



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

2142 Oxford Street

Use Permit #ZP2021-0182 to allow service of distilled spirits incidental to food service in a full- service restaurant

I. Background

A. Land Use Designations:

- General Plan: DT- Downtown
- Zoning: Downtown Mixed-Use Commercial (C-DMU Core), Downtown Arts Overlay Zone

B. Zoning Permits Required:

- Use Permit, under Berkeley Municipal Code (BMC) Section 23.310.030 to add Alcoholic Beverage Service to include distilled spirits

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

D. Parties Involved:

- Applicant Deepak Aggarwal, c/o Rhoades Planning Group, 2140 Shattuck Avenue, Ste. 705, Berkeley
- Property Owner Nasser Kashani, 9 Union Street, San Rafael

Figure 1: Vicinity Map

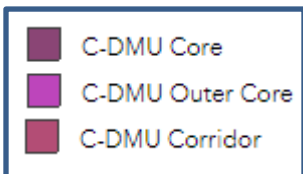
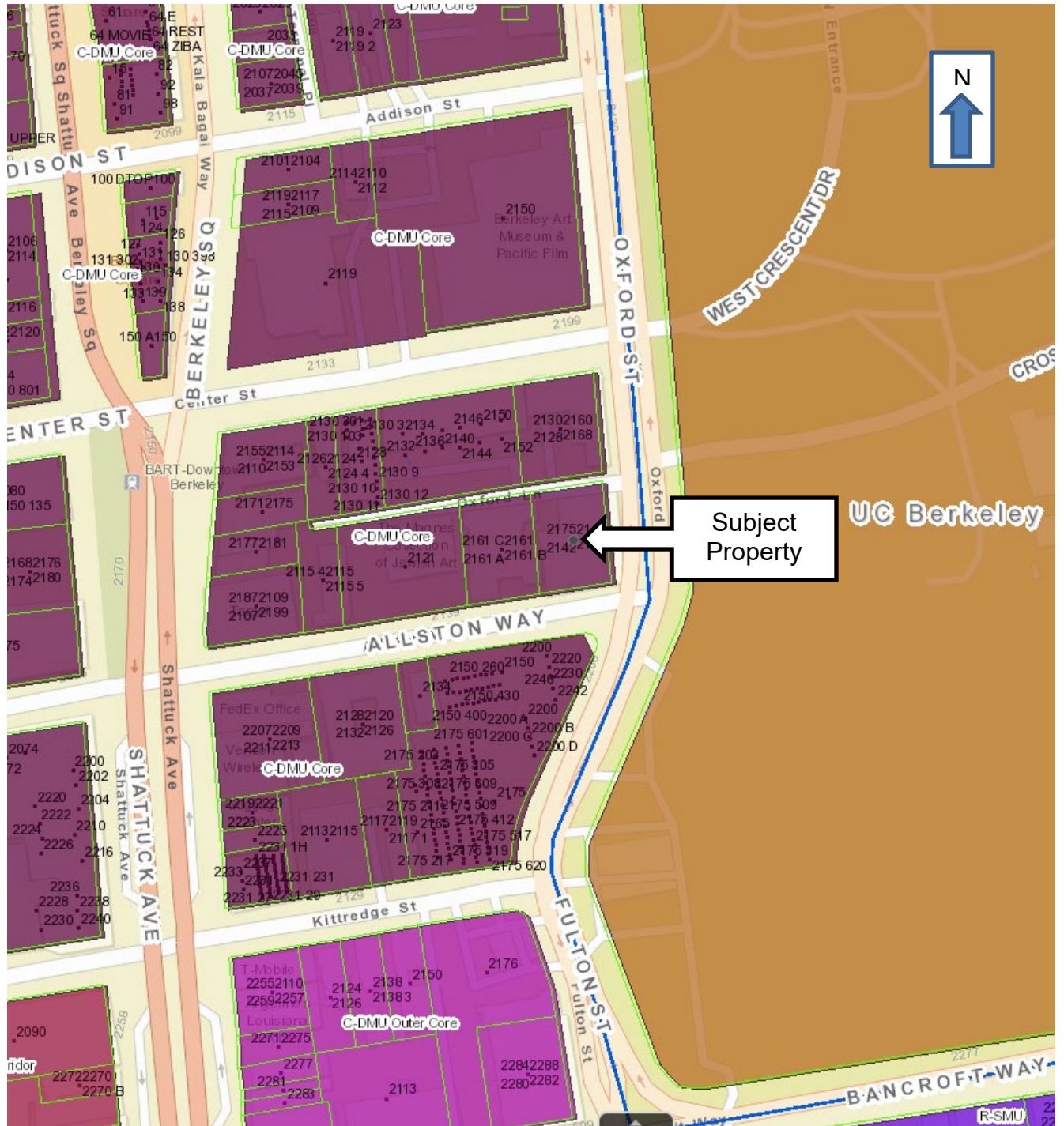


