



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Conditional Use

HEARING DATE: MAY 2, 2013

Date: April 25, 2013
Case No.: 2013.0269C
Project Address: 354 Clement Street
Zoning: Inner Clement Neighborhood Commercial District
40-X Height and Bulk District
Block/Lot: 1429/025
Project Sponsor: Louis Lo
Shabu House Clement
354 Clement Street
San Francisco, CA 94118
Staff Contact: Kanishka Burns – (415) 575-9112
kanishka.burns@sfgov.org
Recommendation: **Approval with Conditions**

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PROJECT DESCRIPTION

The project sponsor proposes to convert his existing Limited-Restaurant (d.b.a. Shabu House) into a Restaurant (also d.b.a. Shabu House), which will allow on-site beer, wine and/or liquor sales for drinking on the premises (with ABC license types 41, 47, 49, 59 or 75) provided that the business operates as a Bona Fide Eating Establishment as defined in Planning Code Section 790.142. The Project does not include any interior or exterior alterations. The business is independently-owned and not considered a Formula Retail Restaurant.

SITE DESCRIPTION AND PRESENT USE

The Project Site is located on the northeast corner of Clement Street and 5th Avenue, Assessor's Block 1429, Lot 025. It is located within the Inner Clement Neighborhood Commercial District (NCD) Zoning District and the 40-X Height and Bulk District.

The Project Site consists of a two-story mixed use building, with two first story commercial spaces (including the subject space) and three dwelling units above. First story uses consist of the subject tenant space, which is a 2,670 sq. ft. Limited Restaurant (d.b.a. Shabu House) at the corner of Clement Street and 5th Avenue and one other commercial space along Clement Street consisting of a restaurant use at 346 Clement Street (d.b.a. King of Thai Noodle #2).

The existing business – Shabu House – was administratively approved as a “Limited Restaurant” in January 2013. The previous Zoning Referral for Health Permit approval at the Project Site allowed a Retail Full-Service Restaurant (d.b.a. Fune-Ya Japanese Restaurant) in October 2004. Fune-Ya was operating with an ABC license type 41 allowing on-site beer and wine sales in an eating place until

August 31, 2005 at which time it was revoked by the California Department of Alcoholic Beverage Control. Fune-Ya continued to operate until early 2012.

Ordinance 0047-12, commonly known as the “Restaurant Legislation”, consolidated the Planning Code’s eating and drinking categories. The new restaurant uses are categorized by what type of liquor license they are allowed to have; Limited Restaurants are not allowed to have on-site alcohol consumption, whereas Restaurants are permitted to have on-site beer, wine and/or liquor sales for drinking on the premises (with ABC license types 41, 47, 49, 59 or 75) so long as the business operates as a Bona Fide Eating Establishment as defined in Section 790.14. While Fune-Ya was previously approved as a Retail Full-Service Restaurant, it was not operating with an ABC license when the “Restaurant Legislation” went into effect in May 2012 and was therefore considered to be operating as a Limited Restaurant. Additionally, Fune-Ya had been operating without an ABC license for over three years, causing it to abandon the Restaurant use category as defined in Section 183.

SURROUNDING PROPERTIES AND NEIGHBORHOOD

The area surrounding the project site is mixed-use in character. A variety of commercial establishments are located within first story storefronts in the Inner Clement NCD, including restaurants, bars, personal services, convenience stores, grocery stores and other types of retailers. Buildings in the vicinity typically range from two to four stories in height. Upper floors of buildings are generally occupied by offices or residential units. The Inner Clement NCD is bounded by residential and mixed-uses in the surrounding RM-1 (Residential, Mixed) District.

ENVIRONMENTAL REVIEW

The Project is exempt from the California Environmental Quality Act (“CEQA”) as a Class 1 categorical exemption.

HEARING NOTIFICATION

TYPE	REQUIRED PERIOD	REQUIRED NOTICE DATE	ACTUAL NOTICE DATE	ACTUAL PERIOD
Classified News Ad	20 days	April 12, 2013	April 10, 2013	22 days
Posted Notice	20 days	April 12, 2013	April 11, 2013	21 days
Mailed Notice	10 days	April 12, 2013	April 12, 2013	20 days

The proposal requires a Section 312-neighborhood notification, which was conducted in conjunction with the conditional use authorization process.

PUBLIC COMMENT

- To date, the Department has received one communication in favor of the project from an attorney on behalf of the subject property owner. The Department has not received any communication in opposition to the proposed project.

ISSUES AND OTHER CONSIDERATIONS

- The business is locally owned and operated. The Project Site would be the third Shabu House in San Francisco and fourth overall (one location in Burlingame).
- The Project Site has housed a restaurant use since at least 1974, according to Planning Department historical files.

REQUIRED COMMISSION ACTION

In order for the project to proceed, the Commission must grant Conditional Use authorization to allow a change of use from a Limited Restaurant to a Restaurant, pursuant to Planning Code Section 303, 716.44 and 790.91.

BASIS FOR RECOMMENDATION

- The proposed Restaurant will enable an independent, locally-owned business to continue their business model while providing desirable goods and services to the surrounding neighborhood.
- The Project meets all applicable requirements of the Planning Code.
- The proposed Restaurant use would not increase the concentration of eating and drinking establishments in the Inner Clement NCD.
- The Project is desirable for, and compatible with the surrounding neighborhood.
- The business is not a Formula Retail use and would serve the immediate neighborhood.

RECOMMENDATION: Approval with Conditions
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Attachments:

Draft Motion
Block Book Map
Sanborn Map
Zoning Map
Aerial Photographs
Site Photo
Reduced Plans
Public Correspondence

Attachment Checklist

- | | |
|---|--|
| <input checked="" type="checkbox"/> Executive Summary | <input checked="" type="checkbox"/> Project sponsor submittal |
| <input checked="" type="checkbox"/> Draft Motion | Drawings: <u>Existing Conditions</u> |
| <input type="checkbox"/> Environmental Determination | <input checked="" type="checkbox"/> Check for legibility |
| <input checked="" type="checkbox"/> Zoning District Map | Drawings: <u>Proposed Project</u> |
| <input type="checkbox"/> Height & Bulk Map | <input checked="" type="checkbox"/> Check for legibility |
| <input checked="" type="checkbox"/> Parcel Map | 3-D Renderings (new construction or significant addition) |
| <input checked="" type="checkbox"/> Sanborn Map | <input type="checkbox"/> Check for legibility |
| <input checked="" type="checkbox"/> Aerial Photo | <input type="checkbox"/> Wireless Telecommunications Materials |
| <input type="checkbox"/> Context Photos | <input type="checkbox"/> Health Dept. review of RF levels |
| <input checked="" type="checkbox"/> Site Photos | <input type="checkbox"/> RF Report |
| | <input type="checkbox"/> Community Meeting Notice |
| | <input type="checkbox"/> Housing Documents |
| | <input type="checkbox"/> Inclusionary Affordable Housing Program: Affidavit for Compliance |
| | <input type="checkbox"/> Residential Pipeline |

Exhibits above marked with an "X" are included in this packet

KB

Planner's Initials

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SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- | | |
|--|--|
| <input type="checkbox"/> Affordable Housing (Sec. 415) | <input type="checkbox"/> First Source Hiring (Admin. Code) |
| <input type="checkbox"/> Jobs Housing Linkage Program (Sec. 413) | <input type="checkbox"/> Child Care Requirement (Sec. 414) |
| <input type="checkbox"/> Downtown Park Fee (Sec. 412) | <input type="checkbox"/> Other |

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Planning Commission Draft Motion

HEARING DATE: MAY 2, 2013

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Case No.: **2013.0269C**
Project Address: **354 CLEMENT STREET**
Zoning: Inner Clement NCD (Neighborhood Commercial District)
40-X Height and Bulk District
Block/Lot: 1429/025
Project Sponsor: Louis Lo
354 Clement Street
San Francisco, CA 94118
Staff Contact: Kanishka Burns – (415) 575-9112
kanishka.burns@gmail.com

ADOPTING FINDINGS RELATING TO THE APPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303, 716.44, and 790.91 OF THE PLANNING CODE TO ALLOW A CHANGE OF USE FROM A LIMITED RESTAURANTS TO A RESTAURANT (DBA SHABU HOUSE) WHICH WILL OPERATE AS A BONA FIDE EATING PLACE. THE PROPERTY IS LOCATED WITHIN THE INNER CLEMENT NEIGHBORHOOD COMMERCIAL DISTRICT AND A 40-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On March 12, 2013, Louis Lo (hereinafter "Project Sponsor") filed an application with the Planning Department (hereinafter "Department") for Conditional Use Authorization under Planning Code Section(s) 716.44 and 790.91 to allow a change of use from a limited restaurant to a restaurant (d.b.a. Shabu House) within the Inner Clement NCD (Neighborhood Commercial District) and a 40-X Height and Bulk District.

