



Z O N I N G A D J U S T M E N T S B O A R D S T A F F R E P O R T

FOR BOARD ACTION
JUNE 23, 2022

925 University Avenue

Use Permit #ZP2021-0225 to allow service of beer, wine, and distilled spirits incidental to food service in a full-service restaurant

I. Background

A. Land Use Designations:

- General Plan: MDR- Medium Density Residential
- Zoning: West Berkeley Commercial (C-W), Designated Node

B. Zoning Permits Required:

- Use Permit, pursuant to Berkeley Municipal Code (BMC) Section 23.310.030, to add Alcoholic Beverage Service to include distilled spirits

C. CEQA Recommendation: It is staff's recommendation that the project is categorically exempt pursuant to Section 15301 of the CEQA Guidelines ("Existing Facilities").

D. Parties Involved:

Applicant/Property Owner: Juan Romo
1805 San Pablo Avenue

Figure 1: Vicinity Map

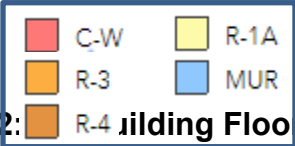
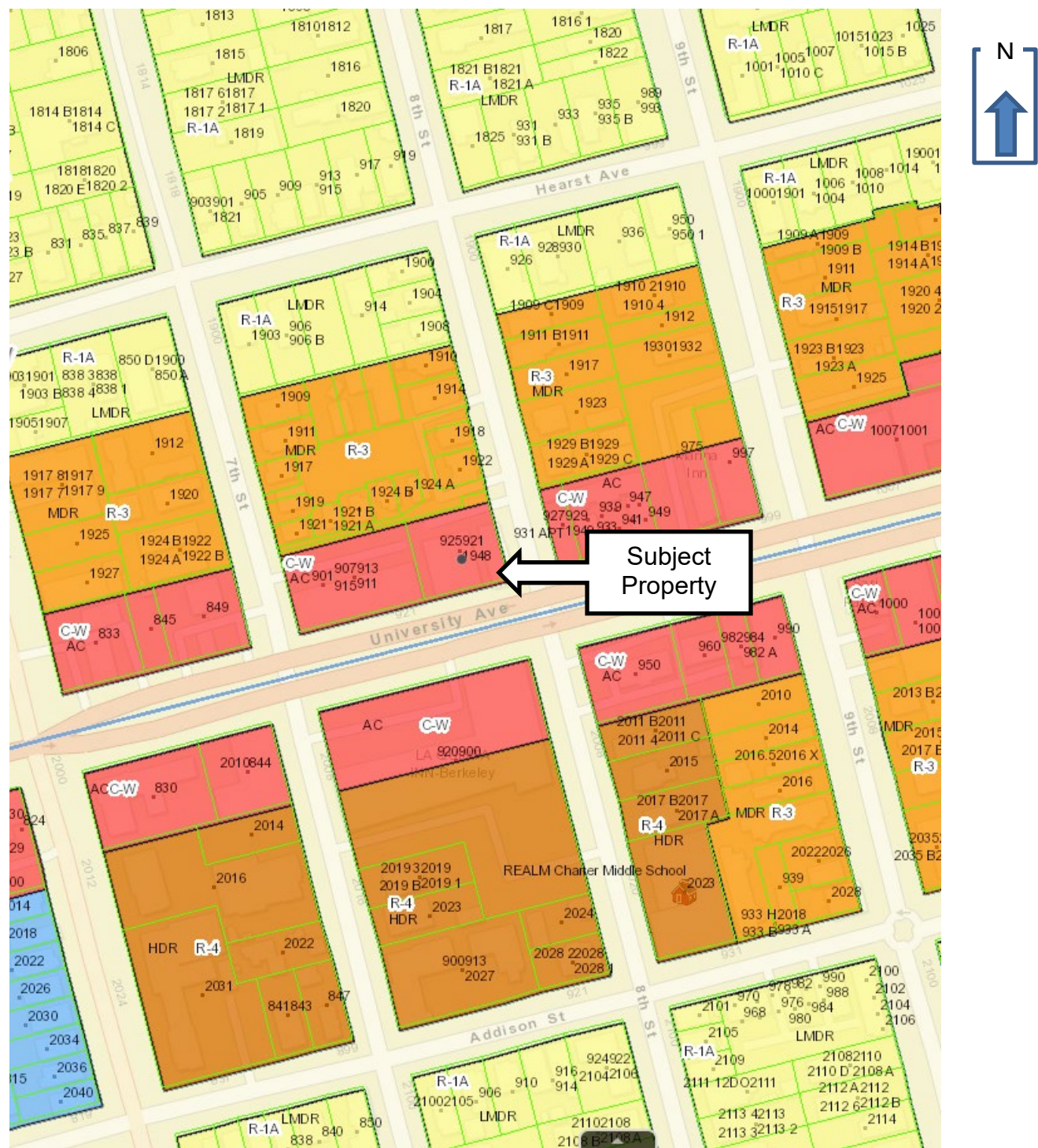
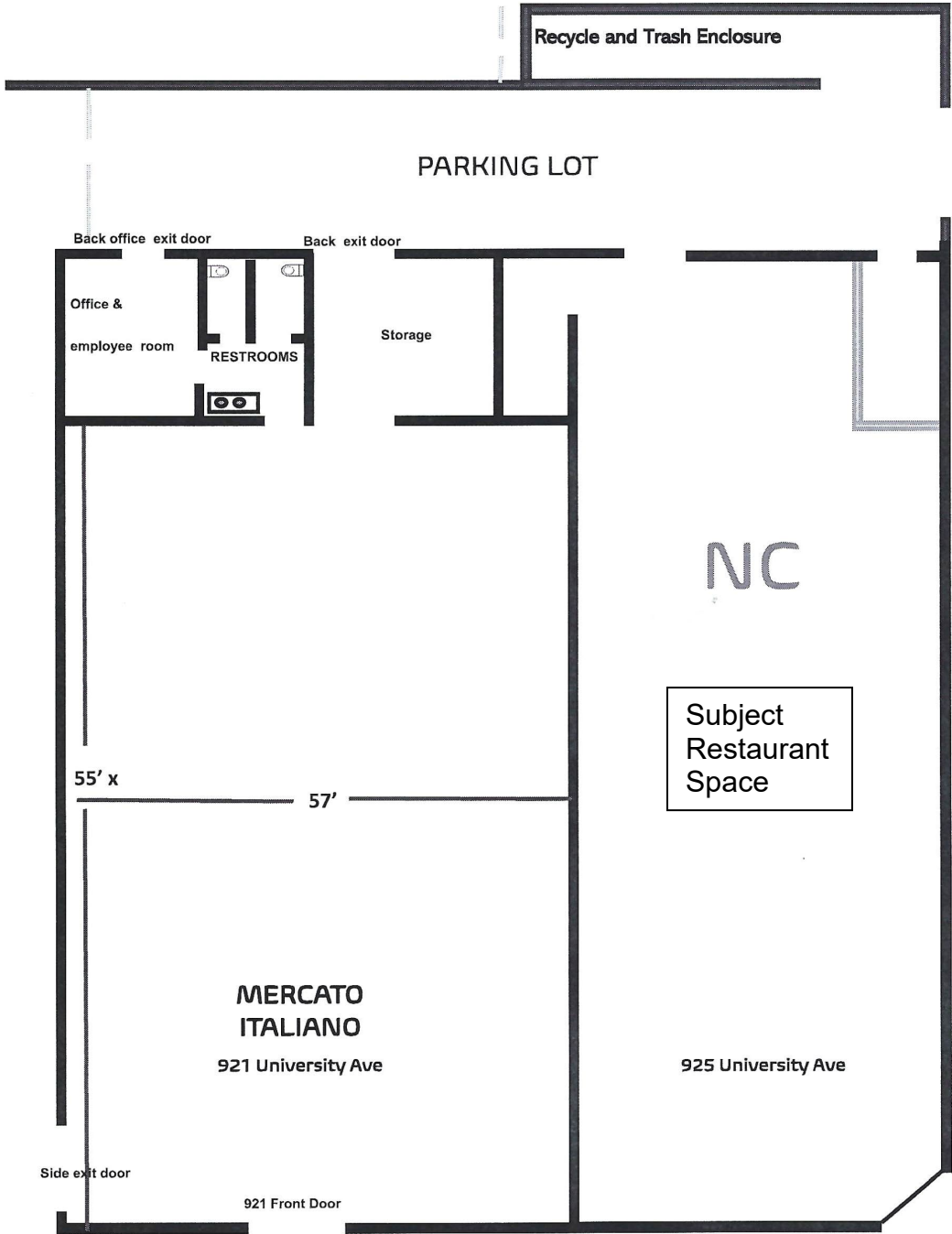


