

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 # UP2013-0054

Property Address: **2271 SHATTUCK AVENUE**

Permittee Name: **BRICK HAT, LLC
Rhoades Planning Group**

Use and/or Construction Permitted:
to allow alcoholic beverage service at a cocktail lounge with incidental amplified live entertainment.

- Use Permit, under BMC Section 23E.68.030, to establish a cocktail lounge with service of beer, wine and distilled spirits
- Administrative Use Permit, under BMC Section 23E.68.030, to allow incidental amplified live entertainment

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 25, 2014.

ATTACHMENT 1

FINDINGS AND CONDITIONS

MAY 8, 2014

2271 Shattuck Avenue – “Tupper & Reed”

Use Permit #2013-0054 to allow alcoholic beverage service at a cocktail lounge with incidental amplified live entertainment.

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”) and 15303(c) (“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. The building is designated as a City of Berkeley Landmark. Exterior changes are limited to new signage, which were reviewed and approved by the Landmarks Preservation Commission through the Structural Alteration Permit process.

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 establishment of a premium-style cocktail bar will encourage other commercial activity in the area, helping to develop a more pedestrian-oriented environment compatible with adjacent commercial uses by expanding the types of goods and services offered in the area.
 - B. The proposed use will include refurbishment and reuse of a notable City of Berkeley Landmark building and will promote the building’s history.
 - C. By providing a new business in what is now vacant space, the project will add to the general welfare of the neighborhood, the area, and the city by providing a service that does not now exist, and is likely to be of interest to both local residents and visitors to the Downtown, adding to the variety and vibrancy of the area.

- D. The operation is not expected to be detrimental to the safety, peace, morals or general welfare of the neighborhood or of the City because the alcohol service will occur in well-appointed space, by properly trained staff representing a well-established company, will be operated under applicable ABC regulations, will make use of a reservation system to limit the volume of clientele, and will employ a door person, host and site manager at all times.
- E. The live entertainment and recorded music will be played through a sound system with a sound limiter that will ensure compliance with the city's Noise Ordinance.
- F. Conditions #10-24 pertaining to alcohol service will be implemented to limit detriment.

OTHER REQUIRED FINDINGS

- 3. Pursuant to Berkeley Municipal Code Section 23 E.68.090.B, the Zoning Adjustments Board finds that the establishment is compatible with the purposes of the district, which are the goals and policies of the Downtown Area Plan, as discussed in the staff report on Pages 10-11, and compatible with the surrounding uses and buildings because it reuses a City of Berkeley Landmark building, is complimentary to the restaurant and theaters in the vicinity, and does not have the potential for detrimental impacts to surrounding uses based on the restrictions noted in the staff report and these conditions, the generally good operating record of the applicant, and the limited number of nearby residential uses that might be sensitive to the impacts of the use.
- 4. Pursuant to Berkeley Municipal Code Section 23E.16.040 addressing sale of alcoholic beverages, the Zoning Adjustments Board makes the following findings of "Public Convenience and Necessity":
 - A. That the proposed establishment will promote the City's economic health, contribute to the General Plan and Area Plan policies as provided above in Finding #2 and #3.
 - B. That the economic benefits associated with the establishment could not be achieved without the proposed alcohol sales.
 - C. That the applicant has not operated a licensed establishment that has been the subject of verified complaints or violations regarding alcohol, public safety or nuisance statues or regulations as they do not have an established comparable operation in the City of Berkeley at present. Although violations have occurred at establishments owned by the applicant in San Francisco, based on the limited number and severity of the applicant's prior violations, the corrective actions taken, and the proposed security measures, staff does not believe the applicant has demonstrated a pattern of poor operations that would indicate a high risk of detrimental impacts at this location.
 - D. That although Berkeley High School is within the 1,000 foot buffer zone, the proposed alcohol service will not have an adverse effect because the door

- person will check customers for proper identification to entry and the BPD did not indicate concern with proximity to the school.
- E. The Berkeley Police Department does not expect the establishment to add to crime in the area.

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.

