



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
FEBRUARY 23, 2023

2930 College Avenue

Use Permit #ZP2022-0139 to add the service of distilled spirits under a new Type 47 ABC license, expand the existing outdoor seating area by 239 square feet on private property, and allow indoor unamplified live music at an existing full-service restaurant.

I. Background

A. Land Use Designations:

- General Plan: NC (Neighborhood Commercial)
- Zoning: C-E (Elmwood Commercial District)

B. Zoning Permits Required:

- Use Permit, pursuant to Berkeley Municipal Code (BMC) Section 23.310.020, to add the service of distilled spirits under a new Type 47 ABC license.

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: RM Ventures, LLC (In the Wood), 2930 College Avenue, Berkeley, CA 94705
- Property Owners: John and Molly Gordon, 2091 Rose Street, Berkeley, CA 94709

Figure 2: Restaurant Floor Plan

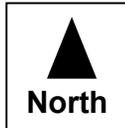
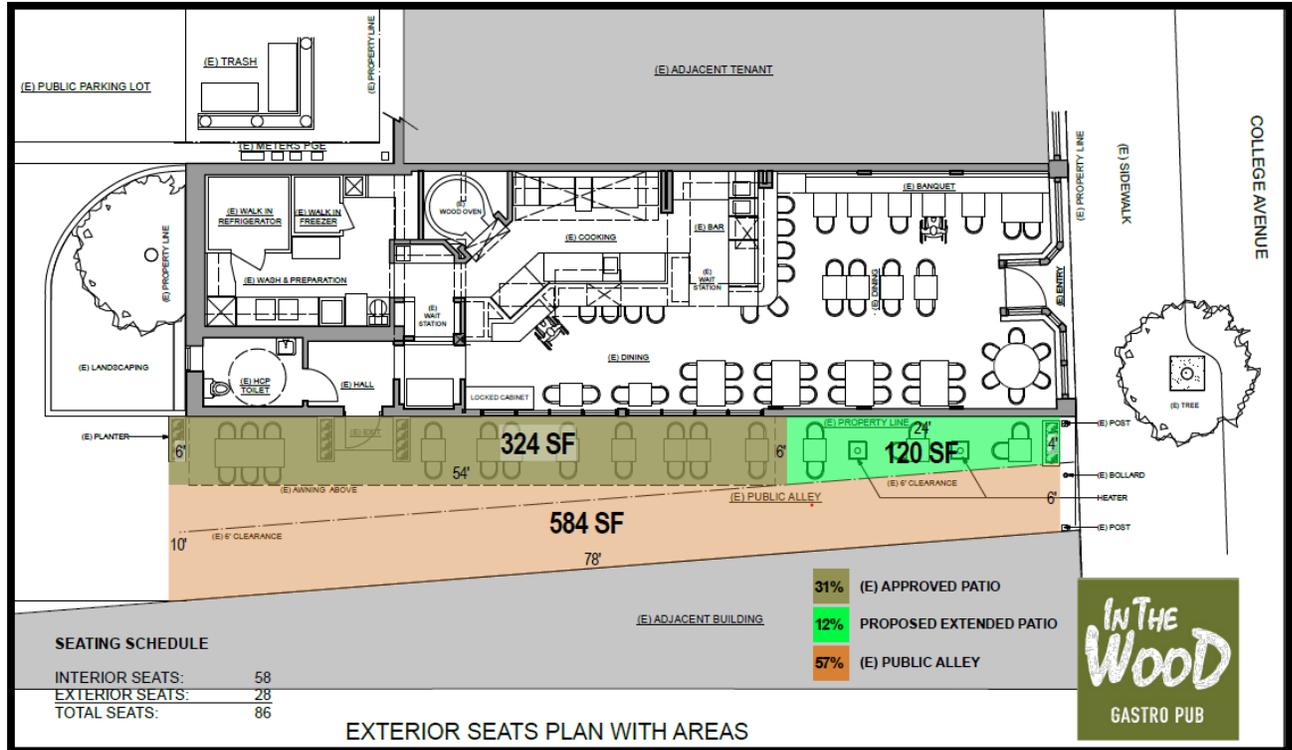


Figure 3: Liquor Licenses within 1,000 feet of the project site



■	20	Off-site beer and wine
▲	42	On-site beer and wine
▲	47	On-site beer, wine, and liquor



Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Restaurant	C-E	Elmwood Commercial
Surrounding Properties	North	Restaurant	C-E	
	South	Restaurant	C-E	
	East	Retail	C-E	
	West	Public Parking Lot	C-E	

Table 2: Special Characteristics

Characteristic	Applies to Project?	Explanation
Alcohol	Yes	The site currently has approval for on-site incidental service of beer and wine (Type 41 ABC license). The operator has applied to add service of distilled spirits (Type 47 ABC License).
Public Convenience or Necessity	Yes	There are two other Type 47 ABC licenses within 1,000 feet. Therefore, public convenience and necessity findings are 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 three 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
October 11, 2022	Application submitted
January 13, 2023	Application deemed complete
February 9, 2023	Public hearing notices mailed
February 23, 2023	ZAB hearing

II. Project Setting

A. Neighborhood/Area Description: The project site is located on the west side of College Avenue between Ashby Avenue and Russell Street, within the Elmwood Commercial (C-E) District. The C-E District consists primarily of low-rise buildings containing various retail and dining establishments. The surrounding neighborhood consists primarily of a mix of single-family and two-family residences.

B. Site Conditions: The project site is located on 4,854 square-foot parcel developed with a 4,331 square-foot single story commercial building. The building includes three individual commercial retail spaces. The existing restaurant, and proposed project, operates in a 1,522 square-foot unit. A public surface parking lot is located directly behind the commercial building.

