

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 22, 2024

1287 Gilman Street

Use Permit #ZP2023-0122 to establish a wine bar with on-site wine service with outdoor seating under a Type 42 Alcoholic Beverage Control (ABC) license, add the retail sale of wine under a Type 20 ABC license, and legalize the addition of new floor area (shipping container) (160 square feet) for retail space, and the use of an ice cream trailer.

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) 23.204.020(A), to establish a bar/tavern use (wine bar);
- Use Permit, pursuant to BMC Section 23.310.020, to serve alcoholic beverages not incidental to food service;
- Use Permit, pursuant to BMC Section 23.310.020, to allow retail sale of wine in the C-N zoning district;
- Use Permit, pursuant to BMC 23.302.020(E)(4), to allow an outdoor use (outdoor seating) on a commercial lot abutting a residential district;
- Use Permit, pursuant to BMC 23.302.020(E)(4), to establish an outdoor use (food truck) on a commercial lot abutting a residential district;
- Use Permit, pursuant to BMC 23.204.030, to construct new floor area (shipping container) in the C-N 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 15303 (“New Construction or Conversion of Small Structures”).
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

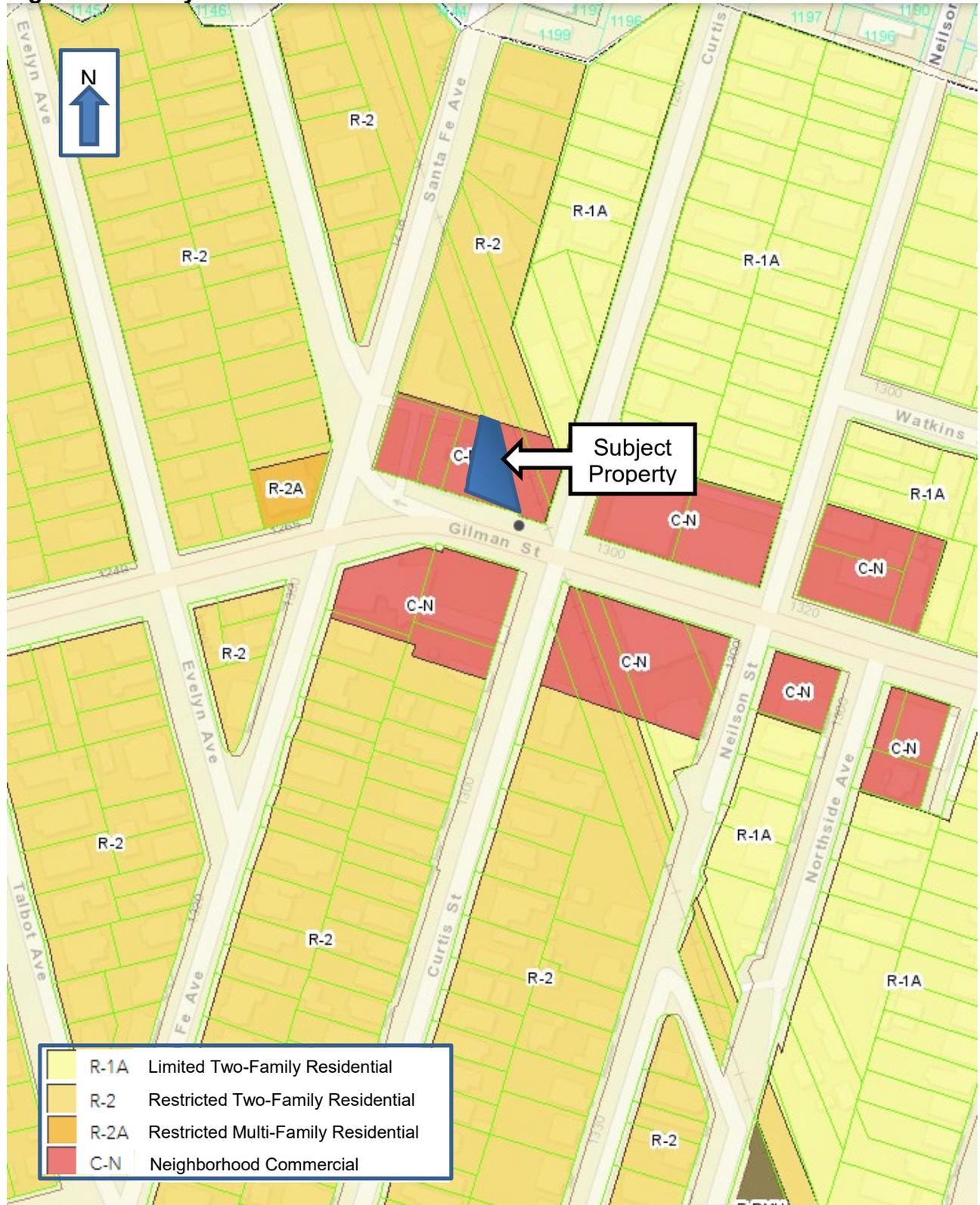


Figure 2: Site Plan

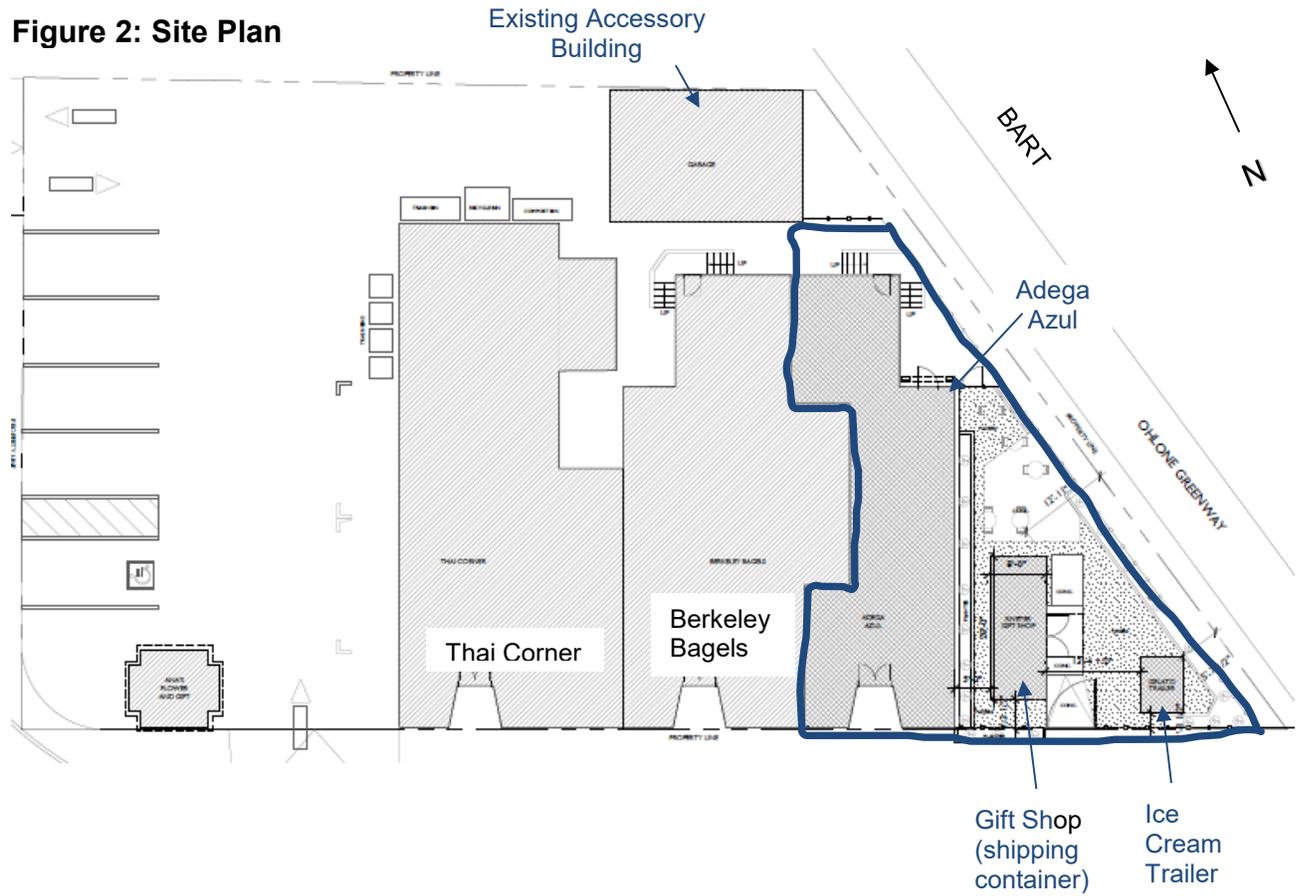


Figure 3: Floor Plan

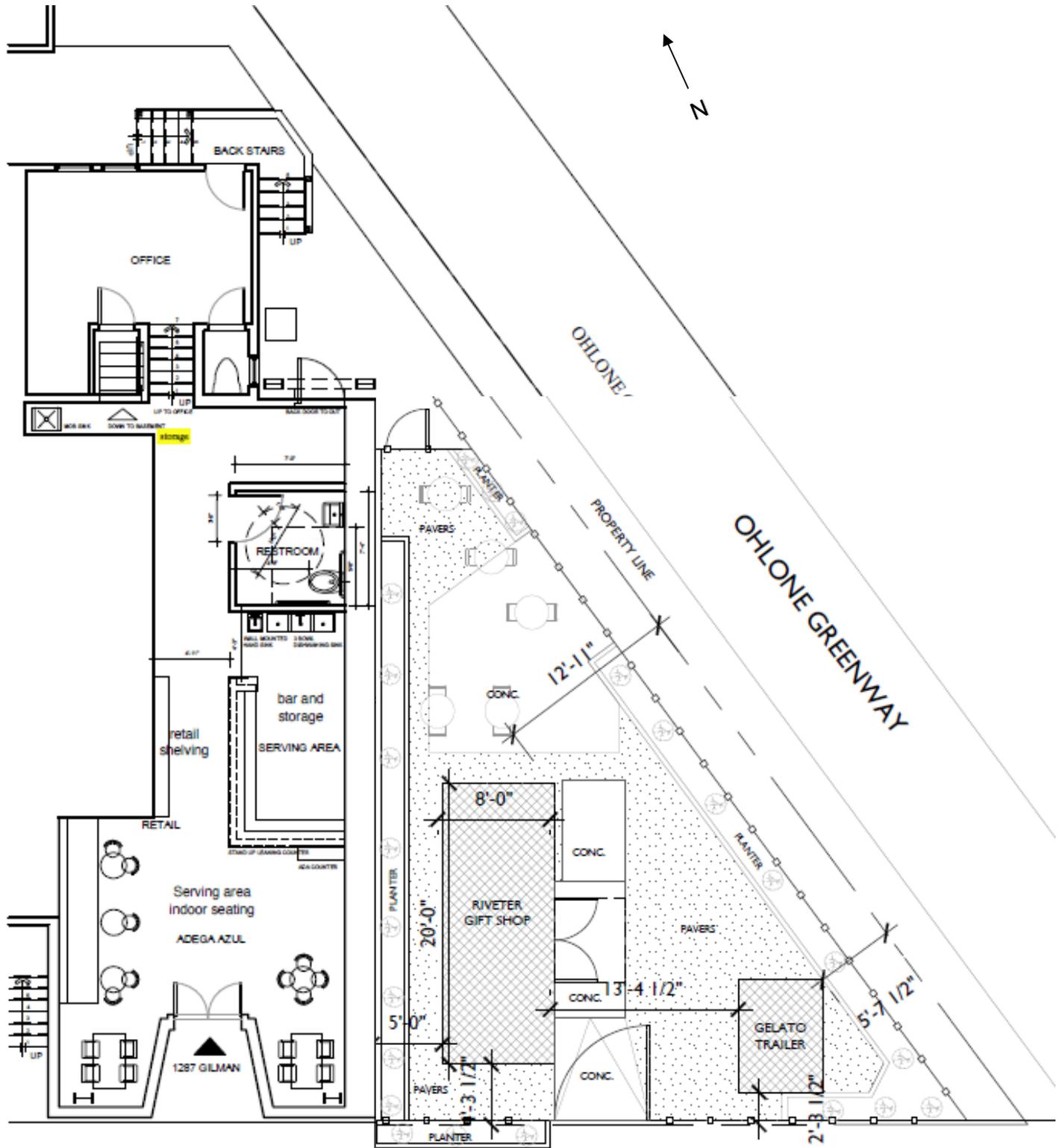
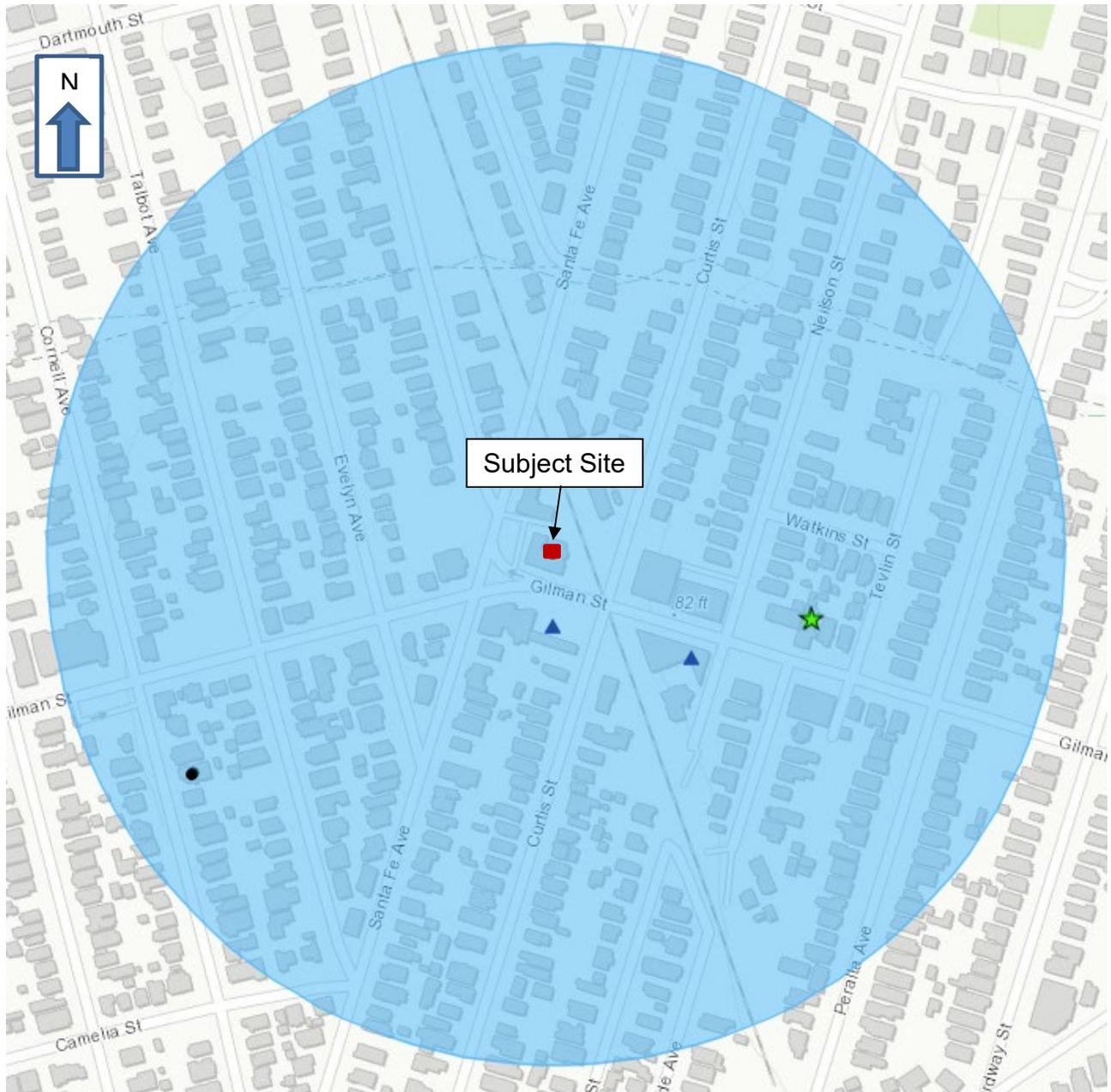


