



Planning and Development Department  
Land Use Planning

# U S E P E R M I T

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CITY OF BERKELEY ZONING ORDINANCE  
Berkeley Municipal Code Title 23

## USE PERMIT # 11-1000001

Property Address: **2993 COLLEGE AVENUE**

Permittee Name: **KAUSHIK AMRUTHUR**

**Use and/or Construction Permitted:**

to legalize the construction of a 322 sq. ft. covered walkway leading to a 230 sq. ft. storage building at the rear of an existing full service restaurant that serves beer and wine with meals.

- Use Permit, under BMC Section 23E.44.030 to allow activities or storage outside of a building when abutting a residential district;
- Use Permit, under BMC Section 23E.44.050 to add new square footage to the building;
- Use Permit, under BMC Section 23E.16.040.A to expand an alcohol service area;
- Use Permit, under BMC Section 23E.04.050 to reduce a required rear yard setback from 12' to 8'.

**FINDINGS, CONDITIONS AND APPROVED PLANS ATTACHED**

The Use Permit herein described has been duly granted by the Zoning Adjustments Board and is in effect on January 22, 2013.

# ATTACHMENT 1

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## FINDINGS AND CONDITIONS

AS APPROVED BY ZAB ON NOVEMBER 29, 2012

### 2993 College Avenue

**Use Permit #11-1000001 to legalize the construction of a 322 sq. ft. covered walkway leading to a 230 sq. ft. storage building at the rear of an existing full service restaurant that serves beer and wine with meals.**

#### CEQA FINDINGS

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1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15301 of the CEQA Guidelines (“Existing Facilities”). 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.

#### GENERAL NON-DETRIMENT FINDING

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2. Pursuant to Berkeley Municipal Code Section 23B.32.040, the Zoning Adjustments Board finds that the proposed legalization of the construction of a 322 sq. ft. covered walkway leading to a 230 sq. ft. storage building at the rear of an existing full service restaurant that serves beer and wine with meals, under the circumstances of the particular case existing at the time at which the application is granted, 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, for the following reasons:
  - A. Pursuant to BMC Section 23E.44.090.B.1, the Zoning Adjustments Board finds that the proposed addition will encourage and maintain the present street frontage and pedestrian orientation of the district because the addition is at the rear and does not affect the façade.
  - B. Pursuant to BMC Section 23E.44.090.B.2, the Zoning Adjustments Board finds that the proposed addition will be compatible in design and character with the commercial district because the front façade is not affected.
  - C. Pursuant to BMC Section 23E.44.090.B.3, the Zoning Adjustments Board finds the proposed addition would be consistent with the purposes of the district in that it would help upgrade an existing use that serves the surrounding

neighborhood, which in turn supports the implementation of the General Plan's designation for a community commercial district in this area. The style, massing and screening of the modest addition matches the existing structure and complements the surrounding structures.

- D. Pursuant to BMC Section 23E.44.090.B.4, the Zoning Adjustments Board finds the proposed addition is an upgrade of an existing approved use and will not interfere with the continuity of retail or compatible service facilities at the ground level.
- E. Pursuant to BMC Section 23E.44.090.B.5, the Zoning Adjustments Board finds the proposed addition is at the rear of the structure and thus will not interrupt a continuous wall of building facades along College Avenue.
- F. Pursuant to BMC Section 23E.44.090.B.6, the Zoning Adjustments Board finds the number of seats provided will not increase, so it is not anticipated that the proposed addition will result in the generation of traffic and parking demand beyond the capacity of the commercial district or significantly increase impacts on adjacent residential neighborhoods.
- G. Pursuant to BMC Section 23E.44.090.B.7, the Zoning Adjustments Board finds the proposed addition does not add any new use, so will not result in the domination of this district by one type of use.
- H. Pursuant to BMC Section 23E.44.090.B.8, the Zoning Adjustments Board finds the proposed addition will not result in the generation of objectionable odors in that the new exhaust system will be of the same type or better than the current exhaust system and will be subject to review by the Environmental Health staff for compliance with their regulations. The proposed addition will not result in the generation of excessive levels of noise, as the addition will result in the enclosure of uses previously outside. The addition will have fixed, non-operable windows that do not open and therefore noise from activity within the storage building will be minimal to surrounding neighbors.
- I. Pursuant to BMC Section 23E.44.070.D and 23E.04.050.E, the reduced rear yard setback of eight feet where 12 feet is normally required would not be detrimental to the abutting residential district to the east because the addition is enclosed with non-operable windows and will be used for storage which will have minimal noise and activity. The storage activity within the enclosed addition will have less of a noise and activity impact than the previous unenclosed space that was used for storage because noise from restaurant staff activity will now be enclosed within walls and a roof and will thus project less noise towards the abutting residential district.

## STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

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### **1. Conditions Shall be Printed on Plans**

The conditions of this Permit shall be printed on the first sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions'. The second sheet may also be used if the first sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

### **2. Applicant Responsible for Compliance with Conditions**

The applicant shall ensure compliance with all of the following conditions, including submittal to the project planner of required approval signatures at the times specified. Failure to comply with any condition may result in construction being stopped, issuance of a citation, and/or modification or revocation of the Use Permit.

### **3. Uses Approved Deemed to Exclude Other Uses (Section 23B.56.010)**

- A. This Permit authorizes only those uses and activities actually proposed in the application and excludes other uses and activities.
- B. Except as expressly specified herein, this Permit terminates all other uses at the location subject to it.

### **4. Modification of Permits (Section 23B.56.020)**

No change in the use or structure for which this Permit is approved is permitted unless the Permit is modified by the Zoning Adjustments Board, in conformance with Section 23B.56.020.A.

Changes in the plans for the construction of a building or structure may be modified prior to the completion of construction, in accordance with Section 23B.56.020.D. 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. The Zoning Officer may also approve a maximum two-foot variation to Board approved plans, provided that such variation does not increase a structure's height, reduce the minimum distance to any property line, and/or conflict with any special objective sought by the Board.

### **5. Plans and Representations Become Conditions (Section 23B.56.030)**

Except as expressly specified herein, the site plan, floor plans, building elevations and any additional information or representations submitted by the applicant during the Staff review and public hearing process leading to the approval of this Permit, whether oral or written, which indicated the proposed structure or manner of operation are deemed conditions of approval.

**6. Subject to all City and Other Regulations (Section 23B.56.040)**

The approved use and/or construction are subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies.

**7. Exercised Permit for Use Survives Vacancy of Property (Section 23B.56.080)**

Once a Permit for a use is exercised and the use is established, that use is legally recognized, even if the property becomes vacant, except as set forth in Standard Condition #8 below.

**8. Exercise and Lapse of Permits (Section 23B.56.100)**

- A. A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.
- B. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
- C. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has (1) applied for a building permit or (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

**9. The applicant shall hold the City of Berkeley and its officers harmless in the event of any legal action related to the granting of this Permit, shall cooperate with the City in defense of such action, and shall indemnify the City for any award of damages or attorneys fees that may result.**

**ADDITIONAL CONDITIONS OF APPROVAL**

Pursuant to BMC Section 23B.32.040.D, the Zoning Adjustments Board attaches the following conditions to this Permit:

**Prior to Issuance of Any Building Permit**

- 10.** The applicant shall have the 322 sq. ft. covered walkway and the 230 sq. ft. storage building added to the approved condominium map.
- 11.** Prior to issuance of a building permit, the applicant shall provide the project planner with the name and telephone number of the individual empowered to manage construction noise from the project. The individual's name, telephone number, and

responsibility for noise management shall be posted at the project site for the duration of construction in a location easily visible to the public. The individual shall record all noise complaints received and actions taken in response, and submit this record to the project planner upon request.

□ Noise Management Individual \_\_\_\_\_  
Name Phone #

12. The applicant and all persons associated with the project are hereby notified that a Transportation Management Permit (TMP) would be required under any of the following circumstances:

- Alterations, closures, or blockages to sidewalks or pedestrian paths
- Alterations, closures, or blockages to vehicle travel lanes (including bicycle lanes)
- Storage of building materials, dumpsters, debris anywhere in the public ROW
- Provision of exclusive contractor parking on-street
- Significant truck activity.

