

# ITEM 7-A

## CITY OF ALAMEDA

### Memorandum

To: President and  
Members of the Planning Board

From: Allen Tai, AICP  
Planning Services Manager

Date: January 11, 2016

Re: **PLN15-0440 – 1716 Webster Street – Applicant: United Brothers Enterprise, Inc.** The applicant requests an amendment to a use permit to allow sale of beer and wine at an existing 24-hour gas station and convenience store. The property is located within the C-C, Community Commercial zone within the Webster Street Business District. The project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15270 – Projects Which Are Disapproved.

### **BACKGROUND**

The subject property is an existing gas station with a 1995 use permit for a convenience store and 24-hour operation. The 1995 use permit specifically prohibits the sale of alcohol (Exhibit 1). In 2012, the property received approval to be redeveloped with a new convenience store and gas station. The applicant at the time also applied for an amendment to the existing use permit to remove the restriction prohibiting alcohol sales. The request for alcohol sales was unanimously denied by the Planning Board. That denial was subsequently upheld by the City Council upon an appeal by the applicant (Exhibit 2).

Pursuant to Alameda Municipal Code Section 30-21.8 – Limitation on New Application, applications for use permits that are denied are not eligible for resubmittal for three years from the date of the denial. Since it has been three years since the September 4, 2012 City Council decision on this matter, the applicant is requesting a reconsideration of the same use permit amendment.

### **DISCUSSION**

The applicant proposes to sell beer and wine for off-site consumption during lawfully permitted hours (6:00 a.m. to 2:00 a.m. of the following day). If the City approves this request, the applicant will then need to apply for a liquor license from the California Department of Alcoholic Beverage Control (ABC). Currently, two stores within 300 feet of this store also sell alcohol (Best Buy Liquor and 7-11).

In 2012, staff originally recommended approval of the applicant's request to the Planning Board, because convenience store goods and services are commonly provided at gas stations. Staff thought that through the use permit process, the Planning Board could require litter pickup, limit shorter hours of alcohol sales, and even the amount of shelf space devoted to alcoholic beverages. Staff recommended a condition of approval that prohibits alcohol sales after midnight, which is consistent with a neighboring liquor store in the immediate area.

The Planning Board disagreed with the staff recommendation in 2012 and denied the request citing the following factors in its findings:

- Alcohol sales is an incompatible use and would adversely affect the residential homes immediately adjacent to the subject property;
- The sale of alcohol for off-site consumption is already plentiful in the vicinity, and permitting additional outlets for off-sale alcohol would oversaturate this area;
- Increasing the number of retail outlets that sell alcohol will adversely affect adjacent residents and businesses; and
- Testimony from neighborhood residents about existing police activity in the area and problems with litter, fights, and late night noise attributed to the sale of alcohol support the general assumption that permitting alcohol sales on this property would be detrimental to other property.

In response to an appeal by the applicant, the City Council held a hearing on September 4, 2012 and unanimously upheld the Planning Board's findings and denial of the application.

Although three years have passed, staff is unable to identify any changes in either the application or the surrounding conditions in the area that would cause the Planning Board to reconsider their conclusions from 2012. Therefore, staff is recommending that the Planning Board deny the application.

## **ENVIRONMENTAL REVIEW**

The proposed use permit amendment is statutorily exempt under California Environmental Quality Act (CEQA) Section 15270 – Projects Which Are Disapproved.

Should the Planning Board wish to approve the application after holding a public hearing and consideration of all public testimony, administrative records, and application material, CEQA provides a categorical exemption per CEQA Guidelines Section 15301 – Existing Facilities – for operation or permitting of existing private structures involving negligible expansion of use beyond that which exists.

## **PUBLIC NOTICE AND COMMENTS**

Property owners and residents within 300 feet of the project's boundaries were notified of the public hearing and given the opportunity to review and comment on the proposal. Because the project is located in the Webster Street Business District, the West Alameda Business Association was specifically notified of this proposal.

### **RECOMMENDATION**

Hold a public hearing and deny the use permit amendment to allow alcohol sales at 1716 Webster Street according to the findings in the Draft Resolution (Exhibit 3).

