

ATTACHMENT 1

FINDINGS AND CONDITIONS

APRIL 9, 2015

2013 Second Street

Use Permit #ZP2014-0061 to construct a new, 4-story, 26,500 square foot building with 19 live/work units and 19 off-street parking spaces at the former site of the Municipal Animal Shelter building(s).

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 15332 of the CEQA Guidelines (“Infill Development Projects”). 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 construction of live/work units housing arts and crafts uses would be compatible with the adjacent uses and provide a transition between the industrial areas north and east of the site and the West Berkeley Commercial District that is located south and east of the project site.
 - B. The project’s massing and design is appropriate for a live/work building and reflects the nature of the industrial district in which it is located.
 - C. The proposed four-story 26,500 square foot building will replace an existing 2,950 square foot, single-story building (and associated outdoor structures), that was approved for demolition in 2013.
 - D. The project is in keeping with the purposes of the district, the General Plan and West Berkeley Area Plan as noted below (Findings 3A-3D).

OTHER REQUIRED FINDINGS

3. Pursuant to Berkeley Municipal Code Section 23E.80.090.B, the Zoning Adjustments Board finds that the project is consistent with the applicable purposes of the District in that:
 - A. The construction of live/work units housing arts and crafts uses would be compatible with the adjacent uses and provide a transition between the industrial areas north and east of the site and the West Berkeley Commercial District that is located south and east of the project site;

- B. The project is consistent with the West Berkeley Area Plan. The construction of live/work studios at the site of the former animal shelter will allow for the continued development of the Mixed Use – Light Industrial District (MU-LI) without displacing existing manufacturing or industrial uses. The live/work units will be conditioned so that the use remains predominantly work oriented (minimum of 60% of the space) and the uses permitted are restricted to Arts and Crafts Uses as defined in the Zoning Ordinance. The new units will help provide a transitional area between the MU-LI District and the West Berkeley Commercial District located south and east of the site;
 - C. The project is not likely, under reasonably foreseeable circumstances, to either induce a substantial change of use in buildings in the District from manufacturing, wholesale trade or warehousing uses. The current location has a mix of uses that range from offices to auto repair. The construction of live/work would provide an appropriate introduction of light manufacturing uses (within the work space of the units) that while industrial in nature, are still compatible with the existing uses of the area;
 - D. The project's massing and design is supportive of the light industrial character of the district. The project is appropriate for a live/work building and reflects the nature of the industrial district in which it is located;
4. Pursuant to Berkeley Municipal Code Section 23E.20.090.A, the Zoning Adjustments Board finds that the proposed Use Permit is consistent with the purposes of the Live/Work Provisions (BMC Section 23E.20.020) and MU-LI District (23E.80.020) in that the new live/work units function predominantly as workspaces and will provide opportunities for people to live and work in a mixed use industrial area without the conflicts that purely residential uses create. Each unit has been designed to accommodate Arts and Crafts Uses and to provide a ratio of 60% work area to 40% live area as required by the Zoning Ordinance. The occupants of the units are required to obtain a City of Berkeley Business License and that license is restricted to permitted Arts and Crafts Uses as defined in the Zoning Ordinance.
5. Pursuant to Berkeley Municipal Code Section 23E.80.090.G, the Zoning Adjustments Board finds that:
- A. The Conditions of Approval ensure that within the Live/Work Units, occupants of the Live/Work Units will only engage in the occupations listed in the definitions of Art/Craft Studios (See Condition of Approval 35); and
 - B. The construction of live/work units housing arts and crafts uses would be compatible with the adjacent uses and provide a transition between the industrial areas north and east of the site and the West Berkeley Commercial District that is located south and east of the project site; and
 - C. The Conditions of Approval ensure that the occupants of each Live/Work unit will be notified in writing that the unit is in the MU-LI District and that light manufacturing is the primary activity in the District, including a requirement that each occupant indicates that he or she has read and understood this information by means of a rider to a lease or a covenant to a deed, as appropriate (See Condition of Approval 35).

STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

- 1. Conditions Shall be Printed on Plans**

The conditions of this Permit shall be printed on the first 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 applying for a building permit, 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.

11. Prior to the issuance of a building permit, the applicant shall submit a *Preliminary Energy Conservation Summary Form* to the project planner.

12. 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 #

13. 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.

