

INFORMATION CALENDAR May 10, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Alene Pearson, Acting Director, Planning and Development Department

Subject: LPO NOD: 2580 Bancroft Way – Application LMSAP2022-0003

INTRODUCTION

The attached Notice of Decision adopted by the Landmarks Preservation Commission is presented to the Mayor and City Council pursuant to Berkeley Municipal Code/Landmarks Preservation Ordinance 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) has approved a Structural Alteration Permit (SAP) to install new equipment on City Landmark Fred Turner building. This action is subject to a 15-day appeal period, which began when the Notice of Decision (NOD) was mailed on April 25, 2022.

BACKGROUND

BMC/LPO Section 3.24.300 allows City Council to review any action of the LPC in granting or denying an SAP. For Council to review the decision on its merits, Council must appeal the Notice of Decision. To do so, this Information Item must be taken up as an Action Item and then set for a public hearing at a later date. Such action must be taken within 15 days of the mailing of the Notice of Decision, or by May 10, 2022. 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.

LPO NOD: 2580 Bancroft Way -- #LMSAP2022-0003

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Landmark designation provides 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 of the LPC to approve the SAP, 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, Senior Planner, Planning and Development Department, 510-981-7410

Attachments:

1: Notice of Decision – #LMSAP2022-0003 for 2580 Bancroft Way



DATE OF BOARD DECISION: April 7, 2022

DATE NOTICE MAILED: April 25, 2022

APPEAL PERIOD EXPIRATION: May 10, 2022

EFFECTIVE DATE OF PERMIT (Barring Appeal): May 11, 2022¹

2580 Bancroft Way

Structural Alteration Permit (#LMSAP2022-0003) to install roof equipment on a City Landmark Building – Fred Turner Building.

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

PERMITS REQUIRED:

Structural Alteration Permit

APPLICANT: Gary Wang & Associates, Inc., 1000 Corporate Center Drive, Suite 550,

Monterey Park, CA

ZONING DISTRICT: Commercial Telegraph (C-T)

ENVIRONMENTAL REVIEW STATUS: Categorically exempt pursuant to Section 15331 of the CEQA Guidelines (Historical Resource Restoration and Rehabilitation).

The Application materials for this project are available online at:

http://www.cityofberkeley.info/zoningapplications

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¹ Pursuant to BMC Section 1.04.070, if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day. Pursuant to BMC Section 3.24.190, the City Council may "certify" any decision of the LPC for review, within fifteen days from the mailing of the NOD. Such certification shall stay all proceedings in the same manner as the filing of a notice of appeal.

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LANDMARKS PRESERVATION COMMISSION NOTICE OF DECISION #LMSAP2022-0003 2580 Bancroft Way April 25, 2022 Page 2 of 5

FINDINGS, CONDITIONS AND APPROVED PLANS ARE ATTACHED TO THIS NOTICE

COMMISSION VOTE: 8-0-0-1

YES: ADAMS, CRANDALL, ENCHILL, FINACOM, JOHNSON, LEUSCHNER,

MONTGOMERY, TWU

NO: [NONE]
ABSTAIN: [NONE]

ABSENT: SCHWARTZ

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

An appeal may be taken to the City Council by the City Council on its own motion, by motion of the Planning Commission, by motion of the Civic Art Commission, by the verified application of the owners of the property or their authorized agents, or by the verified application of at least fifty residents of the City aggrieved or affected by any determination of the commission made under the provisions of this chapter.

Such appeal shall be taken by filing a written notice of appeal with the City Clerk within fifteen days after the mailing of the notice of the decision of the commission. The notice of appeal shall clearly and concisely set forth the grounds upon which the appeal is based. If the appeal is taken by an owner of the property affected, or an authorized agent, the notice of appeal shall be filed in duplicate and the City Clerk shall immediately forward one copy to the secretary of the commission. If the appeal is taken by someone other than an owner of affected property or an authorized agent, the notice of appeal shall be filed in triplicate and the City Clerk shall immediately forward one copy to the owner or authorized agent of the affected property and one copy to the secretary of the commission. Within ten days after the filing of a notice of appeal, the secretary of the commission shall transmit to the City Council a copy of the application, a copy of the notice of appeal and a written statement setting forth the reasons for the commission's decision, and shall make available to the council, at the time the matter is considered by the council, all other papers constituting the record upon which the action appealed from was taken.

The City Clerk is located at 2180 Milvia Street, 1st Floor, Berkeley. The City Clerk's facsimile number is (510) 981-6901. The City Clerk's telephone number is (510) 981-6900.

