



N O T I C E O F A D M I N I S T R A T I V E D E C I S I O N

3001 Telegraph Avenue

Administrative Use Permit #12-20000024

ZONING OFFICER DECISION: The Zoning Officer of the City of Berkeley has APPROVED, pursuant to Zoning Ordinance Section 23B.28.050 and subject to the attached findings and conditions, an Administrative Use Permit at the above address to establish a quick-service food use within an existing 2,063 sq. ft. commercial tenant space with hours of operation from 5:30 a.m. to 9 p.m. daily and to waive three required off-street parking spaces required with the change of use to food service pursuant to:

- Section 23E.36.030 to establish a quick service food use;
- Section 23E.36.060 to allow the coffee shop to open at 5:30 a.m. daily; and
- Section 23E.28.140 to waive three required off-street parking spaces.

APPEAL PERIOD: March 13, 2013 to April 2, 2013

FURTHER INFORMATION:

The Zoning Application and application materials for this project is available online at:
<http://www.cityofberkeley.info/zoningapplications>

Questions about the project should be directed to the project planner, Nathan Dahl, at (510) 981-2482 or ndahl@cityofberkeley.info. All project application materials, including full-size plans, may be viewed at the Permit Service Center (Zoning counter), 2120 Milvia Street, between 8:30 a.m. and 4 p.m., Monday through Friday (closed the 2nd and 4th Friday of every month).

TO APPEAL THIS DECISION (see Section 23B.28.060 of the Berkeley Municipal Code):

To appeal this decision to the Zoning Adjustments Board, you must:

1. Submit a letter clearly and concisely setting forth the grounds for the appeal, along with the required fee (see below) to the Zoning Officer, at the Permit Service Center, 2120 Milvia Street, 1st Floor, Berkeley; or by facsimile to (510) 981-7420. The Land Use Planning Division's telephone number is (510) 981-7410.
2. The appeal and required fee (see below) must be received prior to 4:00 p.m. on the last day of the appeal period shown above (if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day).
3. Submit the required fee to the Permit Service Center (see above; checks and money orders must be payable to 'City of Berkeley'):
 - a. The basic fee for appeals of a Zoning Officer decision to the Zoning Adjustments Board is \$200. This fee may be reduced to \$75 if the appeal is signed by persons who lease or own at least 35 percent of the parcels or dwelling units within 300 feet of the project site, or at least 20 such persons (not including dependent children), whichever is less.
 - b. The fee for appeals of affordable housing projects (defined as projects which provide 50 percent or more affordable units for households earning 80% or less of Area

Median Income) is \$500, which may not be reduced.

c. The fee for all appeals by Applicants is \$2500.

If no appeal is received, the permit will be issued on the first business day following expiration of the appeal period, and the project may proceed at that time.

NOTICE CONCERNING YOUR LEGAL RIGHTS:

If you object to this decision, the following requirements and restrictions apply:

1. If you challenge this decision in court, you may be limited to raising only those issues you or someone else raised in an appeal of the decision.
2. You must appeal to the Zoning Adjustments Board within twenty (20) days after the Notice of Decision of the action of the Zoning Officer 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 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, your appeal of this decision must include the following information:
 - 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 and in court.

cc: Zoning Adjustments Board
Building and Safety Division
Applicant
Abutting & Confronting Owners and Occupants
Neighborhood Groups
Main Library

ATTACHMENT 1

FINDINGS AND CONDITIONS

MARCH 13, 2013

3001 Telegraph Avenue

Administrative Use Permit #13-20000024

To establish a quick-service food use within an existing 2,063 sq. ft. commercial tenant space with hours of operation from 5:30 a.m. to 9 p.m. daily and to waive three required off-street parking spaces required with the change of use to food service.

CEQA FINDINGS

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15301 of the CEQA Guidelines ("Existing Facilities"). Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project will not affect any historical resource.

