



Planning and Development Department  
Land Use Planning Division

# A D M I N I S T R A T I V E U S E P E R M I T

CITY OF BERKELEY ZONING ORDINANCE  
Berkeley Municipal Code, Title 23

**AUP #13-2000041**

Property Address: **1286 GILMAN STREET**

Permittee Name: **DIETMAR LORENZ**

Use and/or Construction Permitted: to establish a temporary, 3,400 square foot, *biergarten* (consisting of 4 mobile food trucks, one of which will remain on site continuously) with incidental beer and wine service, outdoor seating and to reduce the required off-street parking spaces from five to zero pursuant to:

- Section 23E.40.030 to establish a quick service food use;
- Section 23E.40.030 to establish beer and wine service incidental to food service;
- Section 23B.40.010 to establish a temporary use;
- Section 23E.28.130 to reduce the amount of required parking in a commercial district; and Section 23E.08 for staff level design review for exterior changes and signage

FINDINGS, CONDITIONS AND APPROVED PLANS ATTACHED

Following the expiration of the mandatory appeal period set forth in Section 23B.28.040 of the Berkeley Municipal Code, with no timely appeal being filed, the Administrative Use Permit described herein has been duly granted by the Zoning Officer on May 24, 2013.

Attest: Terry Blount  
Terry Blount, AICP, Principal Planner  
For Debbie Sanderson, Zoning Officer

May 24, 2013  
Effective Date

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## FINDINGS AND CONDITIONS

MAY 9, 2013

### **1286 Gilman Street “The Gilman *Biergarten*”**

**Administrative Use Permit #12-20000041**

**Design Review Application # 13-30000024**

**To establish a temporary, 3,400 square foot, *biergarten* (consisting of 4 mobile food trucks, one of which will remain on site continuously) with incidental beer and wine service, outdoor seating and to reduce the required off-street parking spaces from five to zero.**

#### **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 15303 of the CEQA Guidelines (“Construction or Conversion of Small Structures”). 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.

#### **FINDINGS FOR APPROVAL**

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2. As required by Section 23B.28.050.A of the Zoning Ordinance, 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:
  - A. The creation of a quick service food uses will encourage commercial activity in the area, helping to develop a more pedestrian-oriented environment compatible with adjacent commercial uses. The temporary quick service food uses is in keeping with the purposes of the C-N District in that it provides a service for uses and residences located in the immediate vicinity.
  - B. The waiver of five off-street parking spaces in conjunction with the quick service food use location adjacent to the Ohlone Greenway and multiple bus lines will

encourage the use of public transit thus implementing the General Plan's goals to encourage alternative modes of transportation.

C. Conditions of Approval #25-42 pertaining to food and alcohol service will be implemented to limit detriment.

D. The use will be active for a period of no more than three years unless the applicant applies to renew the permit.

3. Pursuant to Berkeley Municipal Code Section 23E.40.090.B, the Zoning Officer finds:

A. The proposed use is consistent with the purposes of the Neighborhood Commercial District in that

1. The proposed *biergarten* is commercial in nature and thus helps to implement the General Plan's designation of a Commercial District. The establishment of temporary quick service food uses will help intensify the pedestrian activity and strengthen the local economy by providing an eating establishment that caters to the neighboring residences as well as patrons utilizing other established uses in the area.

4. Pursuant to Berkeley Municipal Code Section 23E.28.130, the Zoning Officer finds that the reduction in the number of five parking spaces for the proposed 3,400 square-foot food service establishment will not substantially reduce the availability of on-street parking in the vicinity of the use and is permissible because the application meets the required findings as further detailed below:

A. The project is compatible with the surrounding uses and buildings in that it is changing the existing retail space to allow quick service food uses, which is an allowed use in the district.

B. The waiver of the 5 additional required parking spaces would not significantly reduce the availability of on-street parking because many of the clients are likely to take public transportation and/or ride bicycles to the location as it is located directly off of the Ohlone Greenway bike path and within walking distance to two local bus lines and a Rapid Bus line.

C. As required under Section 23E.28.140.B1, the use is a food service establishment.

D. As required under Section 23E.28.140.B.2, the parking reduction will meet the purposes of the C-N District in that it will promote use of public transportation as well as increase the pedestrian activity within the commercial district.

