



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  
OCTOBER 26, 2023

## 1287 Gilman Street

Use Permit #ZP2023-0122 to add the retail sale of wine under a Type 20 Alcoholic Beverage Control (ABC) license, and on-site wine service under a Type 42 ABC license to a commercially zoned property.

### I. Background

#### A. Land Use Designations:

- General Plan: Neighborhood Commercial (NC)
- Zoning: Neighborhood Commercial (C-N)

#### B. Zoning Permits Required:

- Use Permit, pursuant to Berkeley Municipal Code (BMC) Section 23.310.020, to serve alcoholic beverages not incidental to food service;
- Use Permit, pursuant to BMC 23.310.020, to allow retail sales of wine in the C-N zoning district; and
- Use Permit, pursuant to BMC 23.302.020(E)(4), to allow outdoor dining on a commercial lot abutting a residential district.

**C. CEQA Recommendation:** It is staff's recommendation to the Zoning Adjustments Board (ZAB) that the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code Section 21000, et seq. and California Code of Regulations, Section 15000, et seq.) pursuant to CEQA Guidelines Section 15301 ("Existing Facilities"). The determination is made by ZAB.

#### A. Parties Involved:

- Applicant: Diva Robin, 249 Curry Avenue, Vallejo
- Property Owner: Robert Kelso, 2836 Tice Creek Drive, #1, Walnut Creek

