



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

APRIL 25, 2024

1788 FOURTH STREET

Use Permit #ZP2023-0159 to Modify Use Permit #05-10000094 to add the service of distilled spirits incidental to food service, under a Type 47 ABC license, to a currently vacant restaurant space with an existing on-site outdoor dining area; and expand the allowed operating hours for the restaurant. The project also proposes to construct a trellis and barriers to delineate the outdoor area.

I. Background

A. Land Use Designations:

- General Plan: AC: Avenue Commercial
- Zoning District: C-W: West Berkeley Commercial

B. Zoning Permits Required:

- Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.310.020 to add the service of distilled spirits incidental to food service
- Use Permit pursuant to BMC Section 23.302.020(B)(1) to expand the permitted hours of operation beyond those allowed by right in the C-W zoning 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").

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D. Parties Involved:

- Applicant: Elliot Abrams, 1834 Fourth Street, Berkeley
- Property Owner: Marketplaza LLC, 1834 Fourth Street, Berkeley

Figure 1: Vicinity and Zoning Districts



	C-W	West Berkeley		R-1A	Limited Two-Family Residential
	M	Manufacturing		R-3	Multiple-Family Residential
	MULI	Mixed Use-Light			
	MUR	Mixed Use-			

Figure 2(a): Site Plan

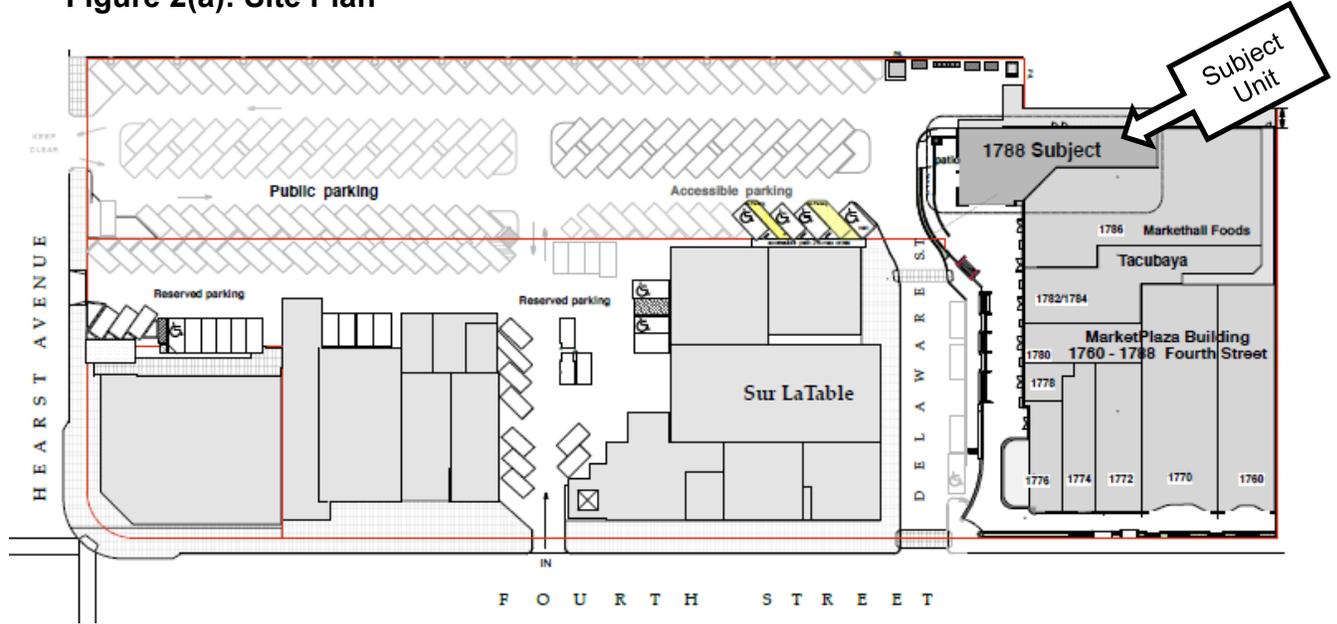


Figure 2(b): Site Detail

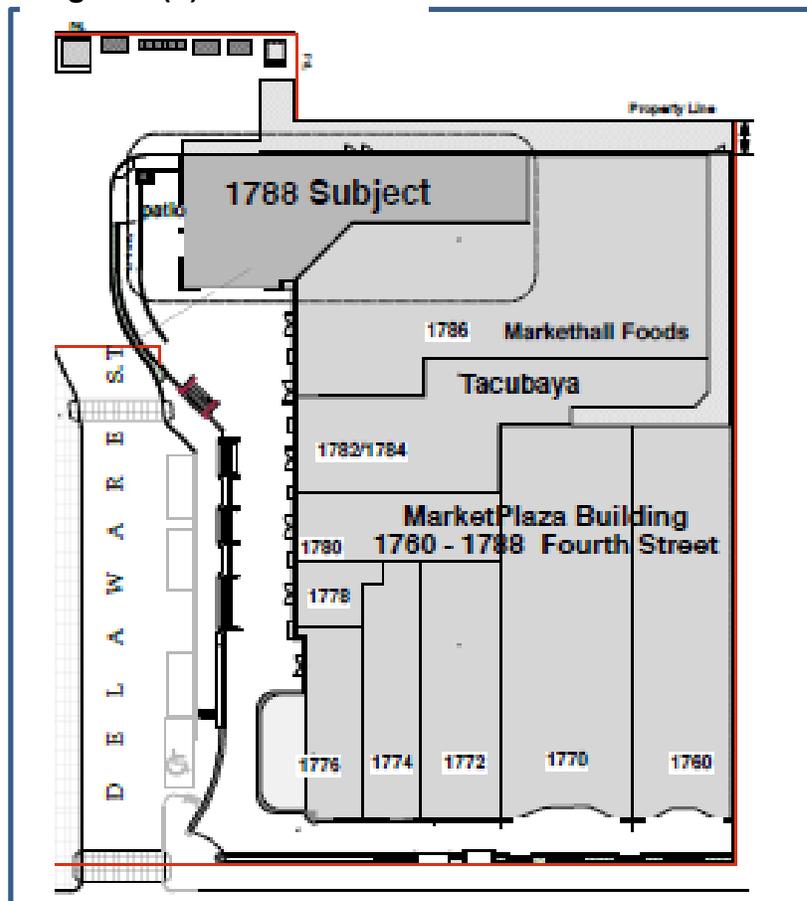


Figure 3(a): Floor Plans

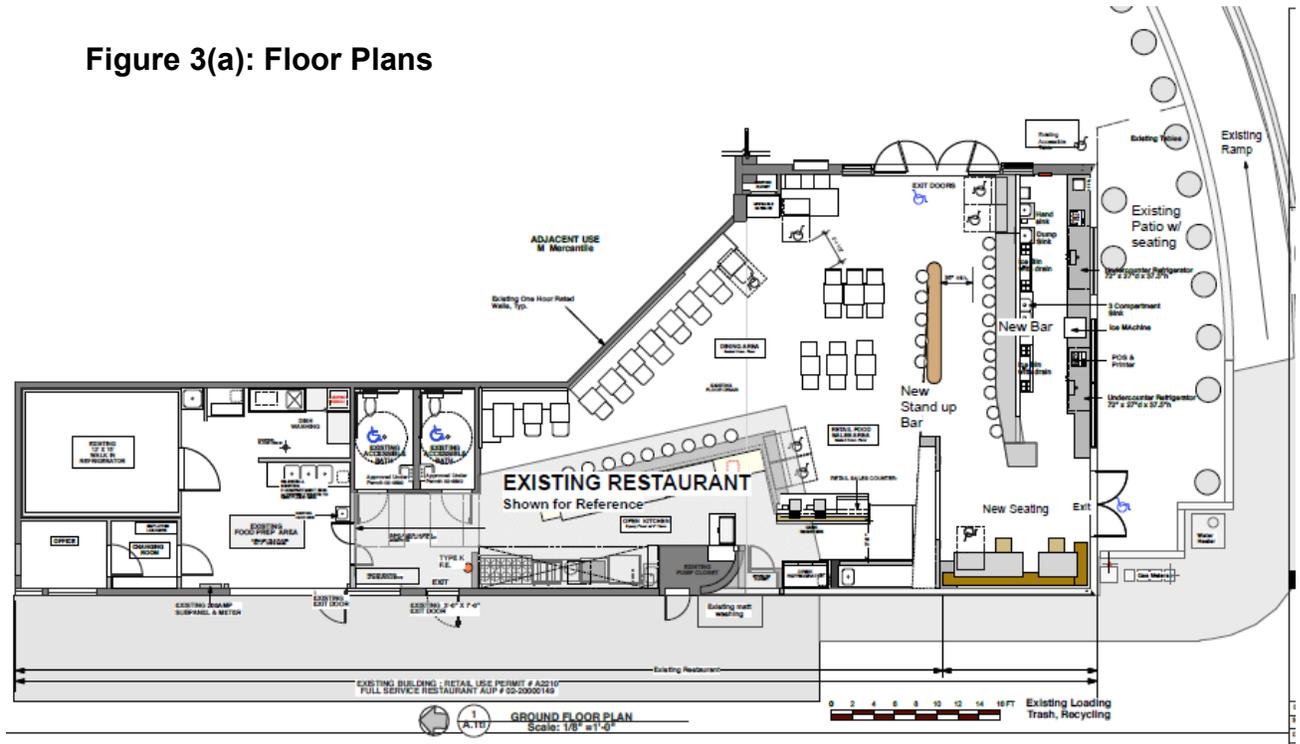


Figure 3(b): Patio Detail

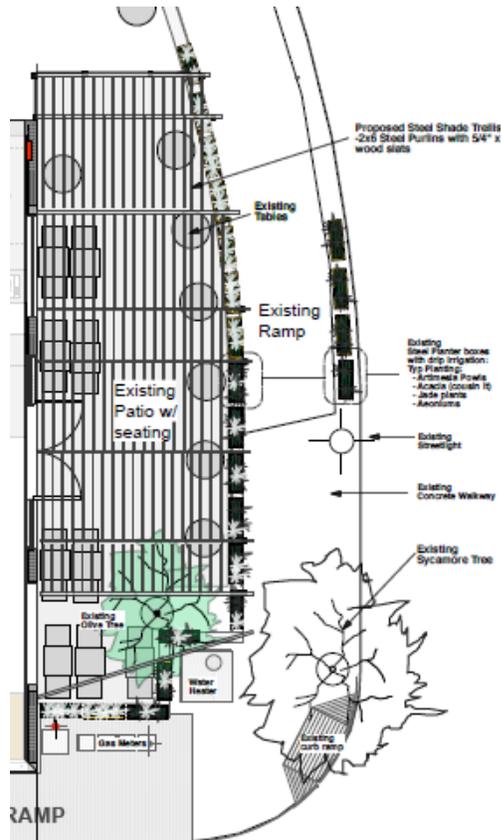
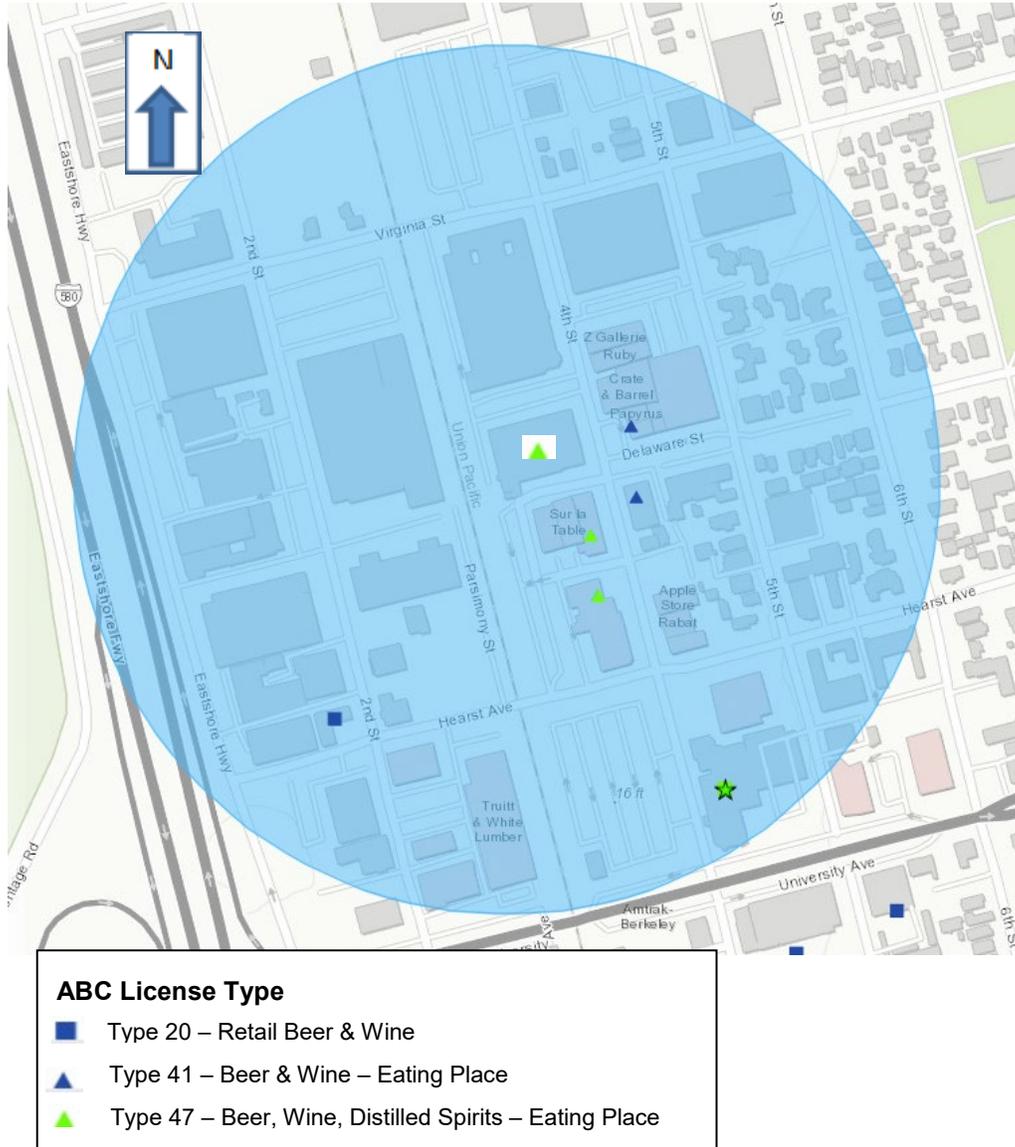