Figure 2: Building Floor Plan



921-925 UNIVERSITY AVE BERKELEY, CA 94710

Figure 3: Site Plan

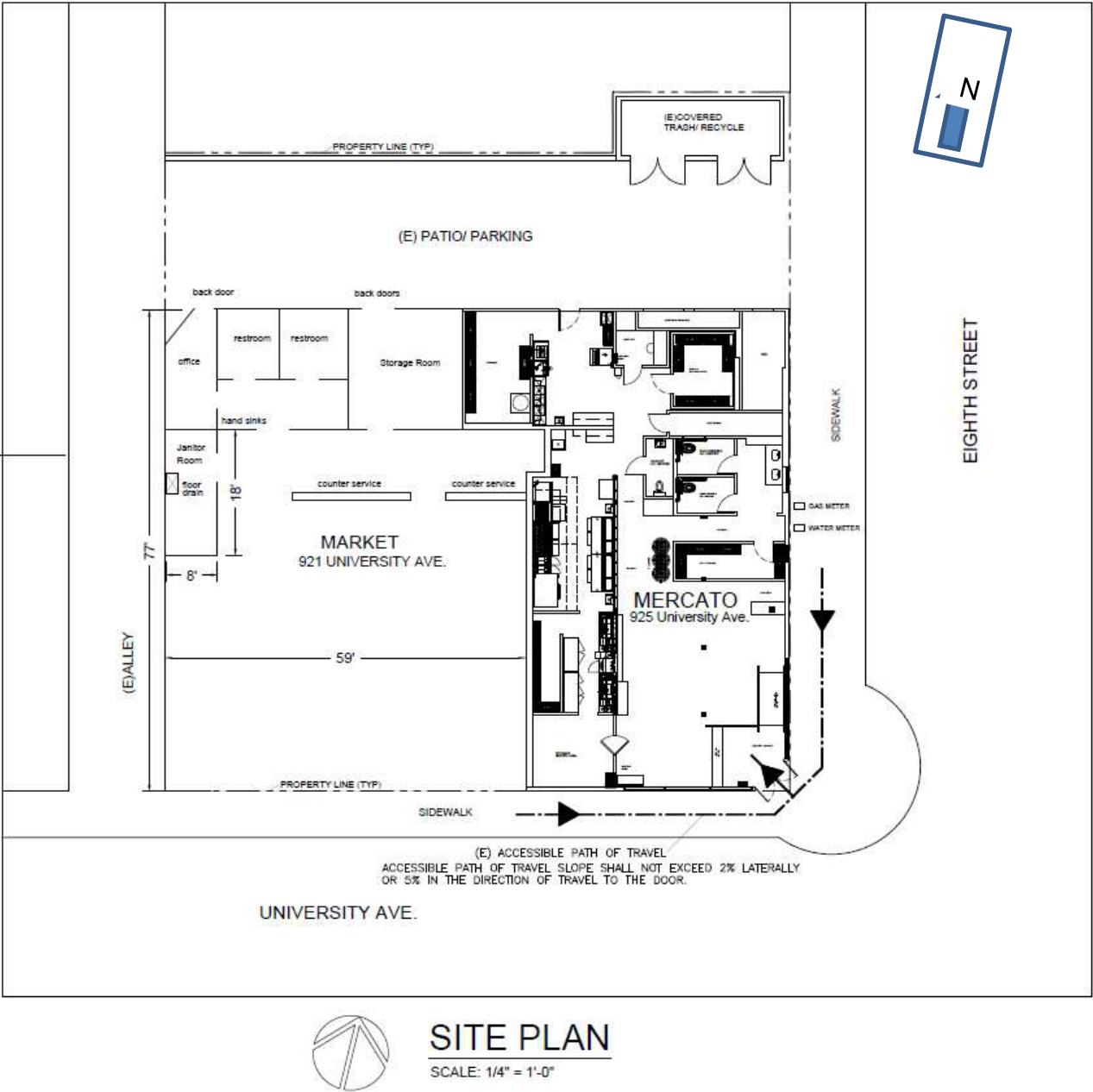


Figure 4: Restaurant Floor Plan

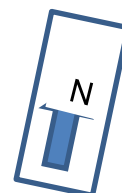
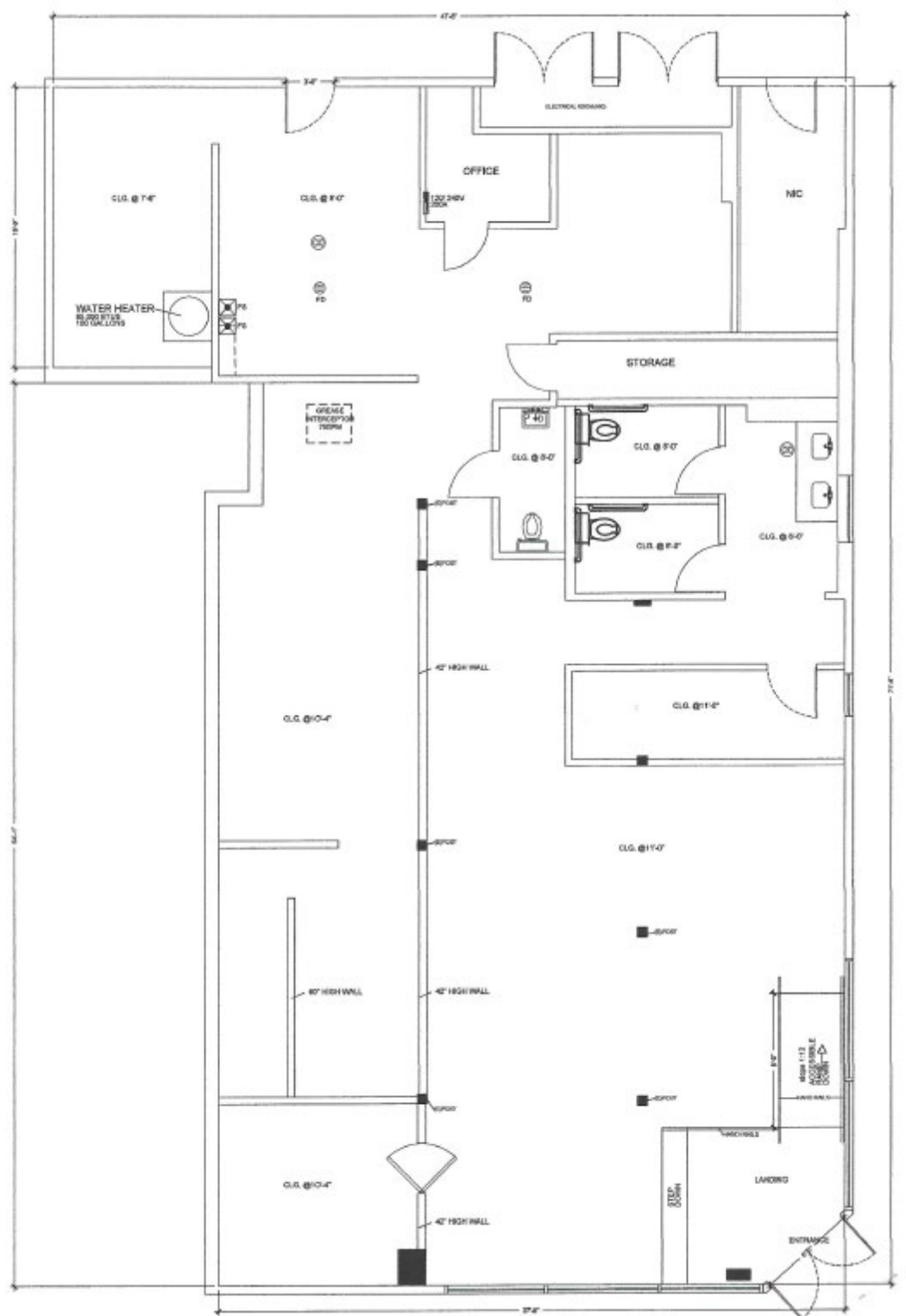