Figure 1: Vicinity

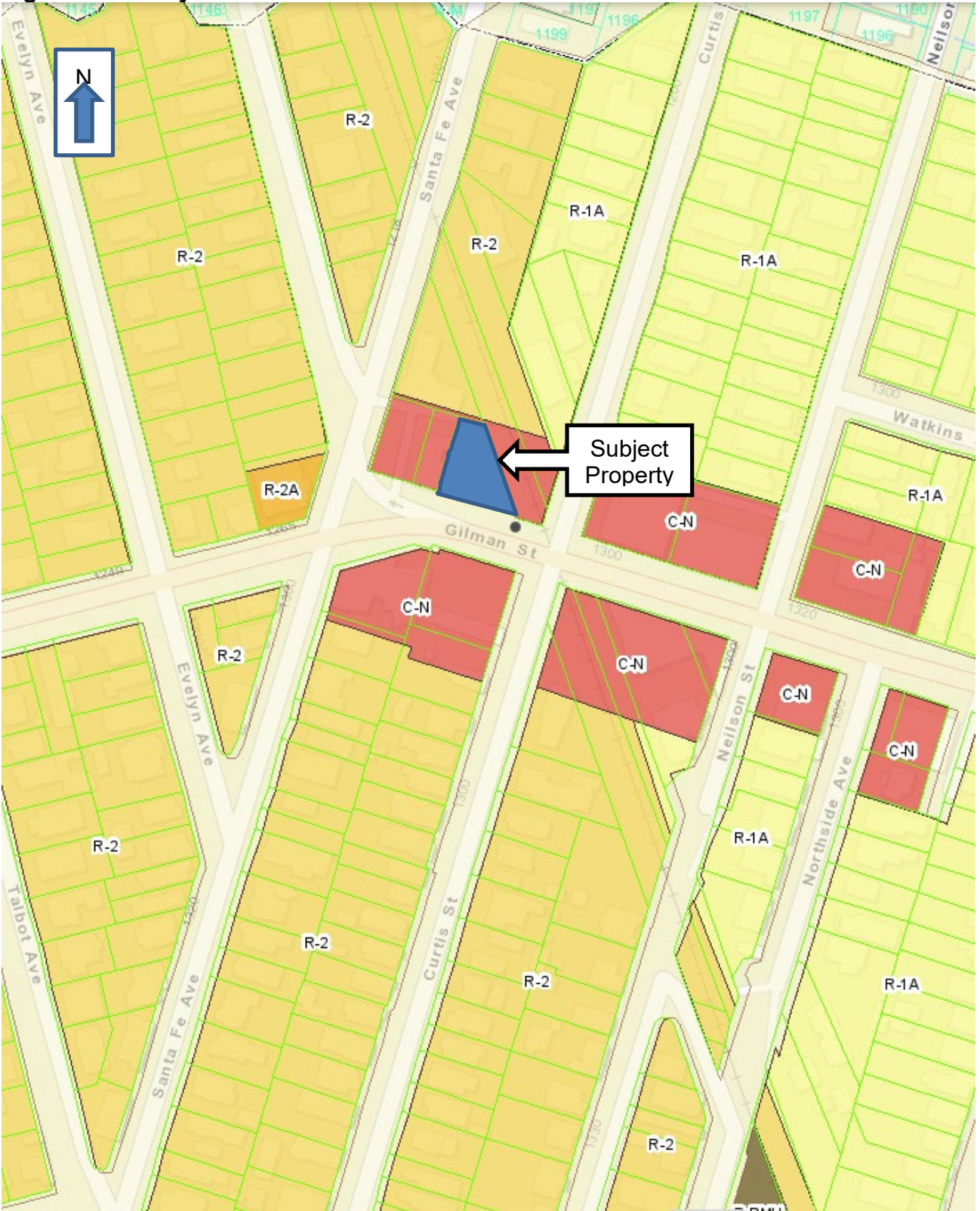


Figure 2: Site Plan

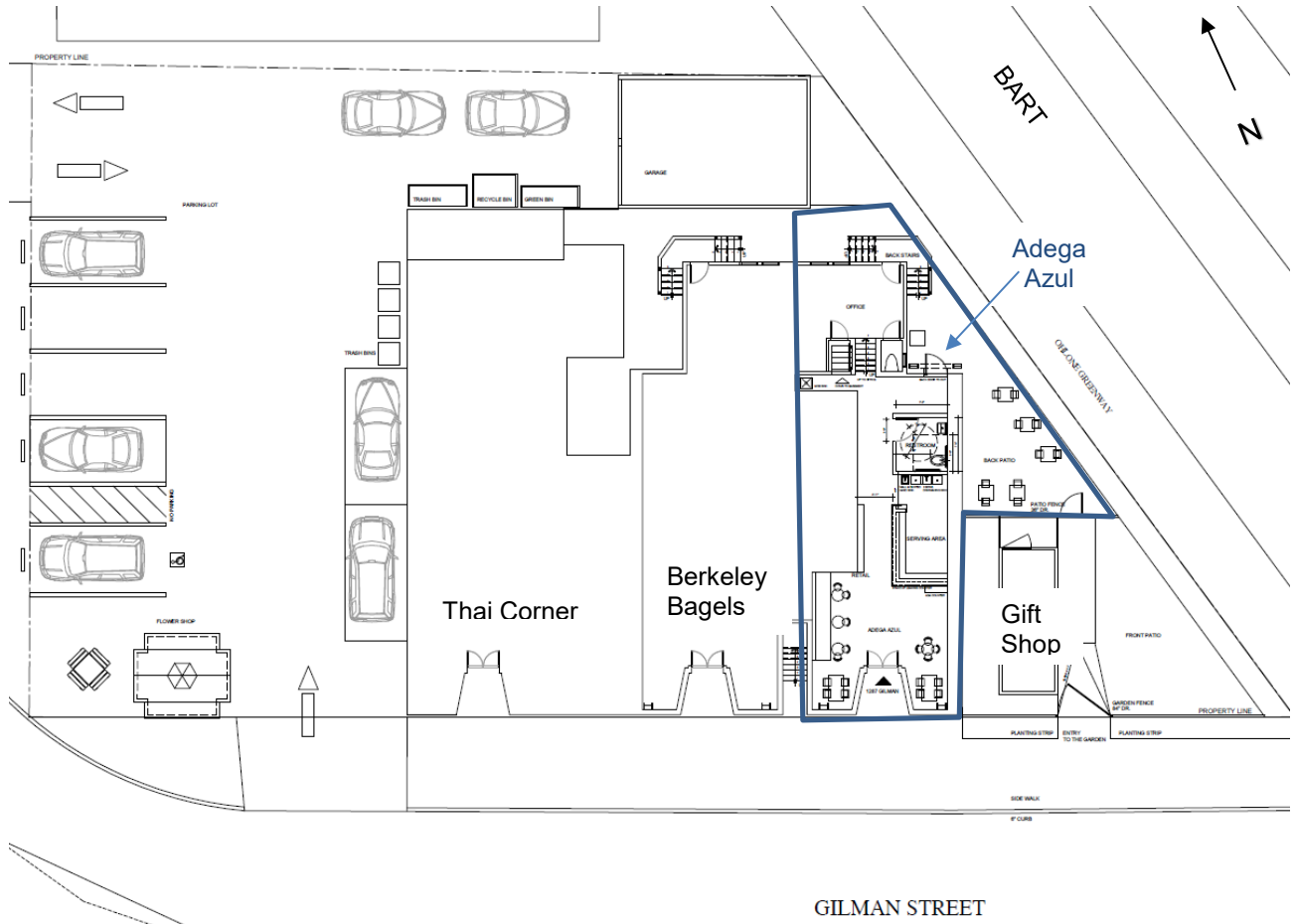


Figure 3: Floor Plan

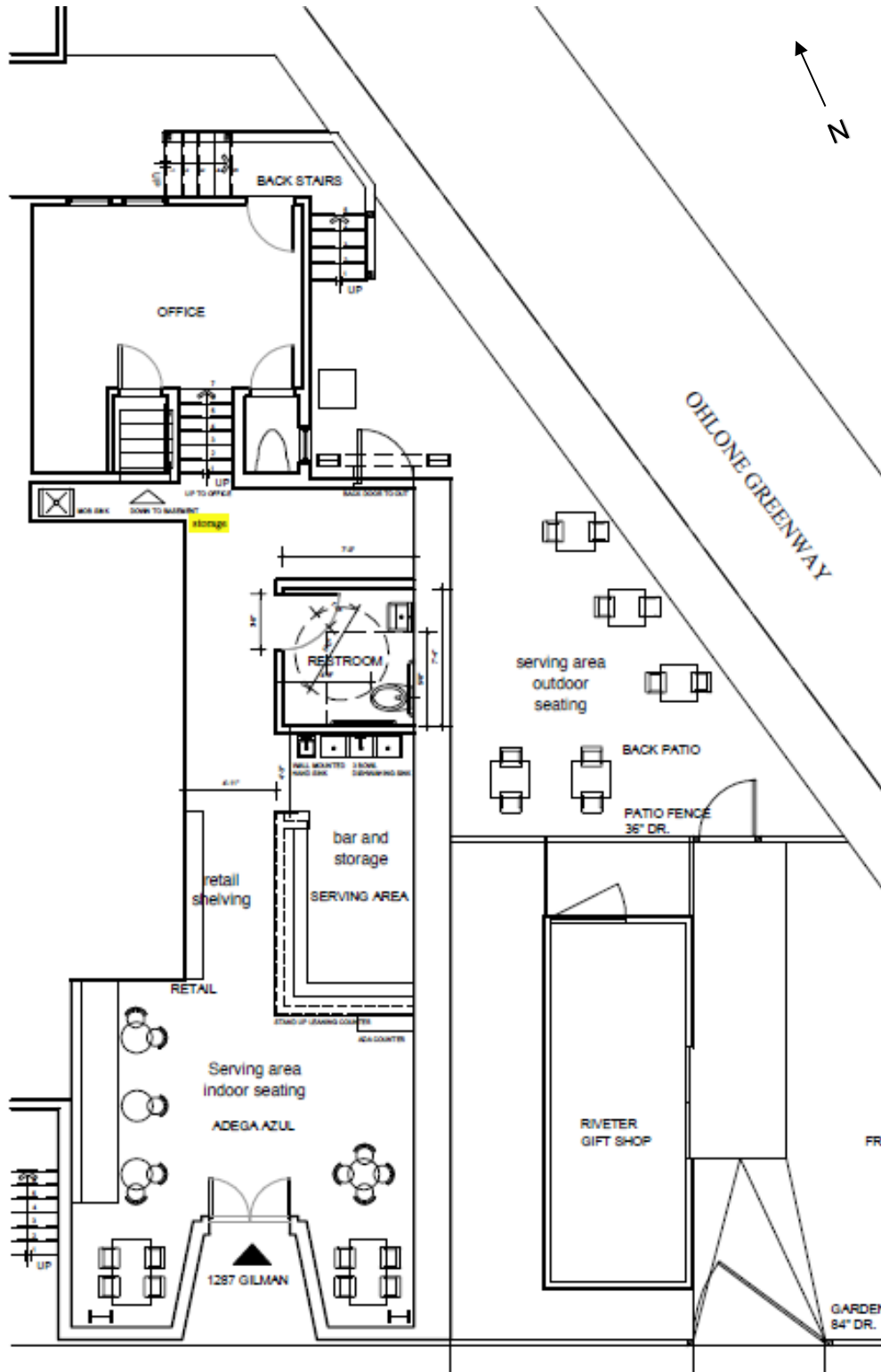
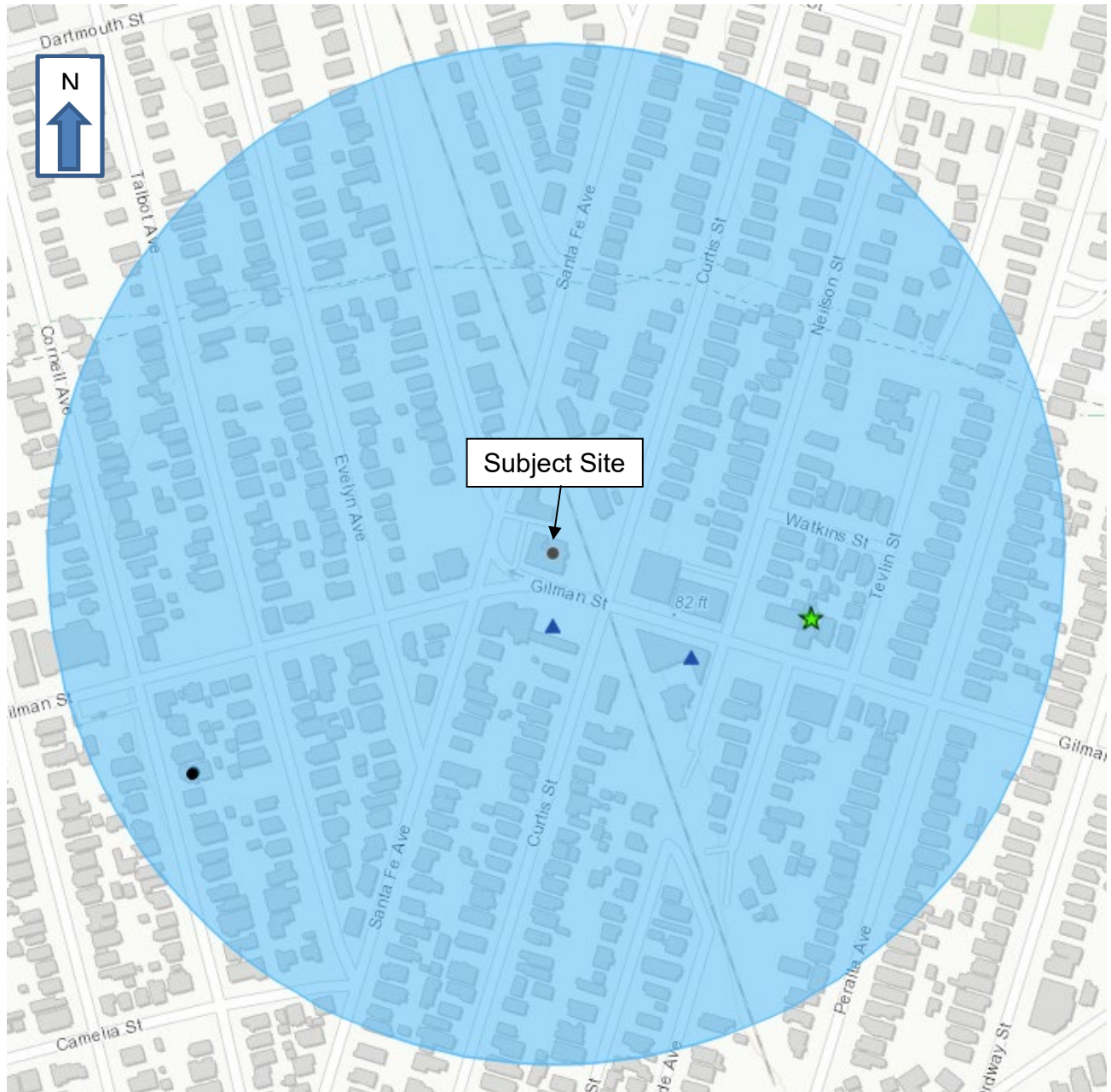


Figure 4: Alcoholic Beverage Licenses Within 1,000 Feet of Subject Site



| ABC License Type |  |
|------------------|--|
| ●                | 2- Winegrower                                      |
| ▲                | 41- On-sale Beer Wine Eating Place                 |
| ★                | 47- On-sale General Eating Place /<br>58- Catering |

**Table 1: Land Use Information**

| Location               |       | Existing Use                           | Zoning District                         | General Plan Designation              |
|------------------------|-------|--|---|---------------------------------------|
| Subject Property       |       | Retail                                 | Neighborhood Commercial                 | Neighborhood Commercial               |
| Surrounding Properties | North | Residential                            | Restricted Two-family Residential (R-2) | Low Medium Density Residential (LMDR) |
|                        | South | Restaurant/Retail                      | Neighborhood Commercial                 | Neighborhood Commercial               |
|                        | East  | Greenway/Bay Area Rapid Transit (BART) |   |                                       |
|                        | West  | Restaurant                             |   |                                       |

**Table 2: Special Characteristics**

| Characteristic  | Applies to Project? | Explanation   |
|---|---------------------|---|
| 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.   |
| Alcohol Sales/Service   | Yes                 | The applicant is applying for Type 20 and Type 42 ABC licenses for retail sales of wine and on-site service of wine.  |
| Public Convenience or Necessity   | No                  | There are no other Type 20 or Type 42 ABC permits within 1,000 feet of the project site.  |
