



Z O N I N G A D J U S T M E N T S B O A R D S T A F F R E P O R T

FOR BOARD ACTION
JANUARY 10, 2013

2068 Center Street

Use Permit #12-1000044 to allow incidental service of beer, wine and distilled spirits within a new full-service restaurant to be established in an existing 3,944 square-foot commercial space.

I. Application Basics

A. Land Use Designations:

- General Plan: Downtown
- Downtown Area Plan: Core Area
- Zoning: C-DMU Core, Commercial-Downtown Mixed-Use Core

B. Zoning Permits Required:

- Use Permit to allow incidental sales and service of beer, wine and distilled spirits within a new full service restaurant under BMC Section 23E.16.040.A
- Administrative Use Permit to allow amplified music under BMC Section 23E.68.030

C. CEQA Determination: Categorically exempt pursuant to Section 15301 (a) of the CEQA Guidelines ("Class 1, Existing Facilities").

D. Parties Involved:

- Applicant Paul W. Frederick/Eureka Burger Berkeley LLC, 1050 Duncan Avenue, #K, Manhattan Beach, CA 90266
- Property Owner 2068 Center Family Limited Partnership, P.O. Box 330361, San Francisco, CA 94133

Figure 1: Vicinity Map

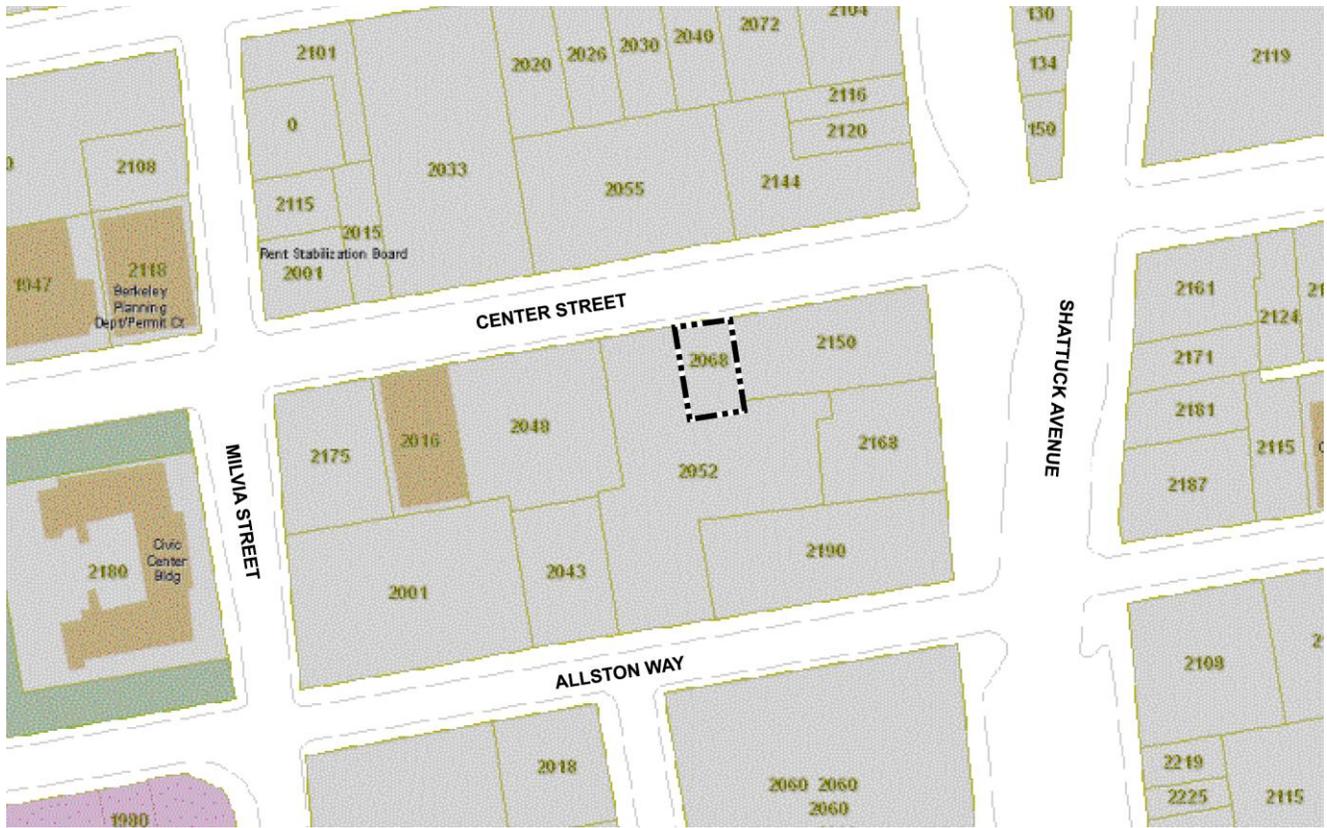


Figure 2: Proposed Floor Plan

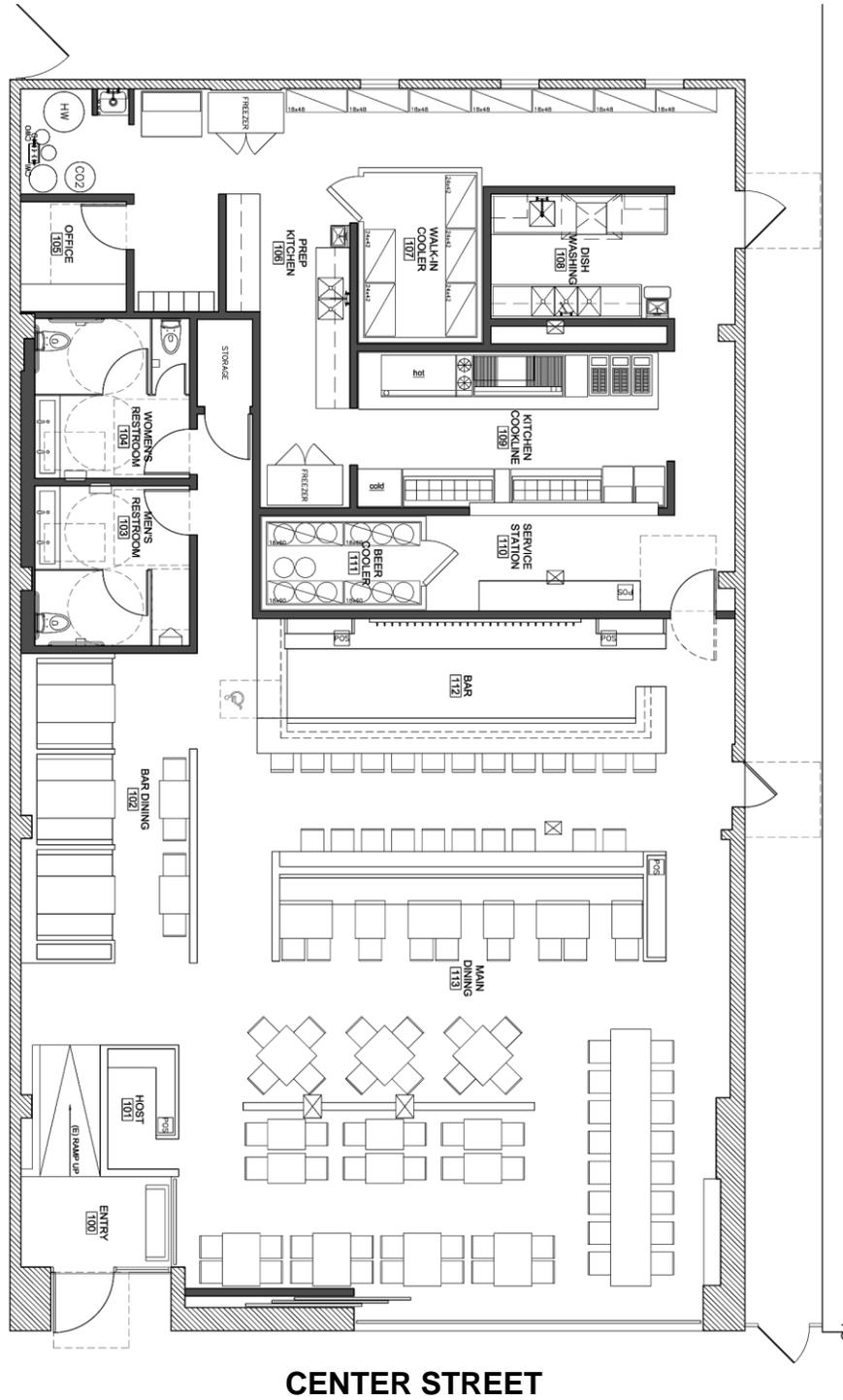


