

COMMUNITY AND ECONOMIC DEVELOPMENT DEPARTMENT PLANNING STAFF REPORT

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| AGENDA ITEM NO.: C.1. | SITE LOCATION: West side of Euclid Street, south of Forbes Avenue, at 14291 Euclid St. #D101 |
| HEARING DATE: April 19, 2018 | GENERAL PLAN: Industrial/Commercial Mixed Use |
| CASE NO.: Conditional Use Permit No. CUP-120-2018 | ZONE: PUD-104-81/86 REV. 90 (Planned Unit Development) |
| APPLICANT: Quan Hoa An LLC c/o Kimberly B. Le | CEQA DETERMINATION: Exempt |
| PROPERTY OWNER: Euclid Real Estate Development (Attn: Doreen Louise Galchutt) | APN: 099-183-03 |

REQUEST:

A request for Conditional Use Permit (CUP) approval to upgrade an existing State Alcoholic Beverage Control (ABC) Type "41" (On-Sale, Beer and Wine, Public Eating Place) License to a new ABC Type "47" (On-Sale, General, Public Eating Place) License, and to allow live entertainment, in the form of karaoke, along with associated components (i.e., amplified sound, stage, and karaoke equipment), for an existing 1,885 square foot restaurant, Pho Hoa An Restaurant, located at 14291 Euclid Street #D101, which is currently operating under Conditional Use Permit No. CUP-102-03.

BACKGROUND:

The site is improved with a multi-tenant retail shopping center called the Euclid Retail Center. The center includes retail stores, restaurants, medical, and office professional uses. The specific 1,885 square foot tenant space under application is located near the center of the development. The subject tenant space has been in operation as a restaurant since 1992, changing ownership several times during subsequent years. According to business license records, the current business owner, the applicant, Kimberly B. Le, has been operating the current restaurant, Pho Hoa An Restaurant, since 2014.

The property is located in the PUD-104-81/86 REV. 90 (Planned Unit Development) zone and has a General Plan Land Use Designation of Industrial/Commercial Mixed Use. The shopping center is adjacent to PUD-104-81/86 REV. 90 zoned properties to the north, west, south, and single-family residentially developed properties located in the City of Santa Ana, across Euclid Street, to the east.

In June of 1999, the City of Garden Grove approved Conditional Use Permit No. CUP-455-99, which allowed the existing restaurant to operate with a new State Alcoholic Beverage Control Type "41" (On-Sale, Beer and Wine, Public Premises) License.

In March of 2003, the City of Garden Grove approved Conditional Use Permit No. CUP-102-03, which allowed the existing restaurant, currently operating with a State Alcoholic Beverage Control Type "41" (On-Sale, Beer and Wine, Public Premises) License, to have live entertainment in the form a solo performer, but with no audience participation, amplified sound system, stage, or dance floor allowed. At the time of the approval of CUP-102-03, the restaurant had existing illegal improvements that included items such as a stage, music instruments, and an amplified sound system. A condition of approval required that all said improvements were to be removed within thirty (30) days from the date of the approval of CUP-102-03.

In late 2016, the applicant had submitted a preliminary inquiry to the City for a request for Conditional Use Permit (CUP) approval to allow an upgrade of the restaurant's existing ABC Type "41" (On-Sale, Beer and Wine, Public Eating Place) License to a new ABC Type "47" (On-Sale, General, Public Eating Place) License. Up to this point, the restaurant had developed a history of non-compliance with its Conditional Use Permit and the applicable conditions of approval, along with other legal violations such as customers smoking within the business. Shortly thereafter, the applicant met with the Police Department to discuss the CUP request. The Police Department outlined past and ongoing issues related to the restaurant including, but not limited to, illegal karaoke live entertainment, amplified music, and the use of an amplified sound system with associated equipment. It should be noted that recent calls for service relating to the restaurant, that were received by the Police Department, included, but were not limited to: disturbing the peace (loud audible music from outside the restaurant), a call relating to a fight, and a call relating to an assault with a deadly weapon.