On May 2, 2013, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing of a regularly scheduled meeting on Conditional Use Application No. 2013.0269C.

On March 18, 2013, the Project was determined to be exempt from the California Environmental Quality Act ("CEQA") as a Class 1 Categorical Exemption under CEQA as described in the determination contained in the Planning Departments files for this Project.

The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Department staff, and other interested parties.

MOVED, that the Commission hereby authorizes the Conditional Use Authorization requested in Application No. 2013.0269C, subject to the conditions contained in "EXHIBIT A" of this motion, based on the following findings:

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and constitute findings of this Commission.
2. **Site Description and Present Use.** The Project Site is located on the northeast corner of Clement Street and 5th Avenue, Assessor's Block 1429, Lot 025. It is located within the Inner Clement Neighborhood Commercial District (NCD) Zoning District and the 40-X Height and Bulk District.

The Project Site consists of a two-story mixed use building, with two first story commercial spaces (including the subject space) and three dwelling units above. First story uses consist of the subject tenant space, which is a 2,670 sq. ft. Limited Restaurant (d.b.a. Shabu House) at the corner of Clement Street and 5th Avenue and one other commercial space along Clement Street consisting of a restaurant use at 346 Clement Street (d.b.a. King of Thai Noodle #2).

The existing business – Shabu House – was administratively approved as a "Limited Restaurant" in January 2013. The business is ready for operation but wishes to wait for Conditional Use Authorization before opening to the public.

3. **Surrounding Properties and Neighborhood.** The project site is located at the intersection of Clement Street and 5th Avenue. The area surrounding the project site is mixed-use in character. A variety of commercial establishments are located within first story storefronts in the Inner Clement NCD, including restaurants, bars, personal services, convenience stores, grocery stores and other types of retailers. Buildings in the vicinity typically range from two to four stories in height. Upper floors of buildings are generally occupied by offices or residential units. The Inner Clement NCD is bounded by residential and mixed-uses in the surrounding RM-1 (Residential, Mixed) District.
4. **Project Description.** The Project Sponsor proposes to convert his existing Limited Restaurant into a Restaurant, which will allow on-site beer, wine and/or liquor sales for drinking on the premises (with ABC license types 41, 47, 49, 59 or 75) provided that the business operates as a Bona Fide Eating Establishment as defined in Planning Code Section 790.142. The Project does not include any interior or exterior alterations.

The existing business – Shabu House – was administratively approved as a “Limited Restaurant” in January 2013. The previous Zoning Referral for Health Permit approval at the Project Site allowed a Retail Full-Service Restaurant (d.b.a. Fune-Ya Japanese Restaurant) in October 2004. Fune-Ya was operating with an ABC license type 41 allowing on-site beer and wine sales in an eating place until August 31, 2005 at which time it was revoked by the California Department of Alcoholic Beverage Control. Fune-Ya continued to operate until early 2012.

Ordinance 0047-12, commonly known as the “Restaurant Legislation”, consolidated the Planning Code’s eating and drinking categories. The new restaurant uses are categorized by what type of liquor license they are allowed to have; Limited Restaurants are not allowed to have on-site alcohol consumption, whereas Restaurants are permitted to have on-site beer, wine and/or liquor sales for drinking on the premises (with ABC license types 41, 47, 49, 59 or 75) so long as the business operates as a Bona Fide Eating Establishment as defined in Section 790.14. While Fune-Ya was previously approved as a Retail Full-Service Restaurant, it was not operating with an ABC license when the “Restaurant Legislation” went into effect in May 2012 and was therefore considered to be operating as a Limited Restaurant. Additionally, Fune-Ya had been operating without an ABC license for over three years, causing it to abandon the Restaurant use category as defined in Section 183.

A building permit for tenant improvements, Building Permit No. 2012.10.29.3025 was approved by the Planning Department on October 30, 2012 to convert the vacated Fune-Ya Japanese Restaurant to Shabu House Clement. Additional Building Permit Nos. 2013.02.19.0401 and 2013.02.21.0698 were issued without Planning Department approvals required to upgrade the fire suppression system and cooking equipment. Building Permit Nos. 2013.03.25.2942 and 2013.03.25.2938 were approved by the Planning Department on March 27 to erect new Code Complying signage.

The proposed use is an independent use and locally owned, which has been encouraged throughout San Francisco. The proposed use is not a Formula Retail use. The proposal requires a change of use and Section 312-neighborhood notification was conducted in conjunction with the Conditional Use authorization process. The proposed use is a neighborhood-serving use.

The proposed operation employs 15-17 people, most of who are San Francisco residents. The subject site is well served by public transit so that employees and customers should not adversely affect the traffic flow. It is not anticipated that the change in use from a Limited Restaurant to a Restaurant will further affect the neighborhood traffic.

The previous use, Fune-Ya Japanese Restaurant was operating as a Full-Service Restaurant without an ABC license. Shabu House is principally permitted to operate as a Limited Restaurant and is seeking approval to operate as a Restaurant.

5. **Public Comment.** The Department has received one communication in support of the Project. The Department has not received any communication in opposition to the proposed Project.

6. **Planning Code Compliance:** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:

- A. **Use.** Planning Code Section 716.44 states that a Conditional Use Authorization is required for a Restaurant on the first story, as defined by Planning Code Section 790.91.

The Subject Property is located within the Inner Clement NCD and pursuant to Planning Code Section 716.44, Restaurants are permitted on the first story with a Conditional Use authorization. The Project Sponsor is requesting Conditional Use authorization in order to allow a Restaurant on the first story of a tenant space, which is currently authorized as a Limited Restaurant. A Restaurant may provide on-site beer, wine, and/or liquor sales for drinking on the premises (with ABC license types 41, 47, 49, 59 or 75); however, if it does so it shall be required to operate as a Bona Fide Eating Place. The Project Sponsor proposes to provide on-site beer and wine sales for drinking on the premises with an ABC license type 41 and will operate as a Bona Fide Eating Place as defined by Planning Code Section 790.142.

- B. **Use Size.** Planning Code Section 716.21 establishes size limited on nonresidential uses for the Inner Clement NCD. Nonresidential uses up to 2,499 square feet are principally permitted while uses 2,500 square feet and above require Conditional Use Authorization.

At 2,952 gross square feet (gsf), the Project exceeds the principally permitted use size. A Zoning Administrator interpretation of Planning Code Section 121.2 allows for a change of use in NC Districts when the use size exceeds the use size limit if the use predated the use size limit requirement and there is no significant increase in floor area. The Subject structure was built circa 1900 and there is no physical expansion proposed as part of this Project. Therefore, a Conditional Use for use size is not required.

- C. **Hours of Operation.** Planning Code Section 716.27 states that hours of operation from 6:00 AM to 2:00 AM are principally permitted in the Inner Clement NCD while hours of operation from 2:00 AM to 6:00 AM are conditionally permitted. Hours of operation are defined by Planning Code Section 790.48 as the permitted hours during which any commercial establishment may be open.

The Project's proposed hours of operation will be from 5:00 PM to 11:00 PM, Monday through Sunday with lunch service provided from 11:30 AM to 2:30 PM on Friday and Saturday. The Project will operate within the principally permitted hours of operation.

- D. **Formula Retail Uses.** Planning Code Section 186 states that all uses meeting the definition of "formula retail" use shall not be permitted except by Conditional Use through the procedures of Planning Code Section 303.

The Project is the fourth Shabu House restaurant in the United States that is part of a business with standardized décor, color scheme, signage and trademark. Each location is owned by a different corporation made up of different partnerships. The Project Sponsor has a partnership interest in each location. There are currently two locations operating in San Francisco (Geary Boulevard and 16th

Avenue and Ocean Avenue and Woodacre Drive) and a third location in Burlingame. The Project is not a "formula retail" use.

- E. **Parking.** Section 151 of the Planning Code requires off-street parking for every 200 square-feet of occupied floor area, where the occupied floor area exceeds 5,000 square-feet.

The Subject Property contains approximately 2,952 square-feet of occupied floor area and thus does not require any off-street parking.

