



City of Santa Barbara California

CITY OF SANTA BARBARA PLANNING COMMISSION

RESOLUTION NO. 010-24 504 STATE STREET CONDITIONAL USE PERMIT JULY 11, 2024

Assessor's Parcel Number: 037-173-020
Zoning Designation: M-C (Manufacturing Commercial)
Application Number: PLN2023-00407
Owner: RTK Associates
Applicant: Omar Khashen; Project 1938 LLC

The 11,200-square-foot lot is currently developed with a two-story mixed-use building comprised of a series of commercial storefronts (502-510 State Street) constructed in 1925 by Edwards and Plunkett and is a contributing historic resource. The project involves a new Alcohol Beverage Control (ABC) license (Type 20) for Lily's Donuts & Pops at 504 State Street, proposing to sell artisan donuts and popsicles paired with local beer and wine. The Type 20 license would allow Lily's to sell wine and beer for off-site consumption under the ABC Act. Review and approval of a variation to the Alcohol Beverage Retail Establishments "distance" development standard is requested from the Planning Commission pursuant to Santa Barbara Municipal Code Section 30.185.075. Exterior changes are limited to new signage. See Exhibits A and B for project plans and an applicant letter, respectively.

The discretionary applications under the jurisdiction of the Planning Commission at this hearing are:

- A. A Conditional Use Permit to allow the sale of alcoholic beverages for offsite consumption with a Type 20 license under the Alcoholic Beverage Control Act (SBMC §30.185.075 & SBMC §30.215)

Confirm the Environmental Analyst's determination that the project is exempt from further environmental review pursuant to the California Environmental Quality Act Guidelines Section 15301[Existing Facilities and SBMC Chapter 22.100.

WHEREAS, the Planning Commission has held the required public hearing on the above application, and the Applicant was present.

WHEREAS, 0 people appeared to speak and the following exhibits were presented for the record:

1. Staff Report with Attachments, July 3, 2024; and
2. Project Plans.

NOW, THEREFORE BE IT RESOLVED that the City Planning Commission:

- I. Approved the subject application, making the following findings and determinations:

- A. **ENVIRONMENTAL REVIEW (SBMC §22.100.160.C; CEQA Guidelines)**

The determination of exemption, as discussed in the staff report dated July 3, 2024, is appropriate, because Section 15301 allows for operation, permitting, licensing, or minor alteration of existing private structures involving negligible or no expansion of former use. The project qualifies for an

exemption from further environmental review under CEQA Guidelines Section 15301, based on the City staff analysis and the CEQA Certificate of Determination on file for this project.

B. CONDITIONAL USE PERMIT (SBMC §30.175.075 & §30.215)

1. The proposed use is allowed with a Conditional Use Permit within the applicable zone district and complies with all specific requirements for the Conditional Use Permit, as well as all other applicable provisions of this title and all other titles of the municipal code;

The retail sale of food and beverages is an allowed use by right in the Manufacturing Commercial zone. As the purpose of the zone is to provide a wide range of commercial uses, serving as the City's major retail, professional, and service zone, the sale of wine and beer in the store is not inconsistent with the zoning designation. The operation meets the specific requirements of the Conditional Use Permit for alcoholic beverage retail establishments, with approval of the variation to distance.

2. The proposed use and development is deemed essential or desirable to the public convenience or welfare and is consistent with the General Plan and any applicable specific plan;

The proposed use is deemed desirable to the public convenience because the use involves a small shop that provides handcrafted artisan desserts and coffee to grab-and-go within the Lower State Street Neighborhood. Inclusion of wine and beer in the store inventory provides a public convenience to patrons of the store, providing an alternative and buy local option in a commercial area of the city.

3. The proposed use and development will not be adverse to the public health, safety, or general welfare of the community, nor materially detrimental to surrounding properties or improvements;

Operationally, the business is anticipated to operate in a manner that is not materially detrimental to surrounding properties as the site is in a commercial area of the city, surrounded by a mix of land uses, particularly other retail uses. Based on feedback from the Police Department the licensing to allow wine and beer sale for off-site consumption as a small component to the shop satisfies the public convenience and necessity and will not be a detriment.

4. The total area of the site and the setbacks of all facilities from property and street lines are of sufficient magnitude in view of the character of the land and of the proposed development that significant detrimental impact on surrounding properties is avoided;

Setbacks for nonresidential uses are not applicable in the Manufacturing Commercial zoning district. The existing commercial building footprint will not be altered as part of the project; therefore the character of the land and the proposed development will not be a detrimental impact on surrounding properties.

5. The design and operation of the project and its components, including hours or manner of operation, outdoor lighting and noise generating equipment, will not be a nuisance to the use of property in the area, particularly residential use;

The design and operation and its components will not be a nuisance to the use of property in the area. With approval of the variation to distance requirements, allowing for an

alcoholic beverage retail establishment within 500 feet away from a religious facility, or a lot that contains a public or private elementary or high school, the project complies with the performance and development standards applicable to alcoholic beverage retail establishments. Business hours of operation are anticipated to be typical of the use and to not created a nuisance to the surrounding area.