Figure 4: Elevations



Figure 5: Alcoholic Beverage Licenses Within 1,000 Feet of Subject Site



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Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Vacant - Restaurant	West Berkeley Commercial	Avenue Commercial
Surrounding Properties	North	Mixed Commercial		
	South	Mixed Commercial		
	East	Railroad right-of-way	N/A	N/A
	West	Mixed Commercial	West Berkeley Commercial	Avenue Commercial

Table 2: Special Characteristics

Characteristic	Applicability	Explanation
Affordable Child Care Fee for qualifying non-residential projects (Per Resolution 66,618-N.S.)	No	This fee applies to net newly constructed nonresidential gross floor area over 7,500 square feet. The project would not create new floor area. Therefore, the fee does not apply.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)		
Alcohol Sales/Service Public Convenience or Necessity	Yes	The project proposes alcoholic beverage service under a Type 47 ABC license. There are two Type 47 ABC licenses within 1,000 feet of the project site. Therefore, public convenience and necessity findings are required.
Transit	Yes	AC Transit lines 80 and 81 have stops within two blocks of the project site.

Table 3: Project Chronology

Date	Action
December 1, 2023	Application Submitted
December 21, 2023	Application deemed incomplete
January 12, 2024	Application resubmitted
February 1, 2024	Application deemed complete
April 11, 2024	Public hearing notices mailed/posted
April 11, 2024	Staff-level Design Review posted
April 25, 2024	ZAB hearing

II. Project Setting

A. Neighborhood/Area Description:

The project is located in the West Berkeley Commercial District in a designated node. It is located on the west side of Fourth Street between Virginia Street and Hearst Avenue. This walkable commercial neighborhood consists of a variety of one to two story commercial buildings with small retail shops and restaurants.

B. Site Conditions:

The project is located on the southwest corner of the Market Plaza commercial complex. It is at the rear of the complex, adjacent to a large customer parking lot to the south, the Union Pacific railroad tracks to the west, and an open patio area for walking and dining to east, which separates it from Fourth Street by about 160 feet. To its north the project is separated from the neighboring commercial parcels by the Market Plaza building. The existing 2,900 square foot restaurant space is currently vacant, but is intended for a future restaurant. The patio area to be used by the restaurant is approximately 428 square feet.

III. Project Description

A. Proposed Project Details: The project proposes to modify the existing restaurant use with the following primary components:

1. Add the service of distilled spirits to the future restaurant.
2. Add service of alcoholic beverages within the designated outdoor patio area.
3. Expand the allowed operating hours to 10:00 am – 1:00 am, which exceeds the district's and node's prescriptive hours of 6:00 am – midnight.
4. Construct a trellis and low fencing around the outdoor dining area.

IV. Community Discussion

A. Neighbor/Community Concerns:

Prior to submitting this application to the City, a pre-application poster was installed on site by the applicant in November 2023. On April 11, 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 3). The City also posted notices within the neighborhood at three nearby locations. At the time of writing this report, staff had not received any communications regarding the project.

B. Landmark Preservation Commission:

This project is not subject to review by the Landmarks Preservation Commission because it does not propose to demolish the commercial structure and is not a designated historic landmark.

C. Design Review:

The project proposes exterior changes to the outdoor area by adding a patio cover, 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 structure (Design Review #DRCP2024-0001) and concluded that, from a design standpoint, the project components would be compatible with the existing commercial and residential neighborhood character (Attachment 5).

V. Issues and Analysis

A. CEQA Approach and Recommendation

It is staff's recommendation that the project qualifies for a Class 1 Categorical Exemption pursuant to CEQA Guidelines Section 15301 ("Existing Facilities"). The project complies with this exemption because the only proposed change is the addition of a trellis over an existing paved area. In addition, none of the exceptions to eligibility for a categorical exemption as listed under CEQA Guidelines Section 15300.2, apply to the project:

- The project is currently developed/characterized as developed by the California Natural Diversity Database;¹ therefore, it is not located in an environmentally sensitive area;
- The cumulative impact of successive projects of the same type in the same place, over time would not be significant;
- There are no "unusual circumstances" at the project site that would result in significant environmental effects;
- There are no eligible or designated scenic highways within the City of Berkeley;² therefore, the project site is not in view of a state scenic highway;
- The site is not included on a list compiled pursuant to Government Code Section 65962.5;³ and
- The project would not result in a substantial adverse change in the significance of a historical resource.

The CEQA determination is made by ZAB, as the decision-making body.

B. General Non-Detriment Finding:

BMC Section 23.406.040(E) states that before the ZAB approves an application for a Use Permit, it must find that the project, under the circumstances of this particular

¹ California Department of Fish and Wildlife. California Natural Diversity Database. Available: <https://apps.wildlife.ca.gov/bios6/?tool=cnddbqv>

² California Department of Transportation. California Scenic Highway Program's Scenic Highway System List. Available: <https://dot.ca.gov/programs/design/lap-landscape-architecture-and-community-livability/lap-liv-i-scenic-highways>

³ California Environmental Protection Agency. Cortese List Data Resources. Available: <https://calepa.ca.gov/sitecleanup/corteselist/>

case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City.