Typically, if a restaurant has developed a history of non-compliance (e.g., repeated CUP violations) with its CUP and/or demonstrated an unwillingness to correct on-going issues, the Police Department has not supported requests/applications where an applicant's request would intensify and/or expand an existing restaurant use (i.e., upgrading an ABC License to add hard liquor sales to beer and wine sales, increasing hours of operation to later hours, etc.). At its meeting, the Police Department advised the applicant that it could not support the applicant's request unless the applicant operated the restaurant in compliance with its Conditional Use Permit (CUP-102-03), demonstrated good operational behavior, and encouraged the business owner to return to the City and re-submit its request for reconsideration after demonstrating CUP compliance and good operational behavior for a period of at least one (1) year.

DISCUSSION:

In October of 2017, the applicant submitted a follow-up preliminary inquiry to the City for a request for Conditional Use Permit (CUP) approval to allow an upgrade of the restaurant's existing ABC Type "41" (On-Sale, Beer and Wine, Public Eating Place) License to a new ABC Type "47" (On-Sale, General, Public Eating Place) License.

It should be noted that the application review process typically begins with the submittal of a preliminary review application package to Staff for review. Said package may include a request in writing, a business proposal, a menu (if applicable), and proposed plans. During the preliminary review process, Staff will work with the applicant to address any issues with the proposal and/or the proposed plans, to ensure the project complies with the requirements of the Municipal Code and is supportable by Staff. Before Staff had completed its preliminary review of the applicant's request (to determine whether or not the City would support the request), the applicant decided to forgo the preliminary review process and submitted a land use entitlement application for its CUP request on December 5, 2017.

Following receipt of the CUP application, Staff continued its preliminary review. During said review, it was noted by the Police Department that on several occasions, including a business check that occurred on December 23, 2017, police officers had observed CUP violations in the subject restaurant, Pho Hoa An Restaurant. Observations included but were not limited to: loud audible music from outside the restaurant, customers smoking within the establishment, karaoke live entertainment, amplified music, and an amplified sound system with associated equipment. The applicant had not been operating in compliance with its current Conditional Use Permit (CUP-102-03), which includes, but is not limited to, the following conditions of approval:

- P. Live entertainment shall be limited to a solo paid professional performer. No audience participation and amplified sound system allowed.*
- Q. There shall be no dancing, karaoke or disc-jockey entertainment or sport bar permitted at any time.*
- R. Noise generated from the establishment shall not be audible outside the establishment.*
- S. There shall be no stage area or dance floor allowed at any time.*
- T. The existing stage with music instruments and amplified sound system and a big-screened television shall be removed within thirty (30) days from the date of Conditional Use Permit approval.*

Staff scheduled the applicant's item for the February 1, 2018 Planning Commission meeting. On January 9, 2018, the applicant submitted a request to withdraw their CUP item from the February 1, 2018 Planning Commission meeting agenda, in order to modify their proposal by adding a request to allow karaoke live entertainment

including other associated components (i.e., amplified sound, stage, and karaoke equipment), in addition to its current request to upgrade its ABC Type "41" License to an ABC Type "47" License.

On February 5, 2018, the applicant had met with Staff, which included the Police Department, to discuss their modified CUP request (to add karaoke live entertainment). The Police Department noted there had been no apparent recent efforts made by the applicant to bring its business into compliance with its current Conditional Use Permit (CUP-102-03), to remove all illegal improvements within the establishment, and to demonstrate good operational behavior since the last meeting between the applicant and the Police Department, which took place approximately one (1) year ago. Accordingly, the Police Department noted it would not support the modified CUP request until the business owner had removed all illegal improvements within the establishment, and successfully demonstrated good operational behavior in compliance with its current CUP, for a period of at least one (1) year. After such time, the Police Department again encouraged the business owner to return to the City and re-submit their request for reconsideration. The applicant stated she would remove all existing illegal improvements and operate in compliance with her current CUP.

