



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

793 Heinz Avenue

Administrative Use Permit #ZP2016-0055

Project Description: To permit a change of use in approximately 11,065 sq. ft. of Manufacturing/ Warehouse/Office space to Biotechnology Product Development and Manufacturing and to allow the Biotechnology Product Development and Manufacturing use under the Temescal Business Park Master Use Permit, pursuant to”

- Allow a biotechnology product development and manufacturing business in an existing space, pursuant to BMC 23E.72.030; and
- Allow a biotechnology product development and manufacturing business in an existing space, under UP #A2223, and subject to the conditions and requirements set forth therein.

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 May 17, 2016.

Attest: Carol Johnson
Carol Johnson, Land Use Planning Manger

May 17, 2016
Effective Date

ATTACHMENT 1

FINDINGS AND CONDITIONS

APRIL 26, 2016

793 Heinz Street

Administrative Use Permit #ZP2016-0055

To permit a change of use in approximately 11,065 sq. ft. of Manufacturing/Warehouse/Office space to Biotechnology Product Development and Manufacturing and to allow the Biotechnology Product Development and Manufacturing use under the Temescal Business Park Master Use Permit.

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 (“minor alteration of existing facilities” with negligible expansion of use). Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) there are no cumulative impacts, (b) there are no significant effects on the environment due to unusual circumstances, (c) the project is not located near a scenic highway, (d) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (e) the project will not cause a significant change in a historical resource.

FINDINGS FOR APPROVAL

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, will 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:
 - a) The on-going use of the building at 793 Heinz Street for manufacturing, warehousing and industrial functions is permitted pursuant to UP #A2223 (10/26/94), and is subject to the conditions thereunder;
 - b) The project involves interior renovations to an existing building in the Temescal Business Center to provide facilities for research and development, manufacturing, warehousing and associated office functions for biotechnology related work. There will be no increase in floor area or significant modifications to the building shell;
 - c) The building is currently vacant, and approval of the project will provide additional space for the antibody development work of Agenus West, LLC, which has an existing facility at 901 Heinz Street. With this expansion, Agenus West will be employing up to 50 people in their West Berkeley facilities, bringing economic benefits and adding to the general welfare of the City;

- d) Parking to serve the affected building is provided within the boundaries of the Temescal Business Center (35 spaces), and UP #A2223 specifies that tenants not park on adjacent properties, reducing potential neighborhood parking impacts;
 - e) The project will be subject to the environmental performance standards established in UP #A2223 relating to air quality, noise, odors, utilities, transportation/circulation, parking, hazardous materials and fire, thereby minimizing the potential health and safety impacts to the surrounding areas;
3. The Zoning Officer finds that the proposed biotechnology product development, warehousing and manufacturing use, and while not specifically listed as an approved use under UP #A2223 is a type of industrial use that can be added as an allowed use under UP #A2223 and approved with an Administrative Use Permit under BMC 23E.72.030 for the following reasons:
- a) The proposed use is consistent with the West Berkeley Plan's designation of the project area for "mixed manufacturing" uses in that the Plan allows a wide variety of industrial and manufacturing uses in the District and because Goal 1 of the Plan calls for the City to take all reasonable actions to maintain and promote manufacturing and other industrial sectors in Berkeley. Furthermore, the list of permitted and promoted uses in the Plan is not comprehensive or absolutely binding, but "seeks to give clear guidance" (West Berkeley Plan, p. 37; UP #A2223, NOD, p. 2). Warehousing, pharmaceuticals, and primary production manufacturing are all considered allowable uses (with an Administrative Use Permit) under BMC 23E.72.030, and the proposed operation would include these functional uses;
 - b) The list of approved uses for the Temescal Business Park under UP #A2223 includes "bio-technology products manufacturing." The proposed project includes this use, but with the addition of the product development component. Given the flexibility in defining "mixed manufacturing" uses that is found in the West Berkeley Plan, and also considering that pharmaceutical manufacturing, warehousing and primary production manufacturing are all allowed uses in the M District and laboratories are allowed as ancillary uses, the proposed use of biotechnology product development and manufacturing can be allowed in the M zoning district (BMC 23E.72.030) and permitted under UP #A2223;
 - c) Manufacturing and Other Industrial Uses with less than 20,000 sq. ft. of floor area can be approved in the M District with an Administrative Use Permit (or Zoning Certificate, in some cases) (BMC 23E.72.030). Since the proposed project would occupy approximately 11,065 sq. ft., the project can be approved with an Administrative Use Permit.
4. As required by Section 23E.72.090 of the Zoning Ordinance, the Zoning Officer finds that:
- a) The proposed project is consistent with the purposes of the M – Manufacturing District in that the project will involve product development and manufacturing in the biotechnology field (more specifically, cancer fighting anti-bodies), thereby expanding the range of manufacturers in the M District;
 - b) The project will encourage the creation and continuation of well-paid industrial jobs, including some that do not require advanced degrees;