- F. **Loading.** Section 152 requires off-street freight loading for uses above a certain size. Retail establishments and uses primarily engaged in the handling of goods (such as the proposed Restaurant) are not required off-street freight loading if they measure less than 10,000 square feet in gross area. Section 231(h)(3) requires that all truck loading associated with this business shall be limited in such a way as to avoid undue interference with sidewalks, or with crosswalks, bus stops, hydrants and other public features.

With a gross floor area under 10,000 square feet, the Project is not required to provide any off-street loading. All loading for this business is required to be conducted in such a way as to avoid undue interference with sidewalks, crosswalks, bus stops, hydrants and other public features.

- G. **Street Frontage in Neighborhood Commercial Districts.** Section 145.1 of the Planning Code requires that within NC Districts space for active uses shall be provided within the first 25 feet of building depth on the ground floor and 15 feet on floors above from any facade facing a street at least 30 feet in width. In addition, the floors of street-fronting interior spaces housing non-residential active uses and lobbies shall be as close as possible to the level of the adjacent sidewalk at the principal entrance to these spaces. Frontages with active uses must be fenestrated with transparent windows and doorways for no less than 60 percent of the street frontage at the ground level and allow visibility to the inside of the building. The use of dark or mirrored glass shall not count towards the required transparent area. Any decorative railings or grillwork, other than wire mesh, which is placed in front of or behind ground floor windows, shall be at least 75 percent open to perpendicular view. Rolling or sliding security gates shall consist of open grillwork rather than solid material, so as to provide visual interest to pedestrians when the gates are closed, and to permit light to pass through mostly unobstructed. Gates, when both open and folded or rolled as well as the gate mechanism, shall be recessed within, or laid flush with, the building facade.

The subject tenant space has approximately 96'-8" of frontage along 5th Avenue and approximately 27'-4" of frontage along Clement Street. This entire space will be occupied by the active use of "Shabu House", which is a Restaurant use that complies with Section 145.1(c)(3). Approximately 65' of both the 5th Avenue and Clement Street frontages are dedicated to clear glazing with unobstructed views into the interior of the tenant space providing approximately 52% transparency. Although this does not meet the 60% transparency and fenestration requirement, it represents the building's existing condition, and the Project does not include any exterior alterations. The building is thus considered legally noncomplying, and the change of use to a Restaurant does not require exterior alterations to bring the building into compliance with this Section.

- H. **Signage.** Planning Code Section 186 states that any signs on the property shall be made to comply with the requirements of Article 6 of the Code applying to nonconforming uses.

Signage was reviewed and approved by the Planning Department on March 25, 2013 under Building Permit Nos. 2013.03.25.2938 and 2013.03.25.2942.

7. **Planning Code Section 303** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval. On balance, the project does comply with said criteria in that:

- A. The proposed new uses and building, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable, and compatible with, the neighborhood or the community.

The Project will occupy the storefront with a desirable neighborhood-serving use and provide entry-level job opportunities for the local community. While the use size exceeds the limitations of Planning Code Section 121.1, the intensity of activity in the district is not such that allowing the larger use will likely infringe on the other needed neighborhood-servicing uses in the area. The proposed use will not increase the size or intensity of the existing commercial space, which was previously used as a Limited Restaurant. The Project frontage on Clement Street is 27'-4" and designed in discrete elements which respect the scale of development in the district.

- B. The proposed project will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity. There are no features of the project that could be detrimental to the health, safety or convenience of those residing or working the area, in that:

- i. Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

The size and shape of the Project Site is compatible with the patterns of development in the area, and the Project does not involve any alterations to the exterior of the subject building. The Project would not physically expand the existing building or tenant space, and therefore would not alter the existing appearance of character of the Project vicinity.

- ii. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;

The Planning Code does not require parking or loading for a 2,952 square-foot restaurant. The proposed use is designed to meet the needs of the immediate neighborhood and should not generate significant amounts of vehicular trips from the immediate neighborhood or citywide. The Project would not adversely affect public transit or overburden the existing supply of parking in the neighborhood, because the project site is well-served by public transit as it is within one block of six MUNI lines.

- iii. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

The project will not produce noxious or offensive emissions related to noise, glare and dust or odor, and the restaurant will be subject to the Condition of Approval No. 9 regarding odor control.

- iv. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs;

The Project Site is completely built-out at the ground floor to all street-facing property lines, thus no landscaping will need to be provided. There are no proposed changes to existing conditions as they relate to screening, open spaces, parking and loading areas, service areas and lighting. Signage has been permitted with Building Permit Nos. 2013.03.25.2938 and 2013.03.25.2942.

- C. That the use as proposed will comply with the applicable provisions of the Planning Code and will not adversely affect the General Plan.

The Project complies with all relevant requirements and standards of the Planning Code and is consistent with objectives and policies of the General Plan as detailed below.

- D. That the use as proposed would provide development that is in conformity with the purpose of the applicable Neighborhood Commercial District.

The proposed project is consistent with the stated purposes of the Inner Clement Neighborhood Commercial District. Inner Clement Street has one of the greatest concentrations of restaurants of any commercial street in San Francisco, as stated in the Section 716.1 of the Code. The Project Site has been used as a restaurant since at least 1974 and would continue to be used as such, consistent with existing land use patterns and maintaining a harmony of uses that support the district's vitality.

- E. The existing concentration of eating and drinking uses shall not exceed 25% of the total commercial frontage as measured in linear feet within the immediate area of the subject site. The immediate area shall be defined as all properties located within 300 feet of the subject property and also located within the same zoning district.

Planning staff has performed a site survey of the Inner Clement Neighborhood Commercial District including the immediate area of the Subject Site. With the proposed Restaurant use, approximately 29% of the frontage of the immediate area (within 300 foot radius) of the Subject Site is attributed to eating and drinking establishments. The proposed change of use from Limited Restaurant to Restaurant will not result in a net increase of commercial frontage within the immediate area.

- 8. **General Plan Compliance.** The Project is, on balance, consistent with the following Objectives and Policies of the General Plan:

NEIGHBORHOOD COMMERCE

Objectives and Policies

OBJECTIVE 1:

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

Policy 1.1:

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development that has substantial undesirable consequences that cannot be mitigated.

Policy 1.2:

Assure that all commercial and industrial uses meet minimum, reasonable performance standards.

Policy 1.3:

Locate commercial and industrial activities according to a generalized commercial and industrial land use plan.

The Project will provide desirable goods and services, as well as employment opportunities to those in the community. No existing commercial tenant will be displaced. The conditions of approval will ensure that the use meets minimum, reasonable performance standards. Further, the Project Site is located within a Neighborhood Commercial District and is thus consistent with activities in the commercial land use plan.

OBJECTIVE 2:

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

Policy 2.1:

Seek to retain existing commercial and industrial activity and to attract new such activity to the City.

The Project will enable the retention of an existing commercial activity as the Project Site has been occupied by a restaurant use since at least 1974.

OBJECTIVE 3:

PROVIDE EXPANDED EMPLOYMENT OPPORTUNITIES FOR CITY RESIDENTS, PARTICULARLY THE UNEMPLOYED AND ECONOMICALLY DISADVANTAGED.

Policy 3.1:

Promote the attraction, retention and expansion of commercial and industrial firms which provide employment improvement opportunities for unskilled and semi-skilled workers.

The Project will provide additional employment opportunities for local residents as well as unskilled and semi-skilled workers.

OBJECTIVE 6:

MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

Policy 6.1:

Ensure and encourage the retention and provision of neighborhood-serving goods and services in the city's neighborhood commercial districts, while recognizing and encouraging diversity among the districts.

No commercial tenant would be displaced and the project would not prevent the district from achieving optimal diversity in the types of goods and services available in the neighborhood.

Policy 6.2:

Promote economically vital neighborhood commercial district which foster small business enterprises and entrepreneurship and which are responsive to the economic and technological innovation in the marketplace and society.

An independent entrepreneur is sponsoring the proposal. The proposed use is a neighborhood-serving use. The proposed eating and drinking establishment is not considered a Formula Retail Use.

Policy 6.3:

Preserve and promote the mixed commercial-residential character in neighborhood commercial districts. Strike a balance between the preservation of existing affordable housing and needed expansion of commercial activity.

The Proposed project will maintain the mixed-use nature of the Subject building and the Inner Clement NCD. The Project Site consists of two commercial uses at the first floor and three dwelling units at the second floor.

