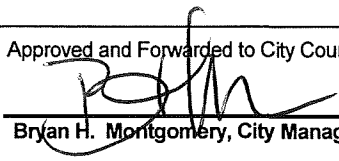




STAFF REPORT

Date: Tuesday, May 27, 2014
To: Bryan H. Montgomery, City Manager
From: Joshua McMurray, Senior Planner
Subject: Pompei Motors - Conditional Use Permit (CUP 01-14) and Variance (VA 01-14)

Approved and Forwarded to City Council:

Bryan H. Montgomery, City Manager

Summary

The applicant is requesting approval of a Conditional Use Permit (CUP 01-14) to sell a limited amount of used motor vehicles (five) in the existing parking lot of the Pompei Nursery located at 4701 Main Street. The application also includes a Variance (VA 01-14) to allow four less parking spaces than originally approved by the Pompei Nursery CUP in 2005.

Staff recommends the City Council adopt the Resolution approving Conditional Use Permit (CUP 01-14) to sell used motor vehicles and a Variance (VA 01-14) to allow four less parking spaces than originally approved for a project located at 4701 Main Street, as conditioned.

Background

The Pompei Nursery project was approved by the Planning Commission on March 21, 2005 by Resolution No. 14-05. This approval consisted of a Conditional Use Permit and Development Plan approval to construct and operate a retail landscape nursery with a 1,800 square foot retail building and a 19,000 square foot outdoor sales area. The applicant opened the nursery with the expectation of new home sales to continue at the rapid growth the area experienced during that time period. Shortly after the nursery opened, the housing market started to drop off and the applicant saw a drop in business as the nursery catered mostly to home owners. In 2008 the applicant applied for an amendment to the Conditional Use Permit to open and operate Pompei Motors. This application requested that the applicant be allowed to utilize five parking spaces in the existing parking lot to sell used cars. The application was approved by the Planning Commission on October 20, 2008 by Resolution No. 12-08. That approval expired on October 20, 2010. The applicant has sold cars off and on since that permit expired and it is the intent of this new application to legalize the use.

General Plan/Zoning Compliance

In 2002 the site was designated "Commercial" in the Oakley 2020 General Plan. The "Commercial" designation allows for a broad range of commercial uses. The project site is zoned Retail Business (RB). The RB District is compatible with the "Commercial" General Plan Land Use designation. The proposed "used car sales" use

Subject: Pompei Motors

Date: May 27, 2014

Page 2

is ancillary to the existing "Nursery" use, which would be classified in the Zoning Ordinance as a retail use where the display of the cars is not conducted in a retail building. This use is allowed in the RB District with the approval of a Conditional Use Permit.

Project Description

The existing Pompei Nursery property is approximately 1.03-acres in size. The site is developed with an existing nursery consisting of a 1,800 square foot retail building and a 19,000 square foot outdoor sales area, a 19 parking space parking lot, landscaping and associated site improvements. The project site is rectangular in shape, fronting on Main Street, Almond Tree Lane and Clearwood Drive. The frontage improvements consisting of curb, gutter, and sidewalk and landscaping have already been constructed along the three project frontages.

The project consists of two different components as follows:

Conditional Use Permit

The proposed "used car sales" use is ancillary to the existing "Nursery" use, which would be considered a retail use where the display of the cars is not conducted in a retail building. This use is allowed in the RB District with the approval of a Conditional Use Permit. The purpose of a Conditional Use Permit is to allow for uses that are not allowed by right, and to ensure, through conditions, that the proposed land use is compatible with the surrounding land uses in the neighborhood.

Variance

The Conditional Use Permit approval in 2005 required the Pompei Nursery provide 17 parking spaces, which the approved plans show. There are existing parking spaces at the nursery, two more than originally required. The proposed application requests the use of five parking spaces and it is assumed with such a limited number of vehicles for sale that there will typically be only one client on the property at a time, resulting in the need for 1 parking space for the proposed use. In total the proposed use will require six parking spaces, which would leave the site with 13 parking space for the nursery; four less than previously approved. The Variance request would allow for the reduction in parking spaces from the previously approved project. Staff is recommending a condition of approval that should a parking issue arise in the future, the application would be brought back to the City Council for reconsideration. It should be noted that in the seven years the business has been operation, both with and without the used car sales use, the City has not received any complaints about parking issues.

