

**County of San Mateo - Planning and Building Department**

# **ATTACHMENT B**



County of San Mateo

## Planning & Building Department

455 County Center, 2nd Floor  
Redwood City, California 94063  
650/363-4161 Fax: 650/363-4849

Mail Drop PLN122  
plngbldg@smcgov.org  
www.co.sanmateo.ca.us/planning

September 25, 2014

Ms. Sandra Pereznegron  
P.O. Box 6886  
Redwood City, CA 94063

Dear Ms. Pereznegron:

Subject: **LETTER OF DECISION**  
File Number: PLN2014-00261  
Location: 3250 Middlefield Rd in North Fair Oaks  
APN: 060-091-260

On September 24, 2014, the San Mateo County Planning Commission considered an Off-Street Parking Exception to allow a minimum of 6 on-site parking spaces where 12 spaces are required (with an off-site location to accommodate parking for 15 employee vehicles) in conjunction with a proposal for a commercial catering business to occupy an existing commercial building, with the 1<sup>st</sup> floor being utilized for all cooking preparation/catering production, and the 2<sup>nd</sup> floor being restricted for use as a single office, with the remaining as storage area. This item was continued from the August 27, 2014 meeting.

Based on information provided by staff and evidence presented at the hearing, the Planning Commission approved the request by adopting the required findings and conditions of approval as identified in Attachment A.

Any interested party aggrieved by the determination of the Planning Commission has the right of appeal to the Board of Supervisors within ten (10) business days from such date of determination. The appeal period for this matter will end at **5:00 p.m.** on October 8, 2014.

Please direct any questions regarding this matter to Lisa Aozasa at [laozasa@smcgov.org](mailto:laozasa@smcgov.org).

Sincerely,

Heather Hardy  
Planning Commission Secretary

County of San Mateo  
Planning and Building Department

**FINDINGS AND CONDITIONS OF APPROVAL**

Permit or Project File Number: PLN 2014-00261

Hearing Date: September 24, 2014

Prepared By: Lisa Aozasa  
Deputy Director

Adopted By: Planning Commission

**FINDINGS**

Regarding the Environmental Review, Found:

1. That this project is categorically exempt from the California Environmental Quality Act, pursuant to Section 15301 (Class 1), related to minor alteration to existing private facilities with negligible or no expansion.

Regarding the Off-Street Parking Exception, Found:

2. That the establishment, maintenance and/or conducting of the off-street parking facilities as proposed are as nearly in compliance with the requirements set forth in Section 6119 as are reasonably possible, as described further below:
  - a. There is no opportunity to reconfigure the site to provide additional on-site parking spaces short of demolishing the trash enclosure or a portion of the building, neither of which would be desirable or practical;
  - b. The proposal to provide 15 parking spaces off-site at 2949 Edison Way (APN 060-041-110) and a shuttle service for the business' 15 employees, despite the fact that it is 1/2 mile away, presents a reasonable and workable plan to provide employee parking for the business that does not involve travel on residential streets, and leaves on-site spaces available for delivery vehicles and on-street parking available for the public;
  - c. Conditions of Approval 2 through 6 will ensure that the proposed parking facilities are used and maintained as planned, and that if the business grows and hires additional employees or acquires additional vehicles, provisions are made for additional parking, and if not, the exception may be revoked;
  - d. The off-street parking facilities proposed (including the off-site parking for employees) are similar to or more extensive than those provided for some other commercial businesses in the vicinity.

## **CONDITIONS OF APPROVAL**

### **Current Planning Section**

1. The approval applies only to the proposal as described in this report and materials submitted for review and approval by the Planning Commission on September 24, 2014. Minor adjustments to the project may be approved by the Community Development Director if they are consistent with the intent of and in substantial conformance with this approval.
2. Prior to the commencement of the catering business at the subject site, the applicant shall submit a building permit application to the County Building Inspection Section for a change of use at 3250 Middlefield Road. Such application shall include a scaled site plan and floor plans (both first and second floors), with adequate details showing all existing or proposed structural, electrical, plumbing, mechanical details as may be required for review by the building inspector to ensure compliance with current code requirements. The site plan shall clearly locate and identify all on-site parking spaces, including their use for both regular and delivery vehicles, as well as an ADA-compliant parking space. Bicycle parking (1 lockable bicycle space per 3 employees) shall also be provided and shown on the building plans. The floor plans shall be scaled and shall identify all areas of work associated with the catering operation, including accurate floor areas (sq. ft.) of each floor. Such plans shall be subject to review by the San Mateo County's Planning and Building Department, the Environmental Health Division, the Department of Public Works, and the Menlo Park Fire Protection District.
3. At the time of the building permit application (as cited in Condition 2), the applicant shall submit evidence that the lease for the off-site parking location at 2949 Edison Way has been secured for a period of not less than 5 years, with the understanding that it may be terminated in the event that the business leaves this location.
4. Prior to the Planning Department's approval of the required building permit (see Condition No. 2), the applicant shall submit: (a) a site plan clearly showing the location of all leased parking spaces on the property addressed as 2949 Edison Way, and (b) a signed lease from the owner of 2949 Edison Way, both for review and approval by the Community Development Director. The lease shall identify the lease parties involved, with appropriate declarations and terms as to the number of parking spaces that will be made exclusively available at all times to BACE employees. Any other available or additional parking spaces on this site not designated for BACE employees shall be identified as such. Any changes to this lease that would affect the ability or need of BACE employees to use the parking exclusively shall first be reviewed and approved by the Community Development Director.
5. The parking spaces at both the 3250 Middlefield Road and 2949 Edison Way sites shall be maintained exclusively for use by all BACE-associated employees and BACE-associated delivery vehicles. Enforcement of this condition will be ensured via the following:
  - a. The applicant shall ensure that all parking spaces at both sites are clearly marked for BACE use only.
  - b. The applicant shall require all employees, as a mandatory condition of employment, to provide the license plate numbers of vehicles they intend to drive to work and park in designated spaces. A list of the employee vehicles identified and all vehicles owned by

the company must be provided to the Planning and Building Department prior to final of the change of occupancy building permit. Any changes or updates to the list shall be provided to the Department regularly, at least every six months.

- c. The Code Compliance Section will do periodic checks, at least every six months, to make sure that BACE business and employee vehicles are parking in designated spaces, and not in public parking spaces on Middlefield Road or Sixth Avenue, or otherwise within the vicinity of 3250 Middlefield Road.
  - d. If BACE business or employee vehicles are observed by Planning and Building Department staff to be parking outside of designated spaces, BACE will be cited in accordance with the County's Administrative Remedies. In the event that three citations are issued, proceedings to revoke the Off-Street Parking Exception shall be initiated pursuant to Zoning Regulations Sections 6537 and 6505.
6. Prior to the hiring of additional employees or the purchase of additional business vehicles, the applicant must apply for an amendment to this Off-Street Parking Exception. Approval of an amendment will only be considered if additional off-site parking spaces are secured to accommodate the additional vehicle(s).
  7. There shall be no deliveries of food or other business-associated materials, supplies or products to BACE at their 3250 Middlefield Road address from the street (be it Middlefield Road or 6<sup>th</sup> Avenue), nor shall there be any delivery parking on the street; all such deliveries shall occur within the parking/service area to the rear of the building. All such deliveries shall be by vehicles no larger than a van or small truck.
  8. BACE-operated business delivery vehicles cannot be parked on the public street or within the public Right-of-Way; they must be parked within the parking area provided to the rear of the building at 3250 Middlefield Road. The only exception shall be when BACE delivery vehicles are making a delivery to a home or business as related to their operation.
  9. The business shall use only that number of vans equivalent to the number of on-site parking spaces located at 3250 Middlefield Road, not including the ADA disabled parking space.
  10. The term of this approval is for five years. The Planning and Building Department will do an investigation and prepare an annual report to the Planning Commission on any complaints received and on compliance with these terms and conditions.
    - a. If the Planning Commission determines that there has been substantial non-compliance with the terms and conditions of this permit, revocation proceedings may be initiated pursuant to Zoning Regulations Sections 6537 and 6505.
    - b. If the Planning Commission is satisfied that the business is being conducted in accordance with these terms and conditions, the applicant may apply for renewal of the Off-Street Parking Exception.
  11. It is the applicant's responsibility to ensure compliance with C-1/NFO Zoning Regulations Section 6253.5 (*Performance Standards*) with regard to limitations on noise, odor, and

vibration. Consistent with the noise standards, the normal hours of operation for the business shall be restricted to 7:00 a.m. to 10:00 p.m. daily.

12. To ensure that both landscaping elements are planted and maintained, the applicant shall show and identify on their building site plan (submitted to the Building Inspection Section, per Condition No. 2) what type of plantings will be planted, to the satisfaction of the Community Development Director. Compliance with this requirement shall be confirmed by the Planning Department prior to its final inspection/approval of the required building permit. The applicant shall be responsible for the long-term maintenance of all such landscaping on the site.
13. It is the applicant's responsibility to ensure that all exterior and interior (be it existing or new) lighting will be designed and located so that direct rays and glare are contained to the premises. Any new exterior lighting fixtures must be shown on the building plans (per Condition No. 2), for review by the Community Development Director prior to issuance of the building permit.
14. It is the applicant's responsibility to ensure that trash containers placed outside are screened from public view. The site plan required as part of the building permit submittal (per Condition No. 2) shall show where their refuse containers are to be stored, and that they are screened (how and by what type of material) as required. Compliance with this requirement (identified location and its screening) shall be confirmed by the Planning Department prior to its final inspection/approval of the building permit. All trash, boxes or similar debris shall be picked up daily and stored in refuse containers that are screened from public view.
15. It is the applicant's responsibility to ensure that all loitering during business hours is controlled, to the extent possible.
16. It is the applicant's responsibility to ensure and oversee that all uses, activities or operations are conducted entirely on the property (with the exception being that the catering operation would have delivery vehicles coming to and leaving from the subject site, as well as employees and customers arriving and leaving the site).
17. It shall be the applicant's responsibility to ensure that all noise levels associated with the catering operation at the project site do not exceed the decibel levels stipulated in Zoning Regulations Section 6253.5.1 (*Performance Standards - Noise*). The definitions of noise and noise sources, and various methods and distance points for measuring such levels are defined in the San Mateo County Code of Ordinances, Title 4 (*Sanitation and Health*), Chapter 4.88 (*Noise*).
18. The applicant shall comply with all codes and regulations as required and administered by the County Environmental Health Division, whose initial review shall be of the required building plans as cited in Condition No. 2.
19. The applicant shall comply with all codes and regulations as required and administered by the Menlo Park Fire Protection District, whose initial review shall be of the required building plans as cited in Condition No. 2.
20. The applicant shall comply with all codes and regulations as required and administered by the County Department of Public Works.



**County of San Mateo - Planning and Building Department**

# **ATTACHMENT C**

# Application for Appeal

To the Planning Commission

To the Board of Supervisors

County Government Center • 455 County Center, 2nd Floor  
 Redwood City • CA • 94063 • Mail Drop PLN 122  
 Phone: 650 • 363 • 4161 Fax: 650 • 363 • 4849

Name: P. DURHAM

Address: 1259 El Camino Real #177  
Menlo Park

Phone, W: 650-369-6192

Zip: 94025

Permit Numbers involved:

PLN 2014-00261

I have read and understood the attached information regarding appeal process and alternatives.

yes

no

I hereby appeal the decision of the:

Staff or Planning Director

Zoning Hearing Officer

Design Review Committee

Planning Commission

Appellant's Signature:

made on Sept. 24 2014 to approve/deny the above-listed permit applications.

Date: 10/8/14

Planning staff will prepare a report based on your appeal. In order to facilitate this, your precise objections are needed. For example: Do you wish the decision reversed? If so, why? Do you object to certain conditions of approval? If so, then which conditions and why?

We appeal the decision based upon the grounds for approving the project.

For example, the parking exception is based upon a mitigation (off-site parking) that is not a true mitigation: it is demonstrably unenforceable, does not provide adequate means of enforcement and does not address the actual parking needs of the applicant.

We appeal the decision based upon the conditions of approval:

For example, the conditions are unclear and open to misinterpretation as well as being unenforceable.

We appeal the decision based upon procedural irregularities/poor procedure:

For example, regulation stipulated in the staff report and critical to on-site parking was omitted from the conditions, leaving these open to misinterpretation.

For example, the planning commission, after it had made its decision (4:0 to deny) was directed by staff to ignore critical planning aspects and other relevant issues from consideration, which matters have direct bearing in the case of a discretionary vote (e.g. zoning, General Plan, community concerns, etc.) This is a denial of due process.

For example, the decision ignores the reason for the proposed move to the subject site (viz county action), which calls into question a categorical exemption under CEQA.

We appeal the decision on the grounds that the instances cited above and numerous other issues resulted in a poor planning decision with serious implications for the future of North Fair Oaks.