Respectfully submitted,

Allen Tai  
Planning Services Manager

Exhibit:

1. Use Permit UP-95-23
2. Council Resolution
3. Draft Resolution
4. Application

CITY OF ALAMEDA PLANNING BOARD  
RESOLUTION NO. PB 95-57

A RESOLUTION OF THE PLANNING BOARD OF THE CITY OF ALAMEDA GRANTING  
USE PERMIT, UP-95-23, AND MINOR DESIGN REVIEW, 1716 WEBSTER STREET

WHEREAS, an application was made on October 23, 1995 by A and S Engineering on behalf of Tosco Northwest Company, for a Use Permit, UP-95-23, to allow 24 hour operation in an expanded gasoline station and convenience market, within the C-M Commercial Zoning District; and for Minor Design Review.

WHEREAS, the application was accepted as complete on November 6, 1995; and

WHEREAS, the subject property is designated Community Commercial on the General Plan Diagram; and

WHEREAS, the subject property is in the C-M Commercial Zoning District; and

WHEREAS, the site is in the Business and Waterfront Improvement Project, on which plan it is designated Commercial; and

WHEREAS, the Planning Board has been advised that, subject to meeting City standards and requirements, the proposed use would conform to the adopted Community Improvement Plan (CIP) for the Business and Waterfront Improvement Project and General Plan policies incorporated by reference within the CIP; and

WHEREAS, the project is Categorically Exempt under Section 15301 of the CEQA Guidelines, minor alterations of existing private structures; and

WHEREAS, the Planning Board held a public hearing on this application on November 27, 1995 and has examined pertinent maps, drawings, and documents; and

WHEREAS, the Planning Board has made the following findings:

1. The location of the proposed use is compatible with other land uses in the area. The location of the proposed use is compatible with other land uses in the area, due to the commercial character of the Webster Street district, as well as to the demand for gasoline in the Webster Street corridor.
2. The installation would not increase parking or transportation demand. The site is on Webster Street at

Buena Vista, both being heavily traveled streets, near the entrances to the tunnels to Downtown Oakland and the freeway onramps to US 880. The street improvements provide adequate ingress and egress from the site for customers.

3. The proposed use, if it complies with all conditions upon which approval is made contingent, will not adversely affect other properties in the vicinity. Several commercial uses along Webster Street operate in the late evening hours. Residential uses are 500 or more feet distant from the site, except to the northeast where residential uses are approximately 100 feet distant. Few residences would be affected by evening hours for the station. The convenience store portion of the use consists of minor and incidental space in the station attendant office.
4. Relationship to General Plan. The site is located within an area designated as Community Commercial. The proposed use favorably relates to the General Plan as well as being consistent with the Business and Waterfront Improvement Project Community Improvement Plan.

THEREFORE BE IT RESOLVED that the Planning Board of the City of Alameda hereby grants Use Permit 95-23, and Design Review, subject to the following conditions:

1. The project shall be constructed in substantial compliance with the plans titled "Proposed Site Plan, 1716 Webster Street & Buena Vista Avenue," dated April 10, 1995, prepared by A & S Engineering, and marked "Exhibit A," on file in the Planning Department.
2. The Use Permit approval shall terminate one (1) year from November 27, 1995, unless actual construction or alteration under valid permits has begun, or the applicant applies for and is granted an extension prior to said expiration.
3. No liquor, beer or wine sales are approved as part of this Use Permit.
4. The improvements shall conform to the Uniform Building Code and to the requirements of the Fire Department.

NOTICE. No judicial proceedings subject to review pursuant to California Code of Civil Procedure Section 1094.5 may be prosecuted more than ninety (90) days following the date of this decision or final action on any appeals plus extensions authorized by California Code of Civil Procedure Section 1094.6.

The decision of the Planning Board shall be final unless appealed to the City Council, in writing and within ten (10) days of the decision by completing and submitting an appeal form paying the required fee.

