



# 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  
MAY 9, 2024

## 1894 University Avenue

**Use Permit #ZP2023-0165 to establish an outdoor use for a mobile food truck in the C-U, abutting the Residential Two-Family Residential District.**

### I. Background

#### A. Land Use Designations:

- General Plan: AC – Avenue Commercial
- Zoning District: C-U University Commercial District

#### B. Zoning Permits Required:

- Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.302.020(E) to establish an outdoor use for an exterior service window (food truck) in the University Commercial District, abutting the Residential Two-Family Residential District

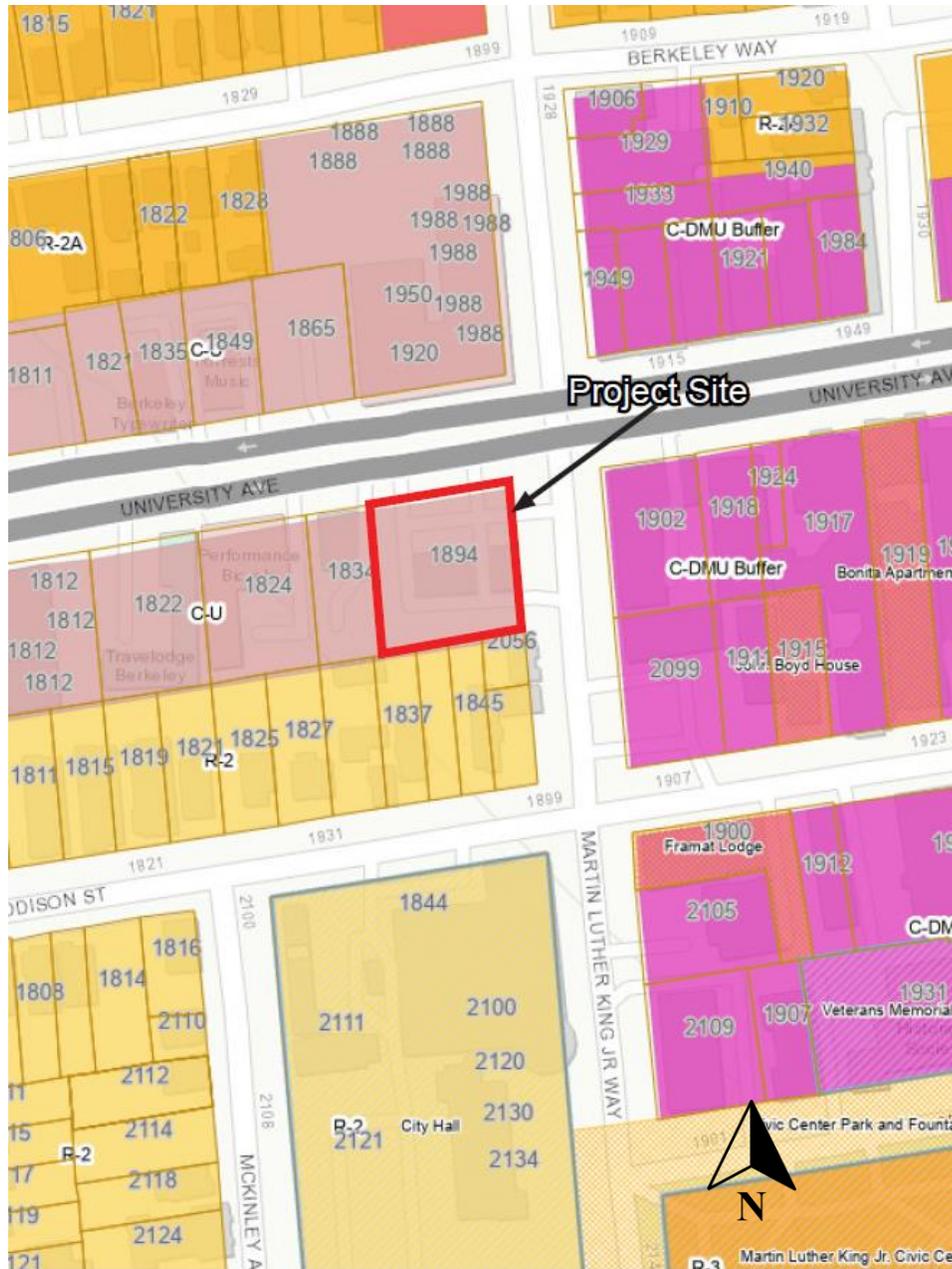
#### C. CEQA Recommendation:

It is staff's recommendation to the Zoning Adjustments Board (ZAB) that the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code Section 21000, et seq. and California Code of Regulations, Section 15000, et seq.) pursuant to CEQA Guidelines Section 15311("Accessory Structures").