III. Project Description

The existing restaurant, In the Wood, is currently permitted to serve beer and wine incidental to food service under a Type 41 ABC license (ZCBL2018-0047). The applicant proposes to add the service of distilled spirits under a Type 47 ABC license. The proposed project would also expand the existing outdoor seating area by 239 square feet on private property, and allow indoor un-amplified live music. The proposed hours of operation are 7 a.m. – 11 p.m., seven days a week. The proposed hours for selling alcoholic beverages are 9 a.m. – 11 p.m., seven days a week. The use of the outdoor dining area will require a land lease agreement with the City of Berkeley, which is expected to go before City Council for approval in March, 2023, and which will be a condition of this use permit.

IV. Community Discussion

A. Neighbor/Community Concerns: A pre-application poster was installed on the building by the applicant in October 2022. On February 9, 2023, 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:** The sale and service of distilled spirits incidental to food service is allowed in the C-E District if a Use Permit is granted by the Zoning Adjustments Board (ZAB) in accordance with required findings as specified under BMC 23.310.020.

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. As shown in Figure 3, there are two other existing Type 47 ABC licenses within 1,000 feet of the project site, these licenses are held by: Donato & Co. at 2635 Ashby Avenue and King Yen Restaurant at 2995 College Avenue. Therefore, the "Public Convenience or Necessity" findings must be made.

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: The proposed addition of distilled spirits service would mean greater tax revenue for the City of Berkeley, with a greater variety of menu options to attract more people. It would also increase the economic health of the business whose cuisine offers a unique culinary opportunity to the community. The additional service would contribute to the cultural, economic, and social opportunities in the C-E District.

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

Staff Analysis: The addition of distilled spirits to the menu would potentially increase the economic success of the business in a way that would likely not be available with just beer and wine service. Staff notes that the increased business revenue would result in increased tax revenue for the City.

- 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 the City of Berkeley as verified by the Police Department, the ZAB shall determine whether such violations indicate a high likelihood of further violations and/or detrimental impacts from the proposed establishment. In making this determination, 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: A letter from the Berkeley Police Department, dated January 18, 2023, (Attachment 2) notes that there was an incident in 2019 where an In the Wood

employee was cited for selling alcohol to a minor. However, the letter indicates that this seems to have been an isolated incident.

- 4) *If the proposed establishment is located within 1,000 feet of any public park or Berkeley Unified School District (BUSD) school, the Board shall take into consideration the effect of the proposed establishment upon such sensitive public uses.*

Staff Analysis: The project site is not located within 1,000 feet from a public park or school.

- 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 BPD for review and comment. In a letter dated January 18, 2023, the BPD stated that, "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."

B. C-E District Findings: To approve a Use Permit in the C-E District, the ZAB must make the following permit findings in accordance with required findings BMC Section 23.204.080(E):

- 1) *The proposed use will:*
 - a) *Encourage and maintain the present street frontage and pedestrian orientation of the district;*
 - b) *Be compatible in design and character with the commercial district and the adjacent residential neighborhoods; and*
 - c) *Be compatible with the purposes set forth in Section 23.204.080.A and the existing character of the district.*
- 2) *The proposed use will not:*
 - a) *Interfere with the continuity of retail or compatible service facilities at the ground level;*
 - b) *Interrupt a continuous wall of building facades;*
 - c) *Generate traffic and parking demand beyond the capacity of the commercial district or significantly increase impacts on adjacent residential neighborhoods;*
 - d) *Result in domination of this district by one type of use; and*
 - e) *Generate objectionable odors nor excessive levels of noise.*

Staff Analysis: This project will not alter the present street frontage and, therefore, is compatible with the pedestrian orientation and character of the district and neighborhood. It may result in a slight increase in customers to the restaurant, but effects on the surrounding neighborhood and businesses would be negligible.

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 and the project must not 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 (alcohol service will remain incidental to food service, will be limited to normal meal hours of operation, off-site sales of alcoholic beverages will be prohibited, all applicable ABC regulations will be in effect, etc.). The outdoor service area will be demarcated with a physical barrier as a condition of the use permit and in accordance with ABC rules. Restaurant operating hours will comply with those allowed in the C-E zoning district. These factors will 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 service and sale of distilled spirits at an existing restaurant will enhance the customer experience and help the restaurant continue to promote the character of Berkeley as a special, diverse, and unique place to live and work.

2. Policy LU-26 Neighborhood Commercial Areas: Maintain and improve Neighborhood Commercial areas, such as Elmwood, Solano, and North Shattuck, as pedestrian-friendly, visually attractive areas and ensure that Neighborhood Commercial areas fully serve neighborhood needs.

Staff Analysis: Enhancing the variety of beverages at the existing restaurant will help to maintain and promote the neighborhood character of the College Avenue Commercial Area and attract increased business.

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 ZAB: **APPROVE** Use Permit #ZP2022-0139 pursuant to Section 23.406.040, subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

1. Findings and Conditions
2. Project Plans, received January 18, 2023
3. Berkeley Police Department comment letter dated January 18, 2023
4. Notice of Public Hearing

ZONING ADJUSTMENTS BOARD
February 23, 2023

2930 COLLEGE AVENUE
Page 10 of 10

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

ATTACHMENT 1

FINDINGS AND CONDITIONS

FEBRUARY 23, 2023

2930 College Avenue

Use Permit #ZP2022-0139 to add the service of distilled spirits under a new Type 47 ABC license, expand the existing outdoor seating area by 239 square feet on private property, and allow indoor unamplified live music at an existing full-service restaurant.

PERMITS REQUIRED

- Use Permit, pursuant to Berkeley Municipal Code (BMC) Section 23.310.020, to add distilled spirits under a new Type 47 ABC license.

