

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 # 13-10000012

Property Address: **1866 ALCATRAZ AVENUE**

Permittee Name: **LINA LOPEZ**

**Use and/or Construction Permitted:**

to establish a child care center and preschool for up to 45 children in an existing ground-floor commercial space; rear yard to be used for outdoor play area.

- Use Permit to establish a Child Care Center, under BMC Section 23E.52.030.A
- Use Permit to allow activities (children's play area) outside of a building abutting a residential zoning district, under BMC Section 23E.52.030.A

**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 16, 2013.

# ATTACHMENT 1

## FINDINGS AND CONDITIONS

AS APPROVED BY THE ZAB ON APRIL 25, 2013

### 1866 Alcatraz Avenue

**Use Permit #13-1000012 to establish a child care center and preschool for up to 45 children in an existing ground-floor commercial space; rear yard to be used for outdoor play area.**

#### 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 Sections 15303 (“New Construction and Conversion of Small Structures”) and 15332 (“Infill Development Projects”) of the CEQA Guidelines. 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

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2. Pursuant to Berkeley Municipal Code Section 23B.32.040, the Zoning Adjustments Board finds that the proposed child care center and pre-school, including outdoor play area, 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. Noise from outdoor play activities is not anticipated to be excessive or detrimental to adjacent uses, due to the relatively small number, and young age, of the children involved, the limited hours of play, and the fact that in general, residential units tend to be unoccupied during weekday daytime hours. In order to provide adequate protection to adjacent uses, this Permit includes a condition of approval stating that the ZAB may impose additional restrictions on outdoor play to mitigate excessive noise in the event of verified violations of the City’s noise ordinance.
  - B. The City’s traffic engineer has evaluated the proposal and determined that the proposed use’s loading/unloading needs can be addressed either by the existing curbside loading zones on Alcatraz Avenue (located on either side of the subject

building), or, if necessary, by the expansion and/or consolidation of these zones to the curb in front of the subject building. This Permit includes a condition requiring additional loading and/or parking to be installed in the future, if deemed necessary by the traffic engineer.

- C. The project would only slightly increase the number of employees at the site from the number that was likely present for the previous retail use. In addition, as noted earlier, the Ashby BART station is located within walking distance of the site, and there is a public parking lot at the west end of the subject block, adjacent to Adeline Street. The Board therefore anticipates that any parking “spillover” impacts on the adjacent neighborhood would not be significant.
- D. The project would create an additional child care center in South Berkeley, consistent with General Plan Policy LU-13 and South Berkeley Area Plan Community Resources Policy 6.1.
- E. The proposed use expands the range of community services in the area and does not displace an existing neighborhood-serving business, consistent with General Plan Policy LU-26.
- F. The site does not have any history of uses involving hazardous materials, and Alcatraz Avenue has relatively low traffic volumes. Therefore, no significant health risks are anticipated from the location of a child care center at the subject property.

### OTHER REQUIRED FINDINGS

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- 3. Pursuant to Berkeley Municipal Code Section 23E.52.090.B, the Zoning Adjustments Board finds that the proposed use:
  - A. Is compatible with the purposes of the C-SA District, in that it provides a community-serving child care center which reflects the Latino culture of many South Berkeley residents (Purpose B), and it further increases the variety of community-oriented retail goods and services in South Berkeley (Purpose D).
  - B. Is compatible in design and character with the District and the adjacent residential neighborhoods, because the existing building will not be altered, and the use will not generate excessive noise, traffic or parking impacts, as discussed in Finding 2 above.
  - C. Will not result in the domination of one type of commercial/retail use in any one area of the District, because the surrounding commercial properties on Alcatraz Avenue are devoted to a variety of uses, none of which includes child care.

## STANDARD CONDITIONS

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### 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 exclude 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 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 does not 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. 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

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

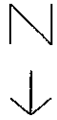
### **Prior to Issuance of Occupancy Permit or Final Inspection:**

10. The project shall conform to the plans and statements in the Use Permit, as conditioned.

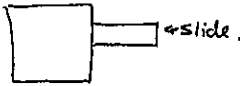
### **At All Times:**

11. Three months after the use has commenced, the traffic engineer shall verify that the approved curbside loading and/or short-term parking arrangement is working effectively. If it is determined that it is not, the applicant shall install additional curbside loading and/or short-term parking within 60 days of such determination, as directed by the traffic engineer, subject to an Engineering Permit. Notwithstanding such additional loading and/or parking improvements, the traffic engineer shall have the authority at all times to require additional improvements as he or she determines necessary, based on verified complaints or staff observations of double parking or other unsafe practices by childcare center patrons. Failure to install required loading and/or parking within 60 days of the traffic engineer's determination shall be grounds for revocation of this Permit by the Zoning Adjustments Board.
12. Use of outdoor play areas shall be limited to a total of four hours per day, between the hours of 10 a.m. and 4:30 p.m., and shall comply with the City's Community Noise Ordinance (BMC Chapter 13.40). No more than 26 children shall use the outdoor area at any time. Violation of the noise ordinance from outdoor activities shall be grounds for review, modification and/or revocation of this permit by the Zoning Adjustments Board, including, but not limited to, additional restrictions on outdoor activities. Such restrictions may include, but are not limited to, reducing the allowable play hours, making the southern (rear) portion of the yard inaccessible to children, and erecting a sound-dampening wall at the southern boundary of the play area.
13. In order to promote a more attractive and pedestrian oriented street frontage, ground floor windows adjacent to the sidewalk shall not be obstructed with shelving, tall furniture, blinds, curtains, or other window coverings, or any other object that would substantially reduce visibility into the front portion of the commercial space. Window displays and signage conforming with City regulations shall be permitted. The Zoning Officer may allow window coverings after business hours on a case-by-case basis, if necessary for security reasons.
14. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.

15. 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.



Play Structure



Green Area



22'-3 1/2"

Fence

**PLANS APPROVED by  
ZONING ADJUSTMENTS BOARD**

*Judy Blount*

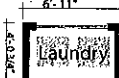
APRIL 25, 2013

Patio

Residential  
Open  
Space

3'-0" 2 1/2"

6'-11"



Bike  
Parking

12'-11 3/8"

2'-0" 3/4"

Restroom

Sink

Central  
Space

Emergency Exit

Emergency Exit



Lobby

30'-0" 3/4"

Proposed Changes- Outside: 1866 Alcatraz Ave. Berkeley, Ca. 94703

Scale: 1/8" = 1'-0"

Building Code: 32

Prepared by: Pamela Lopez

Dates of preparation: Feb. 5-11, 2013

Revised: March 19, 2013

Construction type: Wood frame

Occupancy type: M

**RECEIVED**

**MAR 21 2013**

**LAND USE PLANNING**