



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 #2014-0091**

Property Address: **1701 UNIVERSITY AVENUE**

Permittee Name: **NICHOLAS RIVARD**

Use and/or Construction Permitted: To reduce required parking by two spaces to facilitate a quick service restaurant use pursuant to:

- Section 23E.28.130.C.2 to waive two required 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 September 23, 2014.

Attest: Carol Johnson  
Carol Johnson, Land Use Planning Mgr.

Sept. 23, 2014  
Effective Date

# ATTACHMENT 1

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## FINDINGS AND CONDITIONS

SEPTEMBER 2, 2014

### 1701 University Avenue

#### Administrative Use Permit #AUP2014-0091

**To reduce required parking by two\* spaces to facilitate a quick service restaurant use.**

\* Per Section 23E.28.130.C, the incremental difference between the previous 1200 square foot retail use (2 required parking spaces) and the quick service restaurant (4 required parking spaces) is 2 spaces; therefore the AUP is to waive 2 spaces. The restaurant use is allowed as-of-right.

#### CEQA FINDINGS

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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 15305 of the CEQA Guidelines (“Minor Alteration to Land Use Limitations”). 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.

#### FINDINGS FOR APPROVAL

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2. As required by Section 23B.28.050.A of the Zoning Ordinance, the waiver of two parking spaces, 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:

- Ample on-street parking is available within the vicinity of the use.
- The applicant will provide four secure, on-site bicycle parking racks.
- The reduction in the number of required off-street parking spaces in conjunction with the restaurant’s location near BART stations and multiple bus lines will encourage the use of public transit thus implementing the General Plan’s goals to encourage alternative modes of transportation.
- The restaurant is in keeping with the purposes of the C-1 District in that it provides a service for uses and residences located in the immediate vicinity and it will encourage commercial activity, thereby helping to develop a more pedestrian-oriented environment compatible with adjacent commercial uses.

3. As required by Section 23E.28.130.C.2 and 23E.28.140.B of the Zoning Ordinance, under the circumstances of this particular case at the time at which the application is granted, the Zoning Officer finds that the reduction in parking 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 two additional required parking spaces would not significantly reduce the availability of on-street parking because:
    - i. Based on the parking survey, and substantiated by multiple staff site visits, there is adequate parking within the vicinity of the use during the peak demand period.
    - ii. Many of the customers are likely to walk, take public transportation, or ride bicycles to the location. Additionally, the owner will install four bike racks to facilitate easy access to bicycle parking.
  - C. As required under Sections 23E.28.140.B.1.b and 23E.28.140.B.1.d, the use is located less than one-quarter mile from publically accessible parking facilities and 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-1 District in that it will increase the variety of commercial activities, promote use of public transportation, and increase the pedestrian activity within the commercial district.
  - E. In addition to the above factors, the site is located along multiple AC Transit lines and just over half of a mile from the North Berkeley and Downtown Berkeley BART stations.
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## STANDARD CONDITIONS

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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:

### **At All Times (Operation):**

10. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
11. Prior to occupancy, the applicant shall install four bicycle parking spaces on the property in coordination with the City Traffic Engineer. These spaces shall be maintained as long as the subject space is used as a restaurant. A minimum of two of these spaces shall be available to customers of the establishment.

## **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).

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.

13. Changes in the nature of the operation including, but not limited to, the addition of seating, changes in hours (except decreased hours in compliance with applicable ABC regulations), and the addition of live entertainment, shall require modification of this permit subject to approval by the Zoning Adjustments Board or Zoning Officer.
14. The approved floor plan, including the number of seats, shall be followed and the operation shall be conducted as presented to the Zoning Officer. The maximum occupancy shall be as specified in the application unless otherwise required by applicable regulations.
15. 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.
16. The hours of operation of the restaurant portion of the business shall be limited to: 7:00 a.m. to 12:00 a.m. daily, the allowable hours of the district at the time of applicaiton. Hours of operation refer to arrival of the first patron and departure of the last patron. Any change in the hours of operation (except decreased hours in compliance with applicable 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.
17. 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.
18. Smoke and odor control equipment approved by the City Environmental Health Division and providing adequate protection to residential uses near the restaurant shall be installed (or prior installation verified) prior to issuance of an Occupancy Permit.
19. 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.
20. 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.
21. Any establishment selling beverages in cans or bottles that are subject to the State of California Container Deposit Law shall recycle such containers.
22. 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.

23. 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.
24. 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.
25. 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.



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Prepared by: Jordan Harrison  
For Carol Johnson, Land Use Planning Manager