



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 # UP2013-0035

Property Address: **3290 ADELIN STREET**

Permittee Name: **NEXT DOOR INVESTMENTS, INC.**

Use and/or Construction Permitted: to add incidental service of distilled spirits to an existing Full Service Restaurant (already serving beer and wine), and to extend closing time from 12 midnight to 2 a.m., seven days per week.

- Use Permit to allow incidental service of distilled spirits, under BMC Sections 23E.16.040.A and 23E.52.030.A
- Use Permit to extend hours of operation¹ until 2 a.m., seven days per week, under BMC Section 23E.44.060.A; latest permitted closing without Use Permit is 12 midnight, Sunday through Thursday, and 2 a.m. (of the following day), Friday and Saturday

FINDINGS, CONDITIONS ATTACHED

The Use Permit herein described has been duly granted by the Zoning Adjustments Board and is in effect on February 4, 2014.

¹ Per BMC Section 23E.16.010.B, "In the case of food service establishments, hours of operation include the time that the business is open for customer access to the departure of the last patron. These limitations do not apply to the delivery, maintenance, security, product preparation and other pre-opening activities, and, cleanup, shutdown, and other post-closure activities which do not involve presence of customers.

ATTACHMENT 1

FINDINGS AND CONDITIONS

JANUARY 9, 2014

3290 Adeline Street

Use Permit #2013-0035 to add incidental service of distilled spirits to an existing Full Service Restaurant (already serving beer and wine), and to extend closing time from 12 midnight to 2 a.m., seven days per week

Zoning Permits Required:

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- Use Permit to extend hours of operation¹ until 2 a.m., seven days per week, under BMC Section 23E.44.060.A; latest permitted closing without Use Permit is 12 midnight, Sunday through Thursday, and 2 a.m. (of the following day), Friday and Saturday

CEQA FINDINGS

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 Sections 15303 (“New Construction or Conversion of Small Structures”) and 15332 (“In-Fill Development Projects”) of the CEQA Guidelines. 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

2. Pursuant to Berkeley Municipal Code Section 23B.32.040, the Zoning Adjustments Board finds that the proposed service of distilled spirits, and extended hours of operation, 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

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the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City, for the following reasons:

- A. The Police Department has not expressed concerns about the requested alcohol service and hours of operation, provided certain alcohol and noise control measures are implemented. These measures have been included in the attached conditions.
- B. Within the context of South Berkeley, the subject property is relatively well separated from residential uses and is located on a wide, heavily traveled commercial corridor. There are no residential properties directly abutting the subject property.
- C. The applicant has stated that without the additional revenues he anticipates during the extended hours, he may have to close the restaurant. The fact that several restaurants have opened and closed at this location in the last several years may indicate that a substantially different business model is needed. A successful late-night restaurant/bar, particularly at this prominent location, would help attract new customers and encourage other commercial and residential investment in the area. While approval of the requested hours does entail some risk of increased impacts, the risk is appropriate given the potential economic benefits to the District and the City's longstanding commitment to promote economic revitalization in South Berkeley, as outlined in the South Berkeley Area Plan.
- D. The risk of negative impacts would be reduced by the one-year follow-up review, which would allow the Police Department and Planning staff an opportunity to review calls for service, noise complaints, and ABC violations (if any), and other information regarding the restaurant's impacts on the neighborhood. Based on this information, the ZAB would be able to reduce the restaurant's hours and/or require other appropriate measures to control impacts.
- E. Although there is relatively little commercial activity in the vicinity after midnight, there is an existing bar at 3218 Adeline operating until 2 a.m. daily, and an approved brewpub adjacent to the subject property on Alcatraz Avenue, with approved hours until 12 midnight on weeknights and 2 a.m. on weekends. These uses, in combination with the subject restaurant, would help create a "critical mass" of late-night pedestrian activity that would help mitigate safety concerns and further encourage business activity in the area.
- F. The restaurant would be subject to numerous conditions of approval intended to prevent alcohol-related problems, including the conditions noted in the Police Department's memo, a requirement that customers be allowed to order meals at all times (see Condition 19.E), and a requirement that alcohol service meet the definition of "incidental use" in BMC Section 23F.04.010, which would limit alcohol revenues to 33 percent of the restaurant's non-alcohol revenues (see Condition 16).

- G. The project would be consistent with General Policy LU-26 and South Berkeley Area Plan Land Use Policies A.2 and B.1.2 because (1) it would help an existing restaurant at a prominent corner in a pedestrian-oriented commercial neighborhood to remain in business and increase nighttime pedestrian activity, (2) it would expand the range of commercial services in the neighborhood to include a restaurant serving spirits, and (3) there are no adjacent residential uses, and the restaurant is subject to the City's standard conditions of approval for food service and alcohol, which include limits on cooking odors, trash, excessive consumption of alcohol, and other potential adverse impacts.
- H. The project site is well-served by transit and is in close proximity to relatively dense residential neighborhoods. These factors will help increase the likelihood that customers and employees will walk, bike or ride public transit to the restaurant.
- I. The addition of distilled spirits and extended hours of operation would not cause substantial adverse traffic and parking impacts, because there is abundant parking available on Adeline Street, particularly during later nighttime hours, and because these changes in the restaurant's operations would not substantially increase the number of customers arriving to the site during the peak traffic hour of 5 to 6 p.m.
- J. Approval of the application would help support entrepreneurial efforts by, and jobs for, South Berkeley residents by keeping the existing restaurant in business and bringing new customers to the area, thereby supporting other nearby businesses and making the area more attractive for local investment.

