



Office of the City Manager

INFORMATION CALENDAR
September 24, 2024

To: Honorable Mayor and Members of the City Council
 From: LaTanya Bellow, Interim City Manager
 Submitted by: Jordan Klein, Director, Planning and Development Department
 Subject: LPO NOD: 2000 Kala Bagai Way, LMSAP2024-0002

INTRODUCTION

The attached Landmarks Preservation Commission Notice of Decision (NOD) is presented to the Mayor and City Council pursuant to Berkeley Municipal Code/Landmarks Preservation Ordinance (BMC/LPO) Section 3.24.240.A, which requires that “a copy of the Notice of Decision shall be filed with the City Clerk and the City Clerk shall present said copy to the City Council at its next regular meeting.”

CURRENT SITUATION AND ITS EFFECTS

The Landmark Preservation Commission (LPC/Commission) has approved a Structural Alteration Permit (SAP) for the subject City Landmark property. This action is subject to a 15-day appeal period, which began on September 10, 2024

BACKGROUND

BMC/LPO Section 3.24.300 allows City Council to review any action of the Landmarks Preservation Commission in granting or denying a Structural Alteration Permit. For Council to review the decision on its merits, Council must appeal the Notice of Decision. To do so, a Council member must move this Information Item to Action and then move to set the matter for hearing on its own. Such action must be taken within 15 days of the mailing of the Notice of Decision, or by September 24, 2024 Such certification to Council shall stay all proceedings in the same manner as the filing of an appeal.

If the Council chooses to appeal the action of the Commission, then a public hearing will be set. The Council must then rule on the designation within 30 days of closing the hearing, otherwise the decision of the Commission is automatically deemed affirmed.

Unless the Council wishes to review the determination of the Commission and make its own decision, the attached NOD is deemed received and filed.

ENVIRONMENTAL SUSTAINABILITY & CLIMATE IMPACTS

Landmark designation and discretionary alteration reviews by LPC and staff provide opportunities for the adaptive re-use and rehabilitation of historic resources within the City. The rehabilitation of these resources, rather than their removal, achieves construction and demolition waste diversion, and promotes investment in existing urban centers.

POSSIBLE FUTURE ACTION

The Council may choose to appeal the decision, in which case it would conduct a public hearing at a future date.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

There are no known fiscal impacts associated with this action.

CONTACT PERSON

Fatema Crane, Principal Planner, Planning and Development, 510-981-7410
Desiree Dougherty, Assistant Planner, Planning and Development, 510-981-7431

Attachments:

1: Notice of Decision – 2000 Kala Bagai Way, LMSAP2024-0002



L A N D M A R K S
P R E S E R V A T I O N
C O M M I S S I O N

N o t i c e o f D e c i s i o n

DATE OF BOARD DECISION: July 8, 2024
DATE NOTICE MAILED: September 9, 2024
APPEAL PERIOD EXPIRATION: September 24, 2024
EFFECTIVE DATE OF PERMIT (Barring Appeal or Certification): September 25, 2024¹

2000 Kala Bagai Way – The Shattuck Square Building

Structural Alteration Permit #LMSA2024-0002 to install two new illuminated wall signs and to replace seven awnings on the exterior of a designated City Landmark building.

The Landmarks Preservation Commission of the City of Berkeley, after conducting a public hearing, **APPROVED** the following request:

- **Structural Alterations Permit:**
 - **Applicant:** Jin Lee, Lee's Signs, Inc.
845 E. 10th St.
Oakland, CA 94606
 - **Property Owner:** Mike Maffia
411 Borel Ave, Suite 650
San Mateo, CA 94402

¹ Pursuant to BMC Chapter 3.24, the City Council may "certify" any decision of the LPC for review, which has the same effect as an appeal. In most cases, the Council must certify the LPC decision during the 14-day appeal period. However, pursuant to BMC Section 1.04.070, if any portion of the appeal period falls within a Council recess, the deadline for Council certification is suspended until the first Council meeting after the recess, plus the number of days of the appeal period that occurred during the recess, minus one day. If there is no appeal or certification, the Permit becomes effective the day after the certification deadline has passed.

