



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: ZP2015-0139

Property Address: **841 GILMAN STREET**

Permittee Name: **JOHN HOPKINS
HOPKINS STUDIO**

Use and/or Construction Permitted:
to legalize the previous elimination of a light manufacturing tenant space (841-B) by demising it into two adjacent lawfully, non-conforming retail tenant spaces (841-A & 843-A) thereby expanding both retail uses in the MU-LI district.

- Use Permit for the expansion of a lawfully non-conforming use, under BMC Section 23C.04.060.B

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 October 13, 2016.

ATTACHMENT 1

FINDINGS AND CONDITIONS

SEPTEMBER 22, 2016

841 & 843 Gilman Street

Use Permit #ZP2015-0139 to legalize the previous elimination of a light manufacturing tenant space (841-B) by demising it into two adjacent lawfully, non-conforming retail tenant spaces (841-A & 843-A) thereby expanding both retail uses in the MU-LI district.

PERMITS REQUIRED

- Use Permit for the expansion of a lawfully non-conforming use, under Berkeley Municipal Code Section 23C.04.060.B

I. 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”). The project consists of interior alterations to an existing structure. 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.

II. FINDINGS FOR APPROVAL OF THE EXPANSION OF A NON-CONFORMING USE

1. General Non-Detriment Finding:

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 subject property has long been established as a retail location where four of the existing five tenant spaces are occupied by retail operations. The immediate area surrounding this property is a mix of light manufacturing and commercial uses with regular pedestrian activity that is not present in a typical neighborhoods in this zoning district (MU-LI). These conditions as well as the odd configuration of the former tenant space at 841B (last permitted as a media production) has proven to be unsupportive of a light industrial use at this location. Therefore, the proposal to combine the vacant tenant space at 841B with the adjacent retail spaces at 841A

- and 843 A, thereby expanding these retail uses, is found to be a beneficial, appropriate and efficient land use change.
- B. The immediate surrounding neighborhood includes properties zoned for Mixed Use-Light Industrial, with a mix of manufacturing companies, automobile services, restaurants, music and arts studios, and furniture retail shops. The project will not change the use on the site or its intensity, and will therefore not have detrimental effects to the neighborhood or beyond. The expansion of the units 841 A and 843 A will allow for the continued operation of an established retail businesses, which will contribute towards maintaining a full range of land uses and economic activities within the West Berkeley Plan Area.
 - C. The project is consistent with the Purpose of the MU-LI district to encourage development of a mixed use-light industrial area for a range of compatible uses in accordance with Berkeley Municipal Code Section 23E.80.020 and 23E.80.090 Paragraph B.1. Under the circumstances of this case where the subject use is located in a predominately commercial block face in the MU-LI, the subject retail uses are among the range of existing non-conforming retail and other commercial uses in this concentrated neighborhood where they do not affect light manufacturing uses within the broader MU-LI district. Due to these circumstances and its limited scope (affecting only 2,546 sq. ft. of floor area in the 12K-sq. ft. building), the proposed expansion is not expected to threaten, impede or discourage development and vitality of the MU-LI.
 - D. The project is compatible with the surrounding retail, food service, and office uses because they are all commercial in nature and operate in similar and complementary manner and will not interfere with one another in accordance with Berkeley Municipal Code Section 23E.80.090 Paragraph B.2. The proposal is also compatible with the nearby school bus yard, contractor's yard, auto and tire services, and office uses where these uses and the proposed use have existed and operated for several years without conflict, interference or verified complaint.
 - E. The project is consistent with the West Berkeley Plan's (1993) Spectrum of Permitted Uses in the MU-LI where retail uses are permitted to a limited extent while light manufacturing and other industrial uses are encouraged in accordance with Berkeley Municipal Code Section 23E.80.090 Paragraph B.3. This proposal will expand a retail use that was established prior to the WBP adoption and affects an adjacent tenant space which is not suited for light manufacturing or industrial use due to its condition (no windows and egress), configuration (without adequate street frontage and ROW access) and location within a predominantly retail property on a commercially-dominated West Berkeley block face.
 - F. In accordance with Berkeley Municipal Code Section 23E.80.090 Paragraph B.4, the project is not likely to induce a substantial change-of-use in the buildings in the MU-LI district from manufacturing, wholesale trade or warehousing because of the particular circumstances of this case related to the predominance of retail uses at the subject property and the conditions and configuration of the subject tenant spaces, and these circumstances do not apply generally to other properties in the district [overall].
 - G. The project is designed in manner that is supportive of the light industrial character of the district in accordance with Berkeley Municipal Code Section 23E.80.090

Paragraph B.5. In this regard, the physical compatibility of the project is demonstrated in the existing architectural design of the subject building and the maintenance of this design in the proposal that include no changes to the façade.

III. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

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'. 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 Applicable Laws and 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. 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.

IV. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING OFFICER

Pursuant to BMC Section 23B.32.040.D, the Zoning Adjustments Board attaches the following conditions to this Permit:

Prior to Submittal of Any Building Permit:

10. Project Liaison. The applicant shall provide the project planner with the name and telephone number of the individual empowered to manage complaints generated from the project. The individual's name, telephone number, and responsibility for the project shall be posted at the project site for the duration of the project in a location easily visible to the public. The individual shall record all complaints received and actions taken in response, and submit written reports of such complaints and actions to the project planner on a weekly basis.

□ Project Liaison: _____
Name Phone #

11. Address Assignment. The applicant shall file an "Address Assignment Request Application" with the Permit Service Center (2120 Milvia Street) for any address change or new address associated with this Use Permit. The new address(es) shall be assigned and entered into the City's database prior to the applicant's submittal of a building permit application.

Prior to Construction:

12. Construction Noise Management. 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 #

During Construction:

13. Construction Hours. Construction activity shall be limited to between the hours of 8:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and noon on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.

14. Transportation Construction Plan. The applicant and all persons associated with the project are hereby notified that a Transportation Construction Plan (TCP) is 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.

The applicant shall secure the City Traffic Engineer's approval of a TCP. Please contact the Office of Transportation at 981-7010, or 1947 Center Street, 3rd floor, and ask to speak to a traffic engineer. In addition to other requirements of the traffic Engineer, this plan shall include the locations of material and equipment storage, trailers, worker parking, a schedule of site operations that may block traffic, and provisions for traffic control. The TCP shall be consistent with any other requirement of the construction phase.

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). Please note that the Zoning Officer and/or Traffic Engineer may limit off-site parking of construction-related vehicles if necessary to protect the health, safety or convenience of the surrounding neighborhood. A current copy of the Plan shall be available at all times at the construction site for review by City Staff.

15. Public Works. 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.

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

23. Compliance with Conditions. The project shall conform to the plans and statements in the Use Permit.
24. Compliance with Approved Plan. The project shall conform to the plans and statements in the Use Permit. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated received July 5, 2016.
25. The final inspection for the building permit for this project shall not occur until the building permit to create a second means of egress in Unit 843B (currently B2016-03985) is complete and receives final inspection.

At All Times:

26. Exterior Lighting. All exterior lighting shall be energy efficient where feasible and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
27. Drainage Patterns. When applicable, 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.

- 28. Design Review.** 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.
- 29. Subject to Review.** This permit is subject to review, imposition of addition 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 reducing 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.

SITE PLAN

PROJECT DATA

Description: - Expand Units 841A & 843A into adjacent Unit 841B to to create larger retail spaces.
 - Convert existing Unit 841B 2nd floor to attic.
 - Provide legal egress from all units.

Assessor's Parcel No.: 060 235801202

Zone: MULI

Occupancy: M

Construction Type: III-B

Building Areas (Gross):

(E) Building Area:	12028 s.f.
(E) Unit 841 A:	2546 s.f.
(E) Unit 841 B:	2628 s.f.
(E) Unit 843 A:	2,143 s.f.
(N) Unit 841 A:	3373 s.f.
(N) Unit 843 A:	2,975 s.f.
(N) Exit Passageway:	355 s.f.

