



Planning and Development Department  
Land Use Planning Division

# A D M I N I S T R A T I V E U S E P E R M I T

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## 2247 Fifth Street

### Administrative Use Permit #ZP2015-0230

**Project Description:** To establish a 1,250 square office space within the Bancroft Center, pursuant to:

- Section 23E.84.030 to establish an office under 5,000 square feet.

FINDINGS, CONDITIONS AND APPROVED PLANS ATTACHED

Following the expiration of the mandatory appeal period set forth in Section 23B.28.040 of the Berkeley Municipal Code, with no timely appeal being filed, the Administrative Use Permit described herein has been duly granted by the Zoning Officer on April 18, 2016

Attest: Carol Johnson  
Carol Johnson, Land Use Planning Manger

April 18, 2016  
Effective Date

# ATTACHMENT 1

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## FINDINGS AND CONDITIONS

MARCH 29, 2016

### 2247 Fifth Street

#### Administrative Use Permit #ZP2015-0230

To establish a 1,250 square office space within the Bancroft Center.

#### PERMITS REQUIRED

Administrative Use Permit under Section 23E.84.030 to establish an office under 5,000 square feet.

#### 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 would not affect any historical resource.

#### FINDINGS FOR APPROVAL

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2. As required by Section 23B.28.050.A of the Zoning Ordinance, the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the 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 because:
  - The proposed use will be an office within the Bancroft Center which is composed of 15 different commercial spaces that range in size from approximately 1,000 to 2,000 square feet. It will not result in any changes to the building footprint or height and will not result to detriment to light, air or privacy.

At the time of this writing, other uses within this building are mostly office uses. The last known use for the subject space was an office. The proposed use will be compatible with the surrounding office uses as it will maintain regular business hours, have a small number of employees and clients per day. It will be on a similar scale as and have a limited impact on other tenants in the building. Furthermore, the proposed project, a unique art appraisal and curatorial service will, complement and support the mix of existing uses and other arts and crafts uses in the district. The Bancroft Center,

where the office would be fully contained, will help maintain a transition from more intensive industrial uses to the surrounding residential areas. Under these circumstances, the proposed Project is a compatible use in the MUR district which combines residential, live/work, light industrial, and arts and crafts.

- This proposal adheres to all Use Limitations in the Mixed Use Residential (MU-R) zoning district prescribed under Section 23E.84.060.

3. As required under Section 23E.84.090 (Findings) Paragraph B.1, the proposed incidental uses are consistent with the Purposes of the MU-R district (23E.84.020) as described in the bulleted points below.

*“A. Implement the West Berkeley Plan’s designation of a Mixed Residential District.”*

- The directive to codify the West Berkeley Plan does not apply to the proposed project. However, as discussed herein, the project is consistent with all applicable regulations and findings of the MU-R District to which this Purpose refers.

*“B. Support the continued development of a mixed use District which combines residential, live/work, light industrial, arts and crafts and other compatible uses.”*

- This proposed use is a compatible use where an art appraisal and curatorial business will support other arts and crafts business. This office would be wholly enclosed within a building designed to support the co-existence of all these uses. For these reasons it is found to further the development of this mixed use District.

*“C. Strengthen residential concentrations which exist within the District.”*

*“D. Provide appropriate locations for a broad range of live/work activities to occur.”*

- The directives of items C and D above do not apply to the proposed project.

*“E. Provide a transitional district between the residential districts to the east of the MU-R and the industrial districts to the west of the MU-R.”*

- This office would be wholly enclosed within a building designed as a buffer between residential and industrial districts.

*“F. Encourage light manufacturers and wholesalers which are compatible with a mixed use-residential district.”*

- The directives of item F above does not apply to the proposed project.

*“G. Support the development of businesses of all types which contribute to the maintenance and improvement of the environment.”*

- The directives of item F above does not apply to the proposed project however the proposed project is not inconsistent or contrary to this directive.

*“H. Protect residents from unreasonably detrimental effect of nonresidential uses, such as noise, vibration, odors, smoke, fumes, gases, dust, heat and glare, to the extent possible and reasonable within a mixed use West Berkeley context.”*

- The proposed office use will not present unreasonable impacts on surrounding residents.

*“I. To the extent feasible, protect industrial uses, particularly light industrial uses, from unreasonable intrusions on their ability to operate lawfully.”*

- The proposed use will not hinder or present unreasonable intrusions for industrial uses in the MUR District because it will operate during the normal business day, be fully contained within the building, and not likely to compete for curbside loading space.

*“J. Permit retail and food service activities which are either limited and small scale, primarily serving persons living and/or working in the District, but not a citywide or regional clientele, or which are ancillary and designed to maintain and enhance the economic viability of manufacturers in the District. (Ord. 6478-NS § 4 (part), 1999)”*

- This goal does not apply to the proposed Project.