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ZONING DISTRICT: Downtown Mixed-Use Core District (C-DMU Core)

ENVIRONMENTAL REVIEW STATUS: Categorically exempt from further environmental review pursuant to CEQA Guidelines Section 15061.(b)(3) Review for Exemptions.

The application materials for this project is available online at:

<https://berkeleyca.gov/construction-development/land-use-development/zoning-projects> or
<https://permits.cityofberkeley.info/CitizenAccess/Default.aspx>

FINDINGS AND CONDITIONS OF APPROVAL AND APPLICATION MATERIALS ARE ATTACHED TO THIS NOTICE

COMMISSION VOTE: 7-0-0-1

YES: CRANDALL, ENCHILL, FINACOM, MONTGOMERY, ORBUCH, SCHWARTZ, TWU

NO: NONE

ABSTAIN: NONE

ABSENT: LEUSCHNER

TO APPEAL THIS DECISION (see Section 3.24.300 of the Berkeley Municipal Code):

To appeal a decision of the Landmarks Preservation Commission to the City Council you must:

1. Submit a letter clearly and concisely setting forth the grounds for the appeal to the City Clerk, located at 2180 Milvia Street, 1st Floor, Berkeley. The City Clerk's telephone number is (510) 981-6900.
 - a. Pursuant to BMC Section 3.24.300.A, an appeal may be taken to the City Council by the application of the owners of the property or their authorized agents, or by the application of at least fifty residents of the City aggrieved or affected by any determination of the commission made under the provisions of Chapter 3.24.
2. Submit the required fee (checks and money orders must be payable to 'City of Berkeley'):
 - a. The basic fee for persons other than the applicant is \$1,500. This fee may be reduced to \$500 if the appeal is signed by persons who lease or own at least 50 percent of the parcels or dwelling units within 300 feet of the project site, or at least 25 such persons (not including dependent children), whichever is less. Signatures

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collected per the filing requirement in BMC Section 3.24.300.A may be counted towards qualifying for the reduced fee, so long as the signers are qualified. The individual filing the appeal must clearly denote which signatures are to be counted towards qualifying for the reduced fee.

- b. The fee for appeals of affordable housing projects (defined as projects which provide 50 percent or more affordable units for households earning 80% or less of Area Median Income) is \$500, which may not be reduced.
 - c. The fee for all appeals by Applicants is \$6,000.
3. The appeal must be received prior to 5:00 p.m. on the "APPEAL PERIOD EXPIRATION" date shown above (if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day).

If no appeal is received, the landmark permit will be final on the first business day following expiration of the appeal period.

NOTICE CONCERNING YOUR LEGAL RIGHTS:

If you object to this decision, the following requirements and restrictions apply:

1. If you challenge this decision in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Landmarks Preservation Commission at, or prior to, the public hearing.
2. You must appeal to the City Council within fifteen (15) days after the Notice of Decision of the action of the Landmarks Preservation Commission is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, your appeal of this decision must include the following information:
 - A. That this belief is a basis of your appeal.

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- B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
- C. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.

PUBLIC COMMENT:

Communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the relevant board, commission or committee for further information.

FURTHER INFORMATION:

Questions about the project should be directed to the project planner, Desiree Dougherty, at (510) 981-7431 or ddougherty@berkeleyca.gov. All project application materials may be viewed at the Permit Service Center (Zoning counter), 1947 Center Street, 3rd Fl., during regular business hours.

ATTACHMENTS:

- 1. Findings for Approval
- 2. Application Materials



ATTEST:

Fatema Crane, Secretary
Landmarks Preservation Commission

cc: City Clerk

Applicant: Jin Lee, Lee's Signs, Inc., 845 E. 10th St., Oakland, CA 94606

Property Owner: Mike Maffia, 411 Borel Ave, Suite 650, San Mateo, CA 94402

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ATTACHMENT 1, PART 2

FINDINGS AND CONDITIONS

FINDINGS REQUIRED UNDER CEQA

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15331 of the CEQA Guidelines (“Historic Resource Restoration/Rehabilitation”). Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, and (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5.