Figure 2: Floor Plan

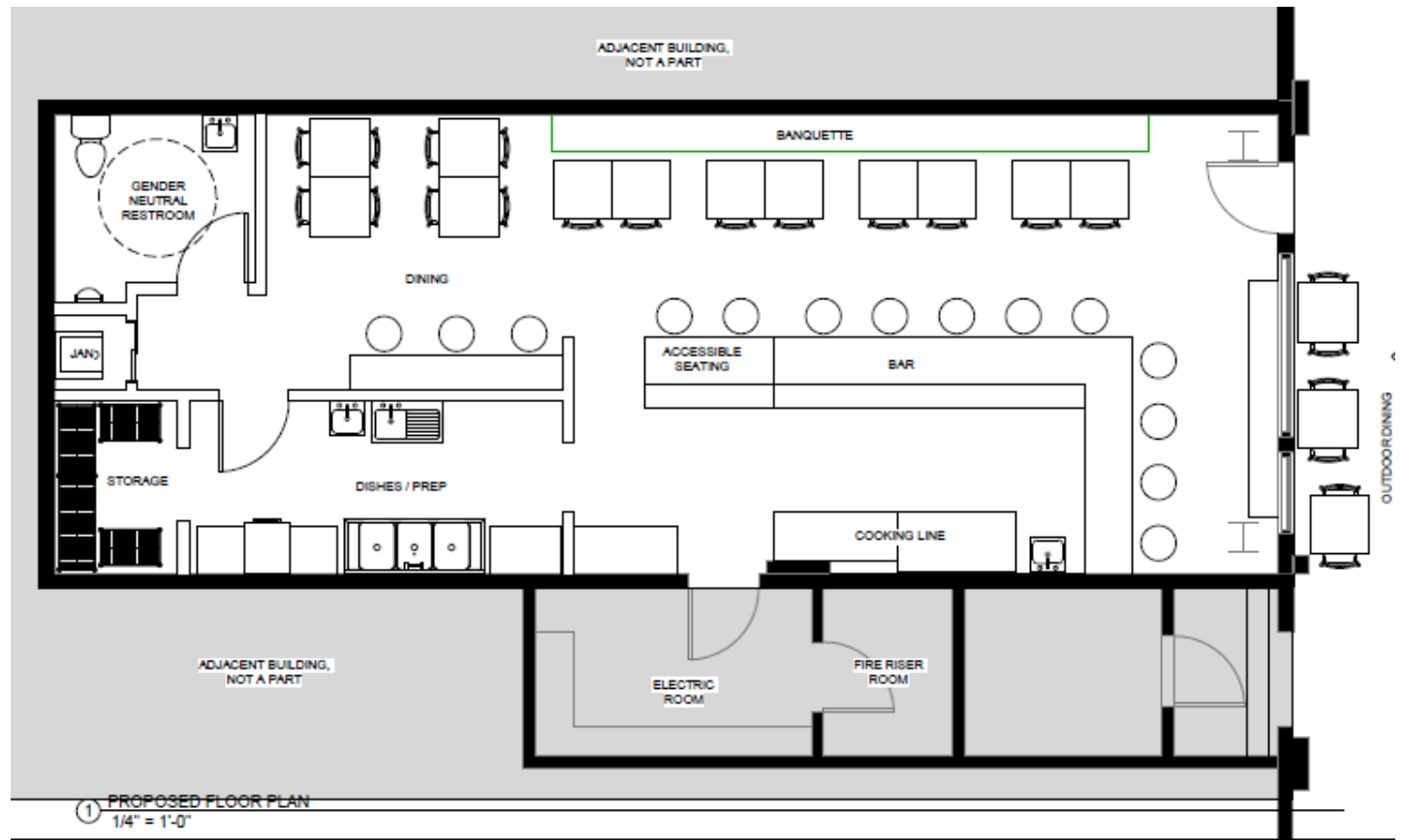
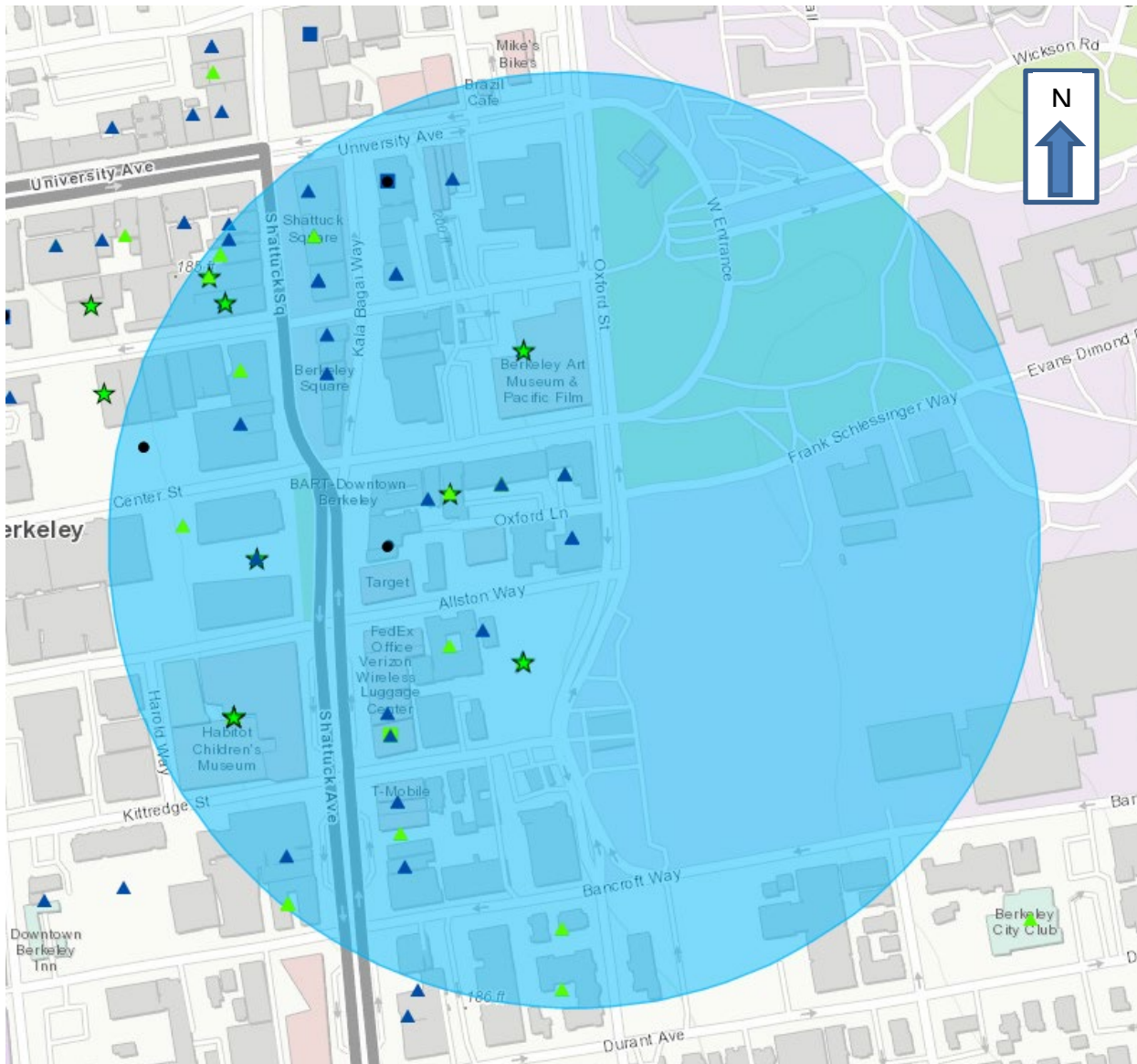


