

Planning and Development Department  
Land Use Planning

# U S E P E R M I T

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CITY OF BERKELEY ZONING ORDINANCE  
Berkeley Municipal Code Title 23

## USE PERMIT # 12-20000005

Property Address: **2905 SHATTUCK AVENUE**

Permittee Name: **HAROLD ADLER**

Use and/or Construction Permitted:  
to allow amplified live entertainment incidental to an existing 720 square-foot art gallery.  
The Zoning Adjustments Board of the City of Berkeley, after conducting a public hearing,

- Administrative Use Permit to establish incidental amplified live entertainment, under Zoning Ordinance Section 23E.52.030.

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 May 1, 2013.

# ATTACHMENT 1

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## FINDINGS AND CONDITIONS

APRIL 11, 2013

### 2905 Shattuck Avenue

#### Administrative Use Permit #12-20000005

To allow amplified live entertainment incidental to an art gallery.

#### CEQA FINDINGS

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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 (“New Construction or Conversions of Small Structures”). As provided under CEQA Guidelines Section 15303(c), the new use will not involve significant amounts of hazardous substances, is located in an urbanized area, in a commercial building, does not exceed 10,000 square feet in floor area and is on a site zoned for commercial uses. The project does not qualify as an exception to this Section for the following reasons:
  - There would be no cumulative impact of successive projects of the same type, in the same place over time that could create a significant environmental impact because the project is located in a fully developed commercial area where new development is limited.
  - There are no unusual circumstances that could lead to a significant impact because the project involves the addition of amplified live music to an existing art gallery and does not involve other changes to the property.
  - The project will not cause a substantial adverse change in the significance of a historical resource.
  - The project is not located near a scenic highway or listed hazardous waste site.

#### FINDINGS FOR APPROVAL

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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:
  - The addition of incidental amplified live entertainment will allow the gallery to continue its hosting of cultural events such as poetry readings and musical performances, and make it more convenient for the performers and audience members.
  - The amplified entertainment has limited hours (7:00 PM -10:00 PM Friday, Noon to 10:00 PM Saturday and Sunday Noon to 8:00 PM.) and the gallery and all of its events are subject to the Berkeley Noise Ordinance (BMC Chapter 13.40).
  - Additional conditions restricting the number of performances have been added to limit detriment (see #14).

## **STANDARD CONDITIONS**

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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 Occupancy Permit or Final Inspection:**

12. All construction at the subject property shall substantially conform to the approved Use Permit drawings or to modifications approved by the Zoning Officer.
13. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated **JANUARY 23, 2012**.

**At All Times - Incidental Amplified Entertainment:**

14. Amplified entertainment shall be limited to 4 times per month, not to exceed 36 times per year. Amplified electronic entertainment shall be limited to 2 times per month and only on Saturdays (these two shall be included as the maximum 4/month and 36/year).
15. Based on verifiable noise complaints, the applicant shall incur the cost of all noise monitoring and enforcement.
16. The operation is subject to the City's noise standards found in according to BMC Section 13.40.
17. Prior to commencement of live entertainment, a qualified sound engineer shall conduct a sound study and such study shall be subject to the review and approval of the Zoning Officer to ensure compliance with the City's Noise Ordinance.
18. Amplified entertainment shall not extend beyond 7:00 PM -10:00 PM Friday, Noon to 10:00 PM Saturday and Sunday Noon to 8:00 PM. In order to ensure minimal impacts from noise on adjacent properties and compliance with the City Noise Ordinance, the applicant shall be responsible for enforcement of the following action:
  - A. Percussion instruments shall be limited to hand drums or drums played with brushes. Kick drums or drums played with sticks or beaters shall not be used.

**At All Times (Operation):**

19. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
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.
21. Noise and exterior lighting 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.