On March 5, 2018, the applicant submitted a request to agenda her item, Conditional Use Permit No. CUP-120-2018, for the next available Planning Commission meeting, forgoing the Police Department's direction to operate in compliance with its current CUP for at least one (1) year before resubmitting her request.

The restaurant is located in a crime district that is 7% above the average crime count per district, and in an area of an over-concentration of Alcoholic Beverage Control on-sale licenses. A summary of the district, can be found in Resolution No. 5907-18 for Conditional Use Permit No. CUP-120-2018.

FINDING OF PUBLIC CONVENIENCE OR NECESSITY

A finding for public convenience or necessity would have to be made in order to approve an establishment that is requesting a new original Alcoholic Beverage Control license that is located within a district with a high crime rate and/or in an area with an over-concentration of ABC licenses. California Business and Professions Code Section 23817.5 prohibits the ABC from issuing new alcoholic licenses in areas of over-concentration. Business and Professions Code Section 23958 states:

The department further shall deny an application for a license if issuance of that license would tend to create a law enforcement problem, or if issuance would result in or add to an undue concentration of licenses, except as provided in Section 23958.4.

Business and Professions Code Section 23958.4 provides the following exception:

(b) Notwithstanding Section 23958, the department may issue a license as follows:

(2) With respect to any other license, if the local governing body of the area in which the applicant premises are located, or its designated subordinate officer or body, determines within 90 days of notification of a completed application that public convenience or necessity would be served by the issuance. The 90-day period shall commence upon receipt by the local governing body of (A) notification by the department of an application for licensure, or (B) a completed application according to local requirements, if any, whichever is later.

The ABC Census Reporting District No. 889.03 shows the subject site to be located in an over-concentration of Alcoholic Beverage Control on-sale licenses; therefore the City is required to make a finding of public convenience or necessity to approve the ABC request. However, Staff does not believe a finding of public convenience or necessity should be made. Staff believes that the proposal to intensify the existing restaurant use, by upgrading the ABC Type "41" (Beer and wine) License to an ABC Type "47" (Beer, wine, and hard liquor) License and to add karaoke live entertainment, at this time will potentially adversely affect the health, peace, comfort or welfare of persons residing or working in the surrounding area, as the applicant has not successfully demonstrated a continuous display of compliance with its current Conditional Use Permit.

Furthermore, Business and Professions Code Section 23958 states that an application for an ABC license shall be denied if issuance of the license would tend to create a law enforcement problem. Staff believes that the applicant's request would intensify the business operations through the upgrade of the current ABC Type "41" License to an ABC Type "47" License, and the addition of karaoke live entertainment, stage, amplified sound, and associated karaoke equipment. Based on previous observations made by the Police Department, where the applicant had not shown the ability to operate in compliance with its current Conditional Use Permit, Staff further believes that applicant's request will potentially put further strain on Police Department resources and increase the calls for service in an area that is above the average crime count for the district.

The Community and Economic Development Department and the Police Department have reviewed the request and do not support the proposal. Therefore, City Staff has included a proposed Resolution of Denial for the Planning Commission's consideration. The documentation submitted by the applicant in support of its request has also been included for the Planning Commission's consideration.

The Planning Commission is not bound by City Staff's recommendation and should make an independent decision based on the facts and evidence presented at the public hearing. In the event the Planning Commission believes the applicant's proposal should be approved, in whole or in part, City Staff recommends that the Planning Commission continue the public hearing to a date certain to allow for consideration of the necessary findings and conditions of approval.

