

Location:	500 Lake Park Avenue (See map on reverse)
Assessors Parcel Numbers:	011-0837-086-04
Proposal:	An appeal of an administrative decision to require a Major Conditional Use Permit to alter, upgrade, and extend the hours of an existing Kwik Way fast food restaurant.
Owner:	Hahn Family Trust
Applicant:	Alex Hahn
General Plan:	Neighborhood Center Mixed Use
Zoning:	C-30, District Thoroughfare Commercial Zone
Environmental Determination:	The administrative determination has been found not to be subject to CEQA since (1) it is exempt from environmental review under the “general rule” (Guidelines Section 15061(b)(3) – no possibility of significant environmental impact) and (2) an administrative determination is not a “project” because there is no possibility that it will produce a significant impact on the environment (Guidelines Section 15378).
Historic Status:	Potentially Designated Historic Property (PDHP); preliminary survey rating: C3
Service Delivery District:	3 – San Antonio
City Council District:	2
Staff recommendation:	Uphold the Zoning Administrator’s determination that a Major Conditional Use Permit is required for the proposed changes to the restaurant.
For further information:	Contact case planner Neil Gray at 510-238-3878 or ngray@oaklandnet.com .

SUMMARY

A determination letter was sent to the appellant on April 23, 2004 saying that proposed extension of hours and physical changes of the existing Kwik Way drive-through restaurant at 500 Lake Park Avenue would remove the business’ legal, nonconforming status as a Fast-Food Restaurant Commercial Activity. The letter stated that the improvements would require a Major Conditional Use Permit, the same permit that would be required for a new Fast-Food Restaurant Commercial Activity in the C-30, District Thoroughfare Commercial Zone. The letter also stated that issues regarding the General Plan conformity of the proposed changes to the Drive-Through Nonresidential Facility were being reviewed by the City. On May 3, 2004 the appellant, the owner of the Kwik Way, filed an appeal of the administrative determination to the Planning Commission.

Staff recommends that the Planning Commission uphold the Zoning Administrators decision to require a Major Conditional Use Permit for the proposed extended hours and alterations to the Fast-Food Commercial Activity and Drive-Through Nonresidential Facility.

BACKGROUND

On April 23, 2004, Deputy Planning Director Gary Patton, acting as the Zoning Administrator, sent a determination letter to the appellant stating that the improvements proposed for the Kwik Way restaurant at 500 Lake Park Avenue would remove the business' legal, nonconforming status as a Fast-Food Restaurant Commercial Activity (see Attachment A for the letter). The letter stated that the improvements would require, at a minimum, a Major Conditional Use Permit, the same permit that would be required for a new Fast-Food Restaurant Commercial Activity in the C-30, District Thoroughfare Commercial Zone. All building and sign permits issued for the improvements were subsequently suspended by the Director of Building Services (see Attachment B). On May 3, 2004 the appellant, the owner of the Kwik Way, filed an appeal of the administrative determination to the Planning Commission. This report is staff's recommendation regarding the appeal.

PROJECT DESCRIPTION

The appellant proposes to alter the existing Kwik Way drive-through restaurant into a more intensive fast-food operation at 500 Lake Park Avenue by extending its operating hours, remodeling its kitchen, upgrading the electrical and plumbing system, and installing new signs. Discussions with the applicant, requests for sign permits, and statements in the appeal application indicate that the proposal would convert the Kwik Way to a McDonald's drive through restaurant. However, the proposed new tenant was not, and is not, relevant in reaching the Zoning Administrator's determination.

According to City records, the existing Kwik Way was constructed in approximately 1955 and was converted to a drive-through facility approximately 1982. The facility currently has a drive-through facility, a walk up window, an inoperative voice amplification system, and a kitchen; the facility contains no indoor seating. The restaurant serves hamburgers, fries, chicken, and other food. The site is a potentially designated historic property because the Kwik Way building is an example of "googie" style architecture that was popular in the 1950's and 1960's.

