



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
MAY 9, 2013

2454 Telegraph Avenue - Mad Monk Center for Anachronistic Media

Use Permit 12-10000030 to add a full-service restaurant, with the incidental service of beer, wine and distilled spirits, with incidental live entertainment, exterior seating, and a coffee counter with a take-out window, to the existing retail use, and to expand the floor area by 128 SF to 9,529 SF.

I. Background

A. Land Use Designations:

- General Plan: Avenue Commercial
- Zoning: C-T, Telegraph Avenue Commercial

B. Zoning Permits Required:

- Administrative Use Permit, per Section 23E.56.030 of the Zoning Ordinance, to allow a full-serve restaurant along with a to-go counter near the entrance;
- Use Permit, per Sections 23E.56.030 & 23E.16.040 of the Zoning Ordinance, to allow the incidental service of beer, wine & distilled spirits within a full-serve restaurant;
- Administrative Use Permit, per Section 23E.56.030 of the Zoning Ordinance, to allow incidental live entertainment;
- Administrative Use Permit, per Section 23E.56.050.A.1 of the Zoning Ordinance, to allow a minor addition to the building; and
- Administrative Use Permit, per Section 23E.56.030 of the Zoning Ordinance, to allow an exterior service window & exterior seating adjacent to public r-o-w.

C. CEQA Determination: Categorically exempt pursuant to Sections 15301, 15302 and 15304 of the CEQA Guidelines (Class 1, relating to minor alterations of existing structures; Class 2 relating to reconstruction of existing structures and facilities and Class 4, relating to minor alterations to land).

D. Parties Involved:

- Applicant Avila Design, 2471 Shattuck Avenue, Berkeley, CA 94704
- Owner Ken Sarachan, 2401 Shattuck Avenue, Berkeley, CA 94704