Figure 4: Alcoholic Beverage Licenses Within 1,000 Feet of Subject Site



ABC License Type

- 2- Winegrower
- ▲ 41- On-sale Beer Wine Eating Place
- ★ 47- On-sale General Eating Place / 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	This fee applies to net newly constructed nonresidential gross floor area over 7,500 square feet. The project would construct 160 square feet of new nonresidential floor area and the new use in the tenant space does not include renovation of a building that was vacant for more than three years. Therefore, this fee 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; therefore, the Public Convenience and Necessity findings are not required.
Creeks	No	No new construction is proposed; therefore, these requirements are not applicable to the project.
Historic Resources	No	
Seismic Hazards (SHMA)	No	
Oak Trees	No	
Soil/Groundwater Contamination	No	
Transit	Yes	The site is served by AC Transit bus line 12, which has 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 continued to date certain
November 27, 2023	Revised project and site plans submitted
November 30, 2023	Public hearing notices mailed/posted
December 14, 2023	ZAB hearing – continued to a date uncertain to complete the required Design Review process
February 8, 2024	Staff-level Design Review posted
February 8, 2024	Public hearing notices mailed/posted for Use Permit and Design Review
February 22, 2024	ZAB hearing

II. Project Setting

A. Neighborhood/Area Description: The project site is located adjacent to the Ohlone Greenway and BART aerial track on the north side of Gilman Street between Santa Fe Avenue and Curtis Street. The vicinity of the site contains a mix of restaurants, a beer garden, retail, personal services, and low to medium density residential development consisting primarily of single-family homes.

B. Site Conditions: The commercial building is on a parcel shaped like a four-sided polygon with a rectangular shape on the west side and a triangular shape on the east (due to the BART right of way) (See Figure 2). The rear lot line abuts the R-2 zoning district. The commercial building is integrated within a single-story commercial structure consisting of three individual commercial spaces with restaurants in the west and middle spaces. The project would be located in the commercial space on the eastern boundary that includes a triangular shaped courtyard. A seven-space parking lot is located on the corner of Gilman Street and Santa Fe Avenue that is shared with the businesses operating in the commercial structure. The project site also includes:

1. an existing accessory building located at the rear of the parcel forms a physical barrier between the courtyard and the neighboring R-2 zoning district;
2. a gift shop operated out of a currently-unpermitted shipping container located in the front section of the courtyard, and constitutes 160 square feet of new floor area; and
3. a currently-unpermitted ice cream trailer, which offers gelato, that will be relocated from the middle of the courtyard to the south-east corner of the courtyard, and will be obscured by decorative vegetation (See Attachment 3).

III. Project Description

This project proposes to establish a wine bar with indoor and outdoor seating under a Type 42 ABC license, as well as offer retail sales of wine under a Type 20 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. These hours are consistent with the allowed hours of operation for alcohol sales within the C-N zoning district pursuant to BMC 23.302.020(B), which are 7:00 a.m. to 11:00 p.m.

In addition, the project proposes to legalize the shipping container as a retail shop, as well as the ice cream trailer, both of which had been added to the site without the required permits. The shipping container constitutes the addition of 160 square feet of floor area to the site, requiring a use permit. The food trailer also requires a use permit because it is an outdoor use on a lot adjacent to a residential district. No changes to the existing accessory building are proposed.

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 within 300 feet of the project site, and to interested neighborhood organizations, and the City posted notices at three locations within the neighborhood. Prior to the November 30, 2023 ZAB hearing, a member of the public contacted City staff to inquire about the unpermitted outdoor structures on the project site. ZAB continued the hearing until December 14, 2023 to provide City staff with additional time to resolve the potential code enforcement issues. On December 14, 2023 ZAB continued the item to a date uncertain to provide City staff with additional time to complete the design review process. The project was subsequently rescheduled to February 22, 2024, upon completion of the design review process. On February 8, 2024, the City mailed public hearing notices to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations (Attachment 4). The City also posted notices at three locations within the neighborhood. At the time of this writing, no additional public comments have been received.
- B. Design Review:** The project proposes exterior changes to the outdoor area (legalizing the shipping container as additional floor area, and a trailer for ice cream sales), and is subject to design review. It was the recommendation of Design Review Staff and the Design Review Committee Chair, that the project be reviewed at Staff Level. Design Review Staff reviewed the proposed structures (Design Review #DRCP2023-0017) and concluded that, from a design standpoint, the project components would be

compatible with the existing commercial and residential neighborhood character (Attachment 5).