The proposal would not expand the square footage of the facility or add new seating. However, the restaurant's current hours would be expanded from 11:00 AM -- 12:00 AM to 6:00 AM -- 12:00 AM and the applicant has submitted building plans indicating the following work at the site:

- Installation of a new 1,500 gallon underground grease interceptor;
- Installation of approximately 160 new pieces of kitchen equipment;
- Upgrading and replacement of the electrical and plumbing systems, gas lines, water heaters, light fixtures, and heating ducts;
- Installation of new rooftop and interior fans and air conditioning;
- Installation of a new cooler and freezer;
- Enlargement and improvement of the restroom;
- Construction of new interior walls; and
- Building a new cement block wall around the garbage area (see Attachment C)

The applicant has also proposed to replace the existing approximately 163.9 square feet of street facade signage with 145.6 square feet of new street façade cabinet signs. Other outdoor improvements include:

- A 4'-4" tall post containing a voice amplification and video ordering confirmation system;

- A 11.81 square foot, 6'-9" tall "pre-sell" monument menu sign;
- A 5'-7" tall, 10.7 square foot monument parking lot directional sign with a 2'-4" restaurant logo;
- A 5'-3" X 8'-3" (43.31 square foot) replacement outdoor menu sign;
- Miscellaneous directional signs;
- A replacement for the existing metal fascia;
- Resurfacing of the parking lot; and
- Miscellaneous building repairs and renovations (see Attachments C and D).

PROPERTY DESCRIPTION

The restaurant is on an approximately 15,300 square foot, 144 foot wide site. The property fronts onto the east side of Lake Park Avenue, a street that links the Lakeshore and Grand Avenue pedestrian shopping districts (see the Attached map). A Bank of America is to the north and a night club is to the south of the restaurant. Other facilities on the eastern side of the street include a Kentucky Fried Chicken, the Grand Lake Theatre, and storefront restaurants and offices. Across the street is the recently renovated Splash Pad Park, the location of a weekly farmers market. Lake Park Avenue carries relatively heavy automobile traffic because of its location between Interstate 580 on- and off-ramps and its adjacency to the Lakeshore and Grand Avenue shopping areas.

A one-way entrance into the facility's parking lot and drive-through from Lake Park Avenue loops around the building to an exit back onto Lake Park Avenue. A second entrance is on Cheney Avenue, an adjacent residential street. Cheney Avenue is the beginning of a residential neighborhood behind Lake Park Avenue.

GENERAL PLAN ANALYSIS

The General Plan designation for the site is Neighborhood Center Mixed Use. The General Plan states that areas with this designation should have pedestrian oriented, neighborhood serving commercial or mixed uses. The conformity of the proposed restaurant and drive-through with the General Plan is under review by the City and may require additional land use entitlements. This issue will be determined at the Planning entitlement stage of the approval process. However, a new Drive-through would require a General Plan Amendment because such facility is expressly prohibited under the document "Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations" adopted by the Planning Commission May 6, 1998 and most recently revised July 15, 2003.

ZONING ANALYSIS

This section describes the zoning permits required for the Kwik Way improvements within the C-30 District Thoroughfare Commercial Zone, the zoning designation of 500 Lake Park Avenue.

Major Conditional Use Permit requirement

Chapter 17.10 of the Planning Code defines the existing Kwik Way as a "Fast-Food Restaurant Commercial Activity" with a "Drive-Through Nonresidential Facility". Fast-Food Restaurant Nonresidential Activities and Drive-Through Nonresidential Facilities are conditionally permitted in the C-30 Zone and, therefore, a new use would require a Conditional Use Permit to operate in the area. As mentioned previously, however, a new drive-through also requires a General Plan amendment to be consistent with the General Plan. Chapter 17.134.020 states that any use permit

involving either a Fast-Food Commercial Activity or a Drive-Through Nonresidential Facility is a major use permit and requires a hearing in front of the Planning Commission.