RECOMMENDATION:

Staff recommends that the Planning Commission take the following action:

1. Adopt the attached Resolution denying Conditional Use Permit No. CUP-120-2018.



Lee Marino
Planning Services Manager



By: Chris Chung
Urban Planner

Attachment 1: Applicant's Request in Writing

Proposal:

The Pho Hoa An Restaurant aka Quan Hoa An, LLC (the applicant) is seeking a **Modification of Conditional Use Permit No. CUP 102-03** to be allowed to operate with an **ABC -type 47 On-Sale General for Bond Fide Public Eating Place** with all other conditions to remain the same. Currently the applicant is operating with an **ABC type 41 On-Sale Beer and Wine for Bona Fide Public Eating Place**.

Background:

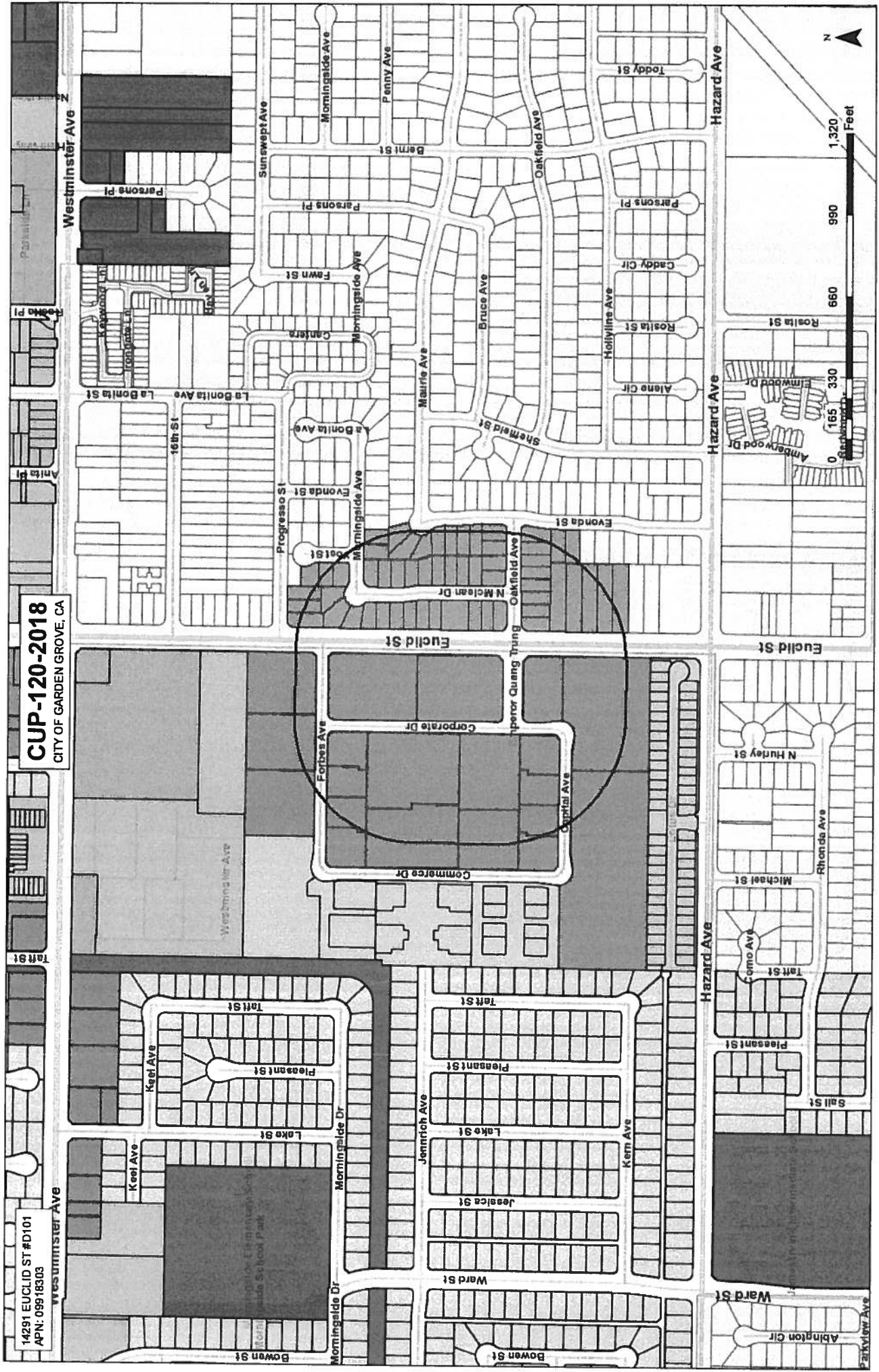
The applicant was chosen to receive the ABC type 47 around October 19, 2016 thru the ABC lottery. Thereafter, she contacted the Garden Grove Planning Dept. to begin the process of the CUP Modification and as she went through the Pre-application phase, Garden Grove Police Officer Pete Arellano contacted her to inform her that she should and must wait for an indefinite amount of time because of previous police calls for service (smoking violations) in the Restaurant's Shopping Center. The applicant explained to Officer Arellano that she had just taken over the restaurant for about a year and a half and that the violations occurred prior to her management. He was understanding but suggested that she waits a few months. Although many of the violations occurred throughout the shopping center and not just specific to the applicant's restaurant, she complied. Over the next several months, a series of face to face and telephonic conferences were made between the applicant and Officer Arellano to ensure that the restaurant was always in compliance and good standing. Around June 2017, another Officer who has just taken Officer Arellano position informed the applicant that she should proceed with the CUP application with the planning department. The GGPD had no input. The applicant is ready to proceed exactly one year from initial contact with the GGPD and operating with a clean record.