Eating and Drinking Establishments

The following guidelines, in addition to others in this objective for neighborhood commercial districts, should be employed in the development of overall district zoning controls as well as in the review of individual permit applications, which require case-by-case review and City Planning Commission approval. Pertinent guidelines may be applied as conditions of approval of individual permit applications. In general, uses should be encouraged which meet the guidelines; conversely, uses should be discouraged which do not.

Eating and drinking establishments include bars, limited restaurants, and restaurants. Guidelines for eating and drinking establishments are needed to achieve the following purposes:

- Regulate the distribution and proliferation of eating and drinking establishments, especially in districts experiencing increased commercial activity;
- Control nuisances associated with their proliferation;
- Preserve storefronts for other types of local-serving businesses; and
- Maintain a balanced mix of commercial goods and services.
- The regulation of eating and drinking establishments should consider the following:
 - Balance of retail sales and services;
 - Current inventory and composition of eating and drinking establishments;
 - Total occupied commercial linear frontage, relative to the total district frontage;
 - Uses on surrounding properties;
 - Available parking facilities, both existing and proposed;
 - Existing traffic and parking congestion; and
 - Potential impacts on the surrounding community.

In districts where the proliferation of eating and drinking establishments could generate problems, the following guidelines should be employed in the consideration of new establishments, relocations, changes from one kind of eating and drinking establishment to another (e.g. from self-service restaurant to full-service restaurant), expansion of intensification of existing establishments:

- The establishment should not add to an over-concentration of eating and drinking establishments in a single district. The balance of commercial uses may be threatened when eating and drinking establishments occupy more than 20% of the total occupied commercial frontage. Proposals for eating and drinking establishments which would increase the proportion of total occupied commercial frontage above 20% should be reviewed to ensure that they would not reduce the variety of neighborhood-serving uses; nor create substantial noise, traffic, parking problems or other nuisances in the district or surrounding neighborhood. Those establishments that would do the above should not be permitted. Except in districts with an established pattern of service to a broad market, such as North Beach, such establishments should not occupy more than 25% of the total commercially occupied frontage in a district. To minimize the problems they can create, eating and drinking uses should generally be at least 100 feet apart from each other, unless there are factors making clustering of uses appropriate. For example, a configuration of clustered eating and drinking uses where off-street parking is shared might be more appropriate than an even distribution of such establishments.
- New, expanding or relocating eating and drinking uses should not impose significant adverse impacts on traffic and transit volumes and circulation and parking congestion. If such impacts are anticipated, especially on transit-preferential streets, the proposed use, expansion or relocation should be redesigned to mitigate such impacts, or it should be prohibited.
- Eating and drinking uses should be adequately soundproofed or insulated for noise and operated so as to reasonably protect adjoining and surrounding upper-story residences from disturbances from fixed source equipment.

The General Plan states that there is a concern with the potential over-concentration of food-service establishments. The Commerce and Industry Element of the General Plan contains Guidelines for Specific Uses. For eating and drinking establishments, the Guidelines state, "the balance of commercial uses may be threatened when eating and drinking establishments occupy more than 20% of the total occupied commercial frontage." Planning staff has performed a site survey of the Inner Clement Neighborhood Commercial District which contains the proposed use. With the proposed restaurant use, approximately 45% of the frontage of the Inner Clement Neighborhood Commercial District is attributed to eating and drinking establishments. The proposed change of use from Limited Restaurant to Restaurant will not result in a net increase of commercial frontage within the Inner Clement Neighborhood Commercial District. The Project Site is also well served by public transit and will be subject to the standard Conditions of Approval for eating and drinking establishments including those concerned with trash, odors and general cleanliness.

9. **Planning Code Section 101.1(b)** establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the project does comply with said policies in that:

- A. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses be enhanced.

The Project will not displace any existing retail uses within the neighborhood.

- B. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

The existing units in the surrounding neighborhood would not be adversely affected. The Project is consistent with the surrounding neighborhood character.

- C. That the City's supply of affordable housing be preserved and enhanced,

No housing will be removed for this Project.

- D. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

The Project would not adversely affect public transit or overburden the existing supply of parking in the neighborhood, because the project site is well-served by public transit as it is within one block of six MUNI lines.

- E. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

Approval of this project will not adversely affect any industrial or service sector jobs; rather, it will create new service sector employment opportunities for local residents.

- F. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

Tenant improvements completed under Building Permit No. 2013.02.21.0698 conform to the structural and seismic safety requirements of the San Francisco Building Code where applicable. This proposal will not affect the property's ability to withstand an earthquake.

- G. That landmarks and historic buildings be preserved.

The Project does not involve any exterior alterations and is not located in a landmark or historic building.

- H. That our parks and open space and their access to sunlight and vistas be protected from development.

The Project will not affect any parks or open space because there is no change to the existing building footprint.

10. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.
11. The Commission hereby finds that approval of the Conditional Use authorization would promote the health, safety and welfare of the City.

DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES Conditional Use Application No. 2013.0269C** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, dated March 28, 2013, and stamped "EXHIBIT B", which is incorporated herein by reference as though fully set forth.

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this Conditional Use Authorization to the Board of Supervisors within thirty (30) days after the date of this Motion No. XXXXX. The effective date of this Motion shall be the date of this Motion if not appealed (After the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on May 2, 2013.

Jonas P. Ionin
Acting Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED: May 2, 2013

EXHIBIT A

AUTHORIZATION

This authorization is for a conditional use to allow a change of use from limited-restaurant to restaurant (d.b.a. Shabu House) located at 354 Clement Street, Lot 025 in Assessor's Block 1429 pursuant to Planning Code Section(s) 303, 716.44 and 790.91 within the Inner Clement Street Neighborhood Commercial District and a 40-X Height and Bulk District; in general conformance with plans, dated March 28, 2013, and stamped "EXHIBIT B" included in the docket for Case No. 2013.0269C and subject to conditions of approval reviewed and approved by the Commission on May 2, 2013 under Motion No XXXXXX. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

RECORDATION OF CONDITIONS OF APPROVAL

Prior to the issuance of the building permit or commencement of use for the Project the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property. This Notice shall state that the project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on May 2, 2013 under Motion No XXXXXX.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. XXXXXX shall be reproduced on the Index Sheet of construction plans submitted with the Site or Building permit application for the Project. The Index Sheet of the construction plans shall reference to the Conditional Use authorization and any subsequent amendments or modifications.

SEVERABILITY

The Project shall comply with all applicable City codes and requirements. If any clause, sentence, section or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other remaining clauses, sentences, or sections of these conditions. This decision conveys no right to construct, or to receive a building permit. "Project Sponsor" shall include any subsequent responsible party.

CHANGES AND MODIFICATIONS

Changes to the approved plans may be approved administratively by the Zoning Administrator. Significant changes and modifications of conditions shall require Planning Commission approval of a new Conditional Use authorization.

Conditions of Approval, Compliance, Monitoring, and Reporting

PERFORMANCE

1. **Validity and Expiration.** The authorization and right vested by virtue of this action is valid for three years from the effective date of the Motion. A building permit from the Department of Building Inspection to construct the project and/or commence the approved use must be issued as this Conditional Use authorization is only an approval of the proposed project and conveys no independent right to construct the project or to commence the approved use. The Planning Commission may, in a public hearing, consider the revocation of the approvals granted if a site or building permit has not been obtained within three (3) years of the date of the Motion approving the Project. Once a site or building permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued diligently to completion. The Commission may also consider revoking the approvals if a permit for the Project has been issued but is allowed to expire and more than three (3) years have passed since the Motion was approved.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

2. **Extension.** This authorization may be extended at the discretion of the Zoning Administrator only where failure to issue a permit by the Department of Building Inspection to perform said tenant improvements is caused by a delay by a local, State or Federal agency or by any appeal of the issuance of such permit(s).