Figure 1: Vicinity Map

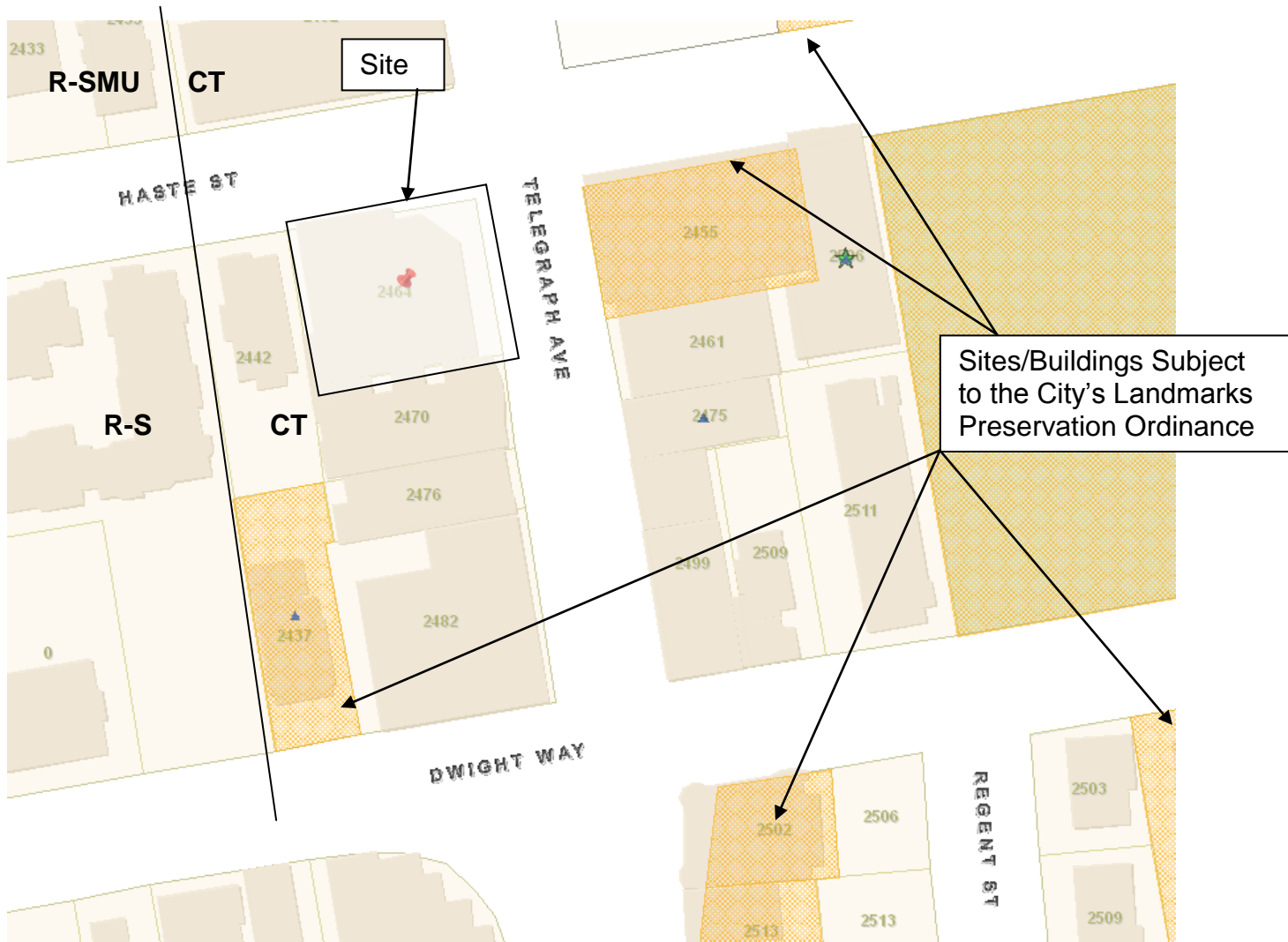
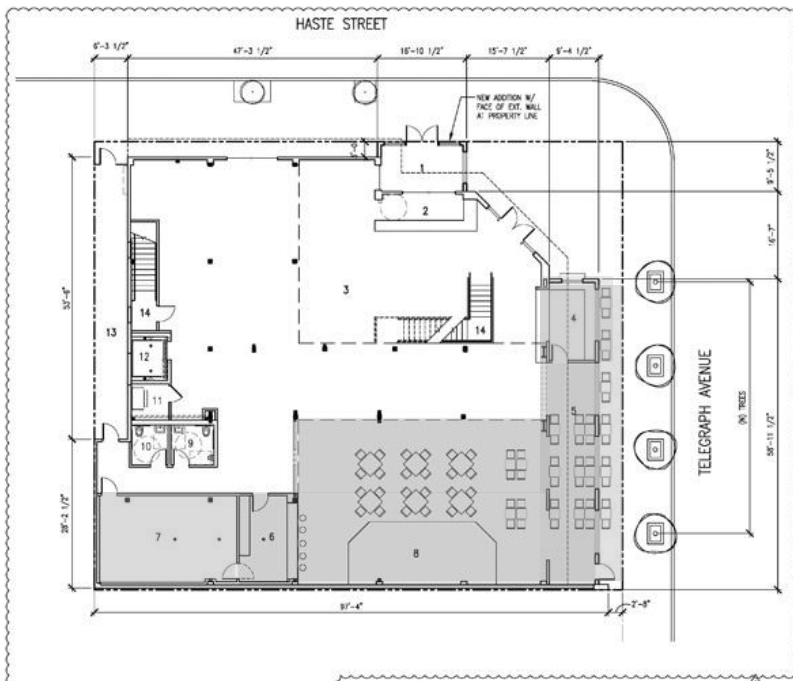