The Pho Hoa An Restaurant currently occupies an 1885 square foot restaurant space located on the West side of Euclid Street, South of Forbes Avenue, at 14291 Euclid Street, Parcel No. 099-183-03. It operates under an ABC type-41 and is licensed to have live entertainment in the form solo performers. The current hours of operations are 10:00 am to 12:00 midnight 7 days a week. The minimum age for patrons is 21 years old and identification is always requested if necessary. At any given time, there are always at least 6 employees and up to 10 during peak hours. The restaurant has a full on-site service kitchen that is open at all hours of operation (menu) enclosed. There is no bar or cocktail lounge on the premise. The restaurant is equipped with an interior security camera system. Currently there are no security guards provided and it had never been a need because most diners and patrons are older adults.

The approval of this request will benefit both the applicant and community by allowing the natural progression of a business to expand its goods and services and contributing to the growth of the Garden Grove business environment.

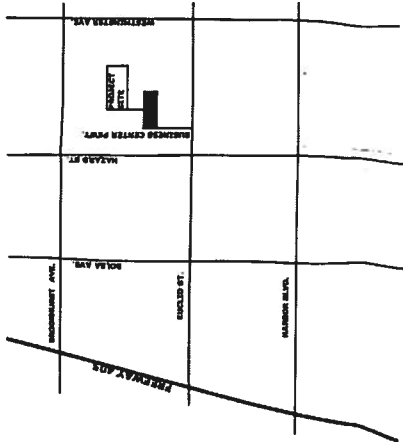
CUP-120-2018
CITY OF GARDEN GROVE, CA

14291 EUCLID ST #D101
APN: 09918303



PHO HOA AN RESTAURANT

14291 EUCLID STREET, SUITE D - 101
GARDEN GROVE, CA 92843

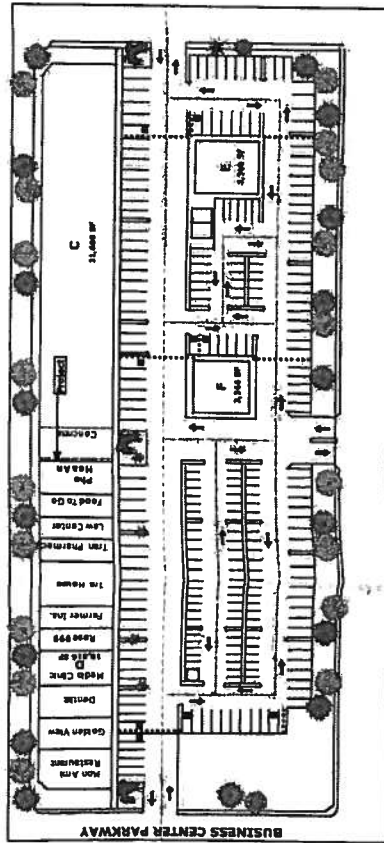


| TYPE OF CONSTRUCTION | TYPE OF WALL (FULLY SPECIFIED) |
|----------------------|---|
| RENOVATION | TYPE 1/4" (FULLY SPECIFIED) |
| NEW CONSTRUCTION | A - 1/2" |
| GENERAL REPAIR | WOOD JOINT |
| WOOD DECKING/DECK | PLANNED WOOD DECKING/DECKING (SEE PLAN 100-101) |
| CEILING MATERIAL | 1/2" x 4" x 8" FT. |
| CEILING LIGHTING | 40,000 WATT FT. |
| CEILING JOINTS | 1/2" x 4" x 8" FT. |
| CEILING MATERIAL | 2x6 SPACERS (INCLUDED IN PRICE B.I.C.) |

PROJECT DATA

VICINITY MAP

CORPORATE DRIVE



EUCLID STREET

SITE PLAN

SCALE 1" = 20'

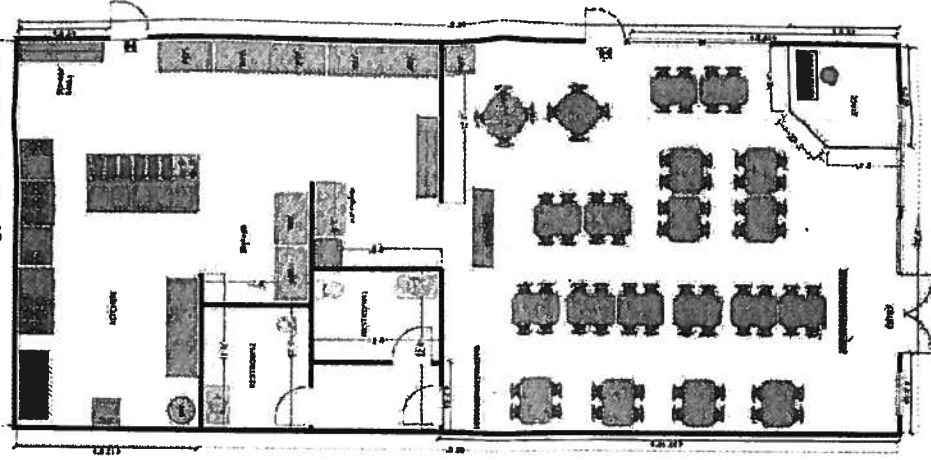
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GreenBuild Construction
12652 Grovemont Street
Garden Grove, CA 92840
Tel: 714-720-6420
CALIF. # B-83266

Project: TENANT IMPROVEMENT FOR
Address: 14291 Euclid Ave.
Garden Grove, CA 92843

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|------------|--|
| Change No. | |
| Issue By | |
| Date | |
| Rev. | |
| Job Number | |
| Comments | |