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

MONITORING – AFTER ENTITLEMENT

3. **Enforcement.** Violation of any of the Planning Department conditions of approval contained in this Motion or of any other provisions of Planning Code applicable to this Project shall be subject to the enforcement procedures and administrative penalties set forth under Planning Code Section 176 or Section 176.1. The Planning Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

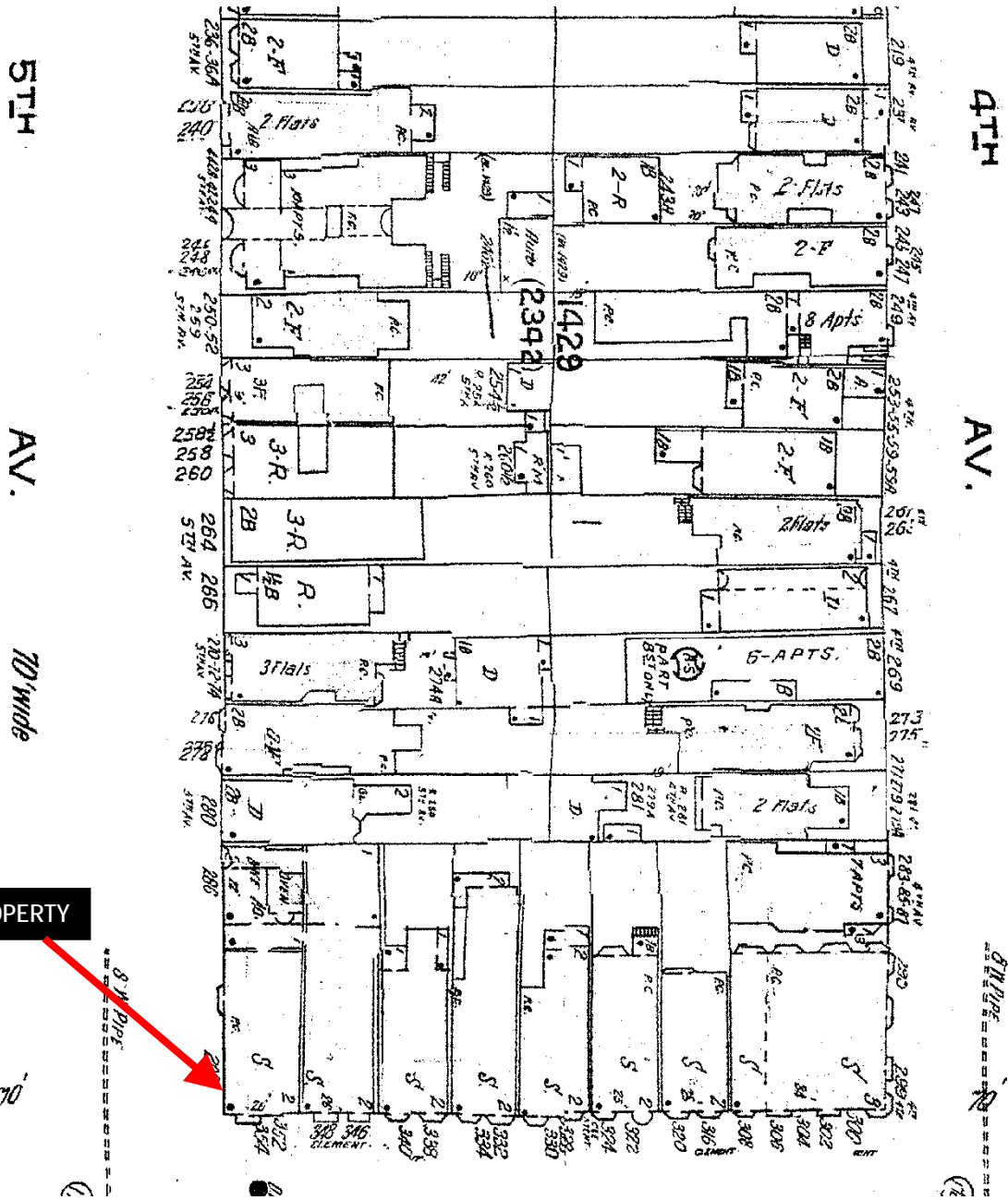
4. **Revocation due to Violation of Conditions.** Should implementation of this Project result in complaints from interested property owners, residents, or commercial lessees which are not resolved by the Project Sponsor and found to be in violation of the Planning Code and/or the specific conditions of approval for the Project as set forth in Exhibit A of this Motion, the Zoning Administrator shall refer such complaints to the Commission, after which it may hold a public hearing on the matter to consider revocation of this authorization.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

OPERATION

5. **Garbage, Recycling, and Composting Receptacles.** Garbage, recycling, and compost containers shall be kept within the premises and hidden from public view, and placed outside only when being serviced by the disposal company. Trash shall be contained and disposed of pursuant to garbage and recycling receptacles guidelines set forth by the Department of Public Works.
For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works at 415-554-.5810, <http://sfdpw.org>
6. **Sidewalk Maintenance.** The Project Sponsor shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works Streets and Sidewalk Maintenance Standards. *For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works, 415-695-2017, <http://sfdpw.org/>*
7. **Noise Control.** The premises shall be adequately soundproofed or insulated for noise and operated so that incidental noise shall not be audible beyond the premises or in other sections of the building and fixed-source equipment noise shall not exceed the decibel levels specified in the San Francisco Noise Control Ordinance.
For information about compliance with the fixed mechanical objects such as rooftop air conditioning, restaurant ventilation systems, and motors and compressors with acceptable noise levels, contact the Environmental Health Section, Department of Public Health at (415) 252-3800, www.sfdph.org
8. **Odor Control.** While it is inevitable that some low level of odor may be detectable to nearby residents and passersby, appropriate odor control equipment shall be installed in conformance with the approved plans and maintained to prevent any significant noxious or offensive odors from escaping the premises.
For information about compliance with odor or other chemical air pollutants standards, contact the Bay Area Air Quality Management District, (BAAQMD), 1-800-334-ODOR (6367), www.baaqmd.gov and Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

Sanborn Map*



SUBJECT PROPERTY

*The Sanborn Maps in San Francisco have not been updated since 1998, and this map may not accurately reflect existing conditions.



Conditional Use Authorization Hearing
 Case Number 2013.0269C
 Restaurant – Shabu House
 354 Clement Street

Aerial Photo

View Looking North



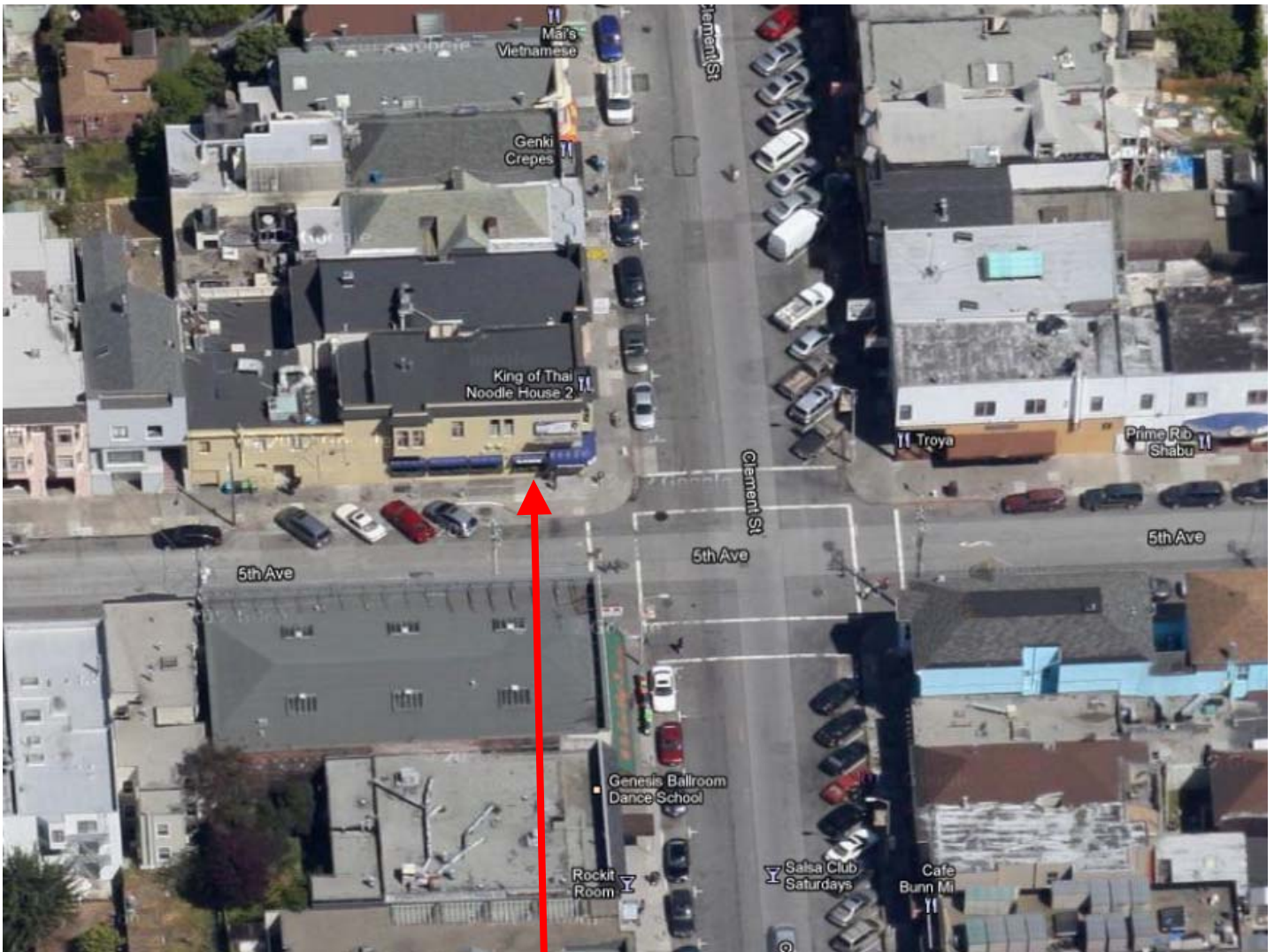
SUBJECT PROPERTY



Conditional Use Authorization Hearing
Case Number 2013.0269C
Restaurant – Shabu House
354 Clement Street