Figure 3: 1000' Vicinity Map of ABC License Types

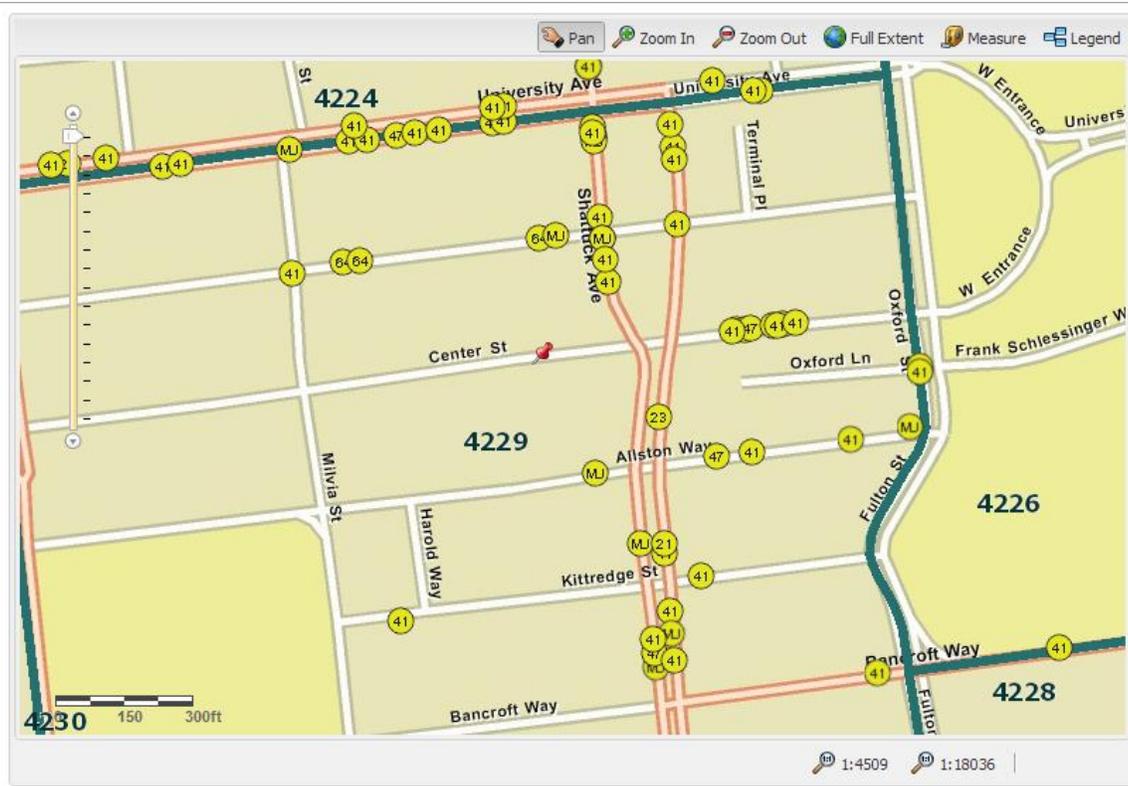


Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Vacant commercial space (former Peking Express Restaurant)	Commercial Downtown Mixed-Use (C-DMU Core)	Downtown Core
Surrounding Properties	North	Mixed-use lofts, bank	Commercial Downtown Mixed-Use (C-DMU Core)	Downtown Core
	South	Parking garage	Commercial Downtown Mixed-Use (C-DMU Core)	Downtown Core
	East	Office building, Downtown BART station	Commercial Downtown Mixed-Use (C-DMU Core)	Downtown Core
	West	Parking garage, Berkeley City College	Commercial Downtown Mixed-Use (C-DMU Core)	Downtown Core