*Please see attachments for further details.*



# Planning & Building Department

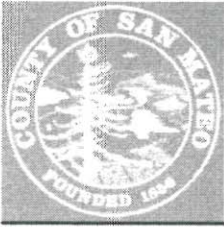
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### Payment Receipt

Check #: CASH  
Receipt #: 207609  
Name: SANDRA PEREZNEGRON  
Address: 3250 Middlefield RD, Redwood City, CA  
Parcel #:

Case Number	Account Number	Description	Date Paid	Amount Due	Amount Paid
<b>Planning Department</b>					
PLN2014-00261	38430-2116	Appeal	10/8/14	\$451.00	\$451.00
	38430-1269	Public Noticing	10/8/14	\$136.00	\$136.00
				Total Paid:	\$587.00
<b>IT Department</b>					
PLN2014-00261	80110-2215	IT Surcharge	10/8/14	\$23.48	\$23.48
				Total Paid:	\$23.48
<b>Legal Department</b>					
PLN2014-00261	16111-2093	Legal Counsel Surcharge	10/8/14	\$29.35	\$29.35
				Total Paid:	\$29.35
				<b>Grand Total:</b>	<b>\$639.83</b>
				<b>Balance Due:</b>	<b>\$0.00</b>



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<b>IT Department</b>					
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				Total Paid:	\$23.48
<b>Legal Department</b>					
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				<b>Grand Total:</b>	<b>\$639.83</b>
				<b>Balance Due:</b>	<b>\$0.00</b>

Appeal filed by P. Durham on behalf of North Fair Oaks Friends and Neighbors, and joined by over a dozen individuals as well as surrounding businesses and taxpayers whose peaceful enjoyment of their property and ability to thrive both physically and economically depend on accessible parking and pedestrian-friendly streets and the diligent enforcement of County zoning regulations.

Together, we represent streets including Fair Oaks Ave., Middlefield Rd., Semicircular Drive, 5<sup>th</sup> Ave., 6<sup>th</sup> Ave., 8<sup>th</sup> Ave., 9<sup>th</sup> Ave., and others.

Collectively, we are appealing the Planning Commission's September 24, 2014 decision to grant an Off-Street Parking Exception to allow a minimum of 6 on-site parking spaces where 12 spaces are required (with an off-site location to accommodate parking for 15 employee vehicles) in conjunction with a proposal for a commercial catering business to occupy an existing commercial building at 3250 Middlefield Rd. (PLN2014-00261). There is no entitlement *either* to the parking exception *or* to the proposed change of use and accompanying building permit, and both should be denied.

#### Requested Action and Summary

The Board of Supervisors should:

- 1) Find that the proposed change of use at 3250 Middlefield Rd. is not categorically exempt from the California Environmental Quality Act, because it does not involve a "minor alteration" with "negligible or no expansion."
- 2) Find that a catering business that serves a large geographic area, focuses on corporate clients, does not offer any walk-in retail services, and uses a fleet of delivery vans and heavy trucks (both its own and those nominally operated by other catering businesses) is not a "Neighborhood Business" as defined in the San Mateo County Zoning Regulations.
  - a. The C-1/NFO designation that currently applies to 3250 Middlefield Rd. (*unlike* the parcel at 3821 Fair Oaks Ave., which explicitly excludes "bakery goods to be sold off the premises") contemplates that businesses might engage in the delivery of food, but only insofar as this use "serve[s] the needs of surrounding residential areas" and "promote[s] the creation of an attractive and pedestrian-oriented neighborhood retail commercial district" (§ 6253.1).
  - b. The NFO Plan, which envisions the long-term amelioration of the surrounding neighborhood, is fundamentally incompatible with setting the precedent that a

large-scale delivery fleet that is not neighborhood-serving can operate out of a C-1 parcel. This is why the NFO Council voted unanimously to recommend against the granting of a parking exception.

- c. The C-1/NFO district (Neighborhood Business) is explicitly contrasted with a C-2/NFO district (General Business), which may allow “a wide range of trades and services to serve the needs of surrounding community and region.”
  - d. The most appropriate designation for BACE as it currently operates (large-scale production of food for sale and delivery off the premises, using a large fleet of vans and trucks that must be constantly loaded and re-loaded from the commercial kitchen) is arguably M-1, which also explicitly includes food establishments specializing in delivery.
- 3) Reverse the Planning Commission’s decision to grant an Off-Street Parking Exception, which was based on flawed findings, and which relies on conditions that are impossible to enforce. The requirement that the proposed parking facilities be “as nearly in compliance with the requirements set forth in Section 6119 as are reasonably possible” was not designed to permit a business to operate with *half* the required parking spaces, and to use an off-site parking lot that is connected to the business location *solely* by residential streets (see attachment 1). Rather, it was designed to allow some “wiggle-room” for non-compliant parking arrangements.

On August 27, when the Planning Commission was poised to deny the parking exception with a 4-0 vote, County attorney Tim Fox jumped in and secured agreement to a continuation. At the continued hearing, County Counsel inappropriately narrowed the issue presented to the Commission and denied the opportunity for full and adequate consideration of the competing interests involved in allowing this project to move forward. This reflects a pattern of delay on the part of County Counsel regarding matters involving BACE and may even amount to a conflict of interest as the *very same* county attorneys and planning staff who have failed diligently to enforce zoning regulations at 3821 Fair Oaks Ave. and who have failed to require that BACE fulfill its repeated commitments to the County to open a neighborhood-serving business are in the position of determining the timetable for the Planning Commission and the Board of Supervisors to consider these matters.

- 4) In light of these conflicts and the potential appearance of impropriety, the Board should also resist Planning Staff’s invitation to link consideration of the ongoing public nuisance

at 3821 Fair Oaks Ave. with its determinations regarding a parking exception at 3250 Middlefield Rd. The situation at 3821 Fair Oaks Ave. was slated to be considered by the Board at hearing seven months ago, and the Board instead remanded to the Planning Commission in light of allegedly new information received. On August 27, the Planning Commission reconfirmed its previous recommendation that this nuisance be subject to enforcement measures effective May 10, 2015, which allows BACE to enjoy the full benefit of the initial term of its lease even though it has been conducting activities contrary to the existing zoning since August 2011. In an extreme example of holding neighbors in the Fair Oaks Ave. part of NFO “hostage” to the negotiations surrounding the use of 3250 Middlefield Rd., County Counsel and Planning Staff have explicitly indicated that they would not put the Planning Commission’s recommendation regarding 3821 Fair Oaks Ave. on the Board of Supervisors’ agenda until they determined whether neighbors were going to file the present appeal. Regardless of intent, this creates an appearance of impropriety in linking decisions regarding two separate parcels subject to two different zoning regimes.

There is also concern that the County has been involved in helping to secure this inappropriate location for BACE, which further compromises the County’s ability to act neutrally in this matter.

No delay should be permitted in the enforcement actions regarding 3821 Fair Oaks Ave., especially since BACE has been on notice that it was required to establish the promised retail services or relocate since August 2011 (see below).

### Reasons for Appeal

This appeal incorporates by reference all submissions made by NFO residents to the Planning Commission for its August 27 and September 24 hearings, and the arguments therein, as well as the submissions to and proceedings of the North Fair Oaks Council on August 7, 2014.

We also reserve our right to supplement these reasons with additional arguments and evidence as circumstances warrant.

#### 1. Procedural Irregularities and Misinformation

The Planning Commission seems to have been misguided about the nature of the determination it was being called upon to make. At the August 27 hearing, all four Commissioners present indicated their intention to deny the proposed exception. At the continuation of the hearing on September 24, County Counsel’s office instructed the Commissioners *only* to ascertain whether the proposed conditions were “as nearly in compliance with the requirements set forth in Section 6119 as are reasonably possible,” leading

Commissioners away from their previous consideration of the impact of the proposal on the surrounding community and the incompatibility of the proposal with existing zoning regulations. This unwarranted narrowing of the Planning Commission's mandate effectively deprived them of the authority to exercise their function of reviewing proposed uses for their compatibility with applicable zoning regulations, something Planning Staff have indicated that this appeal now allows the Board of Supervisors to do.

In making its findings, the Planning Commission was apparently unaware that the same member of Planning Staff who presented Planning Staff's findings recommending approval of an off-site parking arrangement had reached the opposite conclusion about the feasibility of such an arrangement for 3250 Middlefield Rd. less than three years ago, concluding that "Planning doesn't have any evidence from a past project to know how well off site parking actually works. Likelyhood Planning would recommend denial" (see attachment 2).

## 2. BACE Is Not a Neighborhood Business As Required By the C-1/NFO Regulations

The tenant at 3821 Fair Oaks Ave. and 3250 Middlefield Rd. is Bay Area Catering & Events, which holds San Mateo County Environmental Health Permit 11-1455 to operate as a "Commissary-Catering" (attachment 3). According to California Retail Food Code § 113751, "Commissary" means: "a food facility that services mobile food facilities, mobile support units, or vending machines where any of the following occur: (a) Food, containers, or supplies are stored. (b) Food is prepared or prepackaged *for sale or service at other locations*. (c) Utensils are cleaned. (d) Liquid and solid wastes are disposed, or potable water is obtained." In other words, a commissary does not sell food or offer retail services on the premises.

The service and delivery area for Bay Area Catering and Events, according to its website, is "Redwood City and surrounding area." The shaded area on the corresponding map covers areas that extend north of San Francisco, south of San Jose, and east of Fremont (attachment 4).

Planning Staff received the first complaint about the large-scale catering and delivery business operating at 3821 Fair Oaks Ave. on August 30, 2011. At that time, Mike Crivello and Mike Schaller determined that the catering use was similar to the as-of-right use of a walk-in market or deli because BACE Executive Chef Richard Medina misrepresented that clients "come into the store" and that "they have plans to open a walk in deli counter. (within the next few months)" (attachment 5). However, the building permit application states that \$20,000 would be spent to *convert* a market into a "CATERING KITCHEN, not open to public" (attachment 6).

On March 22, 2012, BACE owner Sandra Pereznegron wrote to Jim Eggemeyer (in a message forwarded to Mike Schaller and Steve Monowitz) that "our new location will be 3215 Oak Knoll Dr, Redwood city CA" (attachment 7). That is the also the address that has been displayed on the BACE website (see attachment 4).

On May 14, 2012, Peggy Jensen notified the North Fair Oaks Community Council that “[a]ll of the BACE catering work will be done at the new facility” on Oak Knoll Dr. (attachment 8).

On August 25, 2102, the City of Redwood City returned BACE’s application for the operation of a commercial kitchen for catering as incomplete (attachment 9). Among other concerns, Redwood City planning staff noted that “your website states you have a staff of 45 plus employees” even though the application stated a much smaller number, and “Planning Staff is concerned with the potential disruption to the neighborhood based on the number of deliveries and frequency of vans going out on catering runs, as well as the delivery of supplies for the catering business and market.” They also requested “additional information justifying how the commercial kitchen for the catering establishment would be considered neighborhood serving,” as required by the “Neighborhood Commercial” zoning designation.

3. BACE’s Operations Are Not “Small Scale” or Local in Nature, and No Evidence Has Been Offered That They Are

We incorporate by reference arguments made to the Planning Commission at its August 27, 2014 hearing on this point, as well as submissions including but not limited to those contained in attachments 10, 11, and 12.

Indeed, when residents of Fair Oaks Ave. approached BACE about purchasing family dinners and other small-scale requests, we were turned away.

4. Allowing This Use Would Dramatically Undercut the Expensive Efforts to Develop and Implement the NFO Plan and Associated Redesign of Middlefield Rd.

We incorporate by reference arguments made to the Planning Commission and views expressed by Planning Commission members at its August 27, 2014 hearing on this point, as well as submissions including but not limited to those contained in attachments 10, 11, and 12.

The individuals in the best position to evaluate this serve on the North Fair Oaks Council, and they unanimously decided that a parking exception was not warranted here for reasons including serious parking problems already in the area, the impending lane reconfiguration at this precise juncture of Middlefield Rd., and the immediately adjacent residential uses that are fundamentally incompatible with this proposal. The same is true of the Planning Commission member from the Fourth District, Manuel Ramirez, who voted against granting the parking exception.

5. There Are Crucial Specifications Missing from the Proposed Conditions

The conditions adopted by the Planning Commission, while well-intentioned, have multiple shortcomings including but not limited to:

- failing to require the necessary 4-foot landscaping strip between the parking lot and the sidewalk;
- failing to define “vans” and “trucks” and the permitted number of both;
- failing to create a mechanism whereby employee vehicles that BACE does not register with the County can be monitored for parking violations;
- providing for County enforcement of parking violations only every 6 months, and apparently requiring in-person inspection by code enforcement staff to confirm violations;
- failing to make provisions for vehicles operated by BACE’s owners and other associated contractors that might fall outside the category of “employees”;
- failing to specify that cooking and loading may \*not\* take place before or after the 7:00am-10:00pm time window for operations.

The conditions also create an untenable situation whereby the tenant will likely argue in future years that its capital investment in a catering kitchen means that it is entitled to grow its business, even though the Planning Commission found unanimously that any further growth would be incompatible with the proposed location. In other words, granting the exception now simply sets up a conflict that will inevitably occur down the road.

6. The Proposed Conditions Would Be Prohibitively Expensive to Enforce, Even If They Were Enforceable (Which They Are Not)

BACE’s attorney has made much of the fact that the County has documented innumerable complaints received about the nuisance at 3821 Fair Oaks Ave. but has been able to verify relatively few of them. *That is precisely the point.* The list of violations (see, e.g., the attachment to Planning Staff’s Report of December 11, 2013) includes complaints of noise before 6am and after 10pm, when Staff are not available to verify complaints (when Staff was available, for example on 12/6/2012, they documented loading activities starting before 5:10am, with three vehicles departing before 6:10am, see VIOA025; on 12/21/2012, at a follow-up drive-by inspection prompted by reports of loading activity before 5:00am, all catering vehicles had rear doors open and carts outside at 5:45am, VIOA710). Noises and odors are, by definition, transient, and even if Staff are available to respond on the same day (which often they are not), they might not arrive in time to document violations.