| Creeks  | No                  | No new construction is proposed.  |
| Green Building Score  | No                  |   |
| Natural Gas Prohibition (Per BMC 12.80.020)   | No                  |   |
| Historic Resources  | No                  |   |
| Seismic Hazards (SHMA)  | No                  |   |
| Oak Trees   | No                  |   |
| Soil/Groundwater Contamination  | No                  |   |
| Transit   | Yes                 | The site is served by AC Transit bus lines H and 12, which have stops within a block of the subject site. The site is also immediately adjacent to the Ohlone Greenway. |

**Table 3: Project Chronology**

| Date              | Action                               |
|-------------------|--------------------------------------|
| August 18, 2023   | Application submitted                |
| September 1, 2023 | Application deemed complete          |
| October 12, 2023  | Public hearing notices mailed/posted |
| October 26, 2023  | ZAB hearing                          |

## II. Project Setting

- A. Neighborhood/Area Description:** The project site is located on the north side of Gilman Street between Santa Fe Avenue and Curtis Street, and immediately adjacent to the Ohlone Greenway and BART aerial track. The vicinity of the site contains a mix of restaurants, a beer garden, retail, personal services, and low to medium density housing consisting primarily of single-family homes.
- B. Site Conditions:** The parcel is a four-sided polygon which is rectangular on the west side and triangular on the east (due to the BART right of way). The project site is located in a single-story building consisting of three individual commercial spaces with restaurants in the west and middle spaces. The project site would be located in the eastern space. To the east of the building there is a triangular courtyard. A small structure in the front section of the courtyard houses a gift shop and outdoor garden area. There is a seven-space parking lot on the corner of Gilman Street and Santa Fe Avenue that is shared with the other business at that corner.

