

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 # UP2014-0028

Property Address: **1984 BONITA AVENUE**

Permittee Name: **SAM RUDIN**

Use and/or Construction Permitted:

to operate a live, acoustically based music venue in an existing 1,254-square-foot music studio, with varied performances up to three times a week.

- Use Permit to operate an Entertainment Establishment, under BMC Section 23E.68.030

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 24, 2015.

ATTACHMENT 1

FINDINGS AND CONDITIONS

AUGUST 27, 2015

1984 Bonita Avenue

Use Permit #2014-0028 to operate a live, acoustically based music venue in an existing 1,254-square-foot music studio, with varied performances up to three times a week.

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 parking and traffic analysis submitted as part of the application estimates a trip generation of 19 additional vehicles, with five trips occurring during the peak evening hours (4:00 p.m. to 6:00 p.m.). The Traffic Engineer has determined that this trip generation is not significant. Additionally, the parking survey of nearby on-street and lot availability demonstrated there is sufficient available capacity to absorb the project’s parking demand, even with the potential redevelopment of the Berkeley Way Lot and temporary closure of the Center Street Garage during reconstruction.
 - B. Due to the acoustically based music styles of the performances at this venue, it is unlikely that there would be any impacts that would exceed the City’s noise ordinance (BMC Chapter 13.40). Furthermore, the proposed venue is surrounded predominantly by commercial uses that close at 8:00 p.m. or earlier. There is one dwelling unit on the second floor of the adjacent building to the north; the residents have expressed support of the proposed project to the applicant. As a precaution, however, the project is conditioned for the applicant to submit an acoustical study prior to building permit final, and to implement, subject to review and approval of the Zoning Officer, measures identified in the study to ensure compliance with the City’s noise ordinance.

OTHER REQUIRED FINDINGS

3. Pursuant to Berkeley Municipal Code Section 23E.68.090.B.1, the Zoning Adjustments Board finds that the proposed use is compatible with the purposes of the District, which is to implement the vision and goals of the Downtown Area Plan. The project is consistent with these goals in that it creates a local entertainment/cultural destination that builds on the existing blend of cultural uses in the nearby Arts District, and it increases the City's sales tax revenues from food and beverages served at the nearby restaurants that concert goers will patronize. The project will strengthen the Downtown's growing reputation for music performances and the arts in general.

4. Pursuant to Berkeley Municipal Code Section 23E.68.090.B.2, the Zoning Adjustments Board finds that proposed use is compatible with the surrounding uses and buildings in that the majority are commercial and close by 8:00 p.m. The small scale, acoustically based music venue will act as an appropriate transition between the residential uses to the north and the more active late night activities of the Downtown to the south and east. The venue will provide a level of activity to the Downtown buffer, which will result in the feeling of a more secure and vital neighborhood. No changes are being proposed to the building's exterior.

STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

1. Conditions Shall be Printed on Plans

The conditions of this Permit shall be printed on the second 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.

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 Construction Plan (TCP) 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) or parking lanes.
 - Storage of building materials, dumpsters, debris anywhere in the City ROW.
 - Provision of exclusive contractor parking on-street.
 - Significant truck activity.

Contact the Permit Service Center (PSC) at 510 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dash board permits). Public Works Transportation Engineering at 510 981-7010 reviews all submitted TCP requests.

Meter heads or pay stations (if in the construction area) shall be removed only by City Staff. Contact the site inspector a minimum 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. Construction activity shall be limited to between the hours of 8:00 a.m. and 6:00 p.m. on Monday through Friday, and between 9:00 a.m. and noon on Saturday. No construction-related activity shall occur on Sunday or on any Federal Holiday.
14. 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.
15. 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.
16. 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.

17. 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.
18. Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.
19. Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.
20. 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:

21. The applicant shall submit a report prepared by a qualified acoustical consultant that analyzes how operations (i.e. performances) will comply with the exterior noise standards of the City's Noise Ordinance (BMC 13.40). Subject to review and approval of the Zoning Officer, the applicant shall, to the maximum extent feasible, implement all recommended mitigation measures as identified in the report and shall be included in the building plan set.
22. The project shall conform to the plans and statements in the Use Permit.
23. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated September 5, 2015.

At All Times:

24. Performances shall be limited to acoustically based music, occur a maximum of three times a week, and occur between 8:00 p.m. and 11:00 p.m.
25. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
26. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.
27. Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to Design Review and/or Landmarks Preservation Commission approval.
28. 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.

Further Details of the Proposed Use

LAND USE PLANNING

I teach piano approximately 25-30 hours/week, but only $\frac{1}{2}$ of these hours are on premise. For the others, I go to them.

Most of my incoming students are daytime lessons, and they will either use the parking lot at Berkeley Way above Milvia, or they will find street parking.

Eventually I hope to have performances once or twice a week. I imagine there will be perhaps 30-40 attendees, although capacity will be twice that.