The Kwik Way drive-through never received a Conditional Use Permit to operate at 500 Lake Park Avenue. However, the restaurant is a legal nonconforming business because its establishment predates the City's adoption of regulations pertaining to fast-food restaurants and drive-throughs. However, the Zoning Administrator has made a determination that the proposed expanded hours, remodeling, kitchen upgrades, sign installations, and refurbishing at 500 Lake Park Avenue would remove the site's legal, nonconforming status by intensifying the site's current Fast-Food Commercial Activity (this issue is discussed in depth in the "Key Issues and Impacts" section of this report). Therefore, the Planning Code requires that the proposed improvements at 500 Lake Park Avenue require a Major Conditional Use Permit.

KEY ISSUES AND IMPACTS

Nonconforming Fast-Food Commercial Activity

As mentioned, staff has made a determination that the proposed change to the Fast-Food Commercial Activity removes its legal nonconforming status and, therefore, requires a Major Conditional Use Permit. This section discusses in detail why the proposed changes (increasing hours of operation and alterations) remove Kwik Way's legal nonconforming status and, therefore, require obtaining a Major Conditional Use Permit.

The zoning regulations state that no substitution, extension, or other change in activities and no alteration or other change in facilities is permitted except as otherwise provided in the nonconforming uses Chapter of the Zoning Ordinance. "Substitution of activities" is defined as the "replacement of an existing activity by a new activity, or a change in the nature of an existing activity" under Oakland Planning Code Section 14.114.020. The Zoning Administrator has determined that the proposal to expand the hours and the food production capacity at Kwik Way enlarges and intensifies the Fast-Food Restaurant Commercial activity. This enlargement and intensification changes the nature of an existing activity, creates a substitution not provided for in Planning Code Section 17.114.070, and would increase the restaurant's impacts on the community.

As mentioned, the appellant proposes to open the restaurant at 6:00 AM instead of its current 11:00 AM (an approximately 38 percent increase in the hours of operation) and an upgraded facility, including a new 1,500 gallon underground grease interceptor; approximately 160 new pieces of kitchen equipment; electrical, plumbing, and gas line upgrades; drive-through communication and signage upgrades; and other changes. These changes clearly indicate that the restaurant will enlarge and intensify the operation by significantly increasing the hours of operation, food production, the number of customers served, and other activities related to a fast-food restaurant.

Impacts on the community will increase as a result of the activity's proposed intensification and enlargement. The number of customers using the restaurant would increase, thus increasing the congestion on Lake Park Avenue; the increased number of cars entering on Cheney Avenue and noise created by the proposed drive-through voice amplification and rooftop fans and air conditioning systems would have a negative effect on the surrounding residential neighborhoods; the number of cars using the drive-through would increase and may create traffic congestion on the highly trafficked Lake Park Avenue due to cars queuing onto the street. Finally, the greater number of cars crossing the sidewalk to enter the facility and use the drive-through would impede pedestrian circulation and could create safety issues on Lake Park Avenue.

The possible effect on pedestrian circulation is a critical issue because Lake Park Avenue functions as an important pedestrian connection between the Grand and Lakeshore Avenue shopping districts. The significant investment the City has made in improving the Splash Pad Park across the street from the Kwik Way and the City's designation of the area as Neighborhood Center Mixed Use, a General Plan category that encourages a pedestrian orientation, reflects the City's recognition of Lake Park Avenue as an important pedestrian connection.

As a separate and independent basis, the degree of the proposed physical changes to the structure of Kwik Way also removes the restaurant's legal nonconforming status under Oakland Planning Code Section 17.114.080. This section states that if during any five year period, the aggregate cost of all alterations for which a building or sign permit is required exceeds 25 percent of replacement costs, the activity loses its legal nonconforming status. The City's Building Services Division originally estimated that constructing a new restaurant of comparable size to the existing would be about \$155,855 based on the Marshall and Swift valuation charts (2001), a standard source the City uses to evaluate the value of buildings. According to the building and sign permits, the improvement value of proposal is at least \$65,000 (a \$35,000 and \$30,000 valuation for the work requiring building and sign permits, respectively) or 42.8 percent of the replacement value of the building. Attachment E contains the building and sign permit valuations.

