



Planning and Development Department
Land Use Planning

U S E P E R M I T

CITY OF BERKELEY ZONING ORDINANCE
Berkeley Municipal Code Title 23

USE PERMIT # 12-10000034

Property Address: **1640-50 MARTIN LUTHER KING JR. WAY**

Permittee Name: **KC BOWMAN / THE BAY ARCHITECTS**

Use and/or Construction Permitted:

to convert an existing office space into two new dwellings, reduce the number of required off-street parking spaces from two to zero, and reduce the amount of Usable Open Space from 400 square feet to zero.

- Use Permit to create two new dwellings, under BMC Section 23E.40.030
- Use Permit to reduce required off-street parking, under BMC Section 23E.40.070.D
- Use Permit to reduce the amount of Usable Open Space, under BMC Section 23E.40.070.D

FINDINGS, CONDITIONS AND APPROVED PLANS ATTACHED

The Use Permit herein described has been duly granted by the Zoning Adjustments Board and is in effect on January 22, 2013.

ATTACHMENT 1

FINDINGS AND CONDITIONS

NOVEMBER 29, 2012

1640-1650 Martin Luther King Jr. Way

Use Permit #12-1000034 to convert an existing 2,300 square foot office space into two, two-bedroom dwelling units and to reduce both the Usable Open Space and required off-street parking requirements.

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 15303 of the CEQA Guidelines (“New Construction or Conversions of Small Structures”). 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.

GENERAL NON-DETRIMENT FINDING

2. Pursuant to Berkeley Municipal Code Section 23B.32.040, the Zoning Adjustments Board finds that the proposed conversion of an existing 2,300 square foot office space into two, two-bedroom dwelling units and the reduction of both the Usable Open Space and required off-street parking requirements, under the circumstances of the particular case existing at the time at which the application is granted, will 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, for the following reasons:
 - A. The project site is occupied by an existing 6,800 square foot commercial building which was built in 1909; the second floor of the building would be renovated to create two new dwellings. Because no exterior alterations are proposed, the change in the privacy impacts to adjacent residences will be minimal if any.
 - B. The conversion from office space to residential use meets the purposes of the C-N District in that the residential uses are compatible with the surrounding neighborhood serving uses. The new units will be located on the second floor above an existing fitness center and will not remove ground level neighborhood serving commercial uses.
 - C. The creation of two dwelling units in a location with close proximity to public transportation supports the purpose of the district to encourage utilization of public transit.

- D. The conversion of the space from commercial to residential will reduce the required amount of parking on site from 14 to 11, thus bringing the property into greater conformance than exists.

OTHER REQUIRED FINDINGS

3. Pursuant to Berkeley Municipal Code Section 23E.40.070.D, the Zoning Adjustments Board finds that the reduction in the open space requirement will allow the City to attain two new dwellings in an existing building. The required 400 square feet of Usable Open Space (for the two new dwellings) cannot be met without changing the building configuration and/or removing ground floor commercial space, which is inconsistent with the district purposes and would be detrimental to the property and the historic character of the area.

4. Pursuant to Berkeley Municipal Code Section 23E.40.070.D, the Zoning Adjustments Board finds that the reduction in required parking meets the purposes of the C-N District. The creation of two dwelling units in a location with close proximity to public transportation supports the purpose of the district to encourage utilization of public transit.

STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

1. Conditions Shall be Printed on Plans

The conditions of this Permit shall be printed on the first sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions'. The second sheet may also be used if the first 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 approved is permitted unless the Permit is modified by the Zoning Adjustments Board, in conformance with Section 23B.56.020.A.

Changes in the plans for the construction of a building or structure may be modified prior to the completion of construction, in accordance with Section 23B.56.020.D. 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. The Zoning Officer may also approve a maximum two-foot variation to Board approved plans, provided that such variation does not increase a structure's height, reduce the minimum distance to any property line, and/or conflict with any special objective sought by the Board.

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

Except as expressly specified herein, the site plan, floor plans, building elevations and any additional information or representations submitted by the applicant during the Staff review and public hearing process leading to the approval of this Permit, whether

oral or written, which indicated the proposed structure or manner of operation are deemed conditions of approval.

6. Subject to all City and Other Regulations (Section 23B.56.040)

The approved use and/or construction are subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies.

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. 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 OF APPROVAL

Pursuant to BMC Section 23B.32.040.D, the Zoning Adjustments Board attaches the following conditions to this Permit:

Prior to Issuance of Any Building Permit

10. Prior to applying for a building permit, the applicant shall file an "Address Assignment Request Application" with the Permit Service Center (2120 Milvia Street) for any address change or new address associated with this Use Permit. The new address(es)

shall be assigned and entered into the City's database prior to the applicant's submittal of a building permit application.

11. Prior to issuance of a building permit, the applicant shall complete and submit an updated *Draft GreenPoint Checklist* to the project planner with comments on any revisions to the project that affect the project's green building score.

12. Prior to issuance of a building permit, 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 this record to the project planner upon request

Noise Management Individual _____
Name Phone #

13. 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.

14. Prior to issuance of a building permit, the applicant shall submit a report to the Building and Safety Division and the Zoning Officer by a qualified acoustic engineer certifying that the interior residential portions of the project will achieve interior noise levels of no more than 45 Ldn (Average Day-Night Levels). If the adopted Building Code imposes a more restrictive standard for interior noise levels, the report shall certify compliance with this standard.

During Construction:

15. Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season (between October 15 and April 15), the applicant shall obtain approval of an erosion prevention plan by the Building and Safety Division and the Public Works Department. The applicant shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.
16. 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.
17. 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.
18. 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.
19. 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 thick and secured to the ground.
20. 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.
21. Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.
22. Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.
23. 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.

Prior to Final Inspection or Issuance of Occupancy Permit:

24. The project shall conform to the plans and statements in the Use Permit.
25. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated "Received August 22, 2012".
26. Prior to issuance of an occupancy permit or final inspection approval, the applicant shall update, sign, and submit an *As-Built GreenPoint Checklist* reflecting final as-built conditions, including the total green building score, to the project planner.

At All Times:

27. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
28. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.
29. Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to Design Review and/or Landmarks Preservation Commission approval.

CONDITIONS BY PROJECT TYPE

PROSPECTIVE AFFORDABLE HOUSING FEE

re: Liability for Payment of Prospective Affordable Housing Mitigation Fee

Authority: *Russ Building Partnership v. City & County of San Francisco* (1988) 44 Cal.3d 839

The City of Berkeley has adopted an ordinance authorizing imposition and collection of an affordable housing mitigation fee on new residential rental units constructed in the City of Berkeley, which is codified as BMC § 22.20.065. The findings of this ordinance are incorporated by reference into this condition of approval. The City has not yet adopted a specific fee amount pursuant to Section 22.20.065, but contemplates doing so. The City has completed an analysis of the impacts of new residential rental development in Berkeley on the need for affordable housing, which concludes that any such fee should not exceed \$34,000 per new unit in 2010 dollars. Accordingly, once an affordable housing mitigation fee is established by the City, the Project shall be required to pay that fee, but not exceeding \$34,000 per unit in 2010 dollars, prior to issuance of any certificate of occupancy, or if a certificate of occupancy has already been issued at the time the fee becomes effective, within 30 days thereafter.

