

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 # 12-10000015

Property Address: **3271 ADELIN STREET**

Permittee Name: **MARK RHOADES, AICP**

Use and/or Construction Permitted:

to allow the following uses in addition to the existing office use entitlement in a two-story, approximately 24,000 square-foot building: general retail, community care facility, and up to 4,000 square feet for a full- and/or quick-service restaurant(s) with incidental sales of beer and wine.

- Use Permit for a change of use of over 5,000 square feet from office to retail, under BMC Section 23E.52.030
- Use Permit for a “not listed” use that is compatible with the purposes of the C-SA District, under BMC Section 23E.52.030.B
- Administrative Use Permit to establish a full-service and/or quick-service restaurant, under BMC Section 23E.52.030
- Administrative Use Permit for beer and wine service incidental to food service, under BMC Section 23E.52.030
- Administrative Use Permit to reduce a higher numerical parking standard to the district minimum, under BMC Section 23E.28.130.C.2

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 September 11, 2013.

ATTACHMENT 1

FINDINGS AND CONDITIONS

AUGUST 22, 2013

3271 Adeline Street

Use Permit #12-10000015 to allow the following uses in addition to the existing office use entitlement in a two-story, approximately 24,000 square-foot building: general retail, community care facility, and up to 4,000 square feet for a full- and/or quick-service restaurant(s) with incidental sales of beer and wine.

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 15301 of the CEQA Guidelines (“Existing Facilities”). 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 project, 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 proposed project would facilitate the leasing of the existing building, located on a prominent corner (Alcatraz and Adeline) that has been vacant for more than a year and a half, thereby enhancing the economic vitality of the neighborhood.
 - B. The proposed uses will be located in an existing building, no external modifications will occur to the building as part of this project. The project will, therefore, not impact the neighborhood’s physical environment.
 - C. The restaurant will comply with all fire and building safety codes, as well as all environmental health and safety codes. Issues of noise and disorderly conduct are not anticipated, as beer and wine service would only be served with meals, and the project is subject to conditions of approval restricting the sale and consumption of alcohol. Operations will, therefore, not impact adjacent residential uses with noise,

smoke, or odors. Conditions #10-39 pertaining to food service and incidental beer and wine service will be implemented to limit detriment.

- D. The service of beer and incidental to food service in a “bona fide eating establishment” is not expected to cause detriment as the alcohol service will unlikely act as a draw, in and of itself, for alcohol consumption, or resulting disruptive activities.

OTHER REQUIRED FINDINGS

3. Pursuant to Berkeley Municipal Code Section 23E.52.090.B, the Zoning Adjustments Board finds that the pre-approval of the proposed uses will assist in the promotion of several of the District policies by making it easier for local entrepreneurs to begin their own community- and regional-serving businesses. The possible range of retail, restaurant, and community care uses are compatible with the neighborhood-serving area south of Ashby Avenue, would increase the pedestrian activity in the neighborhood, and would help revitalize a building that has been vacant since February 2012. As the neighborhood is currently a mix of smaller owned businesses, the proposed uses are not anticipated to result in the domination of one type of commercial and/or retail use in this neighborhood. Additionally, due to the low intensity of the proposed uses, the alternative transportation plans conditioned for select uses, and as evidenced by the parking survey that was reviewed and approved by the Traffic Engineer, the uses would meet the South Berkeley Area Plan policy of protecting residential areas from traffic, parking, noise, litter and odors.
4. Pursuant to Berkeley Municipal Code Section 23E.28.140.B, the Zoning Adjustments Board find that the reduction of off-street parking spaces is permissible because:
- (1a) The use is located less than a third of a mile from the Ashby BART station.
 - (1b) There is a publically accessible parking lot directly across Alcatraz Avenue from the property (<0.25 mi.). The lot has a total of 38 parking spaces, including 2 ADA spaces. The use of the lot is not limited to a specific business or activity.
 - (1c) The parking study submitted by the applicant, and reviewed and approved by the Traffic Engineer, demonstrates that within 500 feet or less of the use, on non-residential streets, at least two times the number of spaces requested for reduction are available through on-street parking spaces for at least two of the four hours of the use’s peak parking demand.
 - (1d) The proposed parking waiver is for a Food Service Establishment, a qualified neighborhood-serving use.
 - (2b) To meet the required alternative transportation demand management strategy, the project is conditioned to require the restaurant operator to offer transit subsidies to all employees in an amount equivalent to a monthly AC Transit Pass.