E. A parking survey submitted by the applicant indicates that there is sufficient street-parking to accommodate the reduction in on-site spaces.

F. In addition to the above factors, the site is: located within walking distance of two local AC Transit lines (H and 25); is adjacent to; and is less than one third of a mile from a Rapid Bus stop on San Pablo Avenue.

## **STANDARD CONDITIONS**

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The following conditions, as well as all other applicable provisions of the Zoning Ordinance, apply to this Permit:

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

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

### **2. 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 issued is permitted unless the Permit is modified by the Zoning Officer, except that the Zoning Officer may approve changes that do not expand, intensify, or substantially change the use or building.

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

Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

### **6. Subject to All Applicable Laws and Regulations (Section 23B.56.040)**

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from

the Building and Safety Division, Public Works Department and other affected City divisions and departments.

**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. Indemnification Agreement**

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 IMPOSED BY THE ZONING OFFICER**

Pursuant to BMC 23B.28.050.D, the Zoning Officer attaches the following additional conditions to this Permit:

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

10. 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 written reports of such complaints and actions to the project planner on a weekly basis. **Individual Responsible for Noise Management:**

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

11. 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.

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

12. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.

**During Construction:**

13. 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.
14. 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.

15. 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.
16. 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 in thickness and secured to the ground.
17. 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.
18. Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.
19. Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.
20. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way.
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.
22. Any construction during the wet season shall require submittal of a soils report with appropriate measures to minimize erosion and landslides, and the developer shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.

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

23. All construction at the subject property shall substantially conform to the approved Use Permit drawings or to modifications approved by the Zoning Officer.
24. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated **MARCH 29, 2013**.

**At All Times (Operation):**

25. Only one type 41 license is allowed (to be held by an anchor tenant whose trailer or truck shall remain on site. The license would not apply to other trucks or trailers that come and go on a regular basis.
26. The establishment shall comply with all applicable regulations of the California Department of Alcoholic Beverage Control.
27. A Berkeley Police Department Crime Prevention Through Environmental Design (CPTED) survey shall be completed prior to commencing alcohol service.
28. 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.
29. Employees shall not serve alcohol to patrons who appear to be inebriated or otherwise unable to behave in an orderly manner upon consuming alcohol.
30. 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.
31. The service of alcohol shall be limited to beer and wine and limited to the hours of 8:00 a.m. – 9:00 p.m. Sunday through Thursday and 8:00 a.m. to 10:00 p.m. on Friday and Saturday. The Zoning Adjustments Board or designee shall approve any change in the hours of restaurant operations, of alcohol service, or both. 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.
32. The applicant shall comply with ABC regulations for License Type 41, which requires that the food establishment operate as a bona fide eating place, make actual and substantial sales of meals during normal meal hours, and that the establishment operate at least five days a week. In addition, the applicant shall request that the ABC place the following conditions on the ABC permit for this site, and this Use Permit shall only be operative for as long as these conditions are placed on the associated ABC license:
  - A. The sale of alcoholic beverages for consumption off the premises is strictly prohibited;



- B.** 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;
  - C.** During operating hours, 100% 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;
  - D.** There shall be no exterior advertising or sign of any kind or type, including advertising directed to the exterior, promoting or indicating the availability of alcoholic beverages. Displays of alcoholic beverages or signs which are clearly visible to the public right-of-way shall constitute a violation of this condition.
- 33.** There shall be no service or consumption of alcohol on the public right-of-way.
- 34.** The owner or operator of the establishment shall take reasonable measures to prevent disturbances by patrons in the immediate vicinity. Such measures shall include signs reminding patrons of nearby residences and requests not to congregate or loiter near such residences nor operate vehicles in a noisy manner on residential streets. The operator shall give surveillance to public areas near the establishment, keep such areas free of trash and litter, provide lighting, and otherwise attempt to prevent conduct that might disturb the peace and quiet of residences in the vicinity. Furthermore, the operator shall assume reasonable responsibility for ensuring that patrons do not block the entrance or interfere with pedestrian activity on the adjacent public sidewalk.
- 35.** The applicant shall establish cash handling procedures to reduce the likelihood of robberies and theft.
- 36.** This Use Permit, including these and all other required conditions, shall be posted in conspicuous location, available for viewing by any interested party.
- 37.** 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.
- 38.** 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.
- 39.** The operator of the restaurant/bar 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.

40. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
41. 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.
42. Noise and exterior lighting 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.

**Design Review Conditions:**

43. The proposed signage, size, location and colors are approved as shown on the drawings "received 03/29/13" subject to the following conditions.
44. All non-temporary signage and awnings not previously approved and not listed in this application are prohibited.
45. All materials will be matte unless otherwise noted.
46. No changes can be made to these approved plans without Design Review approval.
47. **SIGNAGE** Prior to Design Review sign-off of the building permit set of drawings, the applicant shall submit complete signage details, including colors, materials, letter heights, dimensions, placement on building, and installation details. All materials will be matte unless otherwise noted.

All non-temporary signage and awnings not previously approved and not listed in this application are prohibited.

Existing Pole structure on Gilman shall not be used for signage, but only site lighting and decorative elements, if approved by Public Works and the City Forester.

48. **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. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
49. **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. Provide irrigation for landscaped areas or provide drought tolerant plant palette.

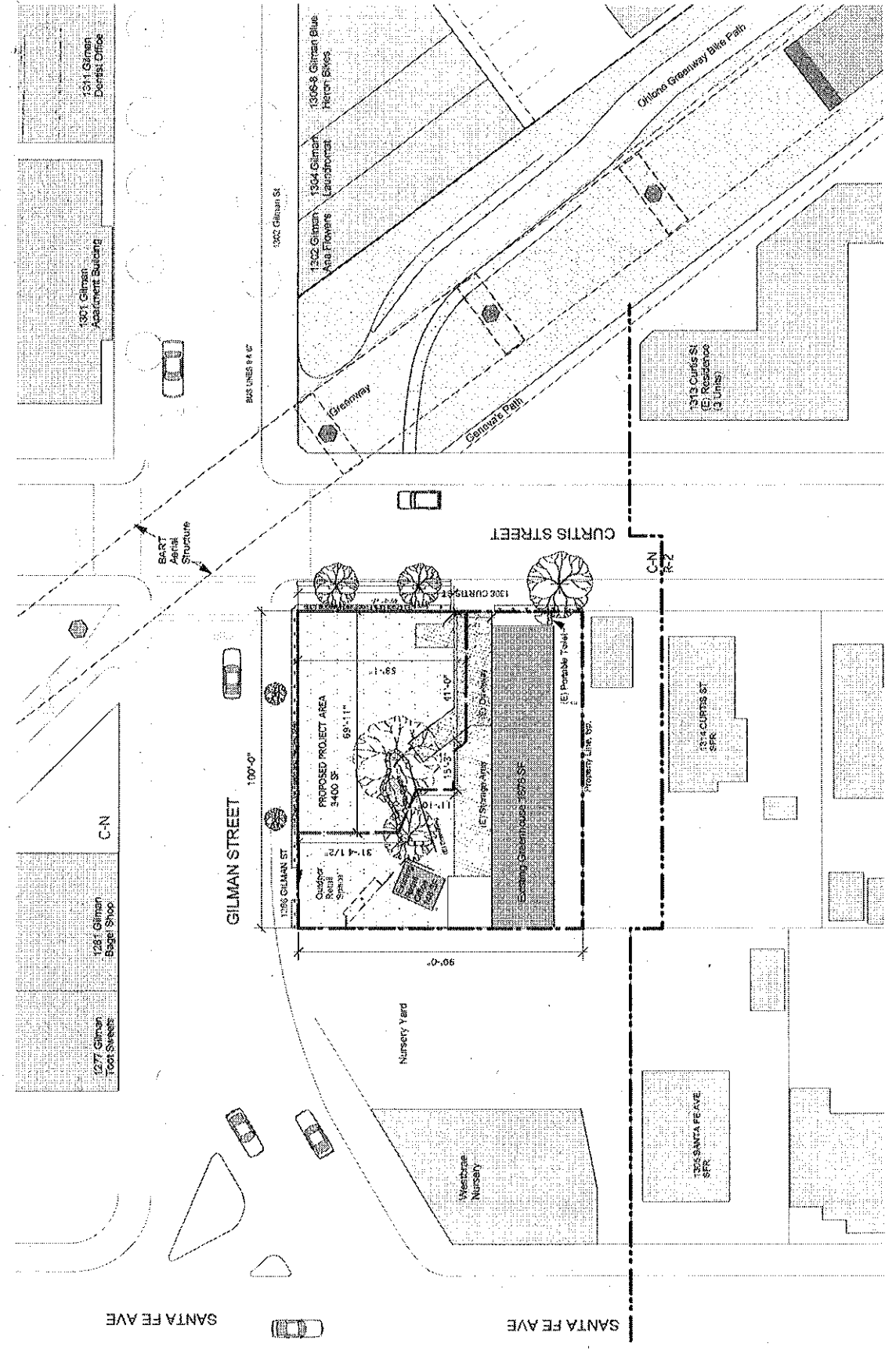
50. The applicant shall be responsible for identifying and securing all applicable permits from the Building and Safety Division and all other affected City divisions/departments prior to the start of work.
51. The applicant is responsible for complying with all the above conditions. Failure to comply with any condition could result in construction work being stopped, issuance of citations, as well as further review by the Design Review Committee, which may modify or impose additional conditions, or revoke the zoning approval.
52. 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 additional approvals by the Zoning Adjustments Board or the Design Review Committee.