As previously indicated, the conditions provide that BACE is not to use residential streets to travel between the Middlefield Rd. location and the leased offsite parking lot on Edison, but the \*only\* streets that connect these locations are residential or partially residential (as indicated on attachment 2).

In addition, implementing these conditions will create an intrinsically hostile relationship between the tenant and surrounding neighbors who are given the burden of monitoring the

tenant for compliance and reporting violations. BACE has already threatened to sue neighbors on Fair Oaks Ave. for “intentional infliction of emotional distress” by “actively continuing” their efforts “to run BACE out of your neighborhood” (see email from Peter Kagel to Chimene Keitner of August 8, 2013). Neighbors should not have to endure the threat of retaliation for complaining about violations. In addition, Code Enforcement officer Ana Santiago’s first response to Mitch Jones’s complaints about BACE operations at 3821 Fair Oaks Ave. was reportedly to tell Mr. Jones that *he* had “something on our property flagged by her department.” This does not inspire confidence, and in fact deters County residents from exercising their civil right to public participation.

Finally, given BACE’s history of misrepresentation to County officials and failure to substantiate their claims with documentation, good faith unfortunately cannot be presumed here. By way of additional example, BACE told Redwood City it would operate a joint catering and retail business on Oak Knoll Dr., but then did not mention the proposed retail operation in its application for a business license (see email from Matthew Seubert to Jim Eggemeyer of Sept. 20, 2013, attachment 13). They also reportedly only claimed 5 full time employees on their business license application (id.). Also despite promises to transfer operations, the Oak Knoll Dr. location was “empty, with no signs or indications of people or activity” in September 2013 (id.).

### Conclusion

Neighbors wish BACE all the best in their large and expanding cooking and delivery business, which also appears to involve a cluster of related businesses. However, this does not justify *either* tolerating the existing large-scale cooking and delivery use at 3821 Fair Oaks Ave. (which is *\*not\** a lawful non-conforming use, and which has been determined to constitute a public nuisance) *or* creating an exception to the parking restrictions at 3250 Middlefield Rd., a parcel that is also inappropriately zoned for the proposed use.

The County has spent countless hours and taxpayer dollars developing a NFO Plan and considering a proposed redesign of this exact area that would be completely undermined by allowing such a use at the proposed location. Neighbors are also extremely concerned about the conflict of interest that certain members of Planning Staff and the County Counsel’s office have in regards to the ongoing dealings with BACE and the procedural irregularities in the steps that have been taken in regards to their activities since October 2010. We are depending on the Board of Supervisors to perform its oversight function diligently and expeditiously, and to allow both residential and neighborhood-serving business uses in our neighborhood to flourish as envisioned in the NFO Plan.

## ATTACHMENT 1

---



**Home      Status      Parcel      Comment      Apply      Help**

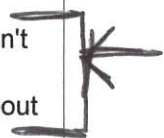
### Parcel Information

The information below summarizes the parcel you selected.

<b>Parcel</b>	060091260
<b>Address</b>	3250 MIDDLEFIELD RD MENLO PARK
<b>Owner</b>	LAUREL ENTERPRISES LLC
<b>Status</b>	Active
<b>Description</b>	

#### Tags Associated with this Parcel Record:

Tag Level	Description/Notes
No Hold	<b>Custom Parcel Tags</b>
	3/28/12 SSB - Restaurant use allowed in C-1/NFO, defined as service & consumption on premises. Tenant wants to locate a vendor cart within an alcove of the building (on their property) along Middlefield Rd. (exterior of bldg.) that would be run as part of the restaurant establishment. Per consult with County Counsel as to whether ?on premises? means solely within the BLD or can extend outdoor (yet still on the subject property), the distinction between on premises versus off premises is the difference between carry out (e.g. take away in car) versus service/consume at property (whether indoor, outdoor or even on sidewalk). So, tenant proposal to expand service to vendor cart on property would be consistent with allowed restaurant use. Nonetheless, tenant made aware that while the vendor cart would be allowed as ancillary to restaurant, no outdoor seating is allowed (due to parking constraints), they would require an encroachment permit from DPW if any portion of activity extends into right-of-way, and they would require a permit from environmental health (and perhaps a business license from tax collector?).
No Hold	<b>Custom Parcel Tags</b>
	10/25/11 osb-i helped a customer, John, at the counter re this existing restaurant . Per the microfiche plans, the first floor is restaurant and second floor is noted as office use/ storage. The customer asked if he can convert the second story to apartments. I gave him a highlighted fee schedule for a Use Permit for residential use but there are hurdles. a) Existing parking is substandard (8 spaces where 26 are required based on 80 chairs) and he would be required to ask for an off street parking exception. to propose a one bedroom apt, he is required 1.2 spaces / 1 bedroom unit. I did ask if he could locate parking off site within 1,000 ft of the property, he did not think this would be possible. Also Dave H. commented, Planning doesn't have any evidence from a past project to know how well off site parking actually works. Likelyhood Planning would recommend denial. I returned call to John and spoke to him about this info.



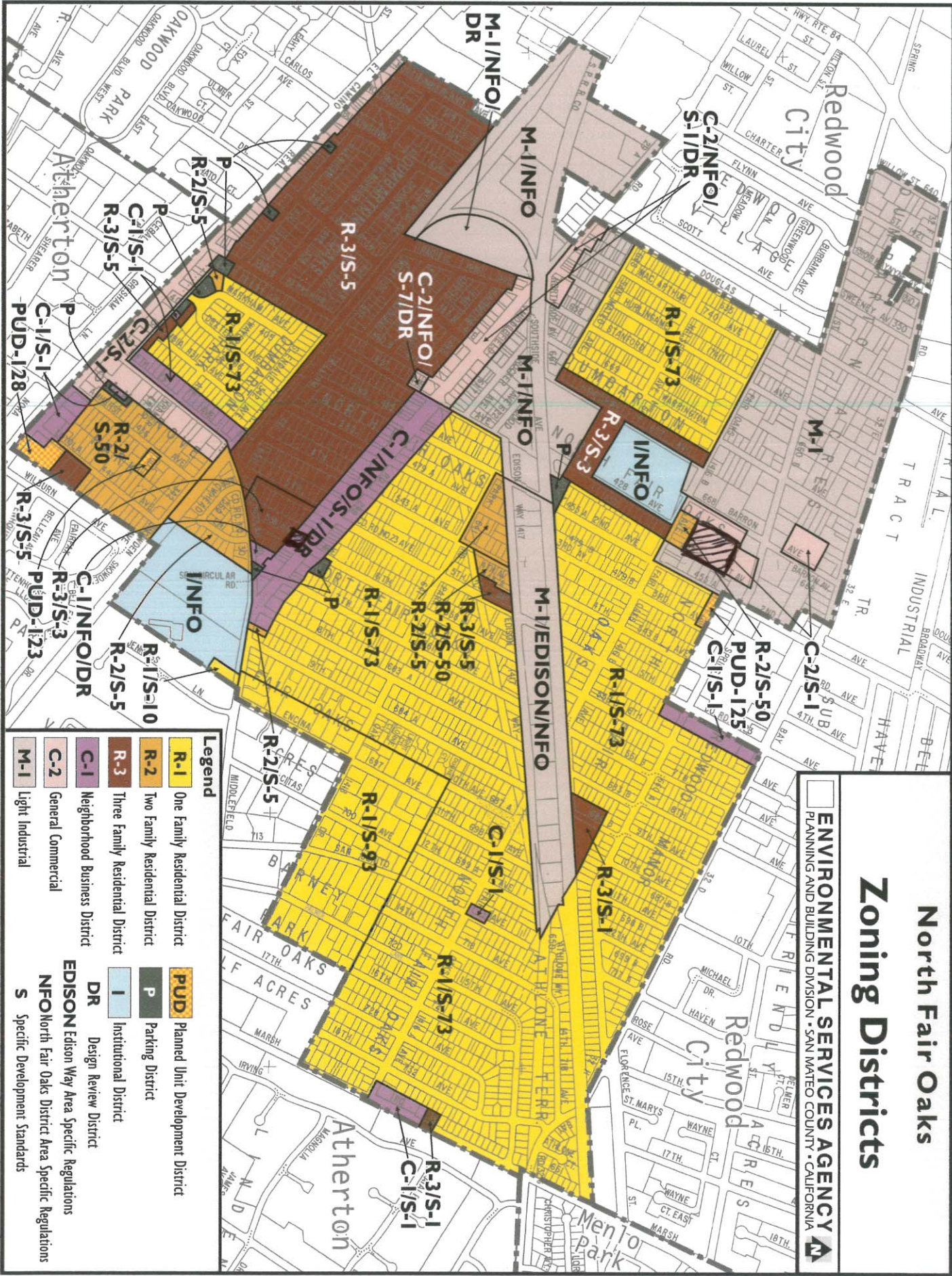
## ATTACHMENT 2

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 = Proposed  
Edisonway & 2nd Ave














 = Proposed  
Edisonway & 2nd Ave

 = Proposed  
Middlefield & 6th



# North Fair Oaks Zoning Districts

ENVIRONMENTAL SERVICES AGENCY  
PLANNING AND BUILDING DIVISION • SAN MATEO COUNTY • CALIFORNIA

Legend	
	R-1 One Family Residential District
	R-2 Two Family Residential District
	R-3 Three Family Residential District
	C-1 Neighborhood Business District
	C-2 General Commercial
	M-1 Light Industrial
	PUD Planned Unit Development District
	P Parking District
	I Institutional District
	DR Design Review District
	EDISON Edison Way Area Specific Regulations
	NFO North Fair Oaks District Area Specific Regulations
	S Specific Development Standards

## ATTACHMENT 3

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CA HEALTH AND SAFETY CODE: 114381

ENVIRONMENTAL HEALTH  
SAN MATEO COUNTY

PERMIT 11- 1455



Protecting Our Health and Environment

P/E: 1681 COMMISSARY - CATERING

**FACILITY**  
BAY AREA CATERING & EVENTS  
3821 FAIR OAKS RD  
MENLO PARK

**OWNER**  
NEGRON, SANDRA PEREZ

FA0047896  
PR0065428

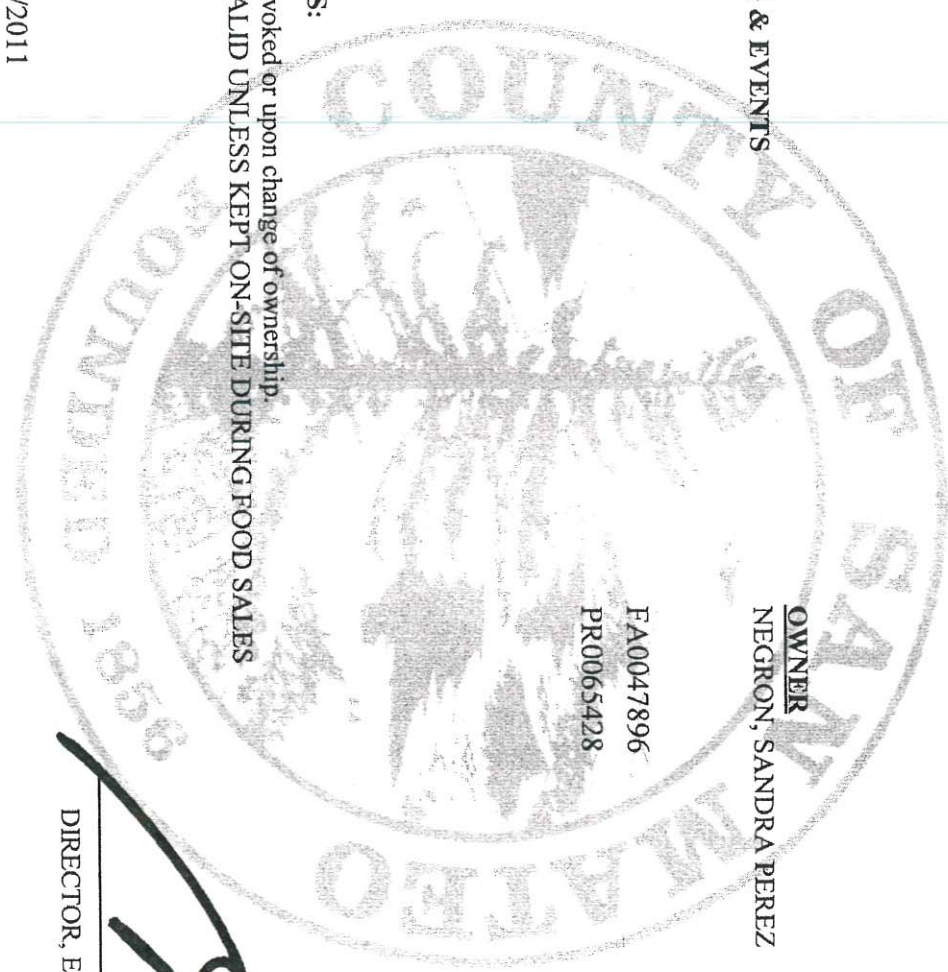
**TERMS & CONDITIONS:**

This permit is valid until revoked or upon change of ownership.  
THIS PERMIT IS NOT VALID UNLESS KEPT ON-SITE DURING FOOD SALES

DATE ISSUED: 7/29/2011

DIRECTOR, ENVIRONMENTAL HEALTH

THIS PERMIT IS NONTRANSFERABLE AND MUST BE POSTED ON-SITE IN A CONSPICUOUS PLACE



## **ATTACHMENT 4**

---



# Bay Area Catering & Events

5 reviews Details

Caterers



**Serving Redwood City and surrounding area**  
3215 Oak Knoll Dr  
Redwood City, CA 94062  
(650) 701-0228  
Message the business  
bacevents.com



See all 6 photos

## Recommended Reviews

Yelp Sort Date Rating Elites

Search reviews

English 5

Your trust is our top concern, so businesses can't pay to alter or remove their reviews. Learn more.