1. The proposed patio trellis is not adjacent to any residences and is lower than the height of the adjacent building. Therefore, it would not have significant effects on sunlight, air, views, or privacy.
2. The project is in an existing restaurant space, so it would not add to increased parking or traffic congestion.
3. The project is not adjacent to any residential areas, and is bordered by busy commercial and industrial uses, as well as the Union Pacific railroad tracks. Therefore, the outdoor dining area would not be a source of disruptive noise.
4. The project is subject to the City's standard conditions of approval regarding hours of operation and alcoholic beverage sales, thereby ensuring 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.

Staff Analysis: The alcohol service would be incidental to food service, and due to the incidental nature of the service, as well as the location of the restaurant, the addition of distilled spirits would not have a detrimental impact on public health, safety, or peace. The permit is subject to the standard conditions for food and alcohol service (alcohol service will remain incidental to food service, off-site sales of alcoholic beverages will be prohibited, all applicable ABC regulations will be in effect, etc.). The outdoor service area would be enclosed with a fence, which will ensure that alcoholic beverages remain on site. Restaurant operating hours will comply with those allowed in C-W district nodes. These factors would ensure that the restaurant is a good neighbor and positive contribution to the community.

C. District Purposes/Use Permits in the C-W District:

BMC Section 23.204.140 allows bars and alcoholic beverage service and sales with approval of a Use Permit, subject to ZAB making the applicable findings under BMC Section 23.204.140(F). In order to approve these Use Permits in the C-W zoning district, ZAB must find that the proposed uses are:

- 1) Consistent with the purposes of the C-W zoning district, which are the following:
 - Implement the West Berkeley Plan Commercial District designation;
 - Provide locations for commercial services which primarily serve area residents and/or businesses;
 - Support the retention and attraction of a balance of both smaller and larger stores and restaurants;

- Provide appropriate locations, consistent with West Berkeley Plan policies, for commercial services which serve a citywide or broader clientele;
- Provide a relatively compact, clearly bounded set of commercial areas in West Berkeley, so as to both improve the quality of West Berkeley shopping environments and to prevent commercial overspill into industrial areas;
- Encourage the intensification of commercial activity at designated nodes to help develop more pedestrian-oriented environments at those locations;
- Increase the opportunities for development of housing in commercial areas to support local retailing and use of transit lines and opportunities for mixed use projects combining pedestrian-oriented neighborhood-serving uses with mixed income housing in locations abutting residential districts;
- Encourage appropriately intense development in underutilized portions of commercial streets;
- Promote development compatible with adjacent commercial, residential and industrial areas;
- Provide a location for cultural and performing arts activities; and
- Promote environmental protection for the residents and workers both within and adjacent to the district from such detriments as noise, fumes, and other detrimental environmental effects.

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

D. C-W District Nodes:

Per BMC 23.205.140(D)(5), the proposed project is located in designated C-W Node 6. To approve a Use Permit for a project in a designated node, the review authority (ZAB) must find that the project supports the development of a strong retail commercial and pedestrian-oriented environment at the node. Factors the review authority should consider when making this finding include:

- a. The placement of store entrances relative to the street and parking lots; and
- b. The size and prominence of display windows and areas facing the sidewalk.

Staff Analysis: This project would promote West Berkeley Plan Commercial District by intensifying a business space in a designated node, bringing a mid-size restaurant with attractive dining area to the neighborhood, and would primarily serve area residents and businesses. It is over 500 feet from the nearest residential area, so would not have negative offsite impacts. The use is fully compatible with surrounding uses and buildings, and is conveniently located next to a large parking lot and pedestrian walkway.

E. 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. In the present case, three other restaurants within 1,000 feet have Type 47 licenses. These are Tacubaya at 1782 Fourth Street, Zut! On Fourth at 1820 Fourth Street, and Iyasari at 1830 Fourth Street.

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

- 1) *The proposed establishment will promote the City's economic health, contribute to General Plan or area plan policies, or further the district purpose.*
- 2) *The economic benefits associated with the establishment could not reasonably be achieved without the proposed alcohol sales.*
- 3) *If the applicant has operated a licensed establishment that has been the subject of violations regarding alcohol in the State of California, or violations of public safety or nuisance statutes or regulations in the City of Berkeley as verified by the Police Department, the ZAB shall determine whether such violations indicate a high likelihood of further violations and/or detrimental impacts from the proposed establishment. In making this determination, the ZAB may consider the number, frequency, and severity of prior violations, the time elapsed since the last violation, and other relevant factors.*
- 4) *If the proposed establishment is located within 1,000 feet of any public park or Berkeley Unified School District (BUSD) school, the Board shall take into consideration the effect of the proposed establishment upon such sensitive public uses.*
- 5) *The Police Department has reported that the proposed establishment would not be expected to add to crime in the area.*

Staff Analysis:

The proposed addition of distilled spirits service would make the currently vacant

restaurant space attractive to potential businesses, thereby bringing additional tax revenue to the City and helping to enliven the neighborhood. The addition of distilled spirits to the menu would potentially increase the economic success of the business in a way that would likely not be available with just beer and wine service. The project site is not located within 1,000 feet from a public park or school.

Staff referred this application to the BPD for review and comment. In a letter dated January 19, 2024, the BPD stated that, "We see no reason to believe this business would increase crime or calls for service in the neighborhood, and see no reason it would have an adverse effect on the health, safety, or morals of the people in the area. We believe it will in fact be a net positive as more businesses open in the neighborhood." The letter does not indicate any previous alcohol-related violations associated with this business owner (Attachment 4).

VI. Other Considerations (Zoning and Land Use Considerations)

A. General Plan Consistency:

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

1. **Policy LU-1:** Maintain the character of Berkeley as a special, diverse, unique place to live and work.
2. **Policy LU-7 Neighborhood Quality of Life, Action B:** Carefully evaluate and monitor new and existing uses to minimize or eliminate negative impacts on adjacent residential uses.
3. **Policy LU-11 Pedestrian- and Bicycle-Friendly Neighborhoods:** Ensure that neighborhoods are pedestrian- and bicycle-friendly with well-maintained streets, street trees, sidewalks, and pathways.