An 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).

The required fee is as follows (checks and money orders must be payable to "City of Berkeley"):

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LANDMARKS PRESERVATION COMMISSION NOTICE OF DECISION #LMSAP2022-0003 2580 Bancroft Way April 25, 2022 Page 3 of 5

- a. The basic fee for persons other than the applicant is \$500. This fee may be reduced to \$100 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.
- 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 \$2,500.

STRUCTURAL ALTERATION PERMIT ISSUANCE:

If no appeal is received, the Structural Alteration Permit will be issued on the first business day following expiration of the appeal period, and the project may proceed at that time. Information about the Building Permit process can be found at the following link: http://www.ci.berkeley.ca.us/permitservicecenter/.

NOTICE CONCERNING YOUR LEGAL RIGHTS:

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

- If you challenge this decision in court, you may be limited to raising only those issues you
 or someone else raised in a public hearing and/or written correspondence during the
 proceedings related to this permit.
- 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.
- 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 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 including the following information:
 - A. That this belief is a basis of your appeal.

LANDMARKS PRESERVATION COMMISSION NOTICE OF DECISION #LMSAP2022-0003 2580 Bancroft Way April 25, 2022 Page 4 of 5

- 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, Fatema Crane, at (510) 981-7413 or fcrane@cityofberkeley.edu. All project application materials, including full-size plans, may be viewed at the Permit Service Center (Zoning counter), 1947 Center Street, between 8 a.m. and 4 p.m., Monday through Thursday.

ATTACHMENTS:

1. Findings and Conditions

2. Project Plans, revised February 17, 2022

Fatema Crane, Senior Planner

Secretary to the Landmarks Preservation Commission

cc: City Clerk

Applicant: Ruben Rodela

Gary Wang & Associates, Inc.

1000 Corporate Center Drive, Suite 550

ATTEST:

Monterey Park, CA 91754

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LANDMARKS PRESERVATION COMMISSION NOTICE OF DECISION #LMSAP2022-0003 2580 Bancroft Way April 25, 2022 Page 5 of 5

Property Owner: The Mark at Berkeley, LLC

315 Oconee Street Athens, GA 30601

FINDINGS AND CONDITIONS

2580 BANCROFT WAY - Fred Turner Building

Structural Alteration Permit #LMSAP2022-0003

Structural Alteration Permit #LMSAP2022-0003 to install new rooftop equipment as a part of tenant improvements for one of the two commercial tenant spaces in the Turner Building.

FINDINGS REQUIRED UNDER CEQA

1. The project <u>is</u> 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 for Rehabilitation, the Landmarks Preservation Commission of the City of Berkeley makes the following findings:

- 1. The property has historically been used as commercial space. The work proposed in this application would support the continued use of this as a commercial space.
- 2. The scope of proposed work would not remove or alter any significant features.
- 3. The proposed scope will not affect any changes to the property that have acquired historic significance in their own right.
- 4. The required alterations to the building to accommodate the proposed scope are minimal and will not affect any distinctive materials, features, finishes, and construction techniques, or examples of craftsmanship that characterize the property. Perforations in the historical façade shall be as discreet as possible and patched where necessary.
- 5. No deteriorated historic features will be affected by this request and none are proposed to be replaced.
- 6. 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.

PUBLIC STRUCTURAL ALTERATION PERMIT -DRAFT Findings and Conditions LMSA#2022-0003

- 7. The project does not have the potential to affect any archaeological resources because the applicant proposes no excavation.
- 8. The applicant proposes no exterior alterations beyond the addition of the roof mounted mechanical equipment. The equipment will be painted so as to be visually compatible with the colors and massing of the existing architecture. The screening mechanism will
- 9. The equipment will be installed in such a manner that, if it were removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

FINDINGS REQUIRED UNDER LANDMARK PRESERVATION ORDINANCE

- 1. As required by Section 3.24.260 of the Landmarks Preservation Ordinance, the Commission finds that proposed work is appropriate for and consistent with the purposes of the Ordinance, and will preserve and enhance the characteristics and features specified in the designation for this property. Specifically:
 - A. Staff finds that the proposed scope will not adversely affect the exterior features of the landmark, the special character or special historical, architectural or aesthetic interest or value of its site and will preserve its distinguishing features.
 - B. The equipment would be installed without impairing the building, and the screening element would adequately camouflage the equipment so as to be compatible with the existing proportions, colors, and scale of the architecture.

