



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 # UP2014-0005

Property Address: **2925 & 2945 BOLIVAR DRIVE**

Permittee Name: **CITY OF BERKELEY**
Parks, Recreation and Waterfront Department

Use and/or Construction Permitted: to allow two vacant, city-owned buildings at Aquatic Park to be used by a theater company for rehearsal space, classes and workshops, and set design and construction, in the Unclassified (U) district.

RESOLUTION, FINDINGS and CONDITIONS ATTACHED

The Use Permit herein described has been duly granted by the City Council and is in effect on March 26, 2014.

RESOLUTION NO. 66,515-N.S.

MODIFY THE ZONING ADJUSTMENTS BOARD'S APPROVAL OF USE PERMIT NO. 2014-0005 TO ALLOW TWO VACANT, CITY-OWNED BUILDINGS AT AQUATIC PARK TO BE USED BY A THEATER COMPANY FOR REHEARSAL SPACE, CLASSES AND WORKSHOPS, AND SET DESIGN AND CONSTRUCTION, IN THE UNCLASSIFIED (U) DISTRICT

WHEREAS, on January 28, 2014, the City's Parks, Recreation and Waterfront Department submitted a Use Permit application to allow two vacant, City-owned buildings at Aquatic Park to be used by a theater company for rehearsal space, classes and workshops, and set design and construction, at 2925-2945 Bolivar Drive; and

WHEREAS, on January 30, 2014, staff deemed this application complete; and

WHEREAS, on February 5, 2014, the Planning Commission voted to make the findings of non-detriment in accordance with BMC Section 23E.92.090; and

WHEREAS, on February 27, 2014, the ZAB voted to approve the application in accordance with BMC Section 23E.92.090; and

WHEREAS, on February 28, 2014, staff contacted the State Lands Commission to clarify the status of Berkeley lands under public trust and learned that the upland areas of Aquatic Park, including the subject property, are not subject to public trust restrictions; and

WHEREAS, on March 25, 2014, the Council considered the record of proceedings before the ZAB, and the staff report and correspondence presented to the Council, and, in the opinion of this Council, the facts stated in, or ascertainable from this information, do not warrant further hearing.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley hereby modifies the findings made by the ZAB in Exhibit A by removing Finding E, affirms the decision of the ZAB to approve Use Permit No. 2014-0005, and adopts the conditions in Exhibit A.

The foregoing Resolution was adopted by the Berkeley City Council on March 25, 2014 by the following vote:

Ayes: Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Worthington, Wozniak and Bates.

Noes: None.

Absent: None.

Attest:


Mark Numainville, CMC, City Clerk


Tom Bates, Mayor

ATTACHMENT 1

FINDINGS AND CONDITIONS

APPROVED BY CITY COUNCIL MARCH 25, 2014

2925 – 2945 Bolivar Drive

Use Permit #2014-0005 to allow two vacant, City-owned buildings at Aquatic Park to be used by a theater company for rehearsal space, classes and workshops, and set design and construction, in the Unclassified (U) District.

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 Sections 15301 and 15303(c) of the CEQA Guidelines (“Existing Facilities” and “New Construction or Conversion 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.92.090, 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. Public benefit: The proposed lessee is a local non-profit organization that will provide recreational and artistic activity for local youth. The proposed uses are expected to attract visitors to the park during the week and throughout the year. The additional activity will help provide a more secure park environment and will introduce more local residents to the park.
 - B. Re-use of a vacant City building: The proposed project will occupy two vacant buildings with a use that will provide recreational and artistic opportunities for local youth. These uses will enhance Aquatic Park’s recreational value to the City.
 - C. Rehabilitation of a City building: The proposed project will provide necessary upgrades, maintenance, and repairs, such as bathroom renovations, ADA upgrades, improvements to the heating system, and floor restoration. Some

exterior changes, such as new decking or patios, new doors, awnings and security lighting, are also planned and would be subject to Landmarks and Design Review. New planters are also proposed. The project will not impact the neighborhood's physical environment.