A reevaluation of the building permit application, after the appeal was filed, has resulted in some adjusted figures regarding the cost of work requiring building permits and the replacement value of constructing a new restaurant. According to the Building Services Division, the following items require building permits: the cooler, the freezer, general tenant improvements for a restaurant, the new trash enclosure, and the 1500 gallon grease interceptor. The Building Services Division estimates that the cost of all these items except the grease interceptor totals approximately \$35,500. Staff also estimates that grease interceptor would cost approximately \$14,500. This increases the total estimated cost of work requiring a building permit to approximately \$50,000; the estimated cost of work requiring a sign permit remains at \$30,000. Thus the total value of work requiring a sign or building permit is about \$80,000 (see Attachment F).

In addition, the Building Services Division now estimates \$180,780 as the replacement cost, which is higher than the \$152,000 stated in the original determination letter. This miscalculation was due to incorrect information regarding the square footage of the facility (see Attachment F).

Accordingly, the revised figures indicate that the proposed costs of the alterations (\$ 80,000) are 44.3 percent of the replacement value (\$180,780). Regardless of which of the above figures are utilized, the costs of alterations exceed the replacement costs of the building by more than 25 percent. The proposal, therefore, removes the legal nonconforming status of the Fast Food Restaurant Commercial activity.

If the issues outlined above are resolved, the City would require evidence that the proposal would not conflict with Section 17.114.070 of the Planning Code. This Section states that no substitution or other change can be made to any nonconforming activity that would conflict with the performance standards contained in Chapter 17.120 or other part of the Planning Code. In particular, the City would require demonstration that:

- The proposed drive-through voice amplification system, rooftop air conditioning and fans, and other new equipment would not conflict with the noise standards contained in Section 17.120.050 of the Zoning Ordinance; and

- The additional cars expected after the facility upgrade would not make the drive-through conflict with the drive-through standards and criteria contained in Section 17.102.290 of the Zoning Ordinance. In particular, the intensification and enlargement of the restaurant may conflict with the standard stating that a drive-through “shall be so situated that any vehicle overflow from it shall not spill onto public streets or the major circulation aisles of any parking lot”

Appeal Issues

This section presents the City’s response to the appellant’s arguments against the administrative determination regarding the Kwik Way proposal. The appellant’s arguments were submitted with the appeal application on May 3, 2004 (see Attachment G). Summaries of the appellant’s statements are in normal font while staff’s response is in **bold**.

1) The appellant argues that there is no “substitution of activities” because the proposed change “is merely a change of tenancy that will continue the previous fast-food restaurant without substantial change” and that there is no evidence that extending the hours of operation will have any effect on the neighborhood, increase the number of customers, automobile trip generation, or other activities related to the operation of a fast-food restaurant.

Staff Response:

First, tenancy is not at issue here. Even if the Kwik Way site had not changed tenants the Zoning Administrator would reach the same conclusion regarding the legal nonconforming status of the operation. As outlined above, the proposal will increase the hours of operation and significantly and substantially increase the food production capacity of the restaurant through the upgrading of the facilities, resulting in a major intensification and enlargement of the operation.

Moreover, it logically follows that if the restaurant significantly expands its operating hours and food production capacity as proposed by appellant, it is expected that the number of customers, automobile trip generations, and other activities related to operation of a fast food restaurant would follow. The owners or operators of the restaurant certainly would not make the substantial financial investment required to implement the proposed improvements unless they expected more customers to visit the restaurant. Traffic surveys performed by members of the public indicate that the proposed facility would generate more traffic than the existing Kwik Way (see Attachment H).

As discussed above, more customers will impact the neighborhood through more traffic generation and conflicts between pedestrians and cars crossing the sidewalk on an important pedestrian corridor. Further, the proposed improvements could result in automobile queuing on Lake View Avenue and will create more noise coming from the site. Obviously, there are no traffic impacts from the existing Kwik Way operation during the hours of 6:00 am – 11:00 am, when they are closed. Increasing the hours of operation alone will increase the traffic congestion in the area. The aforementioned surveys indicate that at least 48-68 cars/hour will use the drive-through facility during the morning hours.

