



Z O N I N G  
A D J U S T M E N T S  
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I N F O R M A T I O N  
I T E M

DECEMBER 13, 2018

## 2777 Shattuck Avenue/2747 Adeline Street

Review of Use Permit #ZP2015-0102 (effective date February 28, 2017) that established a full service auto dealership, including auto sales, repair and maintenance, in an existing building; construction of a 4,427 square-foot addition to the building for auto access and service; and use of a portion of the existing 31-space surface parking lot at 2747 Adeline Street for dealership parking, car display, and inventory.

### I. Background

#### A. Land Use Designations:

- General Plan: AC (Avenue Commercial)
- Zoning: C-SA (Commercial – South Area), Dealership Overlay Area

#### B. Approved Zoning Permits:

- Use Permit to establish an automobile sales use of greater than 5,000 square feet and with associated outdoor activities in the C-SA Zone District, under BMC Section 23E.52.030;
- Use Permit to construct more than 3,000 square feet of new floor area, under BMC Section 23E.52.050;
- Use Permit for outdoor sales and/or display at 2747 Adeline Street, under BMC Section 23E.52.030; and
- Administrative Use Permit for outdoor vehicle display along Stuart Street between Shattuck Avenue and Adeline Street, under Section 23E.52.070.F.

**C. CEQA Determination:** Categorically exempt pursuant to the CEQA Guidelines Section 15301 (“Existing Facilities”), Section 15303 (“New Construction or Conversion of Small Structure”), and Section 15332 (“Infill Development Projects”).

#### D. Parties Involved:

- Applicant: Ali Kashani; 2930 Domingo Avenue #214, Berkeley, CA 94705
- Property Owner: Glenn Yasuda; 920 Heinz Avenue, Berkeley, CA 94710

**E. Use Permit Application Materials, Prior Staff Reports and Correspondence are available on the Internet:**

[http://www.cityofberkeley.info/Planning\\_and\\_Development/Zoning\\_Adjustment\\_Board/2777\\_Shattuck.aspx](http://www.cityofberkeley.info/Planning_and_Development/Zoning_Adjustment_Board/2777_Shattuck.aspx)

## II. COMMUNITY DISCUSSION

**A. Discussions at the ZAB.** On several occasions, neighbors of Berkeley Honda attended ZAB meetings to raise concerns regarding the construction and operation of the business. In response, ZAB directed Staff to return with the Information Item presented this evening. A summary of those discussions are provided below; the associated captioner's records are attached.

- On May 10, 2018 and June 14, 2018, neighbors of Berkeley Honda attended the ZAB meeting and spoke on this project under "Public Comment on Non-Agenda Matters" (see Attachments 2 and 3). Issues raised included the Temporary Certificate of Occupancy, exterior lighting, noise from exhaust fans, location of test drives, traffic circulation, loading, and parking, and well as questions about the review of building permits and the role of Code Enforcement staff. On June 14, 2018, ZAB requested that planning staff provide comments on these issues in two weeks.
- On June 28, 2018, as an "information item", staff provided a brief update on complaints received and the City's actions to enforce the conditions of approval contained in the Use Permit for Berkeley Honda. At that meeting, ZAB requested that staff come back again, walk through the conditions of approval, discuss if conditions have been successfully implemented, if conditions are being violated, and consider additional conditions or revocation. A date to return was not set at that time. (See Attachment 4).
- On September 27, 2018, neighbors of Berkeley Honda attended the ZAB meeting and spoke on this project under "Public Comment on Non-Agenda Matters". Issues raised included the location of deliveries, parking on residential streets, pedestrian and bicycle safety/blocking of the sidewalk. Neighbors expressed frustration that their documentation of these issues has not led to code enforcement nor a change in behavior by Berkeley Honda. Instead, it has allegedly led to harassing behavior from Tim Beinke, the owner of Berkeley Honda. It was at this meeting ZAB said staff shall report on this on November 8 or December 13, 2018. (See Attachment 5).
- On November 8, 2018 there was a brief discussion on postponing the Honda item to January so that Berkeley Honda could pursue SEEDs mediation with neighbors and so that Honda's legal counsel could attend the hearing (he is not available on December 13). Several ZAB members were adamant that this item be reviewed in December and the date was not changed (See Attachments 6 and 7).

**B. Neighbor Comments.** In addition to the verbal comments received, City staff, as well as the Zoning Adjustments Board, received multiple written comments and photo documentation claiming that Berkeley Honda was operating in violation of the Conditions of Approval of their use permit. As of November 11, 2018 staff has received over 65 emails from concerned neighbors (compiled in Attachment 8). Staff has reviewed all emails and accompanying photographs, and has categorized the messages into the following categories: deliveries; parking; test driving; fans/noise; and peace, safety, and general welfare.

