record. The use of the word "grant" shall not imply any warranty on the part of the Grantor with respect to the Easement or the Easement Area.

11. Grantee shall comply with all applicable laws, ordinances and regulations, including but not limited to all applicable regulatory, environmental and safety requirements at Grantee's sole cost and expense. Grantor hereby consents to Grantee constructing any improvements within the Easement Area as required by the City of Oakland, so long as these improvements do not interfere with Grantor's reasonable use of the Property. Grantee shall promptly remove any said improvements and return the Easement Area to its prior condition upon the termination of this Agreement.

12. Grantee shall not use, deposit or permit the use or deposit of any hazardous material or toxic waste or other harmful substances on the Land or on any other real property of Grantor adjacent to the Easement Area.

13. Grantee shall not materially interfere with the use by and operation and activities of Grantor on its property, and Grantee shall use such routes and follow such procedures on Grantor's property as result in the least damage and inconvenience to Grantor.

14. Grantee shall be responsible for any damage to Grantor's property or that of third parties resulting from any exercise of the rights herein granted, including but not limited to soil erosion, subsidence or damage resulting therefrom. Grantee shall promptly repair and restore to its original condition any of Grantor's property damaged or destroyed in connection with the exercise of the Easement or use of the Easement Area.

15. This Grant of Easement is made on the express condition that Grantor is to be free from all liability by reason of injury or death to persons or injury to property from whatever cause arising out of Grantee's, its contractors', agents', officers', members', employees', invitees', or licensees' exercise of rights granted pursuant to this Easement or use of the Easement Area, including any liability for injury or death to the person or property of Grantee, its contractors, agents, officers, members, employees, invitees, or licensees or to any property under the control or custody of Grantee. Grantee hereby covenants and agrees to defend and indemnify Grantor, its officers, employees, agents, students, invitees and guests and save them harmless from any and all liability, loss, costs, or obligations on account of, or arising out of, any such injury or losses caused or claimed to be caused by the exercise of the Easement or use of the Easement Area by Grantee, however occurring, other than those caused solely by the willful or negligent acts or omissions of Grantor.

16. This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or

modifications concerning this instrument shall be of no force or effect except in a subsequent modification in writing, signed by the party to be charged.

17. This instrument shall bind and inure to the benefit of the respective successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

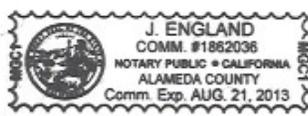
GRANTOR: Stephen S Stephanos
Stephen Stephanos
AKA Stephen P Stephanos

GRANTEE: The Melvin Cavallero Trust
Melvin Cavallero
by Melvin Cavallero, Trustee

GRANTEE: Radiance
Dan Dunkle
by Dan Dunkle, its President
AKA Daniel Joseph Dunkle

State of California County of ALAMEDA
On 11/16/10 before me, J. England
Notary Public, personally appeared DANIEL JOSEPH DUNKLE
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct. WITNESS my hand and official seal.

J. England



ACKNOWLEDGMENT

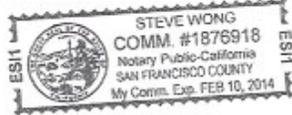
State of California, County of SAN FRANCISCO
On SEPT 18, 2010 before me, STEVE WONG (notary public),
personally appeared MELVIN CAVALLERO

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Steve Wong (Seal)



CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC

STATE OF CALIFORNIA,)
COUNTY OF CONTRA COSTA)

On AUGUST 16, 2010 before me, PEDRO CISNEROS ~~NOTARY PUBLIC~~ a notary public in and for said County and State, personally appeared STEPHEN P STEPHANOS, who proved to me on ~~the basis of satisfactory~~ evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person(s), acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



(Signature of Notary Public)



TDA
 Thomas Drake Architects
 27148 Rock
 Oakland, CA 94618
 415.763.1234
 www.tda.com



Exhibit A

OWNER
 Dan Drake
 27148 Rock
 Oakland, CA
 415.763.1234
 www.tda.com

4th Street Conversion
 278 4th Street
 OAKLAND, CA

PROPOSED
 SITE PLAN

NO.	REVISION	DATE
1	ISSUED FOR PERMITS	11.14.19
2	ISSUED FOR PERMITS	11.14.19
3	ISSUED FOR PERMITS	11.14.19
4	ISSUED FOR PERMITS	11.14.19
5	ISSUED FOR PERMITS	11.14.19
6	ISSUED FOR PERMITS	11.14.19
7	ISSUED FOR PERMITS	11.14.19
8	ISSUED FOR PERMITS	11.14.19
9	ISSUED FOR PERMITS	11.14.19
10	ISSUED FOR PERMITS	11.14.19

DATE: 11.14.19
 DRAWN BY: [Signature]
 CHECKED BY: [Signature]
 SCALE: AS SHOWN
 SHEET NO. A1.1