Contact the Permit Service Center (PSC) at 2120 Milvia Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dashboard permits). Public Works Traffic Engineering (981-6400) reviews all submitted TMP requests.

The TMP may include designation of a specific truck haul route. Meter heads (if in the construction area) shall be removed only by City staff. Contact the site inspector 72 hours in advance of required removal so arrangements can be made.

**During Construction:**

13. Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season (between October 15 and April 15), 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.
14. Construction activity shall be limited to between the hours of 8:00 a.m. and 6:00 p.m. on Monday through Friday, and between 9:00 a.m. and noon on Saturday. No construction-related activity shall occur on Sunday or on any Federal Holiday.
15. 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.

16. 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.
17. 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.
18. All active construction areas shall be watered at least twice daily, and all piles of debris, soil, sand or other loose materials shall be watered or covered.
19. Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.
20. Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.
21. The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.

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

22. The project shall conform to the plans and statements in the Use Permit.
23. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated February 27, 2012 and the south elevation shall reflect amended plans agreed upon between the application and the abutting property owner which were submitted at the ZAB Hearing and dated November 29, 2012.

**At All Times:**

24. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
25. 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.
26. Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to Design Review and/or Landmarks Preservation Commission approval.

## CONDITIONS BY PROJECT TYPE

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

27. Alcoholic beverage service shall be “incidental” to the primary food service use, as defined in Zoning Ordinance 23F.04.010. An incidental use shall not exceed twenty-five percent (25%) 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 thirty-three percent (33%) of the gross receipts generated by the primary use. In addition, the California Department of Alcoholic Beverage Control (ABC) allows this alcohol use only as part of a “bona fide eating place” making “actual and substantial sales of meals,” and stringently enforces this requirement.
28. The establishment shall comply with all applicable regulations of the California Department of Alcoholic Beverage Control.
29. All employees selling and/or serving alcohol, or directly supervising such sales and/or service, shall complete the Licensee Education on Alcohol and Drugs (LEAD) program, or another equivalent program offered or certified by the California Department of Alcoholic Beverage Control within 6 months of employment at the establishment. Employees who have completed the course within the last five (5) years shall be exempt from this requirement.
30. Employees shall not serve alcohol to patrons who appear to be inebriated or otherwise unable to behave in an orderly manner upon consuming alcohol.
31. Any operator of the licensed establishment shall not have had a prior licensed establishment that was the subject of verified complaints or violations regarding alcohol, public safety or nuisance statutes or regulations to be confirmed by the Zoning Officer prior to issuance or transfer of a business license at this location.
32. Neither alcohol-dispensing facilities nor sign(s) advertising alcoholic beverages shall be visible from the public right-of-way.
33. All alcohol served to patrons must be served in durable restaurant tableware – i.e. either cups or glasses. No alcohol may be distributed in its original bottle or can, or in any other potentially disposable container.
34. There shall be no service or consumption of alcohol on the public right-of-way.
35. No alcohol may be transported off-site from the establishment to any other establishment or to the public right-of-way.



36. 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.
37. The applicant shall establish cash handling procedures to reduce the likelihood of robberies and theft.
38. This Use Permit, including these and all other required conditions, shall be posted in conspicuous location, available for viewing by any interested party.

### **FOOD SERVICE CONDITIONS**

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.
40. Changes in the nature of the operation including, but not limited to, the addition of seating, changes in hours, and the addition of live entertainment, shall require modification of this permit subject to approval by the Zoning Officer or the Zoning Adjustments Board.
41. The approved floor plan, including the number of seats, shall be followed and the operation shall be conducted as presented to the Board. The maximum occupancy shall be as specified in the application unless otherwise required by applicable regulations.
42. Changes to the building's facade, including doors or windows, site plans, landscaping, signage, and awnings are subject to Design Review and approval prior to issuance of a building permit.
43. Cooking odors, noise, exterior lighting and operation of any parking area shall be controlled so as to prevent verified complaints from the surrounding neighborhood. This shall include noise created by employees working on the premises before or after patrons arrive.