Table 1, below, outlines the type of comment received by neighbors, the relevant condition of approval, and documentation received. Table 2 lists each of the conditions of approval and the enforcement strategy in place.

**Table 1: Neighbor Comments**

NEIGHBOR COMMENT	COA	DOCUMENTATION
<b>DELIVERIES</b>		
Deliveries made on Shattuck instead of Adeline	10	Neighbor provided photo
Delivery trucks parking on residential streets	10	Neighbor provided photo
Car part delivery trucks parked on Shattuck	10	Neighbor provided photo
Honda cars parked in yellow delivery zones for over 30 minutes	10	Neighbor provided photo
<b>PARKING</b>		
Kirala customers unaware they are allowed to park in triangle parking lot	N/A	
Honda cars parked in Kirala designated parking space	22	Neighbor provided photo
Honda cars parked in public right of way blocking sidewalks	10	Neighbor provided photo
<b>TEST DRIVING</b>		
Honda test driving cars in the neighborhood	41	Neighbor provided photo
<b>FANS/NOISE</b>		
Four fans installed on roof, one fan permitted per Use Permit. Additional fans creating excessive noise in the neighborhood	20, 21	
<b>PEACE, SAFETY, GENERAL WELFARE</b>		
According to neighbors Honda has violated many conditions on several occasions. Therefore, Honda is detrimental to safety, peace and general welfare of the neighborhood	42	
The documenting system has made both Honda and neighbors uneasy. Staff is not able to regulate on a daily basis	N/A	

**C. Honda Comments.** In addition, City staff has received approximately 40 emails from representatives of Berkeley Honda outlining their concerns (compiled in Attachment 8). Correspondence notes that deliveries being made on Shattuck are not for Berkeley Honda and/or are independent vendors, and that double parking, parking violations, obstruction of public right of way is not associated with Honda business activities. Correspondence from Berkeley Honda also claims harassment of Kirala customers and Berkeley Honda customers and staff by neighbors.

### III. ISSUES / ANALYSIS / REVIEW OF CONDITIONS OF APPROVAL

At the direction of ZAB, and in response to the comments above, Table 2, below, includes all Conditions of Approval for the Berkeley Honda Use Permit and the timing of implementation.

**Table 2: Implementation of Berkeley Honda Use Permit Conditions of Approval (#ZP2015-0102)**

Condition of Approval	Implementation
<b>STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS</b>	
The following conditions, as well as all other applicable provisions of the Zoning Ordinance, apply to this Permit:	
<p><b>1. Conditions Shall be Printed on Plans</b>                      The conditions of this Permit shall be printed on the <i>second</i> sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions.' <i>Additional sheets</i> may also be used if the <i>second</i> 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.</p>	Land Use Planning staff confirmed COAs were printed on the plan set when reviewing the building permit.
<p><b>2. Applicant Responsible for Compliance with Conditions</b>                      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.</p>	Note for applicant.
<p><b>3. Uses Approved Deemed to Exclude Other Uses (Section 23B.56.010)</b>                      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.</p>	Land Use Planning staff confirmed when reviewing the building permit that the building plan set matched the plans approved by the ZAB
<p><b>4. Modification of Permits (Section 23B.56.020)</b>                      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.</p>	Land Use Planning staff confirmed when reviewing the building permit that the building plan set matched the plans approved by the ZAB
<p><b>5. Plans and Representations Become Conditions (Section 23B.56.030)</b>                      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</p>	Note for applicant.

Condition of Approval	Implementation
<p>an application or during the approval process are deemed conditions of approval.</p>	
<p><b>6. Subject to All Applicable Laws and Regulations (Section 23B.56.040)</b>                      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.</p>	<p>Note for applicant.</p>
<p><b>7. Exercised Permit for Use Survives Vacancy of Property (Section 23B.56.080)</b>                      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.</p>	<p>Note for applicant.</p>
<p><b>8. Exercise and Lapse of Permits (Section 23B.56.100)</b>                      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.</p>	<p>Note for applicant.</p>
<p><b>9. Indemnification Agreement</b>                      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 attorney's fees that may result.</p>	<p>Note for applicant.</p>
<p><b>ADDITIONAL CONDITIONS IMPOSED BY THE ZONING OFFICER</b></p>	
<p>Pursuant to BMC 23B.32.040.D, the Zoning Adjustments Board attaches the following additional conditions to this Permit:</p>	
<p><b>Prior to Submittal of Any Building Permit:</b></p>	
<p><b>10. Vehicle Operations Plan.</b> A single plan or plan sheet that includes the following: how driveway users will be alerted</p>	<p>Public Works /                      Transportation staff</p>

