



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 MODIFICATION # ZP2015-0086

Property Address: **1931-35 ADDISON STREET**

Permittee Name: **RONY ROLNIZKY**

Use and/or Construction Permitted:  
to modify Use Permit #12-1000042 to allow the option to pay the Affordable Housing Mitigation Fee in lieu of providing below market rate (BMR) units on site.

Use Permit Modification, under BMC Section 23B.56.020

FINDINGS, CONDITIONS ATTACHED

The Use Permit herein described has been duly granted by the Zoning Adjustments Board and is in effect on June 4, 2015.

# ATTACHMENT 1

## FINDINGS AND CONDITIONS

MAY 14, 2015

### 1931-35 Addison Street

**ZP2015-0086 to modify Use Permit #12-1000042 to allow the option to pay the Affordable Housing Mitigation Fee in lieu of providing below market rate (BMR) units on site.**

#### INTRODUCTION

This is an update of the Findings and Conditions adopted by the ZAB for Use Permit #12-1000042 and MODUP2014-0011. Revisions to the findings and conditions necessary to address the modified plans are shown with strikeouts (~~strikeout~~) for deleted text and underlines (underline) for added text. Only the modified Findings or Conditions are included; all other findings or conditions shall continue to apply except for the following:

#### GENERAL NON-DETRIMENT FINDINGS:

E. ~~The project will provide sixty-nine housing units, including seven that are available for households of Very Low Income (less than 50% of the AMI), which will help the City to meet its housing goals. The project will also provide a minimum of ten percent of the units available to Very Low Income households or pay the Affordable Housing Mitigation Fee. Either option assists the City in meeting its goal of providing housing affordable to all income levels.~~  
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#### MODIFIED CONDITIONS

Pursuant to BMC Section 23B.56.020, the Zoning Adjustments Board deletes conditions 11-15 to Use Permit #12-1000042 and replaces condition 11 as follows:

11. Affordable Housing. Prior to Certificate of Occupancy, consistent and in compliance with the requirements of BMC Chapter 22.20 and Resolutions 65,920–N.S., Resolution 66,015–N.S., and Resolution No. 66,809–N.S., the applicant shall:

A. Provide ten percent (10%) of the rental units at rates affordable to Very Low-Income Households for the life of the project, consistent with the requirements of BMC Chapter 22.20. The applicant shall enter into a Regulatory Agreement with the City to include any terms and affordability standards determined by the City to be necessary to ensure such compliance.

-Or-

B. Provide less than 10% of market rate units as Very Low-Income Units and, prior to final inspection or issuance of occupancy permit, pay the Affordable Housing Mitigation Fee at a rate of  $[(A-B) \times \text{Fee}] - [(B/((A-B) \times 10\%)) \times ((A-B) \times \text{Fee})]$  where A = Total Number of Units in the project and B = Number of Very-Low Income Units provided in the project.

-Or-

- C. The City of Berkeley is contemplating adopting an affordable housing mitigation fee on new residential ownership units constructed in the City of Berkeley. In the event the units are made available for ownership at the time of Certificate of Occupancy and the City has established a fee, the project shall be required to pay that fee (or provide on-site Below Market Rate Units in lieu of the fee, if allowed under the fee ordinance), but not exceeding \$34,000 per unit in 2014 dollars, prior to issuance of any certificate of occupancy, or if a certificate of occupancy has already been issued at the time the fee becomes effective, within 30 days thereafter.

### **Affordability Requirements (COAs 11-15)**

- ~~11. Number of Below Market Rate Units. The project shall provide seven (7) below market rate rental dwelling units ("BMR Units"), which satisfy BMC Section 22.20.065. The initial location of the BMR Units shall be designated in the Regulatory Agreement and shall be reasonably dispersed throughout the project; be of the same size and contain, on average, the same number of bedrooms as the non-BMR units in the project; and be comparable with the design or use of non-BMR units in terms of appearance, materials and finish quality. The designation of BMR units shall conform to the addresses assigned to the building by the City.~~
- ~~12. Regulatory Agreement. Prior to the issuance of a building permit, the applicant shall enter into a Regulatory Agreement that implements BMC Section 22.20.065, and this Use Permit. The Regulatory Agreement may include any terms and affordability standards determined by the City to be necessary to ensure such compliance. The maximum qualifying household income for the BMR Units shall be 50 percent of area median income (AMI), and the maximum housing payment shall be 30 percent of 50 percent of AMI, as set forth in the following paragraphs of this condition. If the BMR units are occupied by very low income tenants receiving a rental subsidy through the Section 8 or Shelter Plus Care programs, the rent received by the project sponsor may exceed the restricted rent to the payment standards allowed under those programs so long as the rent allowed under the payment standards is not greater than the market rents charged for comparable units in the development.~~

~~In addition, the following provisions shall apply:~~

~~Maximum rent shall be adjusted for the family size appropriate for the unit pursuant to California Health & Safety Code Section 50052.5 (h).~~

~~Rent shall include a reasonable allowance for utilities, as published and updated by the Berkeley Housing Authority, including garbage collection, sewer, water, electricity, gas, and other heating, cooking and refrigeration fuels. Such allowance shall take into account the cost of an adequate level of service. Utilities do not include telephone service. Rent also includes any separately charged fees or service charges assessed by the lessor which are required of all tenants, other than security deposits.~~

~~BMR units will be provided for the life of the project under Section 22.20.065.~~

- ~~13. Determination of Area Median Income (AMI).~~

The "AMI" (Area Median Income) shall be based on the income standards for the Oakland Primary Metropolitan Statistical Area reported by the United States Department of Housing and Urban Development (HUD). In the event HUD discontinues establishing such income standards, AMI shall be based on income standards determined by the California State Department of Housing and Community Development (HCD). If such income standards are no longer in existence, the City will designate another appropriate source or method for determining the median household income.

14. The applicable AMI for the purpose of determining the allowable rent for each unit (but not for the purpose of determining eligibility for occupancy of an inclusionary unit) shall be determined in accordance with the following table:

<b>Unit Size</b>	<b>AMI Standard</b>
Studio unit	AMI for a one person household
One-bedroom unit	AMI for a two person household
Two-bedroom unit	AMI for a three person household
Three-bedroom unit	AMI for a four person household

15. Nothing in these conditions shall be interpreted to prohibit, or to require modification of the Use Permit or Regulatory Agreement to allow, the provision of additional BMR units, or additional affordability, than are required in the foregoing provisions.