



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
APRIL 28, 2022

2026 San Pablo Avenue

Use Permit #ZP2021-0187 to add the service of distilled spirits incidental to food service at an existing restaurant

I. Background

A. Land Use Designations:

- General Plan: Avenue Commercial
- Zoning: West Berkeley Commercial District, C-W

B. Zoning Permits Required:

- Use Permit, under Berkeley Municipal Code (BMC) Section 23.204.020 to add Alcoholic Beverage Service of Distilled Spirits incidental to food service.

C. CEQA Recommendation: It is staff's recommendation that the project is categorically exempt pursuant to Section 15301 of the CEQA Guidelines ("Existing Facilities"). The determination is made by ZAB.

D. Parties Involved:

- Applicant Sergio Monleon, Gran Via Restaurant Group LLC, 2026 San Pablo Avenue, Berkeley
- Property Owner Kevin Gordon, 2091 Rose Street, Berkeley

Figure 1: Vicinity Map

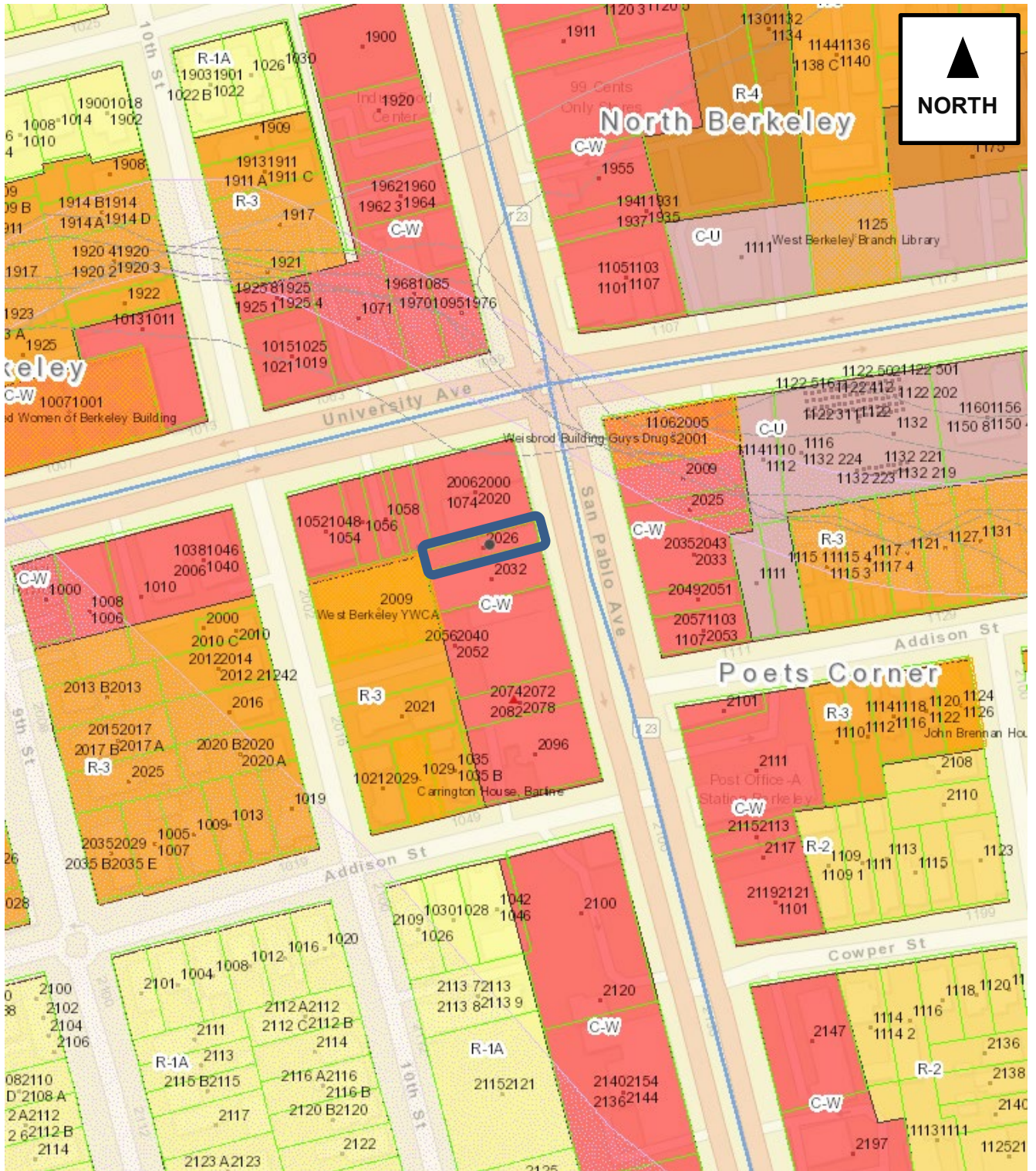


Figure 2: Site Plan/Floor Plan

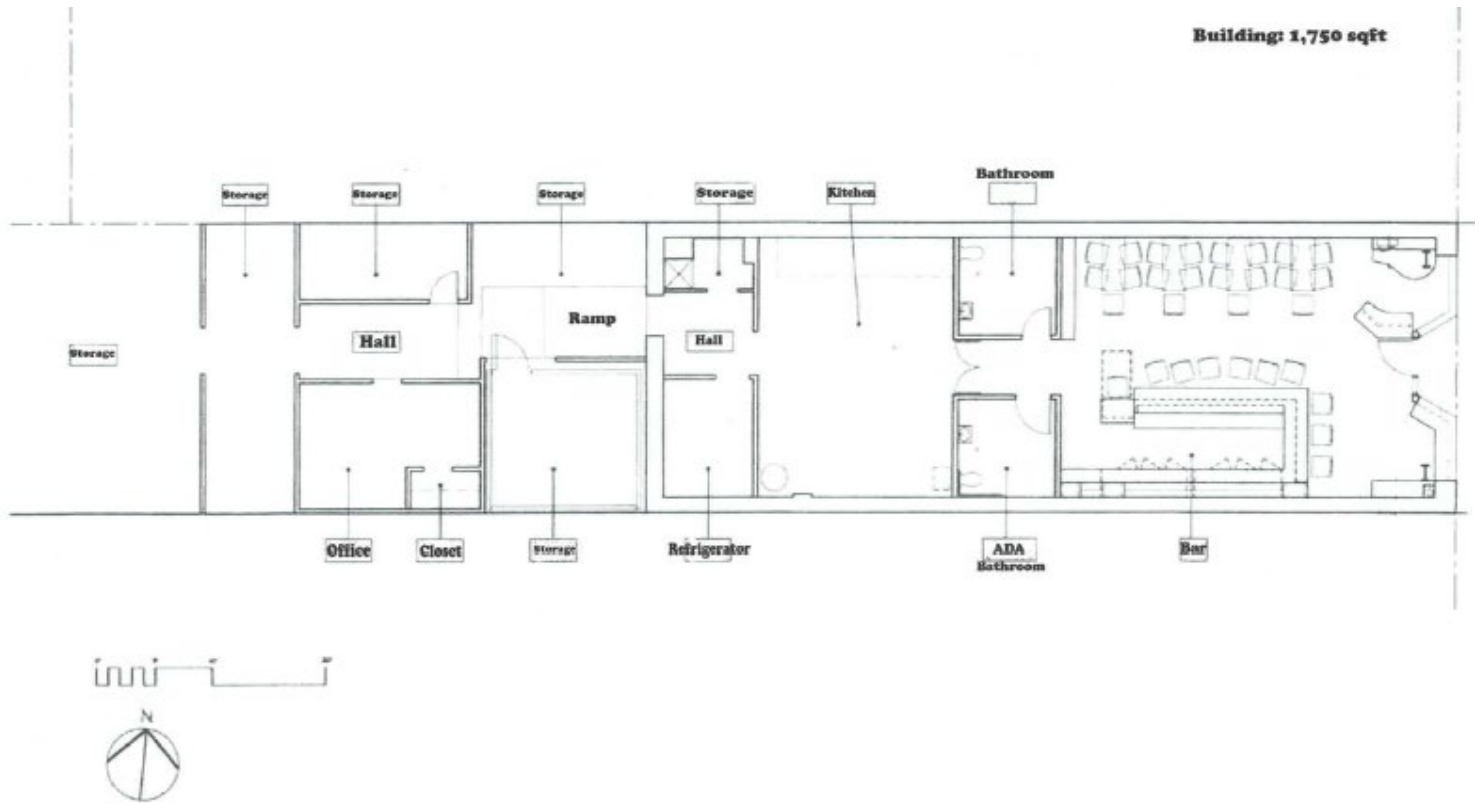
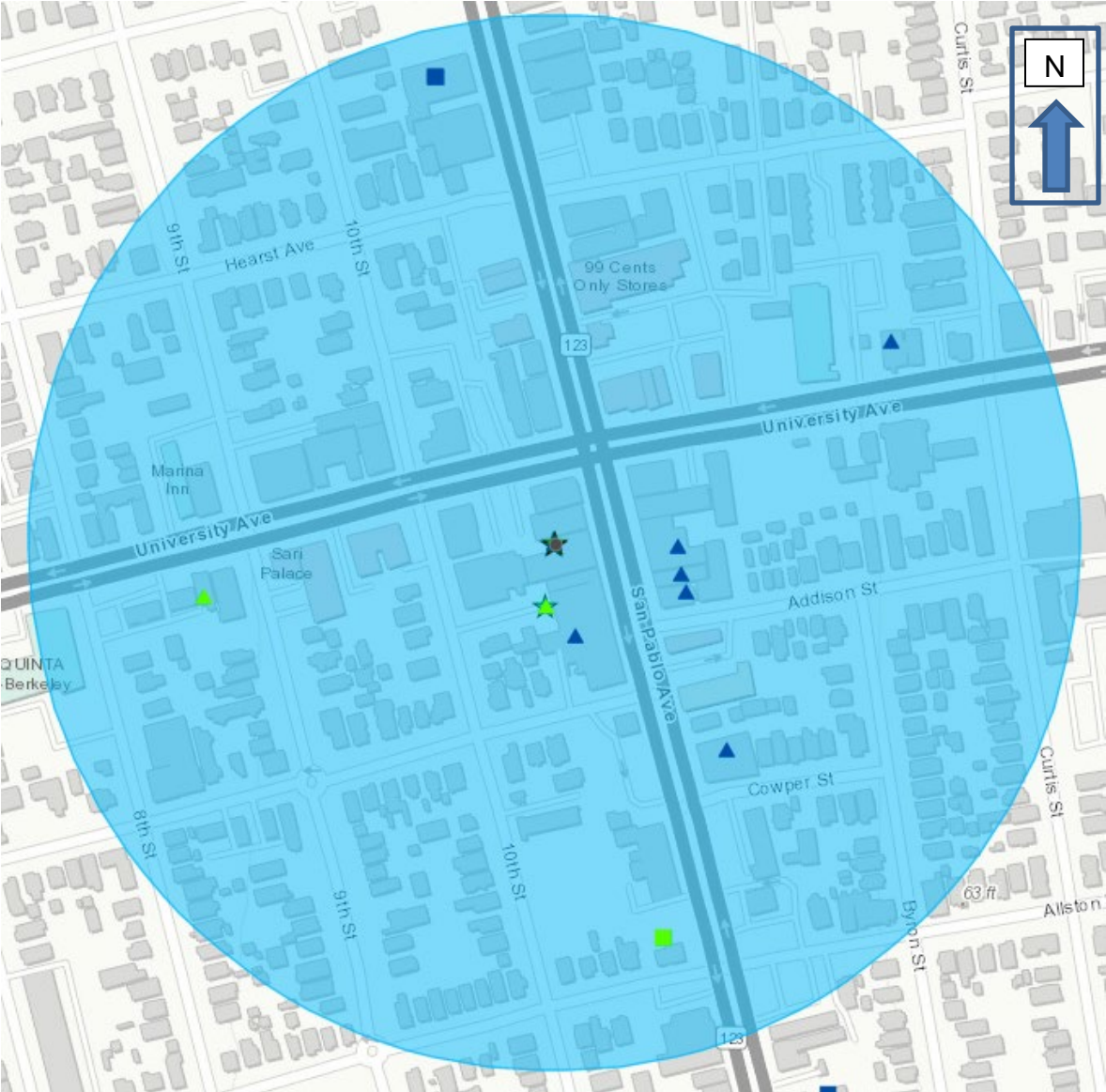