CONDITIONS BY PROJECT TYPE

ALCOHOLIC BEVERAGE SERVICE CONDITIONS (on-site)

10. The establishment shall comply with all applicable regulations of the California Department of Alcoholic Beverage Control.
11. The applicant shall comply with ABC regulations for License Type 48. 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 the following condition is placed on the associated ABC license:
 - A. The sale of alcoholic beverages for consumption off the premises is strictly prohibited (this condition shall not be required if License Type 48 already prohibits off-premises consumption);
12. A Berkeley Police Department Crime Prevention Through Environmental Design (CPTED) survey shall be completed prior to commencing alcohol service.
13. 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.
14. Employees shall not serve alcohol to patrons who appear to be inebriated or otherwise unable to behave in an orderly manner upon consuming alcohol.
15. Any operator of the licensed establishment shall not have had a prior licensed establishment in Berkeley 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.
16. The hours of operation shall be 5:00 p.m. – 2:00 a.m. The Zoning Adjustments Board shall approve any change in the hours of operations, except for reductions in the hours consistent with ABC regulations. 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.
17. All alcohol served to patrons must be served in durable restaurant tableware – i.e. either cups or glasses. No alcohol may be distributed in its original bottle or can, or in any other potentially disposable container.
18. There shall be no service or consumption of alcohol on the public right-of-way.

19. No alcohol may be transported off-site from the establishment to any other establishment or to the public right-of-way.
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. 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.
21. The applicant shall establish cash handling procedures to reduce the likelihood of robberies and theft.
22. This Use Permit, including these and all other required conditions, shall be posted in conspicuous location, available for viewing by any interested party.

TRANSIT SUBSIDY CONDITION

23. The applicant shall reimburse employees the maximum non-taxable cost of commuting to and from work on public transportation (e.g., monthly passes) if they so commute, and a notice informing employees of the availability of such subsidy shall be permanently displayed in the employee area.

LIVE ENTERTAINMENT CONDITIONS

24. In order to ensure 1) minimal impacts from noise on commercial and residential tenants in the immediate vicinity, and 2) compliance with the City Noise Ordinance, the applicant shall be responsible for the enforcement of the following actions:
 - A. A Sound Limiter shall be used to set sound level limits on the second floor to 73 dBA or lower, and on the ground floor to 90 dBA or lower.
 - B. No "buy-outs" or sub-leases to third parties for live entertainment events are permitted.
 - C. A manager with full authority to control operations, including live performances, shall be on duty at all times.
 - D. At the discretion of the city's Zoning Officer, prior to issuance of a use permit transfer, future operators shall provide a noise assessment prepared by a qualified sound engineer verifying that live entertainment will comply with the city's Noise Ordinance.