Figure 3: Liquor Licenses Within 1,000 Feet of Subject Site



- 20 ■ Off-site beer and wine
- 12 ● Manufacturer/Importer
- 41 ▲ On-site beer and wine
- 47 ▲ On-site beer, wine, and liquor
- 58 ★ Off-site Caterer and/or Events

Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Existing Restaurant	C-W	MDR- Medium Density Residential
Surrounding Properties	North	Multi-Family Residential	R-3	
	South	Lodging	C-W	
	East	Personal/Household Services	C-W	
	West	Retail	C-W	

Table 2: Special Characteristics

Characteristic	Applies to Project?	Explanation
Alcohol Sales/Service	Yes	The operator has applied for a Type 47 ABC License, which authorizes the service of distilled spirits.
Public Convenience or Necessity	Yes	There are 2 other type 47 ABC licenses within 1000 feet of the subject property.
Affordable Child Care Fee for qualifying non-residential projects (Per Resolution 66,618-N.S.)	No	The proposed project does not include new floor area or a new use in a space vacant for more than three years; therefore, this mitigation fee payment does not apply.
Creeks	No	No new construction is proposed
Historic Resources	No	
Oak Trees	No	
Soil/Groundwater Contamination	No	

Table 3: Project Chronology

Date	Action
December 22, 2021	Application submitted
May 2, 2022	Application deemed complete
June 9, 2022	Public hearing notices mailed/posted
June 23, 2022	ZAB hearing

II. Project Setting

A. Neighborhood/Area Description: The project parcel is a corner lot located on the north side of University Avenue and to the west of Eighth Street. The subject neighborhood has a mix of uses, including restaurants, bars, retail, household services, offices, gas stations, lodging, and single- and multi-family residential.

B. Site Conditions: The project site is developed with a historic two-story structure, known as the Suendermann Building, which has a 2,736 square foot footprint on a 3,370 square foot lot. The restaurant will occupy the eastern part of the building's first floor, with an

entrance facing the corner of University Avenue and Eighth Street. An associated Italian foods market, which has applied for a separate permit for a Type 21 ABC License, which authorizes the sales of beer, wine, and distilled spirits for off-site consumption (ZP2021-0226), will occupy the western part of the building's first floor. The second floor of the building consists of four residential dwelling units.

III. Project Description

The business owner has an existing Italian restaurant currently located at 1300 Tenth Street and have obtained an administrative use permit (ZP2021-0141) to relocate the restaurant, to be known as Mercado Italiano, to this new location at 925 University Avenue. He is applying for a Type 47 ABC license that allows for the service of beer, wine, and distilled spirits for on-site consumption at a bona fide eating place.

IV. Community Discussion

- A. Neighbor/Community Concerns:** A pre-application poster was installed on the building by the applicant in December, 2021. In April, 2022, the owner reached out in person to the tenants of the four upstairs units to inform them of his plans to open the restaurant. He mailed letters to the other residential dwellings within 300 feet of the site. On June 9, 2022, the City mailed public hearing notices to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations, and posted notices within the neighborhood in three locations. At the time of writing this report, staff has not received any communications regarding the project.
- B. Committee Review:** This project is not subject to design or landmark review. If exterior changes and/or signage are later proposed as part of the associated tenant improvement(s), they will be evaluated by the applicable land use staff at that time.

V. Issues and Analysis

- A. Alcoholic Beverage Service:** Alcoholic beverage sales and service that includes distilled spirits incidental to food service is allowed in the C-W District (BMC 23.204.020) if a Use Permit is granted by the Zoning Adjustments Board in accordance with required findings.