- C. Landmark Preservation Commission:** The project is not subject to review by the Landmarks Preservation Commission because it does not propose to demolish the commercial structure, and the building is not a designated historic landmark.

V. Issues and Analysis

A. Alcoholic Beverage Service:

Alcoholic beverage service is 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 proposed project, 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 for on-site beer and wine service at an eating place). 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 bars and alcoholic beverage service and sales with approval of a Use Permit, subject to ZAB making the applicable findings under BMC Section 23.204.070(E). Additional Use Permits are required to permit the additional floor space and outdoor uses, mentioned above, in the C-N zoning district pursuant to BMC 23.204.030 and 23.302.020(E)(4), respectively. In order to approve these Use Permits in the C-N zoning district, ZAB must find that the proposed uses are:

1) Compatible with the purposes of the C-N zoning 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. The new retail floor area (shipping container) and food trailer are, likewise, not expected to have negative impacts on the neighborhood due to their small size.

C. General Non-Detriment Finding: BMC Section 23.406.040(E) requires states 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. The proposed outdoor seating area is not expected to have a detrimental effect on the surrounding neighborhood due to its proximity to the BART tracks and Ohlone Greenway to the east, which already generate more noise than would be issued by the new outdoor seating, and because a rear accessory building separates the courtyard area from the adjacent residential neighborhood to the north-west.

In addition, the project is subject to the City's standard conditions of approval that regulate hours of operation and alcoholic beverage service. The lack of late-night operating hours, and requirements that ABC rules be strictly followed, thereby ensure that 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, which can generate indoor/outdoor noise. Furthermore, the Berkeley Police Department has submitted a letter of support for the business (Attachment 6), 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 additions proposed by this project add to the diversity of opportunities available in the neighborhood. The project would add a visually attractive storefront to a space that is currently vacant, at a location that 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 (Attachment 1).

Attachments:

1. Findings and Conditions
2. Project Plans, received August 15, 2023 (and November 27, 2023 updated site plan)
3. Street-view Mock-up
4. Notice of Public Hearing
5. Design Review Package
6. Berkeley Police Department Letter, dated September 12, 2023

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

ATTACHMENT 1

FINDINGS AND CONDITIONS

FEBRUARY 22, 2024

1287 Gilman Street

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PERMITS REQUIRED

- Use Permit, pursuant to Berkeley Municipal Code (BMC) 23.204.020(A), to establish a bar/tavern use (wine bar);
- Use Permit, pursuant to BMC Section 23.310.020, to serve alcoholic beverages not incidental to food service;
- Use Permit, pursuant to BMC Section 23.310.020, to allow retail sale of wine in the C-N zoning district;
- Use Permit, pursuant to BMC 23.302.020(E)(4), to allow an outdoor use (outdoor seating) on a commercial lot abutting a residential district;
- Use Permit, pursuant to BMC 23.302.020(E)(4), to establish an outdoor use (food truck) on a commercial lot abutting a residential district;
- Use Permit, pursuant to BMC 23.204.030, to construct new floor area (shipping container) in the C-N 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 15303 of the CEQA Guidelines (“New Construction or Conversion of Small Structures”).
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 proposed outdoor seating area will not have a detrimental effect on the surrounding neighborhood due to its proximity to the BART tracks and Ohlone Greenway to the east, which already generate more noise than would be issued by the new outdoor seating, and because a rear accessory building separates the courtyard area from the adjacent residential neighborhood to the north-west.
- C. The project is subject to the City's standard conditions of approval for alcoholic beverage sales and service, which require strict adherence to ABC rules;
- D. The project does not involve live entertainment, which can sometimes result in neighborhood complaints; and
- E. 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 additional 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. Hold Harmless

The permittee agrees as a condition of approval of this application to indemnify, protect, defend with counsel selected by the City, and hold harmless, the City, and any agency or instrumentality thereof, and its elected and appointed officials, officers, employees and agents, from and against any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorney's fees and disbursements (collectively, "Claims") arising out of or in any way relating to the approval of this application, any actions taken by the City related to this entitlement, or any environmental review conducted under the California Environmental Quality Act, Public Resources Code Section 210000 et seq., for this entitlement and related actions. The indemnification shall include any Claims that may be asserted by any person or entity, including the permittee, arising out of or in connection with the approval of this application, whether or not there is concurrent, passive or active negligence on the part of the City, and any agency or instrumentality thereof, and its elected and appointed officials, officers, employees and agents. The permittee's duty to defend the City shall not apply in those instances when the permittee has asserted the Claims, although the permittee shall still have a duty to indemnify, protect and hold harmless the City.

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 #

11. **Accessory Building.** All owners of record of the subject property shall sign and record with the Alameda County Clerk-Recorder a "Notice of Limitation on Use of Property" (available from Land Use Planning Division) and provide a recorded copy thereof to the project planner. This Notice of Limitation shall stipulate that no part of this accessory building shall be used or converted to use as a dwelling unit unless and until permission is requested of the City of Berkeley and authorized by a Use Permit, Administrative Use Permit, or Zoning Certificate, whichever is applicable. This limitation shall include the explicit acknowledgment that a full bathroom and cooking facilities may be installed, as long as the cooking facilities do not constitute a Kitchen per BMC Section 23.502. This limitation may not be revised or removed from this property without the prior written permission of the Zoning Officer of the City of Berkeley.

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

12. **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.

13. **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. **Phase I and Phase II Environmental Site Assessment (ESA) (per ASTM 1527).** A recent Phase I ESA (less than 2 years old) shall be submitted to the Toxics Management Division for developments for: all new commercial, industrial and mixed-use developments and all improvement projects that require work 5 or more feet below grade, and all new residential buildings with more than four dwelling units located in the Environmental Management Area (or EMA). The EMA can be viewed at: [City of Berkeley Community GIS Portal \(arcgis.com\)](#)
- B. Depending on the findings in the Phase I, a Phase II or additional investigation may be necessary. Any available soils and groundwater analytical data available for projects listed in this section must also be submitted to TMD.

- C. **Environmental Site Clearance.** The applicant shall provide environmental screening clearance from either the San Francisco Bay Regional Water Quality Control Board (RWQCB), Department of Toxic Substances Control (DTSC), or the Alameda County Department of Environmental Health's Local Oversight Program (LOP). Clearance from one of these regulatory agencies will ensure that the property meets development investigation and cleanup standards for the specific use proposed on the property. Environmental screening clearance shall be submitted to the City of Berkeley's Toxics Management Division prior to issuance of any building permits.
- D. **Soil and Groundwater Management Plan.** A site-specific Soil and Groundwater Management Plan (SGMP) shall be submitted to Toxics Management Division (TMD) for all non-residential projects, and residential or mixed-use projects with more than four dwelling units, that: (1) are in the Environmental Management Area (EMA), as shown on the most recent City of Berkeley EMA map, and (2) propose any excavations deeper than 5 feet below grade or if significant soils removal is anticipated. The SGMP shall be submitted to the TMD with the project's building permit application and shall be approved by TMD prior to issuance of the building permit.