Figure 3: Liquor Licenses Within 1,000 Feet of Subject Site









	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	Off-site Caterer and/or...
	68	Portable Bar- beer, wine, and liquor

Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Existing Restaurant	C-DMU Core	DT-Downtown
Surrounding Properties	North	Computer Repair	C-DMU Core	DT-Downtown
	South	Restaurant/Market	C-DMU Core	DT-Downtown
	East	University	R-5	Institutional
	West	Office Building	C-DMU Core	DT-Downtown

Table 2: Special Characteristics

Characteristic	Applies to Project?	Explanation
Alcohol Sales/Service	Yes	The operator will be applying for a Type 47 ABC License, which authorizes the service of distilled spirits.
Public Convenience or Necessity	Yes	There are 15 other type 47 ABC licenses within 1000 feet of the subject property.
Affordable Child Care Fee for qualifying non-residential projects (Per Resolution 66,618-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
Historic Resources	No	
Oak Trees	No	
Soil/Groundwater Contamination	No	

Table 3: Project Chronology

Date	Action
October 4, 2021	Application submitted
January 20, 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 on the south side of Oxford Street between Oxford Lane and Allston Way, across the street from the University of California Berkeley campus. The subject neighborhood has a mix of uses, including restaurants, museums, and retail.

B. Site Conditions: The project site is developed with a historic building with a 13,830 square foot footprint on a 15,660 square foot lot. The proposed restaurant will occupy a 1,065 square foot former retail space within the building.

III. Project Description

The East Bay Spice Company is currently located at 2134 Oxford Street, where they currently hold a Type 47 ABC license that allows for sale of beer, wine, and distilled spirits for on-site consumption at a bona fide eating place. Due to a proposed redevelopment project at that location, they plan to move to the subject property at 2142 Oxford Street in September 2022. They are applying to transfer their existing Type 47 ABC permit to allow the continued service of beer, wine, and distilled spirits in, conjunction with the restaurant, at their new location.

IV. Community Discussion

A. Neighbor/Community Concerns: A pre-application poster was erected by the applicant in October, 2021. On April 14, 2021, the City mailed public hearing notices to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations, and 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 or landmark review. If exterior changes and/or signage are proposed as part of the associated tenant improvement(s), they will be evaluated by the applicable land use staff at that time.

V. Issues and Analysis

A. Alcoholic Beverage Service: Alcoholic Beverage Service: Alcoholic beverage sales and service that includes distilled spirits incidental to food service is allowed in the C-DMU District (BMC 23.204.020) if a Use Permit is granted by the Zoning Adjustments Board in accordance with required findings.

Alcoholic beverage service is also regulated by BMC 23.310.020.D for Special Use Standards. This section requires the City to make all of the "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 food service, within a 1,000-foot radius of the project site. There are currently 15 other establishments within a 1,000-foot radius with a type 47 ABC license for service of beer, wine, and distilled spirits incidental to food service. Table 4 shows these establishments.

Table 4: Type 47 Alcoholic Beverage Licenses Within 1,000 Feet of Project Site

Name/Address	License Type and Description
Shattuck Hotel Plaza- 2086 Allston Way	Type 47: Hotel
Marsh Arts Center - 2120 Allston Way	Type 47: Performance Space
Great China – 2190 Bancroft Way	Type 47: Restaurant
Eureka – 2068 Center Street	Type 47: Restaurant
Ippuku -2130 Center Street	Type 47: Restaurant
Center Pizzeria - 2132 Center Street	Type 47: Restaurant
Easterly - 2142 Center Street	Type 47: Restaurant
Beta Lounge – 2129 Durant Avenue	Type 47: Restaurant
Gather – 2200 Oxford Street	Type 47: Restaurant
Comal – 2020 Shattuck Avenue	Type 47: Restaurant
Comal Next Door – 2024 Shattuck Avenue	Type 47: Restaurant
Revival – 2102 Shattuck Avenue	Type 47: Restaurant
Residence Inn- 2129 Shattuck Avenue	Type 47: Hotel
Sliver Pizzeria- 2174 Shattuck Avenue	Type 47: Restaurant
Shattuck Theater – 2230 Shattuck Avenue	Type 47: Movie Theater

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 will promote the City’s economic health, contribute to General Plan or area plan policies, or further the district purpose.

Staff Analysis: This restaurant, including the incidental alcohol service, will continue the economic and cultural benefits that the restaurant has been providing for over a decade in downtown Berkeley.

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

Staff Analysis: The applicant proposes to invest significant financial resources to further improve the tenant space with the expectation that the offerings in the new dining space, including the service of distilled spirits, will result in his economic benefit as well as that of surrounding businesses and the district. Without distilled spirits service, the business would be at a competitive disadvantage with neighboring restaurants because many restaurants in the downtown area already provide this service.