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Claudine Asbagh, Assistant Planner for  
Debra Sanderson, Zoning Officer

<p><b>Daniel Smith &amp; Associates</b> Architects</p> <p>Tel: 415.339.525, Fax: 415.339.524 dsmith@earthlink.net</p>	<p>Westbrae Food Garden 1286 (1339) Gilman Berkeley, CA 94702</p>	<p><b>Plot Plan</b> EXISTING</p> <p>Project No. 1211 Date: 05/20/13</p>	<p><b>A1.1</b></p>
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APPROVED PLAN 5/9/13

PLANNING DATE

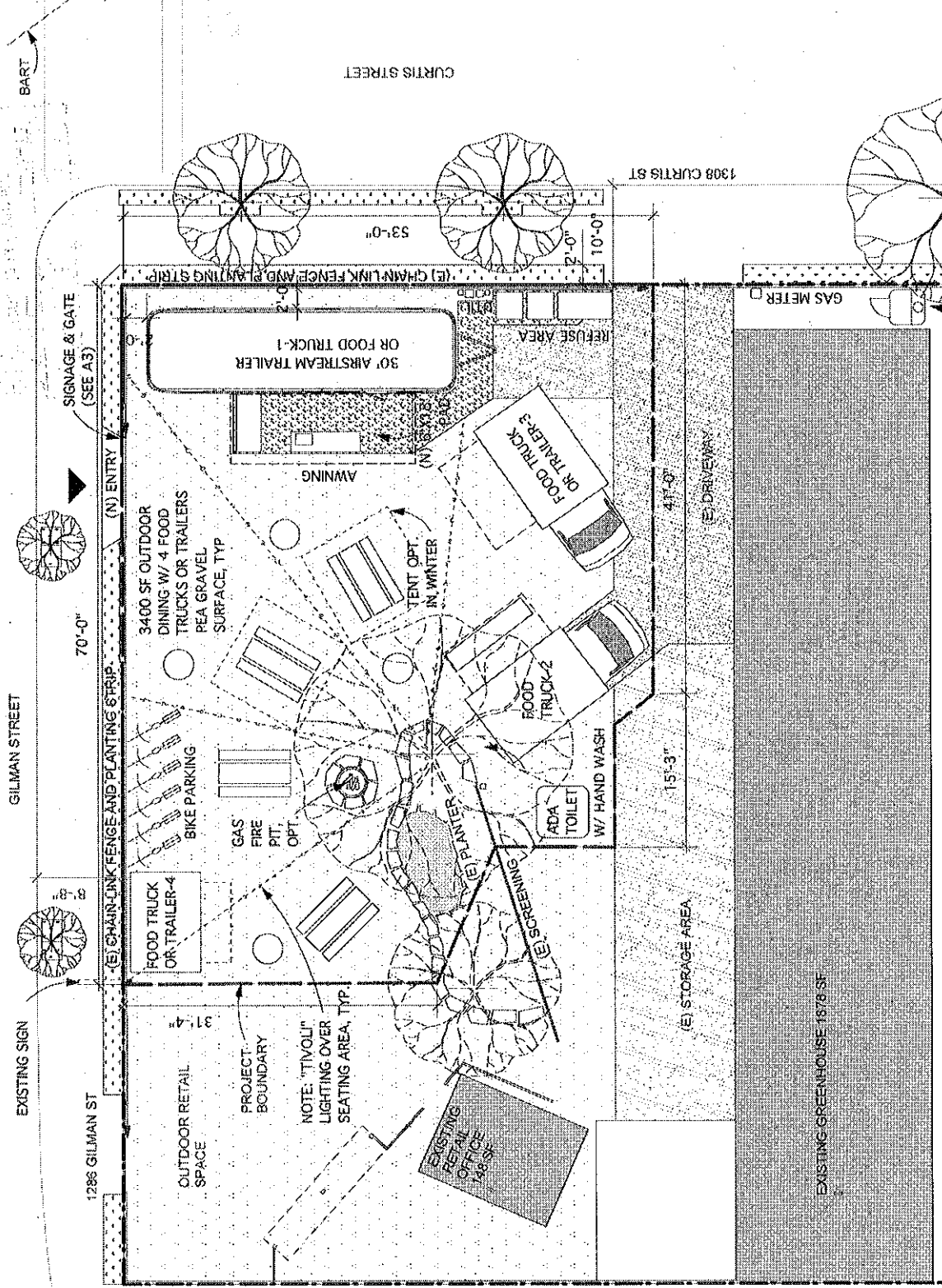
D.R. Conditions Attached

A.U.P. Conditions Attached

U.P. Conditions Attached

Scale: 1" = 30 ft

1 VICINITY & SITE PLAN EXISTING WITH PROPOSED PROJECT AREA



1