Condition of Approval	Implementation
<p>to the shift in access/egress conditions; a.m. and p.m. vehicle circulation within 2777 Shattuck Avenue; location and design of visible and audible driveway alarm for pedestrian safety; and, location of new vehicle and parts delivery along with estimated frequency and time of day. The plan shall also identify operating measures and operating procedures to ensure that the service use is managed so that access to the site does not result in traffic congestion due to double parking in a traffic lane, or to impede transit, pedestrian or bicycle movements in the right-of-way.</p>	<p>confirmed this condition was met when reviewing the building permit (Plan Sheet A0.5.2).</p>
<p><b>11. <u>Shattuck Avenue Circulation.</u></b> Northbound and southbound lane dimensions on Shattuck Avenue, between Ward and Stuart Streets, shall be reviewed to determine whether restriping could better accommodate southbound through traffic, AC Transit buses in particular, to continue around any southbound Project left turners into the proposed new Project driveway. The applicant's traffic engineer shall evaluate the situation and prepare a dimensioned and scaled drawing for City review and consideration. If the City Traffic Engineer concurs with the findings, then the applicant shall include these plans, with documentation of the City Traffic Engineer approval, with their building permit documents.</p>	<p>Public Works / Transportation staff confirmed this condition was met when reviewing the building permit; information was incorporated into the Safe Routes to School project.</p>
<p><b>12. <u>Street Tree.</u></b> The spacing, species and maintenance plan for the street tree proposed on Stuart Street, east of the access to parking lot, shall be set forth by the City Forester, as facilitated by the project applicant.</p>	<p>Coordinated review conducted by Design Review, City Forester and Public Works staff when reviewing the building permit.</p>
<p><b>13. <u>Landscape Plan.</u></b> A Landscape Plan shall be prepared submitted with the Building Permits which includes viable planting plans for both the project site and the planting strips along Ward Street, Stuart Street, Shattuck Avenue, and Adeline Street. Planting on the public right of way is subject to the review and approval of City Public Works.</p>	<p>Coordinated review conducted by Design Review, City Forester and Public Works staff when reviewing the building permit.</p>
<p><b>14. <u>Outdoor Amplification.</u></b> Building plans shall indicate that no outdoor amplification will be used on-site, consistent with standards in Berkeley Municipal Code Section 23E.52.070.F for new and relocated auto sales uses.</p>	<p>Note for applicant.</p>
<p><b>15. <u>Light and Glare.</u></b> Building plans shall show that any exterior light fixtures will not exceed 20 feet in height, will use light cutoffs to control light spillover onto adjacent properties and urban sky glow, and will be low-energy consistent with the City's goals for energy efficiency. Exterior light fixtures also shall achieve uniform light coverage and shall minimize glare.</p>	<p>Note for applicant.  However, complaints were received regarding Honda security lights in the Sconehege parking lot. Site inspection conducted by Code</p>

Condition of Approval	Implementation
	Enforcement confirmed the violation; the necessary modifications were made by Berkeley Honda.
<p><b>16. <u>Project Liaison</u>.</b> 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.</p> <p><b>Project Liaison</b> _____                      Name Phone #</p>	Land Use Planning staff confirmed when reviewing the building permit that a liaison was listed in the COAs printed on the plan set.
<p><b>17. <u>Construction Noise Reduction Program</u>.</b> The applicant shall develop a site specific noise reduction program prepared by a qualified acoustical consultant to reduce construction noise impacts to the maximum extent feasible, subject to review and approval of the Zoning Officer. The noise reduction program shall include the time limits for construction listed above, as measures needed to ensure that construction complies with BMC Section 13.40.070. The noise reduction program should include, but shall not be limited to, the following available controls to reduce construction noise levels as low as practical:</p> <ul style="list-style-type: none"> <li>• Construction equipment should be well maintained and used judiciously to be as quiet as practical.</li> <li>• Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.</li> <li>• Utilize "quiet" models of air compressors and other stationary noise sources where technology exists. Select hydraulically or electrically powered equipment and avoid pneumatically powered equipment where feasible.</li> <li>• Locate stationary noise-generating equipment as far as possible from sensitive receptors when adjoining construction sites. Construct temporary noise barriers or partial enclosures to acoustically shield such equipment where feasible.</li> <li>• Prohibit unnecessary idling of internal combustion engines.</li> </ul>	Land Use Planning staff reviewed and approved a noise reduction plan prior to approval of the building permit.

