



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

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## 3075 Telegraph Avenue

### Administrative Use Permit #ZP2015-0039

**Project Description:** To establish incidental beer and wine service at an existing 898-square-foot quick-service restaurant, with hours of operation from 7 am to 6 pm Monday through Friday and 8 am to 5 pm Saturday and Sunday., pursuant to:

- Section 23.E.36.030 to establish incidental beer and wine service.

### 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 July 22, 2015.

Attest: Shannon Allen  
Shannon Allen, AICP, Principal Planner

July 22, 2015  
Effective Date

# ATTACHMENT 1

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## FINDINGS AND CONDITIONS

JULY 1, 2015

### 3075 Telegraph Avenue

#### Administrative Use Permit #ZP2015-0039

**To establish incidental beer and wine service at an existing 898-square-foot quick-service restaurant, with hours of operation from 7 am to 6 pm Monday through Friday and 8 am to 5 pm Saturday and Sunday.**

#### 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 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.

#### FINDINGS FOR APPROVAL

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2. As required by Section 23B.28.050.A of the Zoning Ordinance, the project, 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:

- The establishment of incidental beer and wine service will help the café remain competitive with other establishments operating in the vicinity, many of which also offer beer and wine service.
- The beer and wine service would be incidental to food service. The café is small and is located along a major thoroughfare; therefore, the potential for disturbance to residents in the neighborhood will be minimized and alcohol sales would not have a significant detrimental impact on public health, safety, or peace.
- Conditions #10-#22 will be implemented to limit detriment.

## **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 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 attorney fees that may result.

**ADDITIONAL CONDITIONS IMPOSED BY THE ZONING OFFICER**

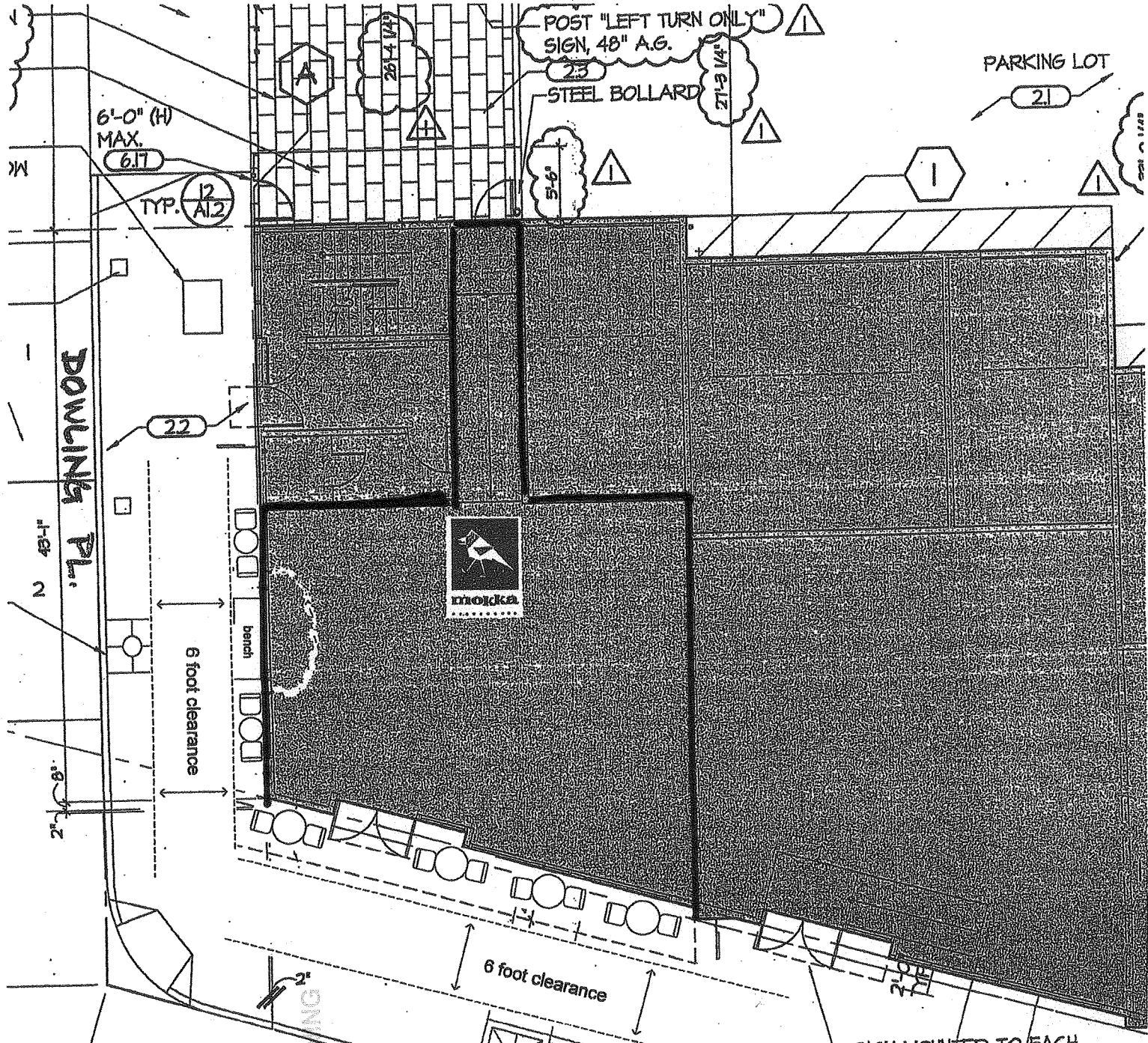
Pursuant to BMC 23B.28.050.D, the Zoning Officer attaches the following additional conditions to this Permit:

- 10. The project shall conform to the plans and statements in the Administrative Use Permit application, dated February 25, 2015.
- 11. This approval allows the service of beer and wine incidental to the approved food service. No service of distilled spirits is permitted without prior application and Use Permit approval.
- 12. Alcoholic beverage service shall be "incidental" to the primary food service use, as defined in Zoning Ordinance 23F.04.010. An incidental use shall not exceed twenty-five percent (25%) of the floor area of the primary use, and if it consists of the commercial sales of a different line of products or services than the primary use, such incidental use may not generate gross receipts in excess of thirty-three percent (33%) of the gross receipts generated by the primary use. 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.
- 13. 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.
- 14. At no time may alcohol be served or consumed outside of the building.
- 15. The applicant shall establish cash handling procedures to reduce the likelihood of robberies and thefts.

16. All employees selling and/or serving alcohol, or directly supervising such sales and/or service, shall complete a course in Responsible Beverage Sales and Service (RBSS) through 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.
17. The applicant shall request that the California Department of Alcoholic Beverage Control (ABC) place the following conditions on the applicant's alcohol license:
  - A. The sale of alcohol beverages for consumption off the premises is strictly prohibited;
  - B. 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. Interior displays of alcoholic beverages or signs that are clearly visible to the exterior shall constitute a violation of this condition.
18. Employees shall not serve alcohol to patrons who appear to be inebriated or otherwise unable to behave in an orderly manner upon consuming alcohol.
19. The owner and/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.
20. 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.
21. 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.
22. 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.



Approved by: Greg Powell, Principal Planner

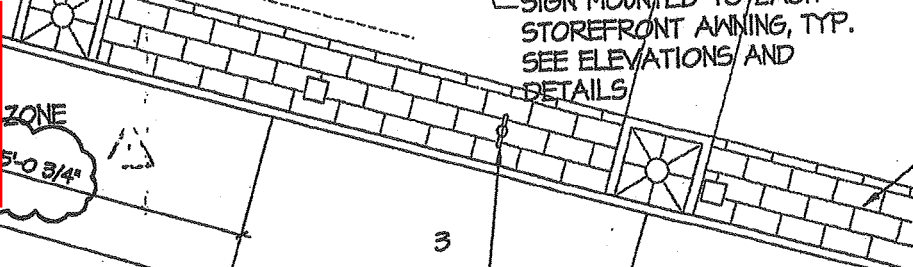


**PLANS APPROVED by**

*[Signature]* July 1, 2015

SIGNATURE DATE

\*AUP Findings and Conditions Attached



**RECEIVED**  
**TELEGRAPH AVE.**  
 1/8" = 1'

**LAND USE PLANNING**

*[Signature]*  
 APPROVED PLAN  
 PLANNING DATE  
 D.R. Conditions Attached  
 A.L.P. Conditions Attached  
 T.P. Conditions Attached