2) The appellant states that the proposal will not impact the area because it has a C-30 Zoning and is home to many businesses such as a Kentucky Fried Chicken and the Grand Lake Theatre that are open as early or late as the proposed restaurant.

Staff Response:

The Grand Lake/Lakeshore area is a thriving, pedestrian oriented business district. However, the C-30 Zoning requires a Major Conditional Use permit for a fast-food restaurant and a drive-through because the City anticipates that these activities can have impacts in this zone that require more regulation. Moreover, the area has a Neighborhood Center Mixed Use General Plan designation, indicating that the City considers the site to be part of a pedestrian oriented shopping area; a fast-food establishment with a drive-through is inconsistent with this desired character. Finally, the existence of other businesses with extended hours has no relationship to whether the subject proposal will have an impact on the neighborhood. If any legal nonconforming businesses were to propose a substitution similar to that proposed for Kwik Way, the City would have similar concerns regarding its impact and appropriateness for the neighborhood.

3) The appellant argues that the history of the Kwik Way drive-through operating at the site indicates that the proposal would not impede traffic or pedestrian circulation or create noise impacts on the residential neighborhoods. The appellant further argues that there is no evidence that the proposal will impact nearby residential areas because “in light of the freeway ramp configuration, and the existence of other McDonald’s restaurants in more accessible locations it is highly unlikely that anyone from outside of the neighborhood would travel to the Grand Lake area specifically to eat at the McDonald’s restaurant”.

Staff Response:

The history of Kwik Way’s impacts on the neighborhood is not relevant because the proposal would intensify and enlarge of the operation; some impacts that may not have existed prior to the proposal may become a problem in the neighborhood after this enlargement and intensification. The freeway on and off ramps makes it more, not less likely that people from outside the neighborhood would visit the McDonalds because they make the facility more accessible from Interstate 580. The significant investment proposed to be made on the facility and the signage indicate that the appellant and applicant expect more customers at the site than are visiting currently.

4) The Zoning Administrator stated in his determination letter that the proposed renovations will “alter the facility and increase the degree of the existing non-conformity”. The appellant asserts that there is no evidence to support this contention and that the “nature of these concerns is unclear”.

Staff Response:

The Zoning Administrator clearly states the nature of the concerns after making the statement that the renovations will “alter the facility and increase the degree of the existing non-conformity” by subsequently citing Planning Code Section 17.114.070. This section states that if during any five year period the aggregate cost of all alterations for which a building or sign permit is required exceeds 25 percent of the replacement cost, the building loses its legal nonconforming status. As described in the “Key Issues and Impacts” section above, the proposed alterations would be over this 25 percent threshold. Indeed, the alterations exceed 40 percent of the replacement value.

5) The appellant argues that the proposal does not constitute “alterations” under the Planning Code, and, therefore, the 25 percent rule under Section 17.114.070 cannot be enlisted. The appellant further

contends that that only \$35,000 worth of changes are proposed, not the \$65,000 stated by the Zoning Administrator.

Staff Response:

Section 17.114.020 defines an "Alteration" as an "enlargement; addition; relocation; repair; remodeling; change in number of living units; development of or change in an open area; development of or change in a Sign, by painting or otherwise; or any other change in a facility, but excluding painting except as provided above for Signs, ordinary maintenance for which no building permit is required, and demolition or removal". The proposal can clearly be described as repairs, a remodeling, the development of or change in a Sign, or other change in a facility. As explained in the "Project Description" section of this report, the appellants propose to repair and renovate the exterior and interior of the building, renovate the kitchen, repair and replace the plumbing, electrical, and gas lines, develop new signage, and make other changes to the restaurant and drive-through.

The \$65,000 dollars worth of renovations are the valuations originally estimated by City staff for the building and sign permits. The building and sign permits showing this amount are shown in Attachment E. The appellant appears to be excluding the estimated \$30,000 value of the new signs even though the ordinance specifically states that the estimated cost shall include "all alterations for which a building or *sign permit* is required..." (emphasis added). Staff has revised its estimate upwards by about \$15,000 to reflect the costs of the 1500 gallon grease interceptor, which was previously excluded from the calculations.