HOPKINS STUDIO

1607 Buena Ave.
 Berkeley, CA 94703
 T 510-910-1937

BERKELEY SPORTS MALL
 841 A & B GILMAN ST.
 BERKELEY, CA 94710

**SITE PLAN
 TITLE SHEET**

Date	06.30.2016
Scale	AS NOTED
Drawn	JH

1
 Sheet

PLANS APPROVED BY ZONING ADJUSTMENTS BOARD

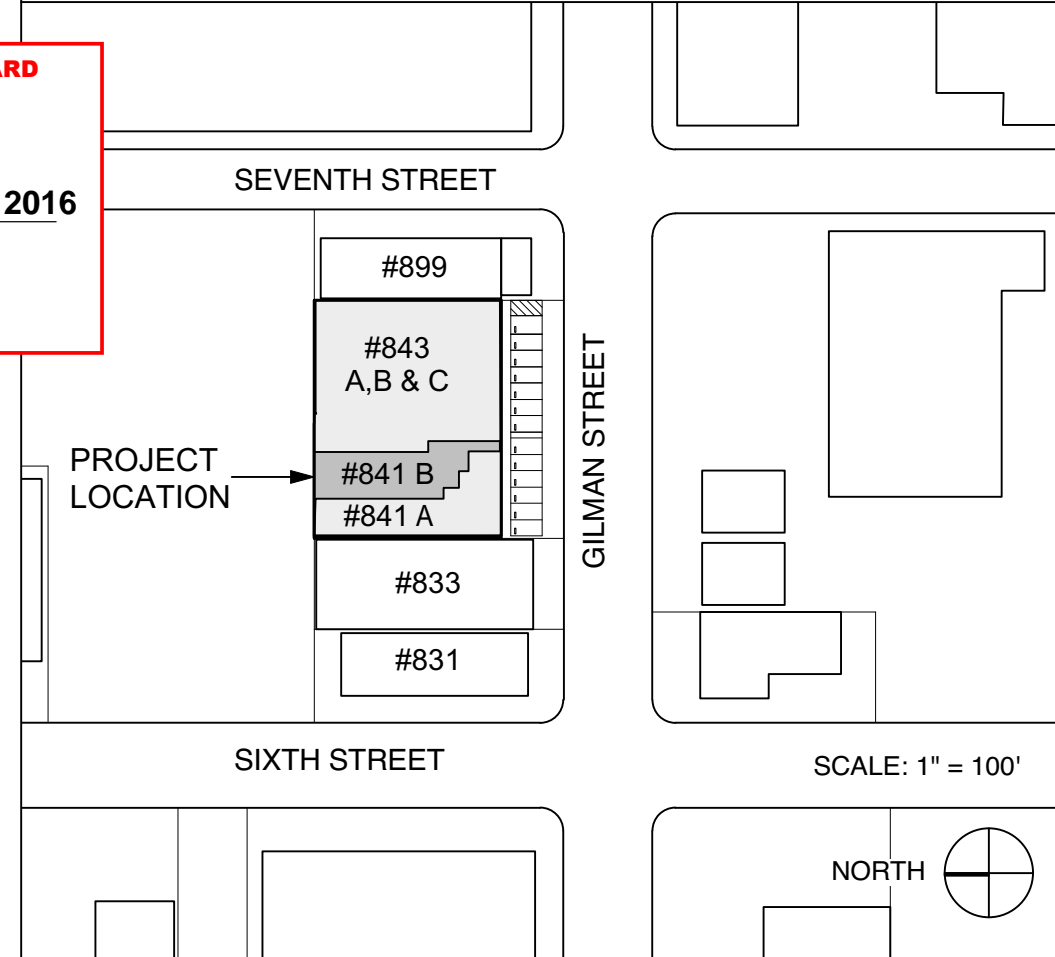
Shamir Alu

September 22, 2016

SIGNATURE

