



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: ZP2016-0089

Property Address: **2440 SACRAMENTO STREET**

Permittee Name: **ADEL GERCESS**

Use and/or Construction Permitted:

To sell beer and wine for off-site consumption at an existing 1,172 square foot food products store, with hours of operation from 9:00 a.m. to 9:30 p.m. Monday through Friday, and 9:00 a.m. to 10:00 p.m. Saturday and Sunday; and permit an indoor Automatic Teller Machine.

- Use Permit with Public Hearing to allow retail sale of beer and wine for off-site consumption, under BMC Section 23E.52.030.
- Use Permit with Public Hearing to permit an Automatic Teller Machine that is not a part of a Retail Financial Service, under BMC Section 23E.52.030.

FINDINGS, CONDITIONS AND APPROVED PLANS ATTACHED

The Use Permit herein described has been duly granted by the Zoning Adjustments Board and is in effect on July 1, 2017.

You may choose to file with the State and County either the enclosed Notice of Exemption or Notice of Determination (which ever applies). Pursuant to the California Environmental Quality Act (CEQA), Public Resources Code section 21167, the time in which a legal challenge will be accepted is shortened if this form is filed within 5 days of the effective date of the City's action.

ATTACHMENT 1

FINDINGS AND CONDITIONS

JUNE 8, 2017

2440 Sacramento Street

Use Permit #ZP2016-0089 to sell beer and wine for off-site consumption at an existing 1,172 square foot food products store, with hours of operation from 9:00 a.m. to 9:30 p.m. Monday through Friday, and 9:00 a.m. to 10:00 p.m. Saturday and Sunday; and permit an indoor Automatic Teller Machine.

PERMITS REQUIRED

- Use Permit, under Berkeley Municipal Code Section 23E.52.030, to allow retail sale of beer and wine for off-site consumption.
- Use Permit, under Berkeley Municipal Code Section 23E.52.030, to permit an Automatic Teller Machine that is not a part of a Retail Financial Service.

I. 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 Structures and Facilities”).
2. 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.

II. FINDINGS FOR APPROVAL

1. As required by Section 23B.32.040.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:
 - A. The addition of retail sales of beer and wine for off-site consumption does not change the existing use of the tenant space from a food products store; it will not change the building height, setbacks from property lines, distance between structures, or lot coverage.
 - B. The sale of beer and wine for off-site consumption would be incidental from the food products store. Due to the incidental nature of the use, and size and location of such use, beer and wine sales will not have a significant detrimental impact on public health, safety, or peace because there are standard conditions pertaining to beer and wine

sales for off-site consumption that are designed to protect the neighborhood character and surrounding uses from any potential adverse impacts (Conditions #10-20).

- C. The Berkeley Police Department (BPD) submitted a memorandum dated July 12, 2016, concluding that the proposed establishment of retail sales of beer and wine would not be expected to add to crime in the area.
 - D. The hours of operation for this food products store will remain as-is: 9:00 a.m. to 9:30 p.m. Monday through Friday, and 9:00 a.m. to 10:00 p.m. Saturday and Sunday; these hours are within the District Use Limitations for hours of operation of commercial uses in the South Area Commercial (C-SA) District, under BMC Section 23E.52.060.A, which are 7:00 a.m. to 12:00 midnight weekdays (Sunday through Thursday) and 7:00 a.m. to 2:00 a.m. weekend days (Friday and Saturday).
2. As required under BMC Section 23E.52.090.B (Findings), the project is permissible because:
- A. According to the applicant, the addition of retail sales of beer and wine to the existing food products store will provide its neighborhood customers with more options and diminish the need to go to a liquor store. Thereby, promoting economic viability of the locally owned, independent food products store, and will therefore support the local economy and neighborhood in general.
 - B. The addition of retail sales of beer and wine incidental to an existing food products store, as discussed in Section 1 Paragraph A, will not change the form of the buildings. Therefore, retail sales of beer and wine for off-site consumption does not change the character of the street frontage, interrupt a continuous wall of building facades, will not interfere with the continuity of compatible service facilities at ground level, nor will it affect the compatibility with the existing character of Sacramento Street.
 - C. The addition of retail sales of beer and wine incidental to an existing food products store does not increase the floor area devoted to this use, and thus the number of required parking spaces need not be increased beyond the existing condition.
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III. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