PUBLIC STRUCTURAL ALTERATION PERMIT -DRAFT Findings and Conditions LMSA#2022-0003

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 (Section 23B.56.100)

- 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 the City of Berkeley and its officers harmless in the event of any legal action related to the granting of this Permit, shall cooperate with the City in defense of such action, and shall indemnify the City for any award of damages or attorneys fees that may result.

ADDITIONAL CONDITIONS

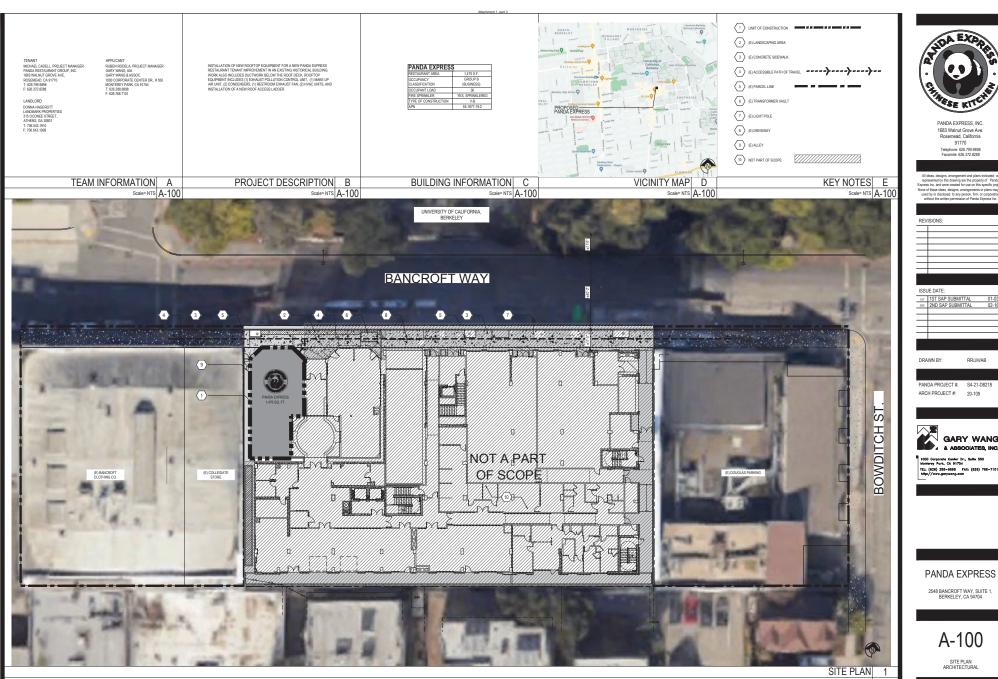
The following additional conditions are attached to this Permit:

- 6. **REVISED PROJECT PLANS** -- SCREEN ELEMENT. Prior to submitting any building permit application for this project, the applicant shall revise the project and proposed screen to include a return on both the east and west sides. The applicant shall provide staff with site photos that accurately show sight lines to the roof; upon staff's review of the revisions and photographs, staff shall determine the minimum and maximum length and depth of the screen element return.
- 7. ROOF EQUIPMENT. Any above ground or roof equipment, such as transformer(s), utilities, fire apparatus, air conditioning units, compressors, etc. shall be shown to scale on the <u>architectural</u> drawings of the building permit set of drawings in both plan and elevation, in order to determine if additional screening and SAP may be required.
- 8. 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.
- 9. REPAIR AND REPLACEMENT OF CHARACTER-DEFINING FEATURES (where applicable). 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 will be substantiated by documentary and physical evidence.
- **10. DETAILS.** Prior to Landmarks plan checker sign-off of the Building Permit set of drawings, the applicant shall submit screen element details for review and approval by the Landmarks plan checker.
- 11. **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.
- **12.** 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.
- 13. 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.
- **14.** 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.

15. 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.

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1683 Walnut Grove Ave. Rosemead, California