Figure 2: Site Plan



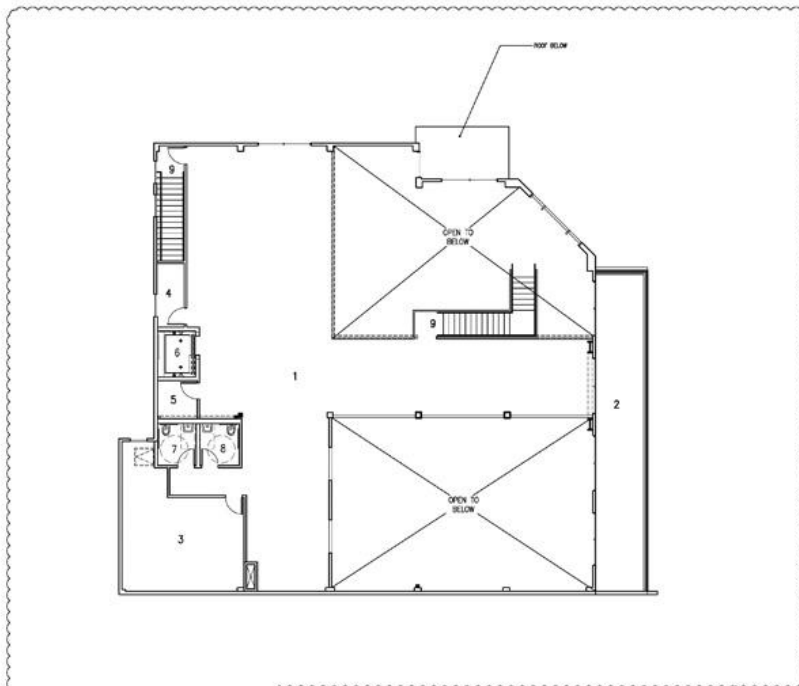
Retail and Related

Food Service and Related

LEGEND

1	FLOWER SHOP	128 S.F.
2	CASH WRAP	131 S.F.
3	RETAIL	3,859 S.F.
4	RESTAURANT - COFFEE COUNTER	208 S.F.
5	RESTAURANT - SEATING	735 S.F.
6	RESTAURANT - BAR	194 S.F.
7	RESTAURANT - KITCHEN	456 S.F.
8	STAIRS	336 S.F.
9	MENS	(E)
10	WOMENS	(E)
11	MECHANICAL	(E)
12	ELEVATOR	(E)
13	SERVICE PATHWAY	(E)
14	STAIRS TO SECOND FLOOR	(E)
TOTAL		6,047 S.F.

Ground Floor Plan



Retail and Related

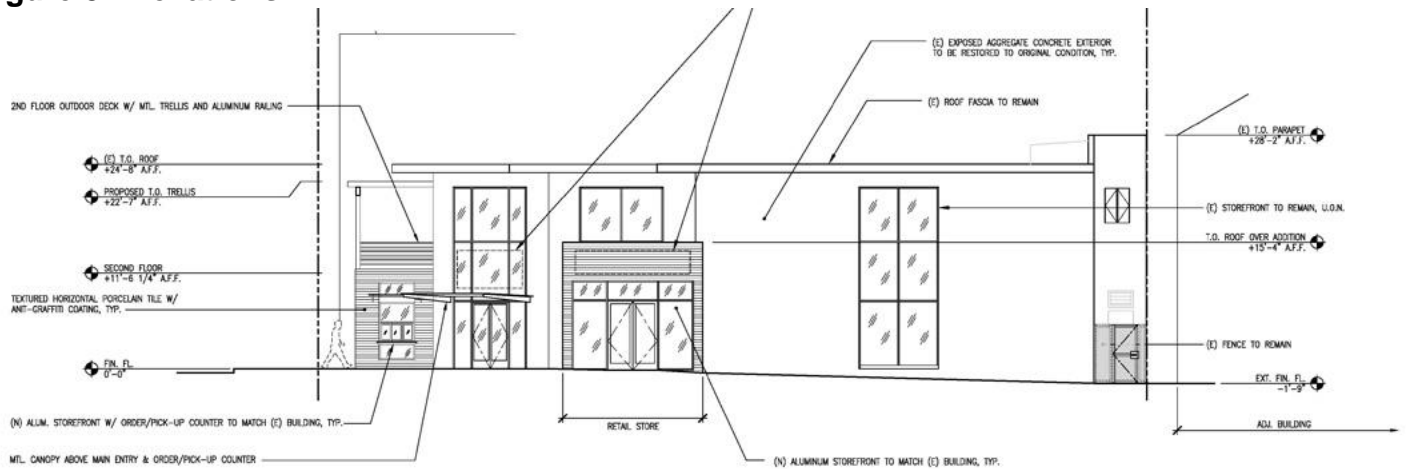
LEGEND

1	RETAIL	2,371 S.F.
2	SUMMER DECK	505 S.F.
3	OFFICE	446 S.F.
4	STORAGE	58 S.F.
5	MECHANICAL ROOM	(E)
6	ELEVATOR	(E)
7	MENS	(E)
8	WOMENS	(E)
9	STAIRS TO GROUND FLOOR	(E)
TOTAL		3,380 S.F.

