



Planning and Development Department
Land Use Planning

U S E P E R M I T

CITY OF BERKELEY ZONING ORDINANCE
Berkeley Municipal Code Title 23

USE PERMIT # 12-20000089

Property Address: **2401 TELEGRAPH AVENUE**

Permittee Name: **AVILA DESIGN**

Use and/or Construction Permitted: To establish an incidental quick service restaurant in the Telegraph Commercial (C-T) zoning district.

- Administrative Use Permit to establish a carry out food service, under Zoning Ordinance Section 23E.56.030;

RESOLUTION, FINDINGS, CONDITIONS AND APPROVED PLANS ATTACHED

The Use Permit herein described has been duly granted by the City Council and is in effect on July 3, 2013.

RESOLUTION NO. 66,244--N.S.

APPROVAL OF ADMINISTRATIVE USE PERMIT 12-10000089 TO ESTABLISH AN INCIDENTAL QUICK SERVICE RESTAURANT IN THE TELEGRAPH COMMERCIAL (C-T) ZONING DISTRICT

WHEREAS, on August 7, 2012, Avila Design ("applicant") filed an application for an Administrative Use Permit to construct a an incidental carry out food service establishment with takeout window at 2401 Telegraph avenue ("project"); and

WHEREAS, on August 31, 2012, staff deemed this application complete; and

WHEREAS, September 13, 2012, the Zoning Officer approved the application in accordance with BMC Section 23B.32.020; and

WHEREAS, January 24, 2013, the ZAB affirmed the decision of the Zoning Officer to approve the AUP; and

WHEREAS, on February 1, 2013, staff issued the notice of the ZAB decision; and

WHEREAS, on February 6, 2013, Gus Shamieh filed an appeal of the ZAB decision with the City Clerk; and

WHEREAS, on May 21, 2013, the Council considered the record of the proceedings before the ZAB, and the staff report and correspondence presented to the Council, and set the matter for a public hearing; and

WHEREAS, on July 2, 2013, the Council held a Public Hearing and concluded that the project should be approved.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley hereby adopts the findings made by the ZAB in Exhibit A, approves Administrative Use Permit No. 12-20000089 without permission for activity outside the building, and adopts the conditions in Exhibit A and the project plans in Exhibit B, however they may be modified subject to the approval of the Zoning Officer to relocate the ice cream sales within the building.

The foregoing Resolution was adopted by the Berkeley City Council on July 2, 2013 by the following vote:

Ayes: Anderson, Arreguin, Capitelli, Maio, Wengraf, Wozniak and Bates.

Noes: Worthington.

Absent: Moore.

Attest:


Mark Numalville, CMC, City Clerk


Tom Bates, Mayor

ATTACHMENT 1

FINDINGS AND CONDITIONS

SEPTEMBER 10, 2012

2401 Telegraph Avenue

Administrative Use Permit #12-20000089 & Design Review #12-30000046 to establish a carry out food service establishment with a take-out window within an existing retail use.

CEQA FINDINGS

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq.) pursuant to Section 15301 of the CEQA Guidelines ("Existing Facilities").
 - There would be no cumulative impact of successive projects of the same type, in the same place over time that could create a significant environmental impact because the project is located in a fully developed commercial area where new development is limited.
 - There are no unusual circumstances that could lead to a significant impact because the project involves the addition of an incidental service and carry-out window to an existing retail business and does not involve other changes to the property. The use will remain substantially the same and no new floor area will be added.
 - The project is not located near a scenic highway or listed hazardous waste site.

FINDINGS FOR APPROVAL

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:
 - The carry out food service establishment will comply with all fire and building safety codes, as well as all environmental health and safety codes. Operations will, therefore, not impact adjacent residential uses with noise, smoke, or odors.
 - Conditions of Approved #24-39 pertaining to food service will be implemented to limit detriment.