1 PROPOSED SITE PLAN
 11/14/19

SUBSTITUTION OF LEGIBLE ORIGINALS
(G.C. 27361.7) I DECLARE UNDER PENALTY
OF PERJURY THAT THIS HANDWRITTEN,
OR TYPEWRITTEN LEGIBLE COPY IS A
TRUE COPY OF THE ORIGINAL PAGE(S)

DJD

State of California

County of _____

On _____ before me, _____ personally
(Insert Name of Notary Public and Title)

appeared _____, who proved to me on the basis of
satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the
within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s), or the entity upon behalf on which the person(s) acted,
executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of
California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA • SUITE 3315 • OAKLAND, CALIFORNIA 94612

Planning and Building Department
Bureau of Planning

(510) 238-3941
FAX (510) 238-6538
TDD (510) 238-3254

September 24, 2021

Chloe Moire
248 3rd Street, #709
Oakland, CA 94607

RE: Case File No. PLN15132-R01; 278 4th Street; APN: 001-0153-009

Dear Ms. Moire:

Your revision application, as described below, has been **APPROVED** for the reasons stated in Attachment A, which contains the findings required to support this decision. Attachment B contains the Conditions of Approval for the project. This decision is effective ten (10) days after the date of this letter unless appealed pursuant to the procedures set forth below.

The following table summarizes the proposed project:

Proposal:	Revision to previously approved Conditional Use Permit to establish an entertainment venue and convert an existing live/work unit within the building into a regular residential dwelling unit. The revision would replace condition #37 of the permit, which states that, prior to commencement of Group Assembly Commercial Activity, “The second means of egress, as indicated on project plans, shall be constructed pursuant to permits” with a condition to either maintain the existing easement for secondary egress through the rear of the building, or construct an alternative second means of egress that has been approved by the Bureaus of Planning and Building.
Planning Permits Required:	Revision to Conditional Use Permit previously approved on September 25, 2015. The prior approval was to establish a Group Assembly Commercial Activity in the C-45 Commercial Zone.
General Plan:	Estuary Policy Plan Waterfront Warehouse District
Zoning:	C-45 Community Shopping Commercial Zone and S-4 Design Review Combining Zone
Environmental Determination:	15303 – New Construction or Conversion of Small Structures; and 15183 – Projects Consistent with a Community Plan, General Plan, or Zoning
Historic Status:	Potentially Designated Historic Property; Within and contributor to an “Area of Primary Importance” (the Waterfront Warehouse Historic District); Office of Cultural Heritage Survey rating of C1+
City Council District:	3

The approved revision is as follows (deletions are in ~~strikeout~~, and additions are in underline):

37. Second means of Egress Exiting to 4th Street

Prior to commencement of Group Assembly Activity Ongoing.

~~The second means of egress, as indicated on project plans, shall be constructed pursuant to permits.~~

The property owner shall either maintain the existing "Grant of Easement and Agreement" dated August 10, 2010, for secondary egress through the rear of the building or construct an alternative second means of egress that has been approved by the Bureaus of Planning and Building. The second means of egress through the rear of the building shall require approval through the Alternative Means and Methods Request process administered by the Bureau of Building.

This revision is being made because the issue of the sufficiency of egress for the Group Assembly Commercial Activity is in the purview of the Bureau of Building, not the Bureau of Planning. This is because egress requirements are in the Building Code and not in the Planning Code and, therefore, not part of a Conditional Use Permit approval. Therefore, the condition is being revised to allow the property owner to seek approval by the Building Bureau of an acceptable and safe mode of secondary egress, which may include use of the easement at the rear of the building or an alternative second egress to the public right of way. The replacement condition will assure that Building Code's health and safety requirements regarding egress are met.

With the exception of the revision described above, each condition and finding of the original September 25, 2015 approval (see Attachment A) shall apply.

If you, or any interested party, seeks to challenge this decision, an appeal **must** be filed by no later than ten (10) calendar days from the date of this letter, by **4:00 p.m. on October 4, 2021**. An appeal shall be on a form provided by the Bureau of Planning of the Planning and Building Department, and submitted via email to: (1) **Neil Gray, Planner IV, at ngray@oaklandca.gov**, (2) **Robert Merkamp, Zoning Manager, at Rmerkamp@oaklandca.gov**, and (3) Catherine Payne, Development Planning Manager, at Cpayne@oaklandca.gov. The appeal form is available online at <https://www.oaklandca.gov/documents/appeal-application-form>. The appeal shall state specifically wherein it is claimed there was error or abuse of discretion by the Zoning Manager or decision-making body or wherein the decision is not supported by substantial evidence. Applicable appeal fees in the amount of **\$2,476.31** in accordance with the City of Oakland Master Fee Schedule must be paid within five (5) calendar days (**October 11, 2021**) of filing the appeal. If the fifth (5th) calendar day falls on a weekend or City holiday, appellant will have until the end of the following City business day to pay the appeal fee. Failure to timely appeal (or to timely pay all appeal fees) will preclude you, or any interested party, from challenging the City's decision in court. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record which supports the basis of the appeal; failure to do so may preclude you, or any interested party, from raising such issues during the appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented to the Zoning Manager prior to the close of the previously noticed public comment period on the matter. For further information, see the attached Interim City Administrator Emergency Order No. 3 and Interim Procedures for Appeals of City Planning Bureau Decisions for Development Projects.