Tupper & Reed
2271 - 2275 Shattuck Avenue
Berkeley, CA

Use Permit Application

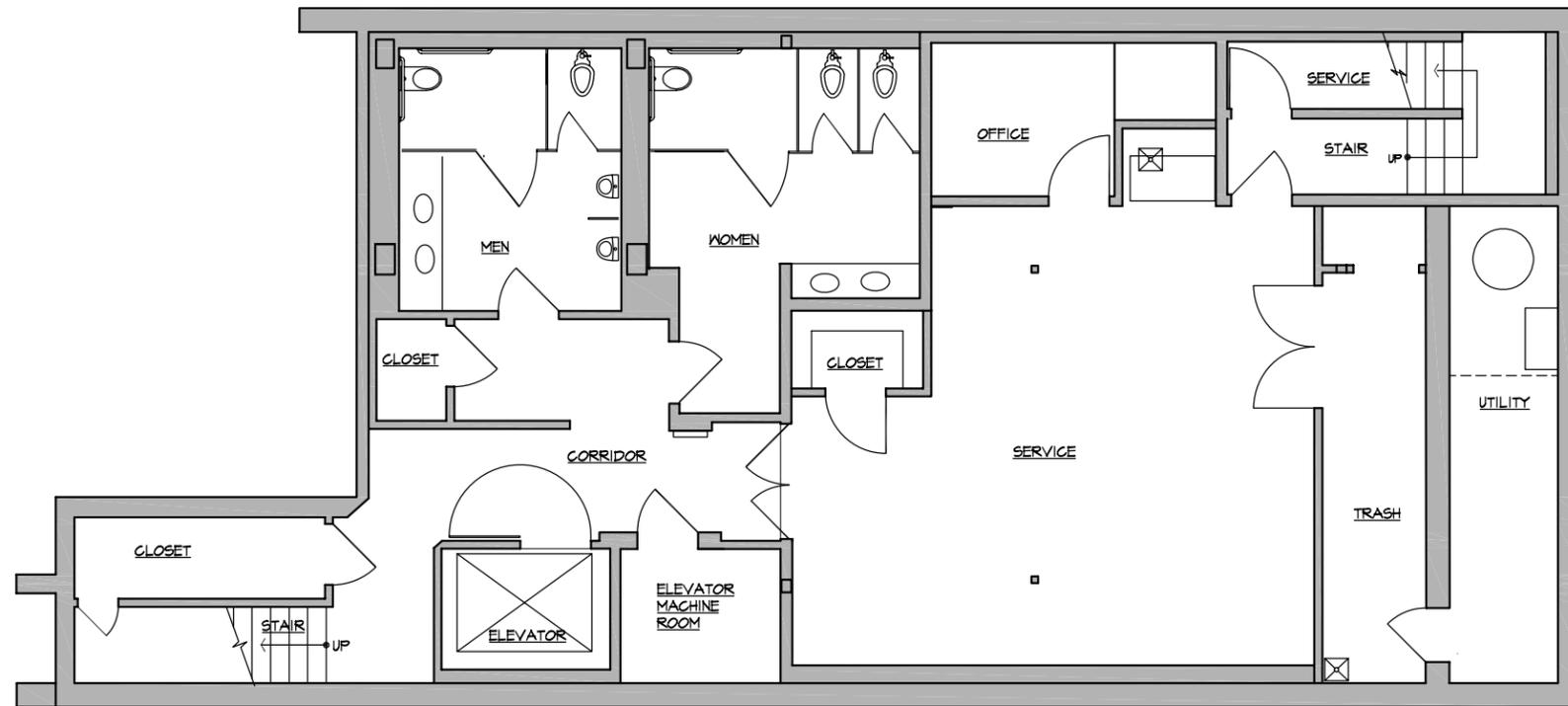
TENANT

BRICK HAT, LLC

561 Geary Street
San Francisco, CA 94102

**PLANS APPROVED by
ZONING ADJUSTMENTS BOARD**

Arnon Sage
MAY 8, 2014



BASEMENT PLAN
SCALE: 1/8" = 1'-0" N-PLAN-0210

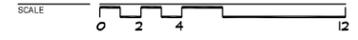
ISSUES/REVISIONS			
#	DATE	DESCRIPTION	DRAWN
1	10/30/13	USE PERMIT	GS