## III. Project Description

This project would operate a retail wine shop under a Type 20 ABC license, and a tasting room, with indoor and outdoor seating, under a Type 42 ABC license. The outdoor seating area is proposed at the rear of the courtyard, which abuts the Ohlone Greenway and the BART aerial tracks. The proposed hours of operation would be noon to 9:00 p.m., Monday through Saturday, and noon to 7:00 p.m. on Sunday.

## IV. Community Discussion

- A. Neighbor/Community Concerns:** A pre-application poster was installed by the applicant on August 21, 2023. On October 12, 2023, the City mailed public hearing notices to property owners and occupants, and to interested neighborhood organizations and the City posted notices within the neighborhood in three locations. At the time of this writing, staff has not received any communications regarding the project.
- B. Landmark Preservation Commission/Design Review Committee:** This project is not subject to review by the Design Review Committee or the Landmarks Preservation Committee because no exterior changes are proposed.

## V. Issues and Analysis

- A. Alcoholic Beverage Service:** Alcoholic Beverage retail sales and on-site service are allowed in the C-N District if a Use Permit is granted by the ZAB in accordance with required findings (BMC 23.204.020)

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. However, in the case of the subject property, there are no other establishments within a 1,000-foot radius with Type 20 or 42 ABC licenses (the Westbrae beer garden across the street holds Type 41 license). Therefore, the findings for public convenience or necessity do not need to be made.

#### **B. Use Permits in the C-N District:**

BMC Section 23.204.070 allows alcoholic beverage service with approval of a Use Permit, subject to ZAB making the applicable findings in BMC Section 23.204.070(E). In order to approve any Use Permit in the C-N District, ZAB must find that the proposed use is:

- 1) Compatible with the purposes of the District, which are the following:
  - Implement the General Plan's designations for Neighborhood Commercial areas;
  - Provide locations for uses supplying convenience goods and services for residents of the immediate area;
  - Provide locations for other activities compatible with allowed commercial uses;
  - Minimize traffic and parking problems for the adjacent residential areas; and
  - Promote compatibility between commercial areas and nearby residential areas.
- 2) Compatible with the surrounding uses and buildings;
- 3) Does not interfere with the continuity of retail and service facilities at the ground level; and
- 4) Does not exceed the amount and intensity of use that can be served by the available traffic capacity and potential parking supply.

*Staff Analysis: The sales and service of wine at this location will strengthen the economic well-being of the neighborhood, and will offer a unique and convenient retail location and gathering spot for the local community. It is not expected that it would attract large gatherings of people or create parking and traffic congestion in the area. Nor will it conflict with the design and character of the surrounding neighborhood.*

- 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: Due to the small size and location of the proposed business, the sale and service of wine is not expected to add significant parking or traffic congestion to the neighborhood. In addition, 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. The project does not propose live entertainment. Furthermore, the Berkeley Police Department has submitted a letter of support for the business (Attachment 4), which states, "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. We believe it will in fact be a net positive as more businesses open in the neighborhood after the long closures due to the pandemic".*

- D. General Plan Consistency:** The 2002 General Plan contains 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.
2. Policy LU-7–Neighborhood Quality of Life: Preserve and protect the quality of life in Berkeley's residential areas through careful land use decisions.
3. Policy LU-10-Parking: Protect residential areas from institutional and commercial parking impacts by encouraging use of alternative modes of transportation and strictly enforcing residential parking permit regulations.
4. 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: The addition of a wine shop and tasting room to this commercial area adds to the diversity of opportunities available in the neighborhood. It will not*

*have negative impacts on quality of life, will add a visually attractive storefront to a space that is currently vacant, and is well served by bus lines and bike routes.*

## 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 #2023-0122 pursuant to Section 23.406.040.D and subject to the attached Findings and Conditions (see Attachment 1).

### Attachments:

1. Findings and Conditions
2. Project Plans, received August 15, 2023
3. Notice of Public Hearing
4. Berkeley Police Department Letter, dated September 12, 2023

**Staff Planner:** Russell Roe, [rroe@berkeleyca.gov](mailto:rroe@berkeleyca.gov), (510) 981-7548

# ATTACHMENT 1

## FINDINGS AND CONDITIONS

OCTOBER 26, 2023

### 1287 Gilman Street

**Use Permit #ZP2023-0122 to add the retail sale of wine under a Type 20 Alcoholic Beverage Control (ABC) license, and on-site wine service under a Type 42 ABC license to a commercially zoned property.**

#### PERMITS REQUIRED

- Use Permit, pursuant to Berkeley Municipal Code (BMC) Section 23.310.020, to serve alcoholic beverages not incidental to food service;
- Use Permit, pursuant to BMC 23.310.020, to allow retail sales of wine in the C-N zoning district; and
- Use Permit, pursuant to BMC 23.302.020(E)(4), to allow outdoor dining on a commercial lot abutting a residential district.

#### 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”).
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. GENERAL NON-DETRIMENT 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. Due to the small size of the proposed business, the sale and service of wine is not expected to add significant parking or traffic congestion to the neighborhood;
  - B. The project is subject to the City’s standard conditions of approval for alcoholic beverage sales and service
  - C. The project does not involve live entertainment; and
  - D. The Berkeley Police Department has indicated, in a letter of support, that they don’t believe the proposed business would increase crime in the neighborhood.

