



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 #2013-0133

Property Address: **2509 HEARST AVENUE**

Permittee Name: **PARAM SINGH**

Use and/or Construction Permitted: to convert an approximately 500 square-foot market into a quick service restaurant and to waive one off-street parking space pursuant to:

- Section 23E.28.130.C.2 to reduce the number of off-street parking spaces.

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 March 20, 2014.

Attest: Greg Powell
Greg Powell, Senior Planner
For Eric Angstadt, Zoning Officer

March 20, 2014
Effective Date

ATTACHMENT 1

FINDINGS AND CONDITIONS

FEBRUARY 26, 2014

2509 Hearst Avenue

Administrative Use Permit #2013-0133 to convert an approximately 500 square-foot market into a quick service restaurant and to waive one off-street parking space.

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 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

2. Pursuant to Berkeley Municipal Code Section 23B.32.040, the Zoning Officer finds that 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. The creation of a quick service restaurant will encourage commercial activity, helping to develop a more pedestrian-oriented environment compatible with adjacent commercial uses. The restaurant 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 reduction in the number of required off-street parking spaces in conjunction with the restaurant’s location near multiple bus and shuttle lines will encourage the use of public transit thus implementing the General Plan’s goals to encourage alternative modes of transportation.

OTHER REQUIRED FINDINGS

3. Pursuant to Berkeley Municipal Code Section 23E.28.130, the Zoning Officer finds that the reduction in the number of required parking spaces for the proposed 500 square-foot quick service restaurant 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 into a quick service restaurant, a use that is allowed in the district.
 - B. The waiver of the one additional required parking space would not significantly reduce the availability of on-street parking because many of the clients are likely to take public transportation, walk, and/or ride bicycles to the location.
 - 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. In addition to the above factors, the site is: located along AC Transit lines F, 52, and 65, UC Campus P Shuttle; is adjacent to a UC parking facility that allows visitor parking; and is half a mile from the Downtown Berkeley BART.

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.

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 Issuance of Occupancy Permit or Final Inspection:

- 8. The project shall conform to the plans and statements in the Use Permit.
- 9. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated **September 12, 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).

- 10. 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.

11. 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.
12. 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.
13. The hours of operation of the restaurant portion of the business shall be limited to 7:00 a.m. to 11:00 p.m. 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.
14. 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.
15. 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.
16. 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.
17. 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.
18. Any establishment selling beverages in cans or bottles that are subject to the State of California Container Deposit Law shall recycle such containers.
19. 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.
20. 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.

21. 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.
22. 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.
23. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
24. 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.



Gregory Powell, Acting Principal Planner for
Eric Angstadt, Zoning Officer



Prepared by: Claudine Asbagh, Assistant Planner