Figure 3: Liquor Licenses within 1,000 feet of the subject site



■	20	Off-site beer and wine
■	21	Off-site beer, wine, and liquor
▲	41	On-site beer and wine
▲	47	On-site beer, wine, and liquor
★	58	Caterer's License

Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Restaurant	C-W	Avenue Commercial
Surrounding Properties	North	Vacant Commercial		
	South	Grocery Store		
	West	YMCA	R-3	Multi-family Residential
	East	Restaurants	C-W	Avenue Commercial

Table 2: Special Characteristics

Characteristic	Applies to Project?	Explanation
Alcohol	Yes	The operator has applied for a Type 47 ABC License, which authorizes the service of beer, wine, and distilled spirits incidental to food service.
Public Convenience or Necessity	Yes	There are three other type 47 ABC licenses within 1,000 feet of the subject property.
Affordable Child Care or Housing Fee for qualifying non-residential projects (Per Resolutions 66,618-N.S. & 66,617-N.S.)	No	The proposed project does not include new floor area or a new use in a space vacant for more than three years; therefore, this mitigation fee payment does not apply.
Creeks	No	No new construction is proposed.
Green Building Score	No	
Historic Resources	No	
Liquefaction (Seismic Hazards Mapping Act)	No	
Oak Trees	No	
Soil/Groundwater Contamination	No	

Table 3: Project Chronology

Date	Action
October 7, 2021	Application submitted
March 18, 2022	Application deemed complete
April 14, 2022	Public hearing notices mailed/posted
April 28, 2022	ZAB hearing

II. Project Setting

A. Neighborhood/Area Description: The project parcel is located in the West Berkeley Plan Area and the C-W Zoning District, on the west side of San Pablo Avenue just south of University Avenue. It is in the University and San Pablo Node. The subject neighborhood has a mix of uses, including gyms, retail, restaurants, and residential units. Buildings surrounding the site are primarily one- and two-story commercial buildings.

B. Site Conditions: The project site is developed with an existing, one-story, 1,750 square foot commercial building. The subject tenant, La Marcha Tapas Bar, currently occupies the entire building area. Metered street parking is available, and the area is well served by public transit.

III. Project Description

The applicant proposes to add the service of distilled spirits and obtain a Type 47 license to add to its current service of beer and wine. No changes to the site or structure are proposed. La Marcha Tapas Bar's proposed hours of operation are 10:00 AM to midnight, seven days a week.

IV. Community Discussion

A. Neighbor/Community Concerns: On September 9, 2021, the applicant posted a yellow project sign in their shop window. On April 14, 2022, the City mailed public hearing notices to property owners and occupants within 300 feet of the project site and to interested neighborhood organizations, and the City posted notices within the neighborhood in three locations. At the time of writing this report, staff has not received any communications regarding the project.

B. Committee Review: This project is not subject to design review committee or landmark review.

V. Issues and Analysis

A. Alcoholic Beverage Service:

Alcoholic beverage sales are also regulated by BMC 23.310.020. This section requires the City to make "Public Convenience or Necessity" findings if an existing establishment has an ABC license of the same type, other than beer and wine service incidental to foodservice, within a 1,000-foot radius of the project site. There are two other establishments within a 1,000-foot radius of the project site with a type 47 ABC license for service of beer, wine, and distilled spirits incidental to food service: El Patio at 2056 San Pablo Avenue and Doc's Refresher at 947 University Avenue. Therefore, the findings of necessity must be made.