The SGMP shall comply with the hazardous materials and waste management standards required by BMC Section 15.12.100, the stormwater pollution prevention requirements of San Francisco Bay Regional Water Quality Control Board's Order No. R2-2009-0074, California hazardous waste generator regulations (Title 22 California Code of Regulations (CCR) 66260 et seq.), and the East Bay Municipal Utility District's Ordinance 311, and shall include the following:

- i. procedures for soil and groundwater management including identification of pollutants and disposal methods;
- ii. procedures to manage odors, dust and other potential nuisance conditions expected during development;
- iii. notification to TMD within 24 hours of the discovery of any previously undiscovered contamination; and
- iv. the name and phone number of the individual responsible for implementing the SGMP and who will respond to community questions or complaints.

TMD may require additional information or impose additional conditions as deemed necessary to protect human health and the environment. All requirements of the approved SGMP shall be deemed conditions of approval.

- E. **Demolitions & Renovations – Building Materials Survey.** A hazardous materials survey for building materials and plans on hazardous materials and hazardous waste removal and disposal is required and must be prepared by qualified professionals, and submitted to the Toxics Management Division (TMD) prior to issuance of the building permit.
- i. The survey shall include the identification of all materials to be disturbed for lead-based paints, PCB containing equipment and caulking, hydraulic fluids, refrigerants, treated wood, and mercury containing devices (including fluorescent light bulbs and mercury switches), asbestos and other hazardous materials and chemicals.

- ii. 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. Contractors must follow state regulations where there is asbestos-related work involving 100 square feet or more of asbestos containing material (8 Cal. Code Regs. §1529, §341.6 et seq.)
- iii. The report to the TMD shall include, in addition to the survey, plans on hazardous materials and hazardous waste removal and disposal that comply with State and Federal codes including California Code of Regulations (CCR) 66260 et seq.
- iv. 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.

Please note, the PCB Screening Form required by Public Works, Engineering, is a separate requirement and does not address the PCB identification requirement of the Toxics Management Division.

- F. **Hazardous Materials Business Plan.** A Hazardous Materials Business Plan (HMBP) in compliance with BMC Section 15.12.040 and California Health & Safety Code, Chapter 6.95 Div. 20, shall be submitted to the Toxics Management Division through the California Environmental Reporting System: <http://cers.calepa.ca.gov/> for chemicals used or stored on site during construction that exceed reporting thresholds. The reporting is required if your facility stores or handles hazardous materials in aggregate quantities equal to or greater than 55 gallons for liquids, 500 pounds for solids, or 200 cubic feet of compressed gases, or generates any quantity of hazardous waste. This includes welding gases, emergency generator fuel, paints, etc.

Additionally, the business occupant must submit an HMBP within 30 days of starting operations.

- G. **Petroleum Storage.** An (SPCC) Plan is required to be prepared and implemented for facilities with any one of the following:
- i. aggregate aboveground petroleum storage capacities of 1,320 gallons or more stored in aboveground storage containers, tanks, oil-filled equipment, or
 - ii. one or more tank(s) in an underground area (TIUGA) with petroleum storage capacities of 55 gallons or greater. More information on TIUGAs can be found here: <https://osfm.fire.ca.gov/divisions/pipeline-safety-and-cupa/certified-unified-program-agency-cupa/aboveground-petroleum-storage-act/tank-in-an-underground-area-tiuga/>
- 1) The SPCC plan must be prepared prior to beginning operations and you must submit facility information to Toxics Management Division (TMD) through the California Environmental Reporting System: <http://cers.calepa.ca.gov/>. The SPCC plan will be reviewed during the site inspection and shall not be submitted in CERS or to the TMD.

Prior to Issuance of Any Building (Construction) Permit

14. **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.

15. **Recycling and Organics Collection.** Applicant shall provide recycling and organics collection areas for occupants, clearly marked on plans, which comply with the Alameda County Organics Reduction and Recycling Ordinance (2021-02). Contact the Zero Waste Division's Recycling Program Manager, Julia A. Heath, at jheath@berkeleyca.gov.
16. **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.

Prior to Demolition or Start of Construction:

17. **Construction/No Parking Permits.** 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.

During Construction:

18. **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.
19. **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 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.

20. **Air Quality – Diesel Particulate Matter Controls during Construction.** All off-road construction equipment used for projects with construction lasting more than 2 months shall comply with one of the following measures:
- A. The project applicant shall prepare a health risk assessment that demonstrates the project's on-site emissions of diesel particulate matter during construction will not exceed health risk screening criteria after a screening-level health risk assessment is conducted in accordance with current guidance from BAAQMD and OEHHA. The health risk assessment shall be submitted to the Land Use Planning Division for review and approval prior to the issuance of building permits; or
 - B. All construction equipment shall be equipped with Tier 2 or higher engines and the most effective Verified Diesel Emission Control Strategies (VDECS) available for the engine type (Tier 4 engines automatically meet this requirement) as certified by the California Air Resources Board (CARB). The equipment shall be properly maintained and tuned in accordance with manufacturer specifications.
 - C. In addition, a Construction Emissions Minimization Plan (Emissions Plan) shall be prepared that includes the following:
 - i. An equipment inventory summarizing the type of off-road equipment required for each phase of construction, including the equipment manufacturer, equipment identification number, engine model year, engine certification (tier rating), horsepower, and engine serial number. For all VDECS, the equipment inventory shall also include the technology type, serial number, make, model, manufacturer, CARB verification number level, and installation date.
 - ii. A Certification Statement that the Contractor agrees to comply fully with the Emissions Plan and acknowledges that a significant violation of the Emissions Plan shall constitute a material breach of contract. The Emissions Plan shall be submitted to the Public Works Department for review and approval prior to the issuance of building permits.
21. **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.
22. **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.
23. **Avoid Disturbance of Nesting Birds.** Initial site disturbance activities, including vegetation and concrete removal, shall be prohibited during the general avian nesting season (February 1 to August 30), if feasible. If nesting season avoidance is not feasible, the applicant shall retain a

qualified biologist to conduct a preconstruction nesting bird survey to determine the presence/absence, location, and activity status of any active nests on or adjacent to the project site. The extent of the survey buffer area surrounding the site shall be established by the qualified biologist to ensure that direct and indirect effects to nesting birds are avoided. To avoid the destruction of active nests and to protect the reproductive success of birds protected by the MBTA and CFGC, nesting bird surveys shall be performed not more than 14 days prior to scheduled vegetation and concrete removal. In the event that active nests are discovered, a suitable buffer (typically a minimum buffer of 50 feet for passerines and a minimum buffer of 250 feet for raptors) shall be established around such active nests and no construction shall be allowed inside the buffer areas until a qualified biologist has determined that the nest is no longer active (e.g., the nestlings have fledged and are no longer reliant on the nest). No ground-disturbing activities shall occur within this buffer until the qualified biologist has confirmed that breeding/nesting is completed and the young have fledged the nest. Nesting bird surveys are not required for construction activities occurring between August 31 and January 31.

