



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

FOR BOARD ACTION
APRIL 25, 2024

2600 Tenth Street

Appeal of the Zoning Officer's Decision to approve Administrative Use Permit (AUP) ZP#2023-0031 to change the use of three tenant spaces (9,750 square feet) from Media Production to Research and Development resulting in a total of 29,745 square feet of Research and Development space, in a seven-story building on a 114,998 square-foot lot.

I. Background

A. Land Use Designations:

- General Plan: M - Manufacturing
- Zoning: MU-LI - Mixed-Use Light Industrial District

B. Zoning Permits Required:

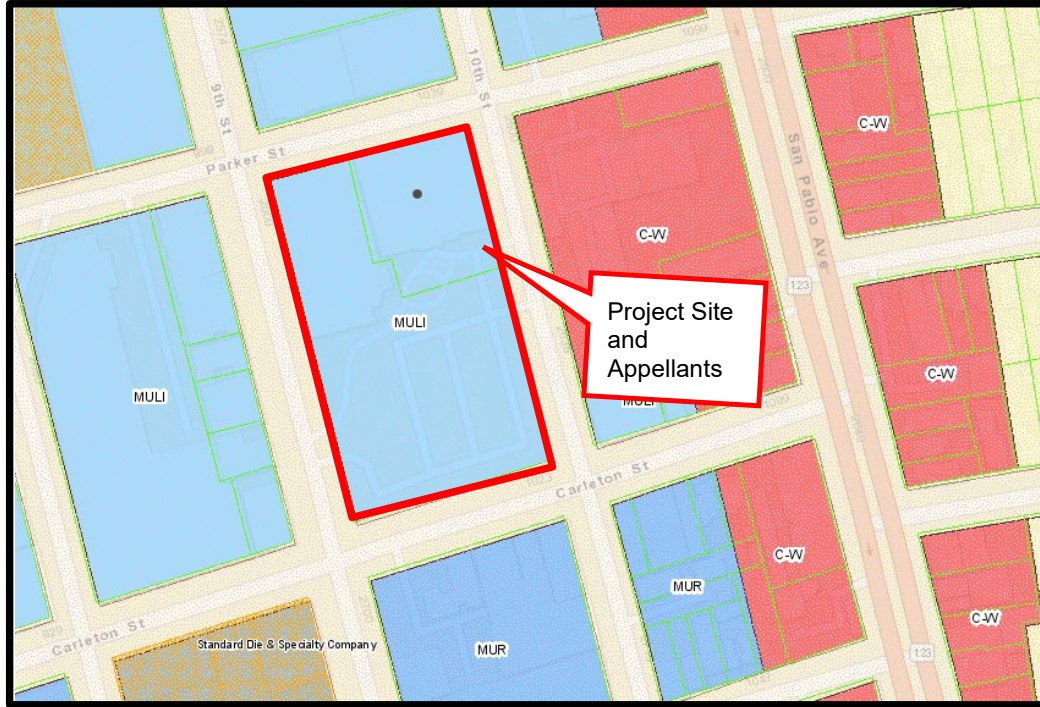
- Administrative Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.206.020 to establish a Research and Development use that is over 20,000 square foot in gross floor area.
- Administrative Use Permit pursuant to BMC Section 23.206.030(B)(3)(a) to create six to nine tenant spaces.

C. CEQA Recommendation: It is staff's recommendation that the project is categorically exempt pursuant to Section 15301 of the CEQA Guidelines ("Existing Facilities").

A. Parties Involved:

- Applicant Lisa Vogel, Wareham Development
- Property Owner 2600 Tenth Street, LLC
- Appellants Rick Auerbach (WEBAIC), Jed Riffe, Connie Field, Vivian Kleinman, Jim Lebrecht

Figure 1: Vicinity Map



Legend:
Zoning Districts
MU-LI: Mixed Use – Light Industrial District
MU-R: Mixed Use – Residential District
C-W: West Berkeley Commercial District