Table 2: Project Chronology

Date	Action
October 19, 2012	Application submitted
November 30, 2012	Application deemed complete
December 27, 2012	Public hearing notices mailed/posted
January 10, 2013	ZAB hearing
January 29, 2013	PSA deadline

Table 3: Development Standards

Standard	Existing	Addition/ (Reduction)	Proposed Total	Permitted/ Required
BMC Sections 23.E52.070-080				
Lot Area (sq. ft.)	5,388	0	No Change	0
Gross Floor Area (sq. ft.)	3,944	0	No Change	N/A
Parking Spaces	0	0	No Change	N/A ¹

¹ The previous use of the space and the proposed use of the space are both for restaurant purposes and thus, there is no change in the parking demand per Zoning Ordinance Section 23E.68.080.A.

II. Project Setting

A. Neighborhood/Area Description:

The project site is located on the south side of Center Street, between Shattuck Avenue and Milvia Street, in the Downtown Core area (see Figure 1). The primary uses in this commercial area consist of restaurants and retail sales and services, as well as office/research and development, civic, and entertainment uses. The existing one-story building is bordered to the east by a 12-story office building and to the south and west by a 5-story parking garage. The Downtown Berkeley BART station is located approximately 400 feet to the east. Berkeley High School, the nearest school to the site, is located less than ¼ mile to the southwest.

B. Site Conditions:

The subject commercial space is located within an existing 3,944 square-foot single-story building located on Center Street, west of its intersection with Shattuck Avenue. The existing building contains a vacant commercial space which operated as a quick-service restaurant, called Peking Express, until its recent closure. The building façade is characterized by storefront windows and rough stone and stucco materials; there are two entrances to the building from the street front. The generally rectangular lot is approximately 5,388 square feet and the building occupies 73 percent of the lot. The remainder of the site includes a pedestrian-accessed service walkway along the west and south edges of the property. No off-street parking is provided and there is no on-site landscaping.

III. Project Description

The applicant proposes to establish a full service restaurant with incidental beer, wine, and distilled spirits service within the existing commercial building located in the Commercial Downtown Mixed-Use Core (C-DMU Core) District. Improvements would be made to the interior and exterior of the building; a change in the existing building square footage is not proposed. The new restaurant would be operated by Eureka Burgers, a small chain restaurant which features artisan burgers, hot sandwiches, salads, and appetizers as well as assorted craft beers and whiskies. The applicant currently operates seven other locations, all within southern California and the central valley. The applicant has continuously operated these businesses with no verified Alcoholic Beverage Control violations (confirmed per Staff review of the ABC's License Query System).

Proposed improvements include modernization of the interior and exterior façade while retaining the existing building. The existing interior walls and surfaces would be demolished and retrofitted to accommodate a new kitchen layout, work stations, food and equipment storage, ADA-compliant restrooms and upgraded finishes throughout (see Figure 2).

The new street façade would feature a set of floor-to-ceiling, operable windows to replace the existing storefront windows and western entry adjacent to the on-site service alley. A low metal railing would provide a physical barrier when the windows are open. The public entry to the restaurant would be located at the eastern edge of the building,

to better provide ADA-complaint access from the west sloping sidewalk along Center Street. West of this entry, the sloping sidewalk would provide a slight separation along the building frontage between pedestrian traffic and the interior dining area. The existing rough stone façade element would be reconstructed with a smoother stone material. The commercial signage would be located on the stone wall element and restricted to graphics used for the name of the restaurant. The existing open-air, pedestrian-accessed service walkway along the west and south edges of the property would be secured, cleaned, and maintained to serve the new restaurant.