24. **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.
25. **Public Works / Building and Safety.** 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:

26. **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.
27. **All landscape, site and architectural improvements** shall be completed per the attached approved drawings dated August 3, 2023 (for indoor area) and November 27, 2023 (for courtyard area).

At All Times:

28. **Compliance with Approved Plan.** The project shall conform to the plans and statements in the Use Permit.
29. **Exterior Lighting.** All exterior lighting shall be energy efficient where feasible; and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
30. **Design Review.** Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to Design Review approval.
31. **Drainage Patterns.** The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.

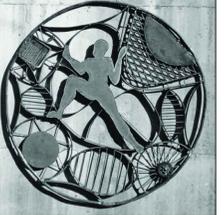
32. **Loading.** All loading/unloading activities associated with deliveries to all uses shall be restricted to the hours of 7:00 a.m. to 10:00 p.m. daily.
33. **Periodic Review and Reporting.** The City may require periodic review of this approved project to verify compliance with permit requirements 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)

34. There shall be no service or consumption of alcohol on the public right-of-way, unless authorized by a Public Works sidewalk seating permit.
35. A Berkeley Police Department Crime Prevention Through Environmental Design (CPTED) survey shall be completed prior to commencing alcohol service.
36. 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.
37. Employees shall not serve alcohol to patrons who appear to be inebriated or otherwise unable to behave in an orderly manner upon consuming alcohol.
38. 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.
39. Fortified alcohol products (e.g., malt liquor), shall not be sold on the premises.
40. The applicant shall establish cash handling procedures to reduce the likelihood of robberies and theft.
41. 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.
42. This Use Permit, including these and all other required conditions, shall be posted in a

conspicuous location, available for viewing by any interested party.

- 43.** 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.
- 44.** All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.



GUNKEL ARCHITECTURE
1295 59TH STREET
EMERYVILLE CA 94608
GUNKELARCHITECTURE.COM
PHONE: (510) 984 - 1112

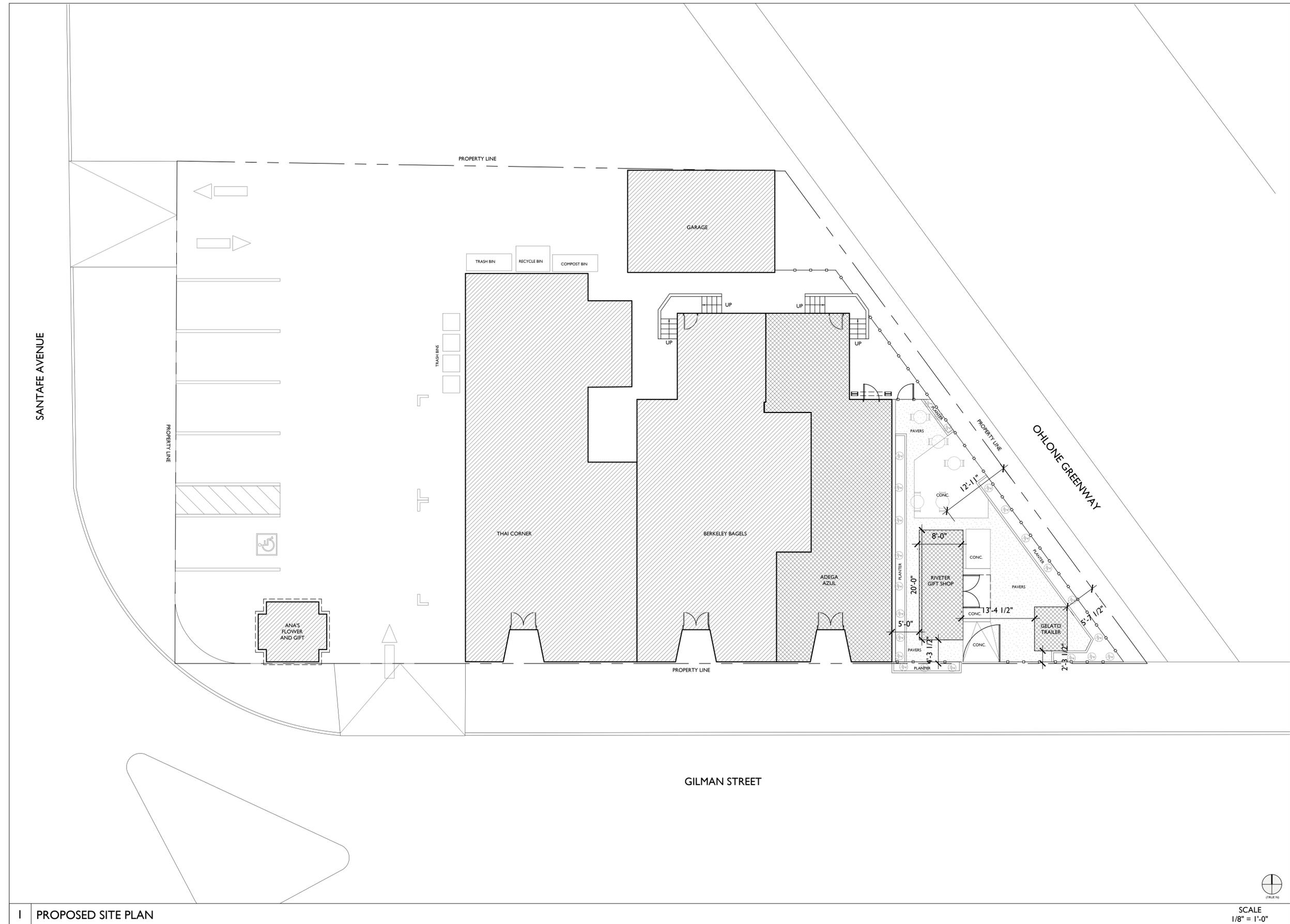
ADEGA AZUL
1287 GILMAN ST,
BERKELEY, CA 94706

