



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 # 2013-0047

Property Address: **2115 SAN PABLO AVENUE**

Permittee Name: **JENNIFER SEIDMAN**

Use and/or Construction Permitted:

To allow expansion of alcoholic beverage service now provided at Acme Bar & Company into unused exterior space abutting residential uses in R-2 Residential District, pursuant to:

- Use Permit (Public Hearing) to expand the service area for alcohol to the outdoor patio that abuts a Residential District, under BMC § 23E.64.030; and
- Use Permit (Public Hearing) to allow the expansion of alcoholic beverage service to the outdoor patio, under BMC § 23E.16.040.

RESOLUTION, FINDINGS, CONDITIONS AND APPROVED PLANS ATTACHED

The Use Permit herein described has been duly granted by the Berkeley City Council and is in effect on October 14, 2015.

RESOLUTION NO. 67,232-N.S.

REVERSING THE ZONING ADJUSTMENTS BOARD'S DENIAL AND APPROVING USE PERMIT NO. 2013-0047 TO ALLOW THE EXPANSION OF ALCOHOLIC BEVERAGE SERVICE INTO AN EXTERIOR SPACE ABUTTING RESIDENTIAL USES IN AN R-2 RESIDENTIAL DISTRICT AT 2115 SAN PABLO AVENUE AND DISMISSING THE APPEAL

WHEREAS, on October 17, 2013, Jennifer Seidman ("applicant") filed an application for a Use Permit to allow the expansion of alcoholic beverage service now provided at Acme Bar & Company into unused exterior space abutting residential uses in the R-2 Residential District at 2115 San Pablo Avenue; and

WHEREAS, on November 15, 2013, staff deemed this application complete and determined that the project was categorically exempt from the California Environmental Quality Act ("CEQA") under Section 15301 ("Existing Facilities"); and

WHEREAS, on May 14, 2015, staff mailed and posted a Notice of Public Hearing for the project in accordance with BMC Section 23B.32.020; and

WHEREAS, on May 28, 2015, the ZAB held a public hearing in accordance with BMC Section 23B.32.030, and denied the use permit application; and

WHEREAS, on June 2, 2015, staff issued the notice of the ZAB decision; and

WHEREAS, on June 11, 2015, Jennifer Seidman filed an appeal of the ZAB decision with the City Clerk; and

WHEREAS, on October 13, 2015, the Council held a public hearing to consider the ZAB's decision, and, in the opinion of this Council, the facts stated in, or ascertainable from the public record, including comments made at the public hearing, warrant reversing the ZAB's decision to deny the application.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby approves Use Permit No. 2013-0047, and adopts the findings and conditions in Exhibit A for the project depicted in Exhibit B.

The foregoing Resolution was adopted by the Berkeley City Council on October 13, 2015 by the following vote:

Ayes: Arreguin, Capitelli, Droste, Wengraf and Worthington.

Noes: Anderson and Maio.

Recused: Moore.

Absent: Bates.

Attest:


Mark Numainville, City Clerk


Linda Maio, Mayor Pro Tempore

EXHIBIT A

FINDINGS AND CONDITIONS

OCTOBER 13, 2015

2115 San Pablo Avenue – Acme Bar and Company

Use Permit #UP2013-0047 to allow expansion of alcoholic beverage service into an exterior space abutting residential uses in an R-2 Residential District at 2115 San Pablo Avenue

CEQA FINDINGS

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, 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.

GENERAL NON-DETRIMENT FINDING

2. Pursuant to Berkeley Municipal Code § 23B.32.040, the City Council 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. It will be compatible with the applicable purposes of the C-W zoning district in that it would focus on (a) Maintaining the full range of land uses and economic activities including residences, manufacturing, services, retailing, and other activities in West Berkeley; (b) maintaining the ethnic and economic diversity of West Berkeley's resident population; and (c) maintaining and improving the quality of urban life, environmental quality, public and private service availability, transit and transportation, and aesthetic and physical qualities for West Berkeley residents and workers;
 - B. The proposed expansion to include an outdoor seating area contributes to the revitalization of the subject property and the immediate neighborhood,

ultimately contributing to the economic vitality of the District in a positive manner;