6. Adequate access and off-street parking including parking for guests is provided in a manner and amount so that the demands of the development for such facilities are adequately met without altering the character of the public streets in the area at any time; and

The site is exempt from off-street parking because it is located in the Central Business District and a 100% Zone of Benefit for parking requirements. Additionally, long-term bicycle parking requirements will be satisfied with the approval of a waiver.

7. The appearance of the developed site in terms of the arrangement, height, scale and architectural style of the structures, location of parking areas, landscaping, open space and other features is compatible with the character of the area.

No changes are proposed to the exterior of the building, therefore the appearance of the developed site in terms of arrangement, height, scale and architectural style, location of parking and other features remains compatible with the character of the area, that is comprised of a mix of uses.

C. ALCOHOLIC BEVERAGE RETAIL ESTABLISHMENTS

1. The proposed alcoholic beverage retail establishment shall not have a significant adverse effect on the crime rate based on feedback from the Police Department that the alcoholic beverage licensing will serve the public convenience, and because crimes involving public drunkenness, illegal sale or use of narcotics, drugs or alcohol, were not noted at the subject location.
2. The upkeep and operating characteristics of the retail establishment are compatible with, and will not adversely affect, the livability or appropriate development of abutting properties and the surrounding neighborhood. The shop provides a benefit by providing handcraft artisan dessert, coffee, and curated local wine and beer pairing options to-go in the Lower State Street Neighborhood.

D. OTHER FINDINGS

The Planning Commission finds that the requested variation to the distance requirements requiring that new non-transferred licenses only be located on a lot that is a minimum of 500 feet away from any residentially zoned lot, or any lot that contains a public or private elementary or high school, health care facilities, social services facility, substance abuse treatment centers, religious facilities, parks or playgrounds, is appropriate to avoid an unreasonable hardship to the establishment, based on feedback from the Police Department that the establishment has a low crime rate, and the sale of alcoholic beverages for off-site consumption represents only one component of the overall shop and is not anticipated to be a nuisance to the nearby school or religious facility.

- II. Said approval is subject to the following conditions:

- A. **Order of Development.** In order to accomplish the proposed development, the following steps shall occur in the order identified:
1. Record any required documents (see Recorded Conditions Agreement section).
 2. Obtain the appropriate license from the California Department of Alcoholic Beverage Control (ABC).
 3. Contact City of Santa Barbara Police Department to create a Police Department file for the subject property including agreement to payment of fees for annual inspection services.

Details on implementation of these steps are provided throughout the conditions of approval.

- B. **Recorded Conditions Agreement.** The Owner shall execute a *written instrument*, which shall be prepared by Planning staff, reviewed as to form and content by the City Attorney and Community Development Director, recorded in the Office of the County Recorder, and shall include the following:

1. **Approved Development.** The development of the Real Property approved by the Planning Commission on July 11, 2024, is for a Conditional Use Permit to allow for the sale of wine and beer for off-site consumption at Lily's Donuts & Pops, an artisan food and beverage shop located near the corner of State Street and East Haley Street. No exterior changes are proposed, as shown on plans signed by the chairperson of the Planning Commission on said date and on file at the City of Santa Barbara.
 - a. Lighting shall comply with the Outdoor Lighting Ordinance (SBMC Chapter 22.75) in order to maintain a safe and secure environment.
 - b. Noise levels generated by the operation of project comply with the City's Noise Ordinance (SBMC Chapter 9.16). Amplified sound at the property line shall not exceed 60 dB(A).
 - c. A change in use or increase in intensity of use related to the off-site sale of alcoholic beverages could have potential land use impacts. Prior to initiating a change of use or an increase in intensity of use, a report shall be submitted by the project to the Community Development Director to determine whether additional City approvals are necessary such as Temporary Use Permits or an Amendment to the Conditional Use Permit, or any other appropriate review procedure.
2. **Uninterrupted Water Flow.** The Owner shall allow for the continuation of any historic flow of water onto the Real Property including, but not limited to, swales, natural watercourses, conduits and any access road, as appropriate.

- C. **General Conditions.**

1. **Mandatory Training.** All new store managers shall complete the Responsible Beverage Service (RBS) Training or the Licensee Education on Alcohol and Drugs program (LEAD) Training within 60 days from the start of their business or employment and are required to carry a valid certification while selling alcoholic beverages. To satisfy this requirement, a certified program must meet the standards of the ABC Responsible Beverage Service Advisory Board or other certifying or licensing body designated by the State of California.