Staff Analysis: The project is located in an active commercial neighborhood that is pedestrian and bicycle friendly and is served by bus lines. It is more than 500 feet from the nearest residences, thereby ensuring that the outdoor dining area will not cause neighborhood noise issues. Furthermore, it will bring a welcome dining experience, filling a currently vacant commercial unit, for area residents and workers.

VII. Recommendation

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

1. **FIND** that the project is categorically exempt from the provisions of the CEQA pursuant to Section 15301 of the CEQA Guidelines ("Existing Facilities"); and

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2. **APPROVE** Use Permit ZC2023-0159 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 January 17, 2024
3. Notice of Public Hearing
4. Berkeley Police Department letter, dated January 19, 2024
5. Design Review Notice, posted April 11, 2024

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

ATTACHMENT 1

FINDINGS AND CONDITIONS

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Use Permit #ZP2023-0159 to Modify Use Permit #05-1000094 to add the service of distilled spirits incidental to food service, under a Type 47 ABC license, to a currently vacant restaurant space with an existing on-site outdoor dining area; and expand the allowed operating hours for the restaurant. The project also proposes to construct a trellis and barriers to delineate the outdoor area.

ZONING PERMITS REQUIRED

- Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.310.020 to add the service of distilled spirits incidental to food service
- Use Permit pursuant to BMC Section 23.302.020(B)(1) to expand the permitted hours of operation beyond those allowed by right in the C-W zoning district

I. CEQA FINDINGS

- A.** 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”).
- B.** 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 will not affect any historical resource.

II. FINDINGS FOR APPROVAL

- A.** 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, will 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:
1. The proposed patio trellis is not adjacent to any residences and is lower than the height of the adjacent building. Therefore, it would not have significant effects on sunlight, air, views, or privacy.; and

2. The project is in an existing restaurant space, so it would not add to increased parking or traffic congestion.; and
3. The project is not adjacent to any residential areas, and is bordered by busy commercial and industrial uses, as well as the Union Pacific railroad tracks. Therefore, the outdoor dining area would not be a source of disruptive noise.
4. The project will be subject to the City's standard conditions of approval regarding hours of operation and alcoholic beverage sales, thereby ensuring 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.

III. OTHER FINDINGS FOR APPROVAL

- B.** As required by Section 23.204.140(F) of the BMC, the Zoning Adjustments Board finds that:
1. The project is consistent with the purposes of the West Berkeley Commercial (C-W) District because it supports the attraction of a mid-size restaurant, creates more commercial activity in a designated node, it is in a pedestrian-friendly location, and it is compatible with adjacent commercial, residential, and industrial areas;
 2. Is compatible with surrounding uses and buildings as determined by the Staff Design Review team;
 3. Complies with the adopted West Berkeley Plan in that it promotes commercial activity in a designated Node;
 4. Provides support to the continuity of retail and service facilities at the ground level;
 5. Compliments the urban fabric of the street and area;
 6. Does not propose the construction of new floor area;
 7. Because of its small size, and location away from residences and adjacent to a railroad right-of-way, it would not have negative off-site impacts.
 8. Because of its small size and location near a large parking lot and bus lines, it would not exceed the intensity of use that can be served by available traffic capacity and parking supply.
- C.** As required by Section 23.204.140(D)(5) of the BMC, the Zoning Adjustments Board finds that the project is consistent with the purposes of the C-W District Nodes in that it supports a strong commercial and pedestrian-oriented environment in that it is located adjacent to an active pedestrian walkway that leads from a large parking lot to the sidewalk along Fourth Street; and
- D.** As required by Section 23.310.020(D) of the BMC for Special Use Standards, the Zoning Adjustments Board finds that the project meets the findings for Public Convenience or Necessity because:
1. The proposed project would encourage a new business to occupy a currently vacant restaurant space, thereby contributing to the economic health of the City and supporting the purposes of the C-W District, West Berkeley, Area Plan, and General Plan;

2. Due to the expanded choices in alcohol sales and dining area, the project would make the currently vacant restaurant space more attractive to prospective new commercial tenants;
3. According to the Berkeley Police Department, the applicant has not operated a previous establishment that has been the subject of violations regarding alcohol in the State of California, or violations of public safety or nuisance statutes or regulations in the City of Berkeley;
4. The project is not located within 1,000 feet of any public park or Berkeley Unified School District school; and
5. The Police Department has reported that the proposed establishment would not be expected to add to crime in the area.

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. **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.
2. **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 re-establish the previously existing use, an applicant must obtain all permits required by the Zoning Ordinance for the use.
3. **Conformance to Approved Plans (BMC Section 23.404.060(B)(4)).**

All work performed under an approved permit shall comply with the approved plans and any conditions of approval.
4. **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.
5. **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.
6. **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.
7. **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.

8. 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 23.404.050(H), the Zoning Adjustments Board attaches the following additional conditions to this Permit:

Prior to Submittal of Any Building Permit:

9. 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 #
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10. Construction and Demolition Diversion. Applicant shall submit a [Construction Waste Management Plan](#) that meets the requirements of BMC Chapter 19.37 including 100 percent diversion of asphalt, concrete, excavated soil and land-clearing debris and a minimum of 65 percent diversion of other nonhazardous construction and demolition waste.

11. 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 \(arcgis.com\)](https://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/>

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

- 12. 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.
- 13. 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:

- 14. 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:

- 15. 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.
- 16. Public Works - Implement Bay Area Air Quality Management District (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.
- 17. 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.

- 18. 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 [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.
- 19. 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 percent. Documentation on concrete mix design shall be available at all times at the construction site for review by City Staff. (Project required to meet applicable code at time of building permit application, if different from above.)
- 20. 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.
- 21. Stormwater Requirements.** The applicant shall demonstrate compliance with the requirements of the City's National Pollution Discharge Elimination System (NPDES) permit as described in BMC Section 17.20. The following conditions apply:
- A.** The project plans shall identify and show site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants to the City's storm drainage system, regardless of season or weather conditions.
 - B.** Trash enclosures and/or recycling area(s) shall be covered; no other area shall drain onto this area. Drains in any wash or process area shall not discharge to the storm drain system; these drains should connect to the sanitary sewer. Applicant shall contact the City of Berkeley and EBMUD for specific connection and discharge requirements. Discharges to the sanitary sewer are subject to the review, approval and conditions of the City of Berkeley and EBMUD.