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 parcel 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. 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-E District standards, including use and hours of operation;
 - B. The addition of distilled spirits alcoholic beverage service in the existing restaurant will not expand the footprint of the business. The proposed service will provide an additional option for patrons in the College 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 23.204.080(E) of the BMC, the Zoning Adjustments Board finds that:
 - 1) *The proposed use will:*
 - a) *Encourage and maintain the present street frontage and pedestrian orientation of the district;*
 - b) *Be compatible in design and character with the commercial district and the adjacent residential neighborhoods; and*
 - c) *Be compatible with the purposes set forth in Section 23.204.080.A and the existing character of the district.*
 - 2) *The proposed use will not:*
 - a) *Interfere with the continuity of retail or compatible service facilities at the ground level;*
 - b) *Interrupt a continuous wall of building facades;*
 - c) *Generate traffic and parking demand beyond the capacity of the commercial district or significantly increase impacts on adjacent residential neighborhoods;*
 - d) *Result in domination of this district by one type of use; and*
 - e) *Generate objectionable odors nor excessive levels of noise.*
2. As required by Section 23.310.020(D) of the BMC, the Zoning Adjustments Board finds that:
 - A. There are two other Type 47 ABC permits within a 1,000-foot radius of the subject site.
 - B. The proposed establishment of distilled spirits service will promote the City's economic health, contribute to General Plan or Area Plan policies, or further the district purposes because the addition of distilled spirits would mean greater tax revenue for the City of Berkeley, would increase the economic health of the business, whose cuisine offers a unique culinary opportunity for the community, and the additional service would contribute to the cultural, economic, and social opportunities in the Elmwood Commercial District.
 - C. The addition of distilled spirits to the menu would potentially increase the economic success of the business in a way that would likely not be available with just beer and wine service.
 - D. This restaurant, which already exists in this neighborhood, has not been the subject of any State of California violations, and has not had any calls for service from the Berkeley Police Department in the last three years.

- E. There are no public parks or schools within 1,000 feet of the project site.
- F. The Berkeley Police Department has indicated support for the proposed project.

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)

10. The Food Service Establishment shall comply with all applicable regulations of the California Department of Alcoholic Beverage Control (ABC).
11. 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.
12. 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.
 13. 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.
 14. 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.
 15. The sale of alcoholic beverages for consumption off the premises is prohibited.
 16. There shall be no service or consumption of alcohol on the public right-of-way, unless authorized by a Public Works sidewalk seating permit.
 17. 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.
 18. 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.
 19. 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.
 20. A Berkeley Police Department Crime Prevention Through Environmental Design (CPTED) survey shall be completed prior to commencing alcohol service.
 21. 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.
 22. Employees shall not serve alcohol to patrons who appear to be inebriated or otherwise unable to behave in an orderly manner upon consuming alcohol.

23. 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.
24. Fortified alcohol products (e.g., malt liquor), shall not be sold on the premises.
25. The applicant shall establish cash handling procedures to reduce the likelihood of robberies and theft.
26. At no time shall the operator rent the restaurant space to a third-party promoter.
27. 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.
28. This Use Permit, including these and all other required conditions, shall be posted in conspicuous location, available for viewing by any interested party.
29. 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.