DATE

* Findings and Conditions Attached



SHEET INDEX

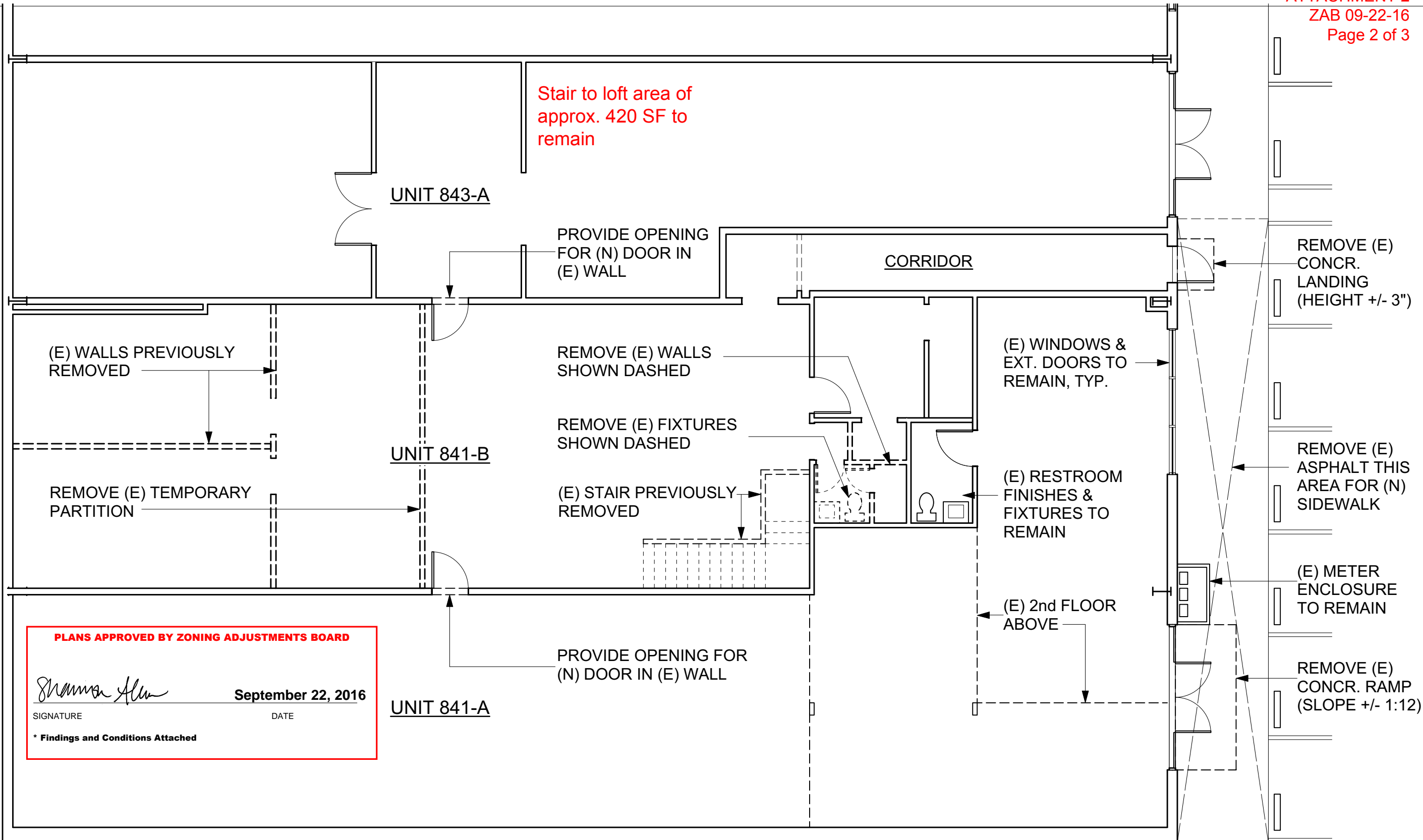
DIRECTORY

- 1 TITLE SHEET / SITE PLAN
- 2 EXISTING FLOOR PLAN A
- 3 EXISTING FLOOR PLAN B
- 4 PROPOSED FLOOR PLAN A
- 4 PROPOSED FLOOR PLAN B

OWNER: Tri City Investments Inc.
 500 Valos Road
 Arvin, CA 93203
 Attn: Marilyn Fanucchi