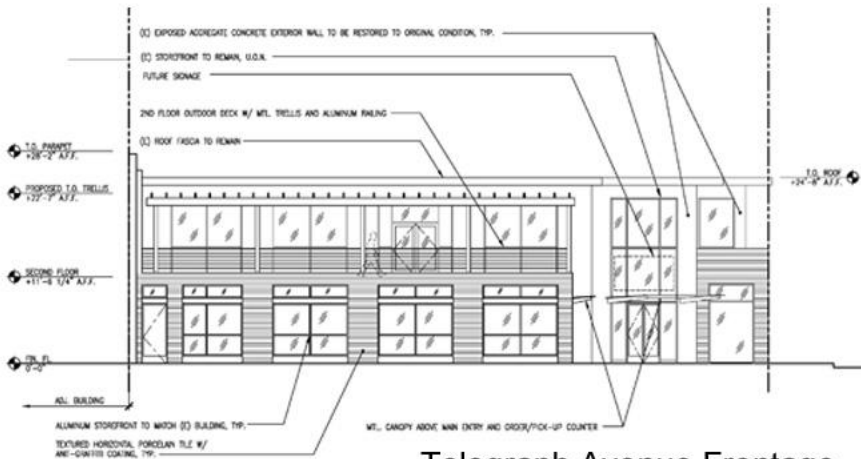
Second Floor Plan



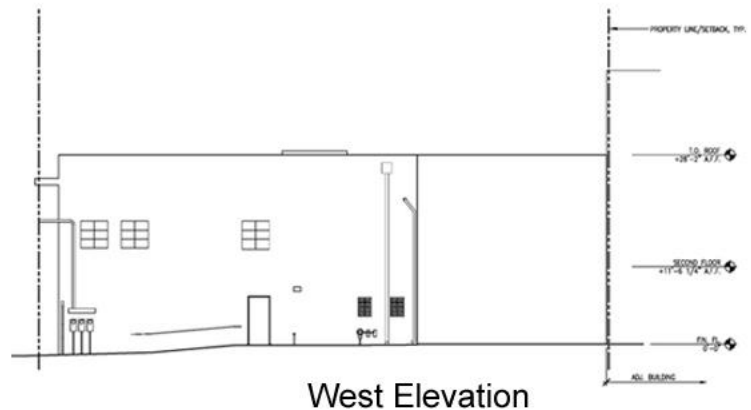
Figure 3: Elevations



Hastee Street Frontage



Telegraph Avenue Frontage



West Elevation

Figure 4: Site Views



Site View, Telegraph Avenue Frontage



Site View, Corner of Telegraph Avenue and Haste Street

Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Commercial (2-stories, vacant)	C-T Telegraph Commercial	Avenue Commercial
Surrounding Properties	North	Vacant land	C-T Telegraph Commercial	Avenue Commercial
	South	Commercial (3-stories, vacant)		
	East	Commercial (Amoeba Records)		
	West	Residential (4 Units)		

Table 2: Special Characteristics

Characteristic	Applies to Project?	Explanation
Alcohol Sales/Service	Yes	On sale only, no off-sale. See Key Issues, below.
Affordable Housing & Childcare Mitigation Fees	Yes	Applies to new construction and existing buildings vacant for more than 3 years.
Quotas	Yes	1 carry-out food service quota would be filed by this project; however, there is no numerical or size limit for full-service restaurants
Green Building Score	Yes	Small Commercial Green Building Checklist completed

Table 3: Project Chronology

Date	Action
September 13, 2012	Application submitted
January 17, 2013	DRC hearing
January 20, 2013	Application deemed complete
March 28, 2013	Public hearing notices mailed/posted
April 11, 2013	ZAB hearing: Continuance
April 25, 2013	Public hearing notices mailed/posted
May 9, 2013	ZAB hearing

Table 4: Development Standards

Standard		Existing	Addition/ (Reduction)	Proposed Total	Permitted/ Required
BMC Sections 23E.56.070-080					
Lot Area (sq. ft.)		8,500	0	8,500	No limit
Gross Floor Area (sq. ft.)		9,401	128	9,529	25,500
Floor Area Ratio		1.1	0	1.1	3
Dwelling Units	Total	0	0	0	0
Building Height	Maximum (ft.)	24	0	24	50
	Minimum (ft.)	24	0	24	35
	Stories	2	0	2	4
Building Setbacks (ft.)	Front (Telegraph)	4'-5"	0	4'-5"	0
	Rear	0	0	0	0
	Left Side	0	0	0	0
	Street Side (Haste)	3'	(3') ^a	0	0
Lot Coverage (%)		70	0	70	100
Usable Open Space (sq. ft.)		N/A	N/A	N/A	N/A
Parking	Automobile	0	0	0	0
	Bicycle	0	0	0	0

^a There would be a partial reduction of the setback to allow for the proposed flower kiosk.

