



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
JULY 14, 2022

1585 University Avenue

Use Permit #ZP2021-0144 to add the service of distilled spirits incidental to food service at an existing restaurant.

I. Background

A. Land Use Designations:

- General Plan: MDR (Medium Density Residential)
- Zoning: C-U (University Avenue Commercial District)

B. Zoning Permits Required:

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

- C. **CEQA Recommendation:** It is staff's recommendation that the project is categorically exempt pursuant to Section 15301 of the CEQA Guidelines ("Existing Facilities"). The determination is made by the ZAB.

D. Parties Involved:

- Applicant: Tindu Sherpa
- Owner: Hon Management, Inc.

Figure 1: Vicinity Map



Figure 2: Restaurant Floor Plan



Figure 3: Liquor Licenses within 1,000 of the subject site



Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Restaurant on first floor; dwelling units on second floor	C-U	Medium Density Residential
Surrounding Properties	North	Multi-family Residential	R-2A	
	South	Language and Marshal Arts School	C-U	
	East	Parking lot	C-U	
	West	Restaurant	C-U	

Table 2: Special Characteristics

Characteristic	Applies to Project?	Explanation
Alcohol	Yes	The site currently has approval for on-site service of beer and wine (Type 41 ABC license) approved under #ZCPT2019-0015. The operator is currently applying for service of distilled spirits (Type 47 ABC License).
Public Convenience or Necessity	Yes	No other Type 47 ABC license within 1,000 feet, therefore public convenience and necessity findings are not required.
Affordable Child Care or Housing Fee for qualifying non-residential projects (Per Resolutions 66,618-N.S. & 66,617-N.S.))	No	The proposed project does not include new floor area or a new use in a space vacant for more than 3 years; therefore, this mitigation fee payment does not apply.
Creeks	No	No new construction is proposed.
Green Building Score	No	
Historic Resources	No	
Liquefaction (Seismic Hazards Mapping Act)	No	
Oak Trees	No	
Soil/Groundwater Contamination	No	

Table 3: Project Chronology

Date	Action
July 28, 2021	Application submitted
June 20, 2022	Application deemed complete
June 30, 2022	Public Hearing Notices Mailed
July 14, 2022	ZAB hearing

II. Project Setting

A. Neighborhood/Area Description: The project parcel is located on University Avenue between California and Sacramento Streets. The University commercial corridor consists primarily of low-rise buildings containing various retail, dining, and lodging

establishments. The surrounding neighborhood consists of a mix of single-family, two-family, and multi-family residential units.

- B. Site Conditions:** The 6,253 square foot subject lot is on the North side of University Avenue, a short distance West of California Street, and is located in the C-U (University Commercial District). The project site is developed with an existing two-story mixed-use building, and the subject restaurant is located in a 2,720 square foot space on the first floor. There are dwelling units above on the second floor. An adjacent parking lot to the east of the building has eight spaces.

III. Project Description

The existing restaurant, Himalayan Flavors, has a permit (ZCPT2019-0015) to serve beer and wine incidental to food service at this location under a Type 41 ABC license. The applicant proposes to add the service of distilled spirits under a Type 47 ABC license. The proposed hours of operation are 10 a.m. – 10 p.m., seven days a week.

IV. Community Discussion

- A. Neighbor/Community Concerns:** A pre-application poster was installed on the building by the applicant in August 2021. In June, 2022 the applicant reached out to owners and occupants of all abutting and confronting residential units by personal contact. On June 30, 2022, public hearing notices were mailed to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations. The City also posted notices within the neighborhood in three locations. At the time of writing this report, staff has not received any public comment 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-U District if a Use Permit is granted by the Zoning Adjustments Board in accordance with required findings (BMC 23.310.030).

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. In the present case, no other Type 47 licenses exist within 1,000 feet of the project site. Therefore, these findings are not necessary.

- B. C-U District Findings:** Alcoholic beverage sales and service is allowed in the C-U District (BMC 23.310.030) if a Use Permit is granted by the Zoning Adjustments Board in accordance with required findings. In order to approve a Use Permit in the C-U

District, under BMC Section 23.204.060(E), the Board must find that the proposed use must:

1. *Be compatible with the purpose of the district:*

Staff Analysis: The existing restaurant is compatible with the General Plan, provides convenient dining opportunities for the neighborhood, is pedestrian friendly, is well served by public transit, and is generally compatible with the University Avenue strategic plan. The addition of distilled spirits will not affect that compatibility.

