

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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## 2911 College Avenue

### Administrative Use Permit #ZP2015-0048

**Project Description:** To change an existing retail sales use to a carry out food service use in an existing 711-square-foot tenant space, with hours of operation from 11 AM to 9 PM Sunday through Thursday and 11 AM to 10 PM Friday and Saturday, pursuant to:

- Section 23E.44.030, to establish a carry-out food service use.

### 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 August 4, 2015.

Attest: Carol Johnson  
Carol Johnson, Land Use Planning Manger

August 4, 2015  
Effective Date

# ATTACHMENT 1

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## FINDINGS AND CONDITIONS

JULY 13, 2015

### 2911 College Avenue

#### Administrative Use Permit #ZP2015-0048

**To change an existing retail sales use to a carry out food service use in an existing 711-square-foot tenant space, with hours of operation from 11 AM to 9 PM Sunday through Thursday, and 11 AM to 10 PM Friday and Saturday.**

#### 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:
  - A) Although parking is not required for commercial spaces less than 6,000 square feet, the carry out food service store would provide two parking spaces in the rear of the property for employees, reducing parking impacts to the surrounding community.
  - B) The carry out food service store is located in an existing tenant space, creating no impacts to the neighborhood's physical environment.
  - C) Standard food service conditions of approval have been added to ensure that the operation of the business would not be detrimental to the health, safety, peace, morals, comfort or general welfare of the neighborhood. In addition, a condition of approval allows revocation of the use if the maintenance or operation of the establishment violates the conditions of approval or causes detriment.

3. As required by Section 23E.44.090.B of the Zoning Ordinance, the carry out food service store will be consistent with the purposes of the District in that it will:
- (1) Encourage and maintain the present street frontage and pedestrian orientation of the District by establishing a pedestrian-oriented, high turnover commercial activity;
  - (2) Not change the physical appearance of the façade, so it will be compatible in design and character with the commercial District and adjacent residential neighborhoods; and
  - (3) Be compatible with the purposes of the District (BMC §23E.44.020) and its existing character because it will introduce a new frozen yogurt shop, a use which is similar or lesser in intensity compared to the existing commercial uses in the District. In addition, the proposed use would not generate high traffic and/or parking demands because it is located in an existing small 711-square-foot tenant space.
  - (4-5) Not interfere with the continuity of retail or compatible service facilities at the ground level nor interrupt a continuous wall of building facades, as the project would provide compatible food service and has a continuous building façade.
  - (6) Due to its very small size and provision of two employee parking spaces, in excess of what is required by the Zoning Ordinance, it will not generate traffic and parking demand beyond the capacity of the commercial or neighboring residential districts.
  - (7) Per BMC §23E.44.040, three carry out food service establishments are allowed in the District; at the time of Permit issuance, there is one existing carry out food service store. Therefore, the establishment of this additional carry out food service for the sale of frozen yogurt would not exceed the number of carry out food service establishments permitted in the District, and would not result in domination of the District by one type of use.
  - (8) It will not generate objectionable odors because no cooking will be done at the facility, nor excessive levels of noise because its hours of operation would be consistent with the permitted hours in the C-E District.

## **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:

### **Prior to Issuance of Occupancy Permit or Final Inspection:**

10. All construction at the subject property shall substantially conform to the approved Use Permit drawings or to modifications approved by the Zoning Officer.
11. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated **March 1, 2015**.

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

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, and the addition of live entertainment, shall require modification of this permit subject to approval by the Zoning Officer or the Zoning Adjustments Board.
14. The approved floor plan shall be followed and the operation shall be conducted as presented to the Board. 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 business shall be limited to 11:00 AM to 9:00 PM Sunday through Thursday and 11:00 AM to 10:00 PM Friday through Saturday. 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 Adjustments Board or designee. 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. 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.
18. 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.
19. 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.
20. 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.
21. 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.
22. 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.
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.

24. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
25. 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.



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Approved by: Greg Powell, Principal Planner

**A0**

**YOGOFINA**

TENANT IMPROVEMENT  
2911 COLLEGE AVE., BERKELEY, CA 94705

DRAWN BY: BC

DATE: 03/01/2015

SCALE: AS SHOWN

**TABULATION**

NTS

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PROJECT ADDRESS:	2911 COLLEGE AVENUE BERKELEY, CA 94705	
SITE AREA:	EXISTING	ACRES
	EXISTING	SQ. FT.
AREA OF WORK	711	SQ. FT.
-CUSTOMER AREA:	235	SQ. FT.
-FOOD PREPARATION AREA:	348	SQ. FT.
-SERVICE AREA (CASHIER)	78	SQ. FT.
-ADA RESTROOM	50	SQ. FT.
PUBLIC PARKING		
STANDARD	EXISTING	STALLS
HANDICAP	EXISTING	STALLS
PARKING TOTAL	EXISTING	STALLS
CURRENT USE:	RETAIL	
PROPOSED USE:	YOGURT SHOP	
TYPE OF CONSTRUCTION:	V-N	
OCCUPANCY	B	
USE ZONE	COMMERCIAL	
FIRE SPRINKLER SYSTEM	NO	
C.B.C	2013	
C.F.C	2013	
C.P.C	2013	
C.E.C	2013	
C.B.E.E.S	2013	
C.M.C.	2013	
CALGreen	2013	
NUMBER OF STORY	1	
CHEMICAL/ HAZARDOUS MATERIALS STORED AT SITE:	NO	