STAMP

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BASEMENT PLAN

PROJECT NUMBER: 2005 PROJECT NAME: TUPPER & REED



NORTH SHEET NUMBER

A2.1

**PLANS APPROVED by
ZONING ADJUSTMENTS BOARD**

Caron Sage

MAY 8, 2014

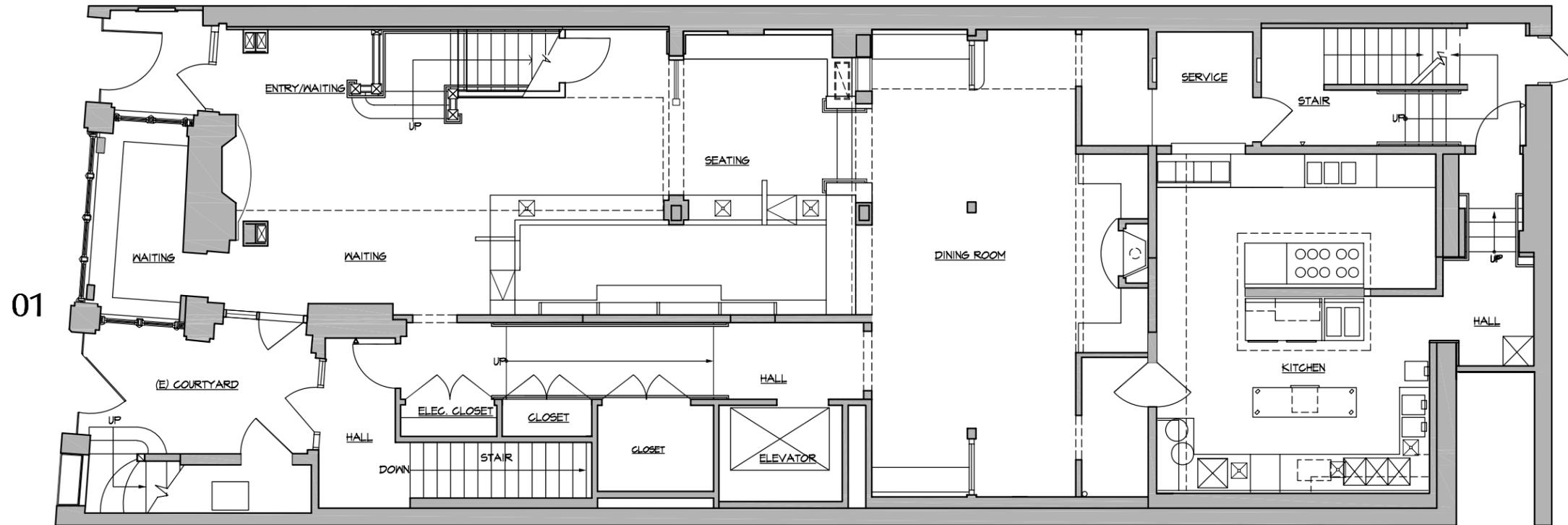
sparc
samonsky + pometta architects, llp
1743 Alcatraz Avenue
Berkeley, CA 94703
tel 510 450 9090
fax 510 450 9091
www.sp-arc.com