**Jonathan M.**  
Los Gatos, CA  
0 friends  
11 reviews

★★★★★ 8/27/2012

BAC also caters for my company's lunches. Their hot buffet style meals are OK. Cooking for the masses is not easy, so I normally let this slide. I've had their Mexican and Italian spreads recently, and both were fairly well done. Jennie C.'s previous comment about greasy or bland, while possibly true, the fact of the matter is that not everyone has the same tastes, so season at will.

My experience with their Mexican offering was the smell was intoxicating and well executed. They offered several types of beans (refried or whole black) and rice (brown and white), which meant I could have (or at least feel like I was having) a partially healthy Mexican meal. The guacamole was rather tasty, though overlooked.

The Italian spread was much better. They did not pre-mix the noodles with proteins or sauces, so it was a mix-at-will sort of pasta bar. I'm not huge on needless carbs, so white pasta is not my thing. Filled up on my grilled chicken and salmon, light pasta with some marinara and I was good to go. Excellently done.

I'm really here because the cold meals provided in my fridge are awesome. The options are fairly healthy (grilled chicken, steamed veggies, brown rice, etc) and great when I miss the catering. I was impressed to see the squash was not mushy at all, which is hard to do when it has to be reheated.

So, thanks, BAC!



**Julie M.**  
Palo Alto, CA  
0 friends  
11 reviews

★★★★★ 8/22/2014

This catering company is the worst right now because they catered a meal at our business around July 16 and as they cleaned up, they accidentally took our office salt and pepper

Today 8:00 am - 6:00 pm Open now

### Hours

- Mon** 8:00 am - 6:00 pm
- Tue** 8:00 am - 6:00 pm Open now
- Wed** 8:00 am - 6:00 pm
- Thu** 8:00 am - 6:00 pm
- Fri** 8:00 am - 6:00 pm
- Sat** Closed
- Sun** Closed

Edit business info

### More business info

Accepts Credit Cards Yes

Andrea H.  
First to review

### People also viewed

- Bay Area Corporate Catering  
★★★★★ 5 reviews
- Redwood Catering  
★★★★★ 22 reviews
- Aroma Buena Catering  
★★★★★ 19 reviews

### People Viewed This After Searching For...

Catering Companies Redwood City

**ATTACHMENT 5**

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[Home](#)   [Status](#)   [Parcel](#)   [Comment](#)   [Apply](#)   [Help](#)

### View Case Status

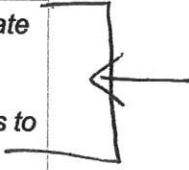
The information below summarizes the case you selected.

**Case Number:** VIO2011-00076   **Status:** Cancelled

<b>Name:</b>	GONZALEZ JAIME TR
<b>Application Date:</b>	08/30/2011
<b>Address:</b>	3821 FAIR OAKS AVE MENLO PARK
<b>Description:</b>	Operating catering business and parking employee vehicles on the streets in surrounding neighborhood.

#### Activities

Type	Requested	Scheduled	Completed	Status	Done By
Complaint Received			8/30/2011	DONE	MJC
Case Opened			8/30/2011	DONE	MJC
Research Ownership			8/30/2011	DONE	MJC
Field Inspection			8/30/2011	DONE	MJC
<p><i>Met with Richard, he explained that they run a catering business for both company parties and private (house) parties. A client comes into the store and selects a menu, items are prepared for a tasting, and then details are worked out. Food is prepared and then delivered to customers home or office, along with staff to serve. All activities are conducted within the building. Additionally they have plans to open a walk in deli counter. (within the next few months)</i></p>					
Meeting			8/30/2011	DONE	MJC
<p><i>Met with M. Schaller, explained what the building is being used for and it was determined that this is an allowed use.</i></p>					
Invalid Complaint/Case Closed			8/30/2011	DONE	MJC
Case Closed			8/30/2011	DONE	MJC



#### Fees

Item	Fee Amount	Fee Remaining
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**ATTACHMENT 6**

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County of San Mateo

Planning & Building Department

455 County Center, 2nd Floor
Redwood City, California 94063
650/363-4161 Fax: 650/363-4849

Mail Drop PLN122
plngbldg@co.sanmateo.ca.us
www.co.sanmateo.ca.us/planning

PERMIT NUMBER: BLD2010-01507

BUILDING PERMIT

FOR INSPECTION CALL: 650-306-8415

SITE ADDRESS: 3821 FAIR OAKS AVE MENLO PARK

MENLO PARK CITY CODE: NFO

OWNER INFORMATION
GONZALEZ JAIME TR
GONZALEZ JAIME TRUST
P O BOX 2724
MENLO PARK
940262724

APPLICANT INFORMATION
JAIME GONZALEZ TR
P.O. BOX 2724
MENLO PARK, CA
94026
Phone #: 650-533-5466

CONTRACTOR INFORMATION
OWNER
Phone #:
LIC#:
WC Policy #
WC Expires:

PROJECT NAME: T.I.

PROJECT DESCRIPTION: In response to SWN2010-00030 - Converting (e) Market into CATERING KITCHEN, not open to public. Install new wall creating kitchen area with new commercial range / oven /griddle & fryer & exhaust system. (e) sinks to remain. Install one new sink. Electrical. No signage -

Table with columns: BUILDING, AREA (SF), YARDS (FT). Rows include: TYPE OF WORK ALT, TYPE OF USE: COM, BUILDINGS: 1, STORIES, UNITS, BEDROOMS, TYPE OF CON, OCC. GROUP, ZONING DIST, LOT AR/DU, LOT WIDTH, LOT COVER, BLD HEIGHT, BUILDING, GARAGE, BSMT, DECK, PARKING, PORCH/BREEZE, TOTAL VALUATION: \$20,000.00

This permit does NOT INCLUDE any construction within the Public Right of Way. Permits for such construction shall be obtained from the Public Works Department. Permit shall expire by time limitations as set forth in the San Mateo County Ordinance Code. Extensions beyond that specified time will require reinstatement of the permit and compliance with applicable codes and zoning regulations in effect at the time of reinstatement.

This permit shall also expire by time limitation if authorized work is not commenced within 180 days, or if work is abandoned for a period of 180 days. Evidence of continuation of work is a progress inspection which can demonstrate substantial progress within the 180 day period.

LICENSED CONTRACTOR DECLARATION

I hereby affirm under penalty of perjury that I am licensed under provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect.
License Class: License Number:
Date: Signature:

## ATTACHMENT 7

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**From:** Jim Eggemeyer  
**To:** Mike Schaller; Steve Monowitz  
**Date:** 3/23/2012 5:40 PM  
**Subject:** Fwd: Re: BAC in North Fair Oaks

FYI  
jke

>>> "Sandra Perez" <sperez@bacevents.com> 3/22/2012 4:34 PM >>>

Hi Jim, I will like to know, how was everything with the Fair Oaks community meeting, and also we already sign the lease today, our new location will be 3215 Oak Knoll Dr, Redwood city CA 94062  
thank you  
Sandra

On Wed, Mar 14, 2012 at 1:02 PM, Jim Eggemeyer <jeggemeyer@smcgov.org> wrote:

Hi Sandra, Thank you very much for your time this morning on the phone and continuing our discussion regarding BAC in North Fair Oaks. As I mentioned, could you please provide me with an update by email with:

1. Your status on the negotiations for additional space in Redwood City you are seeking, and
2. Expansion possibilities for retail services you are planning to provide at your Fair Oaks Ave. operation.

Once again, thank you for your time to respond to this email. Talk to you soon.

jke

--

Sandra Pereznegron  
Accounting Manager  
Bay Area Catering and Events, Inc  
Phone:408-736-1988 ext 224  
Fax: 408-736-1991  
Cell: 415 200 5035  
www.bacevents.com

**ATTACHMENT 8**

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**Memorandum**  
Office of the San Mateo County Manager

To: North Fair Oaks Community Council Members  
From: Peggy Jensen, Deputy County Manager  
Date: May 14, 2012  
Re: Update on Bay Area Catering and Events

**Background**

At the March Council meeting, the Council heard concerns from North Fair Oaks residents about a variety of issues related to the location and operation of Bay Area Catering and Events (BACE). BACE is located on Fair Oaks Avenue in a primarily residential section of North Fair Oaks. In response to community concerns, I told the Council that I had met with the business owners and that BACE was planning to move their catering operation to a larger facility sometime in the summer. At the March meeting, residents also had questions about the process for changing the zoning of the BACE building from commercial to residential. Planning and Building staff and I offered to return to the May North Fair Oaks Council meeting with an update on the BACE move and also a short presentation on the process for changing land use and zoning in the County.

**Update**

On Monday, May 14, 2012, the business owners provided a copy of the construction plans for their new facility, which is located in Redwood City. They expect to submit these plans to the City tomorrow for review. The owners told us the majority of the improvements at the new site are equipment installation, not construction.

They have already ordered the new equipment, so once permits are issued, build-out at the new location should go quickly. The owners anticipate a July/August move-in date.

All of the BACE catering work will be done at the new facility. This means that all deliveries, their delivery trucks and most all their employees will be relocated to the new Redwood City site.

BACE has a five year lease on the North Fair Oaks building with two more years remaining on the lease. The owners plan to turn the North Fair Oaks location into a morning and lunch deli/café offering coffee, French pastries from a bakery in San Francisco and other food items. The business owners would welcome the opportunity to meet with neighbors to learn what types of products and services the neighbors would like to see at the BACE North Fair Oaks location. The County has offered to have the Peninsula Conflict Resolution Center (PCRC) facilitate such a meeting. The owners also mentioned that they would be willing to re-paint the North Fair Oaks location and would welcome community input on the new color(s) for the building.

In response to the community concerns about commercial land uses in predominantly residential areas of NFO, Planning and Building staff will explain the process for changing land uses and zoning at the May 17<sup>th</sup> meeting.

An action that the Council could take, if there is interest in having some commercial areas in North Fair Oaks re-zoned, is to vote to have County staff take a re-zoning request back to the Board of Supervisors for consideration.

**Recommended Council Action**

1. Request County staff to arrange a facilitated meeting between the owners of Bay Area Catering and Events (BACE) and the residents of the neighborhood surrounding the BACE location.
2. Request that County staff take a recommendation from the North Fair Oaks Community Council to review commercial areas in primarily residential sections of North Fair Oaks to the Board of Supervisors for consideration

**ATTACHMENT 9**

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Community Development Department  
Planning and Housing Services  
1017 Middlefield Road  
PO Box 391  
Redwood City, CA 94064



Phone (650) 780-7234  
Fax (650) 780-0128  
TDD (650) 780-0129  
www.redwoodcity.org

August 25, 2012

Bay Area Catering & Events  
Attn: Sandra Perez  
3215 Oak Knoll Drive  
Redwood City, CA 94062

**Subject: Plan Review Committee (PRC) Completeness Review**  
**Project Nos.: UP2012-26**  
**Property Address: 3215 Oak Knoll Drive**  
**Assessor's Parcel Numbers: 057-211-010**

Dear Ms. Perez:

This letter is to inform you that the City of Redwood City Plan Review Committee (PRC) reviewed for completeness, your application for the operation of a commercial kitchen for catering, Bay Area Catering and Events (BACE), and a retail neighborhood commercial market at 3215 Oak Knoll Drive. The PRC is comprised of City staff members from several City departments involved in project review. In addition to determining whether your application is complete, one of the roles of this review body is to use a multi-disciplinary perspective to guide applications through a successful review process, while providing input with respect to City policies, codes, and ordinances.

### **PROJECT DESCRIPTION**

Based on the application materials submitted by Sandra Perez on behalf of Bay Area Catering and Events, for City review, it is the City's understanding that the proposed project includes the following:

#### **Commercial Kitchen**

Floor Area: 4,000 square feet (upper level); 22 burners; refrigeration facilities including a walk-in freezer; 10 commercial sinks, 10 commercial preparation areas/tables.

#### **Supply Delivery /Frequencies:**

The lower floor of the facility contains additional storage and supply areas, bathrooms and break room. Deliveries are expected to occur two to four times per week with trucks no longer than 22 feet

#### **Catering Deliveries:**

Three times per day  
Breakfast: 7:00AM – 9:00AM  
Lunch: 10:00AM – 12:00PM  
Afternoon: 2:00PM – 4:00PM

Product Delivery vehicles: Five (5) 16-foot delivery vans

Market  
Floor area: 2,000 square feet (upper level) includes the deli area (approx. 200 sq.ft.)