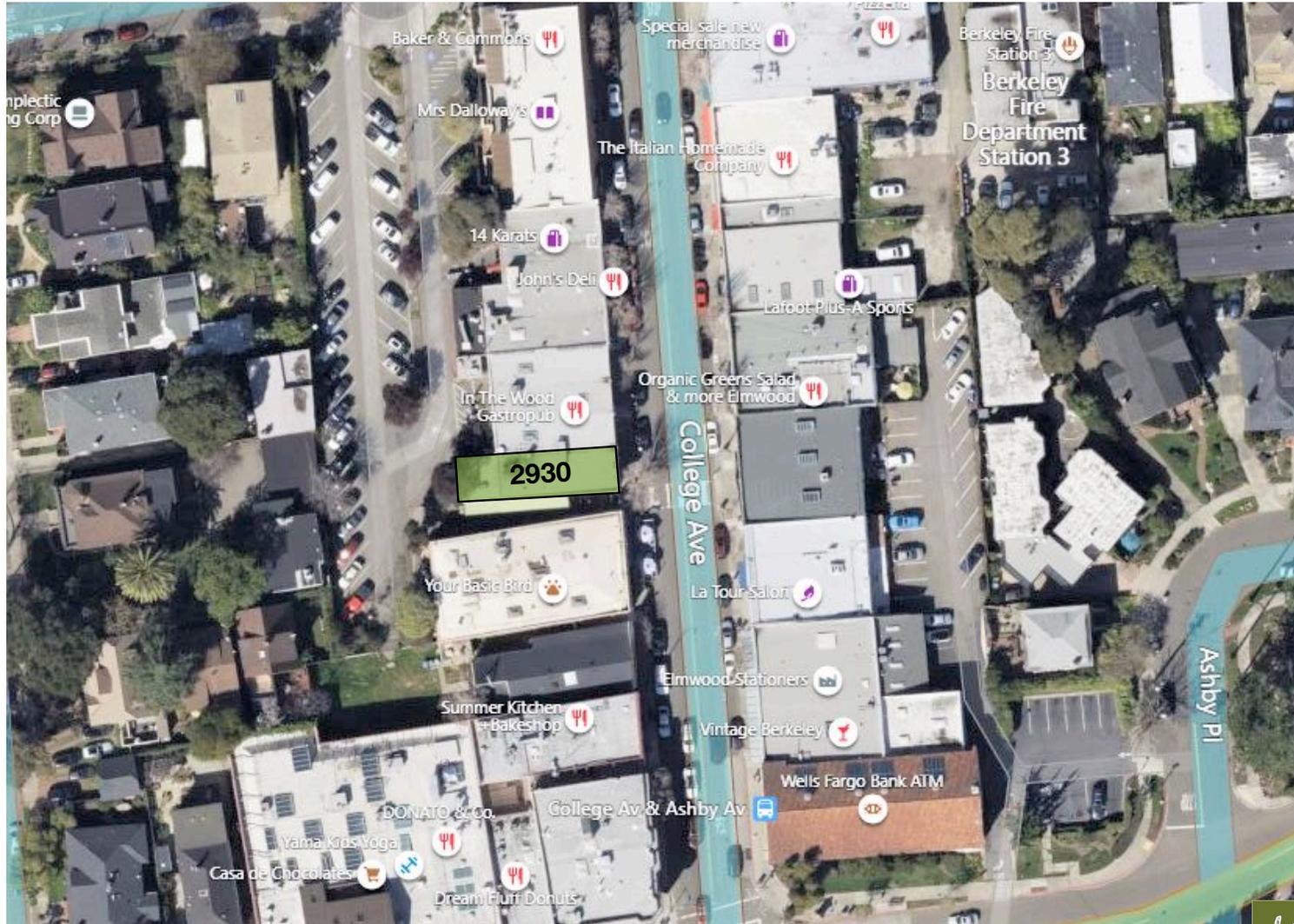
OUTDOOR DINING CONDITIONS

30. There shall be no live entertainment in the outdoor seating area.
31. There shall be a signed land lease agreement, approved by Berkeley City Council within 90 days of the issuance of this use permit, for outdoor dining to continue on the City-owned property adjacent to the restaurant. Use of the leased space shall adhere strictly to the conditions of the lease agreement and of this Use Permit.
32. Seating and tables in the outdoor dining area shall not exceed that designated on the approved plans accompanying this permit.
33. Outdoor patrons shall be in sight of, and monitored by, restaurant staff to ensure that alcohol consumption remains within the designated outdoor dining area.

- 34.** The applicant shall provide a means of demarcation of the leased area permitted for outdoor dining in the form of stanchions, railing, or similarly effective visual barriers. The area outside of the leased area shall be kept clear of tables, chairs, and patrons at all times.

HOURS OF OPERATION

- 35.** Patrons shall only be permitted on the restaurant site between the hours of 7:00am to 11:00pm, Sunday through Saturday.