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 Berkeley as verified by the Police Department, such violations do not indicate a high likelihood of further violations and/or detrimental impacts from the proposed establishment. In making this finding, the ZAB may consider the number, frequency, and severity of prior violations, the time elapsed since the last violation, and other relevant factors.*

Staff Analysis: The following was provided by the restaurant owner: “There have been two alcohol violations at East Bay Spice Company, but were quickly remedied so there is a very low likelihood of those incidents occurring again.

The first incident occurred in 2015 and triggered an increase in preventative measures to avoid a recurrence. East Bay Spice Company implemented increased alcohol awareness training. They also required all their bar staff to join the United States Bartender’s Guild, a membership organization that promotes safe and professional service of alcohol. In 2018, there was an incident resulting from the installation of a new parklet. After the City Berkeley allowed for a parklet to be built in front of East Bay Spice Company, the restaurant was not prepared for all the people who assumed they could walk out with drinks. To remedy the situation, the East Bay Spice Company immediately hired a staff member to attend the door and put up prominently displayed signs to clearly state the rules.

All staff employed at the East Bay Spice Company receive increased alcohol awareness training. All members tending bar are also required to be members of the United States Bartenders Guild. The ownership group and operations manager are committed to continuous improvement and training to ensure that staff understand and follow all relevant rules and regulations.”

Given the restaurant’s commitment to improvement in this area, appropriate response to the two problems that occurred five and seven years ago, plus the lack of concern from the Berkeley Police Department (see attached letter), allowing the restaurant to continue alcoholic beverage service that includes distilled spirits will not be a detriment to the public welfare.

4. *If the proposed establishment is within 1,000 feet of any public park or public school, the ZAB has taken into consideration the effect of the proposed establishment upon such sensitive public uses.*

Staff Analysis: The project is located across the street from the University of California Berkeley campus, but is not within 1,000 feet of a public park or public school.¹ The existing restaurant has been serving beer, wine, and distilled spirits at its current location with only two incidents that have since been addressed. 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.

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 January 4, 2022, the BPD stated, “we see no reason to believe this business would increase crime or calls for service in the neighborhood, and see no reason it would have an adverse effect on the health, safety, or morals of the people in the area. We believe it will in fact be a net positive as more businesses open in the neighborhood after the long closures due to the pandemic.”

Furthermore, the restaurant has stated that it intends to have provisions in place (e.g., high-end cuisine, a host at the front door, etc.) that will ensure that the space functions as a restaurant and not a bar.

B. Use Permits in the C-DMU District:

BMC Section 23.204.130 allows alcoholic beverage service with approval of a Use Permit, subject to the Board making the applicable findings in BMC Section 23.204.130(l). In order to approve any Use Permit in the C-DMU District, the Board must find that the proposed use is:

- 1) Compatible with the purpose of the District, which is to implement the vision and goals of the Downtown Development Plan (adopted 2012) to include: Environmental Sustainability, Land Use, Access, Historic Preservation and Urban Design, Streets and Open Space, Housing and Community Health and Services, and Economic Development.
- 2) Compatible with the surrounding uses and buildings.

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

¹ “School” is defined in BMC 23.502 (Glossary) as elementary, secondary, and high school only.

C. General Non-Detriment Finding: BMC Section 23.406.040.A 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 alcoholic beverage service, 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.

D. 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 serving of distilled spirits at an existing restaurant will enhance customer experiences and help the restaurant to continue to promote the character of Berkeley as a special, diverse, unique place to live and work.

2. Policy LU-16–Downtown Plan: Express and enhance Berkeley's unique social and cultural character in the Downtown; create an appealing and safe Downtown environment, with a comfortable pedestrian orientation; diversify, revitalize, and promote the Downtown economy.

Staff Analysis: The serving of distilled spirits would be consistent with the diversity of economic activities in a District that is well served by transit.

E. Downtown Plan Consistency: The Downtown Area Plan, adopted in 2012, also contains several policies applicable to the project, including the following:

1. LU Goal 1, Policy LU-1.1: Encourage uses that allow people who live, work and learn in Downtown to meet daily needs on foot.
2. LU Goal 1, Policy LU-1.3: 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.

Staff Analysis: Distilled spirit service would enhance a business that has already contributed to the goals of a walkable and diverse downtown.

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 ZP2021-0182 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 August 21, 2021
3. Letter from Berkeley Police Department, dated January 4, 2022
4. Notice of Public Hearing

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

ATTACHMENT 1

FINDINGS AND CONDITIONS

APRIL 28, 2022

2142 Oxford Street

Use Permit #ZP2021-0182 to allow service of distilled spirits incidental to food service in a full- service restaurant

PERMITS REQUIRED

- Use Permit, under Berkeley Municipal Code (BMC) Section 23.310.030 to add Alcoholic Beverage Service to include distilled spirits

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”). The project meets all of the requirements of this exemption, as follows:
 - A. The project is consistent with the applicable General Plan designation and policies, and with the applicable zoning designation and regulations.
 - B. The project occurs within the Berkeley City limits on a project site of no more than five acres, and is surrounded by urban uses.
 - C. The parcels within the project site have previously been developed and have no value as habitat for endangered, rare or threatened species.
 - D. The project would not result in any significant effects relating to traffic, noise, air quality or water quality. The Traffic Impact Analysis prepared for the project was reviewed by the City Transportation Division which concurred with the findings of less than significant impacts. City Standard Conditions would address potential impacts related to traffic, noise, air quality, and water quality.
 - E. The site can be adequately served by all required utilities and public services.
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 project is consistent with all applicable C-DMU District standards, including use and hours of operation;
- B. The addition of distilled spirits alcoholic beverage service in the existing restaurant will not expand the footprint of the existing business. The proposed service will provide an additional option for patrons in the Downtown area;
- C. The alcohol service will be incidental to the overall food service use, and as such, alcohol sales will not have detrimental impact on public health, safety, or peace; and
- D. The permit is subject to the standard conditions for alcohol sales, which will ensure that the restaurant will continue to be a good neighbor.