PROPOSED
SITE PLAN

DESIGN REVIEW

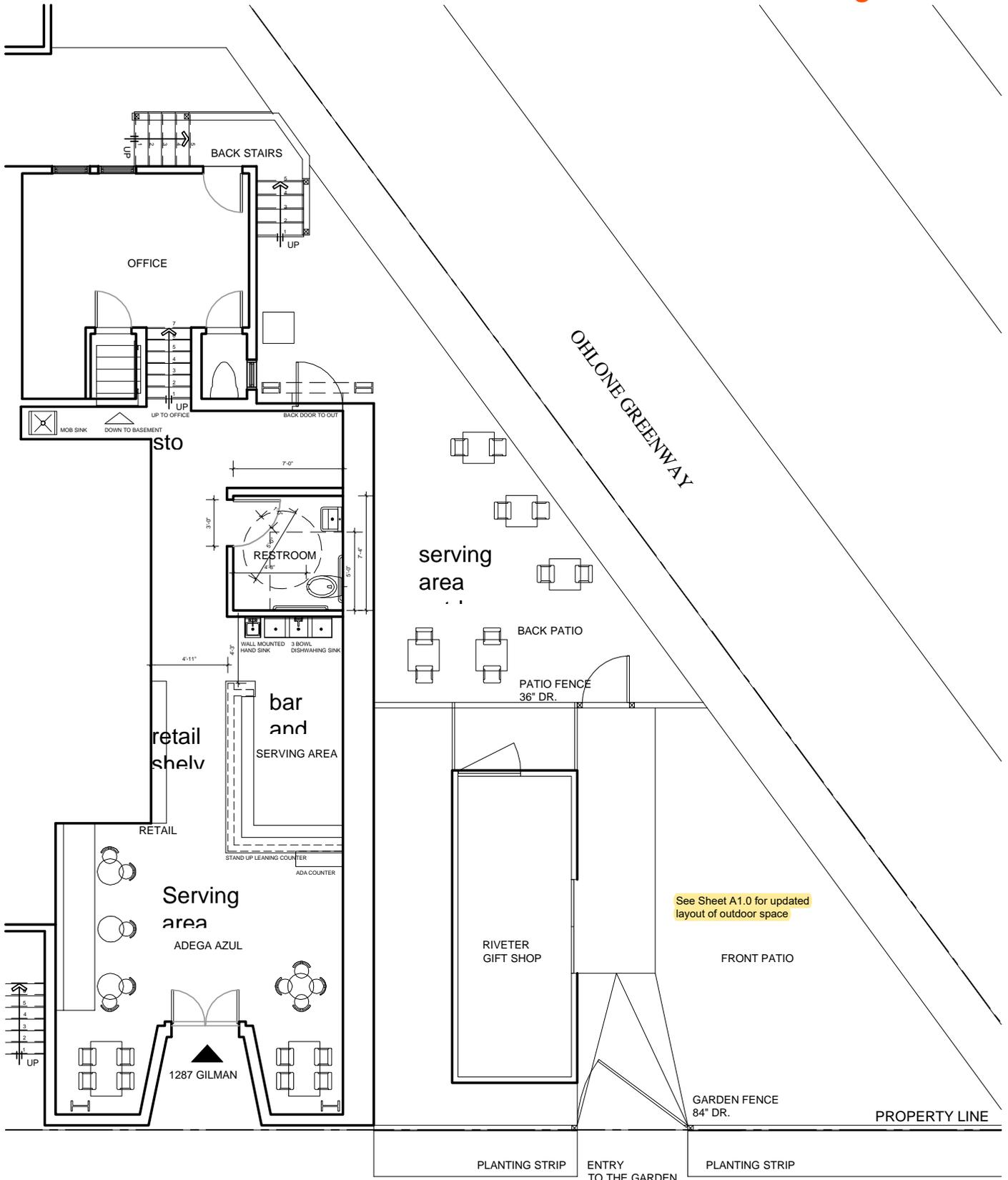
DATE 11/22/2023

A1.0



I | PROPOSED SITE PLAN

SCALE
1/8" = 1'-0"



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

NOTICE OF PUBLIC HEARING

1287 Gilman Street

Use Permit #ZP2023-0122 to establish a wine bar with on-site wine service with outdoor seating under a Type 42 Alcoholic Beverage Control (ABC) license, add the retail sale of wine under a Type 20 ABC license, and legalize the addition of new floor area (shipping container) (160 square feet) for retail space, and the use of an ice cream trailer.

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, February 22, 2024, 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) 23.204.020(A), to establish a bar/tavern use (wine bar);
- Use Permit, pursuant to BMC Section 23.310.020, to serve alcoholic beverages not incidental to food service;
- Use Permit, pursuant to BMC Section 23.310.020, to allow retail sale of wine in the C-N zoning district;
- Use Permit, pursuant to BMC 23.302.020(E)(4), to allow an outdoor use (outdoor seating) on a commercial lot abutting a residential district;
- Use Permit, pursuant to BMC 23.302.020(E)(4), to establish an outdoor use (food truck) on a commercial lot abutting a residential district;
- Use Permit, pursuant to BMC 23.204.030, to construct new floor area (shipping container) in the C-N district.

C. CEQA Recommendation: Categorically exempt pursuant to Section 15303 of the CEQA Guidelines (“New Construction or Conversion of Small Structures”).

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.

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

Public

CITY OF BERKELEY
NOTICE OF PROPOSED DESIGN REVIEW ACTION-STAFF LEVEL
Chapter 23.406.070 of the Zoning Ordinance
DESIGN REVIEW #DRSL2023-0017

A PROJECT has been proposed for this site which is subject to Design Review by Land Use Planning Staff as per Chapter 23.406.070 of the Zoning Ordinance of the City of Berkeley. Under this section, the design can be approved administratively by staff with no public hearing.

PROJECT LOCATION: 1287 Gilman Street

APPLICANT: Adegaz Azul

ZONING DISTRICT: C-N Neighborhood Commercial

PROPOSED ACTION: Approved, According to Conditions on Page 2 (see attached drawings)

DATE OF POSTING: February 8, 2024

APPEAL PERIOD EXPIRES AT 4:00 P.M. ON: February 22, 2024

Any concerned party may appeal the proposed action by submitting a letter specifying the reason(s) for the appeal prior to 4 p.m. on the expiration date with the appeal fee that is required at that time.

You may review project materials online by clicking [this link](#). Written responses should be mailed to 1947 Center Street, 3rd Floor Berkeley, CA 94704, or can be sent via email to Anne Burns at aburns@berkeleyca.gov. Based on comments received, Design Review Staff may extend the appeal period, revise the proposed design review action, or determine that a public hearing with the Design Review Committee will be required in order to process this application.

If Design Review Staff determines that no changes are warranted based on the issues raised, and or comments received, and if no appeal is received during the review period time, the proposed permit will be issued after the first working day following the expiration of the appeal period. Questions! Please call the Design Review Staff at (510) 981-7410.

NOTICE: If you object to this project or to any City action or procedure relating to this project application, any lawsuit which you may later file may be limited to those issues raised by you or someone else at the public hearing on this project or in written communications presented at or prior to the public hearing. The time limit within which to commence any lawsuit or legal challenge related to this application is governed by Section 1094.6 of the Code of Civil Procedure, unless a shorter limitations period is specified by any other provision. Under Section 1094.6, any lawsuit or legal challenge to any quasi-adjudicative decision made by the City must be filed no later than the 90th day following the date on which such decision becomes final. Any lawsuit or legal challenge, which is not filed within that 90-day period, will be barred.