#### III. OTHER FINDINGS FOR APPROVAL

2. As required by BMC Section 23.204.020, retail sales and service of alcoholic beverages is allowed in the C-N District if a Use Permit is granted by the ZAB, provided that it can make

the applicable findings in BMC Section 23.204.070(E). Per 23.204.070(E), the ZAB finds that the proposed project:

- A. Is compatible with the purposes of the C-N District because it is consistent with the General Plan, provides a location for uses supplying convenience goods and services for residents of the immediate area, provides a location for activities compatible with allowed commercial uses, will not contribute to traffic and parking problems, and it promotes compatibility between commercial areas and nearby residential areas.
  - B. Is compatible with surrounding uses and buildings, which consist of a mix of retail, restaurants, personal services, and residential dwellings;
  - C. Contributes to the continuity of retail and service facilities at the ground level; and
  - D. Is not expected to attract large gatherings of people or create parking and traffic problems because it does not exceed the amount and intensity of use that can be served by the available traffic capacity and potential parking supply.
3. As required by BMC Section 23.310.020(D) for Special Use Standards, the City must make additional findings of public convenience and necessity if an existing establishment has an ABC license of the same type, other than beer and wine incidental to food service, within a 1,000-foot radius of the project site. In the present case, the ZAB finds that:
- A. The subject property has applied for Type 20 and Type 42 ABC permits;
  - B. There are no other Type 20 or Type 42 ABC permits within a 1,000-foot radius of the project site; and
  - C. Therefore, it is not necessary to make these addition findings of public convenience or necessity.
4. The proposed project is consistent with the General Plan in that it:
- A. Maintains the character of Berkeley as a special, diverse, and unique place to live and work (Policy LU-1-Community Character).
  - B. Preserves and protects the quality of life in Berkeley's residential areas in that it will be a low-impact business located in an established commercial corridor (Policy LU-7-Neighborhood Quality of Life).
  - C. Protects residential areas from institutional and commercial parking impacts due to its location near bus lines and stops, as well as the Ohlone Greenway (Policy LU-10-Parking).
  - D. Helps to improve a Neighborhood Commercial Area as pedestrian-friendly and visually attractive by filling a currently vacant storefront with a business that is unique to the neighborhood and which is walkable, bikeable, and conveniently accessed by public transportation.

#### **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 follow 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 23.406.040.E, the Zoning Adjustments Board attaches the following additional conditions to this Permit:

**Prior to Submittal of Any Building Permit:**

10. Project Liaison. The applicant shall include in all building permit plans and post onsite the name and telephone number of an individual empowered to manage construction-related complaints generated from the project. The individual’s name, telephone number, and responsibility for the project shall be posted at the project site for the duration of the project in a location easily visible to the public. The individual shall record all complaints received and actions taken in response, and submit written reports of such complaints and actions to the project planner on a weekly basis. **Please designate the name of this individual below:**

**Project Liaison** \_\_\_\_\_  
Name Phone #

**Prior to Issuance of Any Building & Safety Permit (Demolition or Construction)**

11. Construction and Demolition Diversion. Applicant shall submit a Construction Waste Management Plan that meets the requirements of BMC Chapter 19.37 including 100% diversion of asphalt, concrete, excavated soil and land-clearing debris and a minimum of 65% diversion of other nonhazardous construction and demolition waste.

12. Toxics. The applicant shall contact the Toxics Management Division (TMD) at 1947 Center Street or (510) 981-7470 to determine which of the following documents are required and timing for their submittal:

A. Environmental Site Assessments:

- 1) Phase I & Phase II Environmental Site Assessments (latest ASTM 1527-13). A recent Phase I ESA (less than 2 years old\*) shall be submitted to TMD for developments for:
  - All new commercial, industrial and mixed use developments and all large improvement projects.
  - All new residential buildings with 5 or more dwelling units located in the Environmental Management Area (or EMA).
  - EMA is available online at: [http://www.cityofberkeley.info/uploadedFiles/IT/Level\\_3\\_-\\_General/ema.pdf](http://www.cityofberkeley.info/uploadedFiles/IT/Level_3_-_General/ema.pdf)
- 2) Phase II ESA is required to evaluate Recognized Environmental Conditions (REC) identified in the Phase I or other RECs identified by TMD staff. The TMD may require a third party toxicologist to review human or ecological health risks that may be identified. The applicant may apply to the appropriate state, regional or county cleanup agency to evaluate the risks.
- 3) If the Phase I is over 2 years old, it will require a new site reconnaissance and interviews. If the facility was subject to regulation under Title 15 of the Berkeley Municipal Code since the last Phase I was conducted, a new records review must be performed.

B. Soil and Groundwater Management Plan:

- 1) A Soil and Groundwater Management Plan (SGMP) shall be submitted to TMD for all non-residential projects, and residential or mixed-use projects with five or more dwelling units, that: (1) are in the Environmental Management Area (EMA) and (2) propose any excavations deeper than 5 feet below grade. The SGMP shall be site specific and identify

procedures for soil and groundwater management including identification of pollutants and disposal methods. The SGMP will identify permits required and comply with all applicable local, state and regional requirements.

- 2) The SGMP shall require notification to TMD of any hazardous materials found in soils and groundwater during development. The SGMP will provide guidance on managing odors during excavation. The SGMP will provide the name and phone number of the individual responsible for implementing the SGMP and post the name and phone number for the person responding to community questions and complaints.
- 3) TMD may impose additional conditions as deemed necessary. All requirements of the approved SGMP shall be deemed conditions of approval of this Use Permit.

C. Building Materials Survey:

- 1) Prior to approving any permit for partial or complete demolition and renovation activities involving the removal of 20 square or lineal feet of interior or exterior walls, a building materials survey shall be conducted by a qualified professional. The survey shall include, but not be limited to, identification of any lead-based paint, asbestos, polychlorinated biphenyl (PBC) containing equipment, hydraulic fluids in elevators or lifts, refrigeration systems, treated wood and mercury containing devices (including fluorescent light bulbs and mercury switches). The Survey shall include plans on hazardous waste or hazardous materials removal, reuse or disposal procedures to be implemented that fully comply state hazardous waste generator requirements (22 California Code of Regulations 66260 et seq). The Survey becomes a condition of any building or demolition permit for the project. Documentation evidencing disposal of hazardous waste in compliance with the survey shall be submitted to TMD within 30 days of the completion of the demolition. If asbestos is identified, Bay Area Air Quality Management District Regulation 11-2-401.3 a notification must be made and the J number must be made available to the City of Berkeley Permit Service Center.