It should be noted that the appellant has not contested the replacement value of the building in his appeal and the therefore has waived this argument.

6) The appellant also contends that the Conditional Use Permit required for the Fast-Food Restaurant Commercial Activity and the drive-through should be minor, not major permits as stated by the Zoning Administrator because Section 17.134.020 states that a major Conditional Use Permit is required for Fast-Food Restaurant Commercial Activities and Drive-Through Nonresidential Facilities "except where the proposal involves only accessory parking, the resumption of a discontinued nonconforming activity, or an addition to an existing activity which does not increase the existing floor area by more than twenty (20) percent".

Staff Response:

The proposal does not fall into any of these three categories, and, therefore, the City must require a "Major" Conditional Use Permit. Regardless, Sections 17.134.040(B)(1) and 17.134.020(A)(3)(i) of the Planning Code state that the Director of City Planning may refer any conditional use application to the City Planning Commission. These sections further state that when the Planning Director refers an application to the Planning Commission, it shall be considered and processed as a Major Conditional Use Permit. The Planning Director hereby states that she would refer a Conditional Use Permit application for the proposal to the Planning Commission due to its importance to the future development of the Grand Lake/Lakeshore Shopping Districts and concerns regarding the possible impacts of the proposal on the neighborhood.

7) In his appeal, the appellant takes issue with Zoning Administrator's statement that the City would require demonstration that the proposed changes would not make the drive-through or restaurant conflict or further conflict with either the noise or drive-through standards contained in the Planning

Code. The appellant states that “there is no basis in the Zoning Administrator’s letter for his determination on this point and that such an unsupported determination deprives the Appellant of the ability to adequately reply. As such, the Zoning Administrator’s determination violates due process and an invalid determination”. The appellant further states that if the determination is that the Zoning Administrator requires evidence that these conflicts will not occur as a result of the proposal, he submits 1) it has the right to know the basis for this determination 2) it is not required to respond without such basis; and 3) the determination should be rejected for failure to follow proper procedure.

Staff Response:

As demonstrated above, the proposed enlargement and intensification of the operation will lead to more customers traveling to the restaurant and drive-through; it is reasonable to believe that additional customers could create conditions where cars are overflowing onto the right of way while queuing for service at the drive-through. The Zoning Administrator has the responsibility to ensure that the expanded operation will not conflict with any provisions of the Planning Code, including those regarding vehicle overflowing into the right of way. The Zoning Administrator only indicated that he needs demonstration that this conflict will not occur before the City can evaluate the nonconforming status of the enlargement and intensification of the operation.

Similarly, the proposal to replace the voice amplification system and install new roof fans and air conditioning has the potential to conflict with the City’s noise standards; the Zoning Administrator has a responsibility ensure that this conflict will not occur. Again, the Zoning Administrator only stated in his letter that he needs demonstration that the proposal will not conflict with the City’s noise standards before he can fully evaluate the nonconforming status of the proposal.

- 8) The appellant makes the following additional points:
- a) The proposed McDonalds’s will comply with the noise and drive-through standards because the other McDonald’s restaurants are required to comply with these standards and there is no reason to believe the proposed McDonald’s will not comply.
 - b) The transition from the Kwik Way to a McDonald’s will not result in any violation of Planning Code section 17.102.290;
 - c) The change in tenancy will not result in significant reduction in the circulation level or nearby streets;
 - d) The planned queuing lane for the drive-through will comply with the Planning Code standards of Section 17.102.290(B); and
 - e) The transition will not result in any alteration of the building facades or continuity of retail facilities.