Alcoholic beverage service is also regulated by BMC 23.310.020(D) for Special Use Standards. This section requires the City to make all of the "Public Convenience or Necessity" findings if an existing establishment has an ABC license of the same type, other than beer and wine service incidental to food service, within a 1,000-foot radius of the project site. There are currently two other establishments within a 1,000-foot radius with a type 47 ABC license for service of beer, wine, and distilled spirits incidental to food service. These are Doc's Refresher at 984 University Avenue and Café V El Patio at 2056 San Pablo Avenue.

In order to approve the Use Permit, the Board must affirm all of the "Public Convenience or Necessity" findings under BMC Section 23.310.020(D), as follows:

1. The proposed establishment will promote the City's economic health, contribute to General Plan or area plan policies, or further the district purpose.

Staff Analysis: This restaurant, including the incidental alcohol service, will provide the economic and cultural benefits to the West Berkeley community. The City will receive tax revenue from the alcoholic beverage sales.

2. *The economic benefits associated with the establishment could not reasonably be achieved without the proposed alcohol sales or service.*

Staff Analysis: Alcoholic beverage service is typically a major part of a restaurant's revenue. Adding distilled spirits service to the restaurant will help it to remain competitive with other such establishments in the vicinity.

3. *If the applicant has operated a licensed establishment that has been the subject of violations regarding alcohol in the State of California, or violations of public safety or nuisance statutes or regulations in Berkeley as verified by the Police Department, such violations do not indicate a high likelihood of further violations and/or detrimental impacts from the proposed establishment. In making this finding, the ZAB may consider the number, frequency, and severity of prior violations, the time elapsed since the last violation, and other relevant factors.*

Staff Analysis:

The Berkeley Police Department has not reported any previous violations by the applicant.

4. *If the proposed establishment is within 1,000 feet of any public park or public school, the ZAB has taken into consideration the effect of the proposed establishment upon such sensitive public uses.*

Staff Analysis: The site is not within 1,000 feet of any public park or public school. Additionally, as a standard Condition of Approval, no visible advertising of alcohol beverages is allowed, and the business staff would check customers for proper identification to purchase alcohol.

5. *The Police Department has reported that the proposed establishment would not be expected to add to crime in the area.*

Staff Analysis: Staff referred this application to the Berkeley Police Department (BPD) for review and comment. In an email, BPD Officer Brian Hartley indicated that BPD would support this project. A letter from BPD will be submitted to ZAB before the hearing date.

B. Use Permits in the C-W District:

BMC Section 23.204.140 allows alcoholic beverage service with approval of a Use Permit, subject to the Board making the applicable findings in BMC Section 23.204.140(F). Those conditions are the following:

The project:

- Is consistent with the purposes of the district;
- Is compatible with surrounding uses and buildings;
- Complies with the adopted West Berkeley Plan;
- Supports an increase in the continuity of retail and service facilities at the ground level to the degree feasible;
- Does not substantially degrade the existing urban fabric of the street and area;
- If the project includes the construction of new floor area, provides an intensity of development which does not underutilize the property;
- Meets any applicable performance standards for off-site impacts; and
- Does not exceed the amount and intensity of use that can be served by available traffic capacity and potential parking supply.

Staff Analysis: The service of distilled spirits will strengthen the new restaurant that will serve both area residents and a citywide clientele while maintaining compatibility with surrounding uses and buildings. Its location at the corner of University Avenue and Eight Street will help to strengthen the commercial and pedestrian-oriented environment of the location. The use is also compatible with the purposes of the district and the West Berkeley Plan. The project does not include the construction of new floor area or exceed allowable intensities development, performance standards for off-site impacts, or intensities of use that can be served by available traffic capacity and potential parking supply.

C. General Non-Detriment Finding: BMC Section 23.406.040(A) requires that, before the ZAB approves an application for a Use Permit, it must find that the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City.

- 1) General Non-Detriment: The project is subject to the City's standard conditions of approval regarding hours of operation and alcoholic beverage service, thereby ensuring the project would not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City.

D. General Plan Consistency: The 2002 General Plan contains several policies applicable to the project, including the following:

1. Policy LU-1–Community Character: Maintain the character of Berkeley as a special, diverse, unique place to live and work.

Staff Analysis: The serving of distilled spirits at an existing restaurant will enhance customer experiences and help the restaurant to continue to promote the character of Berkeley as a special, diverse, and unique place to live and work.

- 1) Policy LU-33–West Berkeley Plan: Implement the West Berkeley Plan and take actions that will achieve the purposes of the Plan:
 - A. Maintain the full range of land uses and economic activities including residences, manufacturing, services, retailing, and other activities in West Berkeley.
 - B. Maintain the ethnic and economic diversity of West Berkeley's resident population.
 - C. Maintain and improve the quality of urban life, environmental quality, public and private service availability, transit and transportation, and aesthetic and physical qualities for West Berkeley residents and workers.

Staff Analysis: The serving of distilled spirits would be consistent with ethnic and economic diversity activities in a District that is well served by transit, and would contribute to the diversity and range of land use activities that are among the goals of the Berkeley General Plan.