III. OTHER FINDINGS FOR APPROVAL

- 1. As required by Section 23.310.020.D, the Zoning Adjustments Board finds that:
 - 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 Section 23.204.130.I of the BMC, the Zoning Adjustments Board finds that:
 - A. This project is consistent with the purposes of the C-DMU District, which allows the service of distilled spirits for purposes of on-site consumption;
 - B. An existing restaurant that is currently located one block away will relocate to the project site, and is compatible with surrounding uses and buildings;
 - C. The project is consistent with the Downtown Berkeley Plan which has the goals of making downtown a recognized center for culture and the arts, bringing new housing to downtown, and preserving downtown's historic assets;
 - D. The project will not add floor area to the approved building or change its façade;
 - E. The project will not result in significant off-site impacts, as no changes to the exterior of the building are planned, and as the effect on the neighborhood of continuing to provide alcohol service would be generally similar to the effect of such service by the restaurant at its current location; and

- F. The project will not exceed the amount and intensity of use that can be served by available traffic capacity and potential parking supply, as customer numbers would not be substantially higher than those served at the restaurant's current location next door.

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:

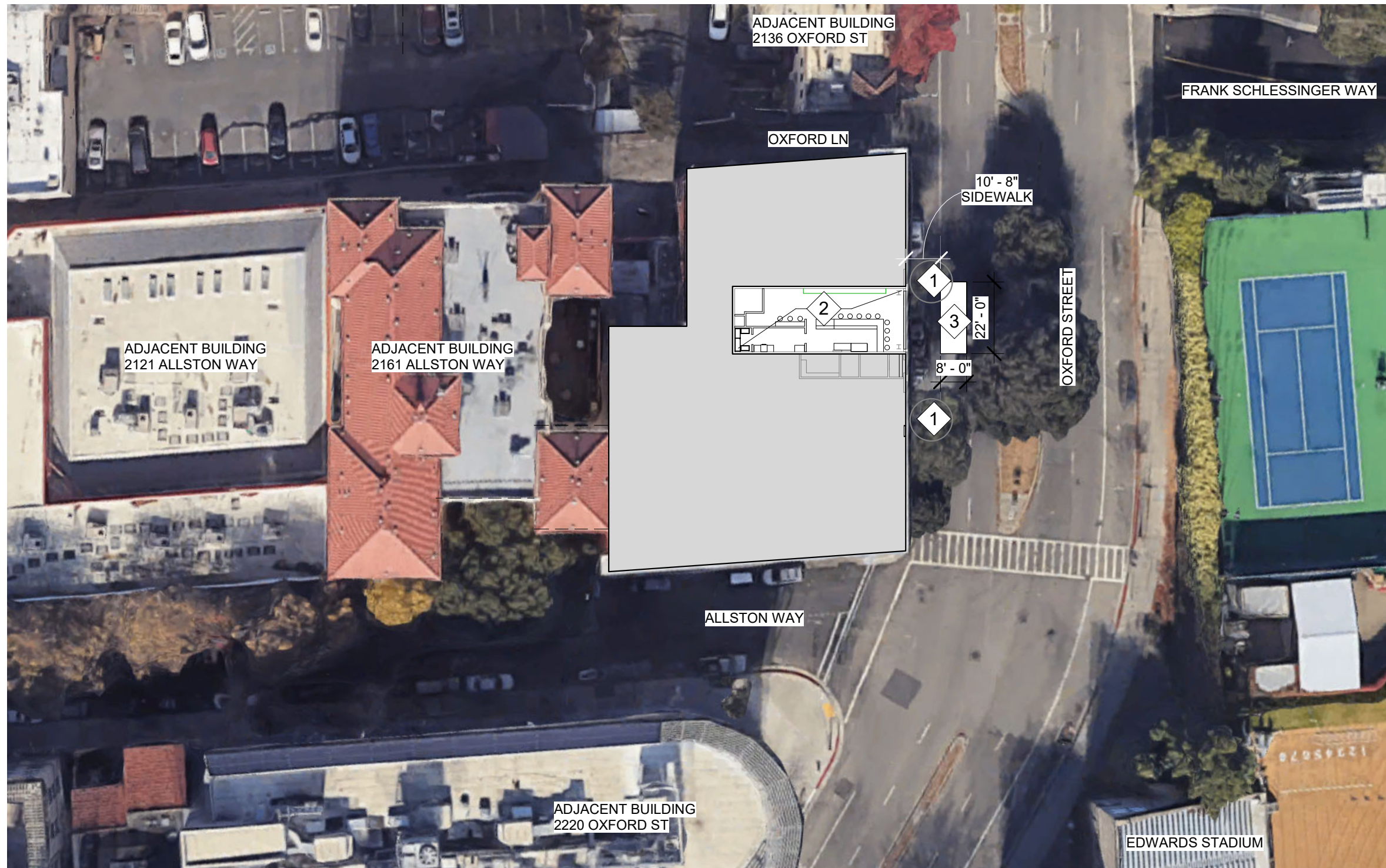
ALCOHOLIC BEVERAGE SERVICE CONDITIONS (on-site)

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 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.
3. Alcohol beverage service shall be only be allowed as part of a “bona fide eating place” making “actual and substantial sales of meals,” and stringently enforces this requirement 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% 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 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.