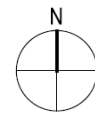


Figure 2: Site Plan

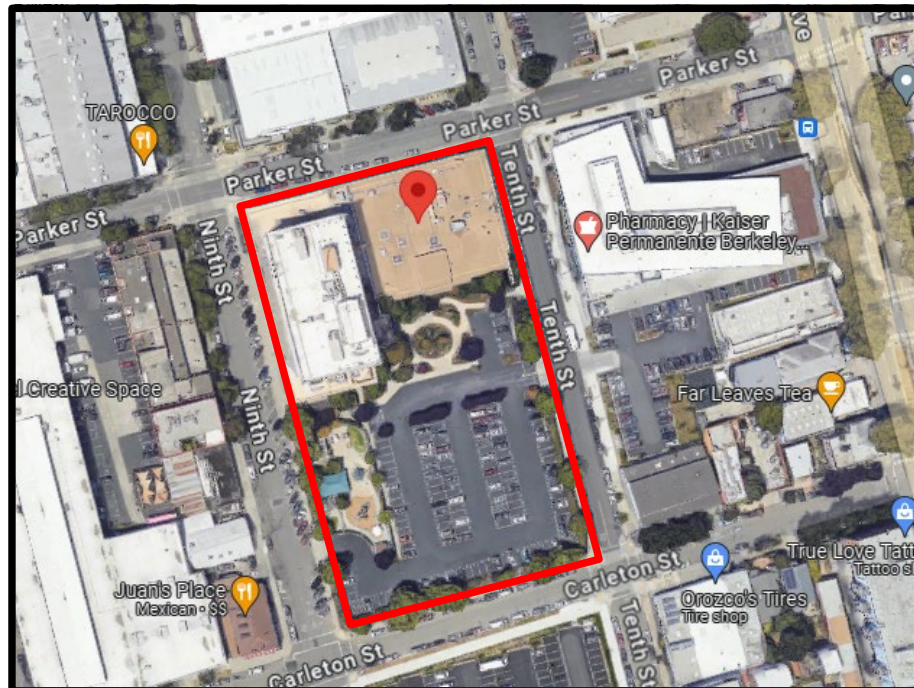
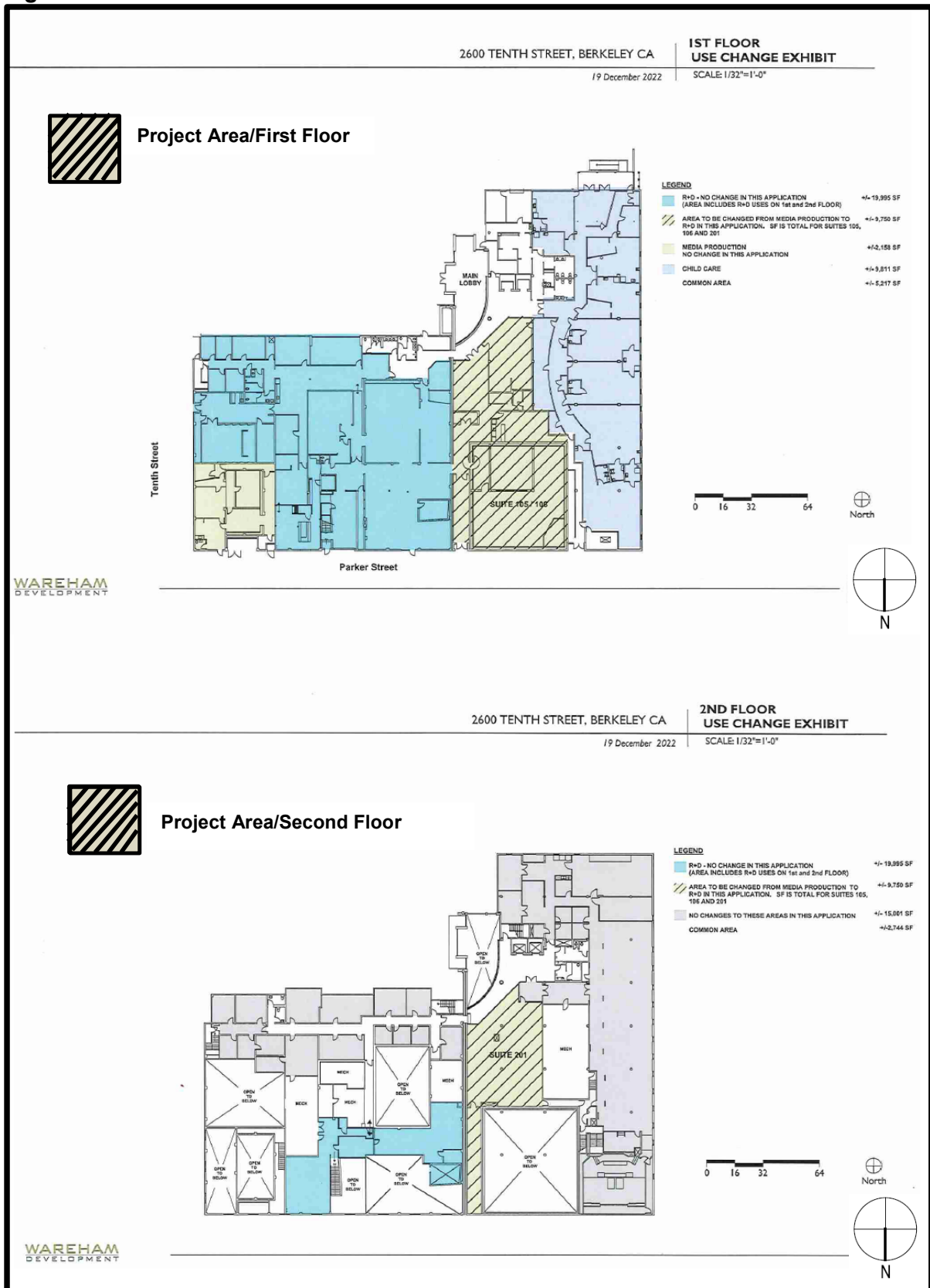


Figure 3: Floor Plans



WAREHAM DEVELOPMENT

WAREHAM DEVELOPMENT

Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Office, Media Production, and Child Care	MU-LI (Mixed Use-Light Industrial) District	M (Manufacturing)
Surrounding Properties	North	Light Manufacturing and Warehouse		
	South	Light Industrial and Commercial Uses, various	Mixed-Use Residential (MU-R)	
	East	Medical Office (Kaiser)	West Berkeley Commercial (C-W)	
	West	Offices, Media Production	MU-LI	

Table 2: Special Characteristics

Characteristic	Applies to Project?	Explanation
Affordable Child Care Fee for qualifying non-residential projects (Per Resolution 66,618-N.S.)	No	This fee applies to projects with net new 7,500 square feet of non-residential floor area. The project is a change of use from Media Production to Research and Development. Therefore, this fee does not apply.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)		
Affordable / Inclusionary Housing Requirements (BMC 23.328)	No	The project is not a housing development project, as defined in BMC 23.328.020 because it does not include the construction of any residential units. Therefore, the inclusionary housing provisions do not apply.
Alcohol Sales/Service	No	This project does not involve alcohol sales/services.
Creeks	No	No creek or culvert, as defined by BMC Chapter 17.08, exists on or within 30' of the site.
Density Bonus	No	This project is not a density bonus project.
Historic Resources	No	The project does not propose the demolition or substantial alteration of a building over 40 years old.
Housing Accountability Act (HAA) (Gov't Code Section 65589.5(j))	No	A "housing development project" is defined as a project that is: residential units only, a mixed-use project with at least two-thirds of the square-footage, or for transitional or supportive housing. The project is a change of use from Media Production to a Research and Development use and would not create new dwelling units, therefore, HAA and the Housing Crisis Act are not applicable.
Housing Crisis Act of 2019 (SB330)		
Oak Trees	No	There are no coast live oak trees on or abutting the project site.
Rent Controlled Units	No	There are no rent controlled units on the subject site.
Residential Preferred Parking (RPP)	No	The project site is not located in a zone of the Residential Preferred Parking program.
Seismic Hazards (SHMA)	No	This property is located within an area susceptible to a liquefaction, but not to earthquakes and landslides, as shown on the State Seismic Hazard Zones Map, however, the the project is a change of use, and no new floor area is proposed and any alterations to the interior resulting from dividing tenant spaces would not exceed 50 percent