4. As required under Section 23E.84.090 (Findings) Paragraphs B.2 through B.6, the Zoning Officer makes the following findings for the proposed use:

Paragraph B.2 – *“Be consistent with the normal use and operation of surrounding uses and buildings, including residential and industrial buildings.”*

- Given the operating hours during the normal business day and their location within the existing mixed-use building, these uses are not expected to interfere with the normal use and operation of other uses, buildings or business in the area. It found to be consistent with the surrounding uses.

Paragraph B.3 – *“Be consistent with the adopted West Berkeley Plan.”*

- This office based art conservation business will be located in an appropriate location. The other uses that are located in the building include two art galleries, a fine art wholesaler, and other offices. The proposed use will be similar to the existing uses in the building.
- The proposed Project is also consistent with the Spectrum of Permitted Uses for this mixed uses/ residential neighborhood as described in the WBP’s Land Use Implementation Measures and Regulations (page 38). Specifically this proposal integrates land uses that have similar discretionary thresholds and policy preferences in this Plan subarea.
- This proposed Project is not contrary to, or inconsistent with, any of the policies of the Plan.

Paragraph B.4 – *“Not be likely, under reasonably foreseeable circumstances, to either induce or contribute to a cumulative change of use in buildings away from residential; live/work; light industrial, or arts and crafts uses.”*

- The proposed Project is a unique combination of art appraisal and curatorial services that will support other arts and crafts uses in the district. This space is 1,250 square feet and is a small portion of the total residential, live/work, light industrial, or arts and crafts uses and is unlikely to contribute to a cumulative change of use.
- See Findings #3 for Purposes of the District, Item I, above.

Paragraph B.5 – *“Be designed in such a manner to be supportive of the character and purposes of the District.”*

- The character of this District reflects the variety of uses present and their ability to coexist in this unique context. The project area features commercial, light industrial, office, educational, residential, live/work and food service uses. This Proposal is consistent with the Spectrum of Permitted uses for this district and will be fully contained within a building that reflects the mix of uses in the district.
- This proposal supports other Purposes of the MU-R District as discussed in Findings #3, above.

Paragraph B.6 – *“Be able to meet any applicable performance standards as described in Section 23E.84.070.H.”*

- The City Manager has not promulgated or revised performance standards for the subject uses.

## STANDARD CONDITIONS

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The following conditions, as well as all other applicable provisions of the Zoning Ordinance, apply to this Permit:

### 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’. *Additional sheets* may also be used if the *second* 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 issued is permitted unless the Permit is modified by the Zoning Officer, except that the Zoning Officer may approve changes that do not expand, intensify, or substantially change the use or building.

**5. Plans and Representations Become Conditions (Section 23B.56.030)**

Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

**6. Subject to All Applicable Laws and Regulations (Section 23B.56.040)**

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments.

**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. Indemnification Agreement**

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 IMPOSED BY THE ZONING OFFICER**

Pursuant to BMC 23B.28.050.D, the Zoning Officer attaches the following additional conditions to this Permit:

**Prior to Submittal of Any Building Permit:**

10. 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 written reports of such complaints and actions to the project planner on a weekly basis. **Individual Responsible for Noise Management:**

□ 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. 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.
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.



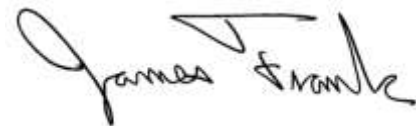
15. All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter in thickness and secured to the ground.
16. All active construction areas shall be watered at least twice daily, and all piles of debris, soil, 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 establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way.
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.
21. Any construction during the wet season shall require submittal of a soils report with appropriate measures to minimize erosion and landslides, and the developer shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.

**Prior to Issuance of Occupancy Permit or Final Inspection:**

22. All construction at the subject property shall substantially conform to the approved Use Permit drawings or to modifications approved by the Zoning Officer.
23. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated October 27, 2015.