PASSED AND ADOPTED by the Planning Board of the City of Alameda on the 27th day of November, 1995 by the following vote:

AYES: (6) Harris, Johnson, Thomas, Fee, Gilmore and Rossi

NOES: (0)

ABSENT: (0)

ATTEST:

*Colette Meunier*  
Colette Meunier, Secretary  
City Planning Board

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CITY OF ALAMEDA RESOLUTION NO. 14729

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALAMEDA UPHOLDING PLANNING BOARD RESOLUTION PB-12-04 PLANNING BOARD ACTION TO DENY MODIFIED USE PERMIT PLN10-0153 TO ALLOW THE SALE OF ALCOHOL AT A CONVENIENCE STORE LOCATED AT 1716 WEBSTER STREET

WHEREAS, an application was made by Delong Liu, requesting a Use Permit Amendment to remove a condition of approval on Use Permit, PB-95-57, that restricts the sale of alcohol; and

WHEREAS, the project site is located within a C-C, Community Commercial Zone; and

WHEREAS, the project site is designated Community Commercial on the General Plan Diagram; and

WHEREAS, the existing service station building was constructed in 1955 and the convenience store is permitted under an use permit, UP-95-23, Planning Board Resolution PB 95-57; and

WHEREAS, Planning Board held a public hearing on this application on April 9, 2012; and

WHEREAS, after considering all materials submitted and all comments made by all parties, including staff, regarding this application, the Planning Board made the requisite findings to unanimously disapprove the modified use permit application to remove the restriction on the sale of alcohol; and

WHEREAS, the Alameda Municipal code provides that decisions by the Planning Board may be appealed within 10 days of the date of a Planning Board decision; and

WHEREAS, Daniel Hoy on behalf of the applicant filed an appeal on April 13, 2012 appealing the Planning Board's action to deny the project; and

WHEREAS, this Council held a de novo public hearing on the use permit application at which all materials submitted and all comments made by all parties, including staff, regarding this application were considered; and

WHEREAS, the City Council held a public hearing to consider the appeal; and

NOW THEREFORE, BE IT RESOLVED that the City Council finds that:

Approved as to Form  
Janet C. Kern, City Attorney

- (1) **The location of the proposed use is not compatible with other land uses in the general neighborhood area, and the project design and size is architecturally, aesthetically, and operationally harmonious with the community and surrounding development.** The site is immediately adjacent on both sides to residential buildings. Granting of the use permit to allow alcohol sales would create an over-concentration of alcohol sales in the neighborhood and would not be compatible with the adjacent residential uses. The area already has a number of stores that sell alcohol, and residents in the area have reported problems related to late night noise, fights, and litter that may be attributed to alcohol use in the area.
- (2) **The proposed use will adversely affect other property in the vicinity and will have deleterious effects on existing business districts or the local economy.** The addition of alcohol sales at this gas station that is immediately adjacent to residential homes on two sides could adversely affect the adjacent properties. The sale of alcoholic beverages for off-site consumption is plentiful in this vicinity. Increasing the number of retail outlets that sell liquor may cause problems for adjacent businesses and residents. Residents at the public meeting provided testimony of existing police activity in their neighborhood and problems such as litter and late night noise that are attributed to the sale of alcohol in the area.
- (3) **The proposed use relates favorably to the General Plan.** Permitting additional outlets for alcohol sales would over saturate this area, which is adjacent to residential zoning districts and residential uses and cause conflicts between commercial and residential land uses in conflict with General Plan policies to minimize conflicts between adjacent land uses.
- (4) The Appellants have failed to demonstrate in any way that the conclusions by the Planning Board are not supported by substantial evidence.

BE IT RESOLVED THAT, the project is Statutorily Exempt from additional environmental review pursuant to California Environmental Quality Act (CEQA) Guidelines, Section 15270 – Projects Which are Disapproved.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the City Council denies the appeal and upholds the Planning Board's adoption of Resolution PB-12-04.

\* \* \* \* \*



I, the undersigned, hereby certify that the foregoing Resolution was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on the 4<sup>th</sup> day of September, 2012, by the following vote to wit:

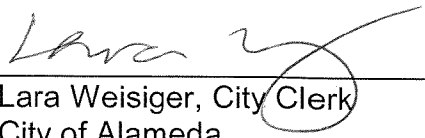
AYES: Councilmembers Bonta, deHaan, Johnson, Tam and Mayor Gilmore – 5.

NOES: None.

ABSENT: None.