		of the value of the structure or 50 percent of the existing floor area.
Soil/Groundwater Contamination	No	The project site is not on the Cortese List. The project site is located within the City's Environmental Management Area; however, no ground disturbance or site improvements are proposed. Standard Conditions of Approval related to hazardous materials would apply.
Transit	Yes	The project site is one block west of the San Pablo Avenue transit corridor, and is approximately 1 mile southeast of the Berkeley Amtrak station. The site is adjacent to the bike boulevard on Ninth Street and the bikeway on Parker Street, which connect to transitways with access to the greater region. The property is located within 5 minutes of the AC Transit #79 and 604 Bus Routes.

Table 3: Project Chronology

Date	Action
March 9, 2023	Application submitted
April 10, 2023	Application deemed incomplete
April 20, 2023	Resubmittal of application material
May 19, 2023	Application deemed complete
November 13, 2023	Notice of Administrative Decision issued
December 4, 2023	Appeal letter received
April 11, 2024	Public hearing notices mailed/posted
April 25, 2024	ZAB appeal hearing

II. Project Setting

A. Neighborhood/Area Description: The subject property is located on the northwest corner of Tenth and Parker Streets, one block south of Dwight Way and one block west of San Pablo Avenue. This area includes office and light industrial/warehousing uses including medical offices to the east (Kaiser Medical outpatient facility), light manufacturing and warehousing to the north, and offices to the west. The subject property is located 1.6 miles northwest of the Ashby Station BART station, 1.1-mile southeast of the Berkeley Amtrak station, and is served by several AC Transit bus routes that operate on San Pablo Avenue and Dwight Way. There are several bike boulevards within one and two blocks of Tenth Street and Channing Way.

B. Site Conditions: The project site is a rectangular 114,998 square foot corner lot, consisting of the one-block area bounded by Park Street to the north, Tenth Street to the east, Carleton Street to the south, and Ninth Street to the west. The parcel is currently developed with one building totaling 117,316 square feet: the two-story structure formerly occupied by the Saul Zaentz Media Center, and a seven-story addition for media production, office uses, as well as a child care center, and is served by a 105-space surface parking lot with vehicular access from Ninth and Tenth Streets. The building has pedestrian access via an interior

landscaped plaza. The current uses at the site include a child care center, Media Production and Research and Development.

III. Project Description

The project scope would change the use of three tenant spaces (suites 105, 106, and 201), totaling 9,750 square feet, from Media Production to Research and Development, and be further divided into up to nine tenant spaces. The existing building has approximately 19,995 square feet of Research and Development space, by changing the use of the three existing tenant spaces the proposed project would result in a total of 29,745 square feet of Research and Development space in the building. No changes to the exterior of the building, nor added square footage are proposed.

IV. Community Discussion

- A. Neighbor/Community Concerns:** Prior to submitting the application to the City, the applicant installed the yellow application posters in April 2023.
- B. Project Background:** A previous version of this application was submitted in May 2019 requesting a change of use of four existing tenant spaces on the first and second floors, totaling 20,367 square feet, from Media Production to Research and Development. The Zoning Officer's decision to approve the project was appealed by Alex Wilmer & Sea Wilmer to the Zoning Adjustment Board (ZAB) in November 2021.

At their January 2022 meeting, the ZAB requested that the Planning Department obtain an opinion from the City Attorney regarding the "protected use" status of spaces in the building, including identifying the existing use as either Media Production or Art/Craft Studio. At that time, ZAB continued the item to a later date.

After consulting with the City Attorney's office, the item was placed back on the ZAB calendar for the April 28, 2022 hearing; however, it was continued to the next ZAB meeting due to time constraints. Subsequently, the applicant withdrew the Administrative Use Permit application before the continuation hearing date, and instead obtained a Zoning Certificate (#ZCBL2022-0121) to change 19,555 square feet of area to Research and Development, which was within the size range allowed by-right.

- C. Zoning Officer's Decision to Approve:** The Zoning Officer determined that the proposed scope in ZP2023-0031 would not be detrimental or contribute to a shortage of industrial spaces in West Berkeley. The project would be consistent with the purposes of the District, compatible with the surrounding uses and buildings, comply with the adopted West Berkeley Plan, meet any applicable performance standards, would not induce substantial changes of use away from industrial uses, and would be supportive of the industrial character of the district.
- D. Appeal:** The appeal of the Administrative Use Permit decision was filed on December 4, 2023 by Rick Auerbach (on behalf of West Berkeley Artisans & Industrial Companies (WEBAIC)), Jed Riffe, Connie Field, Vivian Kleinman, and Jim Lebrecht. (See Attachment 4)

E. Public Notice: On April 11, 2024, the City mailed public hearing notices to all adjacent property owners and occupants within 300 feet of the subject property, and to interested neighborhood organizations. Staff also posted the Notice of Public Hearing at three locations within the immediate vicinity of the subject site. At the time of this writing, Staff has not received any communications, aside from the appeal letter, regarding this project.

V. Appeal Points and Analysis

The appellant raised six main issues in their appeal. For the sake of brevity, these are not re-stated in their entirety. Please refer to the appeal letter for the full text. The summary of the issues raised in the appellants' letter and staff's responses are as follows.

Appeal Point #1: The Appellants believe that the designation of the existing use as Media Production is incorrect and that this use ought to be treated as an Art/Craft Studio use subject to the provisions of BMC Section 23.206.050(B) for Protected Non-Industrial Use in the MU-LI and MU-R Districts.

Background:

Definitions. Media Production and Art/Craft Studio are separately defined non-industrial uses in BMC Section 23.502.020, Defined Terms.