Exhibit A - Finding & Conditions

2401 TELEGRAPH AVENUE

NOTICE OF ADMINISTRATIVE DECISION - Findings and Conditions

Page 2 of 9

Page 2 of 9

AUP #12-20000089 / DR #12-30000046

3. As required by Section 23E.56.090, the establishment of a carry out food service establishment will:
 - Be consistent with the purposes of the Telegraph Avenue Commercial District in that it is consistent with the Master Plan's designations for Community Shopping and Commercial/Residential Districts in this area, and will provide a quick food option serving the mainly pedestrian student and surrounding resident population;
 - Maintain the present, highly pedestrian street frontage of the District by offering a carry out food service option;
 - Be compatible with the character of the District by contributing a new option of food in a District that has numerous food service establishments, but relatively few carry out establishments; and
 - Not generate traffic or parking demand significantly because, as a carry out food service establishment, it will rely on existing pedestrian traffic as its customer base.
4. As per the definition of "Incidental Use" in Section 23F.04.010, conditions of approval will be added to state that the use shall not exceed twenty-five percent of the floor area of the primary use, and will not generate gross receipts in excess of thirty-three percent of the gross receipts generated by the primary use.
5. As required by Section 23E.56.090, the project complies with the Southside Mitigation Monitoring Program.

STANDARD CONDITIONS

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.

SPECIAL CONDITIONS IMPOSED BY THE ZONING OFFICER

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

10. Food Service Use Restrictions

At no time shall the carry out food service exceed twenty-five percent of the floor area of the primary use nor shall it generate gross receipts in excess of thirty-three percent of the gross receipts generated by the primary use.

Prior to Submittal of Any Building Permit

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

□ 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. 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.

Prior to Issuance of Occupancy Permit or Final Inspection:

22. Prior to issuance of occupancy permit or final inspection, all construction at the subject property shall substantially conform to the approved Use Permit drawings or to modifications approved by the Zoning Officer.
23. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated **RECEIVED SEPTEMBER 5, 2012**.

At All Times (Operation) / Standard Food Service Conditions:

(These requirements are in addition to any other requirements under the City's Building, Health or Fire Codes or by agencies such as the Alcoholic Beverage Control Department of the State of California. The applicant is responsible for contacting these and other departments and agencies to identify and secure all applicable permits and licenses).

24. No seating is permitted within this carryout food service establishment.
25. 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.
26. The approved floor plan shall be followed and the operation shall be conducted as presented. The maximum occupancy shall be as specified in the application unless otherwise required by applicable regulations.
27. 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.

Exhibit A - Finding & Conditions

28. The hours of operation of the restaurant portion of the business shall be limited to 7:00 a.m. to 12:00 midnight Sunday through Thursday and 7:00 a.m. to 2:00 a.m. weekends (Friday and Saturday). Hours of operation refer to arrival of the first patron and departure of the last patron. Any change in the hours of operation shall be approved by the Zoning Officer. Hours of operation are subject to review and amendment by the Zoning Officer as necessary to avoid detriment to the neighborhood or to achieve conformance with revised City standards or policies.
29. 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.
30. 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.
31. 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.
32. 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.
33. Any establishment selling beverages in cans or bottles that are subject to the State of California Container Deposit Law shall recycle such containers.
34. 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.
35. 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.
36. 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. 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.
38. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
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.

Design Review Conditions of Approval

40. The proposal to establish a carry out food service establishment with a take-out window within an existing retail is approved as shown on the drawings dated "received 09/05/2012 (See AUP #12-20000089)" subject to the following conditions.
41. No changes can be made to these approved plans without Design Review approval.
42. **COLORS** Prior to Design Review sign-off of the Building Permit set of drawings, the applicant shall submit color and materials information for review and approval by Design Review Staff. All materials will be matte unless otherwise noted.
43. **CLEAR GLASS** All glass is assumed to be clear glass. Any proposed glass that is not clear glass, or includes signage, shall be indicated on all drawings, and shall be reviewed for approval by Design Review Staff.
44. **DETAILS** Prior to Design Review sign-off of the Building Permit set of drawings, the applicant shall submit window, counter, and awning details for review and approval by the Design Review Staff.

Awning to be installed below existing recessed stucco panel located above storefront glazing.

45. **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.

Signage on side of awning to be located within 12" valence area.

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

46. 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.