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.
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- 1 EXISTING STREET TREE, 12" DBH, QUERCUS AGRIFOLIO, COAST ILEX, HOLLY OAK
- 2 SUBJECT TENANT SPACE ON GROUND FLOOR, 2142 OXFORD STREET
- 3 EXISTING PARKING SPACE TO BE CONVERTED TO PUBLIC PARKLET

SHEET LIST	
SHEET NUMBER	SHEET NAME
A1	SITE PLAN
A2	EXISTING FLOOR PLAN
A3	PROPOSED FLOOR PLAN
A4	FRONT ELEVATION

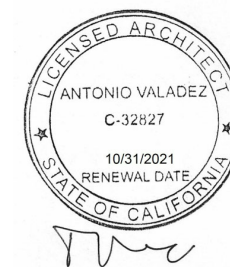


1 SITE PLAN
1/32" = 1'-0"



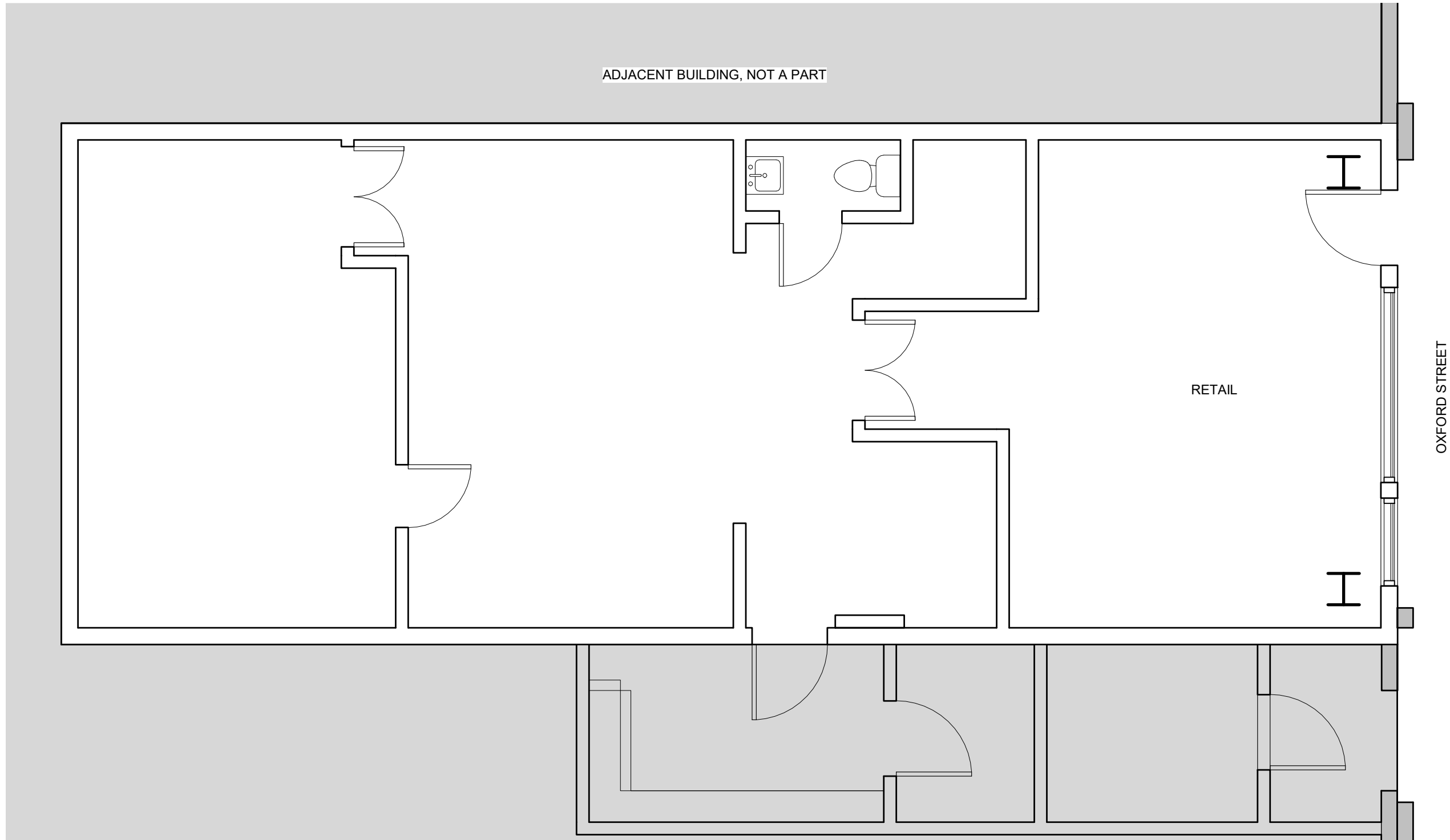
www.coastarchitecture.com

2142 OXFORD STREET - USE PERMIT