F. West Berkeley Plan Consistency: The West Berkeley Area Plan, adopted in 1993, also contains policies applicable to the project, including the following:

- 1) LU Goal 1, Policy C: Provide space for, and designate appropriate locations for – in planning and zoning policies – both neighborhood and regional serving retail businesses.
- 2) LU Goal 2, Policy E: Create a Commercial district that will foster the continued vitality of West Berkeley's neighborhood and regional serving retail trade, in as pedestrian- friendly a manner as possible.
- 3) "Overview of the Districting Concept:" Retail uses should be clustered, to strengthen existing retail areas, to make them for walkable, and to prevent retail sprawl.

Staff Analysis: The sale of distilled spirits, in addition to beer and wine, would support the new restaurant, which offers a unique dining and cultural experience and serves both the immediate and outlying neighborhoods.

VI. Recommendation

Because of the project's consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board:

- A. APPROVE use permit ZP2021-0225 pursuant to Section 23.406.040 and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

1. Findings and Conditions
2. Notice of Public Hearing

Staff Planner: Russell Roe, rooe@cityofberkeley.info, (510) 981-7548

ATTACHMENT 1

FINDINGS AND CONDITIONS

JUNE 23, 2022

925 University Avenue

Use Permit #ZP2021-0225 to allow service of beer, wine, and distilled spirits incidental to food service in a full- service restaurant

PERMITS REQUIRED

- Use Permit, pursuant to Berkeley Municipal Code (BMC) Section 23.310.030, to add Alcoholic Beverage Service to include distilled spirits

I. CEQA FINDINGS

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 15301 of the CEQA Guidelines ("Existing Facilities"). The project meets all of the requirements of this exemption, as follows:
 - A. The project is consistent with the applicable General Plan designation and policies, and with the applicable zoning designation and regulations.
 - B. The project occurs within the Berkeley City limits on a project site of no more than five acres, and is surrounded by urban uses.
 - C. The parcels within the project site have previously been developed and have no value as habitat for endangered, rare or threatened species.
 - D. The project would not result in any significant effects relating to traffic, noise, air quality or water quality. The Traffic Impact Analysis prepared for the project was reviewed by the City Transportation Division which concurred with the findings of less than significant impacts. City Standard Conditions would address potential impacts related to traffic, noise, air quality, and water quality.
 - E. The site can be adequately served by all required utilities and public services.
2. 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, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

II. FINDINGS FOR APPROVAL

1. As required by Section 23.406.040 of the BMC, the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property

and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:

- A. The project is consistent with all applicable C-W District standards, including use and hours of operation;
- B. The addition of distilled spirits alcoholic beverage service in the restaurant will not expand the footprint of the business. The proposed service will provide an additional option for patrons in the West Berkeley/University Avenue area;
- C. The alcohol service will be incidental to the overall food service use, and as such, alcohol sales will not have detrimental impact on public health, safety, or peace; and
- D. The permit is subject to the standard conditions for alcohol sales, which will ensure that the restaurant will continue to be a good neighbor.

III. OTHER FINDINGS FOR APPROVAL

- 1. As required by Section 23.310.020(D), the Zoning Adjustments Board finds that:
 - A. The addition of liquor service in the restaurant will contribute to the variety of goods and services which serve residents in the area. The expansion of services will contribute to the vitality of the neighborhood. The project will contribute to the City's economic health.
 - B. The addition of liquor service to the menu will enable the restaurant to remain competitive with other similar businesses in the neighborhood. Additionally, increased business revenue would result in increased tax revenue for the City.
 - C. The applicant has not operated another establishment that has been the subject of violations regarding alcohol in the State of California.
 - D. The project is not located within 1,000 feet of a public school or park. Additionally, as a standard Condition of Approval, no visible advertising of alcohol beverages is allowed, and the business staff would check customers for proper identification to purchase alcohol.
 - E. In an email dated June 14, 2022, Berkeley Police Department (BPD) Officer Brian Hartley indicated that BPD would support this project. A letter from BPD will be submitted to ZAB as supplemental information prior to the hearing date.
- 2. As required by Section 23.204.140(F) of the BMC, the Zoning Adjustments Board finds that:
 - A. This project is consistent with the purposes of the C-W District and its designated nodes, which allow the service of distilled spirits for purposes of on-site consumption;
 - B. The restaurant has an Administrative Use Permit (ZP2021-0141) to operate at this location. The project is compatible with surrounding uses and buildings;
 - C. The project is consistent with the West Berkeley Plan which has the goals of maintaining the full range of land uses and economic activity in West Berkeley, maintaining the ethnic and economic diversity of West Berkeley's resident population, and maintaining and improving the quality of urban live for West Berkeley residents and workers.
 - D. The project will not add floor area to the approved building or change its façade;
 - E. The project will not result in significant off-site impacts, as no changes to the exterior of the building are planned, and as the effect on the neighborhood of serving liquor would be negligible off site.
 - F. The project will not exceed the amount and intensity of use that can be served by available traffic capacity and potential parking supply, as customer numbers will be small at any given time.

IV. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

The following conditions, as well as all other applicable provisions of the Zoning 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 Use Permit, under the title 'Use 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. Compliance Required (BMC Section 23.102.050)

All land uses and structures in Berkeley must comply with the Zoning Ordinance and all applicable City ordinances and regulations. Compliance with the Zoning Ordinance does not relieve an applicant from requirements to comply with other federal, state, and City regulations that also apply to the property.