The following conditions, as well as all other applicable provisions of the Zoning Ordinance, apply to this Permit:

1. Conditions and Mitigation Monitoring and Reporting Program 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.

IV. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD

Pursuant to BMC 23B.32.040.D, the Zoning Adjustments Board attaches the following additional conditions to this Permit:

RETAIL ALCOHOLIC BEVERAGE SALES CONDITIONS

- 10. The establishment shall comply with all applicable regulations of the California Department of Alcoholic Beverage Control.
- 11. All employees selling alcohol, or directly supervising such sales, shall complete a course through 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.
- 12. 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.
- 13. Employees shall not sell alcohol to patrons who appear to be inebriated or otherwise unable to behave in an orderly manner upon consuming alcohol.
- 14. A Berkeley Police Department Crime Prevention Through Environmental Design (CPTED) survey shall be completed prior to commencing the alcohol sales.
- 15. 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.

16. The owner or operator of the establishment shall take reasonable measures to prevent disturbances by patrons in the immediate vicinity. 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. The property shall have clear "No Loitering" signs posted in locations that are of clear view of the public right of way.
 17. The applicant shall establish cash handling procedures to reduce the likelihood of robberies and theft.
 18. This Use Permit, including these and all other required conditions, shall be posted in conspicuous location, available for viewing by any interested party.
 19. The alcoholic beverages shall be placed in an area of the store that can easily be viewed/monitored by the staff.
 20. Subject to Review. 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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Proposed project:

Application for an off sale beer & Wine license (Type 20):

Applying for a license for the off-site beer and wine sales at my store (Alex market); at 2440 Sacramento st. Berkeley, ca 94702. The store is a grocery store (mostly organic and high end products). Store hours are: 0900 am – 0930pm (opens to 1000 pm on weekends).

We will NOT be selling singles of beer or malt beverages, and we will request from the ABC in our application to limit our ABC License not allow these sales.

Alex Market was opened for business in February 2015, and was warmly welcomed by the neighbors as a much needed service in their neighborhood.

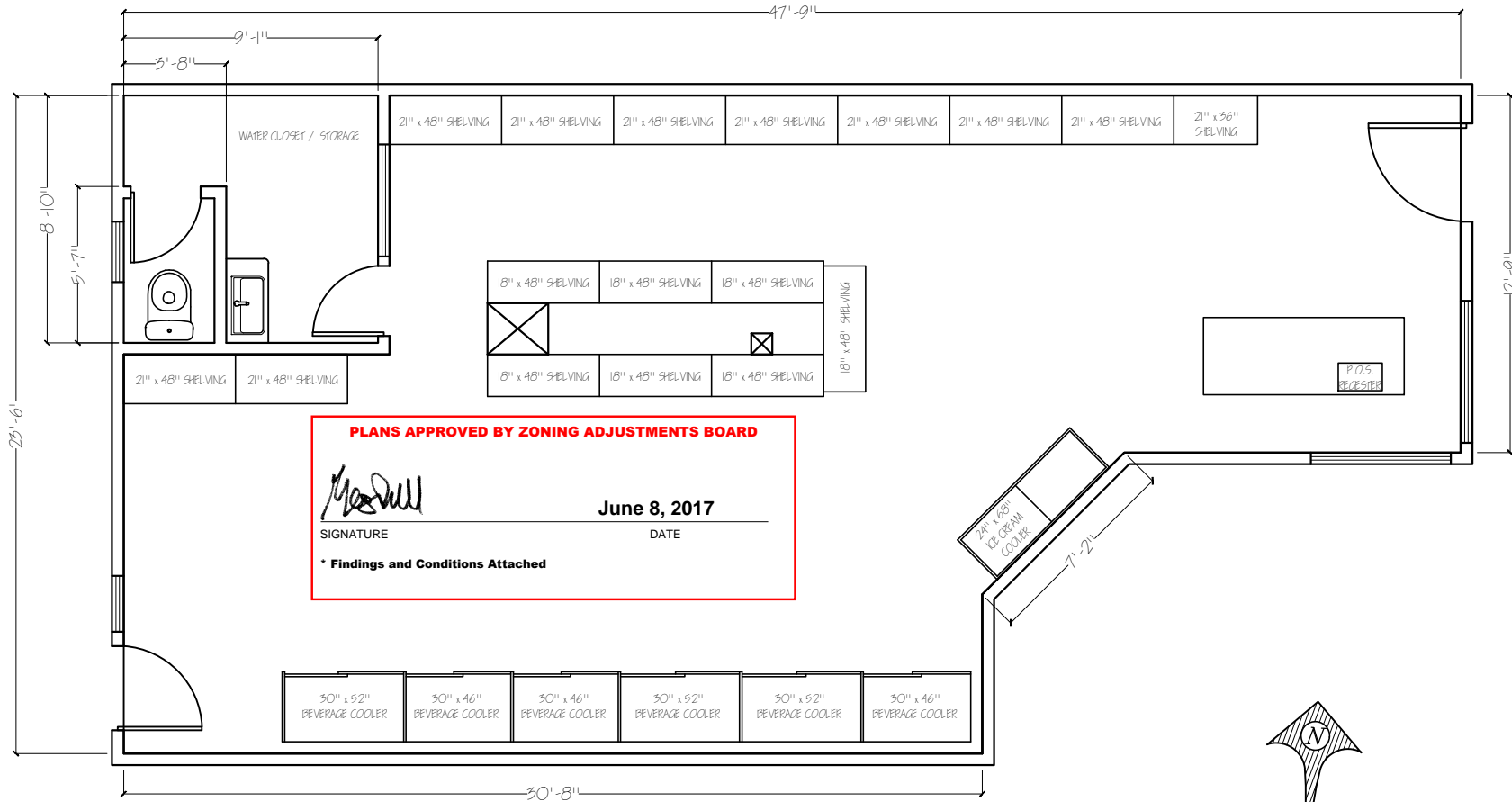
I am applying for a license to sell table wine and beer only (NO distilled spirits) (Type 20) to provide my customers with more options and variety where they can purchase without the need to go to a liquor store.