The new full service restaurant would have a maximum capacity of 113 customers to be accommodated at individual tables, booths and along two bar areas. Seating capacity would accommodate 92 customers. The new restaurant would be open 7 days per week and the typical hours of operation would be from 9 a.m. to 1 a.m.; the busiest hours of operation are expected to be between 6 p.m. and 10 p.m., Thursday through Sunday. The new restaurant will have a total staff of 60, with approximately 30 employees on-site per shift. Live entertainment would be provided approximately once a week by a two- to three-piece band using amplified acoustics and low volume drums; live music would not be amplified beyond 50 decibels.

The new restaurant would serve alcoholic beverages, including beer, wine, and distilled spirits. The applicant has applied for a license from the Department of Alcoholic Beverages Control. Alcoholic beverages would not be sold for off-site consumption.

IV. Community Discussion

A. Neighbor/Community Concerns:

Prior to submitting the application to the City, a pre-application poster was placed at the site by the applicant in November 2012. On December 27, 2012 the City mailed notices to adjoining property owners and occupants, and to interested neighborhood organizations, and posted notice of the ZAB hearing at the site. As of this time, staff has not received any communications regarding the project.

B. Committee Review:

This project has received Staff-level Design Review.

V. Issues and Analysis

A. Key Issues:

1. Commercial Downtown Mixed-Use Core District: Establishment of a new full service restaurant within the existing vacant commercial building would implement and further the vision and goals of the Downtown Area Plan. The proposal would not change the existing permitted use at this location, which previously operated as a quick service restaurant. The project would renovate and modify the building's interior to accommodate the new business and update the existing dilapidated exterior street front façade, which would contribute to the

pedestrian-oriented vitality and economic revitalization of the Downtown. Per BMC Section 23E.08.020.B, improvements to the exterior façade and new commercial signage would be subject to staff-level design review, ensuring that proposed improvements are compatible with the overall character of the area. Furthermore, the new full service restaurant with incidental alcohol service would represent a continuation of existing restaurant uses at the site, which is located in a commercial area characterized by restaurants and retail sales and services, as well as office/research and development, civic, and entertainment uses. In addition, the new restaurant would be located in the Downtown Core area and within walking distance of theaters and other cultural uses, providing a new dining experience for patrons of these uses. The proposal is consistent with, and furthers, the purposes of the C-DMU Core District.

2. Alcohol Service: The applicant has applied for a Type 47 Alcohol Beverage License from the ABC, which authorizes the sale of beer, wine and distilled spirits for consumption on the premises in a restaurant setting. Alcoholic beverage service incidental to food service in the C-DMU District is subject to approval of a Use Permit (BMC Section 23E.68.030). Alcoholic beverage service is also regulated by BMC Section 23E.16.040. This section requires special findings for approval of alcoholic beverage service.

There are five businesses that serve alcohol incidental to food service (restaurants and cafes) that are in the same category of alcoholic beverage sales (Type 47) within 1,000 feet of the project site (see Figure 3). The applicant's proposal for service of beer, wine, and distilled spirits incidental to food service, consistent with ABC requirements, is similar to existing establishments in this commercial area.

Although the site is located within 1,000 feet of a Berkeley Unified School District (BUSD) school (Berkeley High School) the proposed establishment will not have an adverse effect on this use. The proposed restaurant is not designed to attract these students. The establishment would be a sit-down, full service restaurant with a price point well above a typical student's spending ability and it is not a fast-food establishment. Furthermore, the applicant operates seven other locations of this establishment throughout the State, all of which have Type 47 California Alcohol Beverage Control (ABC) licenses, and none of these establishments have been subject to verified complaints or violations regarding alcohol, public safety, or other nuisances. The operator's record in training staff to restrict sales to adults and seated dining and, when appropriate, to request age documentation, will be the main deterrent to violations of the law. The proposed alcoholic beverage service at the site would not adversely affect nearby schools and is compatible with other similar uses in the area. In addition, the Berkeley Police Department (BPD) does not have any objections or concerns with the proposal. The BPD has drafted a memo to this effect but it was not available for inclusion with the staff report at the time of publication. Staff will deliver copies of the memo to the Zoning Adjustments Board at the meeting.