ABSTENTIONS: None.

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the seal of said City this 5<sup>th</sup> day of September 2012.

  
\_\_\_\_\_  
Lara Weisiger, City Clerk  
City of Alameda

CITY OF ALAMEDA PLANNING BOARD  
DRAFT RESOLUTION

DENYING APPLICATION PLN15-0440 TO ALLOW THE SALE OF ALCOHOL AT A  
CONVENIENCE STORE LOCATED AT 1716 WEBSTER STREET

WHEREAS, an application was made by United Brothers Enterprise, Inc., requesting a Use Permit Amendment to remove a condition of approval on Use Permit, UP-95-23, that restricts the sale of alcohol; and

WHEREAS, the project site is located within a C-C, Community Commercial Zone; and

WHEREAS, the project site is designated Community Commercial on the General Plan Diagram; and

WHEREAS, the existing 24-hour convenience store is permitted under use permit UP-95-23; and

WHEREAS, Planning Board held a public hearing on this application on January 11, 2016; and

WHEREAS, the Planning Board held a de novo public hearing on the use permit application at which all materials submitted and all comments made by all parties, including staff, regarding this application were considered; and

NOW THEREFORE, BE IT RESOLVED, that the Planning Board finds that:

- (1) **The location of the proposed use is not compatible with other land uses in the general neighborhood area, and the project is not operationally harmonious with the community and surrounding development.** The site is immediately adjacent on both sides to residential buildings. Granting of the use permit to allow alcohol sales would create an over-concentration of alcohol sales in the neighborhood and would not be compatible with the adjacent residential uses. The area already has a number of stores that sell alcohol. The site is across from the Better Buy Liquors store, which sells a wide range of alcoholic beverages including beer and wine and has been a local establishment for many years. Increasing the number of retail outlets that sell alcohol may cause problems for adjacent businesses, and residents in the area have reported problems related to late night noise, fights, and litter that may be attributed to alcohol use in the area.
- (2) **The proposed use will be served by adequate transportation and service facilities including pedestrian, bicycle, and transit facilities.** The site is well served by AC Transit bus service and pedestrian facilities, although it is anticipated that most customers will arrive by automobile and will purchase goods at the convenience market while their automobile is at the gasoline pumps.

- (3) **The proposed use will adversely affect other property in the vicinity and will have deleterious effects on existing business districts or the local economy.**

The addition of alcohol sales at this gas station that is immediately adjacent to residential homes on two sides could adversely affect the adjacent properties. The sale of alcoholic beverages for off-site consumption is plentiful in this vicinity. The site is across from the Better Buy Liquors store, which sells a wide range of alcoholic beverages including beer and wine and has been a local establishment for many years. Increasing the number of retail outlets that sell liquor may cause problems for adjacent businesses and residents. City records indicate neighboring residents have complained about existing police activity in their neighborhood and problems such as litter and late night noise that are attributed to the sale of alcohol in the area.

- (4) **The proposed use does not relate favorably to the General Plan.** Permitting additional outlets for alcohol sales would over saturate this area, which is adjacent to residential zoning districts and residential uses and cause conflicts between commercial and residential land uses in conflict with General Plan policies to minimize conflicts between adjacent land uses.

BE IT FURTHER RESOLVED THAT the project is Statutorily Exempt from additional environmental review pursuant to California Environmental Quality Act (CEQA) Guidelines, Section 15270 – Projects Which Are Disapproved.

BE IT FURTHER RESOLVED THAT the Planning Board denies application PLN15-0440 to amend use permit UP-95-23 to allow off-sale beer and wine at 1716 Webster Street.