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.

CONDITIONS BY PROJECT TYPE

ADDRESS ASSIGNMENT

- 10.** Prior to applying for a building permit for creation of new tenant spaces, 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.

USE ENTITLEMENT

11. The building, or any space within the building, is pre-approved for the uses and prescribed square-footage limitations, if any, permitted by this permit. After entitlement (application and approval of a business license) of any space within the building, future changes of use within that portion(s) of the building will be subject to the current applicable Zoning Ordinance requirements.

FOOD SERVICE CONDITIONS

These requirements are in addition to any other requirements under the City's Building, Health or Fire Codes or by agencies such as the Alcoholic Beverage Control Department of the State of California. The applicant is responsible for contacting these and other departments and agencies to identify and secure all applicable permits and licenses.

12. 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.
13. Changes in the nature of the operation including, but not limited to, the addition of seating, changes in hours, and the addition of live entertainment, shall require modification of this permit subject to approval by the Zoning Officer or the Zoning Adjustments Board.
14. The approved floor plan, including the number of seats, shall be followed and the operation shall be conducted as presented to the Board. The maximum occupancy shall be as specified in the application unless otherwise required by applicable regulations.
15. Changes to the building's facade, including doors or windows, site plans, landscaping, signage, and awnings are subject to Design Review and approval prior to issuance of a building permit.
16. The hours of operation of the restaurant portion of the business shall be limited to the current District Hours: 7:00 a.m. to 12:00 midnight weekdays (Sunday through Thursday); 7:00 a.m. to 2:00 a.m. weekend days (Friday and Saturday). Hours of operation refer to arrival of the first patron and departure of the last patron. Any change in the hours of operation shall be approved by the Zoning Adjustments Board or designee. Hours of operation are subject to review and amendment by the Zoning Adjustments Board as necessary to avoid detriment to the neighborhood or to achieve conformance with revised City standards or policies.
17. Cooking odors, noise, exterior lighting and operation of any parking area 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.

18. Smoke and odor control equipment approved by the City Environmental Health Division and providing adequate protection to residential uses above and to the east of the restaurant shall be installed prior to issuance of an Occupancy Permit.
19. Garbage and trash containers that are suitably enclosed and screened from view shall be provided subject to approval of the Zoning Officer, the Health Department and, where applicable, the Design Review Planner. Any establishment selling beverages in cans or bottles that are subject to the State of California Container Deposit Law shall provide separate bins or cans for the placement of such cans or bottles to ensure recycling of such containers.
20. Containers used for the dispensing of prepared food shall identify the establishment. Polystyrene foam food packing is prohibited by Section 11.60.030 of the Berkeley Municipal Code.
21. Any establishment selling beverages in cans or bottles that are subject to the State of California Container Deposit Law shall recycle such containers.
22. The operator of the restaurant shall place a waste receptacle near the entry way and shall insure that garbage on the sidewalk in front of the establishment and within 50 feet thereof will be picked up periodically during each day, so that the sidewalk remains clean.
23. The owner or operator of the establishment shall take reasonable measures to prevent disturbances by patrons in the immediate vicinity. Such measures shall include signs reminding patrons of nearby residences and requests not to congregate or loiter near such residences nor operate vehicles in a noisy manner on residential streets. The operator shall give surveillance to public areas near the establishment, keep such areas free of trash and litter, provide lighting, and otherwise attempt to prevent conduct that might disturb the peace and quiet of residences in the vicinity. Furthermore, the operator shall assume reasonable responsibility for ensuring that patrons do not block the entrance or interfere with pedestrian activity on the adjacent public sidewalk.
24. The applicant shall reimburse employees the maximum non-taxable cost of commuting to and from work on public transportation (e.g., monthly passes) if they so commute, and a notice informing employees of the availability of such subsidy shall be permanently displayed in the employee area.