FINDINGS FOR APPROVAL

2. As required by Section 23B.28.050.A of the Zoning Ordinance, the project, under the circumstances of this particular case existing at the time at which the application is granted, will 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:
 - As required per Berkeley Municipal Code Section 23E.36.090, the proposed project meets the required findings for approval because it would be compatible with the purposes of the District as it would promote development compatible with the adjacent commercial and residential uses by creating a neighborhood serving quick service coffee shop and retail coffee outlet. The use, a quick-service coffee shop, is compatible with the surrounding commercial and residential uses and would complement the neighborhood by providing a new amenity to the neighborhood within walking distance of many nearby residential and commercial uses close to the intersection of Ashby and Telegraph Avenue. The use encourages pedestrian-oriented activity and would contribute to the mix of uses to improve neighborhood identity and would improve the continuity of retail services at the ground level.

- Operation of the coffee shop starting at 5:30 a.m. daily would not create unreasonable impacts to the surrounding neighborhood because the commercial tenant space is on the ground floor of a mixed-use building facing Telegraph Avenue and the use would not create unreasonable levels of noise or activity detrimental to the residential tenants in the building above or in the residential neighborhoods nearby. Coffee shops with hours of operation starting before the standard district limit of 7:00 a.m. for the C-1 district are common throughout the city and do not typically create detrimental impacts.
- The waiver of three off-street parking spaces meets the requirements of Section 23E.28.140 because the new use would be a neighborhood serving, quick-service food establishment that would likely increase pedestrian activity. The coffee shop would primarily serve residents and workers in the neighborhood who are most likely to walk to the establishment rather than drive. Additionally, the coffee shop would primarily serve those residing and working within the neighborhood and not a broader city-wide clientele and therefore would not significantly increase the traffic circulation or parking demand in the area.
- Conditions of Approval #29-38 relating to operations of food service establishments have been added to limit detriment to the surrounding neighborhood.

STANDARD CONDITIONS

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

1. Conditions Shall be Printed on Plans

The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions'. *Additional sheets* may also be used if the *second* sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

2. Applicant Responsible for Compliance with Conditions

The applicant shall ensure compliance with all of the following conditions, including submittal to the project planner of required approval signatures at the times specified. Failure to comply with any condition may result in construction being stopped, issuance of a citation, and/or modification or revocation of the Use Permit.

3. Uses Approved Deemed to Exclude Other Uses (Section 23B.56.010)

- A. This Permit authorizes only those uses and activities actually proposed in the application, and excludes other uses and activities.
- B. Except as expressly specified herein, this Permit terminates all other uses at the location subject to it.

4. Modification of Permits (Section 23B.56.020)

No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Zoning Officer, except that the Zoning Officer may approve changes that do not expand, intensify, or substantially change the use or building.

5. Plans and Representations Become Conditions (Section 23B.56.030)

Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

6. Subject to All Applicable Laws and Regulations (Section 23B.56.040)

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments.

7. Exercised Permit for Use Survives Vacancy of Property (Section 23B.56.080)

Once a Permit for a use is exercised and the use is established, that use is legally recognized, even if the property becomes vacant, except as set forth in Standard Condition #8, below.

8. Exercise and Lapse of Permits (Section 23B.56.100)

- A. A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.
- B. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
- C. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has: (1) applied for a building permit; or, (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

9. Indemnification Agreement

The applicant shall hold the City of Berkeley and its officers harmless in the event of any legal action related to the granting of this Permit, shall cooperate with the City in defense of such action, and shall indemnify the City for any award of damages or attorneys fees that may result.

ADDITIONAL CONDITIONS IMPOSED BY THE ZONING OFFICER

Pursuant to BMC 23B.28.050.D, the Zoning Officer attaches the following additional conditions to this Permit:

Prior to Submittal of Any Building Permit:

- 10.** The applicant shall provide the project planner with the name and telephone number of the individual empowered to manage construction noise from the project. The individual's name, telephone number, and responsibility for noise management shall be posted at the project site for the duration of construction in a location easily visible to the public. The individual shall record all noise complaints received and actions taken in response, and submit written reports of such complaints and actions to the project planner on a weekly basis. **Individual Responsible for Noise Management:**

Name: _____ Phone: _____

- 11.** The applicant and all persons associated with the project are hereby notified that a Transportation Management Permit (TMP) would be required under any of the following circumstances:

- Alterations, closures, or blockages to sidewalks or pedestrian paths

- Alterations, closures, or blockages to vehicle travel lanes (including bicycle lanes)
- Storage of building materials, dumpsters, debris anywhere in the public ROW
- Provision of exclusive contractor parking on-street
- Significant truck activity.