3. Approval Limited to Proposed Project and Replacement of Existing Uses (BMC Sections 23.404.060.B.1 and 2)

- A. This Permit authorizes only the proposed project described in the application. In no way does an approval authorize other uses, structures or activities not included in the project description.
- B. When the City approves a new use that replaces an existing use, any prior approval of the existing use becomes null and void when permits for the new use are exercised (e.g., building permit or business license issued). To reestablish the previously existing use, an applicant must obtain all permits required by the Zoning Ordinance for the use.

4. Conformance to Approved Plans (BMC Section 23.404.060.B.4)

All work performed under an approved permit shall comply with the approved plans and any conditions of approval.

5. Exercise and Expiration of Permits (BMC Section 23.404.060.C)

- A. A permit authorizing a land use is exercised when both a valid City business license is issued (if required) and the land use is established on the property.
- B. A permit authorizing construction is exercised when both a valid City building permit (if required) is issued and construction has lawfully begun.
- C. The Zoning Officer may declare a permit lapsed if it is not exercised within one year of its issuance, except if the applicant has applied for a building permit or has made a substantial good faith effort to obtain a building permit and begin construction. The Zoning Officer may declare a permit lapsed only after 14 days written notice to the applicant. A determination that a permit has lapsed may be appealed to the ZAB in accordance with Chapter 23.410 (Appeals and Certification).
- D. A permit declared lapsed shall be void and of no further force and effect. To establish the use or structure authorized by the lapsed permit, an applicant must apply for and receive City approval of a new permit.

6. Permit Remains Effective for Vacant Property (BMC Section 23.404.060.D)

Once a Permit for a use is exercised and the use is established, the permit authorizing the use remains effective even if the property becomes vacant. The same use as allowed by the original permit may be re-established without obtaining a new permit, except as set forth in Standard Condition #5 above.

7. Permit Modifications (BMC Section 23.404.070)

No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Board. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project.

8. Permit Revocation (BMC Section 23.404.080)

The City may revoke or modify a discretionary permit for completed projects due to: 1) violations of permit requirements; 2) Changes to the approved project; and/or 3) Vacancy for one year or more. However, no lawful residential use can lapse, regardless of the length of time of the vacancy. Proceedings to revoke or modify a permit may be initiated by the Zoning Officer, Zoning Adjustments Board (ZAB), or City Council referral.

9. 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.

V. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD

Pursuant to BMC 23.404.050(H), the Zoning Adjustments Board attaches the following additional conditions to this Permit:

ALCOHOLIC BEVERAGE SERVICE CONDITIONS (on-site)

1. The Food Service Establishment shall comply with all applicable regulations of the California Department of Alcoholic Beverage Control (ABC).
2. Alcoholic beverage service shall be "incidental" to the primary food service use, as defined in Zoning Ordinance 23F.04.010. An incidental use shall not exceed twenty-five percent (25%) of

the floor area of the primary use, and if it consists of the commercial sales of a different line of products or services than the primary use, such incidental use may not generate gross receipts in excess of thirty-three percent (33%) of the gross receipts generated by the primary use.

3. Alcohol beverage service shall be only be allowed as part of a “bona fide eating place” making “actual and substantial sales of meals,” and stringently enforces this requirement as determined and required by the ABC.
4. The service of alcohol shall be limited to normal meal hours (per ABC) during the restaurant’s hours of operation. Patrons may only purchase food or finish drinks already purchased within the approved service hours. The Zoning Adjustments Board shall approve any change in the hours of restaurant operations and/or alcohol service (except decreased hours in compliance with applicable ABC regulations). Hours of operation are subject to review and amendment by the Zoning Adjustments Board as necessary to avoid detriment to the neighborhood or to achieve conformance with revised City standards or policies.
5. During operating hours, 100% of the service area shall be designed and used for and must possess the necessary utensils, and condiment dispensers with which to serve meals to the public.
6. The sale of alcoholic beverages for consumption off the premises is prohibited.
7. There shall be no service or consumption of alcohol on the public right-of-way, unless authorized by a Public Works sidewalk seating permit.
8. All alcoholic beverages served to patrons must be served in durable restaurant tableware (i.e. cups or glasses). No beer or wine may be distributed in its original bottle or can, or in any other potentially disposable container.
9. There shall be no bar or lounge area upon the licensed premises maintained for the sole purpose of sales, service or consumption of alcoholic beverages directly to patrons for consumption.
10. There shall be no exterior advertising or sign of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Neither alcohol-dispensing facilities nor sign(s) advertising alcoholic beverages shall be visible from the public right-of-way. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.
11. A Berkeley Police Department Crime Prevention Through Environmental Design (CPTED) survey shall be completed prior to commencing alcohol service.
12. All employees selling and/or serving alcohol, or directly supervising such sales and/or service, shall complete the Licensee Education on Alcohol and Drugs (LEAD) program, or another equivalent program offered or certified by the California Department of Alcoholic Beverage Control within 6 months of employment at the establishment. Employees who have completed the course within the last five (5) years shall be exempt from this requirement.