**PROJECT TEAM**

NTS

3

OWNER: TOM N LEE 28971 HOPKINS ST. #D HAYWARD, CA 94545 TEL: (510) 427-9203 EMAIL: tomlee318@yahoo.com	ARCHITECT: BYOUNG CHOI 1045 SANTA CRUZ AVE. #D MENLO PARK, CA 94025 TEL: (510) 847-9237 EMAIL: byoungarch@yahoo.com
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**PROJECT DESCRIPTION**

NTS

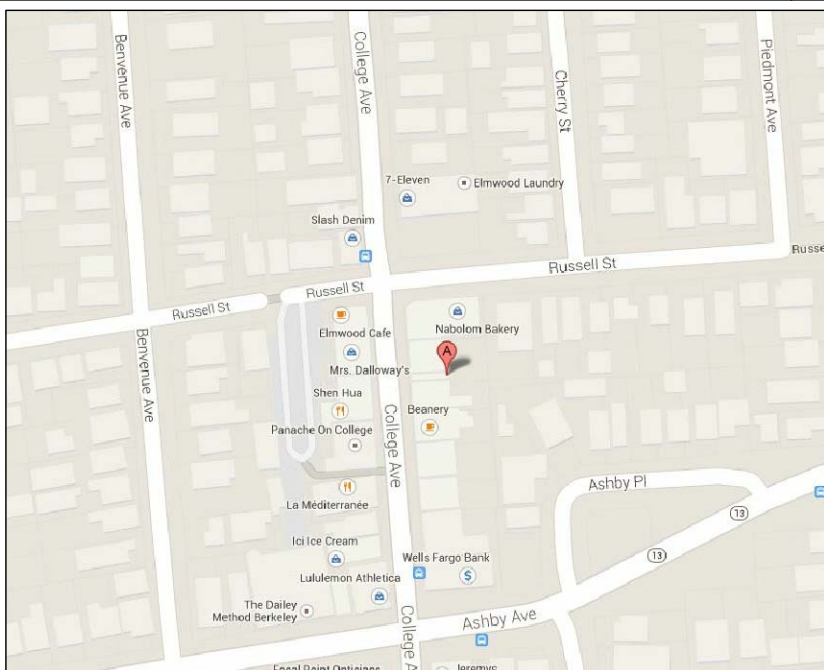
4

THIS PROJECT IS TO PROPOSE A NEW YOGURT SHOP WITH A NEW ADA RESTROOM IN PREVIOUS RETAIL SPACE. THERE IS NO EXTERIOR REVISION.