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<ul style="list-style-type: none"> <li>• If impact pile driving is required, pre-drill foundation pile holes to minimize the number of impacts required to seat the pile.</li> <li>• Construct solid plywood fences around construction sites adjacent to operational business, residences or other noise-sensitive land uses where the noise control plan analysis determines that a barrier would be effective at reducing noise.</li> <li>• Erect temporary noise control blanket barriers, if necessary, along building facades facing construction sites. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling. Noise control blanket barriers can be rented and quickly erected.</li> <li>• Route construction related traffic along major roadways and away from sensitive receptors where feasible.</li> </ul>	
<p><b>18. Toxics.</b> The applicant shall contact the Toxics Management Division (TMD) at 2120 Milvia, 3<sup>rd</sup> Floor or (510) 981-7470 to determine which of the following documents are required and timing for their submittal:</p> <p>A. Environmental Site Assessments:</p> <ol style="list-style-type: none"> <li>1) Phase I &amp; Phase II Environmental Site Assessments (latest ASTM 1527-13) that is not more than 6 months old.</li> <li>2) Phase II ESA is required to evaluate Recognized Environmental Conditions (REC) identified in the Phase I or other RECs identified by TMD staff. The TMD may require a third party toxicologist to review human or ecological health risks that may be identified. The applicant may apply to the appropriate state, regional or county cleanup agency to evaluate the risks.</li> <li>3) If the Phase I is over 6 months old, it will require a new site reconnaissance and interviews. If the facility was subject to regulation under Title 15 of the Berkeley Municipal Code since the last Phase I was conducted, a new records review must be performed.</li> </ol> <p>B. Soil and Groundwater Management Plan:              A Soil and Groundwater Management Plan (SGMP) shall be submitted to TMD for all non-residential projects, and residential or mixed-use projects with five or more dwelling units, that: (1) are in the Environmental Management Area (EMA) and (2) propose any excavations deeper than 5 feet below grade. The SGMP shall be site specific and identify</p>	<p>TMD staff confirmed this condition was met when reviewing the building permit.</p>



Condition of Approval	Implementation
<p>procedures for soil and groundwater management including</p> <ol style="list-style-type: none"> <li>1) identification of pollutants and disposal methods. The SGMP will identify permits required and comply with all applicable local, state and regional requirements.</li> <li>2) The SGMP shall require notification to TMD of any hazardous materials found in soils and groundwater during development. The SGMP will provide guidance on managing odors during excavation. The SGMP will provide the name and phone number of the individual responsible for implementing the SGMP and post the name and phone number for the person responding to community questions and complaints.</li> <li>3) TMD may impose additional conditions as deemed necessary. All requirements of the approved SGMP shall be deemed conditions of approval of this Use Permit.</li> </ol> <p>C. Building Materials Survey:</p> <ol style="list-style-type: none"> <li>1) Prior to approving any permit for partial or complete demolition and renovation activities involving the removal of 20 square or lineal feet of interior or exterior walls, a building materials survey shall be conducted by a qualified professional. The survey shall include, but not be limited to, identification of any lead-based paint, asbestos, polychlorinated biphenyl (PBC) containing equipment, hydraulic fluids in elevators or lifts, refrigeration systems, treated wood and mercury containing devices (including fluorescent light bulbs and mercury switches). The Survey shall include plans on hazardous waste or hazardous materials removal, reuse or disposal procedures to be implemented that fully comply state hazardous waste generator requirements (22 California Code of Regulations 66260 et seq). The Survey becomes a condition of any building or demolition permit for the project. Documentation evidencing disposal of hazardous waste in compliance with the survey shall be submitted to TMD within 30 days of the completion of the demolition. If asbestos is identified, Bay Area Air Quality Management District Regulation 11-2-401.3 a notification must be made and the J number must be made available to the City of Berkeley Permit Service Center.</li> </ol> <p>D. Hazardous Materials Business Plan:</p>	