Analysis

Land Use Compatibility

The project site is bound by residential properties to the west and north. Existing single family uses exist to the south, with the eastern most parcel sharing the same Retail Business zoning as the subject property. Main Street and vacant, commercially zoned properties exist to the east. The proposed project site is in a small commercial corridor on Main Street extending from the property directly south of the project site to East

Subject: Pompei Motors

Date: May 27, 2014

Page 3

Cypress Road, with the exception of the existing residential subdivision located directly north of the project site on the west side of Main Street.

The proposed used car sales use would be ancillary to the existing retail nursery use on the property. There have been several recommended conditions of approval added to the resolution to ensure that the proposed project remain compatible with the existing use on site and the surrounding neighborhood. These conditions are similar to what the Planning Commission approved back in 2008 and address where sales information would be posted on vehicles, signage (including banners, flag signs, pennants, and other attention getting devices), and the parking lot display area.

The parking lot used for the used car display area is located directly off Main Street. That area is currently being used as a parking lot for the nursery and Staff finds that this area would have the least amount of impact on the surrounding neighborhood based on its location and current use. The applicant has requested that the vehicles stay out in the parking lot overnight. The previous approval required that the cars be moved from the parking lot to the storage area in the rear of the property at the close of business each day. Staff feels that with the recommended conditions that only allow for a small amount of advertising on each individual vehicle that there is virtually no impact of leaving five cars in the parking lot overnight.

Operational Characteristics

The applicant has provided a letter containing details about the used car sales business, which is attached to this Staff Report. The business hours for the used car sales would be daily from 9:00 AM to 6:00 PM. These days and hours are similar to that of the Nursery, with the Nursery closed on Mondays and at 5:00 PM each day.

Environmental Review

This project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301 – Existing Facilities. No further environmental review is required for this project.

Findings

Draft findings are included in the attached resolution.