**VICINITY MAP**

NTS

5



**DRAWING INDEX**

NTS

6

- A0 : PROJECT INFORMATION / SITE PLAN
- A1 : PROPOSED FLOOR PLAN

**PLANS APPROVED by**

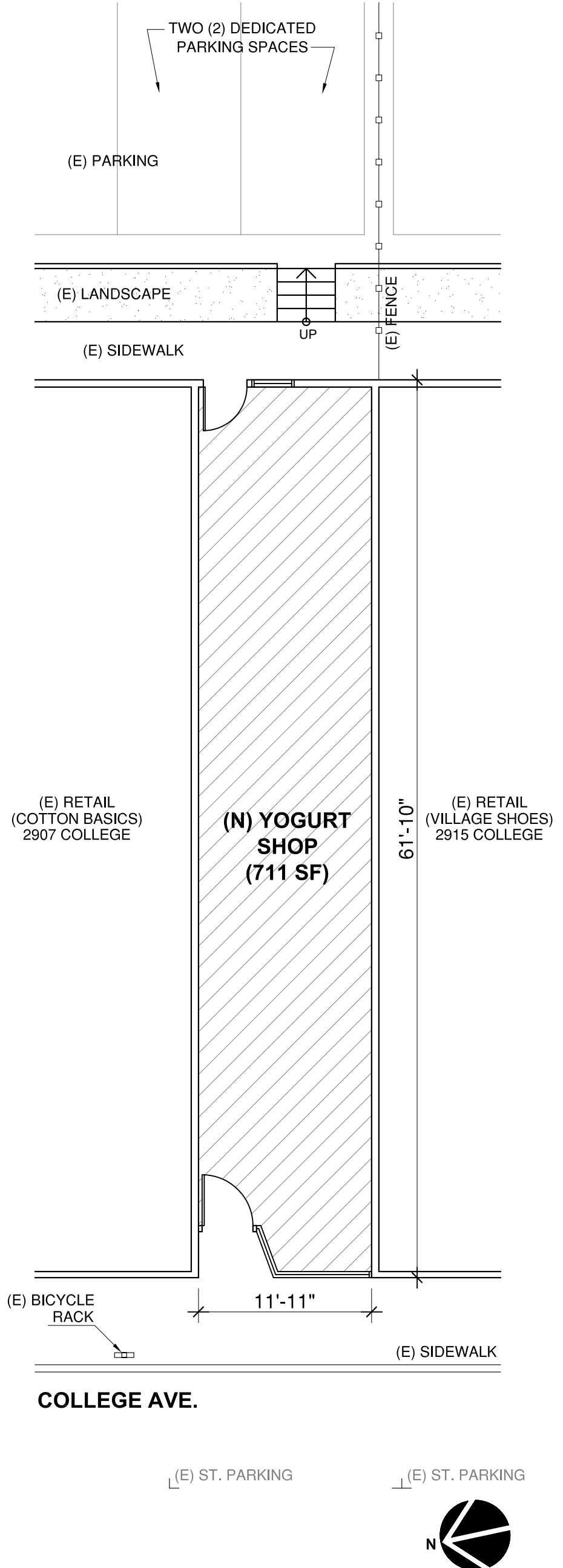
*[Signature]*

July 9, 2015

SIGNATURE

DATE

\*AUP Findings and Conditions Attached





A1

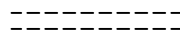
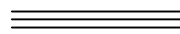
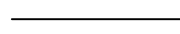




# YOGOFINA

TENANT IMPROVEMENT  
2911 COLLEGE AVE., BERKELEY, CA 94705

DRAWN BY: BC

DATE: 03/01/2015

## LEGEND

-  EXISTING WALLS TO BE DEMOLISHED
-  EXISTING WINDOW TO REMAIN
-  EXISTING WALLS TO REMAIN  
REPAIR AS REQUIRED
-  (N) 3-5/8"X25GA METAL STUDS @ 24" O.C  
AND BELOW CEILING (U.O.N)  
W/ 5/8" TYPE "X" GYP. BD. BOTH SIDES (U.O.N)
-  240V ELECTRICAL RECEPTICLE
-  DUPLEX 110VAC OUTLET
-  FIRE EXTINGUISHER 2A:10BC

**PLANS APPROVED by**

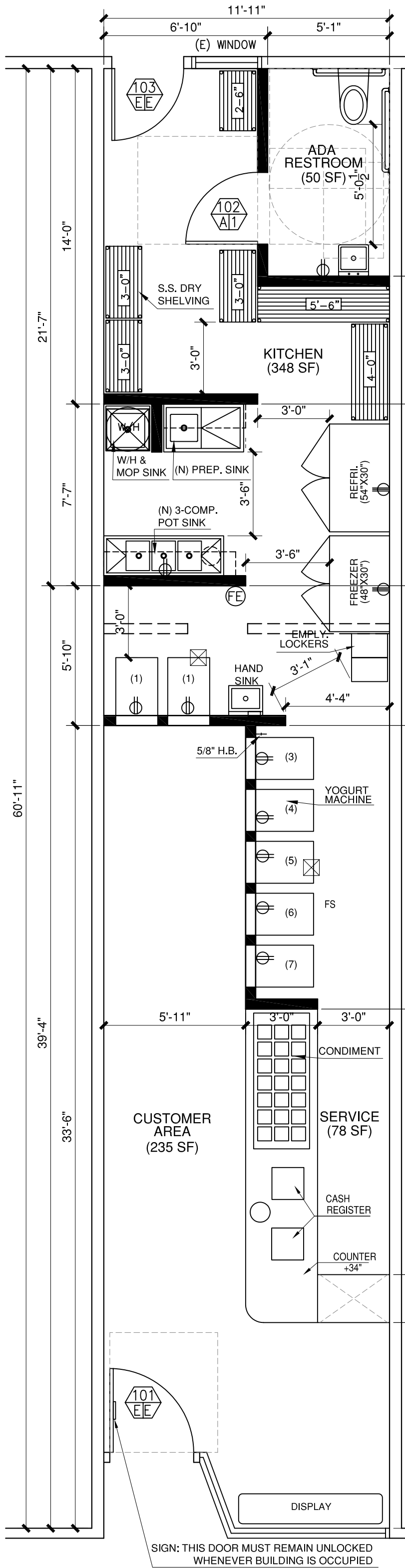


**July 9, 2015**

SIGNATURE

DATE

**\*AUP Findings and Conditions Attached**



SIGN: THIS DOOR MUST REMAIN UNLOCKED  
WHENEVER BUILDING IS OCCUPIED