Media Production: Commercial arts and art-related business services including audio and film recording and editing studios and services, film and video production, titling, video and film libraries, special effects production, motion picture and photograph processing, radio and television broadcast, and similar uses."

Art/Craft Studio: An establishment engaged in the creation of art or crafts that requires artistic skill. Such an establishment may participate in periodic open studios, but otherwise is subject to the applicable zoning district's requirements for incidental sales of goods made on site. Art/craft studios also include rehearsal spaces not designed for public performances. Examples of individuals typically engaged in this work include woodworkers, potters/ceramicists, costume makers, set designers, stained-glass makers, glassblowers, textile artists and weavers, jewelry makers, painters, fine art printmakers, photographers/filmmakers, leather workers, metal workers, musical instrument makers, model makers, papermakers, installation artists, sculptors, video artists, and other makers of art and crafts that the Zoning Officer determines to be consistent with this definition. The use of computers in an activity does not by itself prevent its classification as an art/craft studio. This use excludes architectural and landscape services, industrial or graphic design services, computer systems design services, and other commercial activities normally conducted in an office environment."

Art/Craft Studio is considered a Protected Non-Industrial Use in the MU-LI District (BMC Section 23.206.050(B)(1)¹) provided that the use was (a) legally established as of July 6, 1989, and (b) exists as a single stand-alone use or is combined with residential use in a live/work unit. Media Production is not a protected use.

Permitted Uses.

The established use of the subject site determines what type of zoning permit is required, and whether the provisions of BMC Section 23.206.050, Protected Uses, apply to the project.

Changing from a protected nonindustrial use such as Arts/Crafts Studio to a non-protected use is allowable with either an Administrative Use Permit or a Use Permit, depending on the size (BMC Section 23.206.050(B)(2)), and subject to additional findings for approval that require comparable replacement space to be provided (BMC 23.206.050(B)(4)).

Evidence:

Established Use. Staff evaluated the permit history (summarized below), and determined that the established use as of July 6, 1989 was Media Production.

Site History. At the time of construction and opening in 1971, the building at 2600 Tenth Street contained three recording studios (one with a separate entrance built specifically for Creedence Clearwater Revival), a mastering room, offices, and a warehouse. Owner Saul Zaentz then expanded the company into film production known as Fantasy Films. The success launched another expansion of the company, and construction of a seven-story addition to the recording studios on the subject site. Known as the Saul Zaentz Media Center, the new facility opened in 1980 and housed a film post-production center and a fourth recording studio.

Thus, the long-existing film and video production use of the complex, constructed in phases, is consistent with the current definition of Media Production. This use was previously known as Radio, Television or Audio/Sound Recording and/or Broadcast Studios: Commercial arts and art-related business services including audio and film recording and editing studios and services, film and video production, titling, video and film libraries, special effects production, motion picture and photograph processing, radio and television broadcast, and similar uses.

Specifically, the Saul Zaentz Film Center was a commercial arts business service consisting of several recording and editing studios and office spaces for the purpose of producing various forms of media, including music and film.

An Art/Craft Studio is commonly differentiated from Media Production by the scale and purpose of the establishment, understood to encompass studio spaces for art production and performing art instruction, rehearsal studios, and theatre spaces.

¹ The full list of protected non-industrial uses per BMC 23.206.050(B): Art/craft studio; art galleries, ancillary to art studios when located in the same building; child care facility, fine arts performance, instruction and rehearsal studios (dance, music theater); theaters, stage performance, but excluding motion picture theaters

Media Production uses, by contrast, are “commercial arts and art-related business services” involving various media types.

Land Use Division records indicate that, subsequent to the establishment and expansion of the Media Production use in 1971 and 1980, zoning certificate business licenses were issued to multiple enterprises leasing space from the Center starting around 1998, after the 1989 cut-off date for establishing a protected use. These included media production and artistic uses such as film making, writing office, and television programming, as well as less related uses including computer software design, a health information company, a consulting office, and a general business office for import-export of goods. Further, existing Art/Craft Studio uses that are or have been located in the building have not existed as a single stand-alone use, or been combined with residential use in a live/work unit. Therefore, the existing uses of the building are not protected use.

Conclusion:

The existing film production use most accurately meets the Media Production definition. Furthermore, even if the existing uses were considered an Art/Craft Studio, it still would not be a protected nonindustrial use because it was not the established use of July 6, 1989, and since a number of other commercial uses have shared the building with the existing use, it would not have been a single stand-alone use. Because Media Production is not a protected non-industrial use, the provisions in BMC 23.206.050(B) are not applicable to the project. An Administrative Use Permit to establish a Research and Development use that would have a total area that exceeds 20,000 square feet, per BMC 23.206.020 Allowed Land Uses, is the correct permit pathway.

Appeal Point #2: Appellants note that the City’s Planning Staff Reports such as the 2008 Variance Staff Report, considers the recording, mixing, and screening studios as a “Protected Use” in the MU-LI District whereas the most recent staff report (AUP ZP2023-0031 Findings and Conditions) describes the same use as a non-protected industrial use.

Background:

Variance #07-10000132, approved in March 2008, allowed for conversion of 9,961 square feet of office and storage space on the ground floor to a child care center for up to 100 children and conversion of 31 parking spaces in the northwest corner of the parking lot to 7,500 square feet of outdoor play area. The Findings and Conditions identified the existing use as Media Production and refer to it as a protected use.

The subject Administrative Use Permit under appeal would allow the change of use of three tenant spaces, totaling 9,750 square feet, from Media Production to Research and Development use, and create up to nine new tenant spaces. The Findings and Conditions do not refer to Media Production as a protected use, would allow a change of use more than 5,000 square feet with an AUP, and do not include the findings required to change a protected nonindustrial use to a non-protected use. (Attachment 1)

Evidence:

2008 Review. The previous variance application authorized the conversion of established office uses and storage space to a child care center. Since child care was not an allowed use in the MU-LI, a Variance was required to establish that use on the site. That permit was not in any way related to a change of use from Media Production or Arts/Crafts Studio to another use. While the analysis refers to the Media Production uses elsewhere in the building as a protected use, it is in error. Media Production was not the subject of the permit, and the mis-identification as a protected use had no bearing on the outcome of the variance decision. It cannot be considered a binding determination for future projects which must be evaluated based on the facts and requirements applicable at the time a decision is made on an application².