SATELLITE VIEW



Richard Tapp Associates
Architecture • Planning • Interior Design

2 COMMODORE DR. UNIT 383, EMERYVILLE CA. 94707
(510) 701-8277 - rtapparchitect@aol.com



2930 COLLEGE AVE.
BERKELEY, CA

10/04/22

1568

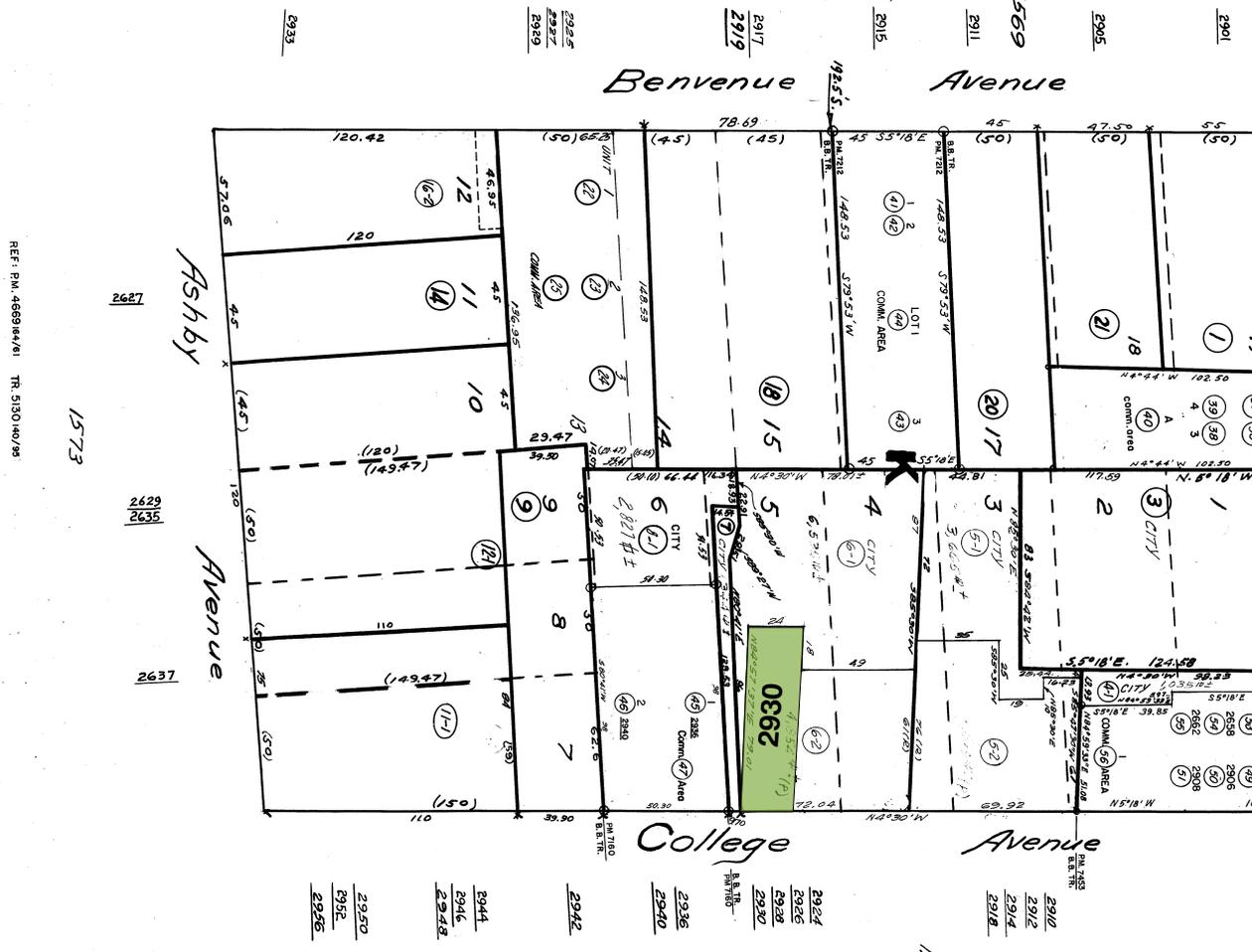
ASSESSOR'S MAP 52

Code Area No. 13-000



The Berg Bangs Tract Map No. 3
Scale: 1"=40'