Aerial Photo

View Looking West

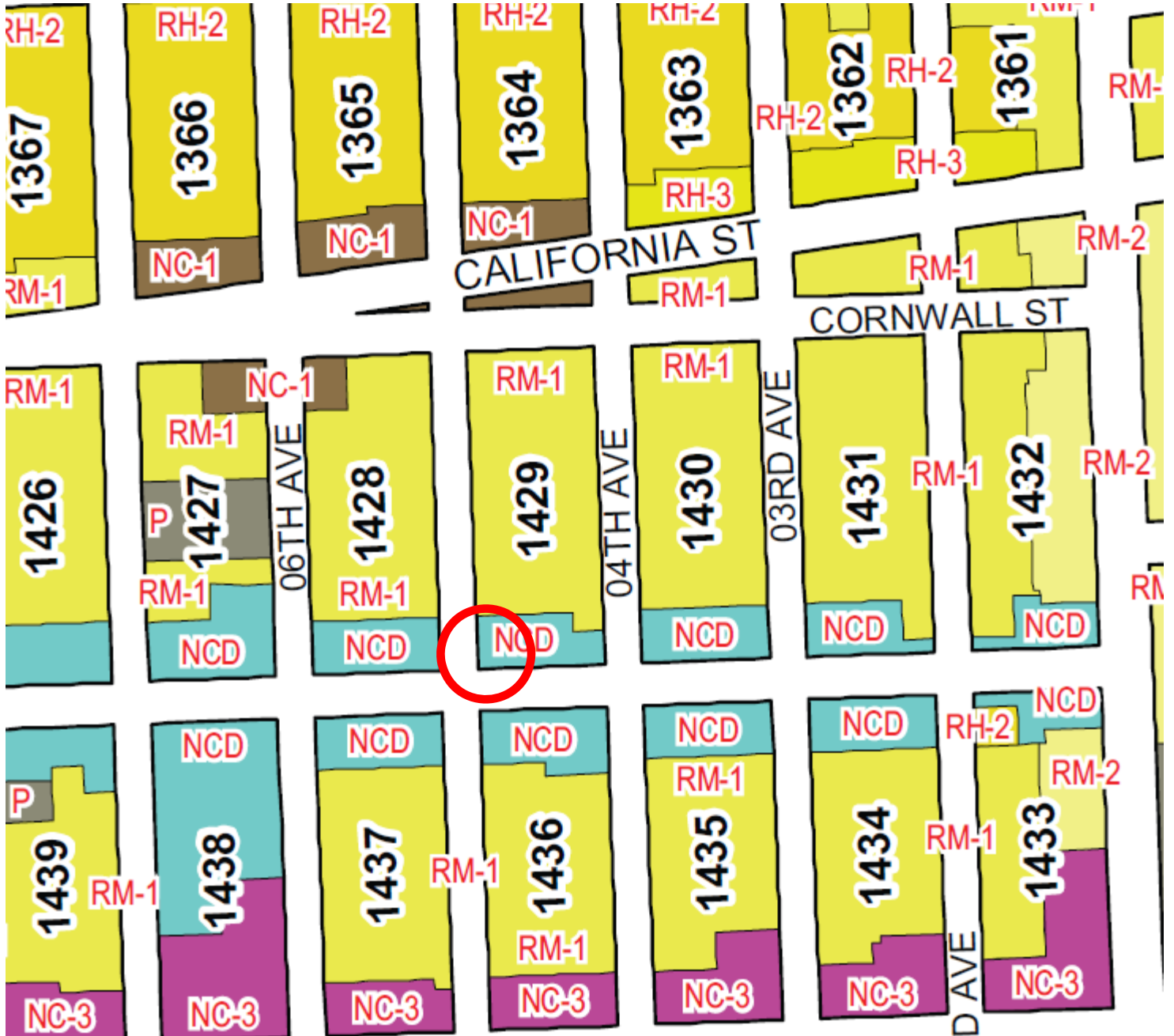


SUBJECT PROPERTY



Conditional Use Authorization Hearing
Case Number 2013.0269C
Restaurant – Shabu House
354 Clement Street

Zoning Map



Conditional Use Authorization Hearing
Case Number 2013.0269C
Restaurant – Shabu House
354 Clement Street



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Exhibit B



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Site Photo

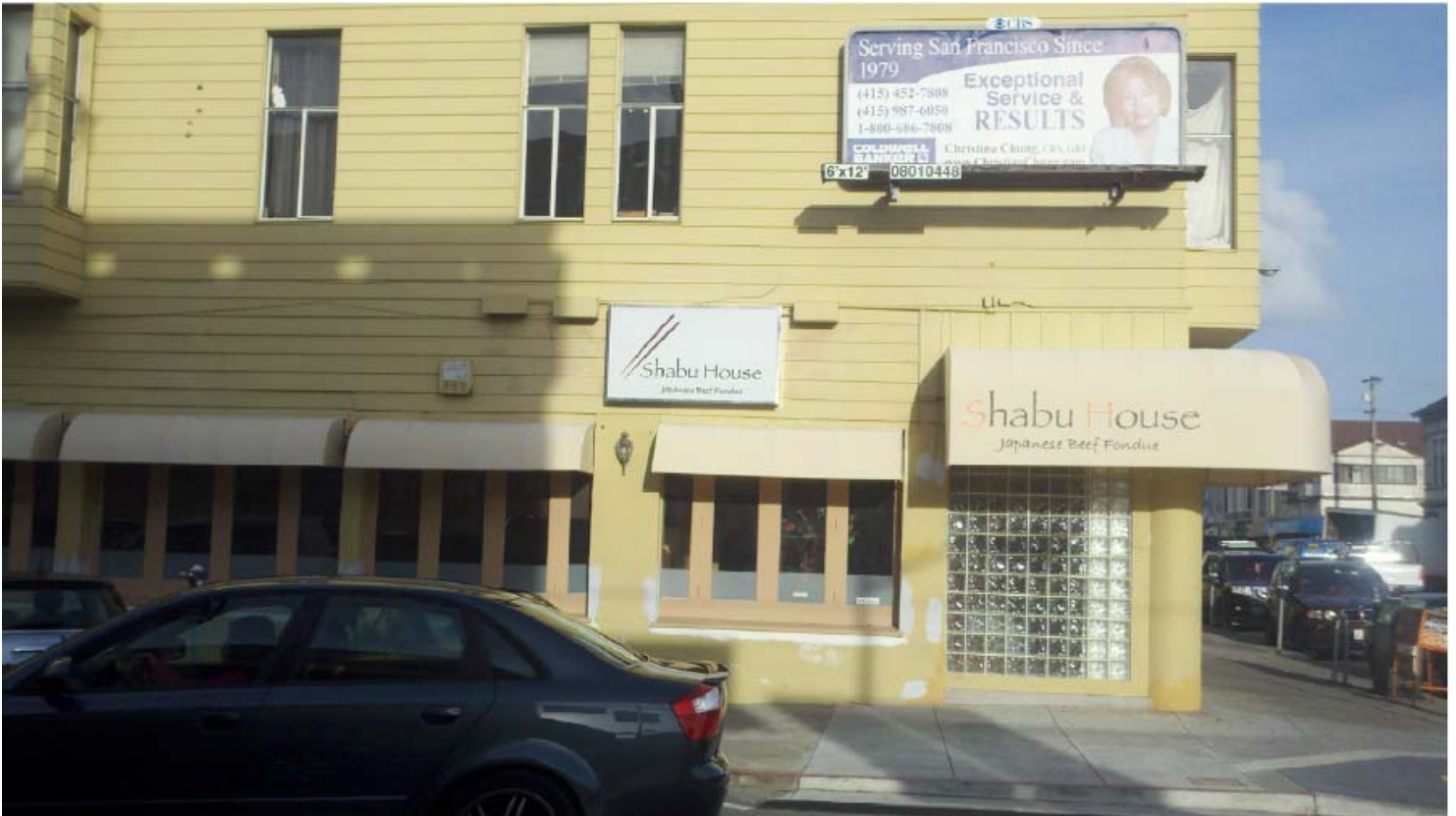
Clement Street Frontage



Conditional Use Authorization Hearing
Case Number 2013.0269C
Restaurant – Shabu House
354 Clement Street