2. **Presentation of Documents.** A copy of any City conditions of approval, applicable California Department of Alcoholic Beverage Control conditions and licenses, and any required training requirements, shall be posted in at least one prominent place within the interior of the establishment where it will be readily and legible to the employees and patrons of the establishment; and shall be presented to any City, County, or State enforcement officer or official upon request.
3. **Containers.** The sale, distribution, dispensation, and display of alcoholic beverages is limited to the following type and size of containers.
 - a. **Wine and Wine Coolers.** Wine must be in a container with a volume of 750 milliliters or greater in size, except multipack containers of wine, and multipack wine coolers containing no more than six percent alcohol by volume. Multipack wine and wine coolers shall not be sold in containers smaller than 12 ounces and in units of less than one four-pack for off-site consumption.
 - b. **Beer, Ale, and Malt Liquor.** Beer, ale, and malt liquor must be in a container with a volume greater than 32 ounces. Multipack beer, ale, and malt liquor in containers of 32 ounces or less shall not be sold in units less than one three-pack for off-site consumption.
4. **Compliance with Requirements.** All requirements of the City of Santa Barbara and any other applicable requirements of any law or agency of the State and/or any government entity or District shall be met.
5. **Approval Limitations.**
 - a. The conditions of this approval supersede all conflicting notations, specifications, dimensions, and the like which may be shown on submitted plans.
 - b. Any deviations from the project description, approved plans or conditions must be reviewed and approved by the City, in accordance with the Planning Commission Guidelines.

Deviations may require changes to the permit and/or further environmental review. Deviations without the above-described approval will constitute a violation of permit approval.
6. **Public Nuisance.** A public nuisance shall be deemed to exist if the following activities are repeated within the premises or in close proximity of the premises from or related to the sale and consumption of alcohol such as: disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic violations, curfew violations, or lewd conduct. The City Administrator may take any action necessary to abate such public nuisance, including but not limited to revocation proceedings.
7. **Reporting.** If the City Administrator or the Chief of Police determine there has been a violation of this chapter or any of the conditions set forth in the Conditional Use Permit issued in compliance with SBMC §30.185.75, a report of those violations shall be

presented to the Planning Commission for review that may include the date, time, and specificity of the violations. The Planning Commission shall require an annual review of any new and existing alcoholic beverage retail establishments.

8. **Responsibility to Enforce.** The provisions of this Conditional Use Permit shall be administered and enforced by the City Administrator in conjunction with the Chief of Police. Such officer, or their duly authorized representatives, may enter upon private or public property to examine an alcoholic beverage retail establishment for the purposes of enforcement and regulation of the conditions of approval, performance standards, and other applicable regulations.
9. **Litigation Indemnification Agreement.** In the event the Planning Commission approval of the Project is appealed to the City Council, Applicant/Owner hereby agrees to defend the City, its officers, employees, agents, consultants and independent contractors (“City’s Agents”) from any third party legal challenge to the City Council’s denial of the appeal and approval of the Project, including, but not limited to, challenges filed pursuant to the California Environmental Quality Act (collectively “Claims”). Applicant/Owner further agrees to indemnify and hold harmless the City and the City’s Agents from any award of attorney fees or court costs made in connection with any Claim.

Applicant/Owner shall execute a written agreement, in a form approved by the City Attorney, evidencing the foregoing commitments of defense and indemnification within thirty (30) days of being notified of a lawsuit regarding the Project. These commitments of defense and indemnification are material conditions of the approval of the Project. If Applicant/Owner fails to execute the required defense and indemnification agreement within the time allotted, the Project approval shall become null and void absent subsequent acceptance of the agreement by the City, which acceptance shall be within the City’s sole and absolute discretion. Nothing contained in this condition shall prevent the City or the City’s Agents from independently defending any Claim. If the City or the City’s Agents decide to independently defend a Claim, the City and the City’s Agents shall bear their own attorney fees, expenses, and costs of that independent defense.

III. Said approval is subject to the following time Limits:

- A. The Planning Commission action approving the Conditional Use Permit shall terminate three (3) years from the effective date of the approval, per Santa Barbara Municipal Code §30.205.120, unless:
 1. An extension is granted by the Community Development Director prior to the expiration of the approval; or
 2. The City is in receipt of the recorded agreement for the Conditional Use Permit allowing for continued sale of alcoholic beverages for off-site consumption.

This motion was passed and adopted on the 11th day of July, 2024 by the Planning Commission of the City of Santa Barbara, by the following vote:

AYES: 4 NOES: 0 ABSTAIN: 0 ABSENT: 3 (Wardlow, Boss, and Lodge)

I hereby certify that this Resolution correctly reflects the action taken by the City of Santa Barbara Planning Commission at its meeting of the above date.

Mariah Johnson, Commission Secretary

Date

PLEASE BE ADVISED:

THIS ACTION OF THE PLANNING COMMISSION CAN BE APPEALED TO THE CITY COUNCIL WITHIN TEN (10) CALENDAR DAYS AFTER THE DATE THE ACTION WAS TAKEN BY THE PLANNING COMMISSION.

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