OTHER REQUIRED FINDINGS

- 3. Pursuant to Berkeley Municipal Code Section 23E.52.090.B, the Zoning Adjustments Board finds that the proposed use:
 - A. Is compatible with the purposes of the C-SA District, in that it supports the continued operation of an existing neighborhood-serving restaurant (Purposes B and C), further increases the variety of community-oriented retail goods and services in South Berkeley (Purpose D), and supports expanded pedestrian activity, particularly at night (Purpose G).
 - B. Is compatible in design and character with the District and the adjacent residential neighborhoods, as discussed in Finding 2.G above.
 - C. Will not result in the domination of one type of commercial/retail use in any one area of the District, because the project retains an existing restaurant with incidental alcohol service, and does not introduce a new use.

STANDARD CONDITIONS

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 exclude 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 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 does not 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

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

At All Times – General:

- 9.** All conditions of Use Permits #03-1000058 and #05-1000105 shall remain effective, except that where the previously adopted conditions conflict with the following conditions, the following conditions shall supercede the previously adopted conditions.

10. Hours of operation (as defined in BMC Section 23E.16.010) shall be limited to 7:00 a.m. to 2 a.m., seven days per week. Any change in the hours of operation (except decreased hours in compliance with ABC regulations) shall be approved by the Zoning Adjustments Board. 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.
11. 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, and otherwise attempt to prevent conduct that might disturb the peace and quiet of residences in the vicinity.
12. 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.

One Year After Commencing Extended Hours:

13. At least one year, but not later than fifteen months, after the establishment commences operating past midnight on weeknights (Sundays through Thursdays), staff shall bring this Permit to the Zoning Adjustments Board for a follow-up review to determine if the approved hours of operation have resulted in any detrimental impacts to the surrounding neighborhood. The review shall include Police calls for service, noise complaints, ABC violations, and other information regarding the restaurant's impacts on the neighborhood after midnight on weeknights. Based on this information, the ZAB shall have authority to reduce the restaurant's hours and/or require other appropriate measures to control detrimental impacts. Any such action may be appealed to the City Council in accordance with the procedures outlined in BMC Chapter 23B.32.

At All Times – Alcohol:

14. The premises shall not be rented out to third-party "promoters" for any special events or parties. This shall not prohibit the applicant from hosting such events in compliance with all applicable conditions of this Permit.
15. This Permit has been granted for the sale of beer, wine, and distilled spirits incidental to the food service. Sales for off-site consumption are not permitted without approval of applicable permits for such sales or service.

16. Alcoholic beverage service shall be “incidental” to the primary food service use as defined in the Zoning Ordinance Section 23F.04.010. In addition, the California Department of Alcohol 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.
17. The establishment shall comply with all applicable regulations of the California Department of Alcoholic Beverage Control.
18. 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 substantially 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.
19. The applicant shall comply with ABC regulations for License Type 47, 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, prior to issuance of a City business license or certificate of occupancy, the applicant shall request that the California Department of Alcoholic Beverage Control (ABC) place the following conditions on the establishment’s alcohol license, and this Permit shall only be operative for as long as these conditions, or substantially similar conditions, are placed on the associated ABC license:
 - A. The sale of alcohol 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;
 - 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; and
 - D. There shall be no exterior advertising or sign of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Signs that are clearly visible to the exterior shall constitute a violation of this condition.
 - E. The establishment shall offer cooked meals at all hours that customers are permitted on the premises.
 - F. Alcohol sales shall cease at least 30 minutes prior to actual closing time, except when closing time is not later than 12 midnight.

20. A Berkeley Police Department Crime Prevention Through Environmental Design (CPTED) survey shall be completed prior to issuance of a City business license or certificate of occupancy.
21. The applicant shall establish cash handling procedures to reduce the likelihood of robberies and thefts.
22. Employees shall not serve alcohol to patrons who appear to be inebriated or otherwise unable to behave in an orderly manner upon consuming alcohol.
23. No sign(s) visible from the public right-of-way advertising alcoholic beverages shall be allowed.
24. At no time may alcohol be served or consumed in the public right-of-way. This condition shall no longer be effective if the Berkeley Municipal Code is revised to permit such alcohol service or consumption.
25. Fortified alcohol products (e.g., malt liquor), shall not be sold on the premises.
26. All alcoholic beverages shall be served in durable, non-disposable restaurant tableware – i.e., either cups or glasses. No alcoholic beverage shall be served in its original bottle or can, or in any other potentially disposable container.
27. No alcohol shall be transported off-site from the establishment to any other establishment or to the public right-of-way, except for authorized sidewalk seating on the premises in compliance with all applicable State and City laws and regulations.
28. A copy of these conditions shall be maintained on the premises and made available upon the demand of any peace officer or authorized code enforcement officer.