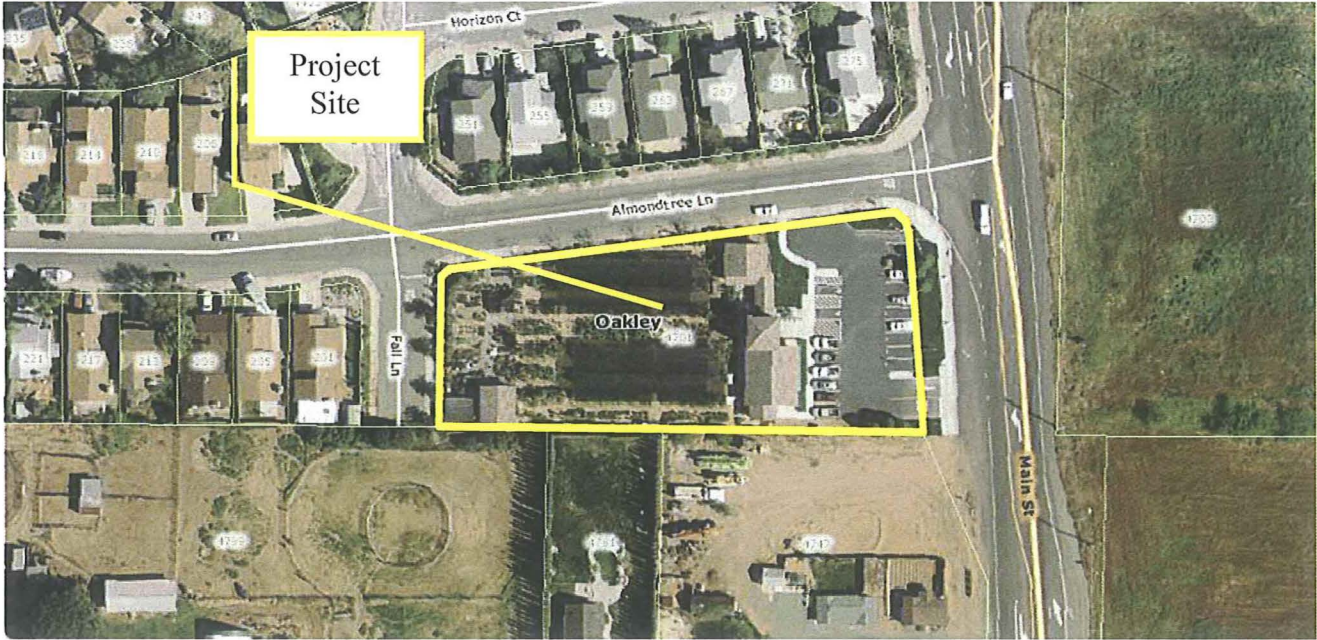
Recommendation

Staff recommends the City Council adopt the Resolution approving Conditional Use Permit (CUP 01-14) to sell used motor vehicles and a Variance (VA 01-14) to allow three less parking spaces than originally approved for a project located at 4701 Main Street, as conditioned.

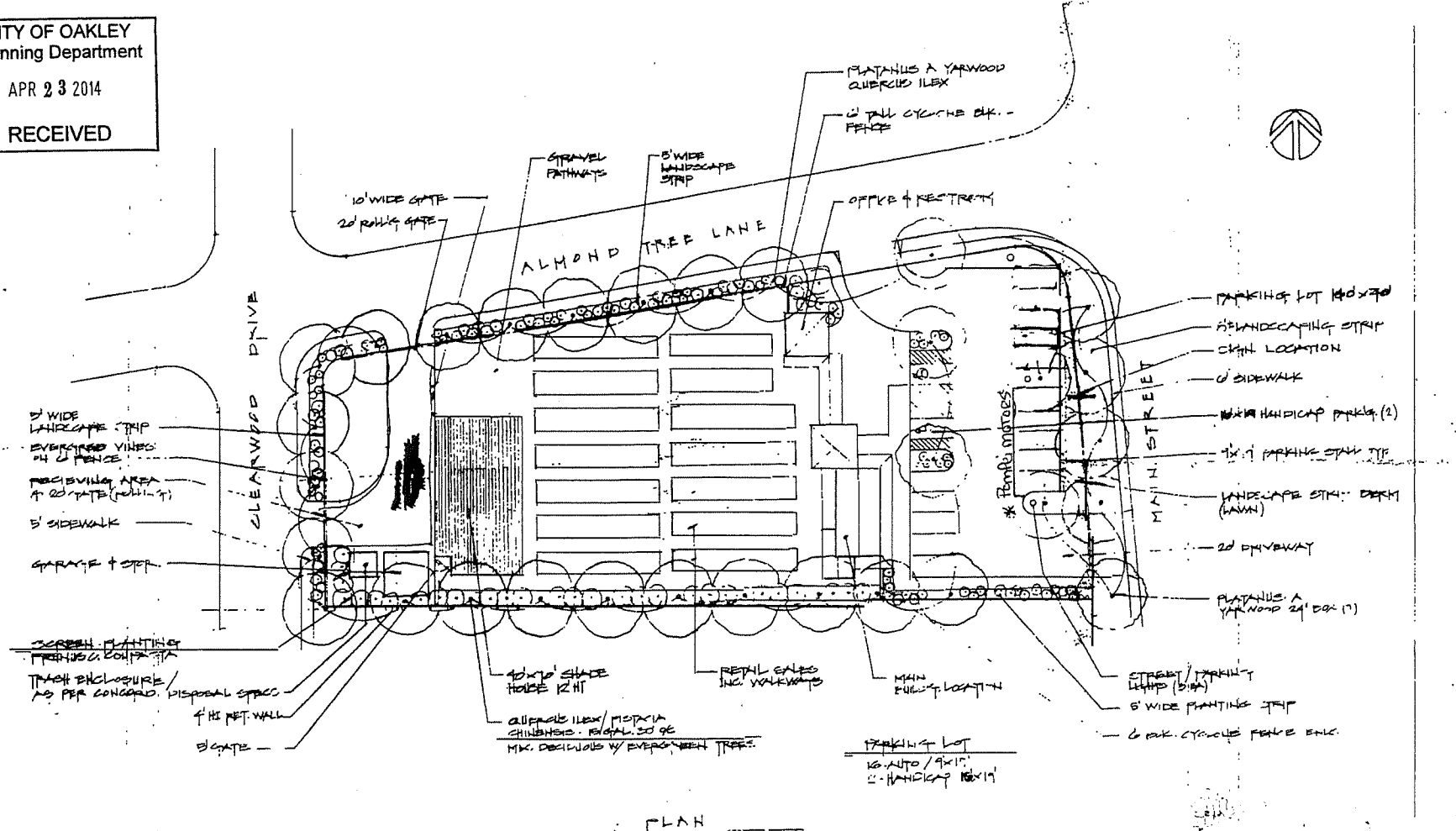
Attachments

1. Vicinity Map
2. Project Plan
3. Project Description from the Applicant
4. Proposed City Council Resolution

Pompei Motors
Conditional Use Permit (CUP 01-14) and Variance (VA 01-14)
Vicinity Map
APN: 035-493-001