- Rev. 8-2-77 73-2
- 3-14-84
- 2-27-86 BY
- 9-25-86 PB
- 9-02-86 LCA
- 1-15-99 PB
- 3-9-00 PB
- 11-3-00 PB



REF: P.M. 4569/84/81 TR. 3130/40/95

1573

2627

2629
2635

2637

2628

2642
2646

P.M. 6655/223/95
P.M. 7453/246/53

P.M. 7212/234/83
P.M. 7160/236/88

ASSESSOR'S MAP

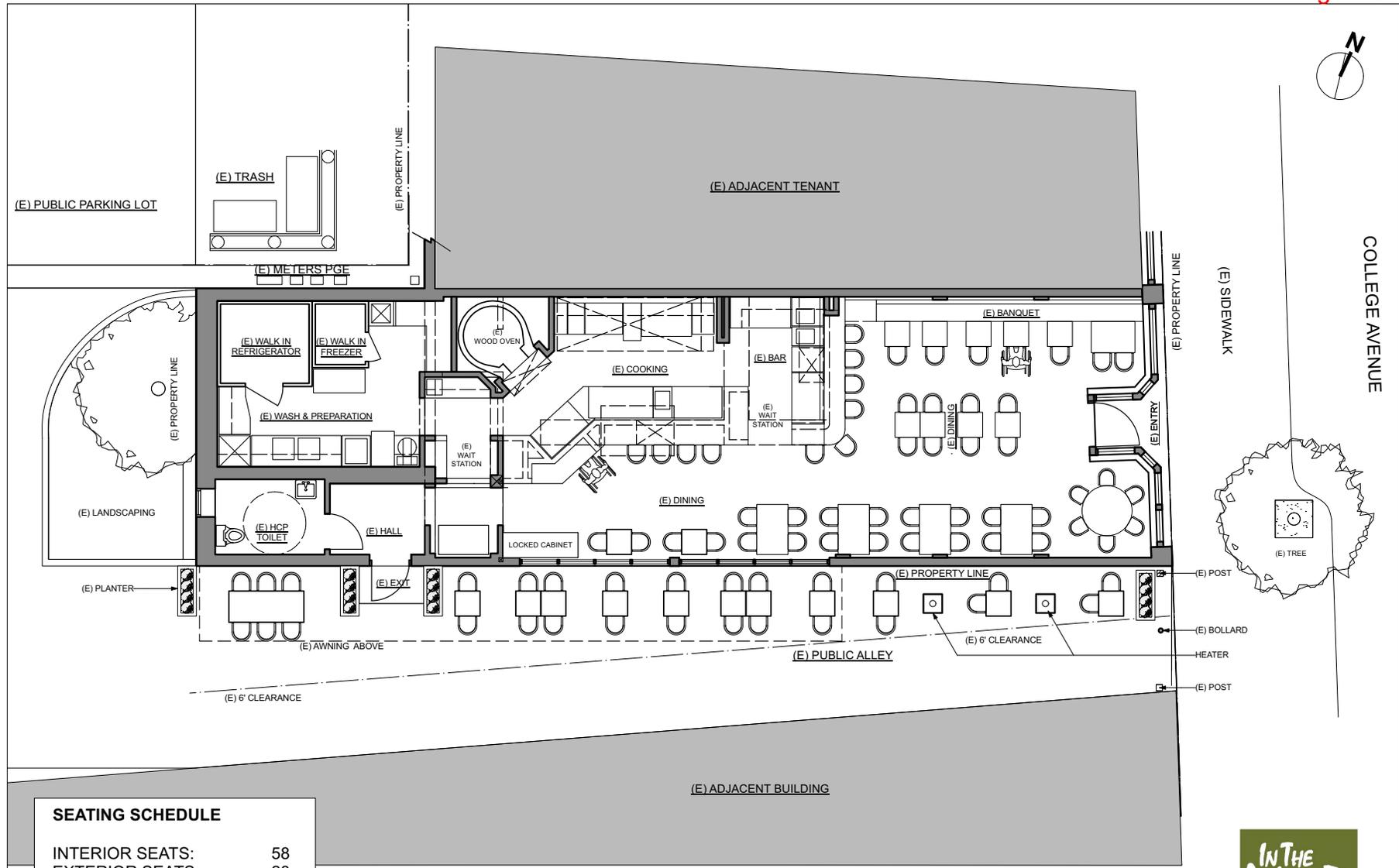


Richard Tapp Associates
Architecture • Planning • Interior Design

2 COMMODORE DR. UNIT 383, EMERYVILLE CA. 94707
(510) 701-8277 - rtapparchitect@aol.com

2930 COLLEGE AVE.
BERKELEY, CA

10/04/22



SEATING SCHEDULE	
INTERIOR SEATS:	58
EXTERIOR SEATS:	28
TOTAL SEATS:	86

SITE PLAN WITH SEATS



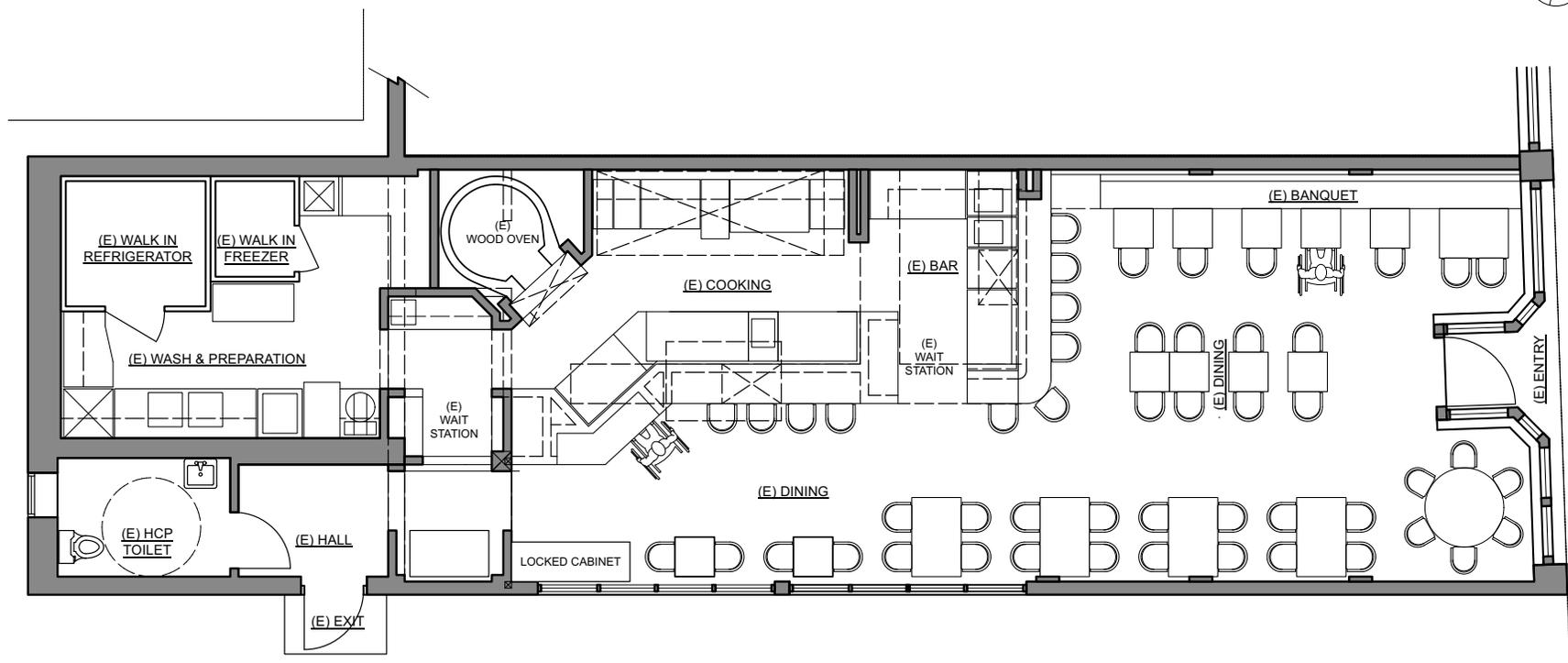
Richard Tapp Associates
 Architecture • Planning • Interior Design