Contact the Permit Service Center (PSC) at 2120 Milvia Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dashboard permits). Public Works Traffic Engineering (981-6400) reviews all submitted TMP requests.

The TMP may include designation of a specific truck haul route. Meter heads (if in the construction area) shall be removed only by City staff. Contact the site inspector 72 hours in advance of required removal so arrangements can be made.

Prior to Issuance of Any Building Permit:

12. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.

During Construction:

13. Construction activity shall be limited to between the hours of 8:00 a.m. and 6:00 p.m. on Monday through Friday, and between 9:00 a.m. and noon on Saturday. No construction-related activity shall occur on Sunday or on any Federal Holiday.
14. If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.
15. Subject to approval of the Public Works Department, the applicant shall repair any damage to public streets and/or sidewalks by construction vehicles traveling to or from the project site.
16. All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter in thickness and secured to the ground.
17. All active construction areas shall be watered at least twice daily, and all piles of debris, soil, sand or other loose materials shall be watered or covered.
18. Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.

19. Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.
20. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way.
21. The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.
22. Any construction during the wet season shall require submittal of a soils report with appropriate measures to minimize erosion and landslides, and the developer shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.

Prior to Issuance of Occupancy Permit or Final Inspection:

23. All construction at the subject property shall substantially conform to the approved Use Permit drawings or to modifications approved by the Zoning Officer.
24. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated **FEBRUARY 21, 2013**.
25. 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.
26. Changes in the nature of the operation including, but not limited to, the addition of seating, changes in hours, and the addition of live entertainment, shall require modification of this permit subject to approval by the Zoning Officer or the Zoning Adjustments Board.
27. The approved floor plan, including the number of seats, shall be followed and the operation shall be conducted as presented to the Board. The maximum occupancy shall be as specified in the application unless otherwise required by applicable regulations.
28. Changes to the building's facade, including doors or windows, site plans, landscaping, signage, and awnings are subject to Design Review and approval prior to issuance of a building permit.

Food Service

29. The hours of operation of the restaurant portion of the business shall be limited to 5:30 a.m. to 12:00 midnight daily. Hours of operation refer to arrival of the first patron and departure of the last patron. Any change in the hours of operation shall be approved by the Zoning Adjustments Board or designee. 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.
30. Cooking odors, noise, exterior lighting and operation of any parking area shall be controlled so as to prevent verified complaints from the surrounding neighborhood. This shall include noise created by employees working on the premises before or after patrons arrive.
31. Smoke and odor control equipment approved by the City Environmental Health Division and providing adequate protection to residential uses above and to the east of the restaurant shall be installed prior to issuance of an Occupancy Permit.
32. Garbage and trash containers that are suitably enclosed and screened from view shall be provided subject to approval of the Zoning Officer, the Health Department and, where applicable, the Design Review Planner. Any establishment selling beverages in cans or bottles that are subject to the State of California Container Deposit Law shall provide separate bins or cans for the placement of such cans or bottles to ensure recycling of such containers.
33. Containers used for the dispensing of prepared food shall identify the establishment. Polystyrene foam food packing is prohibited by Section 11.60.030 of the Berkeley Municipal Code.
34. Any establishment selling beverages in cans or bottles that are subject to the State of California Container Deposit Law shall recycle such containers.
35. The operator of the restaurant shall place a waste receptacle near the entry way and shall insure that garbage on the sidewalk in front of the establishment and within 50 feet thereof will be picked up periodically during each day, so that the sidewalk remains clean.
36. 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.