BUILDING MANAGER: Joe Matera
 607 Jackson St.
 Albany, CA 94706
 510-332-2901

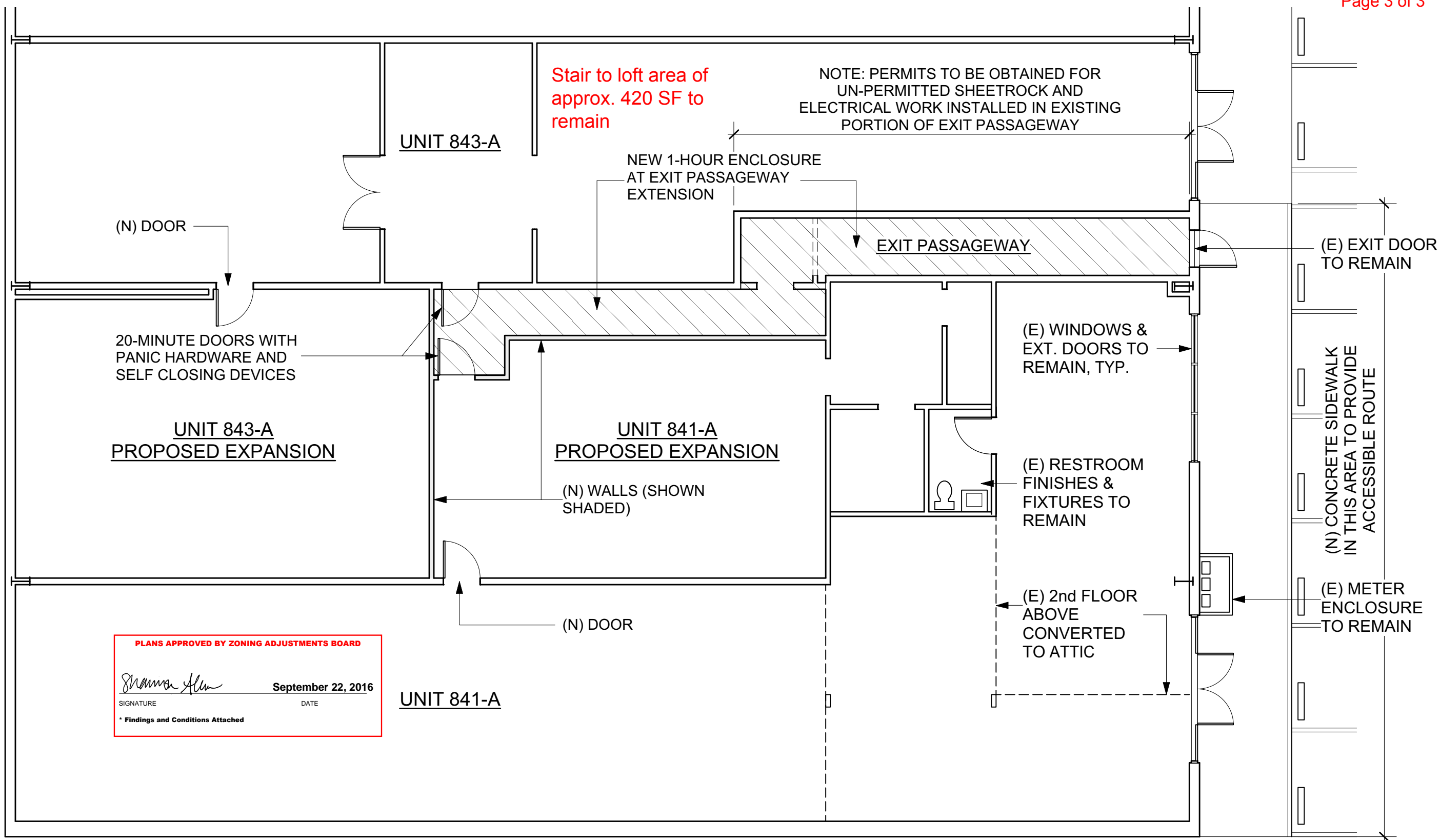
ARCHITECT: Hopkins Studio
 John Hopkins, Architect
 1607 Buena Ave.
 Berkeley, CA 94703
 john@hopkinstudio.com



HOPKINS STUDIO		1607 Buena Ave. Berkeley, CA 94703 T 510-910-1937
BERKELEY SPORTS MALL		841 A & B GILMAN ST. BERKELEY, CA 94710
EXISTING FIRST FLOOR PLAN A		
Date	06.30.2016	
Scale	1/8" = 1'-0"	
Drawn	JH	
2	Sheet	

FIRST FLOOR EXISTING / DEMOLITION PLAN A - UNITS 841 A, 841 B & 843 A
 Scale: 1/8" = 1'-0"





PLANS APPROVED BY ZONING ADJUSTMENTS BOARD

Shanna Alu September 22, 2016
 SIGNATURE DATE

* Findings and Conditions Attached

PROPOSED FIRST FLOOR PLAN A - UNITS 841 A, 841 B & 843 A
 Scale: 1/8" = 1'-0"



HOPKINS STUDIO
 1607 Buena Ave.
 Berkeley, CA 94703
 T 510-910-1937

BERKELEY SPORTS MALL
 841 A & B GILMAN ST.
 BERKELEY, CA 94710

PROPOSED FIRST FLOOR PLAN A

Date 06.30.2016
 Scale 1/8" = 1'-0"
 Drawn JH

4 Sheet