#### D. Parties Involved:

- Applicant Jose Villalobos, 2748 Greenwood Drive, San Pablo, CA 94806
- Property Owner Hadjian Simin & Payvand Etal, 1821 Castle Gate Road, Walnut Creek, CA

Figure 1: Vicinity and Zoning Districts Map

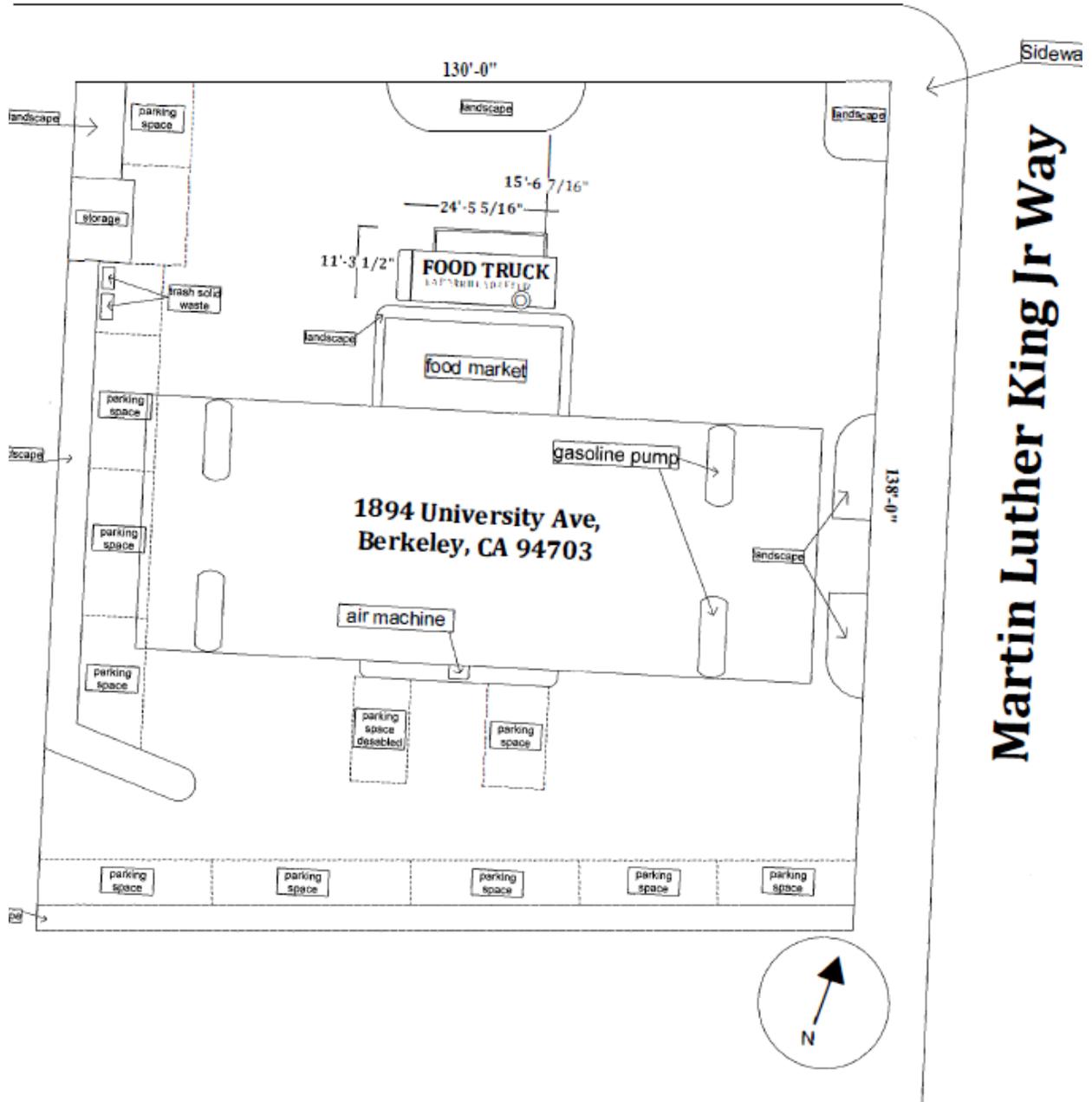


**Legend:**

- C-U – University Commercial District
- C-DMU – Downtown Mixed-Use District
- R-2 – Restricted Two-Family Residential District
- R-2A – Restricted Multiple-Family Residential District
- R-3 – Multiple-Family Residential District