FINDINGS RELATED TO THE SECRETARY OF THE INTERIOR’S STANDARDS

Regarding the Secretary of the Interior’s Standards (SOI) for Rehabilitation, the Landmarks Preservation Commission of the City of Berkeley makes the following findings:

1. The proposed project does not require a change of use. The property will retain its historic commercial use.
2. The project will retain the historic character and architectural design of the property and will not remove any distinctive materials or alter the features that characterize the property.
3. The new signage and awnings will not resemble or replicate designs from the property’s historic period and will not result in a false sense of historical development.
4. Changes to the property that may have acquired significance in their own right are not affected by this project.
5. Distinctive materials, features, finishes, and construction techniques, or examples of craftsmanship that characterize this property, such as the detailing of the upper windows and trim banding, will be substantially retained and preserved with this project.
6. As conditioned herein, if deteriorated historic features will be affected by this request, then they would be repaired or replaced to match the materials, design, and finishes of the original items
7. The applicant does not propose chemical or physical treatments. However, standard conditions of Structural Alteration Permit approval would require any chemical or physical treatments to be undertaken using the gentlest means possible.
8. The project does not have the potential to affect any archaeological resources because the applicant proposes no excavation.

9. The proposed upgrades are designed with complimentary, high-quality materials in simplified, contemporary style employing colors and finishes that harmonize with the historic design elements of the building. Owing to these aspects, new work will be sufficiently differentiated from the historic design.
10. If the proposed improvements were removed in the future, they would not permanently impair the integrity or essential form of the subject building.

FINDINGS REQUIRED UNDER LANDMARKS PRESERVATION ORDINANCE

1. As required by Section 3.24.260 of the Landmarks Preservation Ordinance, the Commission finds that the proposed work is appropriate for and consistent with the purposes of the Ordinance, and will preserve the characteristics and features specified in the designation for this property. Specifically:
 - A. The proposed project will not adversely affect the architectural design of this City Landmark, the Shattuck Square Building. The signs and awning are mounted in locations that fit within the architectural features of the building.
 - B. The proposed project will not affect the special character of the subject property, which lies in the cast concrete detailing around the second story windows and in the commercial storefronts. The alterations will continue to support the historic commercial context of the building and will be installed in such a way that would not affect the integrity of the historic structure if removed in the future.

STANDARD CONDITIONS

The following conditions, as well as all other applicable provisions of the Landmarks Preservation Ordinance, apply to this Permit:

1. Conditions Shall be Printed on Plans

The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Permit, under the title 'Structural Alteration Permit Conditions'. *Additional sheets* may also be used if the *second* sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

2. Plans and Representations Become Conditions

Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

3. Subject to All Applicable Laws and Regulations

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Zoning Adjustments Board or Zoning Officer, Building and Safety Division, Public Works Department and other affected City divisions and departments.

4. Exercise and Lapse of Permits

- A. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
- B. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has: (1) applied for a building permit; or, (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

5. Indemnification Agreement

The applicant shall hold harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments or other losses (including without limitation, attorney's fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval associated with the project. The indemnity includes without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn,

set aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the project and granting any permit issued in accordance with the project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs shall include, without limitation, any attorney's fees, expert witness and consultant fees, court costs, and other litigation fees. City shall have the right to select counsel to represent the City at Applicant's expense in the defense of any action specified in this condition of approval. City shall take reasonable steps to promptly notify the Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.

6. Halt Work/Unanticipated Discovery of Tribal Cultural Resources

In the event that cultural resources of Native American origin are identified during construction, all work within 50 feet of the discovery shall be redirected. The project applicant and project construction contractor shall notify the City Planning Department within 24 hours. The City will again contact any tribes who have requested consultation under AB 52, as well as contact a qualified archaeologist, to evaluate the resources and situation and provide recommendations. If it is determined that the resource is a tribal cultural resource and thus significant under CEQA, a mitigation plan shall be prepared and implemented in accordance with State guidelines and in consultation with Native American groups. If the resource cannot be avoided, additional measures to avoid or reduce impacts to the resource and to address tribal concerns may be required.