Condition of Approval	Implementation
<p>1) A Hazardous Materials Business Plan (HMBP) in compliance with BMC Section 15.12.040 shall be submitted electronically at <a href="http://cers.calepa.ca.gov/">http://cers.calepa.ca.gov/</a> within 30 days if on-site hazardous materials exceed BMC 15.20.040. HMBP requirement can be found at <a href="http://ci.berkeley.ca.us/hmr/">http://ci.berkeley.ca.us/hmr/</a></p>	
<p><b>19. Noise.</b> The three existing windows on the southern (Stuart Street) elevation shall be modified to include a secondary acoustically-rated window assembly on the interior side of the building.</p>	<p>Land Use Planning staff confirmed this condition was noted on Sheet A3.2; which was then confirmed by the Building Inspector prior to issuance of Certificate of Occupancy.</p>
<p><b>20. Noise and Air Quality.</b> The proposed rooftop-mounted exhaust ventilation blower shall be installed closer to Shattuck Avenue and away from residential uses to the east. The exact location shall be shown on the building permit application with a statement from a qualified acoustical engineer confirming the operation of the exhaust system will be below City thresholds.</p>	<p>Land Use Planning staff confirmed this condition during review of the building permit; the location was show on Sheet A2.3 and a memorandum from j.c. brennan &amp; associates confirmed HVAC noise would be below City thresholds. However, noise complaints were submitted to staff from neighbors. Noise measurement by Environmental Health Dept. staff confirmed the violation; modifications were made by Berkeley Honda and noise levels are now met.</p> <p>Neighbors also expressed concern with the number of roof vents. Please note that four vents were existing prior to Honda's application.</p>
<p><b>21. Noise.</b> The project shall include a clear acoustic separation for the entire length of the eastern wall – the sheet rock wall that surrounds the parts department and for the concrete masonry unit (CMU) wall that is independent. The</p>	<p>Land Use Planning staff confirmed this condition was noted on Sheet Sheets A9.2 and A6.1, which was then</p>

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<p>CMU wall could be re-sheet rocked on the inside with an acoustic detailing where it connects with the ceiling.</p>	<p>confirmed by the Building Inspector prior to issuance of Certificate of Occupancy.</p>
<p><b>22. <u>Parking.</u></b> Four parking spaces, designated for Honda customers or employees (in opposed to auto display/storage) shall be added to the 2747 Adeline Street parcel, for a total of eight parking spaces. The related calculations of space designated for display/storage on Adeline Street and total auto display/storage shall be updated.</p>	<p>Land Use Planning staff confirmed implementation when reviewing the building permit. On a related note, staff has received complaints from neighbors that vehicles associated with Berkeley Honda are occasionally in parking spaces delineated for Kirala. The Honda use permit requires that nine stalls be available for Kirala customers. Parking in a Kirala marked stall is not expressly prohibited and is a civil matter. Honda business owners have been contacted regarding this issue. Kirala has submitted a letter in support of Berkeley Honda.</p>
<p><b><u>During Construction:</u></b></p>	
<p><b>23. <u>Construction Hours.</u></b> 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 4:00 PM on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.</p>	<p>Note for applicant.</p> <p>During project construction several complaints were received stating that construction was beginning before 8:00 a.m. Random site inspections were conducted by Code Enforcement and no violations were witnessed; this condition was discussed with the on-site contractor, project architect and property owner. It was later determined that the noise was coming from a</p>

Condition of Approval	Implementation
<p><b>24. <u>Transportation Construction Plan.</u></b> The applicant and all persons associated with the project are hereby notified that a Transportation Construction Plan (TCP) is required for all phases of construction, particularly for the following activities:</p> <ul style="list-style-type: none"> <li>• Alterations, closures, or blockages to sidewalks or pedestrian paths</li> <li>• Alterations, closures, or blockages to vehicle travel lanes (including bicycle lanes)</li> <li>• Storage of building materials, dumpsters, debris anywhere In the public ROW</li> <li>• Provision of exclusive contractor parking on-street relevant</li> <li>• Significant truck activity.</li> </ul> <p>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, 3<sup>rd</sup> 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 requirements of the construction phase.</p> <p>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 this Plan shall be available at all times at the construction site for review by City Staff.</p>	<p>nearby project (who was then contacted).</p> <p>Public Works / Transportation staff confirmed this condition was met when reviewing the building permit.</p> <p>Implementation is spot checked by Public Works Inspectors during the construction process.</p>
<p><b>25. <u>Stormwater Requirements.</u></b> The applicant shall demonstrate compliance with the requirements of the City’s National Pollution Discharge Elimination System (NPDES) permit as described in BMC Section 17.20. The following conditions apply:</p> <p>A. The project plans shall identify and show site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants to the</p>	<p>Public Works staff confirms conformance to current NPDES permit when reviewing the building permit.</p> <p>This is spot checked by Building and Public Works Inspectors during</p>