II. Project Setting

A. Neighborhood/Area Description:

The site is located on Telegraph Avenue in the C-T Telegraph Avenue Commercial District, and was formerly the site of Cody's Bookstore. It has been vacant since the bookstore closed in 2006. There are retail and other commercial buildings along Telegraph Avenue to the north, south and east of the site, while a four-unit residential building is abuts the site to the west.

B. Site Conditions:

The existing building on the site is a vacant shell that has seen only minimal maintenance since Cody's bookstore closed. It has structural integrity, and could be adapted to a new commercial use with extensive interior renovation and modest exterior modifications.

III. Project Description

The proposed project calls for creation of a "multi-concept venue" combining retail sales of old records, tapes and books ("anachronistic media") with a restaurant and full bar, a coffee counter with a take-out window, a performance stage, and a small flower shop.

The building would retain a two-level configuration with an interior staircase (and an elevator) although portions of the second floor would be open to create a mezzanine-like space for retail display areas, but with full-height ceilings above the entrance and performance areas. The second level would also provide access to a deck above the greenhouse structure along the Telegraph Avenue frontage that would be open in warm weather. The only addition to the building would be the construction of a small kiosk for a flower shop facing Haste Street adjacent to the building's entrance. Other exterior changes would include re-finished wall surfaces, new lighting and signs and the existing greenhouse structure along Telegraph Avenue would be replaced. The trees adjacent to the greenhouse would be removed and replaced with new street trees closer to the curb.

The interior modifications would include the construction of a full kitchen on the ground floor, a full service bar, a coffee counter with a take out window near the building entrance, a performance stage and related lighting and sound systems, and seating for the restaurant and performance area. Display areas for the retail goods would be created in the retail areas and a retail check-out counter would be added. The existing restrooms (both floors) would be updated and an office area would be added on the second floor.

The proposed hours of operation are Monday through Saturday from 11:00 AM to 2:00 AM and Sunday from 11:00 AM to 11:00 PM.

IV. Community Discussion

A. Neighbor/Community Concerns: Prior to submitting the application to the City, a pre-application poster was erected by the applicant in September 2011. On March 28, 2013 (for the first hearing, April 25th, which was continued) & April 25, 2013, the City mailed 533 notices to adjoining property owners and occupants, and to interested neighborhood organizations. A letter in support is attached.

B. Design Review: The project was presented to the Design Review Committee on January 17, 2013 and was approved (*VOTE (5-0-0-2) Goring, Williams – absent*). The Design Review Committee recommendations are:

- Detail tile on base carefully. Floor tile used in wall application could be problematic for edge and corner detailing. Would prefer tile without ‘knots’ in sample shown.
- Grey color shown may be too somber. Consider a brighter color scheme.
- Recommend lighting that accents the building wall and some of the sidewalk below.
- Recommend new street trees that are more upright and lose their leaves in the winter so that the corner is more open and brighter during the winter.

V. Issues and Analysis

A. Full Service Restaurant, with Incidental service of Beer, Wine and Distilled Spirits & Live Entertainment: The proposed project calls for renovating the former Cody’s Bookstore building, a retail store, to develop a multi-function business with retail sales, a restaurant with full bar, a coffee counter and a live entertainment stage. Section 23E.56.030 of the Zoning Ordinance allows the service of distilled alcoholic beverages only in conjunction with a full service restaurant, subject to approval of a Use Permit by the Zoning Adjustments Board (ZAB). Incidental live entertainment may also be permitted with an Administrative Use Permit.

The proposal would conform to the joint-use requirement set out in Section 23E.56.030 in that the service of distilled alcoholic drinks would be for on-site consumption only, and the drinks would be served in an establishment with a full service restaurant.

However, Zoning Ordinance Section 23E.16.040 specifies that the ZAB must also make findings of “public convenience or necessity” if there are other establishments within a 1,000 foot radius that provide the same type of alcoholic beverage service. The proposed project would require a Type 47 Alcoholic Beverage Control (ABC) license. Because there are three other such establishments within the 1,000 foot radius, including Kips at 2439 Durant Street and Pappy’s Grill at 2367 Telegraph Avenue, the findings of “public convenience and necessity” are required.

In order to assess whether staff could recommend approval of the proposed request for a full bar and a Type 47 liquor license, the project was referred to the Berkeley Police Department for an evaluation. The Police Department expressed concerns in five areas (see Attachment 4 for full details):

- Security measures;
- Hours of operation;
- Impact on police staffing;
- Adding another bar atmosphere to the area; and
- Noise associated with a large and/or intoxicated crowd leaving the property during hours of operation and disturbing the peace of people living in the area.