Figure 2: Site Plan

# University Ave



ZONING ADJUSTMENTS BOARD

1894 UNIVERSITY AVENUE

May 9, 2024

Page 4 of 11

**Table 1: Land Use Information**

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Gas Station	C-U	Avenue Commercial
Surrounding Properties	North	Mixed Use: restaurant, grocery store, and dwelling units	C-U	Avenue Commercial
	South	Residential	R-2 Restricted Two-Family Residential District	Low Medium Density Residential
	East	Mixed Use: restaurants and dwellings units	C-DMU Buffer Downtown Mixed-Use District Buffer	Downtown
	West	Retail Commercial	C-U	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 is proposing the outdoor use of a food truck, therefore, the fee does not apply.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)		
Affordable / Inclusionary Housing Requirements (BMC Chapter 23.328)	No	The project is proposing the outdoor use of a food truck for the sale of prepared food, therefore, the Affordable/Inclusionary Housing Requirements do not apply.
Alcohol Sales/Service Public Convenience or Necessity	No	The project is proposing to sell prepared food from a food truck and will not include the sale of alcoholic beverages. Therefore, public convenience and necessity findings are not required.
Coast Live Oak Trees (BMC Chapter 6.52)	No	There are no Coast Live Oak ( <i>Quercus agrifolia</i> ) trees on the project site.
Creeks	No	No creek or culvert, as defined by BMC Chapter 17.08, exists on or within 30 feet of the project site.
Density Bonus	No	The project is not proposing residential units at project site, therefore, density bonus would not apply.
Historic Resources	No	The project is proposing the outdoor use of a food truck for the sale of prepared food, and does not include the alteration of a building more than 40 years old, therefore, the project would not affect historic resources.
Housing Accountability Act (HAA) (Gov't Code Section 65589.5(j))	No	The project is proposing the outdoor use of a food truck for the sale of prepared food and does not include any new dwelling units, therefore, it is not a

ZONING ADJUSTMENTS BOARD

1894 UNIVERSITY AVENUE

May 9, 2024

Page 5 of 11

Characteristic	Applicability	Explanation
		“housing development project” and the Housing Accountability Act does not apply. <sup>a</sup>
Housing Crisis Act of 2019 (SB 330)	No	The project does not meet the definition of a “Housing Development Project” per Government Code Section 65589.5(h)(2).
Rent Controlled Units	No	The project is proposing the outdoor use of a food truck for the sale of prepared food and will not affect rent-controlled units.
Residential Preferred Parking (RPP)	No	The project is proposing the outdoor use of a food truck for the sale of prepared food and will not request RPP permits, as the project will not include residential units.
Seismic Hazards (SHMA)	No	The project site is not located within an area susceptible to landslide/liquefaction/fault rupture as shown on the <a href="#">State Seismic Hazard Zones</a> map. <sup>b</sup>
Soil/Groundwater Contamination	No	The project site is within the City’s Environmental Management Area, however is not on the Cortese List. <sup>c</sup> The project would allow the outdoor use of a food truck on an existing paved area – there is no excavation or other ground disturbance. Standard Conditions of Approval related to hazardous materials would apply.
Transit		From the site, Alameda-Contra Costa Transit District (AC Transit) Bus lines 12, 51B, 52, 79, 88, 604, 800 are within 0.5 mile of the project site.
<p>Notes:</p> <p>a. Government Code Section 65589.5(h)(2) “Housing development project” means a use consisting of any of the following: (A) residential units only, (B) mixed-use developments consisting of residential and nonresidential uses in which at least two-thirds of the square footage is designated for residential use, and (C) transitional or supportive housing.</p> <p>b. California Department of Conservation. DOC Maps: Geologic Hazards. Available: <a href="https://maps.conservation.ca.gov/geologic Hazards/">https://maps.conservation.ca.gov/geologic Hazards/</a></p> <p>c. The Cortese List is an annually updated list of hazardous materials sites compiled pursuant Government Code Section 65962.5.</p>		

**Table 3: Project Chronology**

Date	Action
December 14, 2023	Application submitted
January 24, 2024	Application deemed complete
April 25, 2024	Public hearing notices mailed/posted
May 9, 2024	ZAB hearing

## II. Project Setting

### A. Neighborhood/Area Description:

The project is located adjacent to downtown in the University Avenue commercial area. The neighborhood consists of mixed-use commercial and residential buildings, including restaurants, retail and grocery stores in the immediate vicinity.

### B. Site Conditions:

The subject site is a corner lot located on the south side of University Avenue, immediately west of Martin Luther King Jr. Way. It is a square corner lot and generally flat, with 130 feet of frontage along University Avenue, and 135 feet of frontage on Martin Luther King Jr. Way. The lot is occupied by a gas station, consisting of six gas pumps on the eastern side of the lot and a convenience store on the center of the lot. The lot provides off-street parking along the southern and western perimeters of the lot for patrons. Additionally, the lot provides four off-street parking spaces designated for Zip Car rentals through a private contract between Zip Car and University of California, Berkeley. These are tandem parking spaces located along the western perimeter of the gas station building. The site has been developed since the early 1950's, first as a car sales lot, and now as a gas station since the mid 1960's.