- C. As conditioned below, the project will not contribute to public nuisance. Condition #25 requires that the establishment operator maintain and supervise the property to discourage nuisance and/or illegal activities on the sidewalk adjoining the property and areas extending beyond the property line and prohibits the consumption of alcoholic beverages off the premises, and Conditions #10 and #34, set limits on the sound level of music at the outside seating area;

OTHER REQUIRED FINDINGS

3. Pursuant to Berkeley Municipal Code § 23E.16.040, the City Council makes the following findings of "Public Convenience and Necessity":
- A. *"The proposed establishment will promote the City's economic health, contribute to General Plan or Area Plan or further District purposes."* The proposed expansion will promote the City's economic health by generating additional sales tax revenue, and by attracting new customers to the area who will also consume other local goods and services. The City Council further finds that the proposed outdoor use would intensify the commercial nature of San Pablo Avenue. The project would be consistent with specific goals and policies of the West Berkeley Plan including Goal 5 "continue to create employment, specially for Berkeley and West Berkeley" and Goal 6 "promote opportunities for business ownership by the economically disadvantaged –non-whites, women, and other economically disadvantaged people"
- B. *"The economic benefits associated with the establishment could not reasonably be achieved without the proposed alcohol sales."* The City Council finds that a bar would not draw as many patrons, nor generate the same level of economic benefits for the owners or the City, if it could not sell alcohol beverages in the new seating area. Increasing the seating capacity by up to 20 patrons may allow the establishment to expand and economically grow while creating additional employment opportunities. It is reasonable to assume the establishment could not achieve the same economic growth if it could not expand the sales to the patio area.
- 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 statutes or regulations."* The City Council acknowledges there have been records of verified complaints or violations regarding alcohol, public safety or nuisance statutes or regulations against this applicant. However, the City Council finds said nuisances can be mitigated with the conditions of approval incorporated herein that limit the service hours to only 5 p.m.-10:00 p.m. daily.

- D. *"If the proposed establishment is located within one thousand (1,000) feet of any public park or Berkeley Unified School District school, the City Council shall take into consideration the effect of the proposed establishment upon such sensitive public uses."* A tip of Rosa Park Elementary School property falls within a 1,000-foot radius of the subject site. In addition, although not part of the BUSD, REALM Charter Middle and High School, West Wind Academy, and Berkeley Montessori School Berkeley fall within the 1000-foot radius. The proposed business is not designed to attract these students and the hours students might be nearby do not overlap with the use of the outdoor patio area as conditioned. In addition, the space is private so minors cannot actively see consumption, and/or no signs to advertise the sales or consumption of alcohol are visible from the public right of way.
- E. *"The Police Department has reported that the proposed establishment would not be expected to add crime in the area."* The City Council has reviewed and considered the Berkeley Police Department's Memorandum on the proposed project. The Berkeley PD have records of police calls for unruly patrons and noise complaints. Based on this, the City Council acknowledges that the proposed project may add to crime in the area, further depleting police resources and placing a strain on the Berkeley Police Department. The Board acknowledges the Berkeley PD concurs with staff's recommendation to limit use of the patio area from 3:00 p.m. to 10:00 p.m. Monday through Friday, and noon to 10:00 p.m. on Saturdays, Sundays, and major holidays, and prohibit any use of amplifying equipment, live entertainment, special events or other similar uses on the patio. These limitations should ensure that the expansion does not add to crime in the area.
4. Pursuant to Berkeley Municipal Code § 23C.64.030.A., the City Council finds that outdoor activities for alcohol consumption are allowed in the C-W District with a Use Permit. The outdoor patio is behind the bar is only available to the bar patrons. Based on these considerations the City Council finds that the proposed exterior seating is in conformance with the applicable requirements of the C-W Zoning District, furthers the purposes of the Zoning District and would not be detrimental to the health, safety and welfare of the neighborhood.
5. Pursuant to Berkeley Municipal Code § 23E.64.020, the City Council finds that the proposed project would be compatible with the applicable purposes of the C-W Zoning District in that it would "Provide locations for commercial services which primarily serve area residents and/or businesses " (Policy B), and would implement the West Berkeley Plan's designation of a Commercial District.
- A. The proposed exterior outdoor seating would be consistent with several purposes of the District in that it would add variation to an existing category of use that is already found along San Pablo Avenue (Purpose B), and further support the retention and attraction of a balance of both smaller and larger businesses (Purpose C). At the same time, this focus is one with a broader appeal (Policy D), but not such a large regional appeal that it would generate substantial additional new that would overspill into industrial use (Policies D,