2. *Be compatible with surrounding land uses and buildings:*

Staff Analysis: The restaurant already exists in this location. Adding distilled spirits to its menu will not alter its compatibility with the surrounding land uses and buildings.

3. *Not interfere with the continuity of retail and service facilities at the ground level;*

Staff Analysis: The restaurant use is located on the ground level of the building, which would maintain the continuity of a neighborhood food service establishment on the ground floor.

4. *Not exceed the amount and intensity of use that can be served by available traffic capacity and potential parking supply.*

Staff Analysis: The existing food service establishment use and increased service of distilled spirits is incidental and does not change the underlying use, and therefore, would not exceed the amount and intensity of use that can be served by the available traffic capacity or parking supply.

C. General Non-Detriment Finding: BMC Section 23.406.040(E) 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.

Staff Analysis: The alcohol service would be incidental to food service, and due to the incidental nature of the service, as well as the size and location of the restaurant, the addition of distilled spirits would not have a detrimental impact on public health, safety, or peace. The permit is subject to the standard conditions for food and alcohol service, which would ensure that the restaurant tenant is a good neighbor.

B. General Plan Consistency: The 2002 General Plan contains a policy applicable to the project:

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.

2. Policy LU-27-Avenue Commercial Areas: Maintain and improve Avenue Commercial areas, such as University, San Pablo, Telegraph, and South Shattuck, as pedestrian-friendly, visually attractive areas of pedestrian scale and ensure that Avenue areas fully serve neighborhood needs as well as a broader spectrum of needs.

Staff Analysis: The continuation of the existing restaurant will help to maintain the University Avenue Commercial Area. Furthermore, the addition of distilled spirits to the menu will increase the services available in an immediate neighborhood that currently doesn't have any other establishments with Type 47 ABC licenses.

3. Policy LU-29-University Avenue Strategic Plan: Implement the University Avenue Strategic Plan and take actions to achieve the six goals of the Plan:

1. Increase public safety for residents, merchants, and customers.
2. Revitalize the University Avenue corridor through appropriate economic development and housing.
3. Protect and improve neighborhood quality of life.
4. Encourage more pedestrian-oriented development and an appropriate mix of uses to improve neighborhood identity.
5. Enhance University Avenue as a gateway to the city, a series of neighborhoods, and the Downtown.
6. Coordinate and enhance public transit systems, pedestrian access, and bicycle circulation.

Staff Analysis: The restaurant's continued existence at this location will help to support these goals. The negligible effect of adding distilled spirits to their menu should not alter its effect on the neighborhood.

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:

APPROVE Use Permit #ZP2021-0144 pursuant to Section 23.406.040, subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

1. Findings and Conditions
2. Berkeley Police Department comment letter dated November 9, 2021
3. Notice of Public Hearing

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

ATTACHMENT 1

FINDINGS AND CONDITIONS

JULY 14, 2022

1585 University Avenue

Use Permit #ZP2021-0144 to allow service of beer, wine, and distilled spirits incidental to food service at an existing restaurant

PERMITS REQUIRED

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

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(E) 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-U 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 University Corridor 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 23.204.060(E) of the BMC, the Zoning Adjustments Board finds that:
 - A. The existing restaurant is compatible with the general plan in that it provides convenient dining opportunities for the neighborhood, is pedestrian friendly, is well served by public transit, and is generally compatible with the University Avenue strategic plan. The addition of distilled spirits will not affect that compatibility.
 - B. Since the restaurant already exists in this location, adding distilled spirits to its menu will not alter its compatibility with the surrounding land uses and buildings.
 - C. The restaurant use is located on the ground level of the building, which would maintain the continuity of a neighborhood food service establishment on the ground floor.
 - D. The existing food service establishment use and increased service of distilled spirits is incidental and does not change the underlying use, and therefore, would not exceed the amount and intensity of use that can be served by the available traffic capacity or parking supply.
-