Exhibit A - Finding & Conditions

2401 TELEGRAPH AVENUE

Page 9 of 9

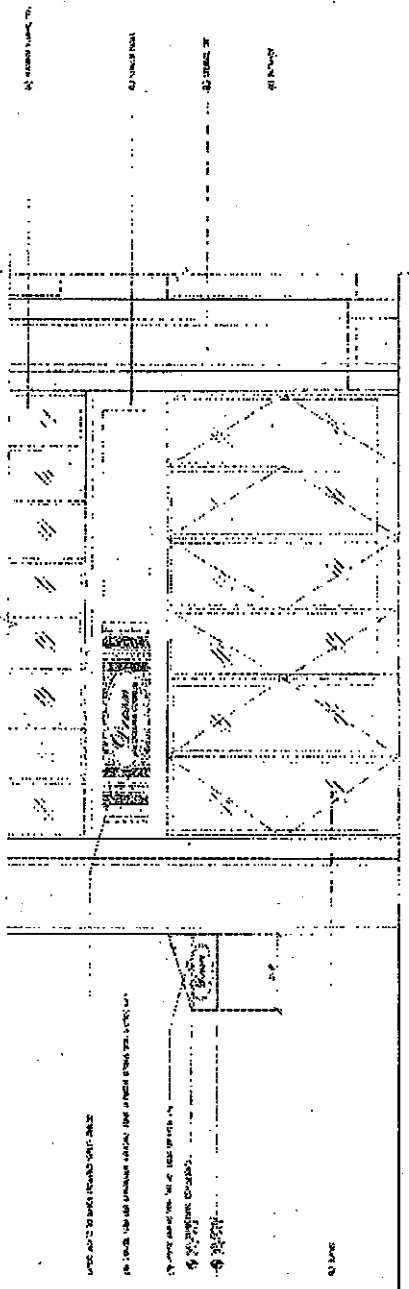
NOTICE OF ADMINISTRATIVE DECISION - Findings and Conditions

AUP #12-20000089 / DR #12-30000046

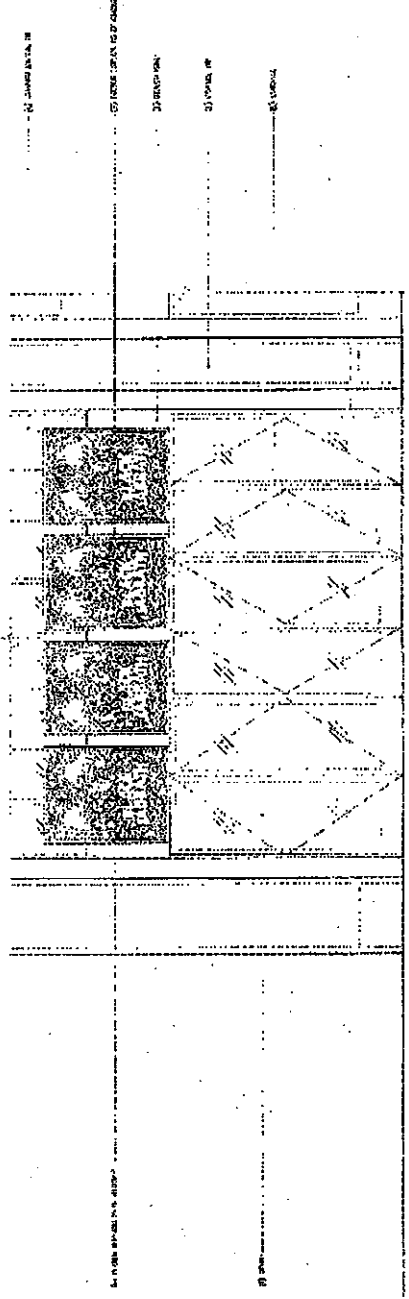
47. The applicant is responsible for complying with all the above conditions. Failure to comply with any condition could result in construction work being stopped, issuance of citations, as well as further review by the Design Review Staff, which may modify or impose additional conditions, or revoke the design review approval.
48. All building permit drawings and subsequent construction shall substantially conform to the final design review plans as outlined in Condition #1. Any modifications must be reviewed by the Zoning Officer or his designee to determine whether the modification requires approval.

Terry Blount, Principal Planner for
Debbie Sanderson, Zoning Officer

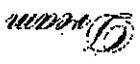
Prepared by: Claudine Asbagh, Assistant Planner



PROPOSED TELEGRAPH AVENUE ELEVATION



EXISTING TELEGRAPH AVENUE ELEVATION


 RASPUTIN MUSIC AND DVDs
 2401 TELEGRAPH AVE.
 BERKELEY, CA



2017-048
 EXISTING TELEGRAPH AVENUE ELEVATIONS
 A 2.00