Staff Response:

Regarding item a), it is unclear whether the other McDonald’s comply with the noise and drive-through standards because the City has not recently evaluated those operations. Regardless, each restaurant has a different site plan, proximity to residential neighborhoods, and drive-through configurations. Therefore, that some restaurants comply with the standards is not an assurance that others will similarly comply. Further, a staff visit on May 25, 2004 visits by the public to a drive-through McDonald’s at the corner of Jackson and 14th Streets indicate that cars queuing into the street waiting for service at the drive-through is an issue at that location (see Attachment I for photos). This evidence provides further reason why the Zoning

Administrator requires assurance that the proposed alterations at 500 Lake Park would not conflict with the Planning Code's drive-through standards contained in 17.102.290. As mentioned, Section 17.114.070 of the Planning Code states if a substitutions or change to a facility is made that conflicts or further conflicts with some part of the Zoning Ordinance and activity loses it legal nonconforming status.

Regarding items b) through d), staff requires sufficient evidence that these conflicts and impacts will not occur because it is reasonable to suggest that these conflicts and impacts may occur given the proposed enlargement and intensification of the operation. Regarding e), the new signs and repairs to the façade do constitute alterations according to Section 17.114.020 of the Planning Code (see response to issue #5). Staff does not argue that the improvements to the façade will change the physical continuity of the retail facilities. However, staff asserts that the proposal would increase traffic crossing the sidewalk and, therefore, create more conflicts between pedestrians and vehicles, worsen the pedestrian experience, and make the neighborhood less pedestrian friendly. As mentioned in the determination letter, the significant investment the City has made in improving the Splash Pad Park across the street from the Kwik Way and the City's General Plan designation of the area as Neighborhood Center Mixed Use reflects the City's recognition of Lake Park Avenue as an important pedestrian connection.

9) A footnote on the second page of the appellant's supplemental information provided with the appeal form states:

“Although not referenced in the Zoning Administrator's administrative determination, and presumably not a basis for his determination, public opposition to the proposed change in tenancy has virtually nothing to do with the existence of a fast food restaurant on the location, and is instead based on an irrational dislike for McDonald's itself. Although members of the community have raised some of the same spurious traffic and noise issues raised by the Zoning Administrator, public support for replacement of the Kwik Way by another fast food restaurant establishes that neighborhood response is directed only to McDonald's”.

Staff Response:

The appellant is correct that the Zoning Administrator's determination was not based on an “irrational dislike” for McDonalds. The basis was made on the proposed changes to the facility and operation and the regulations contained in the Planning Code. This is evidenced by the City's approval of several McDonald's at other locations in Oakland.

RECOMMENDATIONS:

Staff recommends that the Oakland Planning Commission find and determine that:

1. Appellant's proposal to expand the operating hours at Kwik Way restaurant by 38% is a change in the nature of the use and thus a substitution that requires a conditional permit per Section 17.114.070.
2. As a separate and independent basis, the proposed alterations to the facility exceed the 25 percent threshold set by Section 17.114.080 and thus require a conditional use permit.

3. The type of conditional use permit appellant must obtain is a Major Conditional Use Permit.

4. This decision is reached without consideration of the future tenancy of Kwik Way. The Commission expressly finds and determines that if Kwik Way or any other owner/operator proposed to increase the hours of operation by 38 percent or perform alterations that exceed the 25 percent threshold, the same conclusions would be reached

5. Based on the foregoing, the appeal is denied and the Zoning Administrator's determination is upheld, based on this staff report and the administrative record.

Prepared by:

NEIL GRAY
Planner III

Approved by:

GARY V. PATTON
Zoning Administrator and Deputy Director of Planning and Zoning

Approved for forwarding to the
City Planning Commission:

Claudia Cappio
Director of Development

ATTACHMENTS:

- A. April 23, 2004 Zoning Administrator Determination Letter
- B. April 29, 2004 Letter from Calvin Wong, Director of Building Services, suspending the building and sign permits for the site
- C. Building permit plans
- D. Sign permit plans
- E. Building and sign permit printouts from the City's computer permit tracking system
- F. May 25, 2004 memorandum from Calvin Wong, Director of Building Services

- G. Appeal application and supplemental information
- H. Traffic counts performed by the public
- I. Photographs of cars queuing into the street waiting at the McDonald's restaurant drive-through at 14th and Jackson Streets
- J. Correspondence, information, and petition from the public