Many of my customers have expressed their approval and encouragement as well.

Regards,

Adel Gergess

NO.	DATE	DESCRIPTION
1	3/25/16	



PLANS APPROVED BY ZONING ADJUSTMENTS BOARD

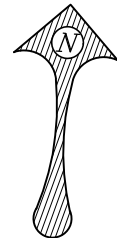
Madell **June 8, 2017**

SIGNATURE DATE

* Findings and Conditions Attached

JASON KAL DRAFTING
 Jason Kal
 2634 SACRAMENTO ST.
 BERKELEY, CA 94702

ALEX MARKET
 Adel Gergess
 2440 SACRAMENTO ST.
 BERKELEY, CA 94702



FLOOR PLAN
NOT TO SCALE

ALEX MARKET
 2440 SACRAMENTO ST.
 BERKELEY, CA 94702

951 sq'

DRAWN: KAL
 SCALE: NONE
 DATE: 2016.03.25
 TITLE: FLOOR PLAN

SHEET #:
FP-1

NO.	DATE	DESCRIPTION
1	3/25/16	



PLANS APPROVED BY ZONING ADJUSTMENTS BOARD

Madull

June 8, 2017

SIGNATURE

DATE

* Findings and Conditions Attached

KLIK SOOL WON
2434 SACRAMENTO ST.

ALEX MARKET, 2440 SACRAMENTO ST.

VIKA BEAUTY SALON, 2442 SACRAMENTO ST.

BREADS OF INDIA
2448 SACRAMENTO ST.

HOMEMADE CAFE
2454 SACRAMENTO ST.

1445
1447
1449
1451
DWIGHT WAY

MIM THAI CUISINE
1453 DWIGHT WAY

SACRAMENTO ST.

JASON KAL DRAFTING
Jason Kal
2634 SACRAMENTO ST.
BERKELEY, CA 94702

ALEX MARKET
Adel Gergess
2440 SACRAMENTO ST.
BERKELEY, CA 94702

SITE PLAN
NOT TO SCALE

DWIGHT WAY

DRAWN: KAL
SCALE: NONE
DATE: 2016.03.25
TITLE: SITE PLAN

SHEET #:
SP-1