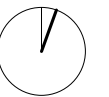


SITE PLAN		A1
Project number	21-22	
Date	8/6/2021	
		Scale As indicated

8/6/2021 11:06:54 AM

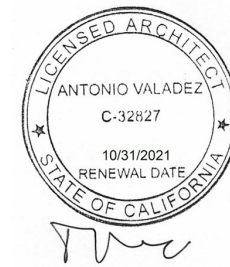


1 EXISTING FLOOR PLAN
1/4" = 1'-0"



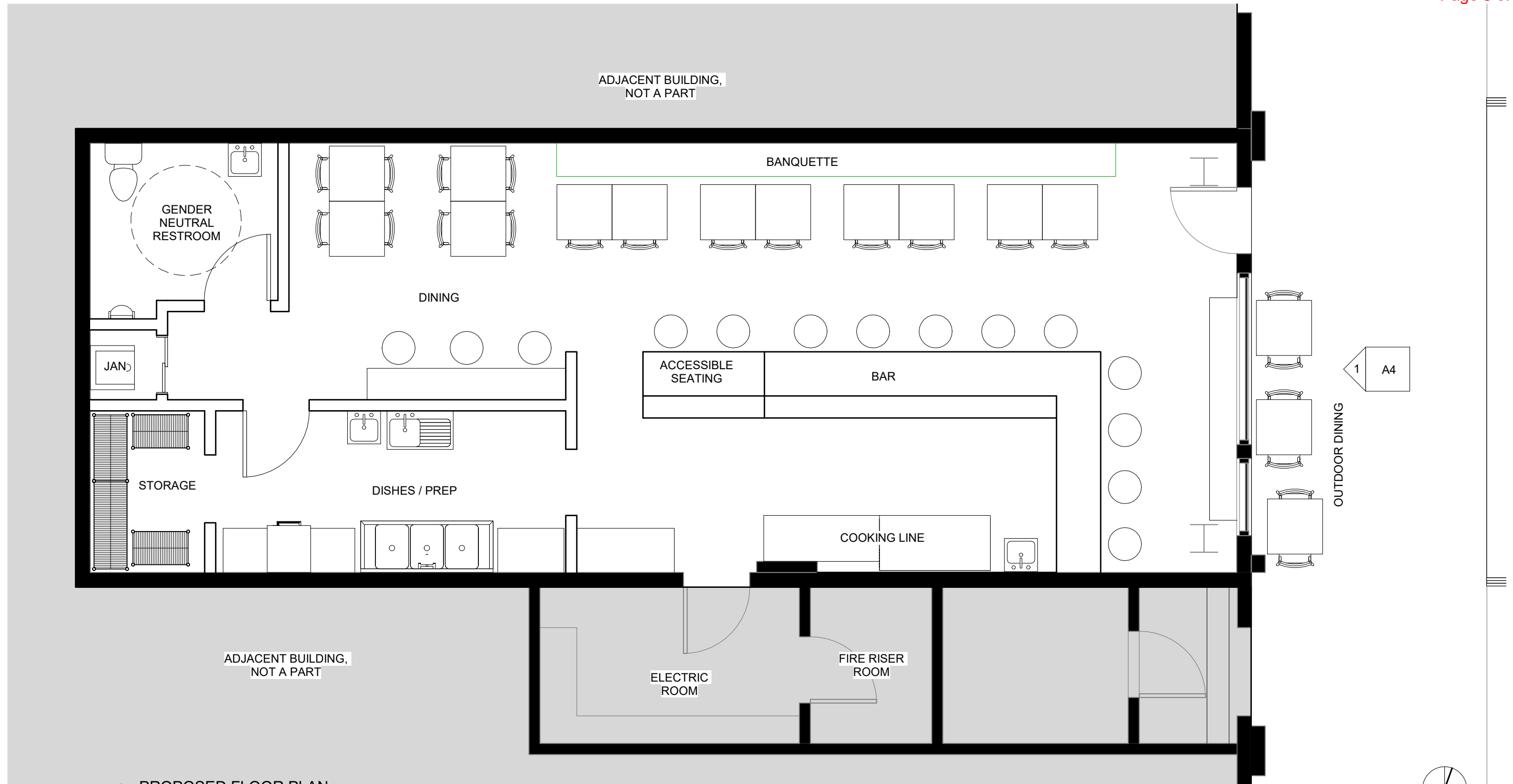
www.coastarchitecture.com

2142 OXFORD STREET - USE PERMIT



EXISTING FLOOR PLAN	
Project number 21-22	A2
Date 8/6/2021	
Scale 1/4" = 1'-0"	

8/6/2021 11:06:54 AM

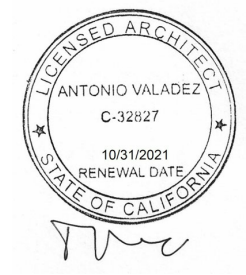


1 PROPOSED FLOOR PLAN
 1/4" = 1'-0"



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2142 OXFORD STREET - USE PERMIT

