



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 # UP2014-0006

Property Address: **2055 CENTER STREET #D**

Permittee Name: **KRISTIN PERSONETT
Indigo Design Group**

Use and/or Construction Permitted:
to add incidental retail sale of wine for off-site consumption at a full service tapas restaurant.

- Use Permit to add retail sales of wine at an existing quick service restaurant, under BMC Sections 23E.68.030 and 23E.16.040

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 June 13, 2014.

ATTACHMENT 1

FINDINGS AND CONDITIONS

MAY 22, 2014

2055 Center Street, Unit D

Use Permit #2014-0006 to add incidental retail sale of wine for off-site consumption at a full service tapas restaurant.

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 15303 of the CEQA Guidelines (“New Construction or Conversions 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.

GENERAL NON-DETRIMENT FINDING

2. Pursuant to Berkeley Municipal Code Section 23B.32.040, the Zoning Adjustments Board finds that the proposed project, 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. The incidental retail sales of beer and wine for offsite consumption at an approved full service restaurant will encourage commercial activity, helping to develop a more pedestrian-oriented environment compatible with adjacent commercial uses and expand the types of goods and services offered in the downtown area;
 - B. The retail alcohol sales would be incidental to the food service use, thus limited to 25% of floor area and 33% of gross receipts and as such will not have significant detrimental impact on public health, safety, or peace; and
 - C. Conditions #10-17 pertaining to alcohol service will be implemented to limit detriment.
 - D. These conditions of approval do not replace the conditions imposed by AUP #2013-0123 related to the restaurant and incidental service of beer and wine.

OTHER REQUIRED FINDINGS

3. Pursuant to Berkeley Municipal Code Section 23E.68.090.B, the Zoning Adjustments Board finds that the establishment of incidental retail of beer and wine for offsite consumption at an approved full service restaurant is permissible because:

- A. The proposed use is consistent with the purposes of the District in that:
 - The restaurant is commercial in nature and thus helps to implement the General Plan's designation of a Commercial District. Botella Republic will be the first restaurant/wine bar of its kind to establish in the downtown area, and the addition of retail sales will help keep sales local and add to the diversity of uses in the downtown area; and
 - The permit is conditioned to include measures to mitigate potential impacts associated with incidental retail of beer and wine and is therefore expected to meet applicable performance standards for potential off-site impacts.

4. Pursuant to Berkeley Municipal Code Section 2323E.16.040.B.2, the Zoning Adjustments Board finds that while there are other businesses with beer and wine retail licenses within 1,000 feet of the project site, "Public Convenience or Necessity" findings can be made, as follows:
 - A. The proposed establishment will promote the City's economic health, contribute to the General Plan or Area Plan policies has been discussed previously;
 - B. The economic benefits associated with the establishment of incidental retail sales for offsite consumption could not be obtained otherwise because an essential component of Botella Republic's business model includes the ability to offer new and unique local wines that customers can sample and then purchase for consumption off premises. The addition of incidental retail sales will allow the restaurant to remain competitive with other restaurants in the area by providing a service not currently available downtown;
 - C. The applicant has not operated a licensed establishment which has been the subject of verified complaints or violations regarding alcohol, public safety or nuisance statues or regulations; and
 - D. The proposed addition of beer and wine sales at a full service eating establishment is not expected to have an adverse effect because the retail sales are designed to promote the restaurant's specialized offerings of wine and is restricted to 25% of floor area and 33% of gross receipts and.

STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

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.