The lot is accessible via four curbcuts. There are two driveways on the north perimeter along University Avenue. The western curbcut provides access to parking areas only, and not to the gas pumps. The eastern curbcut, closest to the intersection, provides the only access from University Avenue to the gas pumps. The other two are on the east perimeter along Martin Luther King Jr. Way, both of which provide access to the gas pumps and parking along the southern property line.

## III. Project Description

### A. Proposed Project Details:

The proposed project would allow the outdoor use of a food truck for the sale of made-to-order meals from an exterior service window with the following primary components:

1. The project proposes a food truck selling made-to-order meals from an exterior service window, and operated by the business owner. The food truck would be parked at the front of the existing building facing University Avenue, approximately 18 feet from the front property line, and 50 feet from the eastern property line along Martin Luther King Jr. Way. The food truck would not be a permanent structure on the site and will be driven to and from the project site to operate during the business hours of 11AM-10PM Monday through Thursday, and 10AM-11PM on Saturdays, within the allowable hours for the district.
2. The majority of the food would be cooked at an off-site location and meals would be prepared by the owner-operator as orders are received, minimizing

odors and eliminating the need to dispose of materials such as cooking oils on the site while providing patrons with quick service.

3. The project would be subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements which will ensure that the project will 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 injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.

#### **IV. Community Discussion**

##### **A. Neighbor/Community Concerns:**

The applicant posted a yellow poster on December 13 2023. On April 25, 2024, the City mailed public hearing notices to property owners and occupants within a 300-foot radius, and to interested neighborhood organizations, and the City posted notices within the neighborhood in six locations. At the time of writing this staff report, staff has not received any written communication.

##### **B. Committee Review:**

This project is not subject to review by the Design Review Committee or the Landmarks Preservation Commission because it is an outdoor use and the food truck will be driven off the property at the end of the day, and does not involve the demolition of a non-residential building.

#### **V. Issues and Analysis**

##### **A. CEQA Approach and Recommendation**

ZONING ADJUSTMENTS BOARD

1894 UNIVERSITY AVENUE

May 9, 2024

Page 8 of 11

It is staff's recommendation that the project qualifies for a Class 1 Categorical Exemption pursuant to CEQA Guidelines Section 15311 ("Accessory Structures"). The project complies with this exemption as the project is not proposing development at the site, rather a food truck that will be driven to the site daily and would be driven off the site at the end of the business hours. 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 as low-medium developed by the California Natural Diversity Database;<sup>1</sup> The site has been developed since 1952 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;<sup>2</sup> 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;<sup>3</sup> 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 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.

**Evidence:**

- 1. Safety/Circulation:** As discussed above in Section II.B, traffic can access the site via four curbcuts, two from each right-of-way. The food truck is proposed to be located between the two curbcuts along University Avenue, and would be cordoned

---

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

<sup>2</sup> 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>

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

off on the sides to clearly identify that no vehicles are permitted to drive through where patrons order and receive their food. The western curbcut accessible from University Avenue only provides access to the parking spaces along the western property line and does not provide access to the gas pumps. The southern curbcut along Martin Luther King Jr. Way provides access to the off-street parking spaces along the southern perimeters, and the northern curbcut provides access to the gas pumps and parking along the southern property line.

2. **Shadows:** The project proposes to add a food truck at the site with an existing gas station to prepare made-to-order meals for takeout. The food truck would not be a permanent structure and would be driven to the site daily, parked at the front of the site where it would not obstruct traffic or access to the gas pumps, and would be driven off the property at the end of the business' operation hours. The food truck would not exceed the height of the existing convenience store building. As such, the project would not create new shadows for the commercial buildings along University Avenue or Martin Luther King Jr. Way, or to the residential lots to the south because the truck would be located on the north side of the existing building.
3. **Air:** The food truck would not be permanently stationed at this location as it would be driven to and from the site on a daily basis. Additionally, the food truck would be parked next to the existing building on the site serving as the convenience store, and would not exceed the height of the existing building and would maintain adequate air space on all sides.
4. **Views:** The proposed project is located in an urban setting, on a developed site on the corner of University Avenue and Martin Luther King Jr. Way. The area is generally flat and the urban location provides tall buildings ranging from two to five stories. The food truck would not exceed the height limit of any surrounding buildings and would not result in additional obstruction of significant views in the neighborhood.
5. **Privacy:** The food truck would not cause significant privacy impacts to neighboring properties. The food truck will be located at the front of the existing convenience store facing University Avenue, at least 60 feet from the nearest neighboring building.
6. The proposed project would be in keeping with the surrounding neighborhood by providing food service along a commercial corridor. The project is subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, thereby ensuring the project would not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.