E and F). It is also noted that the outdoor seating area included is small -- too small to generate substantial additional traffic; and

- B. The City Council also notes that the project sponsor currently operates a business at the subject location and that the proposed expansion would be consistent with Purpose D, E and F, which encourage intensification of commercial activities in certain designated nodes along San Pablo Avenue.
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STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

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'. 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 (§ 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 (§ 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 City Council, in conformance with § 23B.56.020.A.

5. Plans and Representations Become Conditions (§ 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 (§ 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 (§ 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 (§ 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.

ADDITIONAL CONDITIONS OF APPROVAL

(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).

10. This Use 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.
11. 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 Use Permit subject to approval by the City Council.
12. The approved floor plan, including the number of seats, shall be followed and the operation shall be conducted as presented to the City Council. The maximum occupancy shall be as specified in the application unless otherwise required by applicable regulations.
13. 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.

14. The outdoor seating area shall be closed and vacated by no later than 10:00 p.m. each night and use of the outdoor area shall not commence prior to 3:00 p.m. Monday through Friday, and noon on Saturday, Sundays, and major holidays. As determined by the Zoning Officer, any significant change, modification, or expansion of the outdoor seating area shall require an amendment of this Use Permit.
15. The establishment shall comply with all applicable regulations of the California Department of Alcoholic Beverage Control.
16. Dancing, live entertainment, amplified music or the use of freestanding sound amplification equipment (such as boom boxes) or freestanding public announcement (PA) systems (including microphones and speakers), disc jockeys, billiards, game machines, and other similar sound producing equipments are prohibited. No large public/private gatherings for special events shall be permitted unless previously approved by the City. Such events shall include, but are not limited to, major sporting events (such as Super Bowl or World Series), Holiday events, celebratory parties, fraternity/sorority parties or other similar events.
17. 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 which are clearly visible to the exterior shall constitute a violation of this condition.
18. 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.
19. Prior to commencing alcoholic beverage retail sales, a placard shall be posted at the main entrance and in the outdoor seating area stating that alcoholic beverages cannot be consumed off the premises.
- ~~21-20.~~ A Berkeley Police Department Crime Prevention Through Environmental Design (CPTED) survey shall be completed prior to commencing alcohol service.
- ~~23-21.~~ Employees shall not serve alcohol to patrons who appear to be inebriated or otherwise unable to behave in an orderly manner upon consuming alcohol.
- ~~24-22.~~ All alcohol served to patrons must be served in durable 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.

- ~~25-23.~~ There shall be no service or consumption of alcohol on the public right-of-way.
- ~~26-24.~~ No alcohol may be transported off-site from the establishment to any other establishment or to the public right-of-way.
- ~~28-25.~~ 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.
- ~~29-26.~~ The applicant shall establish cash handling procedures to reduce the likelihood of robberies and theft.
- ~~30-27.~~ All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
- ~~31-28.~~ At no time shall the operator rent the restaurant space to a third-party promoter.
- ~~32-29.~~ The applicant shall treat all available wall surface with outdoor (weather resistant) acoustic panels to reduce the buildup of sound emanating from the patio area.
- ~~33-30.~~ The applicant shall install floor covering in the patio area to abate sound.
- ~~34-31.~~ The capacity of the patio area shall be limited to a maximum of 20 persons at any time.
- ~~35-32.~~ The applicant shall submit a report to the Zoning Adjustments Board within six months of the date of approval which documents compliance with all conditions of approval.
- ~~36-33.~~ This Use Permit, including these and all other required conditions, shall be posted in conspicuous location, available for viewing by any interested party.
- ~~37-34.~~ 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.
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EXHIBIT B

PROJECT PLANS
OCTOBER 17, 2013