The Police Department’s recommendations for security measures cover both interior and exterior areas and would be implemented through a request for a Crime

Prevention Through Environmental Design (CPTED) assessment. This process and the specified security measurements have been incorporated into the Findings and Conditions, and implementation would be required if the project is approved.

The remaining Police Department concerns relate to the type of alcoholic beverage service and proposed entertainment venue. These issues, in turn, are core to the findings of public convenience or necessity that must be made in conjunction with the approval of this Use Permit. These findings are discussed individually below:

1. *“The proposed establishment will promote the City’s economic health, contribute to General Plan or Area Plan or further District purposes.”*

The proposed project would re-open an important building on Telegraph Avenue that has been vacant since 2008, bringing a relatively large, new business to a neighborhood that has been in economic decline for years.¹ Staff notes that the applicant has a long record of retail and food service experience on Telegraph Avenue, and believes that his willingness to invest in the restoration of the Cody’s building and re-purpose it as a unique and specialized “multi-concept” venue is an entrepreneurial move that would support the Southside Plan’s primary objective for Telegraph Avenue, which is to “Celebrate and reinforce the Telegraph commercial district’s unique commercial diversity and cultural character.” The project would also be consistent with specific policies of the Southside Plan including Policy ED-A5 “Support the attraction and retention of locally owned, small businesses in the Telegraph retail district.” and Policy ED-B3, “Encourage more evening and nighttime uses in the District to enhance nighttime safety in the area and better meet the needs of residents.”

In summary, staff believes that the project would promote the economic health of Telegraph Avenue and of the City, and that this finding can be made.

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

A restaurant/bar and entertainment venue of this style and character would not draw as many patrons, nor generate the same level of economic benefits for the owners or the City, if it could not provide a full range of services, including a full range of alcoholic beverage services, to its customers. The applicant has indicated that he does not intend to operate the Mad Monk Center as a party place and that he expects to serve a somewhat older clientele, and a clientele with different interests, than those who are attracted to Pappy’s and Kip’s, which currently have Type 47 liquor licenses.

3. *“The applicant has not operated a licensed establishment which has been the subject of verified complaints or violations regarding alcohol, public safety or nuisance statutes or regulations.”*

There is no ABC record on file for this specific applicant, and hence, no record of any current or past disciplinary actions.

¹ The Southside Plan reports that sales tax receipts on Telegraph Avenue were 39% lower in 2007 than in 1991.

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

The proposed restaurant is located within 1,000 feet of People’s Park. Staff does not believe that the issuance of a liquor license associated with a full service restaurant could adversely affect the character of use or the operation of People’s Park. Indeed, the restoration of businesses in vacant stores on Telegraph Avenue, could, over time, have a positive effect on the character of People’s Park.

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

The Berkeley Police Department has reviewed the application and has noted that two other establishments along Telegraph Avenue with music, dancing and alcohol (Pappy’s at 2367 Telegraph and Kip’s at 2439 Durant Ave.) have long records of police calls for crowds and fights both inside and outside their properties. The Police Department recommends a Type 41 (beer and wine) license because “another alcohol venue with distilled liquor and a club-like atmosphere . . . will further deplete police resources and place a strain on the Berkeley Police Department’s personnel after 12:00 AM due to a reduction of police staffing at that hour.”

Based on conversations with the applicant, who will also be the operator, the Mad Monk Center for Anachronistic Media will be a different kind of venue and will not provide a club-like atmosphere similar to Pappy’s or Kip’s. The applicant’s statement indicates that the entertainment stage will house poetry slams, jazz, folk, classic rock, R&B, comedy performances, and book readings – all while also continuing the retail sales. Staff does not believe that performances of this nature are likely to result in a party atmosphere, even in the presence of alcohol, and that the risk of frequent public disturbances and calls to the police would not be nearly as great as the records that have been established by the existing Type 47 license holders within the Telegraph area.

B. Hours: Until May 3, 2013, the hours for businesses that serve alcohol in the entire C-T District are 7:00 AM to 10:00 PM weekdays and 7:00 AM to midnight on weekends (with a Use Permit the hours may be extended). For businesses without alcohol sales or service the hours are 7:00 AM to midnight Sunday-Thursday and 7:00 AM to 2:00 AM on weekends (with an Administrative Use Permit the hours may be extended).