**A. Use Permit in the C-U District:**

To approve any use permit in the C-U, the ZAB must make the applicable findings in the BMC Section 23.204.060 that the project:

1. Is it compatible with the purpose of the district;
2. Is 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

**Evidence:** The food truck would be compatible with the purpose of the district and surrounding uses and buildings. This location is a high-traffic area, by both auto vehicles and pedestrians, and the food truck would strengthen the commercial activities and further diversify dining options in the C-U District. The use does not interfere with the continuity of retail and service facilities at the ground level, and activates an area formerly occupied by parking spaces. The project does not include new construction that would exceed allowable intensities development or intensities of use that can be served by available traffic capacity and potential parking supply.

**VI. Other Considerations (Zoning and Land Use Considerations)**

The following analyses of conformance with district purposes, and the 2002 General Plan goals and policies are provided for informational purposes only, and to provide context.

**C. Area Plan Consistency:**

The University Strategic Plan, adopted in 1996, contains several policies applicable to the project, including the following:

1. **Goal #2:** Revitalize the University Avenue corridor through appropriate economic development and housing

Staff Analysis: The introduction of the proposed food truck would enhance the neighborhood and maintain the full range of land uses and economic activities, including residences, retailing, services and other activities along University Avenue.

2. **Goal #3:** Protect and improve neighborhood quality of life

Staff Analysis: The introduction of the proposed food truck would enhance the pedestrian experiences along the University Avenue Corridor.

3. **Goal #4:** Encourage more pedestrian-oriented development and an appropriate mix of uses to improve neighborhood identity

ZONING ADJUSTMENTS BOARD

1894 UNIVERSITY AVENUE

May 9, 2024

Page 11 of 11

Staff Analysis: The proposed food truck would contribute to the pedestrian-oriented neighborhood by offering a new dining option that is easily accessible to pedestrians.

4. **Goal #6:** Coordinate and enhance public transit systems, pedestrian access, and bicycle circulation

**Evidence:** The proposed food truck would be located in the heart of the University Corridor near major transit stops, while maintaining the safety of pedestrians and bicycle circulation.

## VII. 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:

1. **FIND** that the project is categorically exempt from the provisions of the CEQA pursuant to Section 15311 of the CEQA Guidelines ("Accessory Structures"); and
2. **APPROVE** Use Permit ZP#2023-0165 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 December 14, 2023
3. Notice of Public Hearing
4. Correspondence Received

**Staff Planner:** Karen C. Hernandez, [khernandez-gonzalez@berkeleyca.gov](mailto:khernandez-gonzalez@berkeleyca.gov), (510) 981-7426



---

## FINDINGS AND CONDITIONS

MAY 9, 2024

### 1840 University Avenue

**Use Permit #ZP2023-0165 to establish an outdoor use for a mobile food truck in the C-U, abutting the Residential Two-Family Residential District.**

---

#### ZONING PERMITS REQUIRED

- Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.302.020(E) to establish the outdoor use for an exterior service window (food truck) in the University Commercial District, abutting the Residential Two-Family Residential 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 15311 of the CEQA Guidelines (“Accessory Structures”).
- 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. Establishing a food truck will not expand the footprint of the existing building on the lot. The proposed food truck will provide an additional dining option for patrons of the University Avenue Corridor, promoting the general welfare of the persons residing or working in the neighborhood.
  2. When parked on-site, the area around the food truck will be cordoned off on the sides so that vehicles cannot drive in the area occupied by pedestrians that are placing, waiting, or receiving their orders. The gas pumps cannot be accessed from the western curbcut along University Avenue since vehicles cannot cross in front of the parked food truck.

3. A majority of the food will be cooked off-site and the food truck owner-operator will prepare made-to-order meals on-site, minimizing the odors emitted and eliminating the need to dispose of materials such as cooking oils on the site. Thus, the project will not be detrimental or injurious to the property and improvements of the adjacent properties.
4. The project is consistent with the C-U District standards, including use and hours of operation. The food truck will be driven to the site within the allowed hours of operation for the C-U, and will be parked at an off-site location after business hours. The food truck will be parked at the front of the existing building facing University Avenue, and patrons will be able to order and pay at the service window and consume their food off-site. As such, the food truck will not have detrimental impact on public health, safety, or peace in the neighborhood and surrounding areas.
5. The project will be subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, which will ensure that the project will 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.