2 COMMODORE DR. UNIT 383, EMERYVILLE CA. 94707
 (510) 701-8277 - rtapparchitect@aol.com



2930 COLLEGE AVE.
 BERKELEY, CA

10/04/22



INTERIOR SEATING SCHEDULE
 NUMBER OF SEATS: 58

FLOOR PLAN WITH SEATS

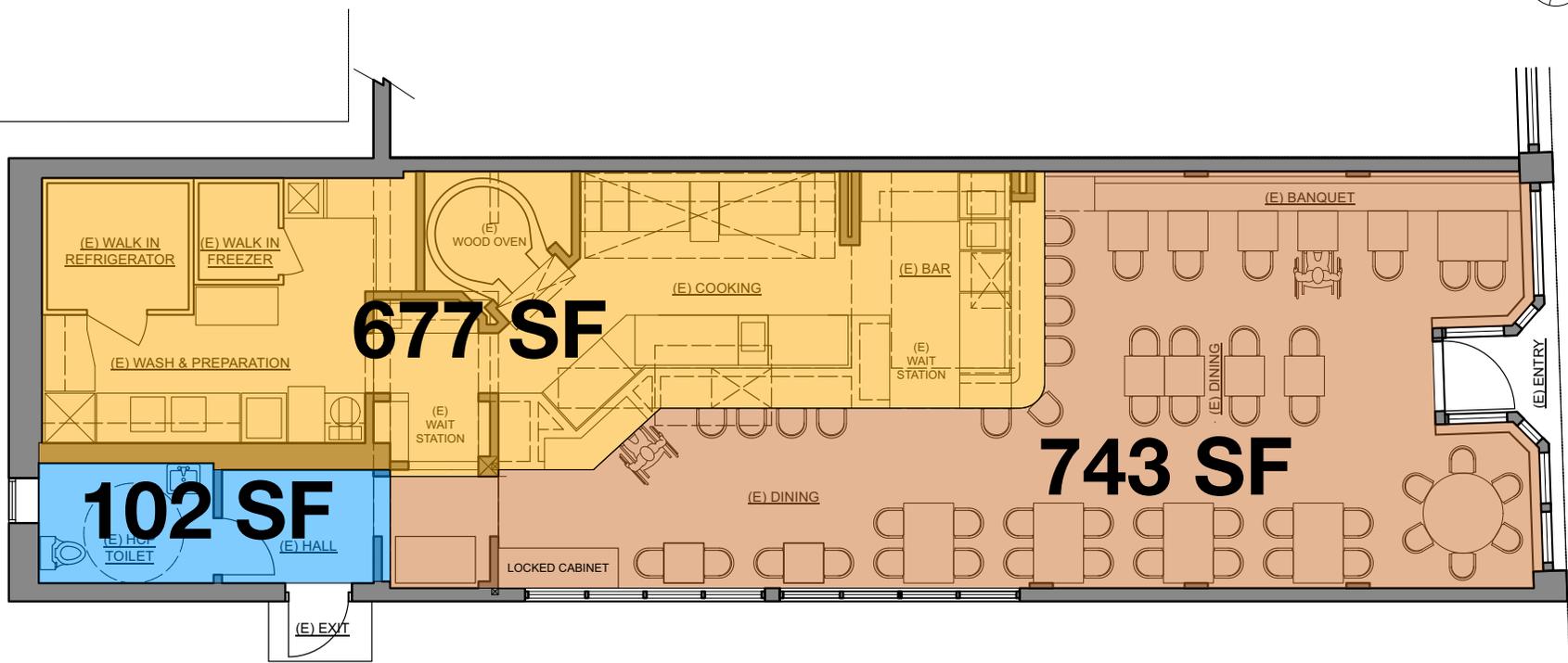


Richard Tapp Associates
 Architecture • Planning • Interior Design
 2 COMMODORE DR. UNIT 383, EMERYVILLE CA. 94707
 (510) 701-8277 - rtapparchitect@aol.com



2930 COLLEGE AVE.
 BERKELEY, CA

10/04/22



AREA SCHEDULE	
 CUSTOMER AREA:	743 SF
 SERVICE/KITCHEN AREA:	677 SF
 HALL & TOILET AREA:	102 SF
TOTAL AREA:	1,522 SF

FLOOR PLAN WITH AREAS



Richard Tapp Associates
 Architecture • Planning • Interior Design

2 COMMODORE DR. UNIT 383, EMERYVILLE CA. 94707
 (510) 701-8277 - rtapparchitect@aol.com



2930 COLLEGE AVE.
 BERKELEY, CA

10/04/22



RESTAURANT INTERIOR



SIDE ALLEY SEATING



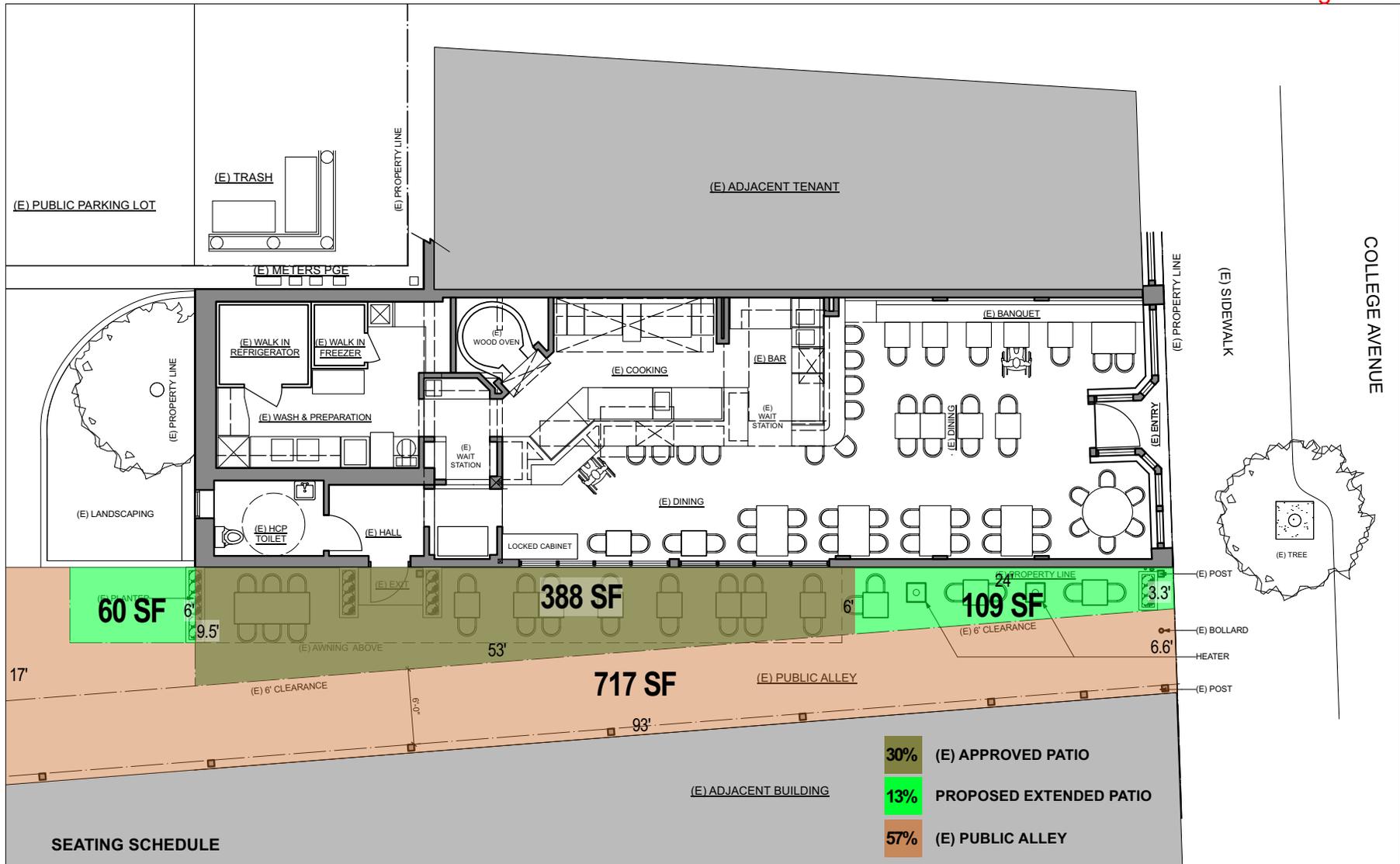
Richard Tapp Associates
Architecture • Planning • Interior Design