# ART HOUSE GALLERY

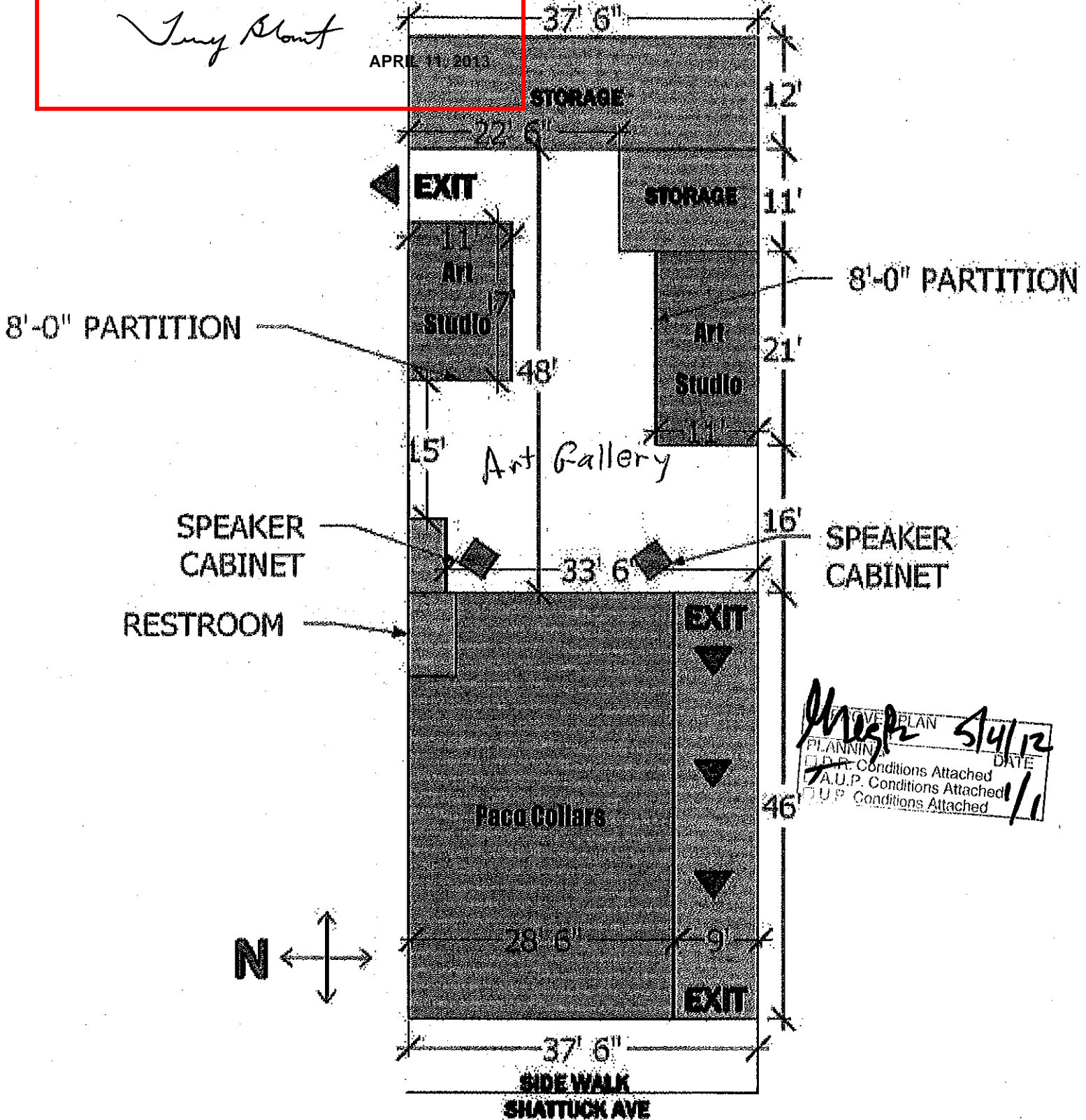
2905 SHUTTACK AVE

**PLANS APPROVED by  
ZONING ADJUSTMENTS BOARD**

## FLOOR PLAN

*Jerry Mount*

APRIL 11, 2013

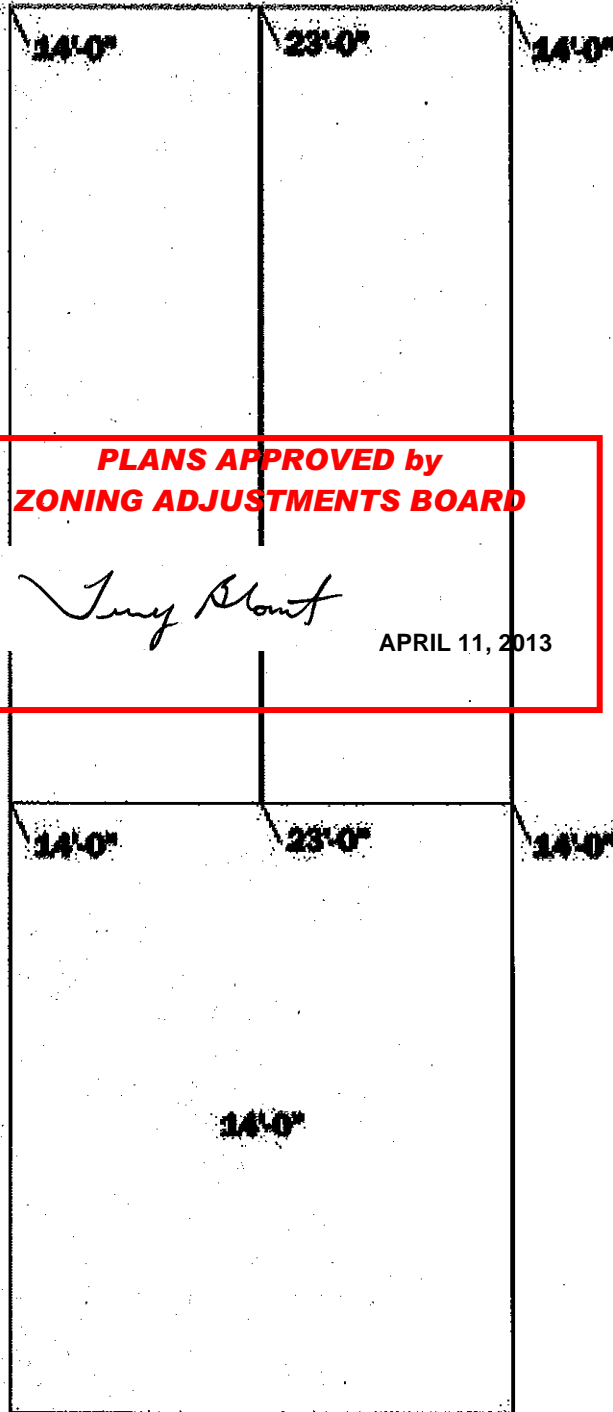


*Mount*  
APPROVED PLAN  
PLANNING DATE 5/4/12  
 P.D.R. Conditions Attached  
 A.U.P. Conditions Attached  
 U.P. Conditions Attached

# ART HOUSE GALLERY

2905 SHUTTACK AVE

## REFLECTED CEILING PLAN



**PLANS APPROVED by  
ZONING ADJUSTMENTS BOARD**

*Tony Blount*

APRIL 11, 2013