**B.** As required by BMC Section 23.204.060(E), the Zoning Adjustments Board finds that:

1. The project is consistent with the C-U district purpose, which allows the sale of prepared food from a food truck as an outdoor use. Located in a high-traffic area, by both auto vehicles and pedestrians, the food truck would strengthen the commercial activities and further diversify dining options in the C-U District
2. The project is compatible with the surrounding community shopping and dining areas, and promotes activities compatible with adjacent commercial areas, and does not interfere with the continuity of retail and service facilities at the ground level.
3. The project will not exceed the amount and intensity of use that can be served by available traffic capacity and potential parking supply because it does not include new construction, is located in a pedestrian-oriented area, and the number of customers will be small at any given time.

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

All work performed under an approved permit shall comply with the approved plans and any conditions of approval.
5. **Exercise and Expiration of Permits (BMC Section 23.404.060(C)):**
  - A. A permit authorizing a land use is exercised when both a valid City business license is issued (if required) and the land use is established on the property.
  - B. A permit authorizing construction is exercised when both a valid City building permit (if required) is issued and construction has lawfully begun.
  - C. The Zoning Officer may declare a permit lapsed if it is not exercised within one year of its issuance, except if the applicant has applied for a building permit or has made a substantial good faith effort to obtain a building permit and begin construction. The Zoning Officer may declare a permit lapsed only after 14 days written notice to the applicant. A determination that a permit has lapsed may be appealed to the ZAB in accordance with Chapter 23.410 (Appeals and Certification).
  - D. A permit declared lapsed shall be void and of no further force and effect. To establish the use or structure authorized by the lapsed permit, an applicant must apply for and receive City approval of a new permit.

6. **Permit Remains Effective for Vacant Property (BMC Section 23.404.060(D)).** Once a Permit for a use is exercised and the use is established, the permit authorizing the use remains effective even if the property becomes vacant. The same use as allowed by the original permit may be re-established without obtaining a new permit, except as set forth in Standard Condition #5 above.
7. **Permit Modifications (BMC Section 23.404.070).** No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Board. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project.
8. **Permit Revocation (BMC Section 23.404.080).** The City may revoke or modify a discretionary permit for completed projects due to: 1) violations of permit requirements; 2) Changes to the approved project; and/or 3) Vacancy for one year or more. However, no lawful residential use can lapse, regardless of the length of time of the vacancy. Proceedings to revoke or modify a permit may be initiated by the Zoning Officer, Zoning Adjustments Board (ZAB), or City Council referral.
9. **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.

#### **IV. 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:

##### **Site Management Conditions**

10. The food truck shall always maintain the pedestrian area, where patrons will order and wait for their food orders, marked off to prevent vehicles from entering the area.
11. The food truck shall not be kept on the property overnight and is to be removed from the property at the end of business hours on a daily basis.

12. The food truck personnel shall inspect the adjacent sidewalks along University Avenue and Martin Luther King Jr. Way at least twice per day and ensure that any litter dropped by customers is removed, and that customers are not eating on the sidewalks or neighboring private properties.
13. During all business hours, management shall place outdoor trash, recycling, and organics containers next to the food truck so that customers have a place to dispose unwanted to-go containers, food, and other disposable items.

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

---

14. **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.
15. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated December 14, 2023.