Site Photo

5th Avenue Frontage



Conditional Use Authorization Hearing
Case Number 2013.0269C
Restaurant – Shabu House
354 Clement Street

**SEILER
EPSTEIN
ZIEGLER &
APPLEGATE LLP**

Attorneys at Law

GML@SEZALAW.COM

April 17, 2013

Via Email and U.S. Mail

SAN FRANCISCO PLANNING DEPARTMENT
PLANNING COMMISSION
Attn: Kanishka Burns
1650 Mission Street, Suite 400
San Francisco, CA 94103

Re: *Shabu House – 354 Clement Street*
Case No. 2013.0269C

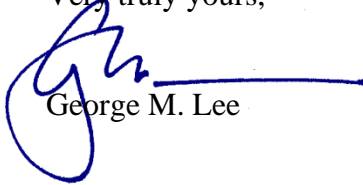
Dear Ms. Burns:

This office represents Sze Ching Law, the owner of the property located at 354 Clement Street, San Francisco, and whose tenant (d.b.a. Shabu House) is applying for a change of use from a Limited Restaurant to a Restaurant, with beer and wine service.

On behalf of Mr. Law, I write in support of Shabu House's application. This establishment will be a locally-owned, Japanese shabu restaurant. The tenant's conditional use as a full Restaurant would add diversity and liveliness to the neighborhood. Moreover, having a full Restaurant on this corner is not expected to materially change the character of the neighborhood. Previous tenants in this space served beer and wine, without incidence, or affecting the quality of life. In short, granting Shabu House's application would promote the City's goal of having long-term, locally-owned and diverse establishments that enhance the character and choices for patrons in the neighborhood.

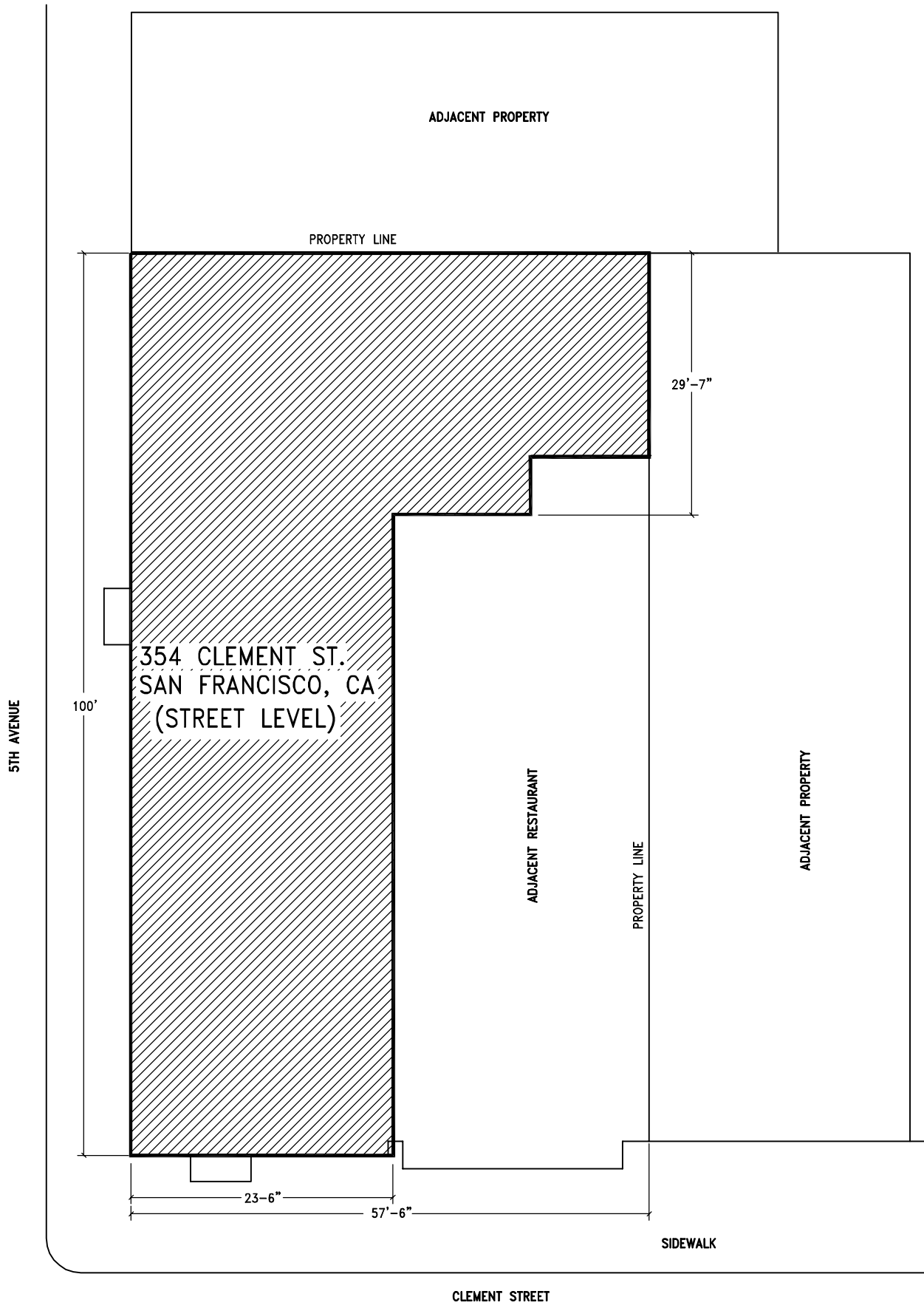
Thank you for your attention to this matter. If you have any questions about our position in this matter, feel free to contact me directly.