Sale of: Produce, dry goods, dairy, deli, beer, wine, and spirits

Delivery of supplies: Two to four times per week with trucks no longer than 22 feet

Kitchen and Market:  
Supply Delivery Times: 7:00AM – 8:00PM Monday through Friday  
10:00AM – 4:00PM Saturday and Sunday

Parking: 57 parking stalls (employees will park in the lower section of the parking lot)

Employees: 11 employees (10 employees for catering and 1 dedicated to the market)

**REQUIREMENTS TO COMPLETE YOUR APPLICATION**

**As submitted, the application is incomplete.** Your application will not be complete until and unless you submit the additional information, documents, materials, and revisions listed below. In order to complete your application, you must submit the following additional materials, information, and revisions and make the following corrections to your submittals:

1. Submit an explanation of how the proposed project complies will perform a vital service to the neighborhood and is consistent with Article 13 of the Zoning Ordinance, including the below:

**Use Permit information:**

- Based on your application and associated information, Planning staff is tasked with evaluating your proposed operation of a “Catering” establishment and “Market” for compliance with Article 13 for Neighborhood Commercial (CN) of the Redwood City Zoning Ordinance, in addition to the General Plan designation of Neighborhood Commercial (CN) for the property.

Pursuant to Article 13 of the Zoning Ordinance, the Neighborhood Commercial zoning purpose is to, “provide centers for convenience shopping in the residential neighborhood planned and controlled to the extent that such centers will perform a *vital service to the neighborhoods* and become integral parts thereof.” (emphasis added) Additionally, the General Plan Commercial - Neighborhood category, “provides areas where lower intensity retail, office, and service-oriented businesses can locate to meet the needs of surrounding residential neighborhoods. Businesses should have limited impact on adjacent residential areas, particularly in terms of lighting, signage, traffic, odor, noise, and hours of operation. Neighborhood commercial development should be designed and intended to

- accommodate and encourage pedestrian access, and must be compatible with surrounding development in terms of scale, building design, materials, and color.”
2. Submit additional information justifying how the commercial kitchen for the catering establishment would be considered neighborhood serving.
  3. Submit a more detailed project description, showing the following:
    - a. The hours of operation for cooking in the commercial kitchen prior to deliveries commencing at 7AM.
    - b. The maximum number of employees that would be cooking in the kitchen (because there is a discrepancy between the information submitted to the City in the initial application and information provided on your website, the City seeks clarification on the maximum number of employees (i.e. submittal states there will be a total of 11 employees; however, your website states you have a staff of 45 plus employees)).
    - c. Whether evening/dinner catering will be offered.
  4. Planning Staff is concerned with the potential disruption to the neighborhood based on the number of deliveries and frequency of vans going out on catering runs, as well as the delivery of supplies for the catering business and market. As a result, please submit a copy of the notice that was sent to the adjacent neighbors for the neighborhood outreach meeting that was in the process of being developed. In addition please submit a brief report summarizing the process and a mailing list of the neighbors that were noticed.
  5. Submit a parking agreement with the San Francisco Public Utilities Commission for parking of vehicles on the Hetch Hetchy right-of-way, or other evidence of parking rights.
  6. A traffic study may be needed to evaluate various environmental issues (i.e. traffic, noise, odor, lighting levels) that the residential neighborhood might be exposed to. Once the application is deemed complete, staff will then be able to determine if there are any impacts, and their nature and subsequently what additional studies are needed.

#### **Project Plans:**

7. Submit a complete set of plans including the following:
  - a. *Site Plan* for the entire site including utilities, parking spaces, property lines, landscaping, curb-cuts, buildings, rooftop mechanical equipment etc.
  - b. *Floor Plan* for all levels of the building including the street level and lower level of the building indicating all of the uses and areas of the building and what they will be used for.
  - c. *Elevations* of the exterior of the building shall be included in the plans. Additionally, with the addition of the commercial kitchen, new mechanical equipment will be installed, and Planning would like to see if the mechanical equipment will be visible to the public. If the mechanical equipment is visible it will have to be placed behind a screen wall or in a location that will not be visible to the public. I have attached an Aesthetic Standards for Mechanical Equipment handout for your use. As a result, if a new screen wall is proposed or mechanical equipment visible, an Architectural Permit will have to be submitted for review.

#### **Signage:**

8. Submit an application for a Sign Permit and include plans for any proposed signage in accordance with the submittal requirements outlined in the Sign Permit Handout

(attached) and the requirements established in the City's Sign Ordinance. The Sign Permit application will be considered as part of this review process. (Planning)

### **INFORMATION REGARDING CITY'S PROCESS AND GENERAL APPLICABLE CODE REQUIREMENTS**

The following comments are intended to provide you with additional information that may be helpful to you but are not requirements for completion of your application. This information includes general code requirements that would apply to your project.

#### **Building:**

9. The Applicant must comply with the 2010 California Building, Mechanical, Electrical, Plumbing, Energy, Green Building Standard and Redwood City Green Building code and local amendments.

#### **Engineering:**

10. Sewer lateral 4" or less shall be upgraded to a minimum 6" size.
11. The applicant shall pay all applicable fees outlined on the City's web site at <http://www.redwoodcity.org/bit/infrastructure/pdf/FeesandCharges01.04.12.pdf>, prior to permit issuance:
  - The Wastewater Treatment Capacity Fee is currently \$7.91 per gallon per day of the projected net new demand for wastewater uses. Please note that the rate is about to increase. Project consumptions and credits are determined by completion of Attachment L of the City's Engineering Standards.
12. Pursuant to City Ordinance chapter 18, article XIV, section 18.242, existing and new electrical, telephone, and cable TV lines connected to the building (if not already underground) will be installed underground.
13. The owner/applicant shall pay a Traffic Mitigation Fee based on the schedule set by Ordinance, or as determined by Traffic Study.

#### **Fire:**

14. Commercial cooking equipment that produces grease laden vapors shall be provided with a Type I Hood, in accordance with the Mechanical Code, and an automatic fire extinguishing system that is listed and labeled for its intended use... (IFC 904.11)
15. A fire extinguisher listed and labeled for Class K fires shall be installed within 30 feet of commercial food heat-processing equipment, as measured along an unobstructed path of travel. (IFC 904.11.5)
16. In the remaining portion of the tenant space, at least one fire extinguisher with a minimum classification of 2A:20BC shall be mounted and placed so that the maximum travel distance to the extinguisher is 50 feet. (IFC 906.3.2)

Please note that the City reserves the right to require additional clarification materials as the plans are more fully developed. Below is the contact information for each respective PRC member. If you have any questions, please feel free to contact me or the respective PRC member.

Sincerely,



**ATTACHMENT 10**

---

To: Planning Commission of San Mateo County  
From: P. Durham for North Fair Oaks West Neighborhood Coalition  
Re: Consideration of Off-Street Parking Exception application by BACE for 3250 Middlefield Road  
Date: August 25, 2014

Notes: "Planning" refers to San Mateo County Planning Department  
"SR" refers to the staff report presented in the Memorandum of 7/31/14 from the Planning Department to the North Fair Oaks Community Council (NFOCC)

This parking exception raises a great many questions and issues which need to be addressed in order for an honest appraisal of its feasibility to take place. Major crucial issues are omitted or glossed over in the staff report's discussion and the staff's conclusions do not reflect material presented in the report.

- Local Parking Issues

Parking is already a very big issue in the neighborhood of 3250 Middlefield. The retail businesses do not have enough spaces for their customers, making it hard for their businesses to flourish; the neighborhood streets are filled to capacity, forcing some residents to park on streets other than where they live; we have a local adult school without a parking lot.

At recent North Fair Oaks Forward meetings, it was stated that diagonal parking is to be removed altogether along Middlefield, in Phase II of the utility undergrounding, thereby removing 30% of existing spaces.

A business of this size would create a parking and traffic hot spot disproportionate for a single business.

The scale and the nature of this enterprise are inappropriate for this site.

- The requested parking exception is unmitigable.

The applicant's suggested mitigation, by an offsite parking lot, places the burden of enforcement on to the County in the absence of any mechanism for such enforcement. AN UNENFORCEABLE MITIGATION IS NO MITIGATION.

- Even if you ignore the problems of enforcement, there are still other problems with the proposed mitigation. For example:

- The proposed mitigation does not comply with the County's requirement.

- Not only is the applicant asking for an exception; they are asking for an EXCEPTION TO AN EXCEPTION since the proposed location of the off-site parking (at 2949 Edison) is half a mile away -- two-and-a-half times the 1000-foot distance required (per Planning) by the County for such a mitigation.

- The proposed mitigation places more traffic on to residential streets.

- The area between the proposed off-site parking lot and the premises is residential. The proposed carpool vehicles would have to pass through this. It is

not stated how many trips nor in what size or kind of vehicles nor at what times of the day the carpooling would take place. All these factors are directly relevant to a consideration of parking impacts.

The distant location of the proposed off-site parking greatly extends the area affected by the impacts of this business.

- The arithmetic of the requested parking exception does not make sense. "...to allow a minimum of 6 on-site parking spaces where 12 on-site spaces are required..." [SR page 1, paragraph 1]

This language implies that six cars would be displaced, to be assimilated into the neighborhood streets. However, since BACE has occupied the premises at 3250 Middlefield, there have typically been between five and eight cars occupying the parking lot (including the handicap accessible space). This does not include any cars that may be parked at their other location at 3821 Fair Oaks.

The staff report states that the on-site parking lot would be "for the purpose of loading and storing BACE's delivery vans" [SR p. 1, para. 2], which are currently parked elsewhere. Therefore the 6+ cars currently occupying the parking lot would also be displaced into the neighborhood. Consequently the exception would mean that c. 12 parking spaces, rather than the 6 numbered in the application, would be dispersed into the surrounding area.

- Other undisclosed factors directly affect parking. HOURS OF OPERATION are directly related to neighborhood parking.  
When the residents are home, 6th Avenue and other neighborhood streets are parked out. Some residents already have to park on other streets than where they live.

BACE's hours of operation, shifts, nature and level of activities at different times of day, which directly affect traffic and parking, are not stated in the staff report. In their previous location, we are informed, they operated almost round the clock, seven days a week.

The SCALE of the operation directly affects parking.

The number of employees has not been disclosed. Nor has the number of delivery trucks delivering to the premises. Nor has the number of shifts, entailing overlapping arrivals and departures of employees. Nor has the number of BACE trucks coming and going and loading and unloading within the 6-space parking lot; nor at what times of day these events would take place.

The business is not neighborhood-serving and it is too large for the premises, which were built as a neighborhood deli and taqueria. The businesses along Middlefield are very small, as are the lots and they occupy, and they have small numbers of employees. These buildings and lots and the streets they occupy cannot accommodate a large-scale operation.

The NATURE of the operation directly affects parking and traffic.

BACE is a manufacturing and assembly company that receives deliveries of raw materials, manufactures them into catering products and delivers them to

customers: they have claimed to cater to events as large as 5,000. As such, they therefore belong in an industrial area with adequate on-site parking. Traffic generated would include delivery trucks, company vans and employee vehicles at various times of the day. How many delivery trucks would be present simultaneously?

Congestion and any parking outside the premises would deprive local businesses, which depend on parking spaces for their customers, of available spots and would deter customers from coming to this area.

- Neighborhood

It is a delightful perk of living in North Fair Oaks that you can walk to the dentist, the bank, to get your chair upholstered, your shoes repaired, to a great ice cream shop, to restaurants with delicious food, to a grocery store and so on.

There are still, however, services that we lack: for example, there used to be a pharmacy, a post office, a photocopy shop. By occupying a storefront for manufacturing, this use is taking away from the potential for businesses that directly serve the community, in keeping with the C-1/NFO zoning regulations.

- North Fair Oaks Plan

A large amount of time and resources have been spent, both by the county and the public, on producing a long-range plan for this area. County planners astutely recognized that the historic small stores and mixed use of this area also represents model planning for the future, in which the automobile may play a smaller role. To this end, planners have worked to protect and enhance the existing quality of this area. Introducing a manufacturing business that does not serve the neighborhood directly would be counter to the long-range plan.

There is room for such a business within differently-zoned spaces within the County.

- Zoning

This application raises a number of significant zoning issues that are not adequately addressed in the staff report. A number of potential violations are unmitigable either inherently or de facto, through lack of available enforcement.

The conclusion of the staff report, that relocating this business "should provide a business operation that avoids the issues created at the Fair Oaks Avenue site", is unsupported and, frankly, mystifying. The conclusion appears to contradict the evidence laid out within the staff report.

- The PURPOSES (see Chapter 15 of the County zoning regulations, Section 6253.1) of C-1/NFO zone include:

- "1. Provide commercial areas intended primarily for the location of a limited number of trades and services to serve the needs of surrounding residential areas.
2. Protect the viability of surrounding and/or adjacent residential land uses by restricting incompatible uses and regulating certain land uses ..."
3. Promote the creation of an attractive and pedestrian-oriented neighborhood retail commercial district.

4. Protect the functional and economic viability of commercial areas by restricting incompatible land uses." "

The business in question meets none of these criteria. It is not directed towards serving the needs of the surrounding residential areas. It would unavoidably impact surrounding and adjacent residential uses and is, therefore, incompatible. As manufacturing, it would not be open to the public and would not be seeking to welcome customers or foot traffic, hence would not be "attractive". Requiring a car pool defines it as inherently NOT "pedestrian-oriented". As demonstrated, this is an incompatible use and fits none of these purposes. Consequently, this application is void ab initio.