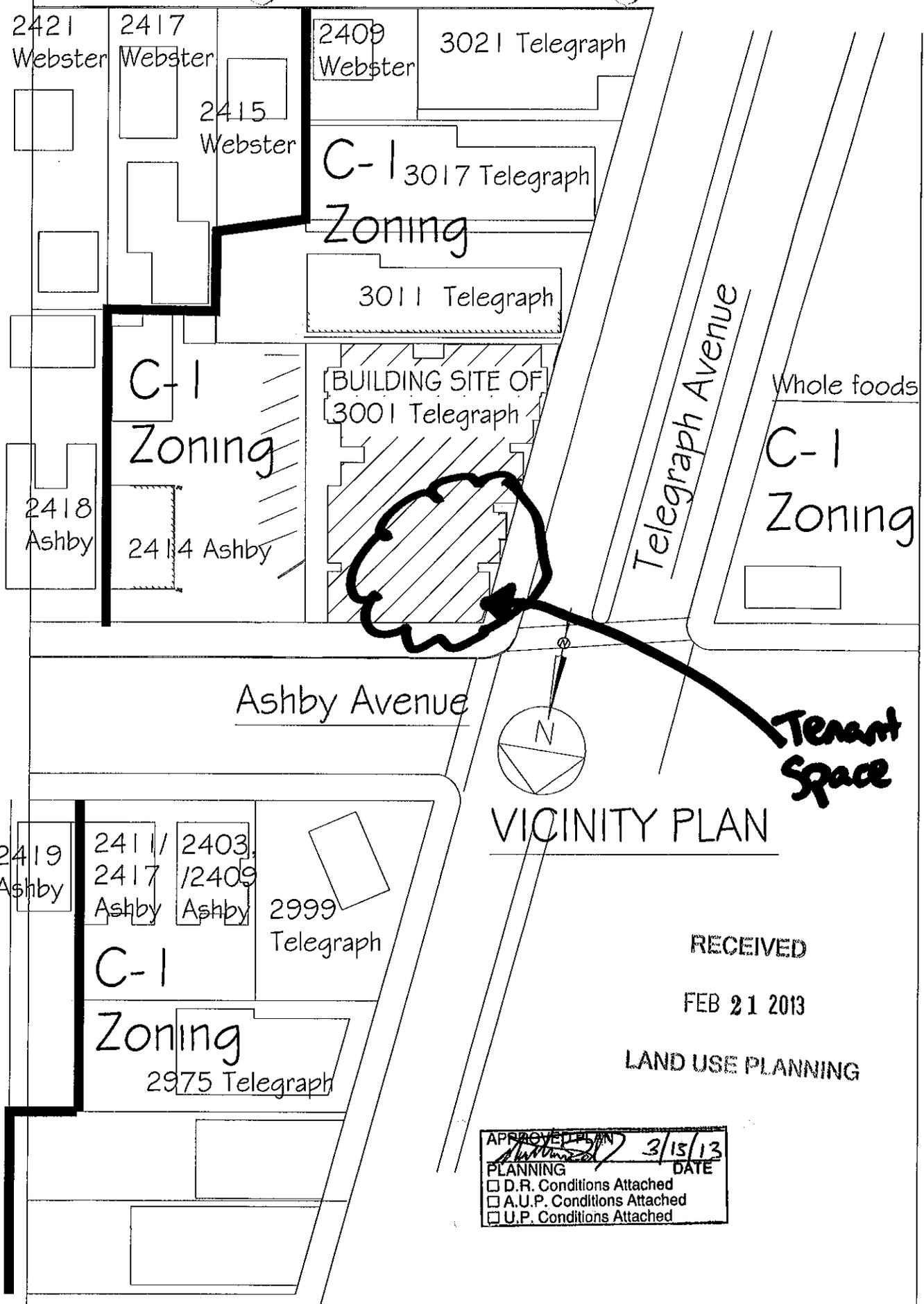
37. The operator shall assume reasonable responsibility for ensuring that patrons do not block the entrance or interfere with pedestrian activity on the adjacent public sidewalk.
38. The applicant shall reimburse employees the maximum non-taxable cost of commuting to and from work on public transportation (e.g., monthly passes) if they so commute, and a notice informing employees of the availability of such subsidy shall be permanently displayed in the employee area.

At All Times (Operation):

39. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
40. 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.
41. Noise and exterior lighting shall be controlled so as to prevent verified complaints from the surrounding neighborhood.