Tupper & Reed
2271 - 2275 Shattuck Avenue
Berkeley, CA

Use Permit Application

BRICK HAT, LLC

561 Geary Street
San Francisco, CA 94102



GROUND FLOOR PLAN
SCALE: 1/8" = 1'-0" N-PLAN.DWG

ISSUES/REVISIONS			
#	DATE	DESCRIPTION	DRAWN
1	10/30/13	USE PERMIT	GS

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GROUND FLOOR PLAN

PROJECT NUMBER: 2005 PROJECT NAME: TUPPER & REED
SCALE: 0 2 4 12
NORTH SHEET NUMBER

A2.2

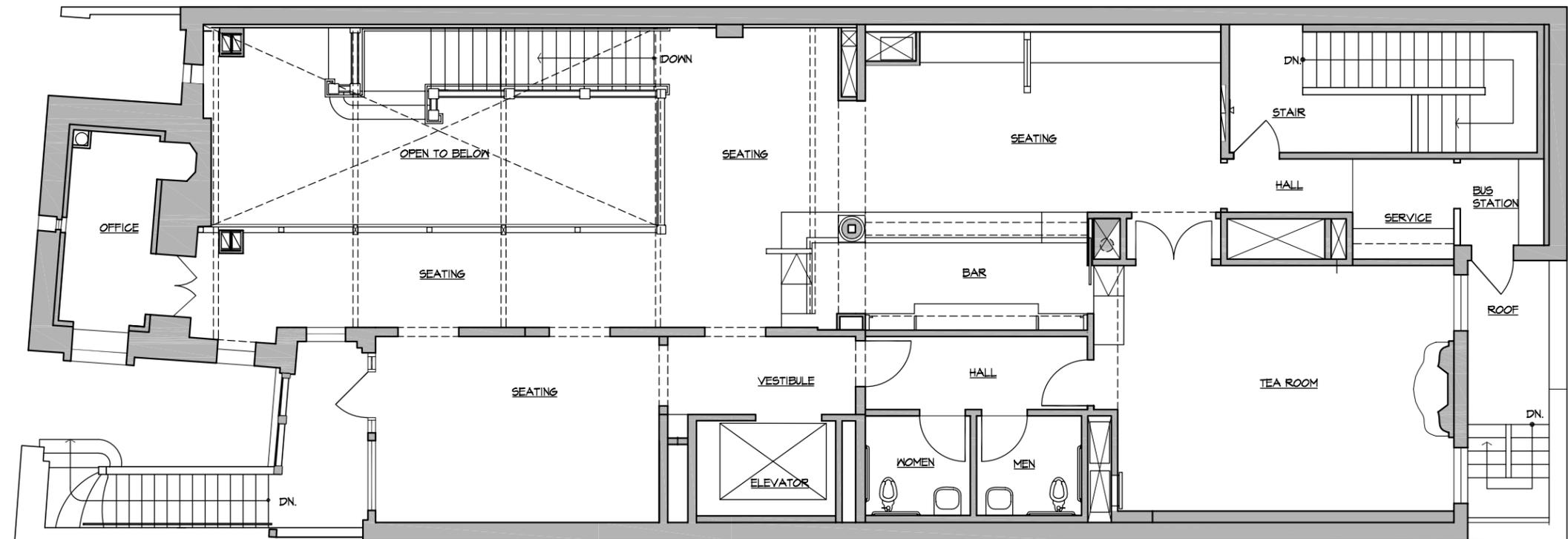
**PLANS APPROVED by
ZONING ADJUSTMENTS BOARD**

Arnon Sage
MAY 8, 2014

Tupper & Reed
2271 - 2275 Shattuck Avenue
Berkeley, CA

Use Permit Application

BRICK HAT, LLC
561 Geary Street
San Francisco, CA 94102



SECOND FLOOR PLAN
SCALE: 1/4" = 1'-0" NPLAN-2

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1	10/30/13	USE PERMIT	GS

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SECOND ROOF PLAN

PROJECT NUMBER	PROJECT NAME
2005	TUPPER & REED
SCALE	
0 2 4 12	
NORTH	SHEET NUMBER

A2.3

Tupper & Reed
2271 - 2275 Stattuck Avenue
Berkeley, CA

Use Permit Application

BRICK HAT, LLC

561 Geary Street
San Francisco, CA 94102

STRUCTURAL ENGINEER

TITLE 24 ENERGY CALCULATIONS

LANDSCAPE DESIGNER

ISSUES/REVISIONS

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SHEET TITLE

PROPOSED EXTERIOR ELEVATION

PROJECT NUMBER PROJECT NAME
2005 Tupper & Reed

SCALE 0 2 4 12

NORTH SHEET NUMBER

A3.2

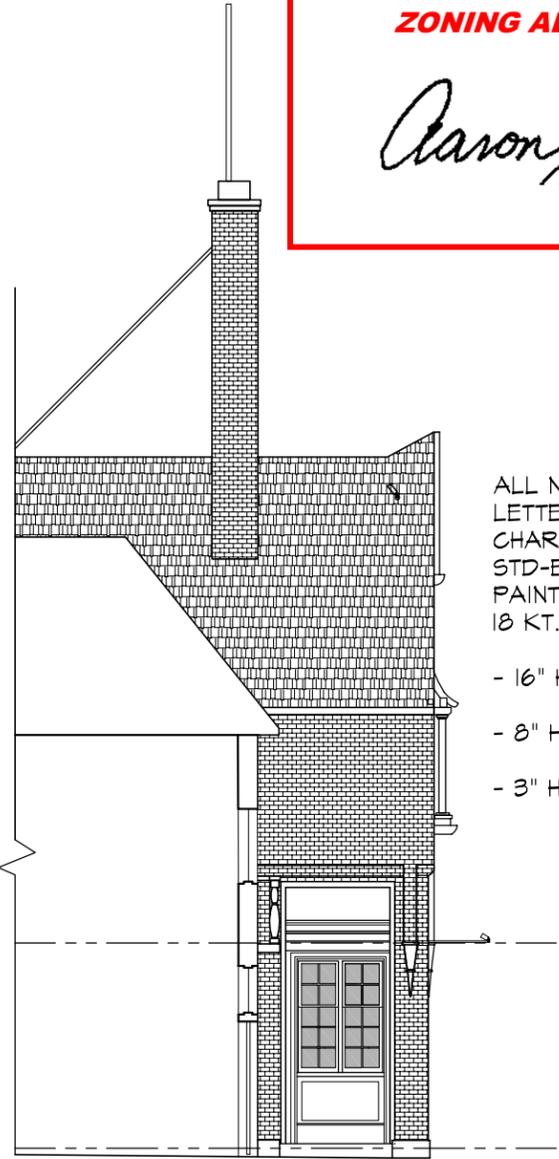
PLANS APPROVED by
ZONING ADJUSTMENTS BOARD
Arson Sage
MAY 8, 2014