- Air pollution

"No use will be permitted which emits an odor or air pollutant, detectable without instruments, beyond the boundaries of the C-1/NFO District." [County zoning regulations, Section 6253.5]

There is an existing business, at Middlefield and Semicircular, that currently emits acrid smoke, and thereby violates zoning performance standards, on a daily basis. Therefore the County is not in good faith in stating that conditions and existing zoning regulations would mitigate this problem in the present instance either.

Employees smoking outside the building creates another hazard for the neighborhood. The more employees a company has, the more likely there will be people smoking outside. It is impossible to contain smoke within the property or the zone.

- Light Pollution

"All exterior and interior lighting shall be designed and located so that direct rays and glare are confined to the premises. " [County zoning regulations, Section 6253.5]

It is almost impossible to confine light to the premises. As with noise, artificial light appears brighter at night, when we are dark-adapted. Light for night-time activity, such as the loading of trucks, interferes with sleep and, as such, is incompatible with surrounding land uses.

- Noise Pollution

The purpose of the noise ordinance is to make life tolerable by day and sleep possible by night. Experience and common sense tell us that industrial night-time activity is unavoidably disturbing -- the sounds of cars and people coming and going, car doors and lock beeps, backup beeps, truck doors, metal rolling over metal during loading and unloading. Does the company rent tables and chairs as well as supply food (as advertised previously on their web site)? Would furniture be being loaded and unloaded as well as metal tray racks?

Night-time noise is all the more startling and is experienced as louder, after the ambient daytime background noise has abated. Continuous noise keeps us awake and sudden noise wakes us. Noise and sleep deprivation are routinely used

as a form of torture in military activities.

Industrial activity beyond business hours is consequently incompatible with existing land uses.

- Planning stated, in notes for the NFOCC hearing, that "parking [is the] only compliance issue".

However, it appears that the scale and nature of BACE's business is incompatible with adjacent residential zoning. Due diligence would require the County to inform the applicant of this.

For example, it has been stated that BACE operates almost round the clock. This would be incompatible with immediately adjacent residential zoning. The staff report states that loading would take place in the parking lot {SR p. 1, para. 2}, which is located behind the building, directly adjacent to the residential zone. The noise of such operations would be unmitigable which would inevitably place BACE into constant contravention of the County's Noise Ordinance, which is enforced by the Sheriff. This is certainly the case if the hours of operation are similar to those stated at the NFOCC hearing.

Moreover, the entrance to the parking lot is from a residential street (6th Avenue), not from Middlefield. Therefore access to the premises would force the company trucks on to the adjoining residential street.

Were the County to grant this parking exception without disclosing the incompatibility issues, it could mislead the applicant into expenditures on plans and permits for a business that is incompatible with existing land uses and consequently not viable at this site.

- "The purpose of the applicant's proposed relocation to the Middlefield Road location is to remedy and eliminate a host of performance problems and zoning issues that have arisen at their present location" [SR p. 2, para. 2]

it is incumbent upon the County to explain how the "host of performance problems" etc. would be remedied by relocating this company half a mile in the same neighborhood, still immediately adjacent to a residential zone. The problems would simply move the half mile with the company to the new location.

- "Concerns arose over the type of commercial use allowed, hours of operation, noise (from delivery vehicles), odor, general parking, truck parking and loading, and waste bin maintenance, among other issues." [SR p. 2, para. 2]

3250 Middlefield is surrounded on all sides by residences, including two apartment buildings immediately next door on Middlefield as well as apartments over the surrounding businesses on Middlefield, which have been there historically since long before the current structure at 3250 Middlefield was even built.

3250 Middlefield is at the corner of Sixth Avenue. Sixth Avenue is a residential street.

The County would be negligent in permitting the applicant to embark upon the expense of remodeling and relocating to premises which are similarly inappropriate to their current location.

- The Planning Commission found that "the commercial use at this address is detrimental to the health, safety and welfare of the surrounding area and that it degrades the neighborhood character"  
[SR p.2, para. 3]

In other words, this business presents a health hazard to neighboring residents. The only apparent mitigation presented in this staff report is the relocation of the business to a less prosperous section of North Fair Oaks. The term for the placement of hazardous commercial operations in poorer and minority areas is "environmental injustice". It would be reprehensible for San Mateo County to open itself to such an accusation by knowingly permitting the relocation of this business, labelled "detrimental", among residents of a different demographic.

- The statement that "such food establishments are considered permitted uses" [SR p. 2, para.3] along this section of Middlefield Road implies that BACE resembles existing businesses, which is not the case. BACE's light industrial/value-added activities do not match the small-scale retail/restaurant/service businesses along this neighborhood shopping street. It also gives the lie to the "Neighborhood Mixed Use" land use designation of Middlefield Road [SR, p. 7].

In fact, manufacturing companies of any kind are not listed among the permitted uses. This, then, becomes a matter of compatibility with existing land uses.

If BACE locates to a more suitable industrial area, the problems of delivery trucks, company trucks and employee vehicles in the numbers required by BACE, would be removed from residential streets. The potential congestion on Middlefield, from large numbers of delivery trucks, would be resolved.

- "Their submitted site plan (Attachment E) shows only 6 available parking spaces, which is enough to accommodate their delivery vans as well as mandated accessible parking." [SR p. 2, para.4]

Delivery vans are larger than cars, some several times larger. How many of BACE's vans could fit into the parking lot and how many vans are there? How can the complexities of loading multiple vans be accommodated in such a small parking lot? While some vans are being loaded, will other vans be out on the street during loading? Will they be on Middlefield or on nearby residential streets?

- "...the applicant has indicated that they would be removing the exhaust filters they have installed at their current Fair Oaks Avenue location and relocating them as part of the exhaust systems at the Middlefield Road site." [SR p. 3, para.2]

According to the administrative record, the present exhaust system does not currently stop the venting of fumes and grease and odor into the neighborhood. Relocating an ineffective exhaust system will not make it effective, hence it is not a mitigation. Again it merely moves a problem, this time to a site close to a school with young children.

- "Additional conditions of approval would be added to ensure that the C1/NFO District's development and performance standards regarding new signage, noise,

odor, exterior lighting, trash and debris management, and loitering are adhered to at the Middlefield Road location." [SR p. 3, para. 2]

If the placing of conditions is intended to ensure their adherence, it is incumbent upon the County to demonstrate good faith in enforcing these as well as upon the applicant in conforming to them. According to testimony at the recent NFOCC hearing, this is not the case as the problems have not been solved to date.

If, as with carpooling, it is not within the County's ability to enforce these conditions, then the County should state so publicly and acknowledge that permitting this business to operate here is incompatible with the County's own laws.

- "That location was unique given the parcel's isolated C-1 zoning, surrounded by R-1 zoning." [p.2, para. 2]

In fact, "that location" (3821 Fair Oaks) resembles 3250 Middlefield closely in that it is surrounded by residences and immediately adjacent to a residential zone. The small businesses on Middlefield close, typically, at 9pm and the residents go to sleep. Nighttime operations would disturb the neighbors at Middlefield, just as it does at Fair Oaks.

- Planning stated at the NFOCC hearing that BACE "generated conflict" at its current other NFO location

Due diligence would require the County to disclose this to the prospective neighbors at the new location.

- "Staff concludes that the subject parcels zoning... and the subject site... should provide a business operation that avoids the issues created at the Fair Oaks Avenue site." [SR p.3, para. 2]

According to the extensive administrative record and to public comment at the NFOCC hearing, this company has not shown good faith in complying with restrictions placed on it. If the problems have not been mitigated at 3821 Fair Oaks, they can not be mitigated simply by moving to 3250 Middlefield. Zoning does not fix behavior.

- The County has spent an enormous amount of time addressing issues generated by the actions of this one company. Our tax dollars should not be spent on a repeat performance. A solution should be found, which simply moving the problem is not. The County should steer this company towards an appropriate industrial site, where it might conduct its business without detriment to the population.

- Brown Act

The hearings for this issue were arranged at very short notice from the filing date. The notification area was very small and notices were in English only.

**ATTACHMENT 11**

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To: Planning Commission of San Mateo County  
From: North Fair Oaks West Neighborhood Coalition, sent by P. Durham  
Re: Consideration of Off-Street Parking Exception application by BACE for  
3250 Middlefield Road  
Date: September 22, 2014

Dear Commissioners:

Please find below our responses to the 9/24 staff report.

#### ZONING and SCALE

The difference between the business that formerly occupied this building and BACE is like the difference between keeping a couple of chickens in your back yard and running a chicken factory.

- "... the current C-1/NFO Zoning District allows catering services as a permitted use that falls under the land use 'Food Establishments Specializing in Carry-Out or Delivery Service. ...  
"A key consideration is whether or not catering is classified as a commercial or industrial endeavor. ... The scale of the business is also a factor..."  
(Addendum, page 2, paragraphs 3 and 4)

Scale is the KEY factor. It is not food production, per se, but the scale that is incompatible with the zoning. The Urgency Ordinance calls it "the intensity of the commercial activity".

The permitted use is clearly intended for small-scale food take-out and delivery appropriate to a neighborhood shopping street. It should not be used to shoehorn in a large-scale manufacturing outfit whose core business does not necessitate it being on a neighborhood shopping street.

Scale is what defines an industrial application. (Assembling a kit car in your garage does not make you into GM.)

Focusing on "catering" rather than on the scale/intensity is to use the letter of the law to obfuscate the spirit of the law.

- "It ... is relatively small-scale."  
(Addendum, p. 3, para. 2)

BACE is not small relative to historical and existing uses on Middlefield and to the NFO plan. These are the only relevant comparisons.

#### WALK-UP WINDOW

- "In addition, the applicant has offered to include a "walk-up window," which would give the business a more neighborhood-serving aspect..."  
(Addendum, p. 3, para. 2)

The offer of adding a "walk-up window" would not mitigate the impacts of size/scale/intensity. It is, rather, an admission that the proposed use is not neighborhood-serving. (Sandwiches and beverages could as well be sold from a small cart without occupying a retail building of this size. Large-scale food manufacturing would better be done in an industrial zone.)

Would the "walk-up window" necessitate the hiring of additional staff, since it is extraneous to the core business?

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#### OFF-SITE PARKING NOT VIABLE

- "a. The proposed off-site parking accommodations are impractical and unworkable. "  
(Attachment A, p. 4)

The off-site mitigation is unsuitable for the administrative staff who do not arrive and leave simultaneously but come and go throughout the day. Would a car-pool van be dispatched every time an employee goes to pick up a bunch of balloons or run an errand?

- "b. Use of the proposed on-site parking for delivery vehicles and off-site parking accommodations for employees as planned is unlikely to be adequately enforced, given the difficulty of enforcing these measures."  
(Attachment A, p. 4)

It cannot be enforced, given the present level of staffing, as has been demonstrated at the Fair Oaks site.

- "c. There are no appropriate/enforceable conditions of approval that could be placed on the project to ensure that, as the business grows, the parking situation in the area does not further deteriorate."  
(Attachment A, p. 4)

This company historically has been twice the present size (per oral testimony of the applicant), so it is safe to assume it will re-grow.

#### CONDITIONS OF APPROVAL

The long list of conditions places on the County the burden of a morass of enforcement. For example, Planning would have to administer the six-monthly updates, annual reports etc. How does the County plan to budget resources for the amount of additional administrative duty and enforcement responsibilities that

these conditions (and performance standards) demand?

The slow revocation proceedings written into the conditions seem to offer no immediate relief to the neighbors, should noise or other disturbances interrupt their sleep.

On this site, 35 years ago, was a bar called El Bracero. They did not honor closing times and played live music, sometimes all night, and served alcohol to minors. The county could only address the noise problem by sending out the Sheriff. The bar owners learned that, if they refused to turn the music off, the Sheriff would finally go and unplug it. Each time this was done, the county would be contacted by Bracero's lawyer who would accept a fee in lieu of taking them to court. The county had no way of stopping the music and, instead, was supporting the bar. In the end it was ATF who closed the bar down.

- "b. The proposal to provide 15 parking spaces off-site at 2949 Edison Way (APN 060-041-110) and a shuttle service for the business' 15 employees ... does not involve travel on residential streets..."  
(Attachment B, p. 5)

All the streets between the two sites are residential or partially residential on one or both sides.

- "c. Conditions of Approval 2 through 6 will ensure that the proposed parking facilities are used and maintained as planned..."  
(Attachment B, p. 5)

Conditions, absent enforcement, ensure nothing, as addressed in previous testimony,

- "d. If BACE business or employee vehicles are observed by Planning and Building Department staff to be parking outside of designated spaces, BACE will be cited..."  
(Attachment B, p. 7)

What is the likelihood that they could observe this, since Planning and Building staff are not on site?

#### PERFORMANCE STANDARDS

The performance standards do not contain all the issues addressed in the Urgency Ordinance. For example, Vibration is as relevant in any location.

The issue of vermin control has not been included anywhere and needs to be addressed. Historically there have been no problems with cockroaches, for example, at the Middlefield site.

- "It is the applicant's responsibility ..."

The performance standards rely on the honor system, similar to "own recognizance" -- making the applicant responsible for enforcing these. According to the administrative record, this has been unsuccessful. The problems requiring enforcement arise because the locations are not suitable for this operation.