Change of Use: As discussed in-depth in Section V.A. Appeal Point #1 of this report, per BMC Section 23.206.050(B)(1), Media Production is not listed as a protected industrial use and may be changed to Research and Development per BMC Section 23.209.020(A), Allowed Land Uses and Permit Requirements. Also, as noted above, even if the existing use could be considered an Art/Craft Studio, it would not be considered a protected use because it was not established as of July 6, 1989 and is not a standalone use (or combined with residential uses) because a number of other commercial enterprises that were clearly not Art/Craft Studios have shared the building with artistic uses. For these reasons, the existing use of 2600 Tenth Street is not a protected use. The change of use from Media Production to Research and Development is not subject to the permit requirements and additional findings for changing a protected nonindustrial use to another use per BMC Table 23.206-9. An Administrative Use Permit to convert 9,750 square feet, resulting in a total of 29,745 square feet total Research and Development, is the correct permit pathway subject to the required findings for non-detriment, tenant space reconfiguration, and Manufacturing Districts only.

Conclusion

The existing use is still best identified as Media Production and not considered as a protected nonindustrial use by BMC Section 23.206.050(B). An erroneous reference in prior documents cannot supersede the applicable requirements and definitions present in the Zoning Ordinance, BMC Title 23. Per BMC Section 23.406.040(E)(4), required findings shall be made based on the circumstances existing at the time a decision is made on the application.

Appeal Point #3: Appellants believe that the proposed project would be detrimental to the general welfare of those working at 2600 Tenth Street because the conversion of Media Production to Research and Development diminishes the opportunities for filmmakers and

² BMC Sections 23.406.030(F)(4) and 23.406.040(E)(4) Findings for Approval state that the “required findings shall be made based on the circumstances existing at the time a decision is made on the application.”

video artists to collaborate on projects and limits their economic and cultural contributions to the general welfare of the City.

Background:

Per BMC Sections 23.406.030(F)(1) and 23.406.040(E)(1), Findings for Approval, the review authority shall find that the proposed project or use:

- a. *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 the proposed use; and*
- b. *Will not 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.*

Per BMC Sections 23.406.030(F)(3) and 23.406.040(E)(3), when acting on a project the review authority must consider the proposed land use and the structure or addition that accommodates the use.

Evidence:

The proposed project includes a change of use from Media Production to Research and Development within an existing building in the MU-LI District and would be at a location that is planned for mixed-use light industrial development. Per BMC Section 23.206.020, this use is allowed in the MU-LI zoning district with an AUP. The project would convert three existing Media Production tenant spaces with no changes to the exterior of the building, nor added square footage. The project will conform to the applicable provisions of BMC Section 23.206.080(E) Development Standards and 23.322.030(C)(2) Parking and Loading, including floor area ratio, height, and setbacks. Although parking minimums are no longer required under AB 2097³, ample on-site parking is currently provided.

The immediate surrounding neighborhood includes properties zoned for MU-LI to the north and west, properties zoned MU-R (Mixed Use-Residential) to the south, and properties zoned C-W (West Berkeley Commercial) to the east. Businesses in the immediate vicinity include offices, medical offices, light manufacturing and warehousing, and food service establishments. The project site has a General Plan designation of Manufacturing. This area of Berkeley is characterized by commercial and light industrial activity in close proximity to San Pablo Avenue, easily accessible for employees and patrons by public transportation or automobile. The proposed Research and Development use is consistent with surrounding development and will contribute to the vitality of the West Berkeley neighborhood.

Conclusion:

³ [AB-2097](#), effective January 1, 2023, prohibits local jurisdictions from requiring minimum parking for most non-residential uses, including Research and Development.

Considering the proposed Research and Development use and the structure that would accommodate the use, the location, site, and building are suitable for Research and Development, and would not be detrimental to the welfare of persons working in the area.

Appeal Point #4: The appellants contend that the change of use does not better serve the purposes of the district as required by BMC Section 23.206.030(B), Tenant Space Reconfiguration.

Background:

To approve an AUP to create between six to nine tenant spaces in the MU-LI, the review authority must find that they would not create or contribute to a shortage of industrial spaces in West Berkeley for the spaces being converted and either (a) the reconfiguration can be reasonably expected to better serve the purposes of the district than leaving the space intact, or (b) the reconfiguration would create spaces which could cross-subsidize larger industrial spaces.

Evidence:

The findings referenced are only required for the tenant space configuration, and do not apply to changes of use.

Conclusion:

Since this provision is not applicable to the appeal point about change of use, no additional analysis is required.

Appeal Point #5: The appellants contend that the change of use is not consistent with the following two MU-LI District purposes: encourage development of a mixed-use light industrial area for a range of compatible uses; and encourage the creation and continuation of well-paid jobs which do not require advanced degrees. They state that there is plenty of space already dedicated to Research and Development in Berkeley while there is not enough for artist and film makers, and that most Research and Development jobs require advanced degrees.

Background:

Pursuant to BMC Section 23.206.100(A)(1) Permit Findings for All Manufacturing Districts), the review authority must find that the project is compatible with the purposes of the district in which it is located. There are ten purposes for MU-LI listed in BMC Section 23.206.080(A) District Purposes, including the two cited above. Research and Development (R &D) is defined as:

“An establishment engaged in the following activities: 1) industrial, biological or scientific research; and/or 2) product or process design, development, prototyping,

or testing. This may include labs, offices, warehousing, and light manufacturing functions as part of the overall Research and Development use.”

Evidence:

Terminology. Throughout the Zoning Ordinance (BMC Title 23), there are a mix of mandatory and discretionary terms used to differentiate between what is required and advisory⁴. Both of the purposes raised in the appeal are written as advisory and not required for every project, however, staff maintains that the proposed project is consistent with both of these district purposes.