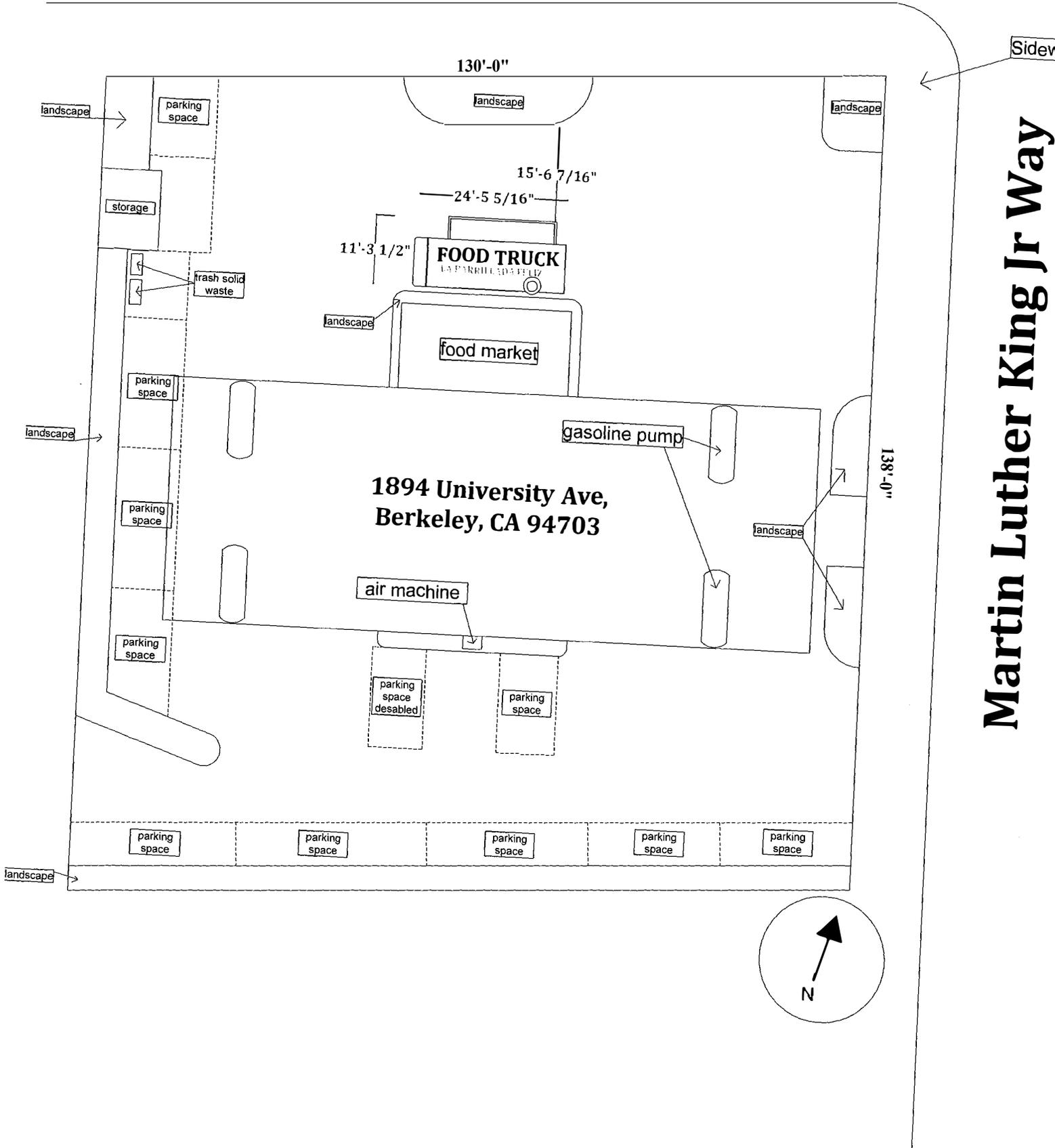
#### **At All Times:**

---

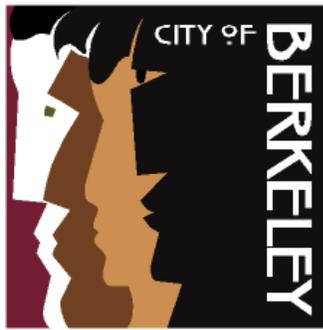
16. **Compliance with Approved Plan.** The project shall conform to the plans and statements in the Use Permit.
17. **Drainage Patterns.** The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.
18. **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.
19. **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
20. **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.
21. **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.

- 22.** 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.

# University Ave







# 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

### 1894 University Avenue

**Use Permit #2023-0165 to establish an outdoor use for a mobile food truck in the C-U, abutting the Residential Two-Family Residential District**

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, May 9, 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-U University Commercial District

#### **B. Zoning Permits Required:**

- Use permit to establish an outdoor use for an exterior service window (food truck) in the University Commercial District, abutting the Residential Two-Family Residential District, under BMC Section 23.302.020(E)

**C. CEQA Recommendation:** Categorically exempt pursuant to Section 15311 of the CEQA Guidelines ("Accessory Structures").

**D. Parties Involved:**

- Applicant Jose Villalobos, 2748 Greenwood Drive, San Pablo, CA 94806
- Property Owner Hadjian Simin & Payvand Etal, 1821 Castle Gate Road, Walnut Creek, CA

**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, Karen C. Hernandez, at (510) 981-7426 or [khernandez-gonzalez@berkeleyca.gov](mailto:khernandez-gonzalez@berkeleyca.gov).

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

**Communication Disclaimer:**

Communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the relevant board, commission or committee for further information.

**Written Comments, Communications, and Reports:**

Written comments must be directed to the ZAB Secretary at the Land Use Planning Division (Attn: ZAB Secretary), or via e-mail to: [zab@berkeleyca.gov](mailto:zab@berkeleyca.gov). All materials will be made available via the Zoning Adjustments Board Agenda page online at this address: <https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board>

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

**Correspondence received by 5:00 PM, eight days before this public hearing, will be provided with the agenda materials provided to the Board.** Note that if you submit a hard copy document of more than 10 pages, or in color, or with photos, you must provide 15 copies. Correspondence received after this deadline will be conveyed to the Board in the following manner:

- **Correspondence received by 5:00 PM two days before** this public hearing, will be conveyed to the Board in a Supplemental Communications and Reports, which is released around noon one day before the public hearing; or

- **Correspondence received after 5:00 PM two days before** this public hearing will be saved in the project administrative record.