- c) The project will be located in an existing building, thereby supporting the retention of manufacturing and industrial buildings in the M – Manufacturing District;
- d) The project, which may operate 24 hours a day, year around, is an appropriate operation in the M – Manufacturing District, because it has been created as an area where manufacturers and industrial businesses will not be interfered with by incompatible uses;
- e) The project will be consistent with the West Berkeley Plan and will help implement the Plan’s designation of a Manufacturing District in that it will “maintain and promote manufacturing and other industrial sectors in Berkeley” (Goal 1) and “continue to support the growth of advanced technology manufacturing (such as biotechnology) and advanced technology services (such as research laboratories) in appropriate locations, under appropriate environmental safeguards” (Goal 4). It will also create employment opportunities, consistent with Goal 8 of the West Berkeley Plan;
- f) That the project will not result in any significant changes in parking demand and traffic generation because 35 spaces of off-street parking are allocated for serving this portion of the Temescal Business Park. The applicant projects a maximum of 40 day-time employees for its operations at both 901 (existing) and 893 Heinz (proposed), so the increase in parking demand is expected to be less 35 spaces. UP #A2223 requires the owner of the business park to notify tenants that they cannot park on adjacent properties. Since it appears that on-site parking will be adequate to meet the project’s needs, it is expected that the applicant will be able to conform with this requirement;
- g) That the project will be bound by, and able to meet, the performance standards for off-site impacts set forth in UP # A2223 in that the use is not expected to generate noise, dust or odor dissimilar to other local uses or previous uses at the site, and therefore the use is not expected to have a detrimental impact on the surrounding uses.

STANDARD CONDITIONS

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 Issuance of Occupancy Permit or Final Inspection:

10. All construction at the subject property shall substantially conform to the approved Use Permit drawings or to modifications approved by the Zoning Officer.
11. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated **March 14, 2016**.

At All Times (Operation):

12. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
13. 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.
14. Noise and exterior lighting shall be controlled so as to prevent verified complaints from the surrounding neighborhood.