**PROPOSED SITE PLAN**  
Scale: 1" = 10 ft

PLANNING DATE

D.R. Conditions Attached

A.U.P. Conditions Attached

U.P. Conditions Attached

*8/20/13*

1286 GILMAN ST

GILMAN STREET

EXISTING SIGN

EXISTING GREENHOUSE 1878 ST

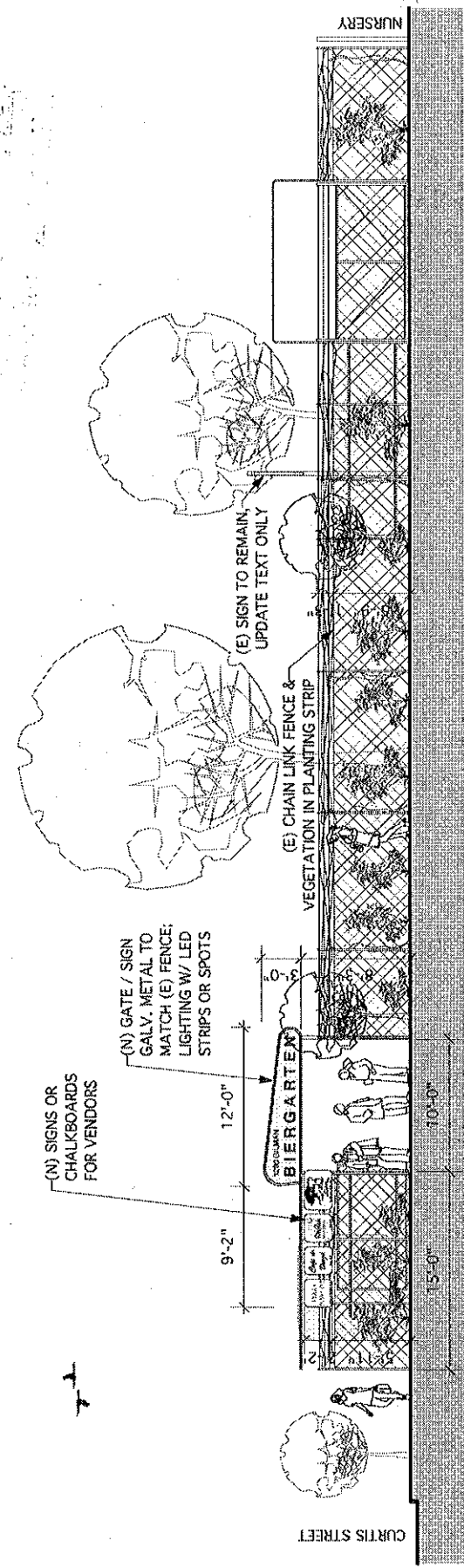
1308 CURTIS ST

CURTIS STREET

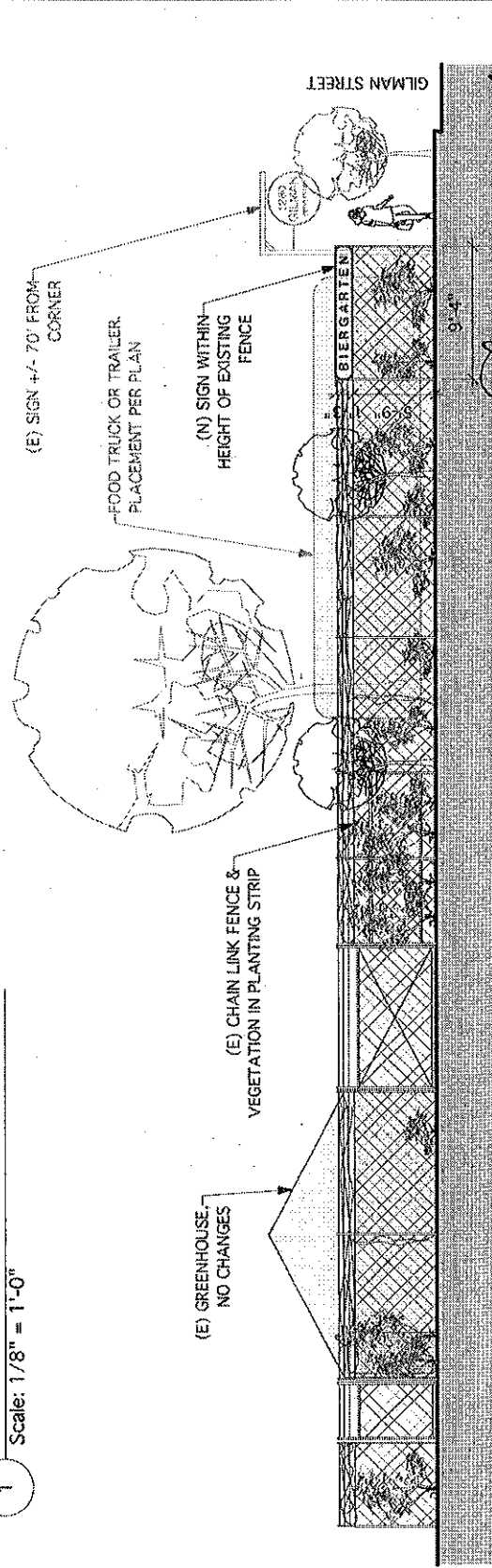
BART

NURSERY YARD

PROPERTY LINE, TYP.