In order to approve the Use Permit, the Board must affirm all of the "Public Convenience or Necessity" findings under BMC Section 23.310.020.D as follows:

- 1) *The proposed establishment of the sale of distilled spirits will promote the City's economic health, contribute to General Plan or Area Plan policies, or further the district purposes.*

Staff Analysis: The proposed addition of distilled spirits service would mean greater tax revenue for the City of Berkeley, with a greater variety of menu options to attract more people. It would also increase the economic health of the business whose Spanish cuisine offers a unique cultural and culinary opportunity to the community.

The additional service would contribute to the cultural, economic, and social opportunities in the San Pablo Neighborhood Commercial area.

- 2) *The economic benefits associated with the establishment could not reasonably be achieved without the proposed alcohol sales.*

Staff Analysis: The addition of distilled spirits to the menu would potentially increase the economic success of the business in a way that would likely not be available with just beer and wine service. Staff notes that the increased business revenue would result in increased tax revenue for the City.

- 3) *If the applicant has operated a licensed establishment that has been the subject of violations regarding alcohol in the State of California, or violations of public safety or nuisance statutes or regulations in the City of Berkeley as verified by the Police Department, the Board shall determine whether such violations indicate a high likelihood of further violations and/or detrimental impacts from the proposed establishment. In making this determination, the Board may consider the number, frequency, and severity of prior violations, the time elapsed since the last violation, and other relevant factors.*

Staff Analysis: This restaurant, which already exists in this neighborhood, has not been the subject of any State of California violations, and has not had any calls for service from the Berkeley Police Department in the last three years.

- 4) *If the proposed establishment is located within 1,000 feet of any public park or Berkeley Unified School District (BUSD) school, the Board shall take into consideration the effect of the proposed establishment upon such sensitive public uses.*

Staff Analysis: There is one small public park, George Florence Park, within 1,000 feet of the subject site. Given that the restaurant already serves beer and wine, that all service will be on-site, and that the park faces Tenth Street and not San Pablo Avenue, there would not likely be any effects on the park.

- 5) *The Police Department has reported that the proposed establishment would not be expected to add to crime in the area.*

Staff Analysis: Staff referred this application to the Berkeley Police Department (BPD) for review and comment. In a letter dated December 27, 2021, the BPD stated that they had no record of calls for service in the past three years at this site. They stated, "The business plan appears to reflect a positive vision, which will help promote the local spirit businesses by adding liquor to their already existing menu".

B. Use Permits in the C-W District:

BMC Section 23.204.140(D)(3) allows the service of alcohol for on-site consumption with approval of a Use Permit, subject to the Board making the applicable findings in BMC Section 23.204.140(D)(5). In order to approve any Use Permit in the C-W District, the Board must find that the proposed use:

- 1) Is consistent with the purposes of the District:
 - Provide locations for commercial services which primarily serve area residents and/or businesses.
 - Support the retention and attraction of a balance of both smaller and larger stores and restaurants.
 - Provide appropriate locations consistent with West Berkeley Plan policies, for commercial services which serve a citywide or broader clientele.
- 2) Supports the development of a strong retail commercial and pedestrian-oriented environment at the node.

Staff Analysis: The additional service of distilled spirits will strengthen the existing restaurant that serves both area residents and a citywide clientele while maintaining compatibility with surrounding uses and buildings. See Section F below for analysis of consistency with the West Berkeley Plan

C. Findings for Use Permits in a C-W District Node: Pursuant to BMC Section 23.204.140.D(5), in order to approve any Use Permit in a District Node, the Board must find the use supports the development of a strong retail commercial and pedestrian-oriented environment at the node. Factors the Board should consider shall include, but are not limited to, the placement of store entrances relative to the street and parking lots, and the size and prominence of display windows and areas facing the sidewalk.

Staff Analysis: The project site is in the University and San Pablo Node (Node 3). La Marcha, which is already in business at this location, has a welcoming store front that is in keeping with other store fronts in this pedestrian-friendly node.

D. General Non-Detriment Finding: BMC Section 23.406.040.E requires that before the ZAB approves an application for a Use Permit, it must find that 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.

- 1) General Non-Detriment: The project is subject to the City's standard conditions of approval regarding hours of operation and sales of alcoholic beverages, thereby ensuring the project would 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.

E. General Plan Consistency: The 2002 General Plan contains several policies applicable to the project, including the following:

- 1) Policy LU-1–Community Character: Maintain the character of Berkeley as a special, diverse, unique place to live and work.

Staff Analysis: The sale of distilled spirits at an existing restaurant that specializes in serving authentic Spanish cuisine would enhance customer experiences and expand the range of services, thus helping to maintain the character of Berkeley as a special, diverse, unique place to live and work.

- 2) Policy LU-33–West Berkeley Plan: Implement the West Berkeley Plan and take actions that will achieve the purposes of the Plan:
 - A. Maintain the full range of land uses and economic activities including residences, manufacturing, services, retailing, and other activities in West Berkeley.
 - B. Maintain the ethnic and economic diversity of West Berkeley's resident population.
 - C. Maintain and improve 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.

Staff Analysis: The service of distilled spirits would increase the diversity of economic activities in a District that is well served by transit.

F. West Berkeley Plan Consistency: The West Berkeley Area Plan, adopted in 1993, also contains policies applicable to the project, including the following:

- 1) LU Goal 1, Policy C: Provide space for, and designate appropriate locations for – in planning and zoning policies – both neighborhood and regional serving retail businesses.
- 2) LU Goal 2, Policy E: Create a Commercial district that will foster the continued vitality of West Berkeley's neighborhood and regional serving retail trade, in as pedestrian- friendly a manner as possible.
- 3) "Overview of the Districting Concept": Retail uses should be clustered, to strengthen existing retail areas, to make them for walkable, and to prevent retail sprawl.