Condition of Approval	Implementation
<p>City's storm drainage system, regardless of season or weather conditions.</p> <p>B. 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.</p> <p>C. Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to stormwater 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.</p> <p>D. Design, location and maintenance requirements and schedules for any stormwater 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 stormwater quality ordinances. This review shall be shall be conducted prior to the issuance of a Building Permit.</p> <p>E. All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.</p> <p>F. All on-site storm drain inlets/catch basins <b>must</b> 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.</p> <p>G. 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 a Stormwater Requirement Checklist and detailed information showing how the proposed project will meet Provision C.3 stormwater requirements,</p>	<p>the construction process.</p>

Condition of Approval	Implementation
<p>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 &amp; M (Operations and Maintenance) agreement for all stormwater treatment devices and installations; and e) Engineering calculations for all stormwater devices (both mechanical and biological).</p> <p>H. All on-site storm drain inlets must be labeled “No Dumping – Drains to Bay” or equivalent using methods approved by the City.</p> <p>I. Most washing and/or steam cleaning must be done at an appropriately equipped facility that drains to the sanitary sewer. Any outdoor washing or pressure washing must be managed in such a way that there is no discharge or soaps or other pollutants to the storm drain. Sanitary connections are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.</p> <p>J. All loading areas must be designated to minimize “run-on” or runoff from the area. Accumulated waste water that may contribute to the pollution of stormwater must be drained to the sanitary sewer or intercepted and pretreated prior to discharge to the storm drain system. The property owner shall ensure that BMPs are implemented to prevent potential stormwater pollution. These BMPs shall include, but are not limited to, a regular program of sweeping, litter control and spill cleanup.</p> <p>K. 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.</p> <p>L. The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations, or a project stop work order.</p>	

Condition of Approval	Implementation
<p><b>26. <u>Public Works - Implement BAAQMD-Recommended Measures during Construction.</u></b> For all proposed projects, BAAQMD recommends implementing all the Basic Construction Mitigation Measures, listed below to meet the best management practices threshold for fugitive dust:</p> <ul style="list-style-type: none"> <li>• All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.</li> <li>• All haul trucks transporting soil, sand, or other loose material off-site shall be covered.</li> <li>• All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.</li> <li>• All vehicle speeds on unpaved roads shall be limited to 15 mph.</li> <li>• All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.</li> <li>• Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.</li> <li>• All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.</li> <li>• Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.</li> </ul>	<p>This is spot checked by Building and Public Works Inspectors during the construction process.</p>
<p><b>27. <u>Public Works.</u></b> 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.</p>	<p>This is spot checked by Building and Public Works Inspectors during the construction process.</p>
<p><b>28. <u>Public Works.</u></b> 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.</p>	<p>This is spot checked by Building and Public Works Inspectors during the construction process.</p>

Condition of Approval	Implementation
<p><b>29. <u>Public Works.</u></b> The project sponsor shall maintain sandbags or other devices around the site perimeter during the rainy season to prevent on-site soils from being washed off-site and into the storm drain system. The project sponsor shall comply with all City ordinances regarding construction and grading.</p>	<p>This is spot checked by Building and Public Works Inspectors during the construction process.</p>
<p><b>30. <u>Public Works.</u></b> Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season 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.</p>	<p>This is spot checked by Building and Public Works Inspectors during the construction process.</p>
<p><b>31. <u>Public Works.</u></b> The removal or obstruction of any fire hydrant shall require the submission of a plan to the City's Public Works Department for the relocation of the fire hydrant during construction.</p>	<p>N/A. (Also confirmed the field by Public Works and Fire Department Inspectors.)</p>
<p><b>32. <u>Public Works.</u></b> 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 &amp; Safety Division, and carry out any necessary corrective action to their satisfaction.</p>	<p>This is spot checked by Building Inspectors and/or Public Works during the construction process.</p>
<p><b><u>Prior to Final Inspection or Issuance of Occupancy Permit:</u></b></p>	
<p><b>33. <u>Compliance with Conditions.</u></b> The project shall conform to the plans and statements in the Use Permit. The developer is responsible for providing sufficient evidence to demonstrate compliance with the requirements throughout the implementation of this Use Permit. Occupancy is subject to verification of compliance with these Conditions of Approval.</p>	<p>Prior to issuance of the Certificate of Occupancy, the Building &amp; Safety Division, which is responsible for verification of compliance with the California Building Standards Code requirements, contacted all departments and divisions that were assigned to review the building permit plans to confirm that all city specific requirements for that project and conditions of approval have been met.</p> <p>Neighbors have questioned whether full compliance was achieved before Honda received its Certificate of Occupancy.</p>