CITY OF OAKLEY
 Planning Department
 APR 23 2014
 RECEIVED



5' WIDE LANDSCAPE STRIP
 EVERGREEN VINES ON FENCE
 RECEIVING AREA + 20' GATE (ROLLUP)
 5' SIDEWALK
 GARAGE + STAIR
 SCREEN PLANTING
 TRASH ENCLOSURE AS PER CONCORD. DISPOSAL SPACE
 FIRE RET. WALL
 5' GATE

10' x 10' SHADE HOUSE 12' HT
 ALLIGATOR ILEX / MYRTLE CHINA BIRD. BIRCHAL. 20' 90
 MK. DECIDUOUS BY EVERGREEN TREES

PARKING LOT 16' x 20'
 5' LANDSCAPING STRIP
 SIGN LOCATION
 5' SIDEWALK
 2x16 HANDICAP PARKING (2)
 16' x 11' PARKING SPACE 11'
 LANDSCAPE STRIP: BERRY (LAWN)
 20' DRIVEWAY
 PLATANUS A YARWOOD 24' DIA (1)
 STREET / PARKING LOT LAND (50X)
 5' WIDE PLANTING STRIP
 6' OAK CYCLOCUS FENCE ENCL.

PLAN

CTE AREA 128,000 sq. FT
 PAVED PARKING: 3,275 sq. FT
 SHADE FROM TREES: 2,400 sq. FT
 TOTAL PAVED / SHADE 5,675 sq. FT
 TOTAL REQUIRED SHADE 12,800 sq. FT
 44%

LANDSCAPE COVERAGE: 2,100 sq. FT
 TOTAL PERCENTAGE LANDSCAPE: 10%
 PAVED PARKING SHADE COVERAGE: 42%
 (1 TREE, 20' 90' EACH, 24' 05' DIA FT)

NOTE:
 LANDSCAPING PLAN
 DEVELOPED BY BOB BAY
 4.25.03
 APPROVED BY THE
 CITY OF OAKLEY

EMPEL NURSERY
 1101 MAIN ST OAKLEY, CA
 94661
 925-761-1111
 TOM LILLY DRAFTING #411
 LANDSCAPING PLAN

Attachment 3

Ph. 925 625-9100

Fax: 925 625-9200

4701 Main Street

Oakley, CA 94561

CITY OF OAKLEY
Planning Department
APR 23 2014
RECEIVED



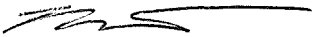
April 23, 2014

To whom it may concern:

It is proposed that Pompei Motors, a business owned solely by Nino Pompei, an individual, be allowed to operate at 4701 Main St., Oakley, Ca. 94561, alongside the existing business known as Pompei Nursery.

The business hours would be daily from 9:00am to 6:00pm. Pompei Motors will retain separate office space within the premises and utilize five parking spaces in the parking area. These spaces would be utilized by Pompei Motors constantly. Pompei Motors holds a current Department of Motor Vehicles dealer license, as well as the necessary bond and insurance requirements.

Please contact me with any questions. Thank you.