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## PLANNING PERMIT APPLICATION

Community Development • Planning Division  
 2263 Santa Clara Ave., Rm. 190  
 Alameda, CA 94501-4477  
 alamedaca.gov  
 510.747.6805 • F: 510.865.4053 • TDD: 510.522.7538

Project Address: 1716 Webster St Alameda CA 94501 APN: 73-417-15

Property on the Alameda Historical Buildings Study List? ☒ No / Yes - Designation: \_\_\_\_\_

Property subject to a Business/Homeowners Association? No / Yes - Association Name: WABA

Check all applicable permits: (\* indicates supplemental forms/materials required)

- |                                                     |                                                   |                                                          |
|-----------------------------------------------------|---------------------------------------------------|----------------------------------------------------------|
| <input type="checkbox"/> Design Review*             | <input type="checkbox"/> Rezoning                 | <input checked="" type="checkbox"/> Use Permit* \$2,500  |
| <input type="checkbox"/> Density Bonus Application* | <input type="checkbox"/> Second Unit Application* | <input type="checkbox"/> Variance*                       |
| <input type="checkbox"/> Certificate of Approval*   | <input type="checkbox"/> Sign Permit*             | <input type="checkbox"/> Zoning Compliance Determination |
| <input type="checkbox"/> Planned Development*       | <input type="checkbox"/> Subdivision*             | <input type="checkbox"/> Other: _____                    |

Project Description: (attach additional sheets if necessary) Apply Beer and Wine License

Property Owner(s): DJS Property Holding, Inc

Address: 1716 Webster St City: Alameda State: CA Zip: 94501

Email: delongia@yahoo.com Phone: 510 759 2384 (mobile): 510 759 2384

Applicant(s): (if different from owner) United Brothers Enterprise, Inc

Address: 1716 Webster St City: Alameda State: CA Zip: 94501

Email: delongia@yahoo.com Phone: 510 759 2384 (mobile): 510 759 2384

Hazardous Materials: Pursuant to CA Gov't Code Section 56962.5 regarding notifying the City of hazardous waste and/or hazardous substance sites, the project site: ☒ IS / ☐ IS NOT (check one) included on any of the hazardous waste or substances lists consolidated by the State of California. If on a list, provide the following information:

Reg. ID #: \_\_\_\_\_ Problem: gas station Date of List: \_\_\_\_\_

Fee Refunds shall be issued to: ☐ OWNER ☐ APPLICANT ☐ OTHER (provide contact information below)

Name: delong lid Address: 1716 Webster St Alameda CA 94501

Phone: 510 759 2384 Email: delongia@yahoo.com

Property Owner: I hereby certify under penalty of perjury, that I am the owner of record of the property described herein and that I consent to the action requested herein. Further, I hereby authorize the City of Alameda employees and officers to enter upon the subject property as necessary to inspect the premises and process this application.

X  
 Property Owner(s) Signature Required

9/15/15  
 Date

Property Owner/Applicant: I hereby certify that I have read this application form and that information in this application and all the exhibits are true and correct. I understand that any misstatement or omission of the requested information or of any information subsequently requested may be grounds for rejecting the application, deeming the application incomplete, denying the application, suspending or revoking a permit issued on the basis of these or subsequent representation, or for the seeking of such other and further relief as may seem proper to the City of Alameda. For applications subject to a time and materials charge, I hereby agree to pay the City of Alameda all incurred costs for staff time and materials associated with review and processing of this application, even if the application is withdrawn or not approved. I understand that one or more deposits may be required to cover the cost noted herein at such time as required by the Community Development Director to ensure there are adequate funds to cover anticipated time and material costs. I expressly acknowledge and agree that failure to pay a written invoice for additional funds within 14 days of date of invoice shall constitute the applicant's withdrawal of the application. I further acknowledge that some application fees are non-refundable and payment does not guarantee approval of the application.

X  
 Owner/Applicant Signature

9/15/15  
 Date

## FOR OFFICE USE ONLY

File #: PLN15-0440 Date Received: 9-17-15 Received By: YB

Zoning: CC GP: Community Commercial





## USE PERMIT

## SUPPLEMENTAL FORM

Community Development • Planning & Building  
 2263 Santa Clara Ave., Rm. 190  
 Alameda, CA 94501-4477  
 alamedaca.gov  
 510.747.6800 • F: 510.865.4053 • TDD: 510.522.7538  
 Hours: 7:30 a.m.–3:30 p.m., M–Th

ATTACH THIS FORM TO THE PLANNING PERMIT APPLICATION

**Use Characteristics:** Please describe the project in terms of anticipated maximum level of operation, scope of use, and materials involved for the proposed use.

Beer and wine license.