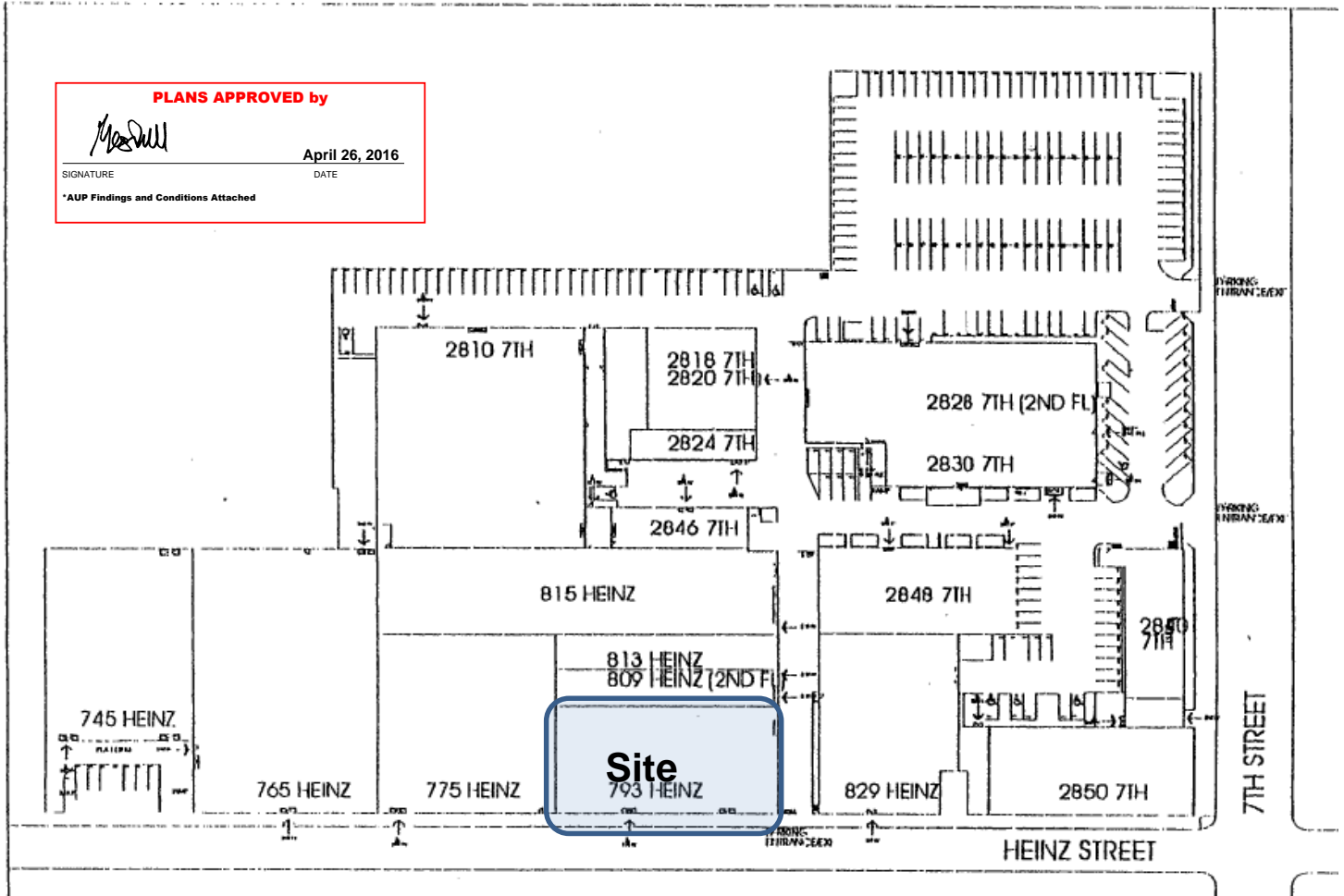


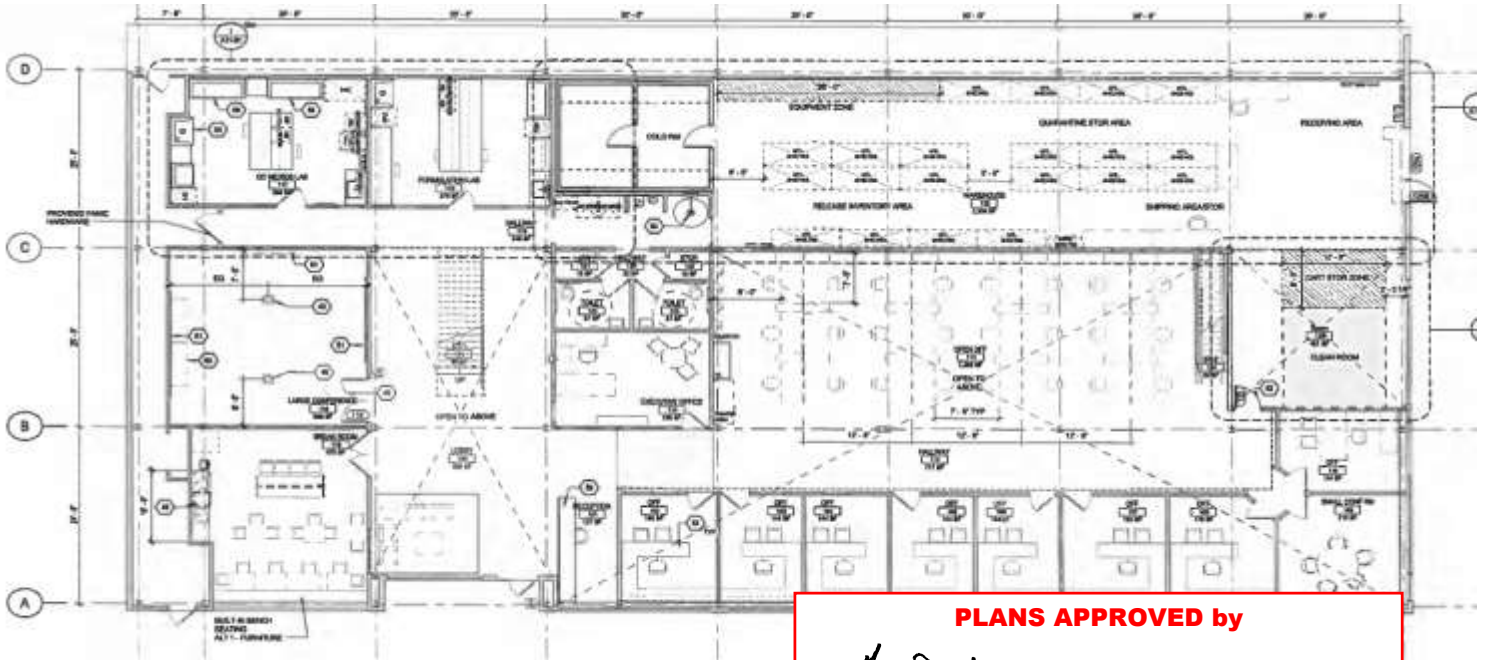
Prepared by: Doug Donaldson (Contract Planner)
For Greg Powell, Principal Planner