ALCOHOLIC BEVERAGE SERVICE CONDITIONS (on-site)

25. Use Permit approval has been granted for the sale of beer and wine incidental to the approved food service. No service of distilled spirits is permitted without prior application and Use Permit approval. Fortified alcohol products (e.g., malt liquor), shall not be sold on the premises.
26. All alcohol served to patrons must be served in durable restaurant tableware – i.e. either cups or glasses. No alcohol may be distributed in its original bottle or can, or in any other potentially disposable container.
27. At no time may alcohol be served or consumed on the public right-of-way. No alcohol may be transported off-site from the establishment to any other establishment or to the public right-of-way.
28. Alcoholic beverage service shall be “incidental” to the primary food service use. As defined in the Zoning Ordinance Section 23F.04.010, “An Incidental Use shall not exceed twenty-five percent (25%) of the floor area of the primary use, and if it consists of the commercial sales of a different line of products to services than the primary use, such incidental use may not generate gross receipts in excess of thirty-three percent (33%) of the gross receipts generated by the primary use.”
29. The establishment shall comply with all applicable regulations of the California Department of Alcoholic Beverage Control, which allows this alcohol use only as part of a “bona fide eating place” making “actual and substantial sales of meals,” and stringently enforces this requirement.
30. The applicant shall request that the California Department of Alcoholic Beverage Control (ABC) place the following conditions on the applicant’s alcohol license:
 - A. The sale of alcohol beverages for consumption off the premises is strictly prohibited;
 - B. There shall be no bar or lounge area upon the licensed premises maintained for the sole purpose of sales, service or consumption of alcoholic beverages directly to patrons for consumption;
 - C. There shall be no exterior advertising or sign of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs that are clearly visible to the exterior shall constitute a violation of this condition.
31. The applicant shall establish cash handling procedures to reduce the likelihood of robberies and thefts.
32. All employees selling and/or serving alcohol, or directly supervising such sales and/or service, shall complete the Licensee Education on Alcohol and Drugs (LEAD)

program, or another equivalent program offered or certified by the California Department of Alcoholic Beverage Control within 6 months of employment at the establishment. Employees who have completed the course within the last five (5) years shall be exempt from this requirement.

33. A Berkeley Police Department Crime Prevention Through Environmental Design (CPTED) survey shall be completed prior to commencing alcohol service.
34. Employees shall not serve alcohol to patrons who appear to be inebriated or otherwise unable to behave in an orderly manner upon consuming alcohol.
35. No sign(s) visible from the public right-of-way advertising alcoholic beverages shall be allowed. No alcoholic dispensing facilities shall be visible from the public right-of-way.
36. Any operator of the licensed establishment shall not have had a prior licensed establishment that was the subject of verified complaints or violations regarding alcohol, public safety or nuisance statutes or regulations to be confirmed by the Zoning Officer prior to issuance or transfer of a business license at this location.
37. This Use Permit, including these and all other required conditions, shall be posted in conspicuous location, available for viewing by any interested party, and shall be made available upon the demand of any peace officer or authorized code enforcement officer.

TRANSIT SUBSIDY

38. The restaurant owner/operator shall reimburse employees the maximum non-taxable cost of commuting to and from work on public transportation (e.g., monthly passes) if they so commute, and a notice informing employees of the availability of such subsidy shall be permanently displayed in the employee area.