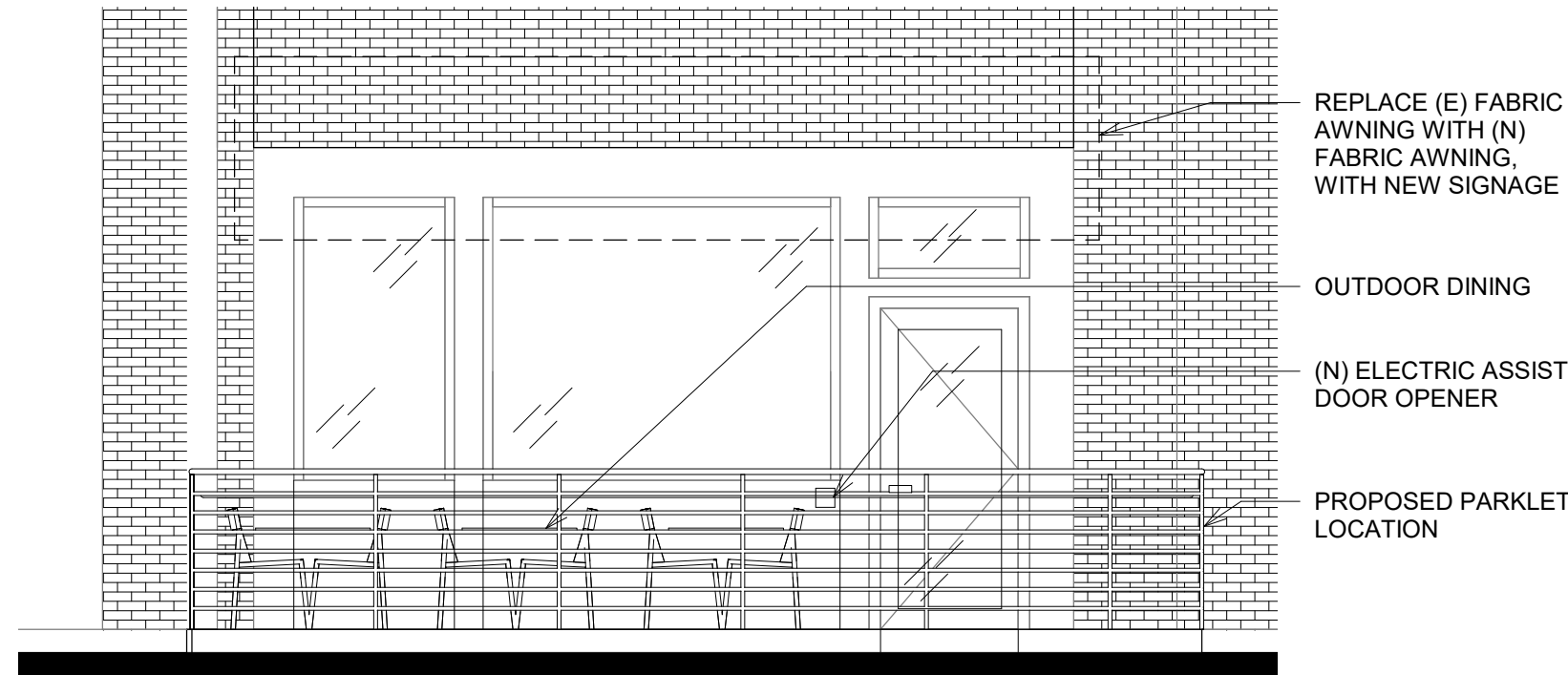


PROPOSED FLOOR PLAN	
Project number 21-22	A3
Date 8/6/2021	
Scale 1/4" = 1'-0"	

8/6/2021 11:06:57 AM



② STREET FRONTAGE
 1 1/2" = 1'-0"

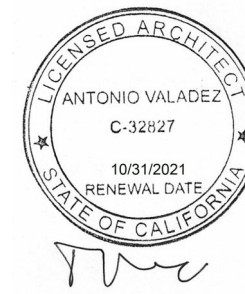


① EAST ELEVATION
 1/4" = 1'-0"

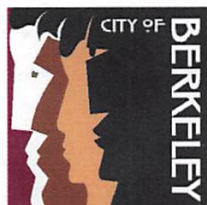


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2142 OXFORD STREET - USE PERMIT



FRONT ELEVATION		A4
Project number	21-22	
Date	8/6/2021	Scale As indicated



Police Department

January 4th, 2022

TO: Nicholas Armour, Senior Planner
City of Berkeley, Department of Planning and Development
1947 Center Street
Berkeley, CA 94704

Re: East Bay Spice Co., 2142 Oxford St. Avenue

Dear Mr. Armour,

This letter is in response to your request to review a proposed change to the above business as outlined in the attached Zoning Project Application. The owner of the East Bay Spice Company remains the same. The business owner is already in possession of a full liquor license for the business currently at 2134 Oxford St. The owner wishes to transfer the license (Type 47) to the new establishment located at 2142 Oxford St.

Based on the information from the Applicant's statement and research of our records, Berkeley Police Department supports approval of this application. The existing license is in good standing with ABC.

The move of the East Bay Spice Company to this location does not seem likely to significantly alter vehicle or pedestrian traffic in the area. This area of Oxford St. is on the comeback after the pandemic and comprises a small but dense and well-traveled restaurant/bar district.

An analysis of police service data at 2134/42 Oxford St. reveals 21 calls for service in our current database, which dates to 2013. It should be noted that the owners of East Bay Spice Company have been in the space since 2018. Of the 21 calls for service at the address 14 are related to East Bay Spice Company, the others occurred before their occupancy.

Of these 21 calls for service in 4 years, the majority of them seemed to be placed by the management asking for assistance, ie, (petty theft incidents, emotionally disturbed people entering the business or causing disturbances.) Based on this information, we believe the proposed upgrade to the business is not at all likely to increase crime or disorder in the district.

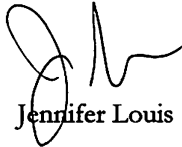
2100 Martin Luther King Jr. Way, Berkeley, CA 94704 Tel: 510.981.5900 TDD: 510.981.5799 Fax: 510.981.5704 E-mail:
police@cityofberkeley.info Website: <http://www.CityofBerkeley.info/Police>

Researching other applications, we have noticed a correlation between businesses having live music and increased calls for service to BPD, often for noise complaints. Deepak Aggarwal indicates they will have live jazz music on occasion.

A search of the California ABC public data portal shows there are no alcoholic beverage violations reported against Venus.

In conclusion, we see no reason to believe this business would increase crime or calls for service in the neighborhood, and see no reason it would have an adverse effect on the health, safety, or morals of the people in the area. We believe it will in fact be a net positive as more businesses open in the neighborhood after the long closures due to the pandemic.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Louis". The signature is stylized with a large initial "J" and a cursive "L".

Jennifer Louis

Interim Chief of Police

JL/gs



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

2142 Oxford Street

Use Permit #ZP2021-0182 to allow service of distilled spirits incidental to food service in a full-service 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: DT- Downtown
- Zoning: Downtown Mixed-Use Commercial (C-DMU Core), Downtown Arts Overlay Zone

B. Zoning Permits Required:

- Use Permit to allow service of distilled spirits incidental to food service in a full-service restaurant, under BMC Section 23.310.030

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

D. Parties Involved:

- Applicant Deepak Aggarwal
- Property Owner Nassar Kashani

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.