13. Employees shall not serve alcohol to patrons who appear to be inebriated or otherwise unable to behave in an orderly manner upon consuming alcohol.
 14. Any operator of the licensed establishment shall not have had a prior licensed establishment that was the subject of verified complaints or violations regarding alcohol, public safety or nuisance statutes or regulations to be confirmed by the Zoning Officer prior to issuance or transfer of a business license at this location.
 15. Fortified alcohol products (e.g., malt liquor), shall not be sold on the premises.
 16. The applicant shall establish cash handling procedures to reduce the likelihood of robberies and theft.
 17. At no time shall the operator rent the restaurant space to a third-party promoter.
 18. The owner or operator of the establishment shall take reasonable measures to prevent disturbances by patrons in the immediate vicinity. Such measures shall include signs reminding patrons of nearby residences and requests not to congregate or loiter near such residences nor operate vehicles in a noisy manner on residential streets. The operator shall give surveillance to public areas near the establishment, keep such areas free of trash and litter, provide lighting, and otherwise attempt to prevent conduct that might disturb the peace and quiet of residences in the vicinity. Furthermore, the operator shall assume reasonable responsibility for ensuring that patrons do not block the entrance or interfere with pedestrian activity on the adjacent public sidewalk.
 19. This Use Permit, including these and all other required conditions, shall be posted in conspicuous location, available for viewing by any interested party.
 20. This permit is subject to review, imposition of additional conditions, or revocation if factual complaint is received by the Zoning Officer that the maintenance or operation of this establishment is violating any of these or other required conditions or is detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the neighborhood or is detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.
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Z O N I N G A D J U S T M E N T S B O A R D

NOTICE OF PUBLIC HEARING

925 University Avenue

Use Permit #ZP2021-0225 to allow service of beer, wine, and distilled spirits incidental to food service in a full-service restaurant

The Zoning Adjustments Board of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 23.406.040.D, on June 23, 2022, **conducted via Zoom, see the Agenda for details at:**

https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2022-06-23_ZAB_Agenda.pdf The meeting starts at 7:00 p.m.

PUBLIC ADVISORY: This meeting will be conducted exclusively through videoconference and teleconference. Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

A. Land Use Designations:

- General Plan: MDR- Medium Density Residential
- Zoning: West Berkeley Commercial (C-W), Designated Node

B. Zoning Permits Required:

- Use Permit, under Berkeley Municipal Code (BMC) Section 23.310.030 to add Alcoholic Beverage Service to include distilled spirits

C. CEQA Determination: Categorically exempt pursuant to Section 15301 of the CEQA Guidelines ("Existing Facilities").

D. Parties Involved:

- Applicant/Owner: Juan Romo, 1805 San Pablo Avenue, Berkeley CA 94702

Further Information:

All application materials are available online at:

<https://aca.cityofberkeley.info/CitizenAccess/Welcome.aspx>.

The Zoning Adjustments Board final agenda and staff reports will be available online 6 days prior to this meeting at: <https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board>.

Questions about the project should be directed to the project planner, Russell Roe, at (510) 981-7548 or rroe@cityofberkeley.info.

Written comments or a request for a Notice of Decision should be directed to the Zoning Adjustments Board Secretary at zab@cityofberkeley.info.

Communication Disclaimer:

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.

Communications and Reports:

Written comments must be directed to the ZAB Secretary at the Land Use Planning Division (Attn: ZAB Secretary), or via e-mail to: zab@cityofberkeley.info. All materials will be made available via the Zoning Adjustments Board Agenda page online at this address: <https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board>.

Correspondence received by 8:00 AM, on the Thursday before this public hearing, will be provided with the agenda materials provided to the Board. Note that if you submit a document of more than 10 pages, or in color, or with photos, you must provide 15 copies. Correspondence received after this deadline will be conveyed to the Board in the following manner:

- **Correspondence received by Noon Tuesday**, the week of this public hearing, will be conveyed to the Board in Supplemental Communications and Reports #1, which is released the end of the day Tuesday, two days before the public hearing;
- **Correspondence received by Noon Wednesday**, the week of this public hearing, will be conveyed to the Board in Supplemental Communications and Reports #2, which is released the end of the day Wednesday, one day before the public hearing; or
- **Correspondence received by 3 PM Thursday** will be given to the Zoning Adjustment Board just prior to the public hearing.

Members of the public may submit written comments themselves at the meeting. To distribute correspondence at the meeting, please provide 15 copies and submit to the Zoning Adjustments Board Clerk. Correspondence received later, and after the meeting, will be posted to the web site following the meeting.



Accessibility Information / ADA Disclaimer:

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

SB 343 Disclaimer:

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the Land Use Planning Division, during regular business hours.

Notice Concerning Your Legal Rights:

If you object to a decision by the Zoning Adjustments Board regarding a land use permit project, the following requirements and restrictions apply:

1. If you challenge the decision of the City 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 Zoning Adjustments Board at, or prior to, the public hearing.
2. You must appeal to the City Council within fourteen (14) days after the Notice of Decision of the action of the Zoning Adjustments Board 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, the following requirements apply:
 - A. That this belief is a basis of your appeal.
 - 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.