**Accessibility Information / ADA Disclaimer:**

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date.

**SB 343 Disclaimer:**

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

**Notice Concerning Your Legal Rights:**

If you object to a decision by the Zoning Adjustments Board regarding a land use permit project, the following requirements and restrictions apply:

1. If you challenge the decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice.
2. You must appeal to the City Council within 14 days after the Notice of Decision of the action of the Zoning Adjustments Board is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than 90 days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that 90-day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, the following requirements apply:
  - a. That this belief is a basis of your appeal.
  - b. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
  - c. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above. If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.



**From:** [Zoning Adjustments Board \(ZAB\)](#)  
**To:** [Hernandez-Gonzalez, Karen](#)  
**Subject:** FW: 1894 University Ave, Use Permit #ZP2023-0165  
**Date:** Monday, April 29, 2024 12:25:45 PM  
**Attachments:** [image.png](#)  
[image.png](#)

---

Internal

Hi Karen. This email is for your project that's going to ZAB on May 9<sup>th</sup>. I will save this as a pdf in the Archive folder.

Thanks,  
Melinda

Melinda Jacob  
Office Specialist II  
Planning and Development, Land Use Division  
1947 Center St., 2<sup>nd</sup> Floor, Berkeley, CA 94704  
**Phone:** (510) 981-7421  
**Website:** [www.berkeleyca.gov](http://www.berkeleyca.gov)  
**Email:** [mjacob@berkeleyca.gov](mailto:mjacob@berkeleyca.gov)

***REDUCED LAND USE HOURS ARE IN EFFECT! Land Use / Zoning counter services are available at the Permit Service Center (PSC) between 8:30 am – 1:30 pm (final check in at 1:00 pm) Monday through Thursday.*** To limit the spread of COVID-19, face masks and social distancing are required when visiting our offices, and some Planning staff continue to work remotely.

[Construction & Development | City of Berkeley \(berkeleyca.gov\)](#)  
<https://berkeleyca.gov/construction-development/permits-design-parameters/permit-process/permit-service-center>  
[Zoning Lookup | City of Berkeley \(berkeleyca.gov\)](#)

---

**From:** Beth Roessner <beth@berkeleychamber.com>  
**Sent:** Monday, April 29, 2024 11:31 AM  
**To:** Zoning Adjustments Board (ZAB) <Planningzab@berkeleyca.gov>  
**Cc:** Beth Roessner <beth@berkeleychamber.com>  
**Subject:** Re: 1894 University Ave, Use Permit #ZP2023-0165

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear Zoning Adjustments Board-

I'm writing in regards to the notice we received about the 1894 University Ave use permit ZP2023-1065, establishing an outdoor use for a mobile food truck; and I'm writing in my capacity as the de facto property manager for the Chamber of Commerce building, located next door to 1894 University Ave, NOT as the director of the Chamber.

As a refresher, the Chamber has an easement at 1894 University Ave: we access our gated parking lot by driving through the southern side of the gas station parking lot. **I am in full support of the food truck permit for UC Gas, provided that our access remains clear at all times.** I believe the truck will be located on the northern side of their property, and in that location we don't have any issues. There was a period of time when the truck was being parked on the south side, and our gate and access point were frequently blocked by customer vehicles, forcing Chamber staff and our tenants to track down customers to have them move their vehicles. When it was parked on the southern side, people waiting for their food also frequently blocked the entrance to the gas station on MLK, causing an unsafe situation for cars and pedestrians alike.

**Again, as long as the truck remains on the north side facing University Ave, and cars do not block our access point, I have no issues with this use permit.** We ask that the owners of the property strive to keep our easement clear and accessible at all times.

Thank you,  
Beth

Photo attachments:

#1866 - view of our easement and gate from our building

#1867 - current and preferred location of proposed food truck

**Beth Roessner, CEO**

Berkeley Chamber  
1834 University Ave.  
Berkeley, CA 94703  
(510) 549-7000  
[www.berkeleychamber.com](http://www.berkeleychamber.com)



**UPCOMING EVENTS** *register online for upcoming live and virtual events*

**APR 23 & 30** | [Business Education Workshop: Activate Your Business with LinkedIn](#) @ 2-DAY Online Workshop

**MAY 3** | [Anniversary Ribbon Cutting](#) @ Scents by the Bay