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:

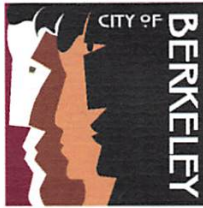
ALCOHOLIC BEVERAGE SERVICE CONDITIONS (on-site)

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 25 percent 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 33 percent 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 percent 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 six months of employment at the establishment. Employees who have completed the course within the last five 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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Police Department

November 9, 2021

TO: James Frank, Associate Planner
City of Berkeley, Department of Planning and Development
1947 Center Street
Berkeley, CA 94704

Re: **Everest Restaurant LLC/DBA Himalayan Flavors, 1585 University Avenue**

Dear Mr. Frank,

This letter is in response to your request to review a proposed change to the above business as outlined in the attached Zoning Project Application. The project comprises a change in ABC license status for an established restaurant, **Everest Restaurant LLC/DBA Himalayan Flavors**. They propose to upgrade their existing Type 41 License (On-Sale Beer and Wine – Eating Place) to a Type 47 License (On-Sale General – Eating Place). From the submitted plans, it appears the only change is the type of license and nature of alcoholic beverages they will offer. There are no other proposed modifications to the physical plant or restaurant operations.

Based on the information from the Applicant's statement and research of our records, Berkeley Police Department supports issuance of this license.

As previously noted, it appears from the application there are no substantive changes to the business or its operation other than the addition of hard alcohol sales. This restaurant appears to have been in existence at this location since at least 2013, but there have been several similar restaurants in this location for many years. There is no reason to believe this addition will change the amount or patterns of their clientele.


An analysis of police call for service data shows 58 calls for service in the current BPD database, which dates to 2009; however almost half of them (26 calls) are alarm calls. This probably indicates a deficiency in the alarm equipment or procedures, especially since 23 of the calls occur after July of 2020, and there are only alarm calls during this period. There are a number of miscellaneous calls, but nothing indicates a pattern of conduct from the business that causes or abets crime or disorder.

The Himalayan Flavors Restaurant appears to generally fit the pattern for smaller neighborhood restaurants. They do not have a business model that attracts crime or problematic behaviors, and

there is nothing in our records, or in a search of the ABC Licensee database, to indicate the management have a history of trouble managing alcohol sales at their establishment.

Overall, we see no reason to believe this business would increase crime or calls for service in the neighborhood, and see no reason it would have an adverse effect on the health, safety, or morals of the people in the area.

Sincerely,



Jennifer Louis
Chief of Police

JL:akm



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

1585 University Avenue

Use Permit #ZP2021-0144 to add the service of distilled spirits incidental to food service at an existing 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 July 14, 2022, **conducted via Zoom, see the Agenda for details at: https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2022-07-14_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: C-U (University Avenue Commercial District)

B. Zoning Permits Required:

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

C. CEQA Recommendation: Categorically exempt pursuant to Section 15301 of the CEQA Guidelines ("Existing Facilities"). **-OR-** (Mitigated) negative declaration prepared pursuant to Article 6 of the CEQA Guidelines (see Attachment click and enter #). **-OR-** Environmental impact report prepared pursuant to Article 7 of the CEQA Guidelines.

D. Parties Involved:

- Applicant Tindu Sherpa
- Property Owner Hon Management, Inc.

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>

All persons are welcome to attend the virtual hearing and will be given an opportunity to address the Board. Comments may be made verbally at the public hearing and/or in writing before the hearing. The Board may limit the time granted to each speaker.

Correspondence received by 5:00 PM, eight days before this public hearing, will be provided with the agenda materials provided to the Board. Note that if you submit a hard copy 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 5:00 PM two days before** this public hearing, will be conveyed to the Board in a Supplemental Communications and Reports, which is released around noon one day before the public hearing; or
- **Correspondence received after 5:00 PM two days before** this public hearing will be saved in the project administrative record.

It will not be possible to submit written comments at the meeting.



Accessibility Information / ADA Disclaimer:

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.

SB 343 Disclaimer:

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available to the public. Please contact the Land Use Planning Division (zab@cityofberkeley.info) to request hard-copies or electronic copies.

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.
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.