Sheet **A-1**



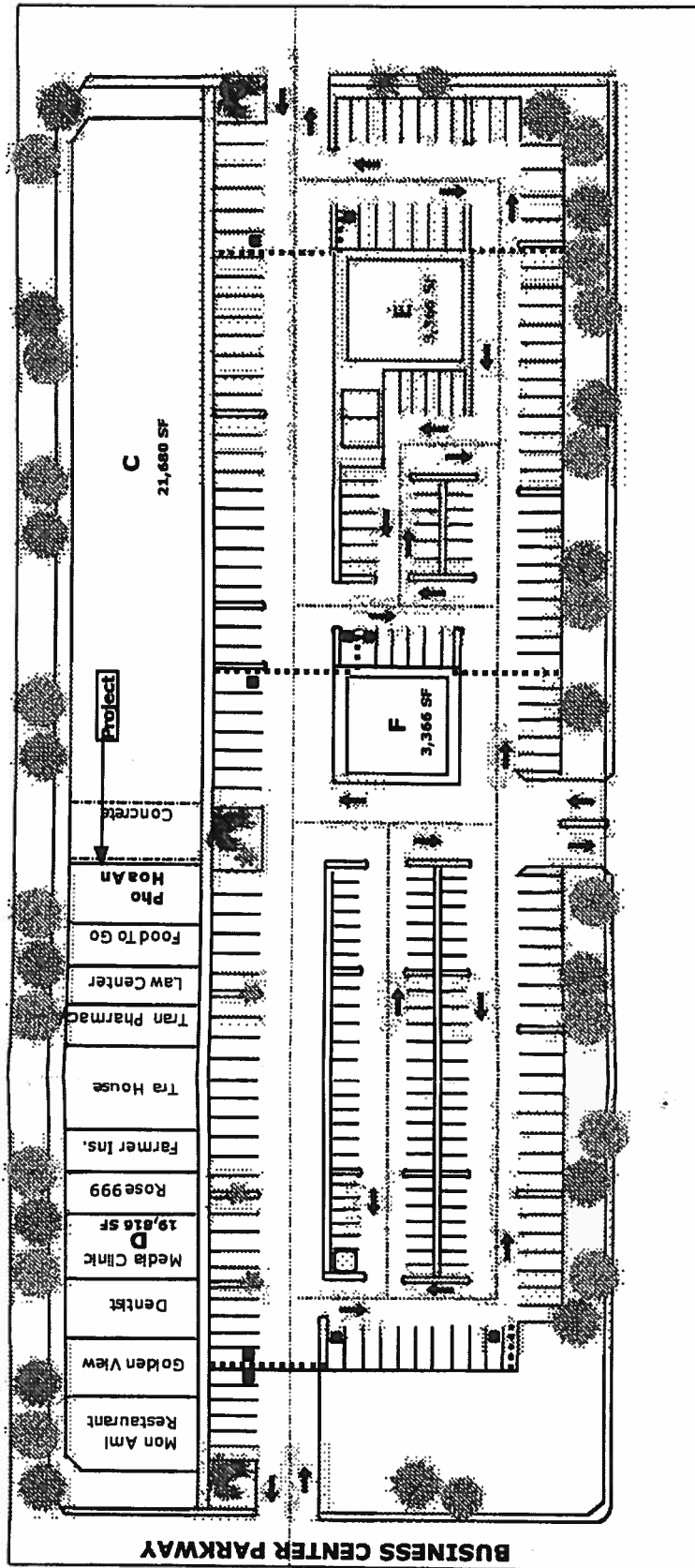
WALL LEGEND
 [Symbol] 3/4" FACE EXIST. WOOD
 [Symbol] NEW 2x4 WALL
 [Symbol] FIRE PARTITION

CUP-120-2018

SCALE 1/4" = 1'

