



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

2575 San Pablo Avenue

Administrative Use Permit #ZP2016-0169

Project Description: To waive the one parking space required for changing 933-square-feet of retail area to a quick-service restaurant (café); the remaining 3,334 square feet of tenant space will remain as retail (bakery). The project will provide on-site bicycle parking for six bicycles.

- Section 23E.28.130.C.2 to reduce a higher numerical parking standard to the district minimum.

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 October 27, 2016.

Attest: Carol Johnson
Carol Johnson, Land Use Planning Manger

October 27, 2016
Effective Date

ATTACHMENT 1

FINDINGS AND CONDITIONS

OCTOBER 6, 2016

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To waive the one parking space required for changing 933-square-foot of retail area to a quick-service restaurant (café); the remaining 3,334 square feet of tenant space will remain as retail (bakery). The project will provide on-site bicycle parking for six bicycles.

PERMITS REQUIRED

- Administrative Use Permit to reduce a higher numerical parking standard to the district minimum, per 23E.28.130.C.2

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 would not affect any historical resource.

FINDINGS FOR APPROVAL

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, would 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 parking waiver will allow a portion of a proposed bakery to function as a quick serve restaurant, allowing seating on site and for sales and consumption of drinks in addition to cookies and other food items. Both the quick serve café and the retail bakery are permissible uses within this designated node location.
 - The project will occupy a vacant restaurant space, thereby maintaining the economic vitality in the neighborhood.
 - The proposed use meets the purposes of the West Berkeley Commercial District in that the business will primarily server area residents, though may draw a broader citywide clientele. In addition, the project will meet the purposes of the designated node by

establishing a locally owned business that contributes to the intensification of retail activity and pedestrian oriented uses in the neighborhood.

- The project does not alter the exterior of the existing structure, other than new signage and windows, and therefore will help preserve the existing physical character of the commercial district.
 - The project will comply with all fire and building safety codes, as well as all environmental health and safety codes. Operations will, therefore, not impact adjacent residential uses with noise, smoke, or odors.
 - The permit is subject to the standard conditions for food service, which will ensure that the restaurant continues to operate in accordance with all applicable standards and will limit potential detriment to the surrounding neighborhood.
3. Pursuant to Berkeley Municipal Code Section 23E.28.140.B, the Zoning Officer finds that the reduction of one parking space will not substantially reduce the availability of on-street parking in the vicinity of the use, as reviewed and evaluated by the Traffic Engineer who determined that a parking study was not required for this project. In addition, the project meets Finding 1.d. in that it represents two of the uses (retail product store and food service) that are determined to be neighborhood serving. The project also meets Finding 2.b. in that the applicant has proposed the installation of two bicycle racks (four spaces) for customers at the sidewalk, and an employee bicycle parking for six spaces at the rear. The bike racks will provide safe and convenient parking for bicycles, incentivizing this alternative mode of transportation.

STANDARD CONDITIONS

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 attorney's 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 Submittal of Any Building Permit:

10. Project Liaison. The applicant shall provide the project planner with the name and telephone number of the individual empowered to manage complaints generated from the project. The individual's name, telephone number, and responsibility for the project shall be posted at the project site for the duration of the project in a location easily visible to the public. The individual shall record all complaints received and actions taken in response, and submit written reports of such complaints and actions to the project planner on a weekly basis.

Project Liaison

Name

Phone #

Prior to Issuance of Occupancy Permit or Final Inspection:

11. All construction at the subject property shall substantially conform to the approved Use Permit drawings or to modifications approved by the Zoning Officer.

12. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated Received September 19, 2016. The location and type of bicycle racks shall be installed upon review and approval of the Traffic Engineer.

At All Times (Operation):

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.

13. 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.
14. 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.
15. The approved floor plan, including the number of seats and outdoor service area, 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.
16. 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.
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. All exterior lighting shall be energy efficient where feasible; and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
24. 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.
25. 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.



Prepared by: Leslie Mendez
For City of Berkeley Zoning Officer