Nino Pompei
Pompei Motors
Office- 925-625-9100
Cell- 925-640-2145



RESOLUTION NO. XX-14

**A RESOLUTION OF THE CITY OF OAKLEY CITY COUNCIL MAKING FINDINGS
AND APPROVING CONDITIONAL USE PERMIT (CUP 01-14) FOR THE
ESTABLISHMENT OF A USED CAR SALES USE AND VARIANCE (VA 01-14) FOR
A REDUCTION IN THE PREVIOUSLY APPROVED NUMBER OF PARKING SPACES
FOR THE POMPEI NURSERY LOCATED AT 4701 MAIN STREET
(APN 035-493-001)**

FINDINGS

WHEREAS, on April 23, 2014, Nino Pompei (“Applicant”), submitted an application Conditional Use Permit (CUP 01-14) to sell a limited amount of used motor vehicles (five) in the existing parking lot of the Pompei Nursery. The application also includes a Variance (VA 01-14) to allow four less parking spaces than originally approved by the Pompei Nursery CUP in 2005. The project site is located at 4701 Main Street (APN 035-493-001) (“Project”); and

WHEREAS, on May 13, 2014, the project application was deemed complete per Government Code section 65920 et. seq; and

WHEREAS, the project is designated as *Commercial* in the Oakley 2020 General Plan, and zoned (RB) Retail Business District; and

WHEREAS, on May 16, 2014, the Notice of Public Hearing for the project was posted at the project site, Oakley City Hall, Freedom High School, and at 204 2nd Street (City Annex). The notice was also mailed out to all owners of property within a 300-foot radius of the subject property’s boundaries, and to parties requesting such notice; and

WHEREAS, the project is exempt from further environmental analysis under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301 – Existing Facilities; and

WHEREAS, on May 27, 2014, the City Council opened the public hearing at which it received a report from City Staff, oral and written testimony from the public and applicant, and deliberated on the project. At the conclusion of its deliberations, the City Council took a vote and adopted this resolution to approve the project, as conditioned, and

WHEREAS, if any term, provision, or portion of these Findings or the application of these Findings to a particular situation is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of these Findings, or their application to other actions related to the Project, shall continue in full force and effect unless amended or modified by the City; and

WHEREAS, these Findings are based upon the City’s General Plan, the City’s Zoning Ordinance, the City’s Commercial and Industrial Design Guidelines, and the

information submitted to the City Council at its May 27, 2014 meeting, both written and oral, including oral information provided by the applicant, as reflected in the minutes of such meetings, together with the documents contained in the file for the project (hereinafter the "Record"); and

NOW, THEREFORE, BE IT RESOLVED THAT, on the basis of the above findings of fact and the entire Record, the City Council makes the following additional findings in support of the approvals:

- A. In regards to the application requesting approval of a Conditional Use Permit (CUP 01-14) to sell a limited amount of used motor vehicles (five) in the existing parking lot of the Pompei Nursery located at 4701 Main Street (APN 035-493-001), the City Council finds that:
1. The site for the proposed use is adequate in size and shape to accommodate the use in a manner complementary with the land and uses in the area in that the site is currently improved with a retail nursery, including an existing 1,800 square foot retail building, an existing 19,000 square foot outdoor sales area, an existing parking lot and associated site improvements. The Retail Business (RB) Zoning District allows for the proposed use with the approval of a Conditional Use Permit. The new ancillary "used car sales" use will be compatible and complement the existing nursery business, and help facilitate the economic development activities of the City; and
 2. The site for the proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed ancillary use in that the site is accessible by public rights-of-way such as Main Street and Almond Tree Lane, which are designed to handle project generated traffic; and
 3. The proposed use will be arranged, designed, constructed, operated, and maintained so as to be compatible with the intended character of the area and will not change the essential character of the area that is intended by the General Plan and the applicable zoning ordinances in that the proposed use is permitted in the Retail Business (RB) Zoning District with the approval of a Conditional Use Permit; and
 4. The proposed use provides for continued growth and orderly development of the community and is consistent with the various elements and objectives of the General Plan in that it provides a new business which may bring jobs to the City. The site is currently improved with a retail nursery. The use and site are a result of Oakley's zoning that allows for commercial lots that can accommodate this type of use.