- "14. It shall be the applicant's responsibility to ensure that all noise levels associated with the catering operation at the project site do not exceed the decibel levels stipulated in Zoning Regulations Section 6253.5.1 (Performance Standards - Noise). The definitions of noise and noise sources, and various methods and distance points for measuring such levels are defined in the San Mateo County Code of Ordinances, Title 4 (Sanitation and Health), Chapter 4.88 (Noise)." (Attachment B, p. 8)

For conditions regarding noise to have a chance of working, noise levels should additionally be explained in an easily understandable and enforceable way: e.g. "Carry out your activities as though people live all around you".

The Sheriff currently enforces the Noise Ordinance successfully, without the need for sound engineering equipment or a sound engineer. The use of decibel levels for enforcement is a last resort and is impractical in most instances.

#### INCOMPATIBILITY -- ZONING AND IMPACTS

- "... the rezoning did not, by itself ... abate the impacts from the catering operation" (Attachment C, p. 3, para. 2)

Moving the business into C-1/NFO zone would not, by itself, abate the impacts which result from the scale and activities of this company. 3250 Middlefield is in a partially residential zone (C-1/NFO) and is immediately adjacent to a residential zone; the building is surrounded by residences.

The impacts are the result, not of zoning, but of "the type of commercial use allowed, hours of operation, noise (from delivery vehicles), odor, general parking, truck parking and loading, and waste bin maintenance, among other issues" (ibid).

- "The subject site at 3250 Middlefield Road represents a location whose zoning and amenities appear to better accommodate BACE's business operation than the Fair Oaks Avenue site." (Attachment C, p. 3, para. 3)

It is unnecessary, in this instance, to rely on "appearance". This is, rather, a working experiment, as the company has occupied the new site since July and is already carrying out some of its activities there.

Since BACE's occupation of 3250 Middlefield, the parking lot there has typically contained between two and eight vehicles during working hours. These vehicles come and go throughout the day, rather than arriving and leaving simultaneously, as would have to be the case if a car pool were an appropriate mitigation. Currently parking also spills on to 6th Avenue. Vehicles often have to move in and out of the parking lot to accommodate other vehicles. Often, the parking lot contains more than six vehicles for many hours.

At this time, the company vans (intended to be the only vehicles at the Middlefield site) are not present; nor are delivery trucks, absent cooking operations. Once those vehicles were at the site, how would BACE address the intermittent need for individual vehicles to come and go throughout the day? Would a company van be dispatched in every instance?

It needs to be clarified, whether the owner of 3250 Middlefield would continue to be present in the building, as is the case at this time, in which case one to two other vehicles (and sometimes a large truck) would need be accommodated.

#### HOURS OF OPERATION AND NOISE

- "Consistent with the noise standards, the normal hours of operation for the business shall be restricted to 7:00 a.m. to 10:00 p.m. daily."  
(Attachment B, Conditions, p. 8)

Hours of operation must be clarified, especially in view of BACE's compliance history. The hours of operation described in Attachment I do not match the hours in the noise standards (above). In Attachment I, the applicant expresses the intention of starting operations during the quiet hours (between 10pm and 7am). If, as stated, the first van leaves at 6:30am, they would have to be operating hours before 6:30am, which does not comply with the noise standards.

Quiet time extends from 10pm to 7am and is enforced by the Sheriff.

The applicant stated that the last van loading would take place before 7pm. No mention was made of the first unloading or the first loading in the morning. At the Fair Oaks location, such activities have taken place during the quiet hours, which should not be tolerated in the Middlefield location.

Hours of operation were included in the performance standards contained in the Urgency Ordinance (adopted for 3821 Fair Oaks Avenue) indicating that they constitute a crucial issue that required previous mitigation. This subject needs due emphasis.

- "It is understood that noise emitted from arrival and departure of delivery vans and trucks at the applicant's present location ... has become critical. It is expected that these issues will be far less intrusive, since the subject site has an adequate area to accommodate the coming, going and parking of the operation's delivery vehicles."

(Attachment C, Performance Standards, p. 5, para. 4)

The Planning Department demonstrates faulty logic here and fails to address the realities of the proposed location. 3250 Middlefield's parking area is BETWEEN the building and the adjacent residential zone, has residences all around, and is accessible ONLY from 6th Avenue. The noise will consequently be concentrated on to the neighboring residential zone, just as it is in the present Fair Oaks location.

#### ODOR

- "No use will be permitted which emits an odor or air pollutant, detectable without instruments, beyond the boundaries of the C-1/NFO District.

... such issues can tend to be less critical when such uses operate within a more appropriate zoning district..."

(Attachment C, Performance Standards, p. 5, para. 5)

This comparative language ("less critical", "more appropriate") is absurd. Either the odor remains within the zone or it does not. As documented in the administrative record, odors from this business are, at this time, continually detectable beyond the premises of the Fair Oaks location. Similarly, on 6th Avenue, acrid odors are strongly detectable all the way from a taqueria, a block away, when the wind blows from that direction.

Apparently this is an unmitigable impact of BACE, especially in light of its declared intention to bring the exhaust system (which, per the administrative record, is ineffective) from the Fair Oaks to the Middlefield location.

Cigarette smoking in the parking lot should be included in the discussion of odor.

#### TRASH AND DEBRIS

- "Trash and Debris. All trash, boxes or similar debris shall be picked up daily and stored in refuse containers that are screened from public view."

(Attachment C, Performance Standards, p. 6, para. 1)

From July to the present, the applicant has not demonstrated good faith regarding refuse storage at the Middlefield location. Twice, the applicant has left a full or over-full black garbage bin blocking THE 6TH AVENUE SIDEWALK for up to five consecutive days prior to garbage pickup. (see attached photos)

#### PARKING IMPACTS

- "It could be argued that a land uses such as BACE, which does not involve retail customer traffic and will provide parking spaces for deliveries and employees (albeit off-site) will be less impactful with regard to parking in the immediate vicinity than a more retail-oriented business would be."  
(Attachment C, Performance Standards, p. 8, para. 3)

History does not support this speculation. During almost 30 years of operation by the successful restaurant that previously occupied 3250 Middlefield, the present frequently over-full parking lot and the incidences of backing in and out to make room for other vehicles were never observed.

Furthermore, restaurant operations or other retail uses take place only during business hours and do not extend into the night.

#### LANDSCAPING AND PARKING

- "Screening and Landscaping. ... a planter or landscaped area shall be provided adjacent to all street rights-of-way. When the subject building was built and finalized in 1984, its rear parking area showed a 4-foot wide landscaping strip ... between the sidewalk and the property's southeasterly back corner. ... any such areas where landscaping does not appear to have been maintained shall be replaced accordingly."  
(Attachment C, Performance Standards, p. 8, para. 4)

When the 4-foot landscape strip between the sidewalk and parking lot (which was removed by the building's current owner) is restored, it will result in the LOSS OF ONE OF THE PRESENT PARKING SPACES.

In addition, there is now a metal storage locker at one end of the parking lot, that is not shown in the site plan (Attachment F) and which decreases the parking area, as shown in Attachment F.

#### ENVIRONMENTAL REVIEW

- "This project is categorically exempt, pursuant to the California Environmental Quality Act, Section 15301 (Class 1), .... involving negligible or no expansion of use."  
(Attachment C, Performance Standards, p. 8, para. 5)

This assertion is not supported by the facts. The change of use from a quiet neighborhood taqueria, with c. 3-4 employees, operating within normal business hours, to a large catering/manufacturing operation with a fleet of company vans coming and going, being loaded and unloaded several times a day (see Attachment I), 15+ employees, multiple shifts, and multiple delivery trucks supplying raw

materials, represents A SIGNIFICANT EXPANSION OF USE.

Furthermore, in its previous location this business had significant impacts on the environment, eliciting constant complaints about odor, noise, lighting, traffic, parking etc. The county took "measures ... to alleviate the condition" (per the Urgency Ordinance), with poor results. This is well documented in the administrative record. These "measures" were mitigations to environmental impacts.

To quote from the Urgency Ordinance: "The County is aware that the intensity of the commercial activity at 3821 Fair Oaks Avenue in the NFO area has created serious impacts that have negatively impacted the residents of the adjacent residential zoning district that completely surrounds this commercial activity."

... the Board finds that there is a current and immediate threat to the public health, safety, and welfare and that performance standards controlling the intensity of land use ... are required to address this risk."

Attachment C, p. 12, para. 1 of this staff report states that the Board of Supervisors found "that the commercial use at this location is detrimental to the health, safety and welfare of the surrounding area."

The mixed-use designation includes "Residential", acknowledging that people live on the Middlefield corridor as well as on the adjacent residential streets and are also subject to potential impacts.

The record thus shows that many environmental impacts were generated by this company, requiring mitigation by the County. The impacts and issues described throughout these proceedings directly affect QUALITY OF LIFE in North Fair Oaks. Based on this company's history and prior performance, it is clear that the POSSIBILITY EXISTS that the requested use for 3250 Middlefield would create significant environmental impacts.

Further, any changes in use that do not comply with the North Fair Oaks Community Plan, would constitute changes in that plan.

For all of these reasons (expansion of use, proven impacts, quality of life, potential changes to General Plan), CALIFORNIA LAW (CEQA) REQUIRES AN EIR FOR THIS USE AT THIS SITE.

#### ENVIRONMENTAL JUSTICE

Facilitating the relocation to Middlefield Road from Fair Oaks Avenue would not remove the impacts. If the wealthier residents cannot tolerate these impacts, can the poorer residents tolerate them any better? This is old-school class-ism. In the 21st century, on the San Francisco peninsula, we expect better than this.

**ATTACHMENT 12**

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To: Members of the Planning Commission  
From: Chimène Keitner, UC Hastings Law Professor and Fair Oaks Ave. Resident Since 2005  
Re: 3821 Fair Oaks Ave. and Bay Area Catering & Events (Agenda Items #1 and #2)  
Date: August 26, 2014

Dear Planning Commission Members,

I am writing this letter in lieu of an oral statement because (1) the time allotted to those speaking on behalf of the North Fair Oaks community is insufficient to make the relevant points; and (2) I do not have the energy to sit through another public hearing in which BACE's attorney calls me and other neighbors "liars" when we make factual assertions based on documents that he has apparently not reviewed because they pre-dated his retention by BACE, including:

- the building permit application filed by the property owner that explicitly lists the value of the remodel at \$20,000 (BACE was relocating an existing business from a prior location, so it cannot legitimately add other alleged business start-up costs to this amount);
- Sandra Pereznegron's March 23, 2012 email to Jim Eggemeyer, Mike Schaller, and Steve Monowitz indicating that BACE is moving to 3215 Oak Knoll Dr. in Redwood City, upon which the County has relied in its dealings with BACE (and, in fact, this is the business location currently specified on BACE's website and Yelp! page<sup>1</sup>);
- the May 12, 2012 memo from Deputy County Manager Peggy Jensen, upon which neighbors have relied in our dealings with the County and BACE, indicating that, according to the business owners, BACE "has a five year lease on the North Fair Oaks building with **two** more years on the lease" and that "[a]ll of the BACE catering work" will be moved to the Redwood City facility by July/August 2012 (confirming that BACE's owners have never relied on the now-alleged option to extend the lease in their planned operations);
- and most importantly, the applicable C-1 zoning regulations, which explicitly designate 3821 Fair Oaks Ave. as a neighborhood business zone that allows "bakeries" but specifically excludes "wholesale baking OR bakery goods to be sold off the premises" in §6251(d)(2). This explicit exclusion of large-scale cooking operations that are not geared towards neighborhood residential consumers is designed to ensure that any commercial use, in the words of the analogous Redwood City ordinance, will "provide centers for convenience shopping in the residential neighborhood planned and controlled to the

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<sup>1</sup> <http://www.bacevents.com/Location.html> (MapQuest link to Oak Knoll Dr.); <http://www.yelp.com/biz/bay-area-catering-and-events-redwood-city> ("Serving Redwood City and surrounding area" from 3215 Oak Knoll Dr.).

extent that such centers will perform a vital service to the neighborhoods and become integral parts thereof” (Ord. 1130, eff. 7-10-64).<sup>2</sup>

The origin of the problem, attributable in the first instance to the property owner, is reflected in the following case file note by Mike Schaller on the building permit application filed by Jaime Gonzalez – the only application the County has received for catering activities on this parcel. Gonzalez’s application did not indicate that the proposed catering business intended to engage solely in cooking for delivery off the premises, and also did not indicate the proposed scale of the operation, which specializes in corporate catering and other large-scale events:

*10/21/10 mjs - Catering business is not specifically listed as an allowed use in the C-1. However, meat markets/delis and grocery stores are allowed by right. This use is similar in nature to those uses. Based upon that similarity, I'm going to sign off on this.*

If the applicant had been forthcoming about the intended use, Mike Schaller would not have analogized it to meat markets/delis and grocery stores, which provide centers for convenience food shopping in the residential neighborhood. This particular catering business has no walk-in retail services or even small-scale delivery services, and early attempts by neighbors to arrange for family meals through the service were rebuffed because that is simply not its business model.