2 COMMODORE DR. UNIT 383, EMERYVILLE CA. 94707
(510) 701-8277 - rtapparchitect@aol.com



2930 COLLEGE AVE.
BERKELEY, CA

10/04/22



SEATING SCHEDULE

INTERIOR SEATS:	58
EXTERIOR SEATS:	28
TOTAL SEATS:	86

SITE PLAN
EXTERIOR SEATS PLAN WITH AREAS



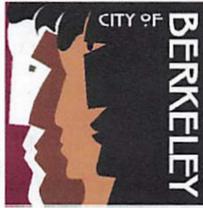
Richard Tapp Associates
 Architecture • Planning • Interior Design
 2 COMMODORE DR. UNIT 383, EMERYVILLE CA. 94707
 (510) 701-8277 - rtapparchitect@aol.com



TENANT IMPROVEMENTS
 2930 COLLEGE AVE.
 BERKELEY, CA

01/11/23





Police Department

January 18, 2023

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

Re: RM Ventures LLC/DBA *In the Wood Gastro Pub*, 2930 College Avenue

Dear Mr. Roe,

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 several minor changes to the business:

- An increase in the area of the outside seating of 133 sq. ft.
- Adding operating hours, so the business will now be open 9 am to 11pm
- Adding non-amplified music in the restaurant and the outdoor seating area

Additionally, the applicant indicates they will upgrade from their current Type 41 ABC license (On Sale Beer/Wine Eating Place) to Type 47 ABC license (On Sale General Eating Place).

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

The changes to the restaurant at this location do not seem likely to significantly alter vehicle or pedestrian traffic in the area. This area of College Avenue has several restaurants in this two-block stretch, and comprises a small but dense and well-traveled restaurant district.

We also believe the proposed business is not likely to increase crime or disorder. An analysis of police call-for-service data also bears out this opinion. Because this space was previously occupied by a similar concept restaurant (i.e. same general seating arrangement, same casual atmosphere, similar price structure and alcohol service), we can somewhat easily judge if such a business in this location would tend to be a magnet for problems.

We find 53 calls for service in our current database, which dates to 2009. In The Wood took over from the previous restaurant (which was called Filippo's) in 2018, and 18 of the calls occur after this change. Of these 53 calls for service in 12 years, a plurality seemed to be placed by each restaurant's owner or management asking for assistance or making police reports as the victim, for example with issues with emotionally disturbed people entering the restaurant or causing disturbances. One

Internal

2 | Page

incident that does stand out is when an employee of the In The Wood was cited for furnishing alcohol to a minor during a minor decoy operation conducted by Berkeley PD (see case 2019-65349 for further). However, we are not aware of evidence that alcohol violations are a pervasive problem at this business.

The allocation for the upgraded license they are requesting was previously held by a restaurant on the same block, and that restaurant, Shen Hua, showed no issues related to their full-service license, such as drastically altering the type or level of patronage (i.e. attracting many more patrons, attracting a much younger demographic including minors, or attracting more large groups). Researching other unrelated applications in the past, we have noticed a correlation between businesses having live music and increased calls for service to BPD, often for noise complaints. However, it seems it is usually amplified live music that creates the most issues, and In The Wood proposes to only have non-amplified music.

A search of the California ABC public data portal shows there are no alcoholic beverage violations reported against the business other than the previously noted violation, and there is no added reason to believe they will not serve alcohol responsibly.

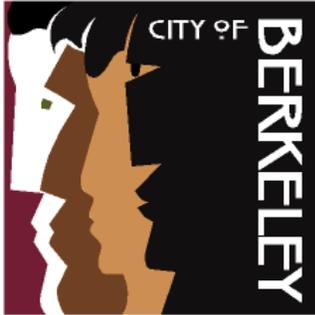
In conclusion, we see no reason to believe this business would increase crime or calls for service in the neighborhood, and see no reason it would have an adverse effect on the health, safety, or morals of the people in the area.

Sincerely,

A handwritten signature in blue ink, appearing to be "Jen Louis", with a blue checkmark and the number "5" written next to it.

Jen Louis
Chief of Police (Interim)

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

2930 College Avenue

Use Permit #ZP2022-0139 to add the service of distilled spirits under a new Type 47 ABC license, expand the existing outdoor seating area by 239 square feet on private property, and allow indoor unamplified live music at an existing 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 February 23, 2023, **conducted via Zoom, see the Agenda for details at:** https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2023-02-23_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 Government Code Section 54953(e) and the state declared emergency, this meeting of the Zoning Adjustments Board (ZAB) will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.

A. Land Use Designations:

- General Plan: NC (Neighborhood Commercial)
- Zoning: C-E (Elmwood Commercial District)

B. Zoning Permits Required:

- Use Permit, pursuant to Berkeley Municipal Code (BMC) Section 23.310.020, to add the service of distilled spirits under a new Type 47 ABC license.

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 RM Ventures, LLC (In the Wood), 2930 College Avenue, Berkeley, CA 94705
- Property Owner John and Molly Gordon, 2091 Rose Street, Berkeley, CA 94709

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.