14. The applicant/end user shall enter into a First Source Agreement with the City's WorkSource Department. The First Source Agreement requires the applicant/end user/tenant to use the City's employment and training system as their first source in recruiting and employing construction and permanent employees. The First Source program provides free employment services and gives priority to Berkeley residents and other specified groups as potential employees;

15. Project requires approval of a Final Design Review application by the Design Review Committee. Final plans shall address the following conditions:

- A. Make sure that final details and materials take possible graffiti into account.
- B. Sidewalk planter strip should better fit into this industrial area.
- C. Work to mitigate the noise from the stacking parking lifts.
- D. *Walls on side yards should have more articulation (minority.)*

During Construction:

16. 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.

17. 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.

18. 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.
19. 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.
20. 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.
21. Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.
22. Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.
23. 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:

24. The project shall conform to the plans and statements in the Use Permit.
25. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated April 9, 2015 "ZAB Submittal".
26. Prior to issuance of an occupancy permit or final inspection approval, the applicant shall provide the project planner with a *Final Energy Conservation Summary Form* for the project, which shall be completed either by PG&E or by a qualified consultant retained by the applicant. If the applicant has requested that PG&E complete this form, and PG&E is unable to do so prior to occupancy permit or final inspection approval, the applicant may satisfy this condition by submitting documentation that PG&E intends to complete the form to the project planner.

At All Times:

27. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
28. 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.
29. Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to Design Review approval.

ENVIRONMENTAL MANAGEMENT ZONE: GENERAL CONDITIONS

- 30. Large Projects where Dewatering is anticipated:** When large projects require dewatering during the construction phase or after construction, the Toxics Management Division will require certain mitigations. Since de-watering activities can draw in contamination from outside areas, monitoring of the groundwater discharges may be required after the construction. The TMD may require dewatering and monitoring plans to ensure the discharge of clean water and the protection of the community from vapors or other health hazards. Additionally, where there is sufficient information indicating soils contamination is present, the TMD could require testing of excavation spoils and documentation of proper disposal.
- 31. Mitigation Fees Apply.** Pursuant to BMC 22.20, this project is subject to mitigation and/or payment of fees to offset and/or mitigate the impacts of the proposed development project on affordable housing and affordable childcare. The affordable housing mitigation and/or payment of fees shall be made pursuant to Resolution 66,617. The affordable childcare mitigation and/or payment of fees shall be made pursuant to Resolution 66,618.

LIVE-WORK DEED RESTRICTION REQUIREMENT

- 32.** Prior to issuance of a building permit, the applicant shall supply a deed restriction, notarized and bearing the stamp of filing from the Alameda County Recorder's Office, which stipulates that:
- A.** At least one resident in each Live/Work Unit shall maintain at all times a valid City Business License and any applicable Zoning Certificate or Use Permit for a business for Arts and Crafts Uses only.
 - B.** No portion of a Live/Work Unit may be separately rented or sold as a commercial space for a person or persons not living on the premises, or as a residential space for a person or persons not working on the premises.
 - C.** That the developer shall provide tenant notification, via a lease rider or deed covenant, that each live/work unit is located in the MU-LI District, which is primarily a mixed use area that includes manufactures and other light industrial uses, that each occupant shall not seek to impede their lawful operation and that each live/work unit is not a residential unit,

PARKING LIFT CONDITIONS

- 33.** Parking lifts shall be used for parking of vehicles only. Vehicles that can tip over, such as two-wheeled vehicles, shall be provided with a rack to prevent tipping over. No storage shall be allowed on or in parking lifts or pit areas. Vehicles shall not be used for storage while parked on or in the lifts.
- 34.** Any parking lift in a structure shall have coverage by fire sprinklers at all levels, both above and below grade.

STORM WATER CONDITIONS

- 35.** The project plans shall identify and show site-specific BMP's appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants to the City's storm drainage system, regardless of season or weather conditions.