On March 19, 2013, the City Council amended the C-T District to expand the hours. Except for retail sales of alcohol (for off-site consumption), all businesses between Bancroft Way and the north side of Dwight Way may operate 24 hours per day, seven days per week. Prior to voting to extend the hours, the Council was advised that the Police Department and the Code Enforcement Division were concerned that later hours of operation could result in increased negative behavior on Telegraph Avenue and increased calls for police service, which could reduce police availability for other calls. Nevertheless, the Council extended the hours because later hours of

operation on Telegraph Avenue will increase late night options available to area residents and should encourage more people to be out in the district at night. In addition, the Council felt that the expanded hours would attract new businesses to the District. The Council directed that after January 1, 2016, the Planning Commission shall review the expanded hours of operation to assess the impact on the C-T Commercial District.

As this site is north of Dwight Way, and would not include retail sales of beer, wine or distilled spirits (for off-site consumption), this business may operate 24 hours per day, seven days per week.

C. Exterior Service Window, Exterior Seating & CT District Quota: The project design calls for restoring the greenhouse room along the Telegraph Avenue frontage for restaurant seating and adding a door at the southern end. The trees that are currently located adjacent to the greenhouse structure would be removed and replaced with street trees in sidewalk openings. Removal of the trees would leave space for up to six small outdoor dining tables adjacent to restaurant space that would remain on private property and not encroach into the public right-of-way. A take-out window would be added adjacent to the main entrance, and would be served from the coffee counter inside.

Zoning Ordinance Section 23C.56.030 allows outdoor activities and exterior service windows in the C-T District with a Use Permit. Carry-out food service stores are also allowed subject to numerical limitations. Section 23C.56.040 allows up to 19 carry out food service establishments in the District as a matter of right, with a Use Permit required to exceed the limit. Currently there are 13 carry-out food service shops on Telegraph Avenue and the addition of the proposed service window will not cause the limit to be exceeded. Based on these considerations staff believes that the Board can approve the proposed exterior seating and the requested carry-out food service.

D. Flower Sales Kiosk: The project plans call for construction of a 128 sq. ft. enclosed space for a flower sales kiosk facing Haste Street near the building entrance. The space would extend to the property line where the building is currently set back by three feet and would open onto the sidewalk. A tree that is currently in this location would be removed. This is the only expansion of the existing building that is proposed in conjunction with the project.

Zoning Ordinance Section 23E.56.050.A.1 allows additions to existing structures when the addition complies with the purposes of the District. Staff believes that the addition furthers the purposes of the District as noted in Section F, below.

E. Compatibility with Purposes of the C-T District: The Zoning Ordinance, Section 23E.56.020, lists 21 purposes of the Telegraph Avenue Commercial District and requires, in Section 23E.56.090, that the Board make certain findings, to the extent applicable, in approving a Use Permit for a project in this District.

While the proposed project cannot be said to meet all of the purposes of the C-T District, and particularly those that encourage additional housing and mixed

commercial-residential uses, staff believes that this project is one that would “help maintain the cultural quality of the District . . . ” (Policy E), and would implement policies that focus on maintaining the unique character of the street and serving the local population.

More specifically, staff believes that the proposed Mad Monk Center is a project that would further the following stated purposes of the C-T District:

- It would be a business that caters to “the needs of the population groups using the District, especially the University population and the surrounding resident population” (Purpose C) in that it would provide unique goods (old records and tapes) that are a specialty of Telegraph Avenue, in a venue that would serve food and provide entertainment intended to appeal to the local population.
- The proposed focus on anachronistic media would be consistent with several purposes of the District in that it would add variation to an existing category of use that is already found along Telegraph Avenue (Purpose G), further a category of use that can attract all age groups and a range of users and interests (Policy H), and it would not detract from the unique mix of goods and services that is available in the District (Purpose U). At the same time, this focus is one with a specialized regional appeal (Policy E), but not such a large regional appeal that it would generate substantial additional new traffic (Policies D, E and F). It is also noted that the entertainment center included in the design is small -- too small to generate substantial additional traffic.
- By proposing to rehabilitate and reuse the former Cody’s Bookstore building the project would comply with Purpose N, which calls for new development to protect and enhance historically and architecturally significant buildings (even though the building is not officially historic or architecturally important). Because the exterior modifications are proposed to be modest, the project would conform with Purpose Q, which calls for “renovations to harmonize with and enhance the unique character of the District” and with Purpose J, which calls for architecture which “reinforces . . . the pedestrian orientation of the District.”
- Finally, it is noted that the project sponsor currently operates a business on Telegraph Avenue and that the project would be consistent with Purpose O, which encourages the establishment and survival of small, locally-owned businesses.