Research and Development. MU-LI District Purpose (BMC Section 23.206.080(A)(2)): *Encourage* development of a mixed-use light industrial area for a range of compatible uses. Research and Development Use is classified in the Allowed Land Uses Table (BMC 23.206-1) as an Industrial and Heavy Commercial Use. By definition, Research and Development is comprised of a combination of uses that may include labs, offices, warehousing, and light manufacturing functions. Research and Development uses are present in a variety of industries – including bio-tech and areas of innovative – and encompass a wide range of related activities. The flexibility to create up to nine tenant spaces would allow for multiple Research and Development tenants that can adjust their tenant space size to meet their needs, including renting smaller spaces or expansions, as needed. Media Production is also classified as an Industrial and Heavy Commercial Use, and the proposed project would remain in the same category of the existing use. Therefore, Research and Development would be a compatible use within a mixed-use light-industrial area, the potential for a variety of tenant spaces increases the viability of a range of businesses, and the proposed project satisfies this district purpose.

District Purpose. MU-LI District Purpose (BMC Section 23.206.080(A)(4)): Encourage the creation and continuation of well-paid jobs which do not require advanced degrees. While this purpose primarily relates to traditional manufacturing jobs, as noted throughout the West Berkeley Plan, it also recognizes that uses such as Research and Development (referred to as “Advanced Services” in the plan) create technical positions that may require higher levels of education as well as clerical and service positions. The variety and flexibility of tenant spaces also creates more opportunity for clerical and support services. The proposed project would not displace a manufacturing use.

Findings shall consider the proposed land use and the structure or addition that accommodates the use.

Conclusion:

Research and Development is classified as an Industrial and Heavy Commercial Use, encompasses a wide range of activities, and would be compatible with a range of uses that are allowed and located within the MU-LI District. The flexibility provided for additional tenant spaces would allow a variety of Research and Development tenants. The use would create technical positions that may require higher levels of education as well as clerical and

⁴ BMC Section 23.104.030(L) Mandatory and Discretionary Terms. The words "shall," "will," "must," and "is" are always mandatory. The words "may" and "should" are advisory and discretionary terms.

service positions. The variety and flexibility of tenant spaces would create additional opportunities. The proposed project would not displace a manufacturing use.

As previously noted, the review authority must base their decision on the required findings in the Title 23 and must consider the proposed land use and the structure or addition that accommodates the use. They may not deny or approve a project based on speculation, unsubstantiated opinions, or the level of support or opposition of various parties regarding its potential economic or social impacts.

Appeal Point #6: Appellants believe that the proposed project does not abide by the West Berkeley Plan goals and policies for the protected arts uses and actively works in contradiction to those goals and policies. In particular, the appellants believe that Goal 7 (Economic Development) and West Berkeley Plan Appendices– Appendix B-Cultural Resources of West Berkeley, are not supported by the proposed project.

Background:

The West Berkeley Plan⁵ was adopted in 1993 and the Zoning Ordinance amendments to implement the plan were adopted in 1999. In 2011, Chapter 1 Land Use, Section 7 Land Use Regulations of the West Berkeley Plan – for Adoption in Principle of the plan was amended to reflect changes in permitted and prohibited uses and special situations and regulations. Major changes included: Research and Development was added to the MU-LI district's permitted uses tables, conversion to Arts/Crafts were allowed within protected industrial spaces, and conversion to Research and Development was allowed to be in Wholesale Trade and Warehouse protected spaces (all subject to the requirements and limitations in the zoning ordinance).

1. Chapter 2 Economic Development⁶

- a. Goal 7⁷: Protect small businesses, particularly arts and crafts businesses, so that they can flourish in West Berkeley.*
 - i. Policy 7a: Use available mechanisms, including zoning, property purchase assistance, and direct City assistance to artists, to assure that artists and craftspeople remain a viable part of the West Berkeley community.*
- b. General Implementation Strategies, Ordinances, Regulation, and Policy Development – Arts and Crafts Review⁸:*
 - i. Review the functioning of the arts and crafts Ordinance, and develop recommendations about how it can be implemented.*
 - ii. Goal and Policies Implemented: Goal 7, Policy 7a*

Evidence:

Distinct Uses. Media Production and Art/Craft Studio are two distinct uses. Appendix B-Cultural Resources of West Berkeley⁹ of the plan identifies some of the studios and

⁵ West Berkeley Plan: <https://berkeleyca.gov/your-government/our-work/adopted-plans/west-berkeley-plan>

⁶ West Berkeley Plan, page 59-94

⁷ West Berkeley Plan, page 87

⁸ West Berkeley Plan, page 92

⁹ West Berkeley Plan, page 221

worksites of artists and craftspeople, including the Kawneer Building, Nexus Institute, and Kala Institute. It goes on to state that, “in addition to art and craft studios, there is also film, video, and record production companies in West Berkeley, at the Fantasy Building.”

West Berkeley Plan Implementation. The Zoning Ordinance was amended in 1999 to implement the West Berkeley Plan, and included provisions for protected use. Art/Craft Studio uses were included as protected uses provided they were legally established as of July 6, 1989 and were a stand-alone use or combined with residential use, same as the current code requirement. The existing use of the subject building was Media Production¹⁰ at the time of West Berkeley Plan implementation in the Zoning Ordinance. Neither West Berkeley Plan Goal 7 and Policy 7a have been amended to include Media Production as a protected use, nor the criteria for Art/Craft Studios has changed in this plan.

Subsequent Amendments. The Subsequent amendments to the West Berkeley Plan in 2011 and corresponding zoning amendments did not alter the protected use criteria for Art/Craft Studios. They did address changes of use from manufacturing and industrial uses to other uses. These changes allowed protected spaces, including Warehouse, Wholesale Trade, Manufacturing, and Material Recovery Enterprises, to be converted to Arts/Craft Studio uses.