Staff Analysis: The sale of distilled spirits, in addition to beer and wine, would support the existing business, which offers a unique dining and cultural experience and serves both the immediate and outlying neighborhoods.

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 ZP2021-0187 pursuant to Section 23.406.040 and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

1. Findings and Conditions
2. Project Plans, received October 7, 2021
3. Letter from Berkeley Police Department, dated December 27, 2021
4. Notice of Public Hearing

Staff Planner: Russell Roe, rroe@cityofberkeley.info, (510) 981-7548

ATTACHMENT 1

FINDINGS AND CONDITIONS

APRIL 28, 2022

2026 San Pablo Avenue

Use Permit #ZP2021-0187 to add the service of distilled spirits incidental to food service at an existing restaurant.

PERMITS REQUIRED

- Use Permit, under Berkeley Municipal Code (BMC) Section 23.204.140 to add incidental service of distilled spirits at an existing restaurant.

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 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 23.406.040 of the BMC, 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 Zoning Adjustments Board finds that the alcohol service will be incidental to food service and, due to the incidental nature of the service, as well as the size and location of the restaurant, distilled spirits sales will not have a significant detrimental impact on public health, safety, or peace. The permit is subject to the standard conditions for food and alcohol service, which will ensure that the restaurant tenant is a good neighbor. Staff referred this application to the Berkeley Police Department (BPD) for review and comment. In a letter dated December 27, 2021, the BPD stated that they had no record of alcohol violations at this site in the last 3 years. They stated that “the business plan reflects a positive vision, which will help promote the local spirit businesses by adding liquor to their already existing menu”.

III. OTHER FINDINGS FOR APPROVAL

1. As required by BMC Section 23.310.020.D, 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 expansion of alcoholic beverage service in an existing restaurant will contribute to the variety of goods and services which serve residents in the area. The expansion of services will contribute to the vitality of the neighborhood. The project will contribute to the City's economic health.
 - B. The addition of liquor service to the menu will enable the restaurant to remain competitive with other similar businesses in the neighborhood. Additionally, staff notes the potential increased business revenue would result in increased tax revenue for the City.
 - C. The applicant has not operated another establishment that has been the subject of violations regarding alcohol in the State of California.
 - D. The project is located approximately 900 feet from REALM Charter Middle School, but not within one thousand feet of any public park. The existing restaurant has already been serving beer and wine, and no reports of alcohol service to minors have been reported. Additionally, as a standard Condition of Approval, no visible advertising of alcohol beverages is allowed, and the business staff would continue to check customers for proper identification to purchase alcohol.
 - E. In a letter dated December 27, 2021, the BPD stated that they had no record of alcohol violations at this site in the last 3 years. They stated that "the business plan reflects a positive vision, which will help promote the local spirit businesses by adding liquor to their already existing menu".
2. As required by BMC Section 23.204.140.F, the Zoning Adjustments Board finds
- A. The project will be consistent with the purposes of the C-W District, which allows restaurant uses and the sale of liquor for on-site consumption.
 - B. The project is compatible with the surrounding uses and building, which are comprised of recreational facilities, retail, restaurants, and dwelling units.
 - C. The project is consistent with the West Berkeley Plan.
 - D. Supports an increase in the continuity of retail and service facilities at the ground level to the degree feasible.
 - E. Does not substantially degrade the existing urban fabric of the street and area.
 - F. Does not include the construction of new floor area.
 - G. Meets applicable performance standards for off-site impacts, and
 - H. Does not exceed the amount and intensity of use that can be served by available traffic capacity and potential parking supply (Ord. 7787-NS § 2 (Exh. A), 2021).
3. As required by BMC Section 23.204.140.d(5), the Zoning Adjustments Board finds
- A. The use supports the development of a strong retail commercial and pedestrian-oriented environment at the node.
 - B. The placement of store entrances relative to the street and parking areas, and the size and prominence of display windows and areas facing the sidewalk are in keeping with, and appropriate for this location.
-

IV. 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 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. Compliance Required (BMC Section 23.102.050)

All land uses and structures in Berkeley must comply with the Zoning Ordinance and all applicable City ordinances and regulations. Compliance with the Zoning Ordinance does not relieve an applicant from requirements to comply with other federal, state, and City regulations that also apply to the property.

3. Approval Limited to Proposed Project and Replacement of Existing Uses (BMC Sections 23.404.060.B.1 and 2)

- A. This Permit authorizes only the proposed project described in the application. In no way does an approval authorize other uses, structures or activities not included in the project description.
- B. When the City approves a new use that replaces an existing use, any prior approval of the existing use becomes null and void when permits for the new use are exercised (e.g., building permit or business license issued). To reestablish the previously existing use, an applicant must obtain all permits required by the Zoning Ordinance for the use.

4. Conformance to Approved Plans (BMC Section 23.404.060.B.4)

All work performed under an approved permit shall be in compliance with the approved plans and any conditions of approval.