(N) BICYCLE RACK (S.L.D.)  
 (7) 8'-0" X 22'-0" PARKING SPACES

**SITE PLAN**  
**MOKKA**

*Madill*

July 1, 2015

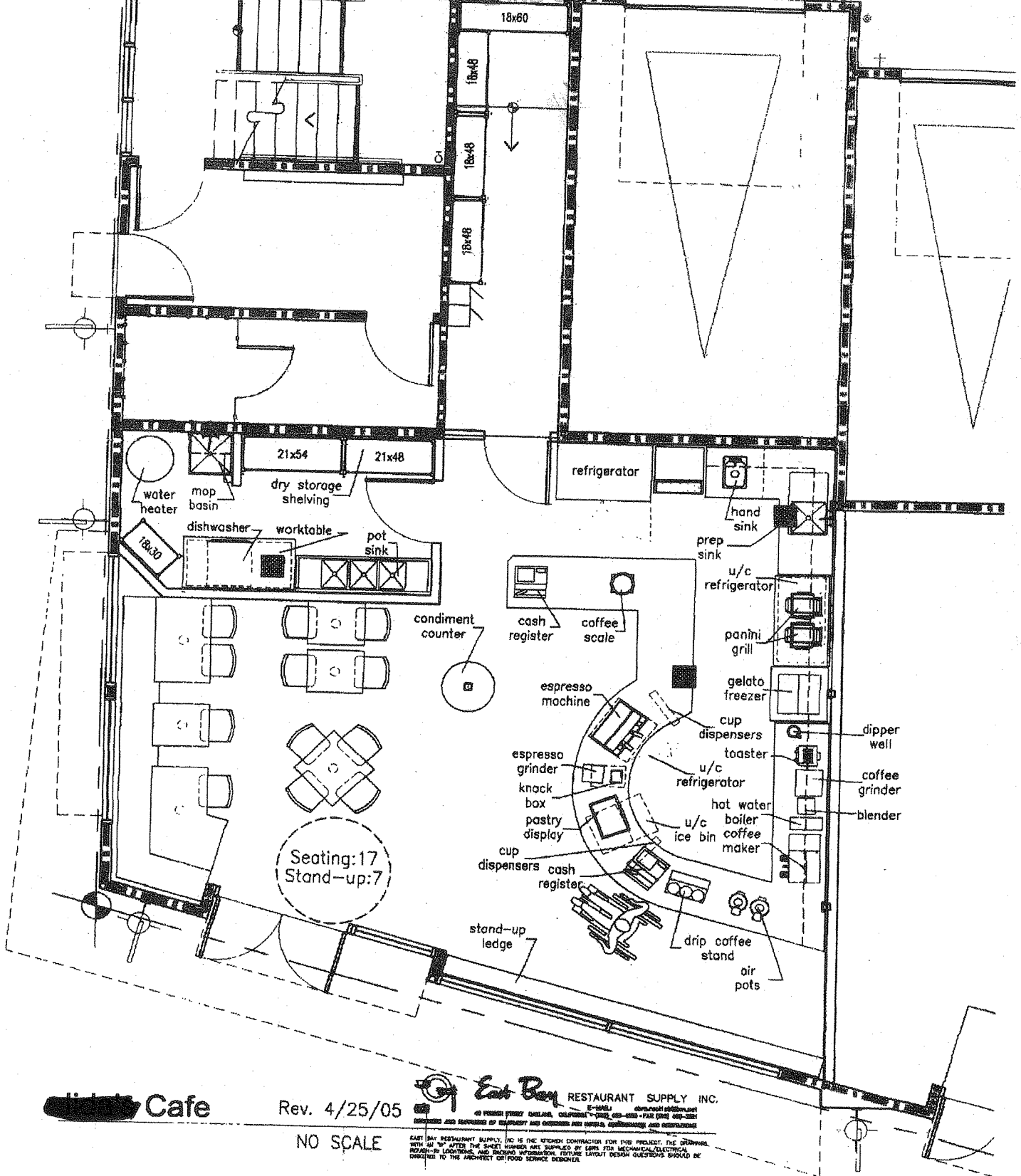
SIGNATURE

DATE

\*AUP Findings and Conditions Attached

25 2015

AND LIFE PLANNING



**Cafe**

Rev. 4/25/05

**East Bay RESTAURANT SUPPLY INC.**  
E-1048  
40 HERRING STREET, OAKLAND, CALIFORNIA 94612 • TEL: 415-435-4300 • FAX: 415-435-3381  
WWW.EASTBAYRESTAURANTSUPPLY.COM

NO SCALE

EAST BAY RESTAURANT SUPPLY, INC. IS THE OFFICIAL CONTRACTOR FOR THIS PROJECT. THE DRAWINGS WITHIN ARE NOT TO BE USED FOR MECHANICAL/ELECTRICAL/PLUMBING OR OTHER TRADES. ANY CHANGES TO THE DRAWINGS MUST BE APPROVED BY THE ARCHITECT OR FOOD SERVICE DESIGNER.