Conclusion:

The appellant’s argument in this point is based on the incorrect premise that the building is subject to the protections for Art/Craft Studio uses. As explained in Appeal Point # 1 and above, the existing use is Media Production and any current Art/Craft Studio uses would not meet the criteria for a protected nonindustrial use. The proposed project would not be counter to the goal, policy, or implementation strategy raised in the appeal.

VI. Recommendation

Because the project is consistent with the Zoning Ordinance and General Plan, and would have minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board uphold the Zoning Officer decision and **APPROVE Administrative Use Permit #ZP2023-0081** pursuant to Section 23.406.040 and subject to the attached Findings and Conditions (Attachment 1), and **DISMISS** the Appeal.

Attachments:

1. Findings and Conditions, November 13, 2023
2. Project Plans, received March 9, 2023
3. Notice of Administrative Decision, dated November 13, 2023
4. Appeal Letter, received December 4, 2023
5. Notice of Public Hearing, dated April 11, 2024

Staff Planner: Nilu Karimzadegan, (510) 981-7430, NKARIMZADEGAN@BERKELEYCA.GOV

¹⁰ Formerly called Radio, Television or Audio/Sound Recording and/or Broadcast Studios

ATTACHMENT 1

FINDINGS AND CONDITIONS NOVEMBER 13, 2023

2600 Tenth Street

Administrative Use Permit #ZP2023-0031

To change the use of four tenant spaces (9,750 square feet) from Media Production to a Research and Development use, and create up to nine tenant spaces within a seven-story building on a 114, 998 square-foot lot.

PERMITS REQUIRED

- Administrative Use Permit (AUP) pursuant to Berkeley Municipal Code (BMC) Section 23.206.020 to establish a Research and Development use that is over 20,000 square foot in gross floor area.
- Administrative Use Permit pursuant to BMC Section 23.206.030(B)(3)(a) to create up to nine tenant spaces.

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”).
2. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

FINDINGS FOR APPROVAL

3. As required by Section 23.406.040(E)(1) of the Zoning Ordinance, the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:
 - The subject property is a seven-story building that includes existing office use, Research and Development, Media Production and childcare. It is located in south west Berkeley on a full city block bounded by Parker Street to the north, Tenth Street to the east, Carleton Street to the south and Ninth Street to the west. The proposed project is a change of use from Media Production to Research and Development use within an existing building in the MU-LI (Mixed Use-Light Industrial) District. The project will convert three existing Media Production tenant spaces totaling 9,750 square feet to create additional space for Research and Development within the building, with no changes to the exterior of the

building, nor added square footage. The project will conform to the applicable provisions of BMC Section 23.206.080(E) and 23.322.030(C)(2), including floor area ratio, height, and setbacks. Although parking minimums are no longer required under AB 2097¹, ample on-site parking is currently provided.

In 2022, a zoning certificate was issued to change the use of 19,995 square feet of Media Production to Research and Development for suites 107, 108, 109, and 110 (ZCBL2022-0121). The project will change an additional 9,750 square feet, comprised of suite numbers 105, 106 and 201. The total area of Research and Development will be 29,745 square feet.

- The immediate surrounding neighborhood includes properties zoned for MU-LI to the north and west, properties zoned MU-R (Mixed Use-Residential) to the south, and properties zoned C-W (West Berkeley Commercial) to the east. Businesses in the immediate vicinity include offices, medical offices, light manufacturing and warehousing, and food service establishments. The project site has a General Plan designation of Manufacturing. This area of Berkeley is characterized by commercial and light industrial activity in close proximity to San Pablo Avenue, easily accessible for employees and patrons by public transportation or automobile. Therefore, the proposed Research and Development use is consistent with surrounding development and will contribute to the vitality of West Berkeley's neighborhood.

4. As required by BMC Section 23.206.030(B)(3) for the MULI District, the Zoning Officer finds that the reconfiguration of three existing spaces up to nine is allowable because the reconfiguration will not create or contribute to a shortage of industrial spaces in West Berkeley for spaces of the size being converted, and that the reconfiguration can be reasonably expected to better serve the purposes of the district (BMC 23.206.080 (A)) than leaving the space intact because:

- Both the existing Media Production and proposed Research and Development uses are classified as "Industrial and Heavy Commercial Uses" so there is no change in the industrial nature of activities that can occur onsite.
- The additional spaces will potentially allow multiple tenants engaging in research and development activities, with flexibility in the size of individual tenant spaces.
- Research and Development is an allowed Land Use and the proposed project is consistent with, and supports implementation of, relevant policies set forth in the adopted West Berkeley Plan in that it will provide additional Research and Development space, keeping with the land use mix set forth in the Plan, and allowing for continued attraction of new and growth of existing business while maintaining the existing character of the area.

¹ [AB-2097](#), effective January 1, 2023, prohibits local jurisdictions from requiring minimum parking for most non-residential uses, including Research and Development.

5. As required by BMC Section 23.206.100 (A), the Zoning Officer finds that the project is:
- (1) consistent with the purposes of the District; (2) compatible with the surrounding uses and buildings; (3) Complies with the adopted West Berkeley Plan; and (4) Meets any applicable performance standards for off-site impacts. The project is permissible for the following reasons:
- The change of use from Media Production to Research and Development is consistent with the purposes of the MU-LI District because it will support the development of a mixed-use light industrial area for a range of compatible uses, encourage the creation and continuation of well-paid jobs which do not require advanced degrees, and will provide a location for Research and Development while not interfering with light manufacturing uses or the light manufacturing building stock.
 - The change of use is compatible with the surrounding uses and buildings, as it will not result in any changes to the exterior of the building.
 - The change of use is consistent with the West Berkeley Plan because, as noted above, the project will provide a location for Research and Development while not interfering with light manufacturing uses or the light manufacturing building stock, and will thus not induce a change of use in other areas of West Berkeley where manufacturing and warehousing uses occur.
 - The Zoning Officer finds that no additional performance standards are applicable to this project. The existing Media Production use conforms to the parking requirements in the District, and the project will not result in the creation of new floor area. Therefore, the project will not exceed the amount and intensity of use that can be served by available traffic capacity and parking supply.
6. As required by BMC Section 23.206.100(B)(2), the Zoning Officer finds that the project:
- (a) Is unlikely, under reasonably foreseeable circumstances, to induce a substantial change of use in buildings from manufacturing, wholesale trade, or warehousing uses; and
 - (b) Is designed in such a manner to be supportive of the industrial character of the district. Such physical compatibility shall include materials used; facade treatments; landscaping; lighting; type, size and placement of awnings, windows, and signs; and all other externally visible aspects of the design of the building and site. The proposed use is to expand the existing Research and Developmental gross floor area and therefore will not induce a substantial change of use in the building from a manufacturing use. Additionally, no exterior changes will occur due to the proposed project.
-