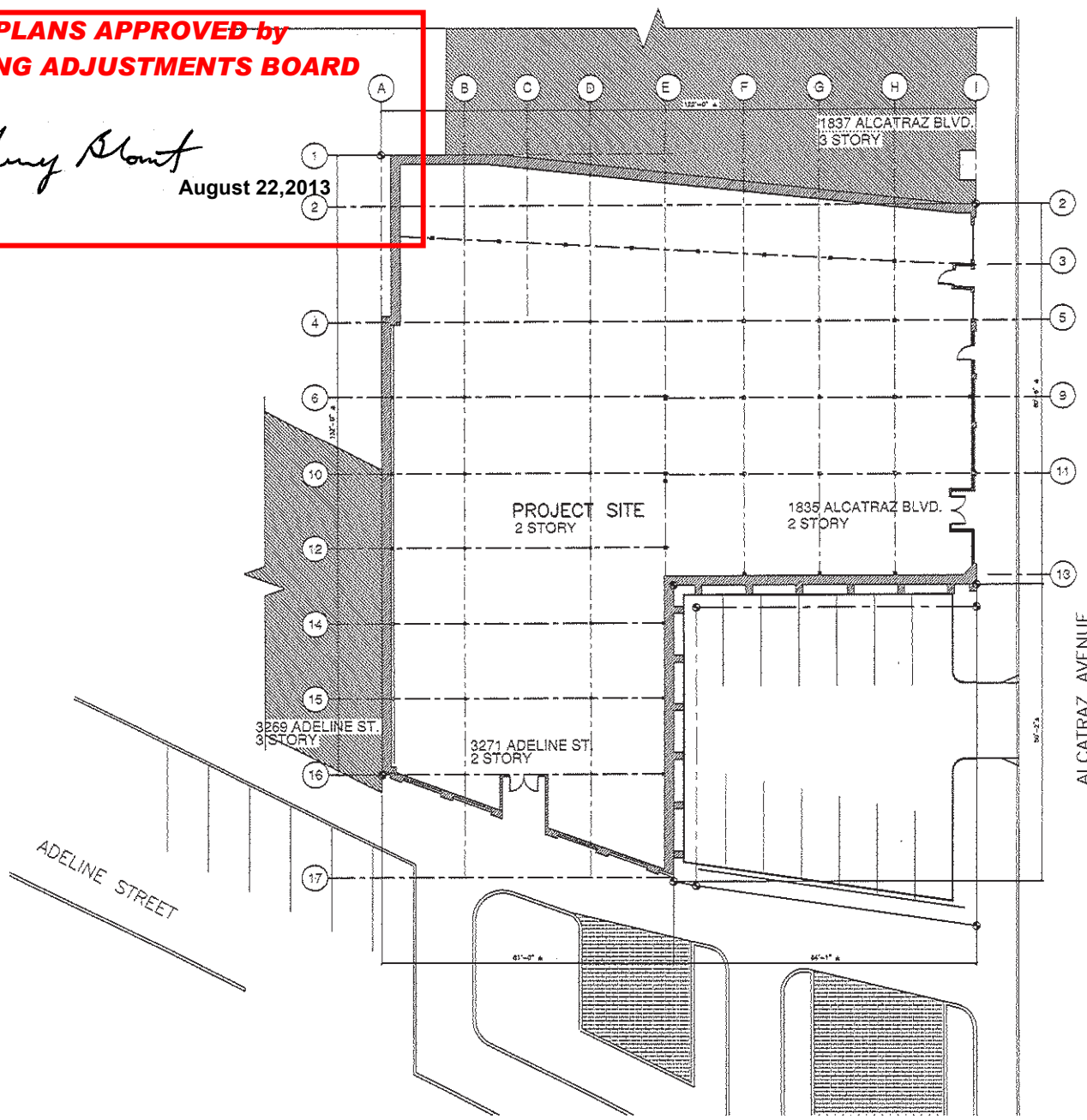
AT ALL TIMES:

39. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
40. 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.
41. 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.

PLANS APPROVED by
ZONING ADJUSTMENTS BOARD

Tracy Blount

August 22, 2013



3271 ADELINE STREET

ZONING:	C-1
BLOCK:	1528
LOTS:	4-14
STORIES:	2
AREA/STORY:	12,500 S.F.
AREA TOTAL:	15,000 S.F.
HEIGHT:	27'-0" FT.
OCCUPANCY:	A2,B2,E,M
SETBACKS:	0 FT.