D. Hazardous Materials Business Plan:

- 1) A Hazardous Materials Business Plan (HMBP) in compliance with BMC Section 15.12.040 shall be submitted electronically at <http://cers.calepa.ca.gov/> within 30 days if on-site hazardous materials exceed BMC 15.20.040. HMBP requirement can be found at <http://ci.berkeley.ca.us/hmr/>

**Prior to Issuance of Any Building (Construction) Permit**

13. HVAC Noise Reduction. Prior to the issuance of building permits, the project applicant shall submit plans that show the location, type, and design of proposed heating, ventilation, and cooling (HVAC) equipment. In addition, the applicant shall provide product specification sheets or a report from a qualified acoustical consultant showing that operation of the proposed HVAC equipment will meet the City's exterior noise requirements in BMC Section 13.40.050. The City's Planning and Development Department shall review the submitted plans, including the selected HVAC equipment, to verify compliance with exterior noise standards.
14. Recycling and Organics Collection. Applicant shall provide recycling and organics collection areas for occupants, clearly marked on site plans, which comply with the Alameda County Mandatory Recycling Ordinance (ACWMA Ordinance 2012-01).
15. Public Works ADA. Plans submitted for building permit shall include replacement of sidewalk, curb, gutter, and other streetscape improvements, as necessary to comply with current City of Berkeley standards for accessibility.

- 16. Required Parking Spaces for Persons with Disabilities.** Per BMC Section 23.322.040.H of the Zoning Ordinance, “If the number of required off-street parking spaces in a non-residential district is reduced as allowed by this chapter, the number of required parking spaces for persons with disabilities shall be calculated as if there had been no reduction in required spaces.”

**During Construction:**

- 17. Construction Hours.** Construction activity shall be limited to between the hours of 7:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and 4:00 PM on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.
- 18. Public Works - Implement BAAQMD-Recommended Measures during Construction.** For all proposed projects, BAAQMD recommends implementing all the Basic Construction Mitigation Measures, listed below to meet the best management practices threshold for fugitive dust:
- A. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
  - B. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
  - C. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
  - D. All vehicle speeds on unpaved roads shall be limited to 15 mph.
  - E. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
  - F. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
  - G. All construction equipment shall be maintained and properly tuned in accordance with manufacturer’s specifications. All equipment shall be checked by a certified visible emissions evaluator.
  - H. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District’s phone number shall also be visible to ensure compliance with applicable regulations.
- 19. Construction and Demolition Diversion.** Divert debris according to your plan and collect required documentation. Get construction debris receipts from sorting facilities in order to verify diversion requirements. Upload recycling and disposal receipts if using [Green Halo](#) and submit online for City review and approval prior to final inspection. Alternatively, complete the second page of the original [Construction Waste Management Plan](#) and present it, along with your construction debris receipts, to the Building Inspector by the final inspection to demonstrate diversion rate compliance. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement.
- 20. Low-Carbon Concrete.** The project shall maintain compliance with the Berkeley Green Code (BMC Chapter 19.37) including use of concrete mix design with a cement reduction of at least 25%. Documentation on concrete mix design shall be available at all times at the construction site for review by City Staff.

- 21. Transportation Construction Plan.** The applicant and all persons associated with the project are hereby notified that a Transportation Construction Plan (TCP) is required for all phases of construction, particularly for the following activities:
- Alterations, closures, or blockages to sidewalks, pedestrian paths or vehicle travel lanes (including bicycle lanes);
  - Storage of building materials, dumpsters, debris anywhere in the public ROW;
  - Provision of exclusive contractor parking on-street; or
  - Significant truck activity.

The applicant shall secure the City Traffic Engineer's approval of a TCP. Please contact the Office of Transportation at 981-7010, or 1947 Center Street, and ask to speak to a traffic engineer. In addition to other requirements of the Traffic Engineer, this plan shall include the locations of material and equipment storage, trailers, worker parking, a schedule of site operations that may block traffic, and provisions for traffic control. The TCP shall be consistent with any other requirements of the construction phase.

Contact the Permit Service Center (PSC) at 1947 Center Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dashboard permits). Please note that the Zoning Officer and/or Traffic Engineer may limit off-site parking of construction-related vehicles if necessary to protect the health, safety or convenience of the surrounding neighborhood. A current copy of this Plan shall be available at all times at the construction site for review by City Staff.

- 22. Public Works.** The removal or obstruction of any fire hydrant shall require the submission of a plan to the City's Public Works Department for the relocation of the fire hydrant during construction.
- 23. Public Works.** If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.

**Prior to Final Inspection or Issuance of Occupancy Permit:**

- 24. Compliance with Conditions.** The project shall conform to the plans and statements in the Use Permit. The developer is responsible for providing sufficient evidence to demonstrate compliance with the requirements throughout the implementation of this Use Permit.