Condition of Approval	Implementation
	Specific concerns about noise and traffic control are addressed under COA 35 and COA 36.
<p><b>34. Compliance with Approved Plan.</b> 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 received <b>August 31, 2016</b>, except as modified by conditions of approval.</p>	See Above.
<p><b>35. Noise.</b> Between the Temporary Certificate of Occupancy and the Final Certificate of Occupancy, when the service area and sales area are both in operation, a qualified acoustical engineer shall take noise measurements consistent with professional practice along the eastern property line, in close proximity to the adjacent residential uses. Measurements shall be compared to the City of Berkeley requirements and documented in a memorandum submitted to the City of Berkeley Planning Department.</p>	This condition was intended to verify the noise study results submitted with Use Permit application. To satisfy this condition, a memorandum from Saxelby Acoustics was submitted and reviewed by staff to confirm that noise generated by the operation of Berkeley Honda is below City thresholds.
<p><b>36. Traffic Circulation.</b> Approximately 6 to 8 months after the Temporary Certificate of Occupancy is issued, when the service area and sales area are both in operation, a circulation study shall be conducted by a qualified traffic engineer, at the expense of the project applicant. The scope and methodology of the circulation study shall be reviewed and approved by the City Traffic Engineer. The Study should include observations during a.m. and p.m. peak periods on weekdays and a Saturday between 12:00 noon and 2:00 p.m. Observations should focus on difficulties or conflicts associated with southbound left turns into the Honda service area. If safety, delay or delay issues are observed with this turning movement, alternative site access (right-in, right-out at service entrance) shall be analyzed. The study shall be submitted to the City Traffic Engineer for review and approval.</p> <p>If the City Traffic Engineer determines that recommendations or street improvements, based on the applicant's consultant's analysis or the City's interpretation of that analysis, are appropriate, the applicant shall pay for said improvements. Said improvements are to be designed by the applicant, paid for by the applicant, focused on the issues laid out in this COA, and installed</p>	On October 23, 2018, the City Traffic Engineer approved the scope of work for the circulation study. The data for the study was collected in late November, after the completion of the Safe Routes to School work at the intersection of Shattuck and Ward. It is anticipated that the circulation study will be submitted to the City Traffic Engineer for review in mid-December 2018.

Condition of Approval	Implementation
<p>within three (3) months of the City Traffic Engineer notifying the applicant (via email or letter) of determination.</p>	
<p><b>At All Times:</b></p>	
<p><b>37. Design Review.</b> Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to Design Review approval.</p>	<p>Design Review was conducted for signs, colors, landscaping and lighting. No post-construction modifications have been requested.</p>
<p><b>38. Drainage Patterns.</b> 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 &amp; Safety Division and Public Works Department, if required.</p>	<p>Drainage plans were part of the site improvements and have been inspected.</p>
<p><b>39. Transit Subsidy Condition.</b> The applicant shall reimburse employees the maximum non-taxable cost of commuting to and from work on public transportation (e.g., monthly passes) if they so commute, and a notice informing employees of the availability of such subsidy shall be permanently displayed in the employee area as per BMC Chapter 9.88.</p>	<p>The applicant is responsible for compliance. If complaints are received, they can be investigated.</p>
<p><b>40. Hours of Operation.</b> Modified Use Permit #A1937 requires the Ward Street parking lot to be “chained” by 8:00 p.m. (but signed to state lot closes at 7:00 p.m.) Monday through Saturday and closed all day Sunday. The Honda project includes 9 parking spaces in the Ward Street parking lot and as such, the Honda hours of operation shall be limited as follows:</p> <p><u>Sales:</u>                      Monday through Friday: 7:00 a.m. to 7:00 p.m.                      Saturday: 8:00 a.m. to 7:00 p.m.                      Sunday: 10:00 a.m. to 6:00 p.m.</p> <p><u>Service:</u>                      Monday through Friday: 7:30 a.m. to 6:00 p.m.                      Saturday: 8:00 a.m. to 6:00 p.m.                      Sunday: closed</p>	<p>The applicant is responsible for compliance. If complaints are received, they can be investigated.</p>