**At All Times (Operation):**

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



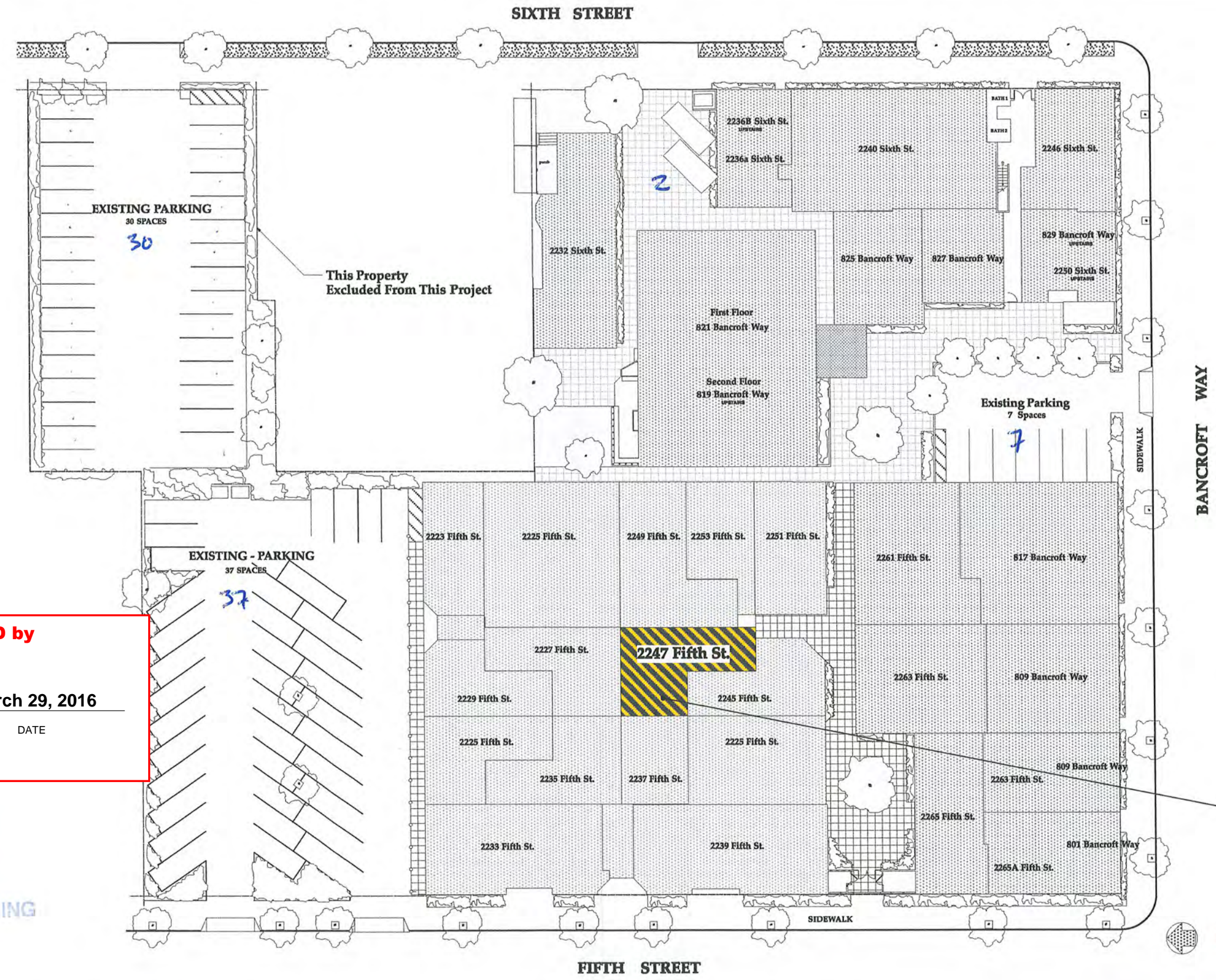
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Prepared by: Jim Frank, Assistant Planner  
For Shannon Allen, Principal Planner, AICP

