



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 # ZP2015-0176

Property Address: **1511 A & B SHATTUCK AVENUE**

Permittee Name: **ELITE PROPERTIES, LLC**

Use and/or Construction Permitted:

to establish incidental service and off-site sales of beer and wine at two carry out food service establishments.

- Use Permit to establish incidental service and sales of beer and wine at a carry out food service establishment and for sale for off-site consumption at a restaurant, under BMC Section 23E.48.030

FINDINGS, CONDITIONS ATTACHED

The Use Permit herein described has been duly granted by the Zoning Adjustments Board and is in effect on February 19, 2016.

ATTACHMENT 1

FINDINGS AND CONDITIONS

JANUARY 28, 2016

1511 A & B Shattuck Avenue – Epicurious Garden

Use Permit ZP2015-0176 to establish incidental service and off-site sales of beer and wine at two carry out restaurants.

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”). 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 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 incidental service and sales of beer and wine at two existing carry out food service establishments will encourage commercial activity, 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 project will promote the economic viability of the locally owned, independent restaurant, and will therefore support the local economy and the neighborhood in general.
 - C. The permit is subject to conditions for food and alcohol service, which will ensure that the restaurants continue to be a good neighbor, including the prohibition or rental to a third party promoter. Due to the incidental nature of the service and sales, and the size, hours of operation, and location of the restaurants, alcohol sales will not have significant detrimental impact on public health, safety, or peace.

OTHER REQUIRED FINDINGS

3. Pursuant to Berkeley Municipal Code Section 23E.48.090, *Findings*, the Zoning Adjustments Board finds that the proposed full service restaurant is consistent with the North Shattuck Commercial District's purposes as set forth in BMC Section 23E.48.020 *Purposes*. More specifically it is found that the project would:
- B(1, 2) Be compatible in design and character with the commercial district and the adjacent residential neighborhoods and be compatible with the purposes and the existing character of the district as the project will not affect the appearance of the building, nor does the establishment of incidental service of beer and wine change the underlying, existing commercial uses. The addition of beer and wine service and sales will expand dining options and thereby contribute to activities in a pedestrian oriented environment, encouraging pedestrian traffic and maintaining an interactive street presence along the boulevard.
 - B(3-5) Not interfere with the continuity of retail or compatible service facilities at the ground level; not exceed the amount and intensity of use that can be served by available traffic capacity; and not result in the domination of this district by one type of use in one block or small area of the district as the project is adding an incidental service to existing businesses and is otherwise not changing the intensity of the underlying use. The two carry out food service establishments already occupy two of the food service quota allocations permitted in the district.
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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'. 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 approved is permitted unless the Permit is modified by the Zoning Adjustments Board, in conformance with Section 23B.56.020.A.

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.

10. All conditions of all Use Permit 04-10000111 shall remain in full force and effect, except as modified below.

ALCOHOLIC BEVERAGE SALES AND SERVICE CONDITIONS

10. 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.

11. Alcohol may only be sold with a food purchase.

12. The establishment shall comply with all applicable regulations of the California Department of Alcoholic Beverage Control.

13. The applicant shall comply with ABC regulations for License Type 41, which requires that the food establishment operate as a bona fide eating place, make actual and substantial sales of meals during normal meal hours, and that the establishment operate at least five days a week. 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 these conditions are placed on the associated ABC license:
 - There shall be no bar or lounge area upon the licensed premises maintained for the sole purpose of sales, service or consumption of alcoholic beverages directly to patrons for consumption;
 - During operating hours, 100% of the service area shall be designed and used for and must possess the necessary utensils, and condiment dispensers with which to serve meals to the public;
 - 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.
14. The applicant shall post signs at each venue selling alcohol stating: Consumption of Alcohol in the Public Right of Way is Prohibited by BMC 13.36.070.
15. A Berkeley Police Department Crime Prevention Through Environmental Design (CPTED) survey shall be completed prior to commencing alcohol service.
16. 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.
17. Employees shall not serve alcohol to patrons who appear to be inebriated or otherwise unable to behave in an orderly manner upon consuming alcohol.
18. Any operator of the licensed establishment shall not have had a prior licensed establishment 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.
19. The service of alcohol shall be limited to restaurant service hours; patrons may only purchase food or finish drinks already purchased within the approved service hours.
20. Fortified alcohol products (e.g., malt liquor), shall not be sold on the premises.
21. All alcohol served to patrons dining in must be served in durable restaurant tableware – i.e. either cups or glasses; not in a potentially disposable container. All alcohol sold as a ‘to go’ order must be sold in an unopened container.
22. No service or consumption of alcohol shall occur on the public right-of-way.

23. No opened alcohol containers may be transported off-site from the establishment to any other establishment or to the public right-of-way.
 24. The applicant shall post signs at all exits that state, "No open alcohol containers may be carried off the premises or consumed beyond this point"; and placing garbage/recycling/composting bins at all such exits.
 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.
 26. The applicant shall establish cash handling procedures to reduce the likelihood of robberies and theft.
 27. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
 28. At no time shall the operator rent the restaurant space to a third-party promoter.
 29. This Use Permit, including these and all other required conditions, shall be posted in conspicuous location, available for viewing by any interested party.
 30. 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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