5. Exercise and Expiration of Permits (BMC Section 23.404.060.C)

- A. A permit authorizing a land use is exercised when both a valid City business license is issued (if required) and the land use is established on the property.
- B. A permit authorizing construction is exercised when both a valid City building permit (if required) is issued and construction has lawfully begun.
- C. The Zoning Officer may declare a permit lapsed if it is not exercised within one year of its issuance, except if the applicant has applied for a building permit or has made a substantial good faith effort to obtain a building permit and begin construction. The Zoning Officer may declare a permit lapsed only after 14 days written notice to the applicant. A determination that a permit has lapsed may be appealed to the ZAB in accordance with Chapter 23.410 (Appeals and Certification).
- D. A permit declared lapsed shall be void and of no further force and effect. To establish the use or structure authorized by the lapsed permit, an applicant must apply for and receive City approval of a new permit.

6. Permit Remains Effective for Vacant Property (BMC Section 23.404.060.D)

Once a Permit for a use is exercised and the use is established, the permit authorizing the use remains effective even if the property becomes vacant. The same use as allowed by the original permit may be re-established without obtaining a new permit, except as set forth in Standard Condition #5 above.

7. Permit Modifications (BMC Section 23.404.070)

No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Board. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project.

8. Permit Revocation (BMC Section 23.404.080)

The City may revoke or modify a discretionary permit for completed projects due to: 1) violations of permit requirements; 2) Changes to the approved project; and/or 3) Vacancy for one year or more. However, no lawful residential use can lapse, regardless of the length of time of the vacancy. Proceedings to revoke or modify a permit may be initiated by the Zoning Officer, Zoning Adjustments Board (ZAB), or City Council referral.

9. Indemnification Agreement

The applicant shall hold harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments or other losses (including without limitation, attorney's fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval associated with the project. The indemnity includes without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn, set aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the project and granting any permit issued in accordance with the project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs shall include, without limitation, any attorney's fees, expert witness and consultant fees, court costs, and other litigation fees. City shall have the right to select counsel to represent the City at Applicant's expense in the defense of any action specified in this condition of approval. City shall take reasonable steps to promptly notify the Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.

V. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD

Pursuant to BMC 23.404.050(H), the Zoning Adjustments Board attaches the following additional conditions to this Permit:

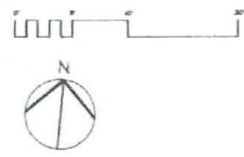
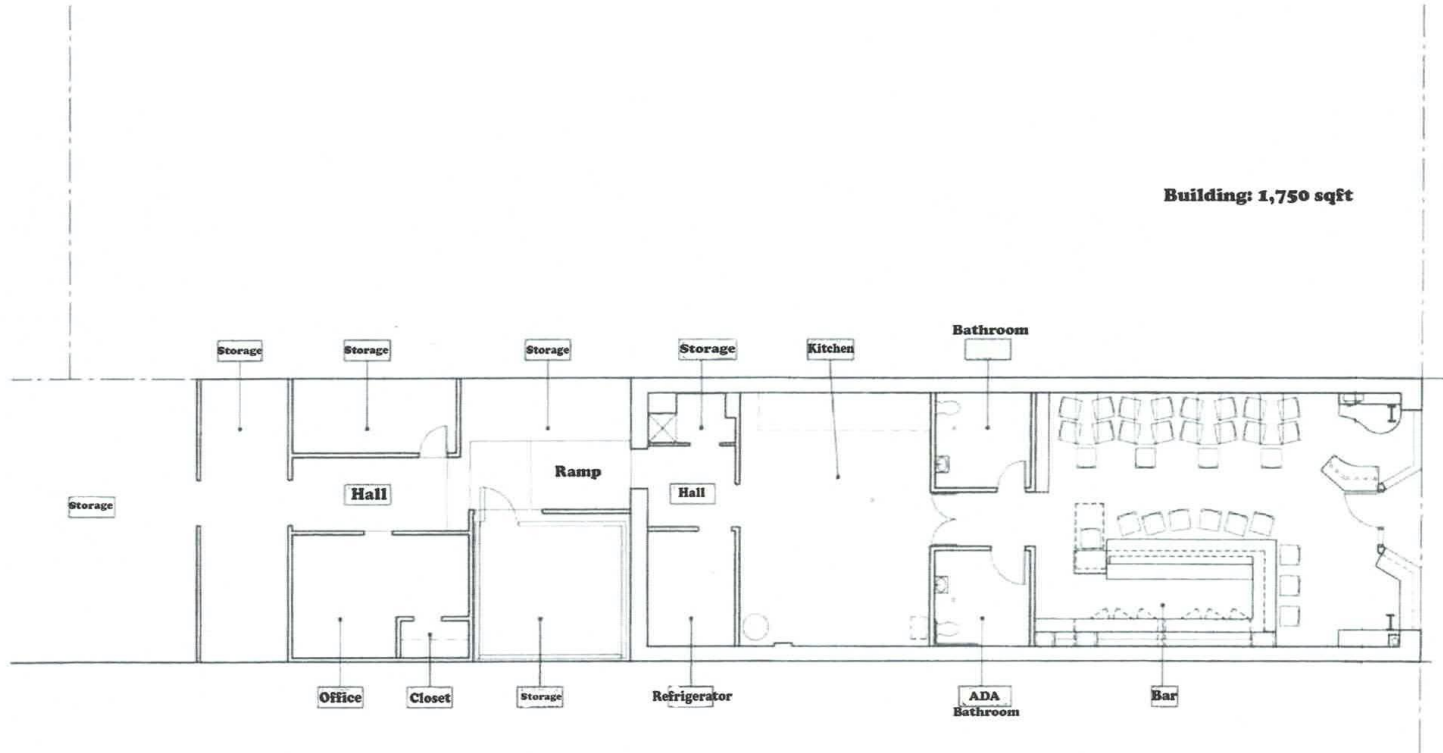
ALCOHOLIC BEVERAGE SERVICE CONDITIONS (on-site)

1. The Food Service Establishment shall comply with all applicable regulations of the California Department of Alcoholic Beverage Control (ABC).