Planning Staff have emphasized that in approving the October 2010 building permit application filed by Jaime Gonzalez, it did not make any finding regarding the conformity of a food delivery business closed to the public with C-1 zoning regulations, as opposed to any type of hypothetical catering business operated in conjunction with a restaurant, market, or deli (see p. 7 of the Sept. 11, 2013 Staff Report). If BACE feels its business expectations have been thwarted, it should sue Mr. Gonzalez, not the County, for failing properly to specify the scope of the tenant’s intended activities and ensure that these comported with County regulations.<sup>3</sup>

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<sup>2</sup> This requirement appears to have stymied the attempt to move to Redwood City, since in an August 25, 2102 letter Redwood City Planning Staff asked Bay Area Catering to provide additional submissions in support of its permit application including “additional information justifying how the commercial kitchen for the catering establishment would be considered neighborhood serving.” BACE responded by indicating to Redwood City that it planned to keep its commercial cooking operation at 3821 Fair Oaks Ave. active, at the same time that it was telling County staff that all cooking operations would be relocated to Redwood City. In light of these repeated misrepresentations, BACE’s planned move to the intersection of Middlefield Rd. and 6<sup>th</sup> Ave. should be subject to close scrutiny. Item 2 on today’s agenda would allow trucks and employee vehicles to clog yet another North Fair Oaks intersection with no corresponding benefit to the neighborhood in terms of retail services, in complete contravention of the letter and spirit of the expensive and carefully thought-out North Fair Oaks revitalization plan.

<sup>3</sup> The property owner was well aware of the restrictions on the use of his property. Even though he represented to neighbors (incorrectly) that he could operate a mortuary or a “Hanky Panky” on the premises without seeking County approval, he was previously enjoined from allowing a lawn mower repair business to operate at 3821 Fair Oaks Ave. on the grounds that it did not comport with applicable C-1 regulations. See Case No. VIO2009-00027 (March 18, 2009) (Mike Crivello reported: “Jaime Gonzales called to inquire why he was not permitted to operate a lawn mower repair shop and also if there might be a use permit he could apply for that would allow the use. I referred him to the planning counter and also faxed him a copy of the zoning regulations.”).

As soon as the scale of food production and delivery business became clear, a complaint was filed. Mike Crivello wrote the following in response to the complaint (VIO2011-00076):

**Field Inspection**

8/30/2011

DONE

MJC

*Met with [Executive Chef] Richard [Medina], he explained that they run a catering business for both company parties and private (house) parties. A client comes into the store and selects a menu, items are prepared for a tasting, and then details are worked out. Food is prepared and then delivered to customers home or office, along with staff to serve. All activities are conducted within the building. Additionally they have plans to open a walk in deli counter. (within the next few months)*

This representation was false, since the building permit (which Mike Crivello apparently did not review as part of the complaint investigation process) was to convert a market into a “CATERING KITCHEN, not open to public” with “No signage,” precisely because customers do not come into the store. Moreover, the company’s website explicitly states that they specialize in corporate, not private, catering. No permit application was, or has been, filed to open a “walk in deli counter,” yet it was on the basis of Mr. Medina’s representation that Planning Staff closed the file on this complaint.

I have reviewed many of the ensuing details of this case in my prior memos, which I will not repeat here. Critically, a non-neighborhood business use persists at this location, and Planning Staff are (again) asking the Commission to give this operation its stamp of approval by treating it as a lawful non-conforming use. Yet the Planning Commission still has not addressed the underlying problem here: this parcel has never been zoned for a large-scale cooking and delivery operation that offers zero goods or services to neighbors. The failure to consider this essential point is the result of procedural oddities that give Planning Staff, who have contributed to perpetuating the current situation<sup>4</sup>, control over the Planning Commission’s agenda.

On December 10, 2013, the Board of Supervisors found that commercial uses of 3821 Fair Oaks Ave., a single parcel in an exclusively residential zone, amount to a public nuisance. As relevant cases make clear: “A property owner has no constitutional right, vested or otherwise, to maintain private property as a public nuisance. *Suzuki v City of Los Angeles* (1996) 44 CA4th 263, 276; *Leppo v City of Petaluma* (1971) 20 CA3d 711, 717. Local agencies have the authority to administratively abate public nuisances. *City of Bakersfield v Miller* (1966) 64 C2d 93. The California Supreme Court confirmed this principle in *Livingston Rock & Gravel Co. v County of Los Angeles* (1954) 43 C2d 121, 128, when it held that the revocation of the right to continue a previously existing lawful business [which BACE is not] is a legitimate exercise of the police power when a business is so ‘exercised as to be detrimental to the public health or safety, or so as

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<sup>4</sup> See, for one of many examples, the attached memo of July 16, 2012 from Steve Monowitz to Jim Eggemeyer and Mike Schaller. As reported by resident Mitch Jones, Ana Santiago’s response to his initial complaint about BACE was to tell him that the County would investigate “flags” on his property.

to be a nuisance.” Especially because BACE is not a lawful C-1 use, County Counsel’s approach to the possibility of liability to BACE is not only overly cautious, it is simply incorrect.

The question is: will the Commission (and the Board of Supervisors) appropriately exercise its oversight and enforcement role, or will it let a threat of frivolous litigation<sup>5</sup> based on unsubstantiated allegations of start-up costs and business expectations already considered at its March 13, 2013 hearing override its duty to County residents?<sup>6</sup>

On a personal note, my daughter was one year old when BACE’s lease began in March 2010. She started kindergarten yesterday. I was pregnant with my third child when I first addressed the Planning Commission on the BACE situation. She will turn one year old next month. Our family of five is nervous biking and walking in the neighborhood because of traffic from delivery trucks (including those owned by BACE, and semi-trailers that come in to deliver raw materials for processing) and employee vehicles, not to mention noise, odors, and overall degradation of the residential neighborhood resulting from the unauthorized presence of a factory/warehouse and truck depot at its center.<sup>7</sup> We deserve more from the County.

Respectfully,

Chimène Keitner, Esq.

Attachments:

Permit Application for BLD2010-01507 showing TOTAL VALUATION of \$20,000.

Memo from Peggy Jensen to NFO Community Council of May14, 2012.

Email from Steve Monowitz of July 16, 2012.

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<sup>5</sup> The Commission should be aware that BACE’s attorney has repeatedly threatened to sue neighbors for exercising their public right and duty to complain about nuisances (even though there is no basis for such a suit). BACE has also attempted to extract cash settlements from neighbors with threats of frivolous litigation.

<sup>6</sup> On the other side of the balance sheet, of course, is potential County liability for not enforcing the applicable regulations in the all-too-likely event that BACE, a commercial kitchen that does not have a fire sprinkler system in place (per Fire Department records), causes a neighborhood fire, or that its commercial vehicles (which would otherwise be prohibited by applicable traffic regulations on Fair Oaks Ave., which does not have sidewalks, stop signs, or traffic lights) cause personal injury to the many residents and children who walk and bike along this street.

<sup>7</sup> San Mateo County Ordinance Code Section 7.48.090 indicates: “No person, firm or corporation shall drive or place or cause to be driven or placed any commercial vehicle exceeding a gross weight of 5,000 pounds upon FAIR OAKS AVENUE, County Road No. 1416-A, from its intersection with NINTH AVENUE, County Road No. 684-A, easterly to its intersection with MARSH ROAD, County Road No. 31, except as allowed in sections 35712 and 35714 of the Vehicle Code.” BACE’s vans and trucks are models that approach or exceed the 5,000 pound limit even when empty, and that would clearly exceed this limit when full. The semitrailers that supply BACE vastly exceed this limit.

**ATTACHMENT 13**

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**From:** Matthew Seubert  
**To:** Jim Eggemeyer  
**CC:** Mike Schaller  
**Date:** 9/20/2013 3:23 PM  
**Subject:** Fwd: FW: NEW LICENSE # 45403 ISSUED TO 3215 OAK KNOLL DR.

Jim,

This is the email that I received from RWC Planning about the business tax license for BACE at the Oak Knoll site. Not much detail, although I'm surprised that they only claim 5 full time employees. Also, their business activity is listed as catering, with no mention of the proposed retail operation.

I also went by the Oak Knoll site today. It is a large site with a good amount of parking and loading spaces. BACE had one van parked there, and a few cars were parked there as well, but the building appeared empty, with no signs or indications of people or activity.

-Matt

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>>> CD-Christopher Rogers <crogers@redwoodcity.org> 9/19/2013 10:06 AM >>>  
Good morning Mark,

Below is the business tax license that was sent to me via email. If you would like the scanned hard copy I can obtain it, but it will I will have to obtain it from our Revenue Services Department.

Best regards,

Christopher Rogers  
Assistant Planner  
City of Redwood City  
1017 Middlefield Road  
Redwood City, CA 94063  
(650) 780-5939 T  
(650) 780-0128 F  
crogers@redwoodcity.org

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-----Original Message-----

From:  
Sent:  
To:  
Cc:  
Subject: NEW LICENSE # 45403 ISSUED TO 3215 OAK KNOLL DR.

FYI

LICENSE	45403
DBA	BAY AREA CATERING & EVENTS INC
DESCRIPTON	CATERING SERVICE
NAICS CODE	722320 Caterers



**PROJECT AREA**  
 APN 060041110 060091260

**BACE OFF SITE  
 PARKING (0.4 mi)  
 2949 EDISON WAY**

**BACE  
 3250 MIDDLEFIELD RD**

**San Mateo County Board of Supervisors Meeting**

Attachment: D

Owner/Applicant: BACE

File Numbers: PLN2014-00261

# North Fair Oaks Land Use Designations

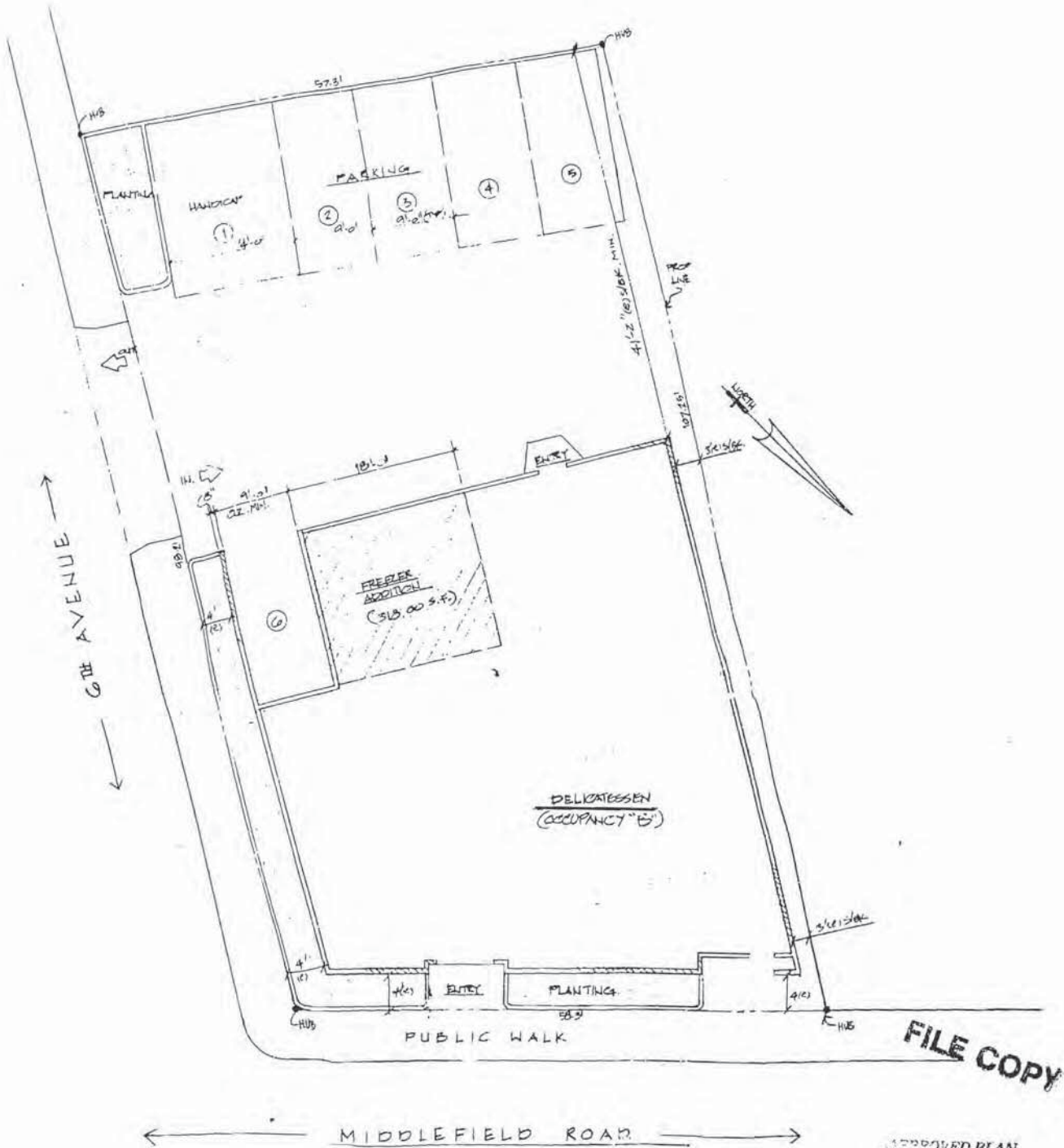


## San Mateo County Board of Supervisors Meeting

Owner/Applicant: BACE

File Numbers: PLN2014-00261

Attachment: E



**FILE COPY**

SITE PLAN  
181.16'

APPROVED PLAN  
MAR 25 1988  
BY W.K.  
SAN MATEO COUNTY BUILDING  
INSPECTION DIVISION

*Revised  
3/25/88*

**San Mateo County Board of Supervisors Meeting**

Owner/Applicant: BACE

Attachment: F

File Numbers: PLN2014-00261