- C.** Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to stormwater pollution. Where feasible, landscaping should be designed and operated to treat runoff. When and where possible, xeriscape and drought tolerant plants shall be incorporated into new development plans.
- D.** Design, location and maintenance requirements and schedules for any stormwater quality treatment structural controls shall be submitted to the Department of Public Works for review with respect to reasonable adequacy of the controls. The review does not relieve the property owner of the responsibility for complying with BMC Chapter 17.20 and future revisions to the City's overall stormwater quality ordinances. This review shall be conducted prior to the issuance of a Building Permit.
- E.** All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.
- F.** All on-site storm drain inlets/catch basins must be cleaned at least once a year immediately prior to the rainy season. The property owner shall be responsible for all costs associated with proper operation and maintenance of all storm drainage facilities (pipelines, inlets, catch basins, outlets, etc.) associated with the project, unless the City accepts such facilities by Council action. Additional cleaning may be required by City of Berkeley Public Works Engineering Dept.
- G.** All on-site storm drain inlets must be labeled "No Dumping – Drains to Bay" or equivalent using methods approved by the City.
- H.** Most washing and/or steam cleaning must be done at an appropriately equipped facility that drains to the sanitary sewer. Any outdoor washing or pressure washing must be managed in such a way that there is no discharge of soaps or other pollutants to the storm drain. Sanitary connections are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
- I.** All loading areas must be designated to minimize "run-on" or runoff from the area. Accumulated waste water that may contribute to the pollution of stormwater must be drained to the sanitary sewer or intercepted and pretreated prior to discharge to the storm drain system. The property owner shall ensure that BMPs are implemented to prevent potential stormwater pollution. These BMPs shall include, but are not limited to, a regular program of sweeping, litter control and spill cleanup.
- J.** Restaurants, where deemed appropriate, must be designed with a contained area for cleaning mats, equipment and containers. This contained wash area shall be covered or designed to prevent run-on or run-off from the area. The area shall not discharge to the storm drains; wash waters should drain to the sanitary sewer, or collected for ultimate disposal to the sanitary sewer. Employees shall be instructed and signs posted indicating that all washing activities shall be conducted in this area. Sanitary connections are subject to the review, approval and conditions of the waste water treatment plant receiving the discharge.

- K.** Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry to the storm drain system. If any cleaning agent or degreaser is used, wash water shall not discharge to the storm drains; wash waters should be collected and discharged to the sanitary sewer. Discharges to the sanitary sewer are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
- L.** The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations, or a project stop work order.
- 22. Public Works.** Subject to approval of the Public Works Department, the applicant shall repair any damage to public streets and/or sidewalks by construction vehicles traveling to or from the project site.
- 23. Public Works.** All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter thick and secured to the ground.
- 24. Public Works.** The applicant shall ensure that all excavation accounts for surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.
- 25. Public Works.** The project sponsor shall maintain sandbags or other devices around the site perimeter during the rainy season to prevent on-site soils from being washed off-site and into the storm drain system. The project sponsor shall comply with all City ordinances regarding construction and grading.
- 26. Public Works.** Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season the applicant shall obtain approval of an erosion prevention plan by the Building and Safety Division and the Public Works Department. The applicant shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.
- 27. 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.
- 28. 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:

- 29. 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.

30. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated January 17, 2024.

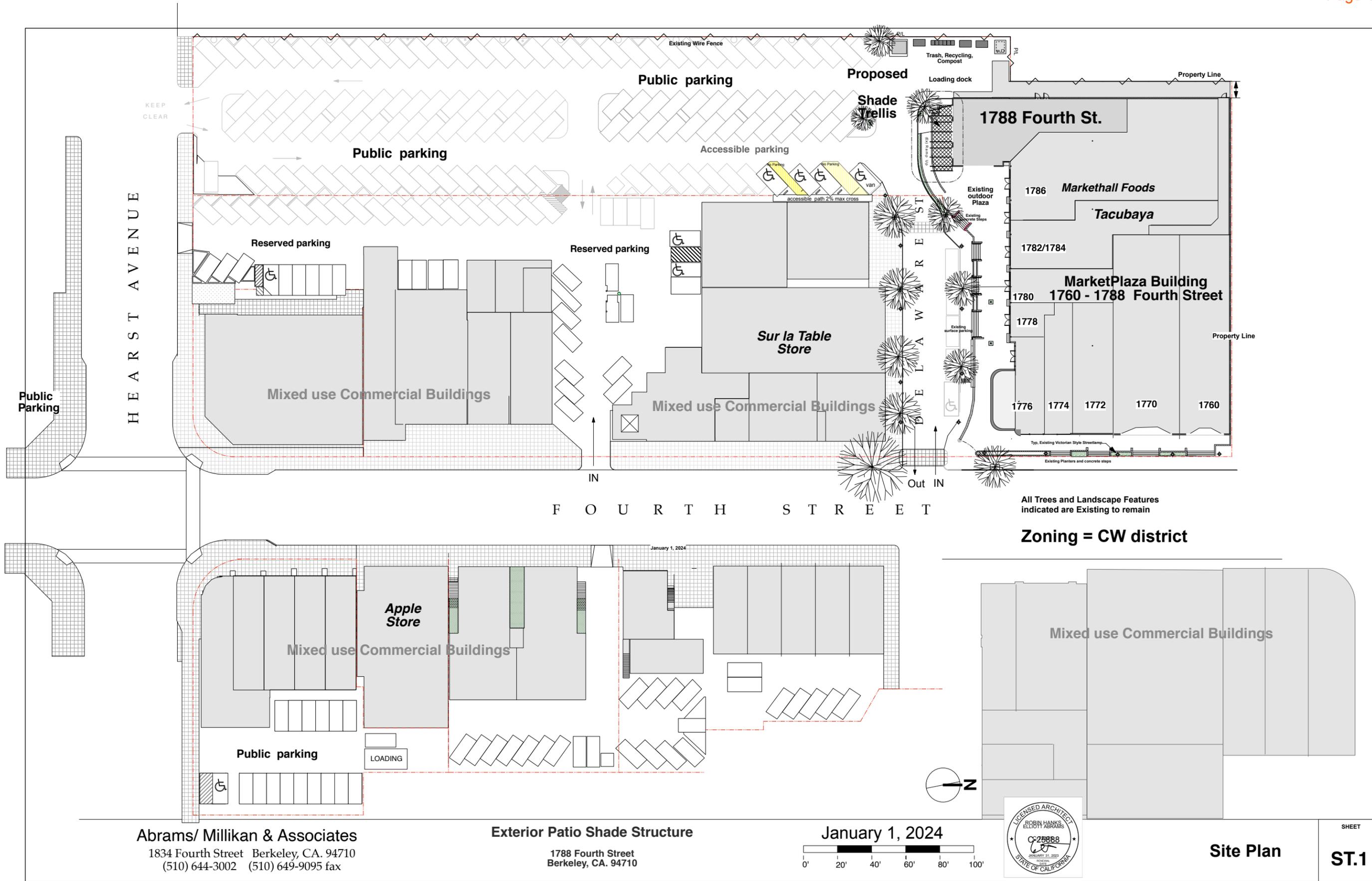
At All Times:

31. **Compliance with Approved Plan.** The project shall conform to the plans and statements in the Use Permit.
32. **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.
33. **Design Review.** Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to Design Review approval.
34. **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.
35. **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.
36. **Guaranteed Ride Home.** If qualifying for participation in the Alameda County Guaranteed Ride Home program (or successor program), shall participate in the "Guarantee Ride Home" program to reduce employee single occupant vehicle trips by providing alternate means of leaving work in an emergency. Enrollment shall be encouraged by providing Guarantee Ride Home information to all employees. An affidavit/statement indicating number of participating employees shall be provided annually to the Transportation Division Manager
37. **Transit Subsidy Condition.** If 10 or more employees, the business operator shall reimburse employees the maximum non-taxable cost of commuting to and from work on public transportation (e.g., monthly passes) if they so commute, and a notice informing employees of the availability of such subsidy shall be permanently displayed in the employee area as per BMC Chapter 9.88.
38. **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.
39. 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.

ALCOHOLIC BEVERAGE SERVICE CONDITIONS (on-site)

40. The Food Service Establishment shall comply with all applicable regulations of the California Department of Alcoholic Beverage Control (ABC).
41. Alcoholic beverage service shall be “incidental” to the primary food service use, as defined in Zoning Ordinance 23.502. An incidental use shall not exceed 25 percent of the floor area of the primary use, and if it consists of the commercial sales of a different line of products or services than the primary use, such incidental use may not generate gross receipts in excess of 33 percent of the gross receipts generated by the primary use.
42. Alcohol beverage service shall be only be allowed as part of a “bona fide eating place” making “actual and substantial sales of meals,” and stringently enforces this requirement as determined and required by the ABC.
43. The service of alcohol shall be limited to normal meal hours (per ABC) during the restaurant’s hours of operation. Patrons may only purchase food or finish drinks already purchased within the approved service hours. The Zoning Adjustments Board shall approve any change in the hours of restaurant operations and/or alcohol service (except decreased hours in compliance with applicable ABC regulations). Hours of operation are subject to review and amendment by the Zoning Adjustments Board as necessary to avoid detriment to the neighborhood or to achieve conformance with revised City standards or policies.
44. During operating hours, 100 percent of the service area shall be designed and used for and must possess the necessary utensils, and condiment dispensers with which to serve meals to the public.
45. The sale of alcoholic beverages for consumption off the premises is prohibited.
46. There shall be no service or consumption of alcohol on the public right-of-way, unless authorized by a Public Works sidewalk seating permit.
47. All alcoholic beverages served to patrons must be served in durable restaurant tableware (i.e. cups or glasses). No beer or wine may be distributed in its original bottle or can, or in any other potentially disposable container.
48. There shall be no bar or lounge area upon the licensed premises maintained for the sole purpose of sales, service or consumption of alcoholic beverages directly to patrons for consumption.
49. There shall be no exterior advertising or sign of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Neither alcohol-dispensing facilities nor sign(s) advertising alcoholic beverages shall be visible from the public right-of-way. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.
50. A Berkeley Police Department Crime Prevention Through Environmental Design (CPTED) survey shall be completed prior to commencing alcohol service.

- 51.** 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.
- 52.** Employees shall not serve alcohol to patrons who appear to be inebriated or otherwise unable to behave in an orderly manner upon consuming alcohol.
- 53.** 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.
- 54.** Fortified alcohol products (e.g., malt liquor), shall not be sold on the premises.
- 55.** The applicant shall establish cash handling procedures to reduce the likelihood of robberies and theft.
- 56.** 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.
- 57.** This Use Permit, including these and all other required conditions, shall be posted in conspicuous location, available for viewing by any interested party.





Existing Steel Planter boxes with drip irrigation:
 Typ Planting:
 - Artemisia Powis
 - Acacia (cousin it)
 - Jade plants
 - Aeoniums

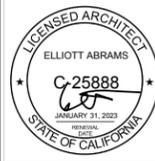


Proposed Steel Shade Trellis
 -2x6 Steel Purlins with 5/4" x 5" wood slats

Proposed Steel Shade Trellis
 -2x6 Steel Purlins with 5/4" x 5" wood slats

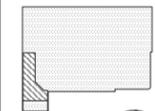
EXISTING RESTAURANT
 Shown for Reference

Abrams/ Millikan & Associates
 DESIGN CONSTRUCTION DEVELOPMENT
 1834 FOURTH STREET BERKELEY, CA 94710
 (510) 644-3002 (510) 649-9095 FAX



Exterior Patio Shade Trellis
 1788 Fourth Street
 Berkeley, CA. 94710

KEY PLAN



DATE : January 2024
 SCALE: As noted
 DRAWN : EA
 JOB

REVISION	DATE	BY	CHECKED

SHEET NO.
A.1
 OF ___ SHEETS

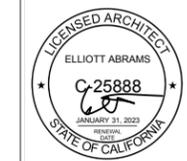
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TRELLIS PLAN & LANDSCAPE
 Scale: 1/8" = 1'-0"



Zoning = CW district

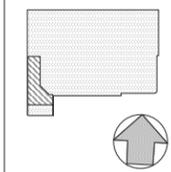
January 4, 2024

Abrams/ Millikan & Associates
 DESIGN CONSTRUCTION DEVELOPMENT
 1834 FOURTH STREET, BERKELEY, CA, 94710
 (510) 644-3002 (510) 645-9095 FAX