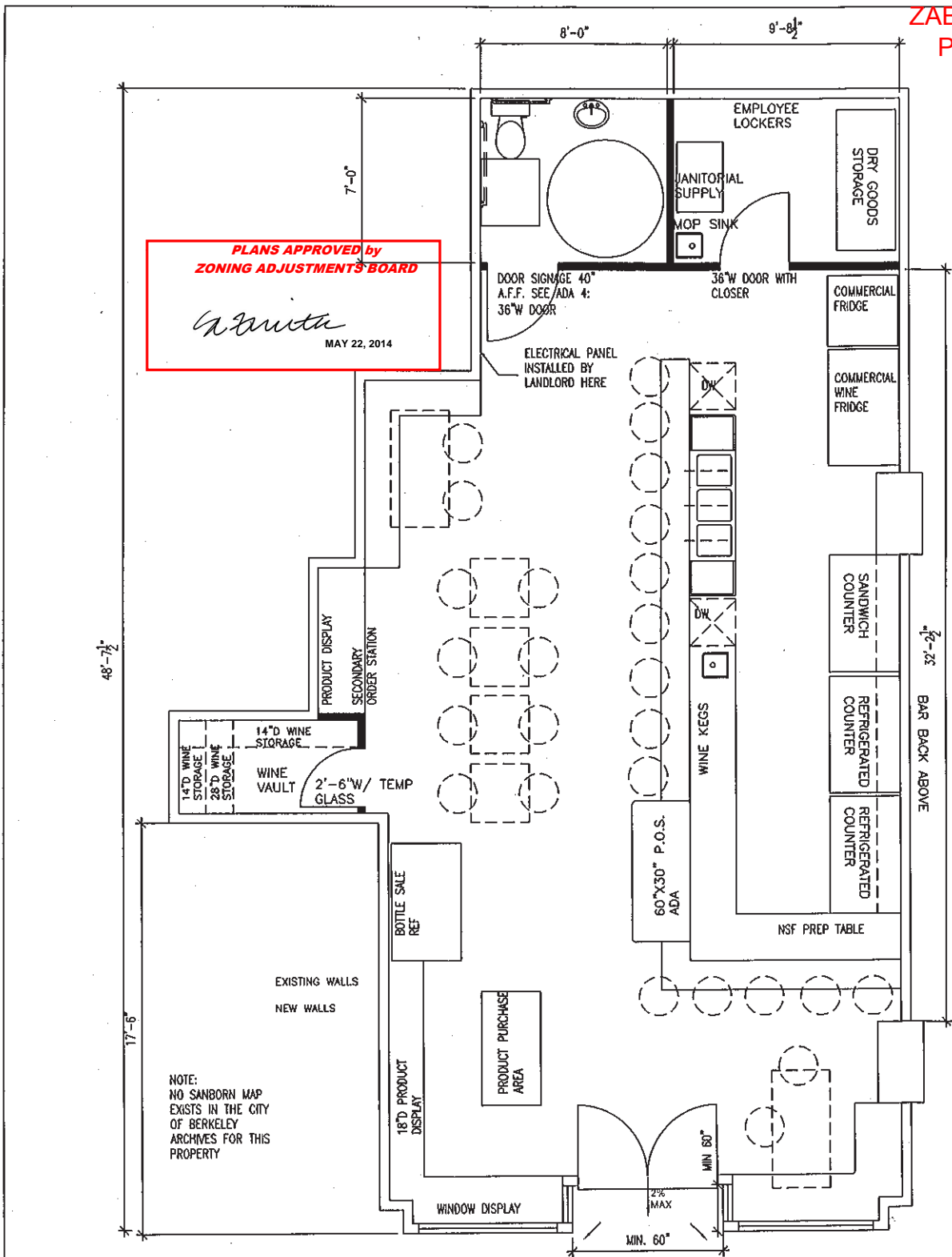
9. The applicant shall hold the City of Berkeley and its officers harmless in the event of any legal action related to the granting of this Permit, shall cooperate with the City in defense of such action, and shall indemnify the City for any award of damages or attorneys fees that may result.

ALCOHOLIC BEVERAGE SERVICE CONDITIONS (off-site)

- 10.** The area devoted to the retail sales of alcoholic beverages shall not exceed 25% of the gross floor area of the full service restaurant.
- 11.** The revenue generated by the retail sale of alcoholic beverages for offsite consumption shall not exceed 33% of the gross receipts of the full service restaurant.
- 12.** The establishment shall comply with all applicable regulations of the California Department of Alcoholic Beverage Control.
- 13.** All employees selling and/or serving alcohol, or directly supervising such sales and/or service, shall complete a course through 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.

14. 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.
15. Employees shall not serve alcohol to patrons who appear to be inebriated or otherwise unable to behave in an orderly manner upon consuming alcohol.
16. A Berkeley Police Department Crime Prevention Through Environmental Design (CPTED) survey shall be completed prior to commencing the alcohol sales.
17. The owner or operator of the establishment shall take reasonable measures to prevent disturbances by patrons in the immediate vicinity. 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.
18. The applicant shall establish cash handling procedures to reduce the likelihood of robberies and theft.
19. This Use Permit, including these and all other required conditions, shall be posted in conspicuous location, available for viewing by any interested party.



<p>iNDiGO design group</p> <p>phn: 510-697-4289 fax: 510-655-3705 www.indigo-design-group.com indigodesigngroup@gmail.com</p>	<p>PROJECT SCOPE</p> <p>This application is for the Zoning Approval of a discretionary permit (UP) to allow the commercial service, BOTELLA REPUBLIC, to operate as a light fare Napa style restaurant with beer and wine service, at an existing commercial location within the zoning approved standard of the Downtown District with the proposed add on service of retail bottle sales for off site consumption</p>	<p>A2</p>
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