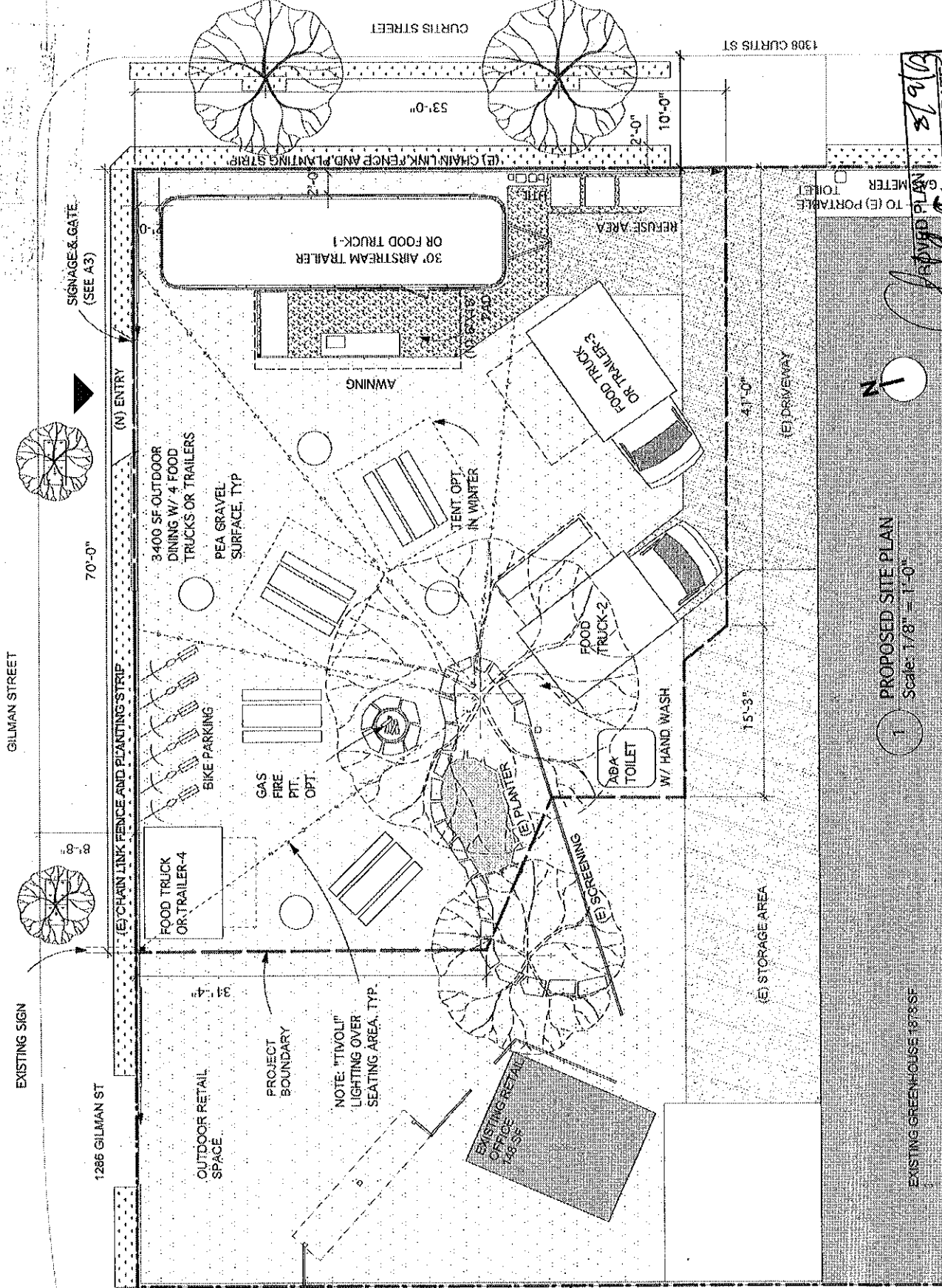


1 GILMAN STREET ELEVATION AND SIGNAGE  
 Scale: 1/8" = 1'-0"



2 CURTIS STREET ELEVATION AND SIGNAGE  
 Scale: 1/8" = 1'-0"

APPROVED PLAN *[Signature]* 5/19/13  
 DATE  
 D.R. Conditions Attached  
 A.U.P. Conditions Attached  
 U.P. Conditions Attached



PROPOSED SITE PLAN  
 Scale: 1/8" = 1'-0"

1

DATE

2/9/13

DATE

CONDITIONS ATTACHED

D.F.R. CONDITIONS ATTACHED

A.U.P. CONDITIONS ATTACHED

CONDITIONS ATTACHED

EXISTING GREENHOUSE 1873 SF

PROPERTY LINE, TYP.

NURSERY YARD

1286 GILMAN ST

GILMAN STREET

1308 CURTIS ST