B. In regards to Variance (VA 01-14) to allow four less parking spaces than originally approved by the Pompei Nursery Conditional Use Permit Resolution No. 14-05, the City Council finds that:

1. Approval of the variance would not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and the respective land use district in that the retail nursery that exists today was approved with 17 parking spaces and there are currently 19 parking spaces on site (two more than the original approval required). The approval of the retail sales of used cars in the existing parking lot would be ancillary to the existing retail use on site and would not create an impact to the existing parking and circulation for the retail nursery. Additionally, the project has been conditioned that should a future parking issue arise because of the used car sales use, the project would need to be brought back to the City Council for further consideration; and
2. There are special circumstances applicable to the subject property because of its size, shape, topography, location or surrounding that would deprive the subject property of rights enjoyed by other properties in the vicinity if the strict application of the zoning regulations is required in that the project site is already improved with a retail nursery, retail building, and parking lot. The proposed use was already approved for a limited two year term back in 2008. The used car sales use did not create an impact in the parking lot or the existing retail nursery and therefore the ancillary used car sales use is found to be compatible with the existing retail nursery use on site; and
3. Approval of a variance would substantially meet the intent and purpose of the respective land use district in which the subject property is located in that the Retail Business (RB) Zoning District allows for a broad range of Retail and Commercial uses.

C. The project complies with Measure J Growth Management requirements.

BE IT FURTHER RESOLVED THAT, on the basis of the above Findings and the Record, the City Council approves of the Applicant's request for a Conditional Use Permit, subject to the following Conditions of Approval:

Conditions of Approval

Applicant shall comply with the requirements of the Oakley Municipal Code. Any exceptions must be stipulated in these Conditions of Approval. Conditions of Approval are based on the application received by the Community Development Department on **April 23, 2014**, as well as additional information acquired since that time and made part of the project file.

THE FOLLOWING CONDITIONS OF APPROVAL SHALL BE SATISFIED PRIOR TO THE ESTABLISHMENT OF THE USE UNLESS OTHERWISE NOTED:

Planning Division Conditions

General:

1. This **Conditional Use Permit (CUP 01-14)** and **Variance (VA 01-14)** is approved, as shown on the revised plans, date stamped by the Community Development Department on **April 23, 2014**, and as modified by the following conditions of approval, subject to final review and approval by the Community Development Director.
2. This approval shall be effectuated within a period of three (3) years from the effective date of this resolution by establishing the use (receiving a Business Tax Certificate, etc.) and if not effectuated shall expire on **May 27, 2017**. Prior to said expiration date, the applicant may apply for an extension of time pursuant to the provisions of the Zoning Code.
3. This approval is separate from the Pompei Nursery Planning Commission approval Resolution 14-05. All conditions in Resolution 14-05 are still valid and in effect.
4. All conditions of approval shall be satisfied by the owner/developer. All costs associated with compliance with the conditions shall be at the owner/developer's expense.
5. The applicant shall defend, indemnify, and hold harmless the city or any of its boards, commissions, agents, officers, and employees from any claim, action or proceeding against the city, its boards, commissions, agents, officers, or employees to attack, set aside, void, or annul, the approval of the project. The city shall promptly notify the applicant of any such claim, action or proceeding. The city shall have the option of coordinating the defense. Nothing contained in this condition shall prohibit the city from participating in a defense of any claim, action, or proceeding if the city bears its own attorney's fees and costs, and the city defends the action in good faith.

Site Plan:

6. A maximum of five vehicles at any one time may be offered for sale on the property at 4701 Main Street.
7. Vehicles for sale shall not use more than the five dedicated parking spaces as shown on the Site Plan dated April 23, 2014.
8. Vehicles may be parked in the five dedicated parking spaces overnight. The advertising used on the vehicles shall conform to all of the conditions of approval contained in this resolution.

9. In the event that the Variance reducing the number of parking spaces from 17 approved parking spaces to 13 parking spaces results in an inadequate number of parking spaces for the existing retail nursery, this Conditional Use Permit and Variance shall be brought back to the City Council for further review and consideration.

Signage:

10. The proposed signage shall meet the requirements of the City's Zoning Ordinance. All proposed signage, if applicable, shall be reviewed by the Planning and Building Departments.
11. Vehicles for sale shall have relevant sales information posted in a discreet and unobtrusive manner in the vehicles window (small sign, window sticker, placard, etc...).
12. There shall be no banners, pennants, flags, signs, balloons, inflatable objects, roped-off areas, or similar items used to draw attention to the vehicles for sale. The applicant shall rely on alternative means for advertising the vehicles for sale such as the internet or newspaper/used car sales publications.

PASSED AND ADOPTED by the City Council of the City of Oakley at a meeting held on the 27th of May, 2014 by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

APPROVED:

Randy Pope, Mayor Date

ATTEST:

Libby Vreonis, City Clerk Date