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OCT 27 2015

LAND USE PLANNING

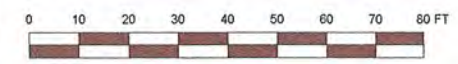


BANCROFT WAY

SIXTH STREET

FIFTH STREET

Subject Space



**PLANS APPROVED by**

*James Frank*      **March 29, 2016**

SIGNATURE      DATE

**\*AUP Findings and Conditions Attached**

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OCT 27 2015

LAND USE PLANNING

### ABRAMS/ MILLIKAN & ASSOCIATES

ARCHITECTURE CONSTRUCTION DEVELOPMENT  
LICENSE #C25888

1834 Fourth Street Berkeley, CA. 94710  
(510) 644-3002 (510) 649-9095 fax

### Bancroft Center

Space #2247 Fifth St.  
Berkeley, CA. 94710

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#### OVERALL SITE PLAN

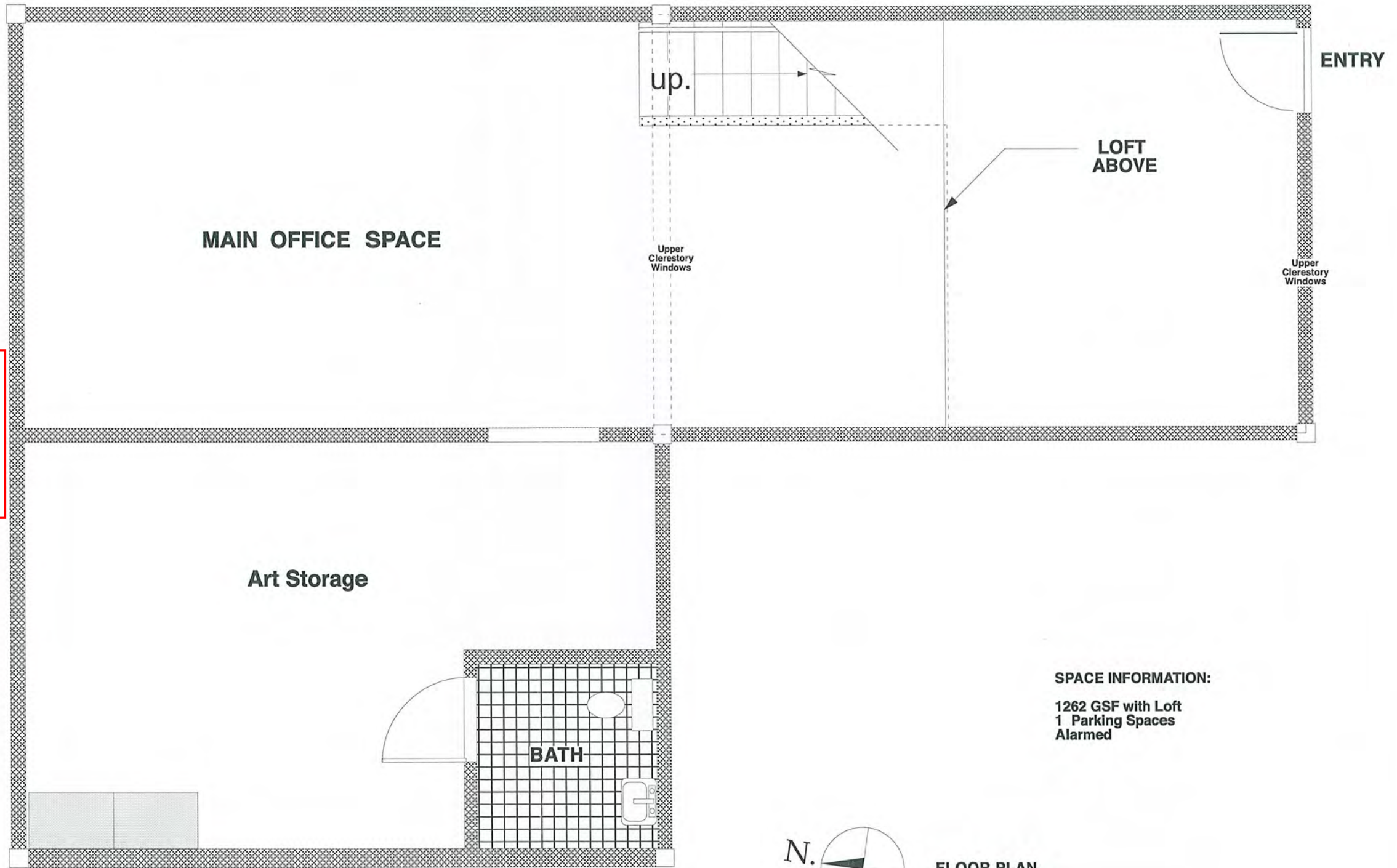
DATE :	10/21/2015		
SCALE:	1/4"=1'-0"		
DRAWN :	EA		
JOB: #			
REVISION	DATE	BY	CHECKED

SHEET NO.

# A.0

OF \_\_\_ SHEETS

RECEIVED  
 OCT 27 2015  
 LAND USE PLANNING



**PLANS APPROVED by**

*James Frank*

March 29, 2016

SIGNATURE

DATE

\*AUP Findings and Conditions Attached

SPACE INFORMATION:  
 1262 GSF with Loft  
 1 Parking Spaces  
 Alarmed



FLOOR PLAN  
 Scale: 1/4" = 1'-0"

**ABRAMS/ MILLIKAN & ASSOCIATES**

ARCHITECTURE CONSTRUCTION DEVELOPMENT  
 LICENSE #C25888

1834 Fourth Street Berkeley, CA. 94710  
 (510) 644-3002 (510) 649-9095 fax

**Bancroft Center**  
 Space #2247 Fifth St.  
 Berkeley, CA. 94710

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**FLOOR PLAN**

DATE :	6/ 10/ 97		
SCALE:	1/4"=1'-0"		
DRAWN :	EA		
JOB: #			
REVISION	DATE	BY	CHECKED

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