PAINT EXISTING PIPER,
KRYLON, 18 KT. GOLD.

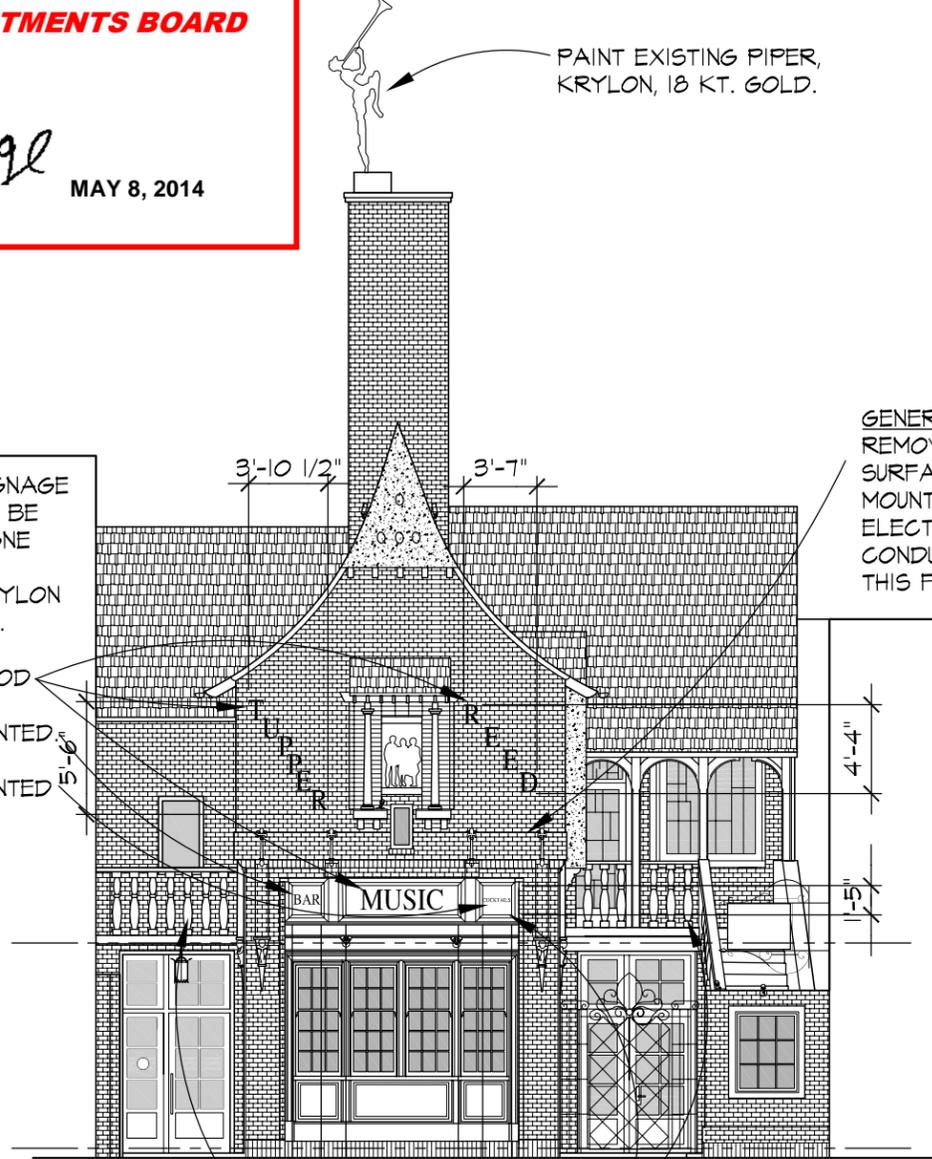
GENERAL NOTE:
REMOVE ALL
SURFACE
MOUNTED
ELECTRICAL
CONDUIT FROM
THIS FACADE.