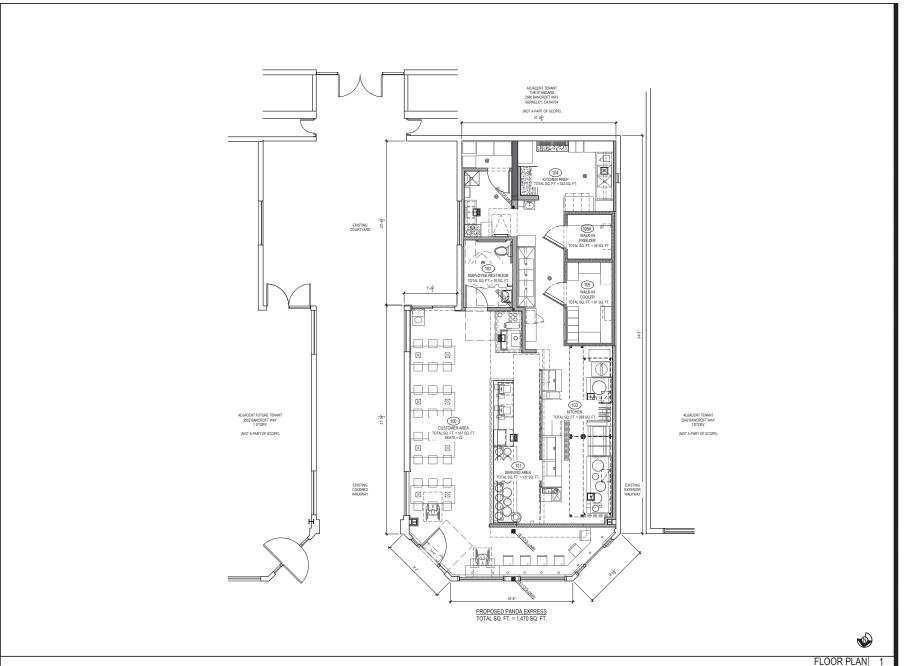
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RR/JH/AB

GARY WANG

TEL: (626) 288-6898 FAX: (626) 768-7101 http://www.garywang.com





PANDA EXPRESS, INC. 1683 Walnut Grove Ave. Rosemead, California 91770 Telephone: 626.799.9898 Facsimile: 626.372.8288

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ARCH PROJECT #: 20-109

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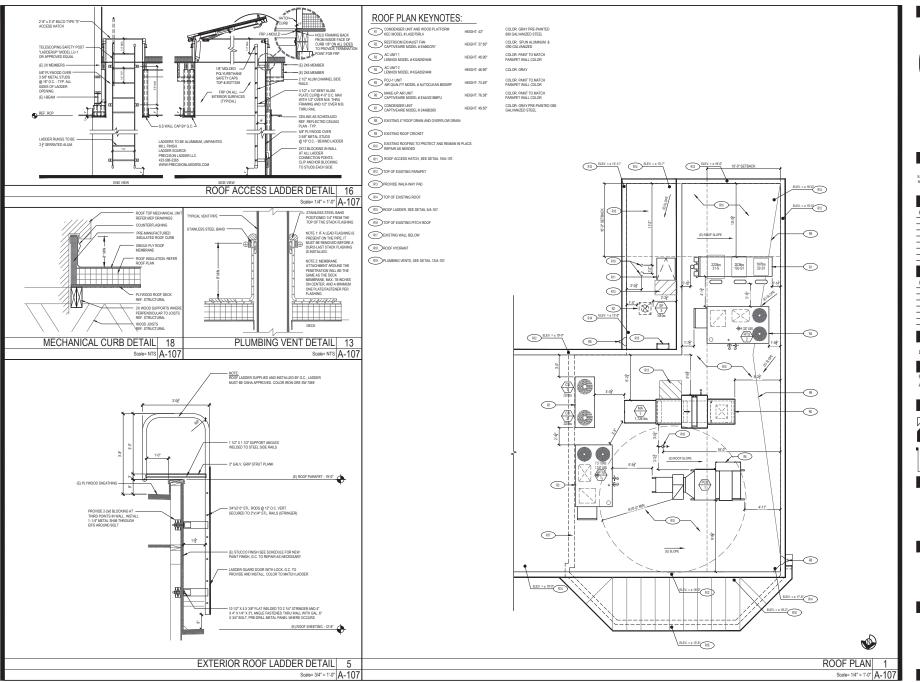
PANDA EXPRESS

2548 BANCROFT WAY, SUITE 1, BERKELEY, CA 94704

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FLOOR PLAN

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PANDA EXPRESS, INC. 1683 Walnut Grove Ave. Rosemead, California 91770

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PANDA PROJECT#: S4-21-D8218 ARCH PROJECT#: 20-109

GARY WANG

1000 Corporate Center Dr., Suite 550 Monteney Pork, CA 91754 TEL: (628) 288-8888 FAX: (628) 768-7101 http://www.gorywong.com