**Business Activity:**

Existing Use: ☒

Proposed Use: same

Hours and Days of Operation: 24 hrs.

Total Employees: 10

Number of Shifts: 3

Employees per Shift: 2

Customers Per Day: 800

Trucks Per Day (indicate truck size):

Floor Area: 2300

Number of Parking Spaces on Property: 5

**Check all that may apply with the proposed use:**

☐ Operating Hours Between 10:00PM – 7:00AM

☐ Use of Outdoor Spaces/Sidewalk

☐ Hazardous Materials

☐ Air Emissions/Odors

☐ On-sale Alcohol ☒ Off-sale Alcohol

☐ Massage Activity

☒ Beer ☒ Wine ☐ Distilled Spirits

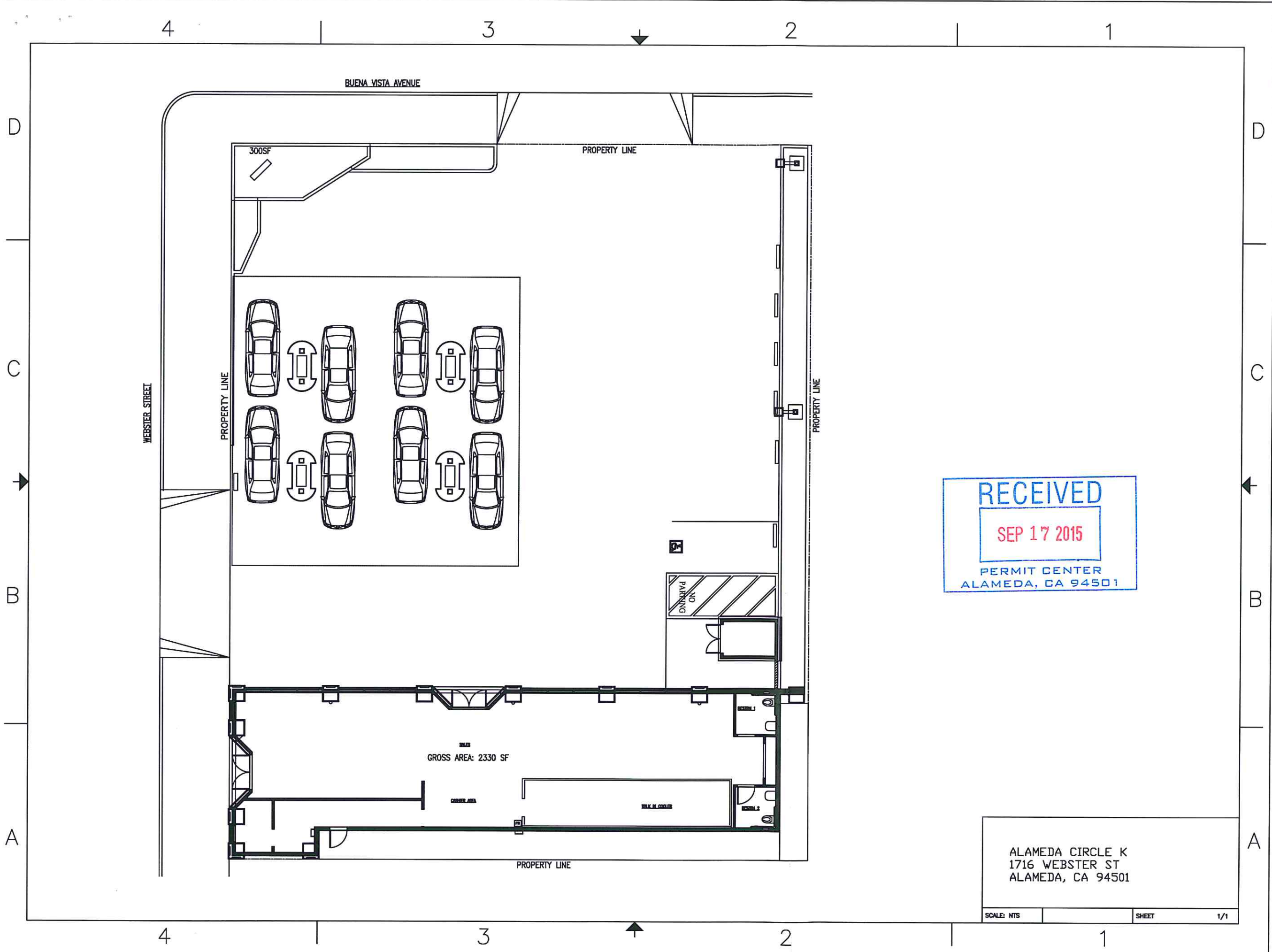
☐ Use of Amplified Noise

Use the space below to provide addition detail, if necessary:

**Surrounding Land Uses:** What uses (residential, commercial, park, or manufacturing) exist on adjacent properties?

North: Resturant + comercial East: gas station

South: Residential ando West: comercial



RECEIVED  
SEP 17 2015  
PERMIT CENTER  
ALAMEDA, CA 94501

ALAMEDA CIRCLE K  
1716 WEBSTER ST  
ALAMEDA, CA 94501

SCALE: NTS SHEET 1/1

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**From:** gerstle@mindspring.com [mailto:gerstle@mindspring.com]

**Sent:** Thursday, December 31, 2015 6:30 PM

**To:** Frank Matarrese <FMatarrese@alamedaca.gov>; Jim Oddie <JOddie@alamedaca.gov>; Marilyn Ezzy Ashcraft <MEzzyAshcraft@alamedaca.gov>; Tony Daysog <TDaysog@alamedaca.gov>; Trish Spencer <TSpencer@alamedaca.gov>; ANDREW THOMAS <ATHOMAS@alamedaca.gov>

**Subject:** Fw: Please vote no on alcohol sales at 1716 Webster Street (Union 76)

Dear Mayor, Council and Planning Board,

I am resending this as time has passed. Please do not approve yet another alcohol distribution outlet in this area. What is needed is a medical, counseling and social work facility to help those in the community who suffer from alcoholism and other forms of substance abuse.

Regards,

Steve Gerstle

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**From:** [gerstle@mindspring.com](mailto:gerstle@mindspring.com)

**Sent:** Wednesday, September 23, 2015 10:54 AM

**To:** [Trish Herrera-Spencer](#) ; [Frank Matarrese](#) ; [Jim Oddie](#) ; [Tony Daysog](#) ; [Marilyn Ezzy-Ashcraft](#) ; [Andrew THOMAS](#)

**Subject:** Re: Please vote no on alcohol sales at 1716 Webster Street (Union 76)

Dear Mayor, Council and Planning Board,

When Union 76 / Circle K first opened they were denied a permit to sell beer and wine. They are again asking to sell beer and wine. I urge you to affirm the former council's decision and deny alcohol sales. The area is saturated with stores selling alcohol. This is a lower income area with little access to healthy food, but abundant access to fast food and alcohol. Attached is a map from the ABC showing current liquor licenses near Webster between Atlantic and Lincoln. Three of these are off-sale locations: 7-11, Better Buy Liquor and Walgreen's. Ralph's at Lincoln and Eighth is also nearby. Each morning on my way to work I see liquor bottles in the bus shelters. If you

allow this gas station to sell alcohol, then the others will want to do so too.

Please deny this permit.

<http://tinyurl.com/1716WebsterAlcohol>

Regards,

Steve Gerstle

**From:** [gerstle@mindspring.com](mailto:gerstle@mindspring.com)

**Sent:** Thursday, August 23, 2012 6:45 PM

**To:** [Marie Gilmore](#) ; [Rob Bonta](#) ; [Doug DeHaan](#) ; [Lena Tam](#) ; [Beverly Johnson](#)

**Subject:** Please vote no on alcohol sales at 1716 Webster Street (Union 76)

Dear Mayor and Council,

I strongly urge you not to approve an alcohol sales permit for the Union 76 Station at 1716 Webster Street. This is item 6.A on the September 4, 2012 council agenda. The area is already saturated with stores selling alcohol. There are currently five stores selling alcohol, two of which are within a block of this location. To further saturate the area with alcohol sales would be detrimental to the commercial area and the surrounding residential neighborhood.

Sincerely,

Steve Gerstle  
P.O. Box 476  
Alameda



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