Staff believes that the project has the potential to continue and enhance a unique and specialized commercial use that is well established on Telegraph Avenue (anachronistic media) and contributes to its unique character. The proposed restaurant and entertainment venue would serve the local population, without drawing substantial additional vehicular traffic. Although the proposal would not provide any new housing, staff believes the Board can find that the proposal would be compatible with the applicable purposes of the C-T District.

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

1. Policy LU-3–Infill Development: “Encourage infill development that is architecturally and environmentally sensitive, embodies principles of sustainable planning and construction, and is compatible with neighboring land uses and architectural design and scale”.

The proposed project is aimed at revitalizing the former Cody’s Bookstore building to create a multiple focus business combining retail shopping for anachronistic media, with food services, a full range of beverages, and an entertainment venue, while retaining the architectural scale and character of the existing building. By retaining most of the existing building and adapting it to a new set of uses intended to serve the population of the University-centered area, the project would appear to be consistent with the General Plan’s Infill Development policy.

2. Policy LU-27–Avenue Commercial Areas: “Maintain and improve Avenue Commercial Areas including . . . Telegraph Avenue . . . as pedestrian-friendly, visually attractive areas of pedestrian scale and ensure that Avenue areas fully serve neighborhood needs as well as a broader spectrum of needs”.

By re-opening a building that has been vacant for five years the project would help revitalize Telegraph Avenue. The proposed design would retain the pedestrian-friendly scale and amenities of the former bookstore building by retaining the greenhouse dining area along the Telegraph frontage, restoring the former flower stand, and by adding a sitting deck on the second floor for warm weather use. The restaurant and entertainment operations would extend the hours of operation beyond normal retail store hours, adding life and activity to the Avenue and aiming to attract the University-focused population that characterizes the area.

3. Policy UD-16–Context: “The design and scale of new or remodeled buildings should respect the built environment in the area, particularly where the character of the built environment is largely defined by an aggregation of historically and architecturally significant buildings”.
4. Policy UD-24–Area Character: “Regulate new construction and alterations to ensure that they are truly compatible with and, where feasible, reinforce the desirable design characteristics of the particular area they are in”.

The proposed project calls for re-purposing the former Cody’s Bookstore, an iconic Telegraph business that closed five years ago. By retaining the building’s shape and structure, along with the greenhouse dining space along the sidewalk and the flower stand, the project would respect and reinforce memorable design characteristics of the area.

G. Southside Area Plan Policy Analysis: The Southside Area Plan, adopted in 2011, also contains several policies applicable to the project, including the following:

1. Policy LU-F14: “Mixed-use buildings with housing above retail uses are the preferred land use throughout this subarea”.

The project involves the rehabilitation and re-opening of an existing two-story retail building. The change of use of this existing non-conforming structure is consistent with the applicable City policies and zoning provisions (23C.04.060 and 070).

2. Policy ED-A5: “Support the attraction and retention of locally owned, small businesses in the Telegraph retail district”.
3. Policy ED-B1: “Improve the physical appearance and sense of safety in the district”.
4. Policy ED-B3: “Encourage more evening and nighttime uses in the District to enhance nighttime safety and better meet the needs of residents”.

The proposed project would be a locally owned small business, would improve the streetscape by re-opening a large vacant and unused building and would encourage more evening and nighttime use by providing dining and entertainment opportunities in combination with retail sales.

5. Objective CC-A: “Retain and enhance the architectural character and appearance of Commercial Subareas”.

The project proposes to retain the architectural character of an iconic Telegraph Avenue building, while adapting it to new uses that would reinforce the existing uses of the commercial area.

VI. Recommendation

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

- A. APPROVE Use Permit #12-1000030 pursuant to Section 23B.32.040 and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

1. Findings and Conditions
2. Project Plans, received January 10, 2013 & Applicant’s Statement
3. Notice of Public Hearing
4. March 18, 2013, Letter from Berkeley Police Department
5. February 19, 2013, Letter from the Telegraph Business Improvement District

Staff Planner: Doug Donaldson, consulting planner; for Greg Powell, Project Manager, Gpowell@ci.berkeley.ca.us, (510) 981-7414