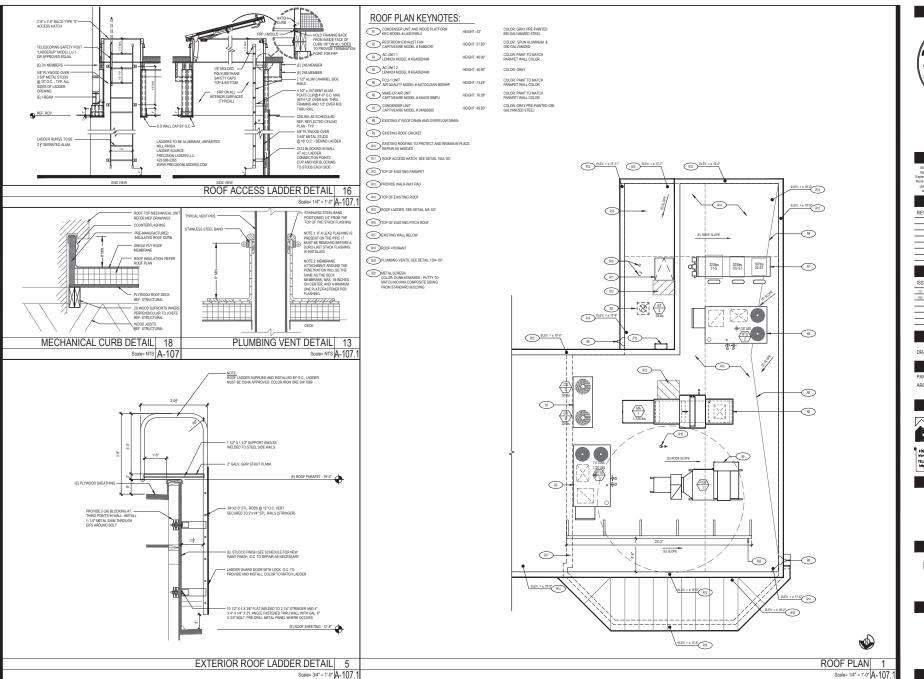
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2548 BANCROFT WAY, SUITE 1,

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ROOF PLAN

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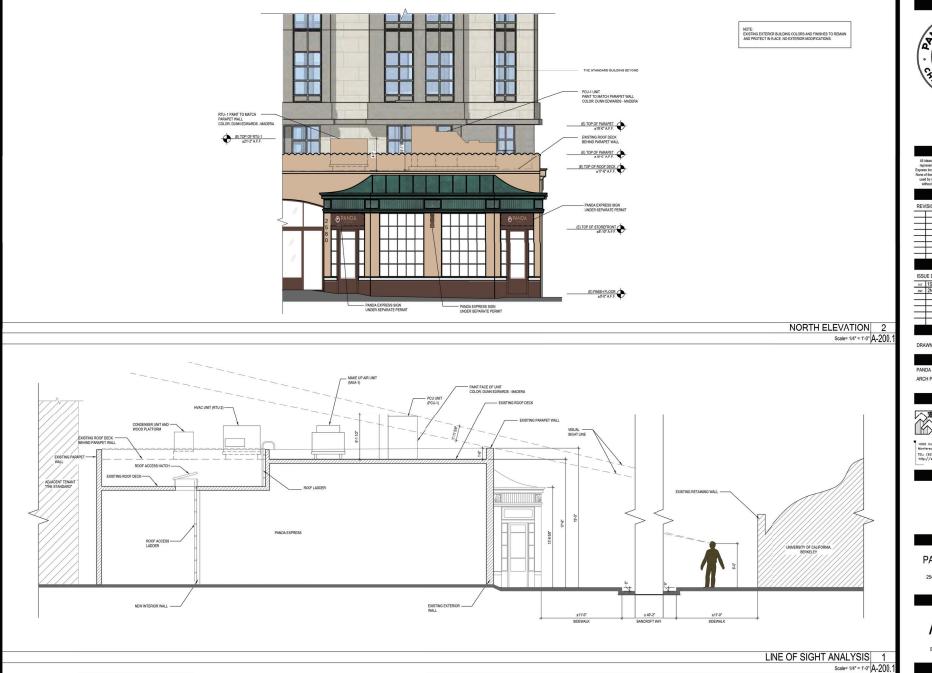
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2548 BANCROFT WAY, SUITE 1, REPORT BY CA 94704