7. Archaeological Resources *(Ongoing throughout demolition, grading, and/or construction)*

Pursuant to CEQA Guidelines Section 15064.5(f), "provisions for historical or unique archaeological resources accidentally discovered during construction" should be instituted. Therefore:

- A. In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist, historian or paleontologist to assess the significance of the find.
- B. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified professional would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Berkeley. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by the qualified professional according to current professional standards.
- C. In considering any suggested measure proposed by the qualified professional, the project applicant shall determine whether avoidance is necessary or feasible in light of factors such as the uniqueness of the find, project design, costs, and other considerations.
- D. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while mitigation measures for cultural resources is carried out.

E. If significant materials are recovered, the qualified professional shall prepare a report on the findings for submittal to the Northwest Information Center.

8. Human Remains (*Ongoing throughout demolition, grading, and/or construction*)

In the event that human skeletal remains are uncovered at the project site during ground-disturbing activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to CEQA Guidelines Section 15064.5 (e)(1) . If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to Health and Safety Code Section 7050.5(c), and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.

9. Paleontological Resources (*Ongoing throughout demolition, grading, and/or construction*)

In the event of an unanticipated discovery of a paleontological resource during construction, excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified paleontologist (per Society of Vertebrate Paleontology standards [SVP 1995,1996]). The qualified paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the project on the qualities that make the resource important, and such plan shall be implemented. The plan shall be submitted to the City for review and approval.

ADDITIONAL CONDITIONS

The following additional conditions are attached to this Permit:

- 10. No changes can be made to these approved plans without prior approval.**
- 11. CITY PERMITS.** This Structural Alteration Permit (SAP) approval is contingent upon approval of the requisite Use Permit and Public Work Permit for the project scope.
- 12. PLANS COMPLIANCE.** Construction and building permit plans shall substantially conform to the Structural Alteration Permit (SAP) project plans dated/received May 06, 2024.
- 13. REPAIR AND REPLACEMENT OF CHARACTER-DEFINING FEATURES.** Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old or historic feature in design, color, texture, and, where possible,

materials. Replacement of missing features shall be substantiated by documentary and physical evidence.

14. Chemical or physical treatments, if appropriate, shall be undertaken using the gentlest means possible. Treatments that cause damage to historic materials shall not be used.
15. **COLORS.** Prior to Landmarks plan checker sign-off of the Building Permit set of drawings, the applicant shall submit color and materials information for review and approval by Landmarks staff, in coordination with the LPC Chair as needed.
16. **DETAILS.** Prior to Landmarks plan checker sign-off of the Building Permit set of drawings, the applicant shall submit sign and awning details for review and approval by the Landmarks plan checker.
17. **SIGNAGE.** Prior to Landmarks plan checker sign-off of the building permit set of drawings, the applicant shall submit complete signage details, including colors, materials, letter heights, dimensions, placement on building, and installation details. All materials will be matte unless otherwise noted. All non-temporary signage and awnings not previously approved and not listed in this application are prohibited.
18. **LIGHTING.** Prior to Landmarks plan checker sign-off of the building permit set of drawings, the applicant shall submit lighting details showing all existing and proposed site and building lighting. Exterior lighting, including for signage, shall be downcast and not cause glare on the public right-of-way and adjacent parcels.
19. The applicant shall be responsible for identifying and securing all applicable permits from the Building and Safety Division and all other affected City divisions/departments prior to the start of work.
20. The applicant is responsible for complying with all the above conditions. Failure to comply with any condition could result in construction work being stopped, issuance of citations, as well as further review by the Landmarks staff, which may modify or impose additional conditions, or revoke approval.
21. All building permit drawings and subsequent construction shall substantially conform to the approved plans as outlined in Condition #1. Any modifications must be reviewed by the Landmarks plan checker to determine whether the modification requires approval.
22. The applicant shall hold harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments or other losses (including without limitation, attorney's fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval associated with the project. The indemnity includes without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn, set aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the project and granting any permit issued in accordance with the project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified

herein. Direct and indirect costs shall include, without limitation, any attorney's fees, expert witness and consultant fees, court costs, and other litigation fees. City shall have the right to select counsel to represent the City at Applicant's expense in the defense of any action specified in this condition of approval. City shall take reasonable steps to promptly notify the Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.