If the ten (10) day appeal period expires without an appeal, you are expected to contact **Neil Gray** in order to receive the signed Notice of Exemption (NOE) certifying that the project has been found to be exempt from CEQA review. It is your responsibility to record the NOE and the Environmental Declaration at the Alameda County Clerk's office at 1106 Madison Street, Oakland, CA 94612, at a cost of **[\$50.00]** made payable to the Alameda County Clerk. Please bring the original NOE related documents and five copies to the Alameda County Clerk, and return one date stamped copy to the Bureau of Planning, to the attention of **Neil Gray, Planner IV**. Pursuant to Section 15062(d) of the California Environmental Quality Act (CEQA) Guidelines, recordation of the NOE starts a 35-day statute of limitations on court challenges to the approval under CEQA. The NOE will also be posted on the City website at <https://aca.accela.com/OAKLAND/Welcome.aspx>.

If you have any questions, please contact the case planner, **Neil Gray, Planner IV** at **(510) 238-3878** or **ngray@oaklandca.gov**, however, this does not substitute for filing of an appeal as described above.

Very Truly Yours,



ROBERT D. MERKAMP
Zoning Manager

cc:

Alain Placido aplacido@oaklandca.gov	Lance Freeman lancebfreeman@gmail.com
Dan Dunkle dan@radianceoak.org	Lara Stables Lara.Stables@ucsf.edu
Ben Delaney ben@bendelaney.com	Leslie Isaac lesliegeee@gmail.com
Bill Batty b_batty@yahoo.com	Tilia Bell lindsey.snider@gmail.com
Carrie Rosenberger crosenberger@gmail.com	Lou lr101898@aol.com
Claire SunSpiral spiralgaia@gmail.com	Lynn Lampky lynnlampky@gmail.com
Craig and Susan Matthews craig94549@gmail.com	Manav Thapar thaparmanav@yahoo.com
Diana Stapleton dstapleton@cca.edu	Marcella Raimondo givemeacarrot@yahoo.com
Ed Mechem ed@mechem.org	Mark Jen mark@affinitylabel.com
Elaine Noble elaine.noble@rocketmail.com	Matthew Gordon mpgordon@alumni.princeton.edu
Eliza Randolph eculverfitz@gmail.com	Mimi Heft mimi.heft.design@gmail.com
Elizabeth Balmin ebalmin@sierracommunityhouse.org	Natalia Cianfaglione ncianfaglione@gmail.com
Elizabeth Franklin elizabeth.s.franklin@gmail.com	Niyi Omotoso niyi1978@hotmail.com
Christine Caliway doctoroffun@gmail.com	Patrick McGilvray pmcgilvray@gmail.com
Heriberto Madrigal heriberto.madrigal@gmail.com	Prodromos Stephanos pmstephanos@comcast.net
Hussein Saffouri Hussein@ramseylawgroup.com	Rob Rayle rob@outersect.net
James Starke jstarke1414@yahoo.com	Scott Wolland scott@wolland.org
Janelle Tavares jtav77@gmail.com	Sam Shirley shams@heartfire.net
Jason Wells jason@wells.me	Yuliya Shmidt yuliya.shmidt@cpuc.ca.gov
Jessica Theissen ajtheissen@googlemail.com	Stacy Moke stacyandolivia@hotmail.com
David E. jj9627880@gmail.com	Stephen Lowe ewolnephets@sbcglobal.net
John F. Van Dinther john@twohatsconsulting.com	Tim Low tlow@oaklandca.gov
Karl Banks shaymana@gmail.com	Tania Simirenko tsimi@icloud.com
Keith Plymale keith@volume21.com	Ruby Tuesdae Ruby.Tuesdae@va.gov
Ken Greenlaw kgreenlaw@gqit.net	Vytas SunSpiral vytas@sunspiral.org
Kevin Byall one14am@gmail.com	Will Goldberg will.goldberg@gmail.com

Attachments:

- A. September 25, 2015 Approval Letter for PLN15132
- B. August 10, 2021 Grant of Easement and Agreement
- C. Interim City Administrator Emergency Order No. 3 and Interim Procedures for Appeals of City Planning Bureau Decisions for Development Projects