There is only one neighbor who is likely to hear any sound coming from the building, and they have pronounced themselves (they are a couple) to be enthusiastically in favor of the music and not concerned about musical noise, as long as it's not too late. Speaking of which, I expect the concerts to go no later than 11:00.

Add to this the fact that this will always be quieter, acoustically based music - therefore I don't think sound insulation will be required.

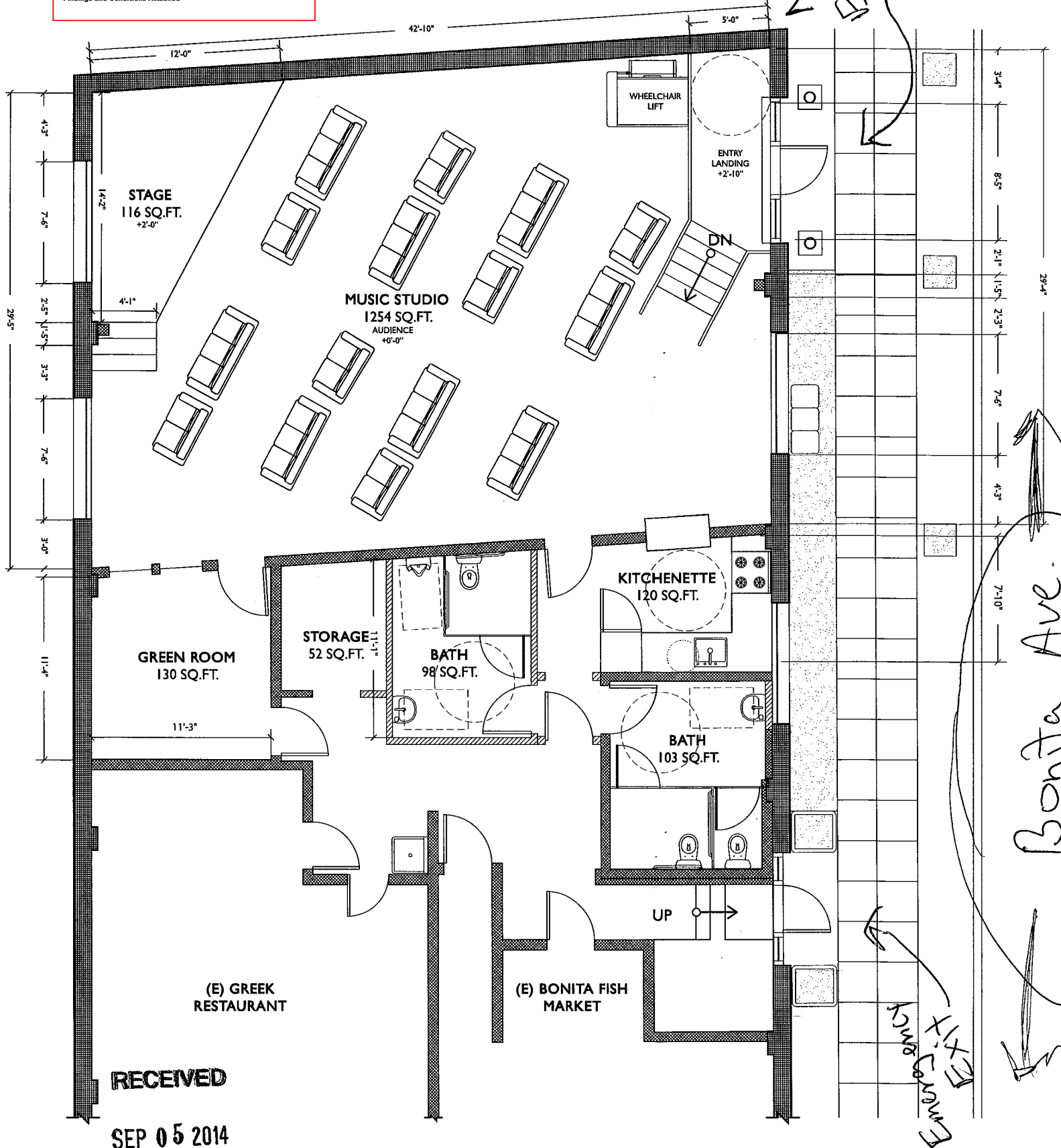
→ All concert attendees will be encouraged to use the Berkeley Way Parking Lot.

Shanna Alu
SIGNATURE

August 27, 2015
DATE

* Findings and Conditions Attached

ATTACHMENT 2
ZAB 08-27-15
Page 2 of 2



RECEIVED

SEP 05 2014

LAND USE PLANNING Re: Use Permit # 2014-0028

1984 BONITA
MUSIC STUDIO
SCALE 1/8"=1'



← University Ave. →

Bonita Ave.

Emergency Exit

Handwritten notes:
12'-0"
42'-10"
5'-0"
3'-4"
8'-5"
2'-1"
1'-5"
2'-3"
7'-6"
4'-3"
7'-10"