

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 # UP2014-0004

Property Address: **90 BOLIVAR DRIVE**

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

Use and/or Construction Permitted: to occupy a vacant, city-owned building in Aquatic Park for use as a bicycle rental and repair outlet, with community meetings/lecture/classroom space and an incidental café with indoor seating 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. 66,514-N.S.

MODIFY THE ZONING ADJUSTMENTS BOARD'S APPROVAL OF USE PERMIT NO. 2014-0004 TO OCCUPY A VACANT, CITY-OWNED BUILDING IN AQUATIC PARK FOR USE AS A BICYCLE RENTAL AND REPAIR OUTLET, WITH COMMUNITY MEETING/LECTURE/CLASSROOM SPACE AND AN INCIDENTAL CAFÉ WITH INDOOR SEATING IN THE UNCLASSIFIED (U) DISTRICT

WHEREAS, on January 28, 2014, the City's Parks, Recreation and Waterfront Department submitted a Use Permit application to occupy a vacant, City-owned building in Aquatic Park for use as a bicycle rental and repair outlet, with meeting space and an incidental café at 90 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 by the Council of the City of Berkeley that the Council hereby modifies the findings made by the ZAB in Exhibit A by removing Finding C, affirms the decision of the ZAB to approve Use Permit No. 2014-0004 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:

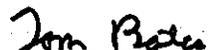
Ayes: Anderson, Arreguin, Capitelli, Moore, Wengraf, Worthington, Wozniak and Bates.

Noes: None.

Absent: Maio.

Attest:


Mark Numainville, CMC, City Clerk


Tom Bates, Mayor

ATTACHMENT 1

FINDINGS AND CONDITIONS

APPROVED BY CITY COUNCIL MARCH 25, 2014

90 Bolivar Drive

Use Permit #2014-0004 to occupy a vacant, City-owned building at Aquatic Park for use as a bicycle rental and repair outlet, with community meeting/lecture/classroom space and an incidental café with indoor seating 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 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.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 activity and vocational training for local youth. The proposed uses will attract visitors to the park during the week and throughout the year. The use will enhance Aquatic Park’s recreational value to the City and the additional activity will help provide a more secure park environment.
 - B. Rehabilitation and re-use of a vacant City building: The proposed project will occupy a long vacant building with a use that will provide recreational opportunities for visitors to the park and provide training opportunities for youth. The proposed project will provide necessary upgrades, maintenance, and repairs to an existing building. Minor exterior changes will be subject to design review. These improvements will improve the City’s property without impacting the physical environment of the area.

- C. State Tidal Lands: ~~The use of the building for bicycle repair and rentals, vocational training for youth and an indoor café will accommodate the public's use of State Trust Lands.~~
- D. 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 this building on the east side of the park will not significantly impact wildlife at the park.
- E. Traffic and parking: The ZAB may set forth development standards and include them in the Use Permit. Parking impacts are not expected to be significant for several reasons:
- a. The building and parking were developed for the park and the uses are not significantly different from past uses.
 - b. The uses or activities will be staggered throughout the day. Except for occasional talks/presentations, which may attract up to 30 people at a time, the use will not attract large numbers of patrons or youth interns at one time.
 - c. Most of the patrons are expected to travel to the site by bicycle.

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, Waterfront Workshops will provide necessary upgrades, maintenance, and repairs to the existing building. These upgrades will include bathroom renovations, ADA upgrades, and electrical system upgrades. Minor exterior changes to windows and doors would be subject to Design Review. Any future designation of the site as a landmark would subject exterior changes to Landmarks review.

Waterside Workshops does not plan to make structural changes to the interior. The organization's final location of uses within the space may change depending on program needs, but the current plan is as follows (see Figure 3 for room references):

- The area marked "office", to the north, is planned to accommodate a fleet of approximately 15 rental bicycles, placed in racks; an area for workstands and tools where community members can work on their bikes; and a small multipurpose seating area, likely clustered around the fireplace area, for presentations, classes or community members to sit with a coffee.
- The area marked "storage" in the center of the building may be used for a coffee bar. This coffee bar may alternatively be placed in a corner of the northern building. In all cases, café-related activity is not anticipated to exceed 500 square feet.
- The area marked "office", to the south, is planned to house Waterside's vocational training program, and will include approximately 50 bicycle racks for building and repair of bicycles that will ultimately be donated or sold.

CONDITIONS BY PROJECT TYPE

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.

- 22.** Changes in the nature of the operation including, but not limited to, the addition of outdoor 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.
- 23.** 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.

24. 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.
25. 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.
26. Any establishment selling beverages in cans or bottles that are subject to the State of California Container Deposit Law shall recycle such containers.
27. The operator of the café 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.

AT ALL TIMES:

28. The hours of operation for all uses on the site shall be limited to **10:00 AM to 6:30 PM daily**. Hours of operation refer to the arrival of the first patron and the departure of the last patron. Any change in the hours of operation shall be approved according to Berkeley Municipal Code Chapter 23E.92.
29. 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.
30. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
31. 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.
32. 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.
33. The lessee shall abide by the conditions of the lease with the City of Berkeley.