PHOTO OF EXISTING CONDITION OF SIGN AWNINGS



EXISTING AWNINGS HEIGHT, DEPTH & FRAME SIZE



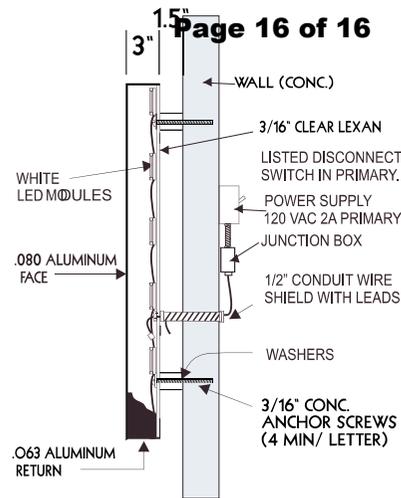
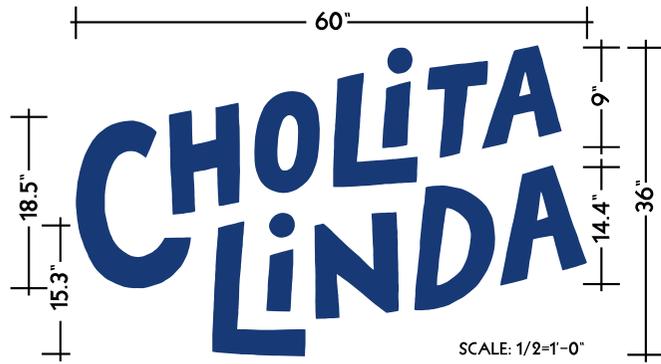
EXISTING SIGN DEMENSIONS



PROPOSED SIGN DEMENSIONS

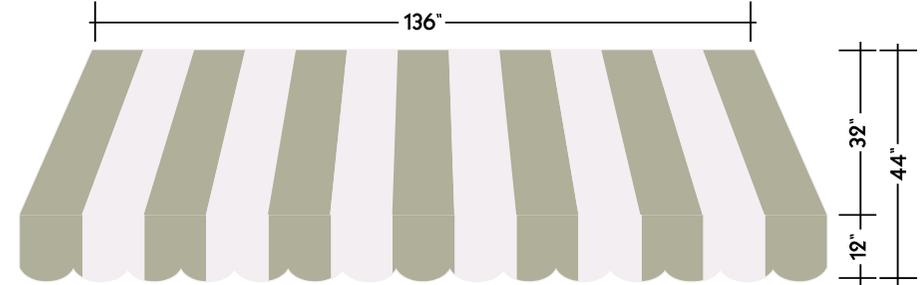
SIGNAGE FOR "CHOLITA LINDA"

(36"HT. 60" ILLUM. INDIVIDUAL REVERSED CHANNEL, HALO-LIT)



LETTERS SECTION

REPLACEMENT NEW FABRIC ON EXISTING FRAMES



COLORS & MATERIALS
FABRIC - 12" WIDE MANHATTAN FOG (SUNBRELLA # 4876.0000)

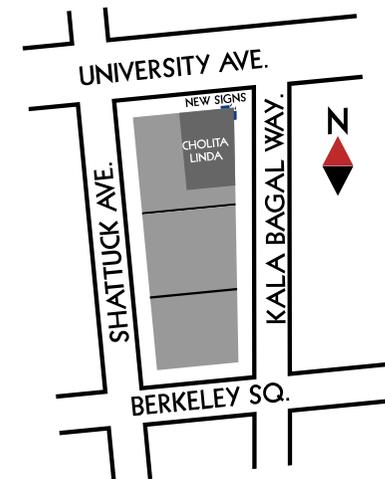


EXISTING VIEW KALA BAGAI WAY.

REMOVAL
EXISTING
SIGNS



UNIVERSITY AVE.



PLAN VIEW



PROPOSED VIEW KALA BAGAI WAY. ELEVATION



UNIVERSITY AVE. ELEVATION

PROJECT APPLICANT
CHOLITA LINDA
2000 KALA BAGAI WAY, BERKELEY, CA, 94704
MURAT SOZERI
510-692-3762
JUN.24.2024

LEE'S SIGNS
 State Lic. # 556289 Owner: Jin H. Lee
 845 E. 10th Street Oakland, CA 94606
 Tel: 510.452.1420 Fax: 510.452.0177