44. Smoke and odor control equipment approved by the City Environmental Health Division and providing adequate protection to residential uses above and to the east of the restaurant shall be installed prior to issuance of an Occupancy Permit.
45. Garbage and trash containers that are suitably enclosed and screened from view shall be provided subject to approval of the Zoning Officer, the Health Department and, where applicable, the Design Review Planner. Any establishment selling beverages in cans or bottles that are subject to the State of California Container Deposit Law shall provide separate bins or cans for the placement of such cans or bottles to ensure recycling of such containers.
46. Containers used for the dispensing of prepared food shall identify the establishment. Polystyrene foam food packing is prohibited by Section 11.60.030 of the Berkeley Municipal Code.
47. Any establishment selling beverages in cans or bottles that are subject to the State of California Container Deposit Law shall recycle such containers.
48. The operator of the restaurant shall place a waste receptacle near the entry way and shall insure that garbage on the sidewalk in front of the establishment and within 50 feet thereof will be picked up periodically during each day, so that the sidewalk remains clean.
49. 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.
50. 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.
51. The applicant 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.
52. All other conditions from Use Permit #A2377 and Use Permit #A2107 shall remain in effect.



PERMITTING AND (E) STORAGE RENOVATION FOR  
 TRATTORIA LA SICILIANA  
 2493 COLLEGE AVENUE  
 BERKELEY, CA 94705

ELEVATIONS

ISSUE #	DATE
1	07/10/11
2	01/07/12

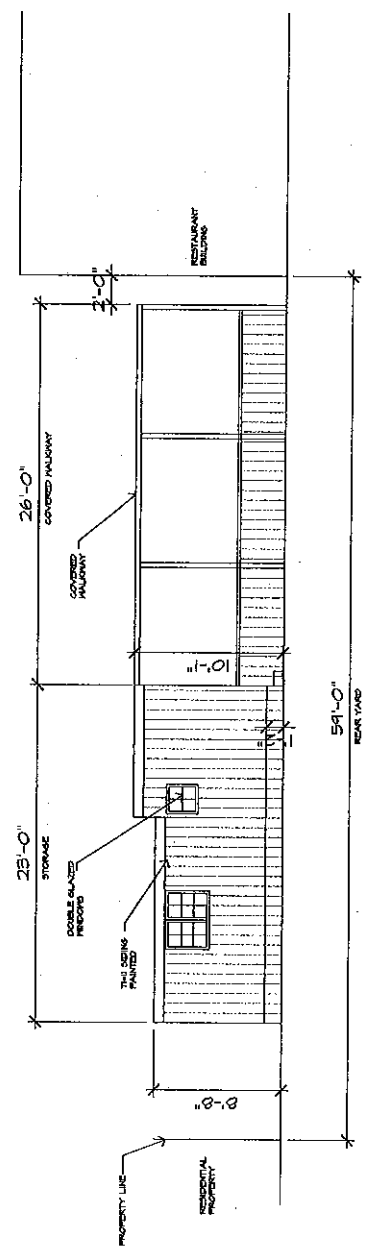
JOB NO. 12021  
 SCALE AS NOTED  
 SHEET NO.

A2.0

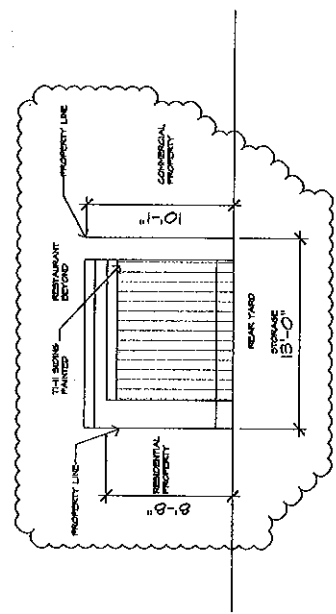
**PLANS APPROVED by  
 ZONING ADJUSTMENTS BOARD**

*Jerry Blount*

November 29, 2012



NORTH ELEVATION SCALE: 1/8" = 1'-0"



EAST ELEVATION