Exterior Patio Shade Trellis
 1788 Fourth Street
 Berkeley, CA. 94710

KEY PLAN

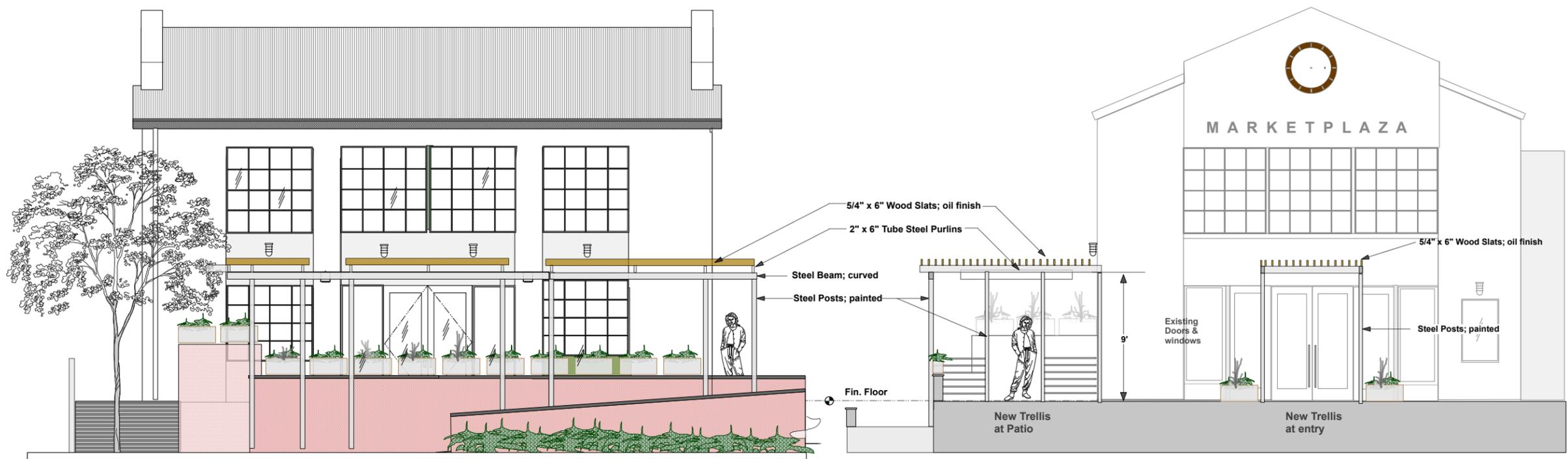


DATE : January 2024
 SCALE: As noted
 DRAWN : EA
 JOB
 REVISION DATE BY CHECKED

SHEET NO.

A.2

OF _____ SHEETS



2 Proposed South Elevation
 Scale: 1/8" = 1'-0"

3 Proposed East Elevation
 Scale: 1/8" = 1'-0"



1 Existing South Elevation
 Scale: 1/8" = 1'-0"



Zoning = CW district

January 3, 2024



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

1788 FOURTH STREET

Use Permit #ZP2023-0159 to Modify Use Permit #05-10000094 to add the service of distilled spirits incidental to food service, under a Type 47 ABC license, to a currently vacant restaurant space with an existing on-site outdoor dining area; and expand the allowed operating hours for the restaurant. The project also proposes to construct a trellis and barriers to delineate the outdoor area.

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, April 25, 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: AC (Avenue Commercial)
- Zoning: C-W (West Berkeley Commercial)

B. Zoning Permits Required:

- Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.310.020 to add the service of distilled spirits incidental to food service
- Use Permit pursuant to BMC Section 23.302.020(B)(1) to expand the permitted hours of operation beyond those allowed by right in the C-W zoning district

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

D. Parties Involved:

- Applicant Elliot Abrams, 1834 Fourth Street, Berkeley
- Property Owner Marketplaza LLC, 1834 Fourth Street, Berkeley

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 roer@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:

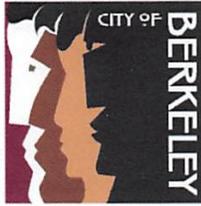
Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available to the public. Please contact the Land Use Planning Division (zab@berkeleyca.gov) to request hard-copies or electronic copies.

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.
-

Internal



Police Department

January 19, 2024

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

Re: 1788 Fourth St, New Restaurant

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 of 1788 Fourth St. remains the same. The owner is requesting an upgrade to their (Type 41) license to a (Type 47) license. The (Type 47) license allows for the sales of spirits. The current license is in good standing with ABC.

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

This business is currently a restaurant and will remain a restaurant. A new name has yet to be chosen for the restaurant. The business would like to add a designated outdoor gated patio for alcohol use and to modify existing hours to 10:00 am to 1:00 am. No changes will be made to existing structure except the new patio.

It should be noted that within a block of this address there are three other restaurant businesses with (Type 47) licenses, the nearest residential area is over 500 feet away and no schools are in the vicinity. The area in question is one of the premier shopping districts of Berkeley that generally caters to mature customers and is generally safe. The new restaurant at this address seems to easily fit in with the character of this popular Berkeley neighborhood.

An analysis of police service data at 1788 Fourth St. revealed 16 calls for service at the address from 2011 to present. One of those calls was alcohol related. Most of the calls pertain to theft associated with the adjacent city parking lot. An analysis of the other (Type 47) establishments in the area reveal 81 calls for service during the same time frame. With only two of those calls being alcohol related.

Internal

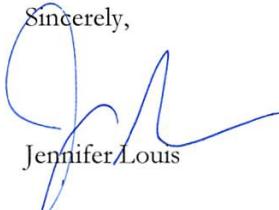
2100 Martin Luther King Jr. Way, Berkeley, CA 94704 Tel: 510.981.5900 TDD: 510.981.5799 Fax: 510.981.5704 E-mail:
police@cityofberkeley.info Website: <http://www.CityofBerkeley.info/Police>

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A search of the California ABC public data portal shows there are no alcoholic beverage violations reported at this address.

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.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jennifer Lous", with a long horizontal flourish extending to the right.

Jennifer Lous

Chief of Police

JL/gs

Public

CITY OF BERKELEY
NOTICE OF PROPOSED DESIGN REVIEW ACTION-STAFF LEVEL
Chapter 23.406.070 of the Zoning Ordinance
DESIGN REVIEW #DRSL2024-0001

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: 1788 Fourth Street

APPLICANT: Elliot Abrams

ZONING DISTRICT: C-W West Berkeley Commercial

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

DATE OF POSTING: April 11, 2024

APPEAL PERIOD EXPIRES AT 4:00 P.M. ON: April 25, 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 area is approved as shown on the drawings dated "received 1/30/2024" 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) **DETAILS** Prior to Design Review sign-off of the Building Permit set of drawings, the applicant shall submit steel shade trellis details for review and approval by the Design Review Staff.
- 5) **SIGNAGE** Applicant shall submit a separate application for design review of the signage. It is not included in this permit.
- 6) **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.
- 7) **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.
- 8) **USE PERMIT** Design Review approval is contingent upon use permit approval.
- 9) 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.
- 10) 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.

Public

1788 Fourth Street/ DR# DRSL2024-0001
Page 3 of 4

- 11) 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.
- 12) 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

1788 Fourth Street/ DR# DRSL2024-0001
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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.
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