Condition of Approval	Implementation
<p><b>41. <u>Location of Test Drives.</u></b> No test driving of vehicles for sale or vehicles being serviced shall be permitted on Ward or Stuart Streets. Test drives shall be limited to Shattuck Avenue and Adeline Street and down towards the freeway.</p>	<p>Multiple complaints have been received regarding test drives on Ward and/or Stuart Streets. Code Enforcement reviewed complaints, but could not verify any violations.</p> <p>In correspondence to the City, Berkeley Honda has stated that it is their business practice to require a Berkeley salesperson to accompany each potential buyer on a test drive. Each Honda sales manager and salesperson is required to sign a form confirming their understanding of COA 41. The form requires staff to acknowledge in writing that they cannot conduct test drives behind the dealership whatsoever.</p> <p>In addition, each Honda service manager and technician is required to sign a form confirming their understanding of COA 41. The form requires staff to acknowledge in writing that all road tests for service vehicles will be done on Shattuck and Adeline. No personnel is to drive customer cars through the neighborhood behind the dealership. All vehicles driven out of Ward Street parking lot are to make a left upon exit.</p>

Condition of Approval	Implementation
<p><b>42. Subject to Review.</b> 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.</p>	<p>The purpose of this report is to review Honda's compliance with use permit conditions.</p>

**Representations/Loading.** The use permit does not include a Condition of Approval regarding loading. However, as described in the May 31, 2015, Berkeley Honda Supplemental Traffic Analysis (a representation of the project) deliveries of new cars and deliveries of auto parts would be made on Adeline Street, north of the existing curb cut. Delivery truck would not access the site via Ward or Stuart Streets. Delivery of auto parts would be made once a day during the off peak periods, i.e. outside the windows of morning/evening peaks. The delivery truck would stop on Adeline Street and the parts trolley would be rolled across the street into the project site. An estimated two tow trucks would bring cars to the site each day, and would unload inside the building in the service department. Honda recently stated that large deliveries are made at night, on Adeline, to reduce effects on area residents.

In the project area, on the east side of Shattuck, there are two lengths of green curb, where parking is limited to 30 minutes. There is also a length of yellow curb which is for commercial use/for loading and unloading merchandise or materials. These areas are available to the public, including vendors.

#### IV. Next Steps

In response to the concerns raised by neighbors, the ZAB requested that in addition to review of the conditions of approval, information be provided on the possible actions that ZAB may take.

**A. Process to Modify or Revoke Permits.** BMC Section 23B.60.010, Revocation and Modification of Permits, provides that the City Council may revoke or modify any permit if it makes the findings required by this Chapter (see Attachment 10). The findings for revocation or modification include:

- A. The holder of the permit has failed to comply with at least one or more of the conditions set forth therein.
- B. The use, structure or building permitted has been substantially expanded or changed in character beyond that set forth in the permit.
- C. The property has been vacant for one (1) year and the applicant has not demonstrated a good faith intent to re-occupy the property with the use specified in the approved Permit.)

Proceeding under BMC Section 23B.60.030 may be initiated by a referral by the Zoning Adjustments Board to the City Council for consideration. Such a referral shall identify the property and set forth the reasons for modification or revocation.

More typically, the ZAB reviews modifications to use permits that are proposed by an applicant. If the applicant were to propose modifications to the building, use, operation, conditions of approval, etc., the applicant would submit an application that would be reviewed by staff, deemed complete, analyzed, and presenting to the ZAB for consideration.

Honda has exercised their use permit and Honda may claim that it has a vested right to the permit, and the permit's modification or revocation could potentially lead to litigation.

### **B. Recommendation.**

As noted above, numerous complaints have been received by neighbors. However, based on the City's review of these complaints and the use permit conditions, Staff concludes that Berkeley Honda is in substantial compliance with its use permit. Staff recommends that no further action be taken.

Alternative actions include:

1. Continue this item for the purpose of gathering additional information.
2. Set a hearing date to initiate a referral to the City Council to modify or revoke the Use Permit for Berkeley Honda, ZP#2015-0102.

### **Attachments:**

1. Approved Site Plan
2. Related captioner's record from May 10, 2018, ZAB hearing
3. Related captioner's record from June 14, 2018, ZAB hearing
4. Related captioner's record from June 28, 2018, ZAB hearing
5. Related captioner's record from September 27, 2018, ZAB hearing
6. Related captioner's record from November 8, 2018, ZAB hearing
7. Letter from Kenneth S. Katzoff, Katzoff & Riggs, LLP, October 29, 2018, requesting continuance
8. Neighbor Concerns Compiled Correspondence
9. Berkeley Honda Concerns Compiled Correspondence
10. Berkeley Municipal Code 23B.60 Compliance and Revocation
11. Notice of Public Hearing

**Staff Planner:** Shannon Allen, ShAllen@cityofberkeley.info, (510) 981-7430