- D. Attracting public to Aquatic Park: The proposed uses are expected to attract visitors to the park during the week and throughout the year. The additional activity will help provide a more secure park environment and will introduce more local residents to the park.
- E. ~~State Tidelands Public Trust: The use of the building for bicycle repair and rentals, vocational training for teens and an indoor café will accommodate the public's use of public trust lands.~~
- F. Impacts to Wildlife: According to the Berkeley Aquatic Park Improvement Plan (2012), the park provides minimal value as habitat due to, among other reasons, its small size, local and regional isolation, and proximity to active recreational uses (pp. 4.2-2 and 4.2-3). The only important foraging or nesting opportunities identified in the report is the intertidal mudflat adjacent to the Rowing Club, on the south end of the park on the west side. Therefore, the use of these two buildings on the east side of the park will not significantly impact wildlife at the park.
- G. Traffic and parking: The ZAB may determine development standards and include them in the Use Permit. Traffic and parking impacts are not expected to be significant for several reasons:
- a. The southern end of Aquatic Park does not have significant levels of activity.
 - b. The vehicle trips will not add significantly to the traffic accessing the I-80 Freeway due to its low volume (40 trips maximum at one time) and fact that most trips will occur outside of peak hours.
 - c. A condition has been added that YMTC will provide a "flight plan" detailing the hours and volume of anticipated traffic, and any carpooling policies in place. This plan must be reviewed by the Transportation Division and deemed adequate prior to occupancy.

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.

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.

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 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 #

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.

During Construction:

12. 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.
13. 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.
14. 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.
15. 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.
16. 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.
17. Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.
18. Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.
19. 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:

20. The project shall conform to the plans and statements in the Use Permit.
21. All landscape, site and architectural improvements shall be completed per the description below:

As part of the lease agreement, YMTC will provide necessary upgrades, maintenance, and repairs to the existing buildings. Generally, these upgrades will

include bathroom renovations, ADA upgrades, improvements to the heating system and floor upgrades. Exterior changes will not result in substantial changes to the building and would be limited to new decking or patios, new doors, awning and security lighting. Exterior changes would be subject to Design Review. Any future designation of the site as a landmark would subject exterior changes to Landmarks review.

No proposed floor plan has been submitted for either of the buildings. However, the changes are described as follows:

- 2925 Bolivar: The interior walls will remain as shown in the existing conditions plan. The bathroom in the south-west corner currently has a toilet, sink and shower. The shower will be removed and the bathroom will be modified to meet ADA standards for accessibility. The exterior door leading to the bathroom will be walled off, and the doorway leading into the bathroom from the office area will be widened if necessary. The second bathroom will be converted to storage space. The kitchen will be used as storage space, but there are no plans to remove the existing sink and countertop. The door leading to the porch on the north-west corner will be widened to provide ADA access to the building. Finally, the door at the top of the stairs on the east side of the building may be widened to double doors to provide access for sets and materials.
- 2945 Bolivar: The walls separating the two office spaces would be removed, creating one large room. A 6' by 7.5' ADA-accessible bathroom would be added in the south-east corner of the building. The exterior doors leading to the porch on the west side of the building would be widened if they are not already ADA-compliant.

CONDITIONS BY PROJECT TYPE

AT ALL TIMES:

22. The hours of operation for all uses on the site shall be limited to **6:00 AM to 10:00 PM seven days a week**. Hours of operation refer to the arrival of the first patron and the departure of the last patron. No practices or workshops shall begin prior to 9:00 AM or end later than 9:00 PM. Any change in the hours of operation shall be approved according to Berkeley Municipal Code Chapter 23E.92. Special event permits may be requested for occasional exceptions to hours of operation, and are subject to Parks, Recreation and Waterfront Director approval.
23. 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.
24. Alert Landlord, Parks Superintendent, and Utilities Authority, and other agencies as required by law (USA), before conducting digging of any kind on this property to ensure proper caution is exercised around the jet fuel line that runs under the property.

- 25.** All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
- 26.** YMTC will provide a “flight plan” detailing the hours and volume of anticipated traffic, and any carpooling policies in place. This plan must be reviewed by the Transportation Division and deemed adequate prior to occupancy.
- 27.** 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.
- 28.** 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.
- 29.** The lessee shall abide by the conditions of the lease with the City of Berkeley.