ALL NEW SIGNAGE
LETTERS TO BE
CHARLEMAGNE
STD-BOLD,
PAINTED KRYLON
18 KT. GOLD.
- 16" HT. WOOD
- 8" HT. PAINTED
- 3" HT. PAINTED

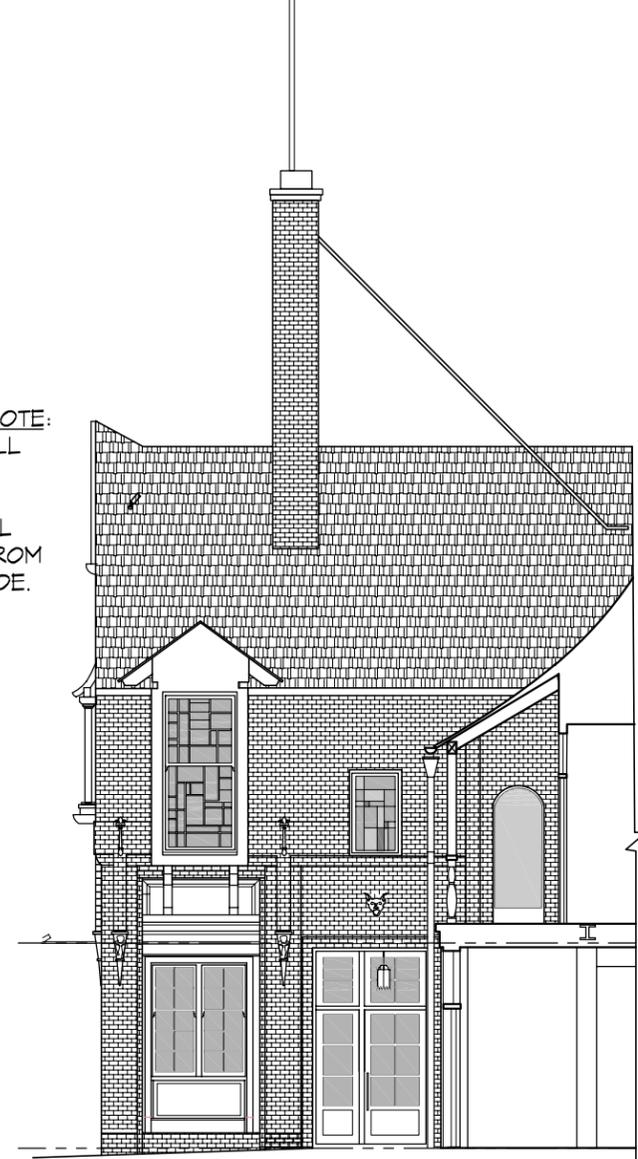
PAINT EXISTING RAILINGS &
SIGNAGE BACKGROUND PANELS,
BENJAMIN MOORE, AURA
WATERBOURNE, BLACK, SATIN.



03 NORTH ELEVATION
SCALE: 1/4" = 1'-0"



02 WEST ELEVATION
SCALE: 1/4" = 1'-0"



01 SOUTH ELEVATION
SCALE: 1/4" = 1'-0"