Very truly yours,


George M. Lee

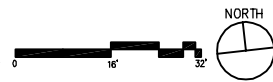
cc: Matthew Wang, Shabu House

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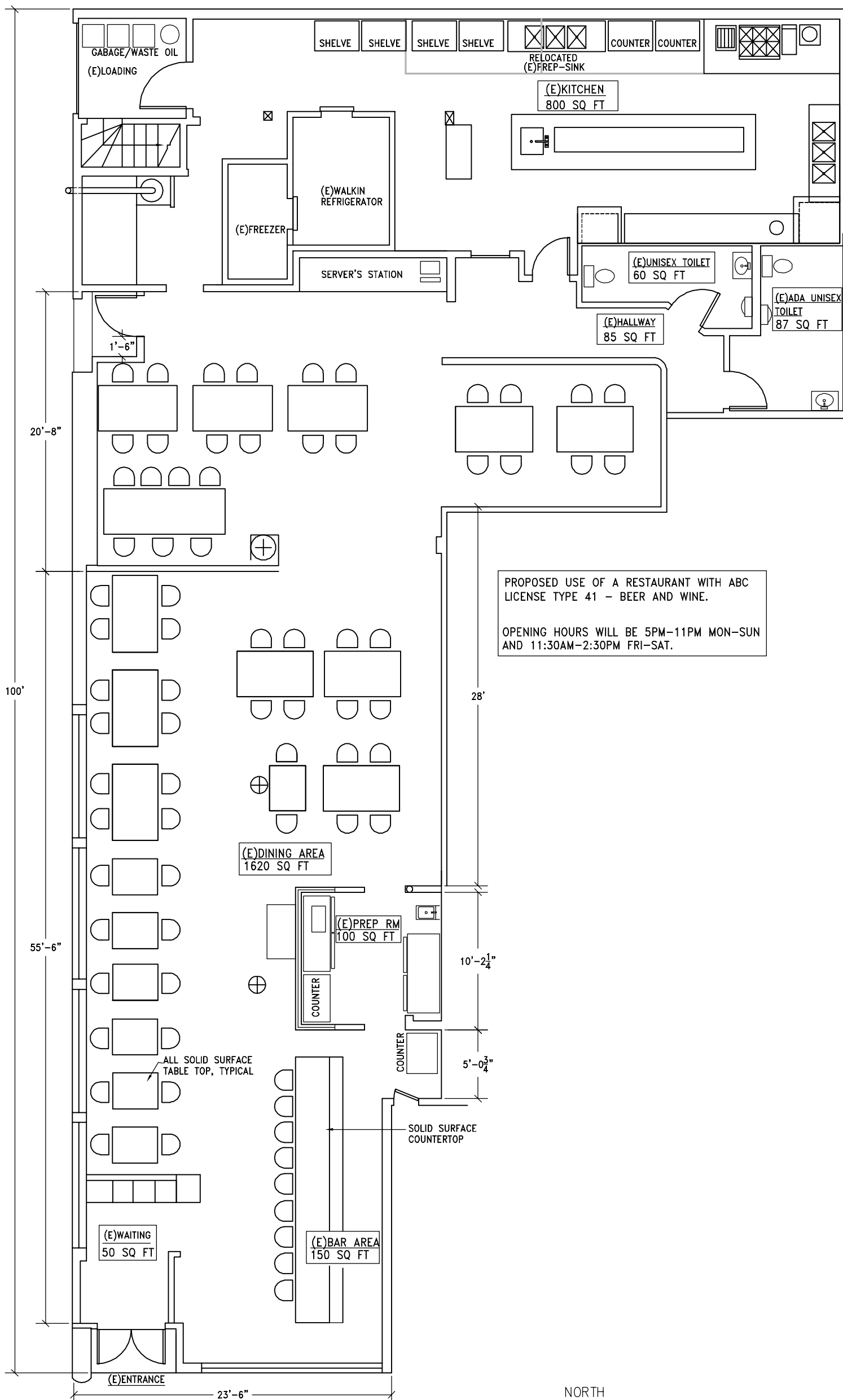


SCOPE OF WORK:
CHANGE THE USE OF A LIMITED RESTAURANT TO A
RESTAURANT. OPENING HOURS WILL BE 5PM-11PM MON-SUN
AND 11:30AM-2:30PM FRI-SAT.

EXISTING/PROPOSED PLOT PLAN
1/16"=1'-0"



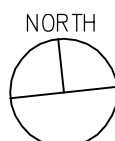
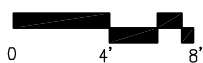
3/28/2013



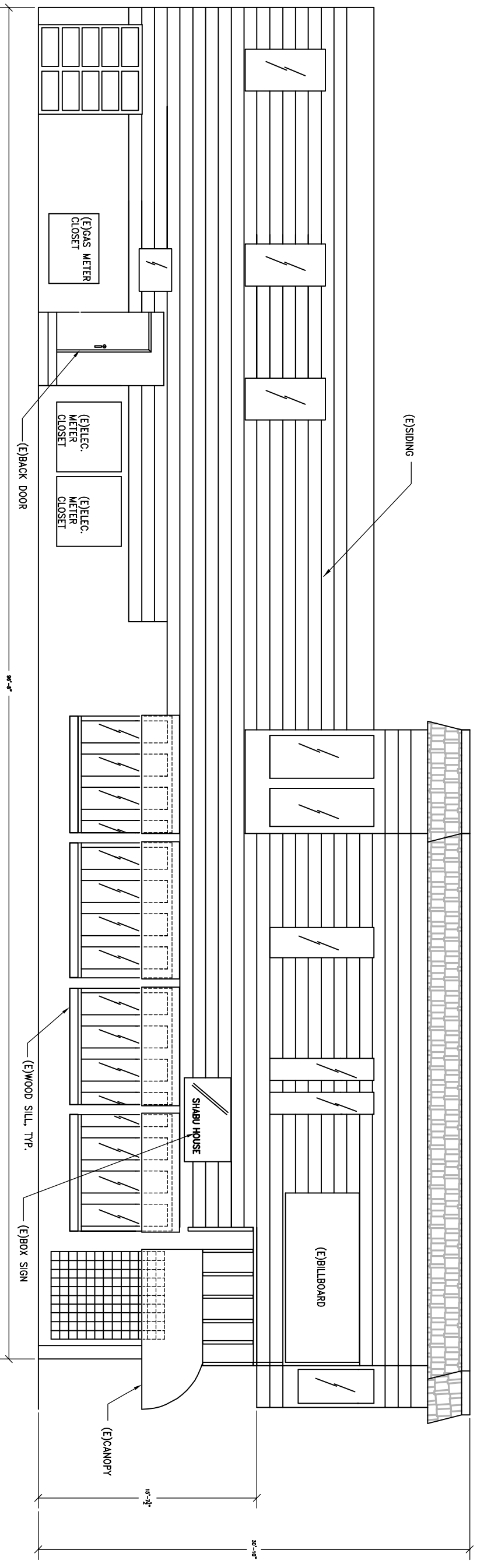
PROPOSED USE OF A RESTAURANT WITH ABC
 LICENSE TYPE 41 - BEER AND WINE.
 OPENING HOURS WILL BE 5PM-11PM MON-SUN
 AND 11:30AM-2:30PM FRI-SAT.

EXISTING/PROPOSED FLOOR PLAN

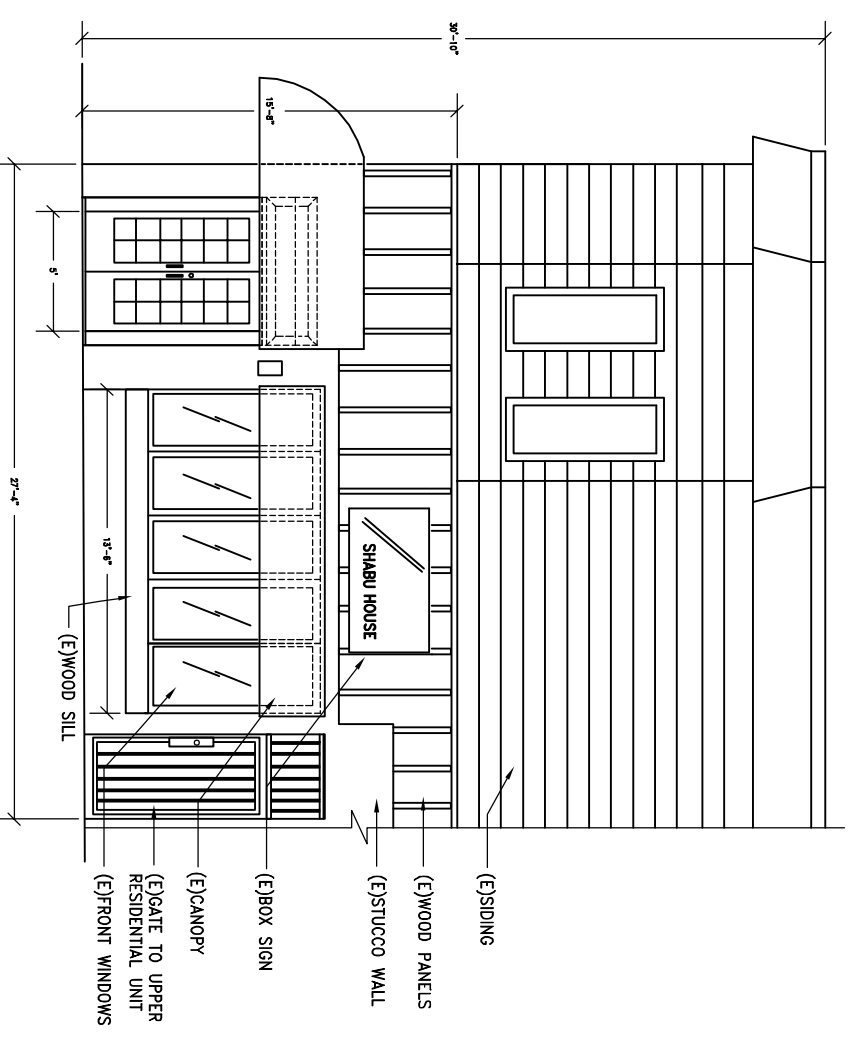
1/8" = 1' = 0"



3/28/2013



EXISTING/PROPOSED SIDE ELEVATION
 1/8"=1'-0"



EXISTING/PROPOSED FRONT ELEVATION
 1/8"=1'-0"