ATTACHMENT 2

SITE PLAN

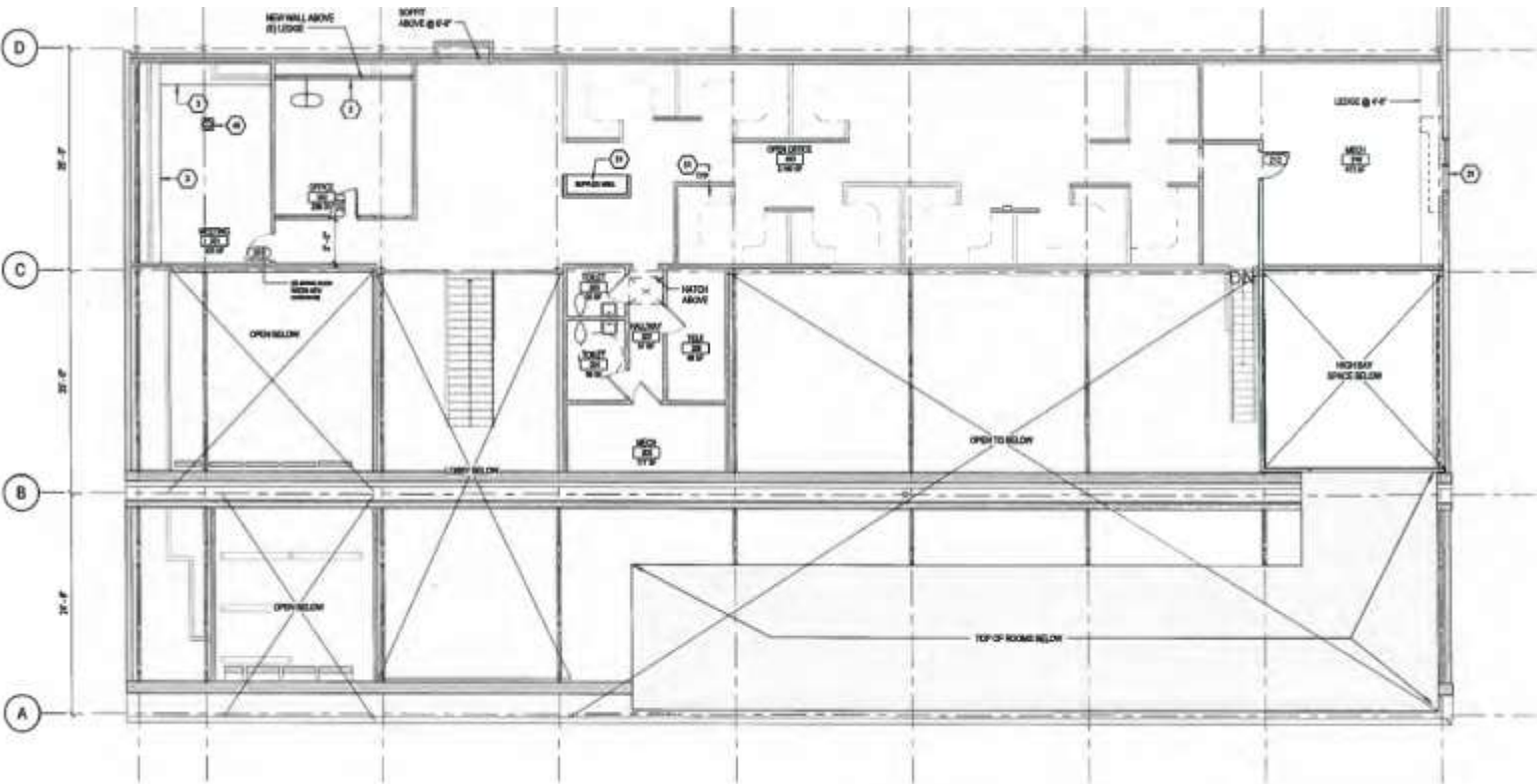
TEMESCAL BUSINESS CENTER





FLOOR PLAN LEVEL 01

PLANS APPROVED by
Ms. Dull
April 26, 2016
SIGNATURE DATE
***AUP Findings and Conditions Attached**



FLOOR PLAN MEZZANINE