2. 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 25 percent 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 33 percent of the gross receipts generated by the primary use.
3. Alcohol beverage service shall be only be allowed as part of a “bona fide eating place” making “actual and substantial sales of meals.” This requirement shall be stringently enforced as determined and required by the ABC.
4. The service of alcohol shall be limited to normal meal hours (per ABC) during the restaurant’s hours of operation. Patrons may only purchase food or finish drinks already purchased within the approved service hours. The Zoning Adjustments Board shall approve any change in the hours of restaurant operations and/or alcohol service (except decreased hours in compliance with applicable ABC regulations). Hours of operation are subject to review and amendment by the Zoning Adjustments Board as necessary to avoid detriment to the neighborhood or to achieve conformance with revised City standards or policies.
5. During operating hours, 100 percent 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.
6. The sale of alcoholic beverages for consumption off the premises is prohibited.
7. There shall be no service or consumption of alcohol on the public right-of-way, unless authorized by a Public Works sidewalk seating permit.
8. All alcoholic beverages served to patrons must be served in durable restaurant tableware (i.e. cups or glasses). No beer or wine may be distributed in its original bottle or can, or in any other potentially disposable container.
9. 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.
10. 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. Neither alcohol-dispensing facilities nor sign(s) advertising alcoholic beverages shall be visible from the public right-of-way. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.
11. A Berkeley Police Department Crime Prevention Through Environmental Design (CPTED) survey shall be completed prior to commencing alcohol service.
12. 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

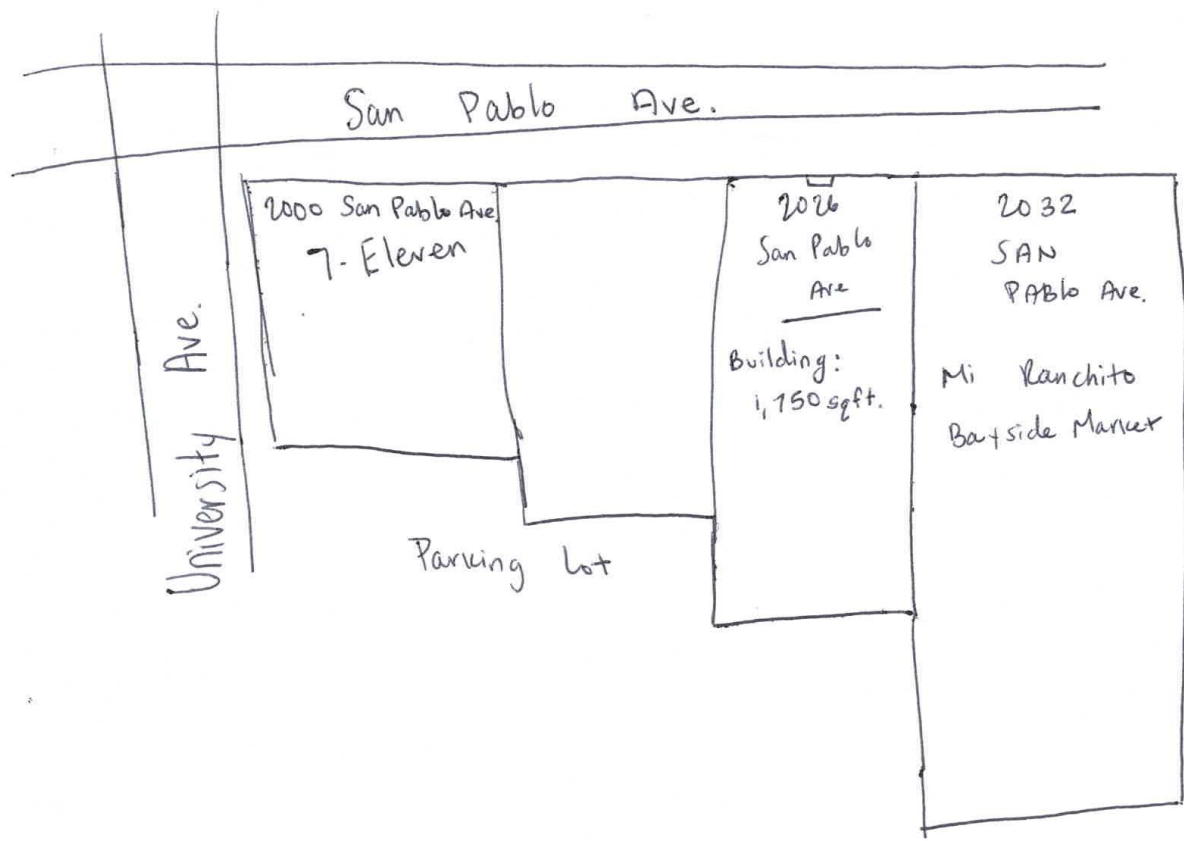
Beverage Control within six months of employment at the establishment. Employees who have completed the course within the last five years shall be exempt from this requirement.