36. Trash enclosures and/or recycling area(s) shall be covered; no other area shall drain onto this area. Drains in any wash or process area shall not discharge to the storm drain system; these drains should connect to the sanitary sewer. Applicant shall contact the City of Berkeley and EBMUD for specific connection and discharge requirements. Discharges to the sanitary sewer are subject to the review, approval and conditions of the City of Berkeley and EBMUD.
37. Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to storm water pollution. Where feasible, landscaping should be designed and operated to treat runoff. When and where possible, xeriscape and drought tolerant plants shall be incorporated into new development plans.
38. Design, location and maintenance requirements and schedules for any storm water quality treatment structural controls shall be submitted to the Department of Public Works for review with respect to reasonable adequacy of the controls. The review does not relieve the property owner of the responsibility for complying with BMC Chapter 17.20 and future revisions to the City's overall storm water quality ordinances. This review shall be conducted prior to the issuance of a Building Permit.
39. All on-site storm drain inlets/catch basins **must** be cleaned at least once a year immediately prior to the rainy season. The property owner shall be responsible for all costs associated with proper operation and maintenance of all storm drainage facilities (pipelines, inlets, catch basins, outlets, etc.) associated with the project, unless the City accepts such facilities by Council action. Additional cleaning may be required by City of Berkeley Public Works Engineering Dept.
40. All private or public projects that create and/or replace 10,000 square feet or more of impervious surface must comply with Provision C.3 of the Alameda County NPDES permit and must incorporate stormwater controls to enhance water quality. Permit submittals shall include detailed information showing how the proposed project will meet Provision C.3 stormwater requirements, including a) Site design measures to reduce impervious surfaces, promote infiltration, and reduce water quality impacts; b) Source Control Measures to keep pollutants out of stormwater runoff; c) Stormwater treatment measures that are hydraulically sized to remove pollutants from stormwater; d) an O & M (Operations and Maintenance) agreement for all stormwater treatment devices and installations; and e) Engineering calculations for all stormwater devices (both mechanical and biological).

Commercial and Industrial Construction

41. The project plans shall include storm water pollution prevention and control measures for the operation and maintenance of the project during and after construction for the review and approval of the City Engineer. The project plan shall identify Best Management Practices (BMPs) appropriate to the uses conducted on-site in order to limit to the maximum extent practicable the entry of pollutants into storm water runoff.

The project plan shall also include erosion control measures to prevent soil, dirt and debris from entering the storm drain system, in accordance with the practices outlined

in the ABAG Erosion and Sediment Control Handbook, California Storm Water Best Management Practice Handbooks and Regional Water Quality Control Board's Erosion and Sediment Control Field Manual.

The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all storm water quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations or a project stop order.

42. All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants, such as, bulk materials stored outdoors may need to be covered as deemed appropriate by the City Engineer.
43. Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry to the storm drain system. If any cleaning agent or degreaser is used, wash water shall not discharge to the storm drains; wash waters should be collected and discharged to the sanitary sewer. Discharges to the sanitary sewer are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
44. All on-site storm drain inlets must be labeled "No Dumping – Drains To Bay" or equivalent using approved methods by the City.

STANDARD TOXICS MANAGEMENT DIVISION CONDITIONS

45. Soil and Groundwater Management Plan

A Soil and Groundwater Management Plan (SGMP) shall be required for all non-residential projects, and residential or mixed-use projects with four or more units, that: (1) are in the Environmental Management Area (EMA), as shown on the most recent City of Berkeley EMA map, and (2) propose any excavations deeper than 5 feet below grade. The SGMP shall be submitted to the Toxics Management Division (TMD) with the project's building permit application and shall be approved by TMD prior to issuance of the building permit. The EMA map is available online at: http://www.ci.berkeley.ca.us/Planning_and_Development/Toxics_Management/Environmental_Management_Area.aspx

46. The SGMP shall identify procedures for soil and groundwater management including identification of pollutants and disposal methods and shall comply with the hazardous materials and waste management standards required by Berkeley Municipal Code Section 15.12.100, the San Francisco Bay Regional Water Quality Control Board's Order No. R2-2009-0074 C3 and C6, California hazardous waste generator regulations (Title 22 California Code of Regulations (CCR) 66360 et seq.), and the East Bay Municipal Utility District's Ordinance 311.

The SGMP shall also include:

- A requirement that TMD be notified within 24 hours of the discovery of any previously undiscovered contamination;

- Procedures to manage odors, dust and other potential nuisance conditions expected during development; and
- A requirement that the name and phone number of the individual responsible for implementing the SGMP and responding to community questions and complaints be posted at the construction site on the same notice required by Zoning Officer for noise management (BMC B.28.050.D).

TMD shall review the SGMP and may require additional information or impose additional conditions as deemed necessary to protect human health and the environment. All requirements of the approved SGMP shall be deemed conditions of approval of this Use Permit.

47. Hazardous Materials Business Plan

A Hazardous Materials Business Plan (HMBP) in compliance with BMC Section 15.12.040 shall be submitted to TMD within 30 days if on-site hazardous materials exceed in aggregate any of the following: 55 gallons for liquids; 500 pounds for solids; or 200 cubic feet of gases at standard temperature and pressure. This includes fuel in generators and gas cylinders.