RECEIVED

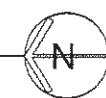
APR 26 2012

LAND USE PLANNING

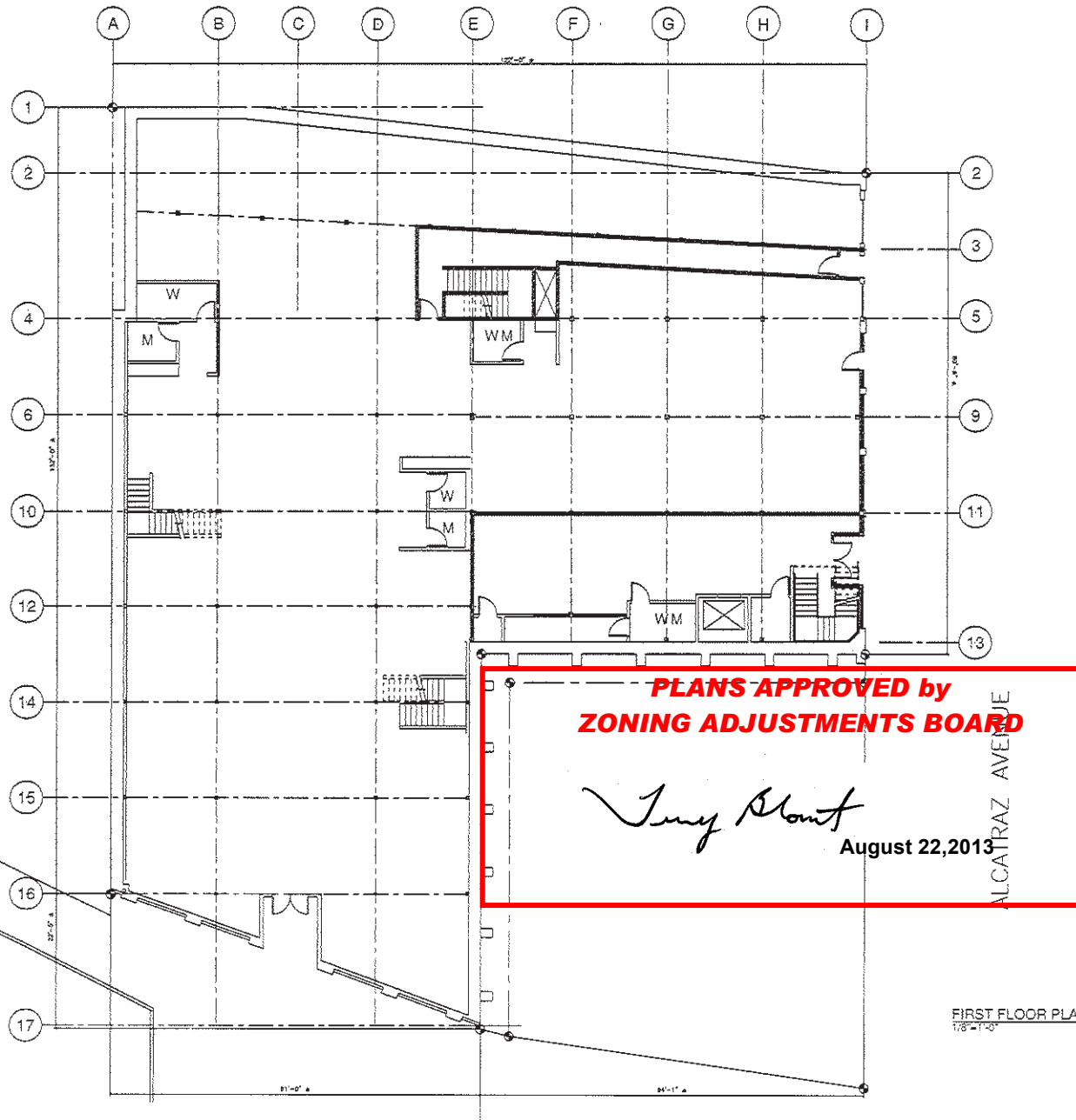
ALCATRAZ AVENUE

ADELINE STREET

PLOT PLAN
1:10



DRAWING NO.	A-1
DATE:	
SCALE:	1" = 10'
REV. NO.	
PLOT PLAN	
PLOT PLAN 3271 ADELINE STREET BERKELEY, CA	
Jeffrey Suprent A.I.A. Architect Berkeley, CA	
Professional Seal	