- 13.** Employees shall not serve alcohol to patrons who appear to be inebriated or otherwise unable to behave in an orderly manner upon consuming alcohol.
- 14.** 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.
- 15.** Fortified alcohol products (e.g., malt liquor), shall not be sold on the premises.
- 16.** The applicant shall establish cash handling procedures to reduce the likelihood of robberies and theft.
- 17.** At no time shall the operator rent the restaurant space to a third-party promoter.
- 18.** 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.
- 19.** This Use Permit, including these and all other required conditions, shall be posted in conspicuous location, available for viewing by any interested party.
- 20.** 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.

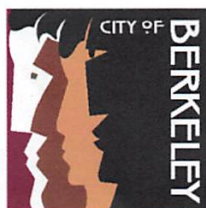


Internal

2026 Site Plan



Internal



Police Department

December 27th, 2021

To Allison Riemer, Associate Planner

From Jennifer Louis, Interim Chief of Police
Assigned to and completed by:
Officer Brian Hartley, Area Coordinator

Subject **La Marcha Tapas Bar, 2026 Tenth St, Berkeley, CA**

This memo is in response to a request to add a Type 47 ABC License to their already existing license at **La Marcha Tapas Bar, 2026 Tenth St, Berkeley**. This location is situated in west Berkeley.

There have been no calls for services in the past 3 years for any disturbances, noise complaints or criminal complaints at **La Marcha Tapas Bar**, directly related to alcohol or alcohol consumption. The business plan appears to reflect a positive vision, which will help promote the local spirit businesses by adding liquor to their already existing menu.

The Berkeley Police Department does not have any significant concerns with this change. BPD does recommend the ownership and staff of **La Marcha Tapas Bar** to develop a relationship with the Berkeley Police Department Area 4 Coordinator and the current beat officer(s) to address any issues or concerns with this new proposal.

The Berkeley Police Department also encourages ownership and staff of **La Marcha Tapas Bar** to participate in the local Business/Merchant Association, as it will contribute towards the success of their business in the City of Berkeley.

Sincerely,

Jennifer Louis
Interim Chief of Police

JL/bah



Z O N I N G
A D J U S T M E N T S
B O A R D
NOTICE OF PUBLIC HEARING

2026 San Pablo Avenue

Use Permit #ZP2021-0187 to add the service of distilled spirits incidental to food service at an existing restaurant

The Zoning Adjustments Board of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 23.406.040.D, on April 28, 2022, **conducted via Zoom, see the Agenda for details at:**

https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_ZAB/2022-04-28_ZAB_Agenda.pdf. The meeting starts at 7:00 p.m.

PUBLIC ADVISORY: This meeting will be conducted exclusively through videoconference and teleconference. Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

A. Land Use Designations:

- General Plan: Avenue Commercial
- Zoning: C-W, West Berkeley Commercial District

B. Zoning Permits Required:

- Use permit to add the service of distilled spirits incidental to food service at an existing restaurant, under BMC Section 23204.020

C. CEQA Recommendation: Categorically exempt pursuant to Section 15301 of the CEQA Guidelines ("Existing Facilities").

D. Parties Involved:

- Applicant Sergio Monleon, Gran Via Restaurant Group LLC
- Property Owner Kevin Gordon

Further Information:

All application materials are available online at: <http://www.cityofberkeley.info/zoningapplications>. The Zoning Adjustments Board final agenda and staff reports will be available online 6 days prior to this meeting at: <http://www.cityofberkeley.info/zoningadjustmentsboard>.

Questions about the project should be directed to the project planner, Russell Roe, at (510) 981-7548 or rroe@cityofberkeley.info.

Written comments or a request for a Notice of Decision should be directed to the Zoning Adjustments Board Secretary at zab@cityofberkeley.info.

Communication Disclaimer:

Communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the relevant board, commission or committee for further information.

Communications and Reports:

Written comments must be directed to the ZAB Secretary at the Land Use Planning Division (Attn: ZAB Secretary), or via e-mail to: zab@cityofberkeley.info. All materials will be made available via the Zoning Adjustments Board Agenda page online at this address: <https://www.cityofberkeley.info/zoningadjustmentboard/>.

All persons are welcome to attend the virtual hearing and will be given an opportunity to address the Board. Comments may be made verbally at the public hearing and/or in writing before the hearing. The Board may limit the time granted to each speaker.

Correspondence received by 5:00 PM, eight days before this public hearing, will be provided with the agenda materials provided to the Board. Note that if you submit a hard copy document of more than 10 pages, or in color, or with photos, you must provide 15 copies. Correspondence received after this deadline will be conveyed to the Board in the following manner:

- **Correspondence received by 5:00 PM two days before** this public hearing, will be conveyed to the Board in a Supplemental Communications and Reports, which is released around noon one day before the public hearing; or
- **Correspondence received after 5:00 PM two days before** this public hearing will be saved in the project administrative record.

It will not be possible to submit written comments at the meeting.



Accessibility Information / ADA Disclaimer:

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date.

SB 343 Disclaimer:

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available to the public. Please contact the Land Use Planning Division (zab@cityofberkeley.info) to request hard-copies or electronic copies.

Notice Concerning Your Legal Rights:

If you object to a decision by the Zoning Adjustments Board regarding a land use permit project, the following requirements and restrictions apply:

1. If you challenge the decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice.
2. You must appeal to the City Council within fourteen (14) days after the Notice of Decision of the action of the Zoning Adjustments Board is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, the following requirements apply:
 - A. That this belief is a basis of your appeal.
 - B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
 - C. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.