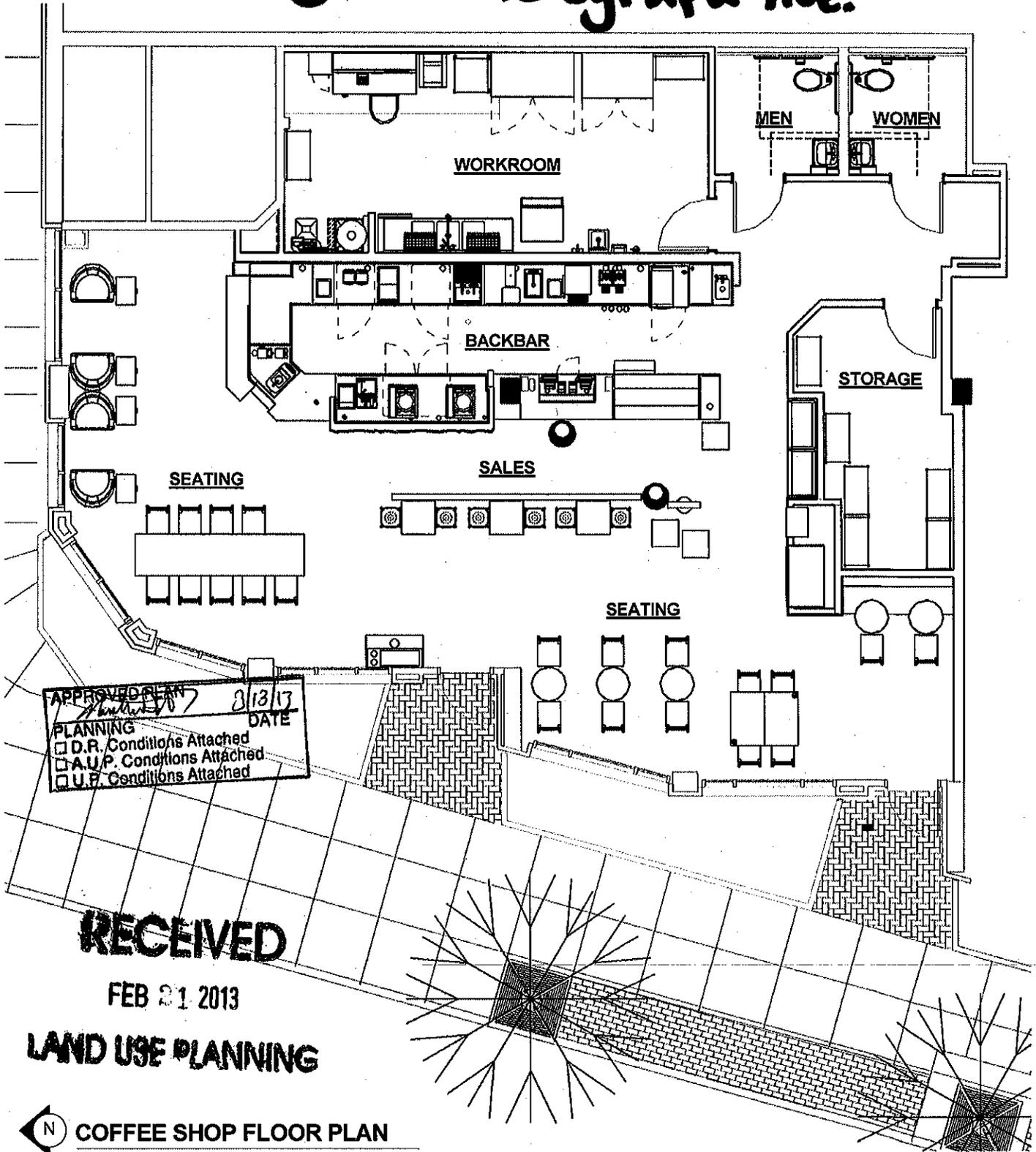


Nathan Dahl, Associate Planner for
Debra Sanderson, Zoning Officer



I
G
C
P
S
A
S
D
S
D
S
S
S
S
S
P

3001 Telegraph Ave.



APPROVED PLAN
PLANNING
 D.R. Conditions Attached
 A.U.P. Conditions Attached
 C.U.P. Conditions Attached

8/13/17
DATE

RECEIVED

FEB 21 2013

LAND USE PLANNING

COFFEE SHOP FLOOR PLAN

Telegraph Ave.