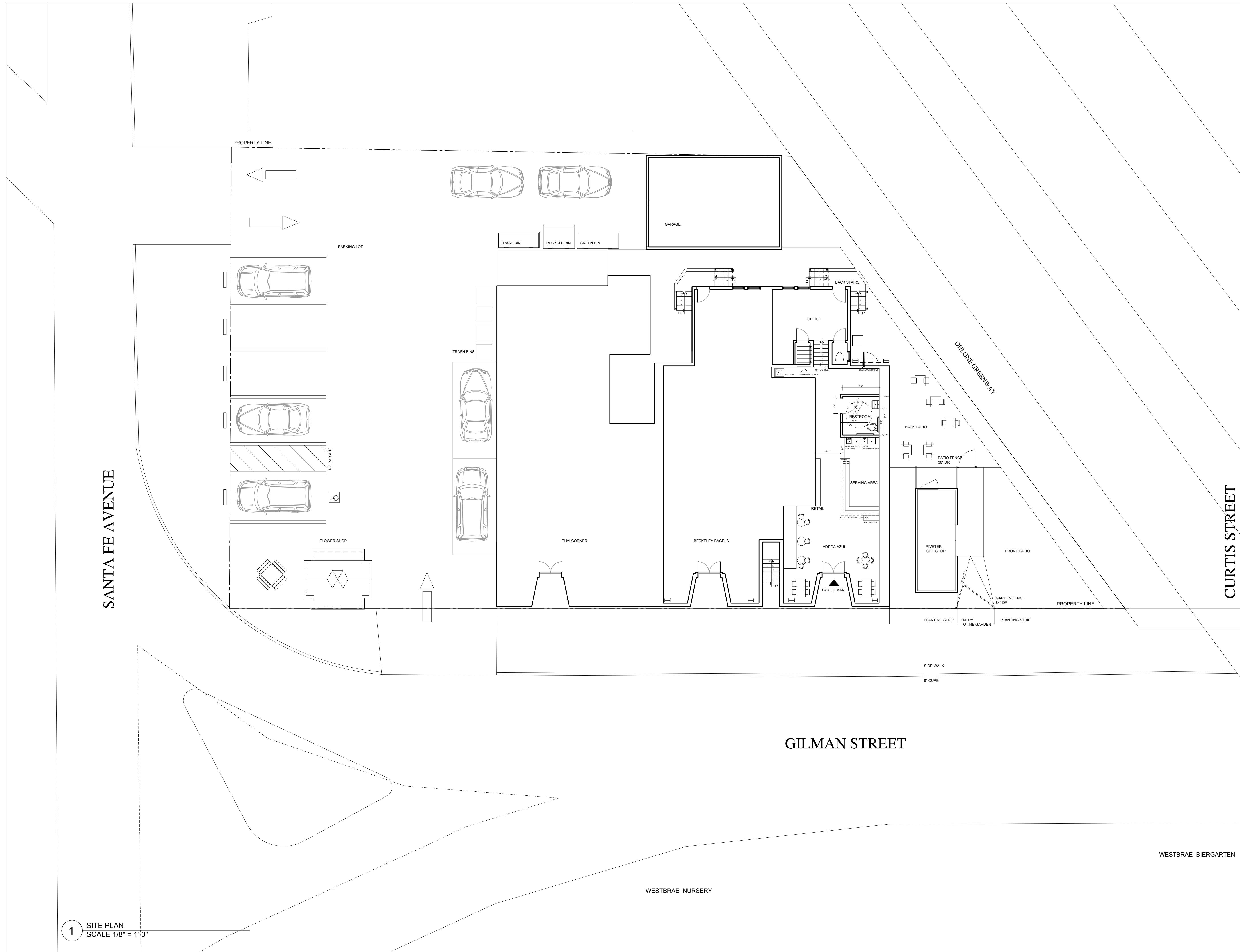
**At All Times:**

- 25. Loading.** All loading/unloading activities associated with deliveries to all uses shall be restricted to the hours of 7:00 a.m. to 10:00 p.m. daily.
- 26. Periodic Review and Reporting.** The City may require periodic review of this approved project to verify compliance with permit requirements and conditions of approval. The permit holder or property owner is responsible for complying with any periodic reporting, monitoring, or assessments requirement. This permit is subject to the provisions of BMC Section 23.404.080 (Permit Revocation) if violations of the permit requirements are found by the Zoning Officer.

**ALCOHOLIC BEVERAGE SERVICE CONDITIONS (on-site)**

27. There shall be no service or consumption of alcohol on the public right-of-way, unless authorized by a Public Works sidewalk seating permit.
28. A Berkeley Police Department Crime Prevention Through Environmental Design (CPTED) survey shall be completed prior to commencing alcohol service.
29. 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.
30. Employees shall not serve alcohol to patrons who appear to be inebriated or otherwise unable to behave in an orderly manner upon consuming alcohol.
31. 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.
32. Fortified alcohol products (e.g., malt liquor), shall not be sold on the premises.
33. The applicant shall establish cash handling procedures to reduce the likelihood of robberies and theft.
34. 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.
35. This Use Permit, including these and all other required conditions, shall be posted in a conspicuous location, available for viewing by any interested party.
36. 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.
37. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.





SANTA FE AVENUE

CURTIS STREET

GILMAN STREET

1287 GILMAN STREET  
 BERKELEY, CA 94706

Existing  
 Site Plan

ADEGA AZUL

1/8" = 1'-0"

CC CC

**A1.0**

1 1

1 SITE PLAN  
 SCALE 1/8" = 1'-0"

WESTBRAE BIERGARTEN

WESTBRAE NURSERY

SIDE WALK  
 6" CURB

PLANTING STRIP ENTRY TO THE GARDEN PLANTING STRIP

GARDEN FENCE 84" DR. PROPERTY LINE

FRONT PATIO

PATIO FENCE 84" DR.

BACK PATIO

ONE WAY GREENWAY

BACK STAIRS

OFFICE

GARAGE

TRASH BIN RECYCLE BIN GREEN BIN

PARKING LOT

FLOWER SHOP

NO PARKING

TRASH BINS

THAI CORNER

BERKELEY BAGELS

RETAIL

ADEGA AZUL

1287 GILMAN

SERVING AREA

RESTROOM

UP

UP

UP

UP

UP

UP

UP

UP

UP

UP

UP

UP

UP

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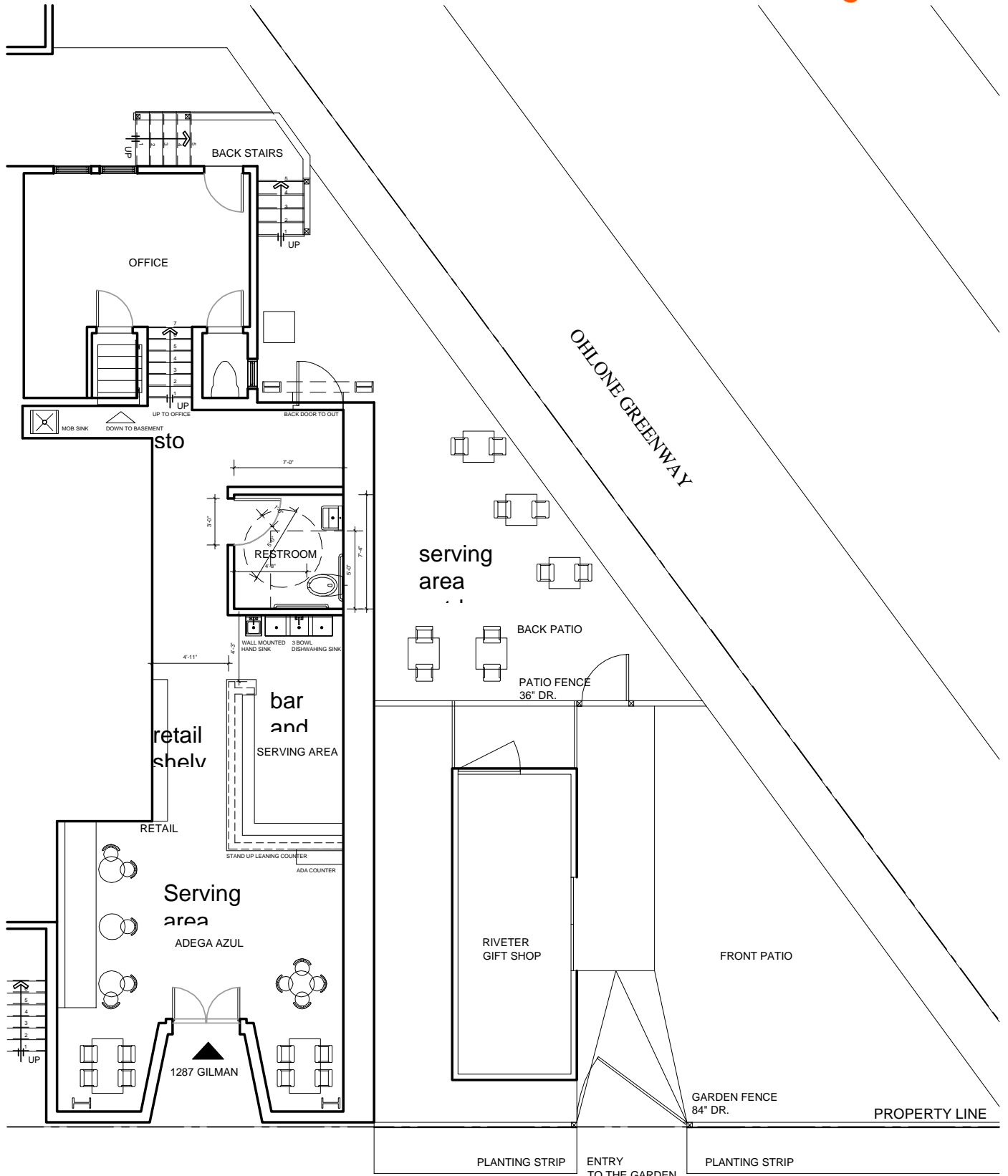
UP