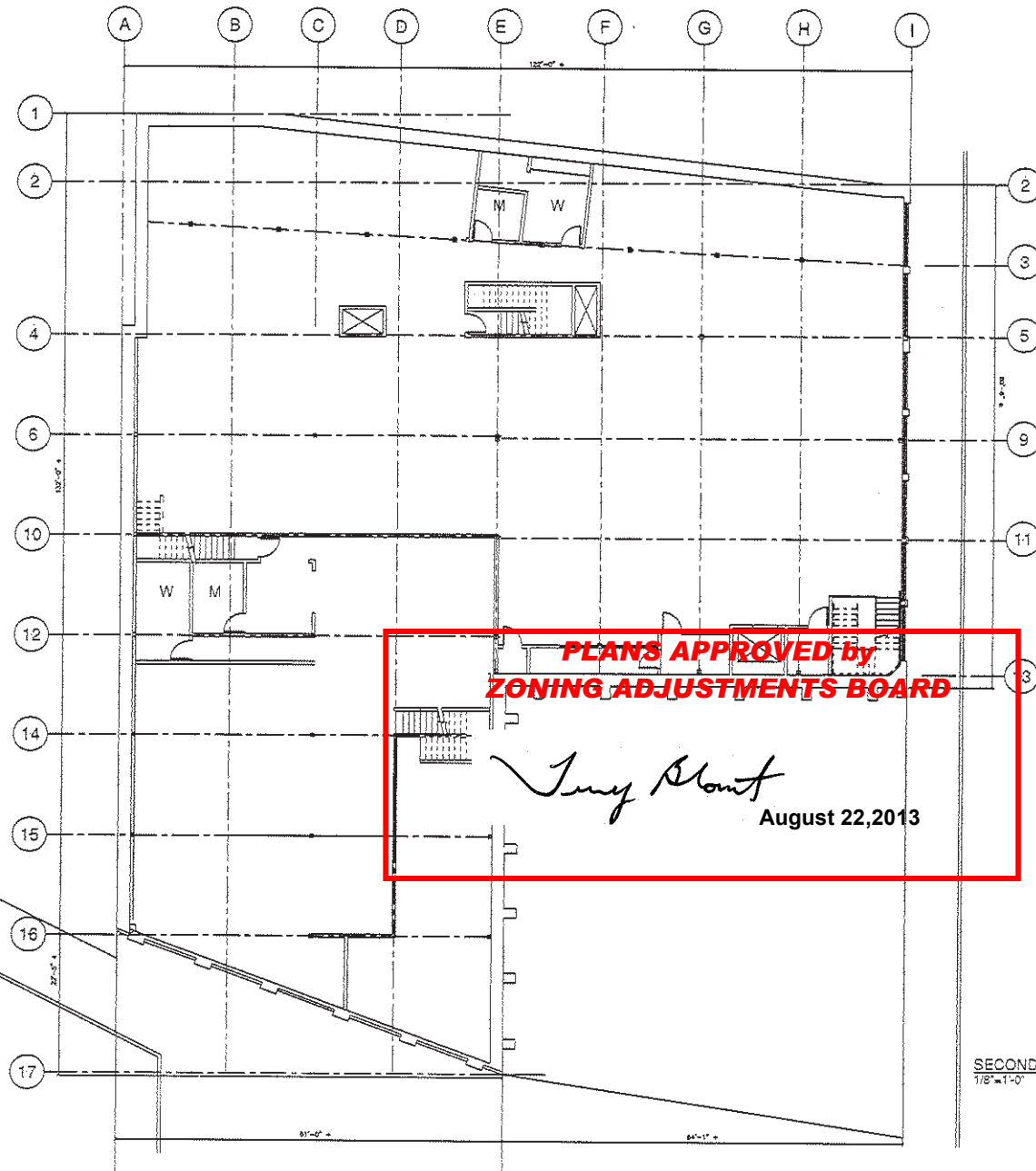
PLANS APPROVED by
ZONING ADJUSTMENTS BOARD

Jeffrey Blount
 August 22, 2013

DRAWING NO.	A-2
DATE:	SCALE: 1/8"=1'-0"
REV. NO.	
FIRST FLOOR PLAN	
GENERAL PLAN	52711 ADELINE STREET BERKELEY, CA
Jeffrey Supran A.I.A. Architect	Berkeley, CA Phone: 925.842.8888 Fax: 925.842.8889

ADELINE STREET

FIRST FLOOR PLAN
 1/8"=1'-0"



DRAWING NO. A-3	DATE: SCALE: 1/8"=1'-0"	REV. NO.	SECOND FLOOR PLAN	GENERAL PLAN 3271 ADELINE STREET BERKELEY, CA	Jeffrey Sprunt A.L.A. Architect PHOTOGRAPHY ARCHITECTURE
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ADELINE STREET

SECOND FLOOR PLAN
 1/8" = 1'-0"