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ROOF PLAN





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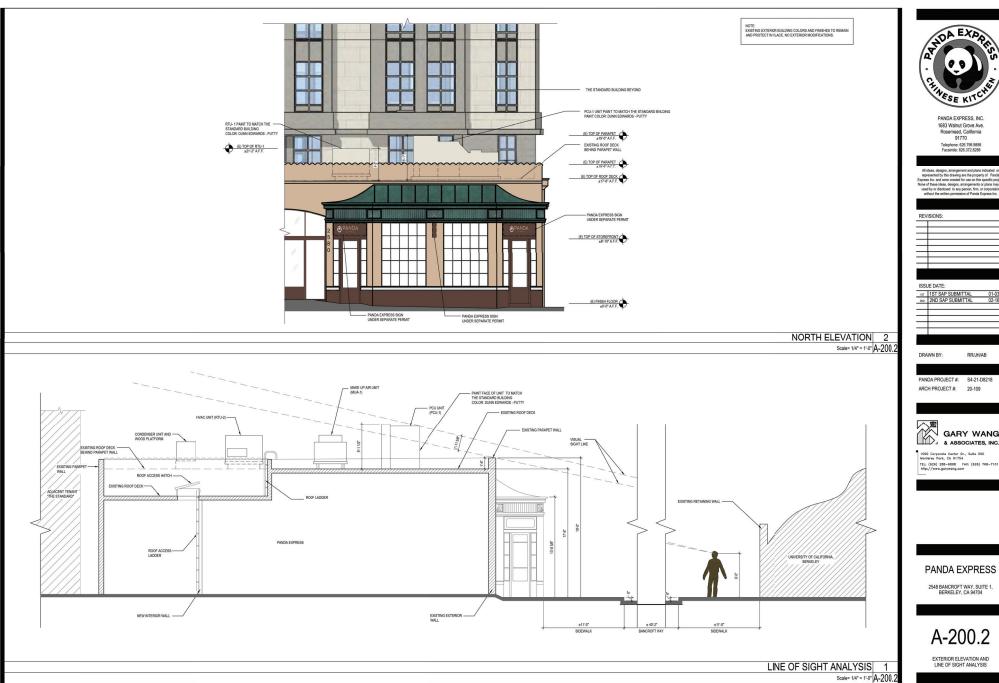
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EXTERIOR ELEVATION AND LINE OF SIGHT ANALYSIS

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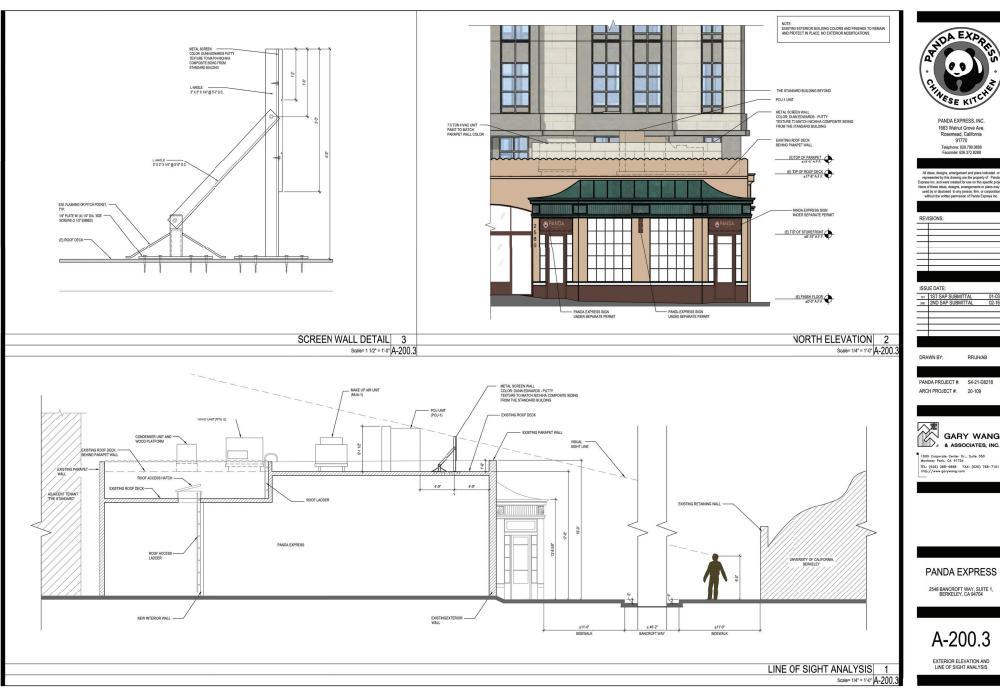


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GARY WANG & ASSOCIATES, INC.

EXTERIOR ELEVATION AND LINE OF SIGHT ANALYSIS