UP

UP

UP

UP



GILMAN STREET

cogur design  
 6201 Snake Road  
 oakland california 94611  
 Tel: (510) 331-7667

1287 GILMAN STREET  
 FLOOR PLAN

job number: 2023-02  
 scale: N/A  
 date: AUG/3/2023  
 drawn by: CC  
 cadd file: 1287GILMAN

A1.1



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

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NOTICE OF PUBLIC HEARING

## 1287 Gilman Street

**Use Permit #2023-0122 to add the retail sale of wine under a Type 20 ABC (Alcoholic Beverage Control) license, and on-site wine service under a Type 42 ABC license to a commercially zoned property.**

The Zoning Adjustments Board of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance, Section [23.404.050 \(Public Hearings and Decisions\)](#)

**When:** Thursday, October 26, 2023, 7:00 pm

**Where:** Berkeley Unified School District meeting room, 1231 Addison Street, (wheelchair accessible) with remote/hybrid option (via Zoom).

Please visit: <https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board> and click on the hearing date to access the most up-to-date meeting information, or call the Land Use Planning division (510) 981-7410.

***PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED IN A HYBRID MODEL WITH BOTH IN-PERSON ATTENDANCE AND VIRTUAL PARTICIPATION AVAILABLE FOR MEMBERS OF THE PUBLIC.***

*For in-person attendees, face coverings or masks that cover both the nose and mouth are encouraged. If you're feeling sick, please do not attend the meeting in-person as a public health precaution.*

*Currently, there are no physical distancing requirements in place by the State of California or the Local Health Officer for an indoor event similar to a Commission meeting. However, all attendees are requested to be respectful of the personal space of other attendees. An area of the public seating area will be designated as "distanced seating" to accommodate persons that need to distance for personal health reasons.*

### **A. Land Use Designations:**

- General Plan: Neighborhood Commercial (NC)
- Zoning: Neighborhood Commercial (C-N)

**B. Zoning Permits Required:**

- Use Permit, pursuant to Berkeley Municipal Code (BMC) Section 23.310.020, to serve alcoholic beverages not incidental to food service;
- Use Permit, pursuant to BMC 23.310.020, to allow retail sales of wine in the C-N zoning district; and
- Use Permit, pursuant to BMC 23.302.020(E)(4), to allow outdoor dining on a commercial lot abutting a residential district.

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

**D. Parties Involved:**

- Applicant                      Diva Robin, 249 Curry Avenue, Vallejo
- Property Owner                Robert Kelso, 2836 Tice Creek Drive, #1, Walnut Creek

**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 [roeb@berkeleyca.gov](mailto:roeb@berkeleyca.gov).

Written comments or a request for a Notice of Decision should be directed to the Zoning Adjustments Board Secretary at [zab@berkeleyca.gov](mailto:zab@berkeleyca.gov).

**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.

**Written Comments, 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@berkeleyca.gov](mailto:zab@berkeleyca.gov). 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 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.



**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:**

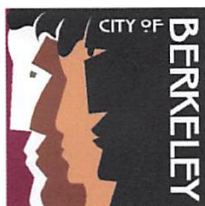
Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available to the public. Please contact the Land Use Planning Division (zab@berkeleyca.gov) to request hard-copies or electronic copies.

**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 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 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 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.
-

Internal



Police Department

**September 12th, 2023**

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

**Re: Adegaz Azul, 1287 Gilman St.**

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 owner (Robert Kelso) of the new restaurant Adegaz Azul is requesting a beer/wine and a general eating place license at the location. The applicant/owner indicates they will obtain an Alcohol Beverage Control License Type 20 and 47 (On Sale General Eating Place and Offsite Beer and Wine Sales).

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

This is a new restaurant in the neighborhood and we believe this addition will not cause a radical change to the neighborhood. The neighborhood is very active with businesses, other restaurants/bars, nightlife and local citizens. The restaurant/bar will most certainly be a welcome addition to the neighborhood. A records check reveals no current licenses with Kelso and/or Adegaz Azul through ABC.

Adegaz Azul restaurant will not significantly alter vehicle or pedestrian traffic in the area. The space is an existing fixture to the northeast corner of the intersection. As stated above this area of Gilman St. and the Ohlone Greenway is very active especially since the pandemic is over. Adegaz Azul restaurant at this address seems to easily fit in with the character of this neighborhood.

An analysis of police service data at 1287 Gilman St., reveals 39 calls for service in our current database, since 2009. Of these calls for service, the majority of them seemed to be business alarms calls with a minimal amount of business burglary and vehicle burglary calls.

Internal

2 | Page

Based on this information, we believe the proposed new restaurant is not at all likely to increase crime or disorder in the district.

Researching other applications, we have noticed a correlation between businesses having live music and increased calls for service to BPD, often for noise complaints. Adega Azul appears to have no plans for live music.

A search of the California ABC public data portal shows there are no alcoholic beverage violations reported against Adega Azul or Robert Kelso.

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. We believe it will in fact be a net positive as more businesses open in the neighborhood after the long closures due to the pandemic.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jennifer Louis". The signature is stylized and somewhat cursive.

Interim Chief of Police

JL/gs