REQUIRED CONDITIONS:

- 1) The proposed outdoor seating reconfiguration project, including new structures, is approved as shown on the site plan drawing dated “received 11/27/2023” and the renderings dated “received 01/02/2024” subject to the following conditions.
- 2) No changes can be made to these approved plans without Design Review approval.
- 3) **COLORS** Prior to Design Review sign-off of the Building Permit set of drawings, the applicant shall submit color and materials information for review and approval by Design Review Staff.
- 4) **CLEAR GLASS** All glass is assumed to be clear glass. Any proposed glass that is not clear glass, or includes signage, shall be indicated on all drawings, and shall be reviewed for approval by design review staff
- 5) **DETAILS** Prior to Design Review sign-off of the Building Permit set of drawings, the applicant shall submit gift shop and food truck details for review and approval by the Design Review Staff.
- 6) **SIGNAGE** Applicant shall submit a separate application for design review of the signage. It is not included in this permit.
- 7) **LIGHTING** Prior to Design Review sign-off of the building permit set of drawings, the applicant shall submit lighting details showing all existing and proposed site and building lighting. Exterior lighting, including for signage, shall be downcast and not cause glare on the public right-of-way and adjacent parcels.
- 8) **LANDSCAPE PLANS** Prior to Design Review sign-off of the Building Permit set of drawings, the applicant shall submit a Landscape plan including the number, location, and species of all proposed plantings, and which existing plantings shall be removed. The applicant shall provide irrigation for all landscaped areas or provide drought tolerant plant palette. This shall be called out on Landscape building permit drawings. Additional landscape shall be installed between the food truck and property lines.
- 9) **USE PERMIT** Design Review approval is contingent upon use permit approval.

Public

1287 Gilman Street/ DR# DRSL2023-0017
Page 3 of 4

- 10) The applicant shall be responsible for identifying and securing all applicable permits from the Building and Safety Division and all other affected City divisions/departments prior to the start of work.
- 11) The applicant is responsible for complying with all the above conditions. Failure to comply with any condition could result in construction work being stopped, issuance of citations, as well as further review by the Design Review Staff, which may modify or impose additional conditions, or revoke the design review approval.
- 12) All building permit drawings and subsequent construction shall substantially conform to the final design review plans as outlined in Condition #1. Any modifications must be reviewed by the Zoning Officer or his designee to determine whether the modification requires approval.
- 13) 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.

ATTEST:



Anne Burns, Senior Planner - Design Review
(510) 981-7415

Public

1287 Gilman Street/ DR# DRSL2023-0017
Page 4 of 4

LEGAL NOTICE CONCERNING YOUR LEGAL RIGHTS

If you object to a decision by the Design Review Staff, the following requirements and restrictions apply:

1. If you challenge the decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Design Review Committee at, or prior to, the public hearing.
 2. You must appeal to the Design Review Committee within fourteen (14) days of the date of this post notice.
 3. Pursuant to Code of Civil Procedure Section 1094.6(b), 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 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.
 5. 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.
 6. 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.



GUNKEL ARCHITECTURE
1295 59TH STREET
EMERYVILLE CA 94608
GUNKELARCHITECTURE.COM
PHONE: (510) 984 - 1112

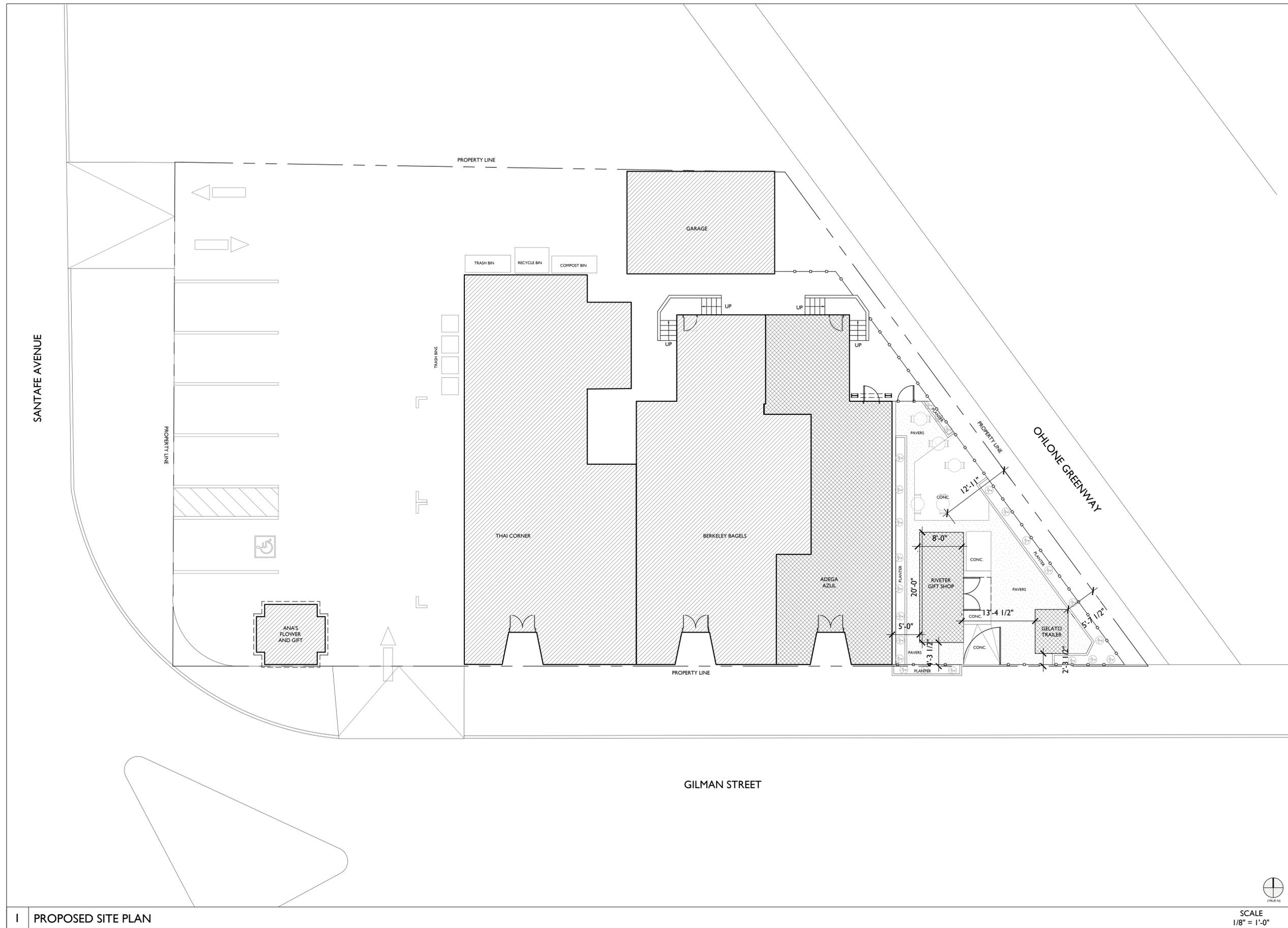
ADEGA AZUL
1287 GILMAN ST,
BERKELEY, CA 94706

PROPOSED
SITE PLAN

DESIGN REVIEW

DATE 11/22/2023

A1.0

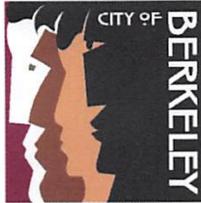


I PROPOSED SITE PLAN

SCALE
1/8" = 1'-0"



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: **Adega 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 Adega 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 Adega Azul through ABC.

Adega 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. Adega 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', is written over the typed name.

Jennifer Louis

Interim Chief of Police

JL/gs