The economic benefits associated with this establishment would be enhanced by the proposed sale and service of alcohol. With a Type 47 ABC License for full alcoholic beverage service, incidental to food-service, the new business would be in keeping with comparable dining experiences located within the area. The applicant would commit a substantial amount of financial resources to improving the interior and exterior of the building with the expectation that the restaurant experience offered, including full alcoholic beverage service both in the dining area with meals and at the bar areas, will result in a positive customer experience as well as an economic benefit to the District. Without this service, which is an essential component of the operation's business model, the business would be at a competitive disadvantage with other, nearby restaurants that offer comparable service.

For the reasons stated above, the proposal would be consistent with the findings required by BMC Section 23E.16.040 (see Attachment 1).

3. Amplified Music: Amplified music is allowed in the C-DMU District, subject to the approval of an Administrative Use Permit (BMC Section 23E.68.030). While the applicant would provide amplified pre-recorded music most of the time, live entertainment would be provided approximately once a week by a two- to three-piece band using amplified acoustics and low volume drums. The applicant states that live music would not be amplified beyond 50 decibels. Noise levels will be required to comply with the City's Noise Ordinance (BMC Section 13.40). As described in the attached conditions of approval, live entertainment will end at least half an hour before closing time and percussion instruments would be limited to hand drums or drums played with brushes. Kick drums or drums played with sticks or beaters will not be used. In addition, the new establishment is located in a commercial area in the City's Downtown Core and is not adjacent to any residential neighborhoods. Occasional live entertainment would contribute to the draw of the new establishment and would also contribute to the economic vitality of the Downtown.

B. General and Area Plan Consistency:

Downtown Area Plan Analysis: The Downtown Area Plan contains the following policies applicable to the project:

1. Policy LU-1.1: Downtown Uses: Encourage uses that allow people who live, work and learn in Downtown to meet daily needs on foot.
2. Policy LU-1.3: Complementary & Active Businesses: Cultivate synergy between restaurants, shops and other businesses, combined with Downtown's focus on cultural and educational uses, to encourage a thriving and diverse retail environment.

3. Policy ED-1.3: Retail, Restaurants & Cultural Uses: Support existing and encourage highly functional and viable new retail, restaurant, and cultural uses (such as theaters, music, museums, and galleries).

Staff Analysis: Establishment of a new full service restaurant within the currently vacant commercial space would contribute to the economic diversity and pedestrian-oriented vitality of the Downtown. The new restaurant would be located in the Downtown Core area and within walking distance of theaters and other cultural uses, providing a new dining experience for patrons of these uses.

General Plan Policy Analysis: The 2002 General Plan contains several policies applicable to the project, including the following:

1. Policy UD-27–Relation to Sidewalk: Projects generally should be designed to orient the main entrance toward the public sidewalk, not a parking lot, and avoid confronting the sidewalk with a large windowless wall or tall solid fence.
2. Policy EM-8–Building Reuse and Construction Waste: Encourage rehabilitation and reuse of buildings whenever appropriate and feasible in order to reduce waste, conserve resources and energy, and reduce construction costs.
3. Policy UD-16–Context: The design and scale of new or remodeled buildings should respect the built environment in the area, particularly where the character of the built environment is largely defined by an aggregation of historically and architecturally significant buildings.
4. Policy UD-29–Signs: Signs should contribute aesthetically to, rather than detract from, the site they are on and the general streetscape.

Staff Analysis: One of the two main entrances oriented towards Center Street would be retained, while the existing service alley and service entrance would be secured by a gated entry. Façade improvements include a set of floor-to-ceiling, operable windows. Proposed façade improvements and signage would be reviewed by the City’s Design Review staff to ensure compatibility with the overall character or the surrounding area.

VI. Recommendation

Because of the project’s consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, Staff recommends that the Zoning Adjustments Board:

- A. APPROVE Use Permit #12-1000044 pursuant to Section 23B.32.040 and subject to the attached Findings and Conditions (see **Attachment 1**).

Attachments:

1. Findings and Conditions
2. Applicant Statement
3. Notice of Public Hearing

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