FLOOR PLAN

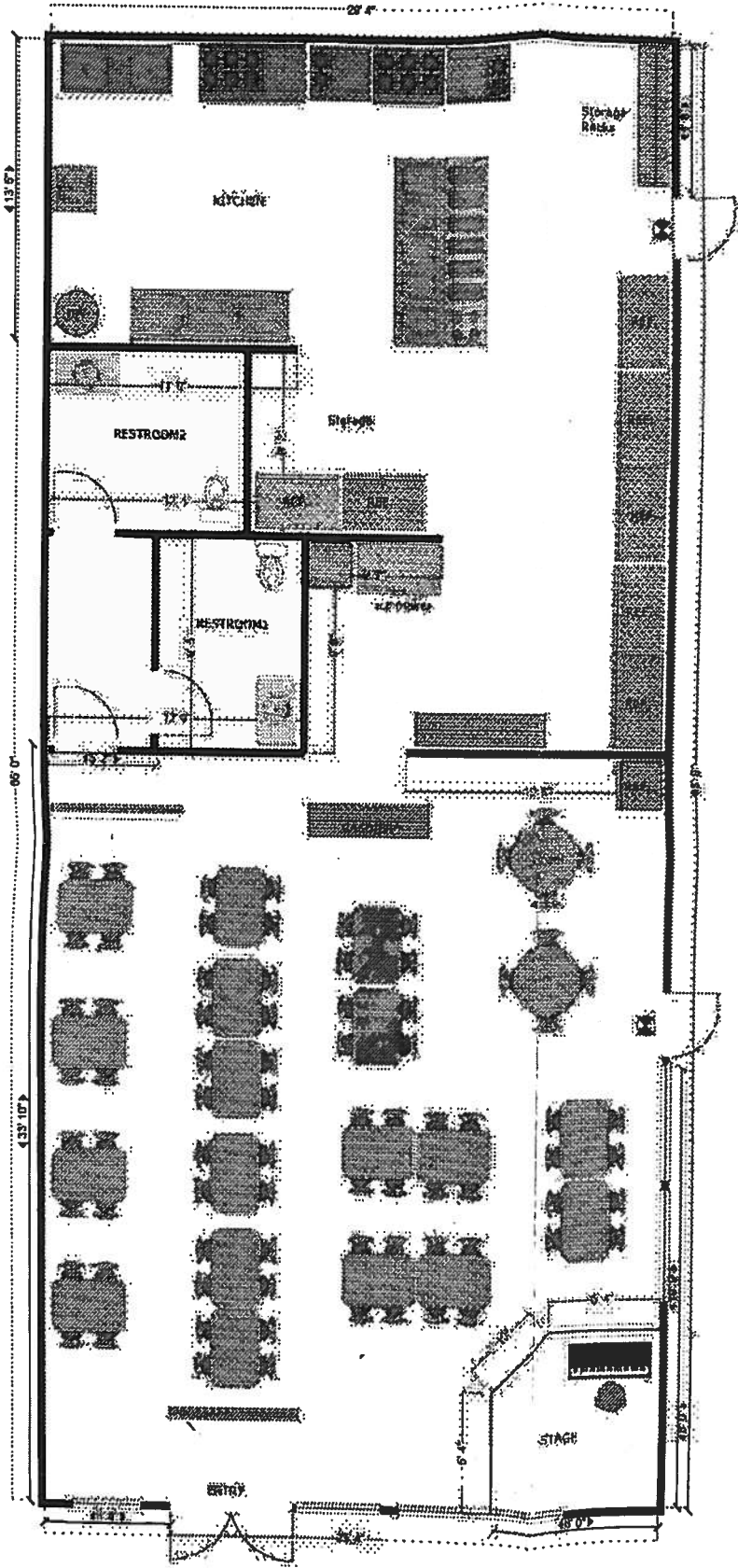
CORPORATE DRIVE



EUCLID STREET

FORBES AVENUE

BUSINESS CENTER PARKWAY



GreenBuild Construction
 12652 Groveview Street
 Garden Grove, CA 92840
 Tel: 714-720-6420
 CA Lic. # B.832466

Project:
 TENANT IMPROVEMENT FOR
Hoa An Restaurant & Lounge
 Address: 14291 Euclid Ave.
 Garden Grove, CA 92843

| |
|-----------------------|
| Design by: |
| Drawn by: Jason Le |
| Scale: |
| Date: |
| Job Number: |
| Contractor: |

Sheet:
A-1

CUP-120-2018

SCALE: 1/4" = 1'

I
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