STANDARD CONDITIONS

The following conditions, as well as all other applicable provisions of the Berkeley Municipal Code, apply to this Permit:

1. Conditions Shall be Printed on Plans

The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions'. *Additional sheets* may also be used if the *second* sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

2. Compliance Required (BMC Section 23.102.050)

All land uses and structures in Berkeley must comply with the Zoning Ordinance and all applicable City ordinances and regulations. Compliance with the Zoning Ordinance does not relieve an applicant from requirements to comply with other federal, state, and City regulations that also apply to the property.

3. Approval Limited to Proposed Project and Replacement of Existing Uses (BMC Sections 23.404.060.B.1 and 2)

- A. This Permit authorizes only the proposed project described in the application. In no way does an approval authorize other uses, structures or activities not included in the project description.
- B. When the City approves a new use that replaces an existing use, any prior approval of the existing use becomes null and void when permits for the new use are exercised (e.g., building permit or business license issued). To reestablish the previously existing use, an applicant must obtain all permits required by the Zoning Ordinance for the use.

4. Conformance to Approved Plans (BMC Section 23.404.060.B.4)

All work performed under an approved permit shall be in compliance with the approved plans and any conditions of approval.

5. Exercise and Expiration of Permits (BMC Section 23.404.060.C)

- A. A permit authorizing a land use is exercised when both a valid City business license is issued (if required) and the land use is established on the property.
- B. A permit authorizing construction is exercised when both a valid City building permit (if required) is issued and construction has lawfully begun.
- C. The Zoning Officer may declare a permit lapsed if it is not exercised within one year of its issuance, except if the applicant has applied for a building permit or has made a substantial good faith effort to obtain a building permit and begin construction. The Zoning Officer may declare a permit lapsed only after 14 days written notice to the applicant. A determination that a permit has lapsed may be appealed to the ZAB in accordance with Chapter 23.410 (Appeals and Certification).
- D. A permit declared lapsed shall be void and of no further force and effect. To establish the use or structure authorized by the lapsed permit, an applicant must apply for and receive City approval of a new permit.

6. Permit Remains Effective for Vacant Property (BMC Section 23.404.060.D)

Once a Permit for a use is exercised and the use is established, the permit authorizing the use remains effective even if the property becomes vacant. The same use as allowed by the original permit may be re-established without obtaining a new permit, except as set forth in Standard Condition #5 above.

7. Permit Modifications (BMC Section 23.404.070)

No change in the use or structure for which this Permit is issued is permitted unless approved by the review authority which originally approved the permit. 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.

8. Permit Revocation (BMC Section 23.404.080)

The City may revoke or modify a discretionary permit for completed projects due to: 1) violations of permit requirements; 2) Changes to the approved project; and/or 3) Vacancy for one year or more. However, no lawful residential use can lapse, regardless of the length of time of the vacancy. Proceedings to revoke or modify a permit may be initiated by the Zoning Officer, Zoning Adjustments Board (ZAB), or City Council referral.

9. Indemnification Agreement

The applicant shall hold harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments or other losses (including without limitation, attorney's fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval associated with the project. The indemnity includes without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn, set aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the project and granting any permit issued in accordance with the project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs shall include, without limitation, any attorney's fees, expert witness and consultant fees, court costs, and other litigation fees. City shall have the right to select counsel to represent the City at Applicant's expense in the defense of any action specified in this condition of approval. City shall take reasonable steps to promptly notify the Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.

ADDITIONAL CONDITIONS IMPOSED BY THE ZONING OFFICER

Pursuant to BMC Section 23.406.030.H.2, the Zoning Officer attaches the following additional conditions to this Permit:

Prior to Submittal of Any Building Permit:

10. Project Liaison. The applicant shall include in all building permit plans and post onsite the name and telephone number of an individual empowered to manage construction-related 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. **Please designate the name of this individual below:**

Project Liaison

Name

Phone #

11. The applicant shall file an "Address Assignment Request Application" with the Permit Service Center (1947 Center Street) for any address change or new address associated with this Administrative Use Permit. The new address(es) shall be assigned in accordance with BMC 16.28.030, and entered into the City's database after the building permit is issued but prior to final inspection

Standard Construction-related Conditions Applicable to all Projects:

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

13. If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.

14. Subject to approval of the Public Works Department, the applicant shall repair any damage to public streets and/or sidewalks by construction vehicles traveling to or from the project site.

15. All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter in thickness and secured to the ground.

16. All active construction areas shall be watered at least twice daily, and all piles of debris, soil, sand or other loose materials shall be watered or covered.

17. Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.

18. Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.

19. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way.

20. The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.
21. Any construction during the wet season shall require submittal of a soils report with appropriate measures to minimize erosion and landslides, and the developer shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.

Prior to Issuance of Occupancy Permit or Final Inspection:

22. All construction at the subject property shall substantially conform to the approved Use Permit drawings or to modifications approved by the Zoning Officer.
23. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated March 9, 2023.

At All Times (Operation):

24. 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.
25. Noise and exterior lighting shall be controlled so as to prevent verified complaints from the surrounding neighborhood. This shall include noise created by employees working on the premises before or after patrons arrive.
26. Design Review. Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to design review's review and approval.
27. 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.
28. Transit Subsidy. If 10 or more employees, the business operator 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.



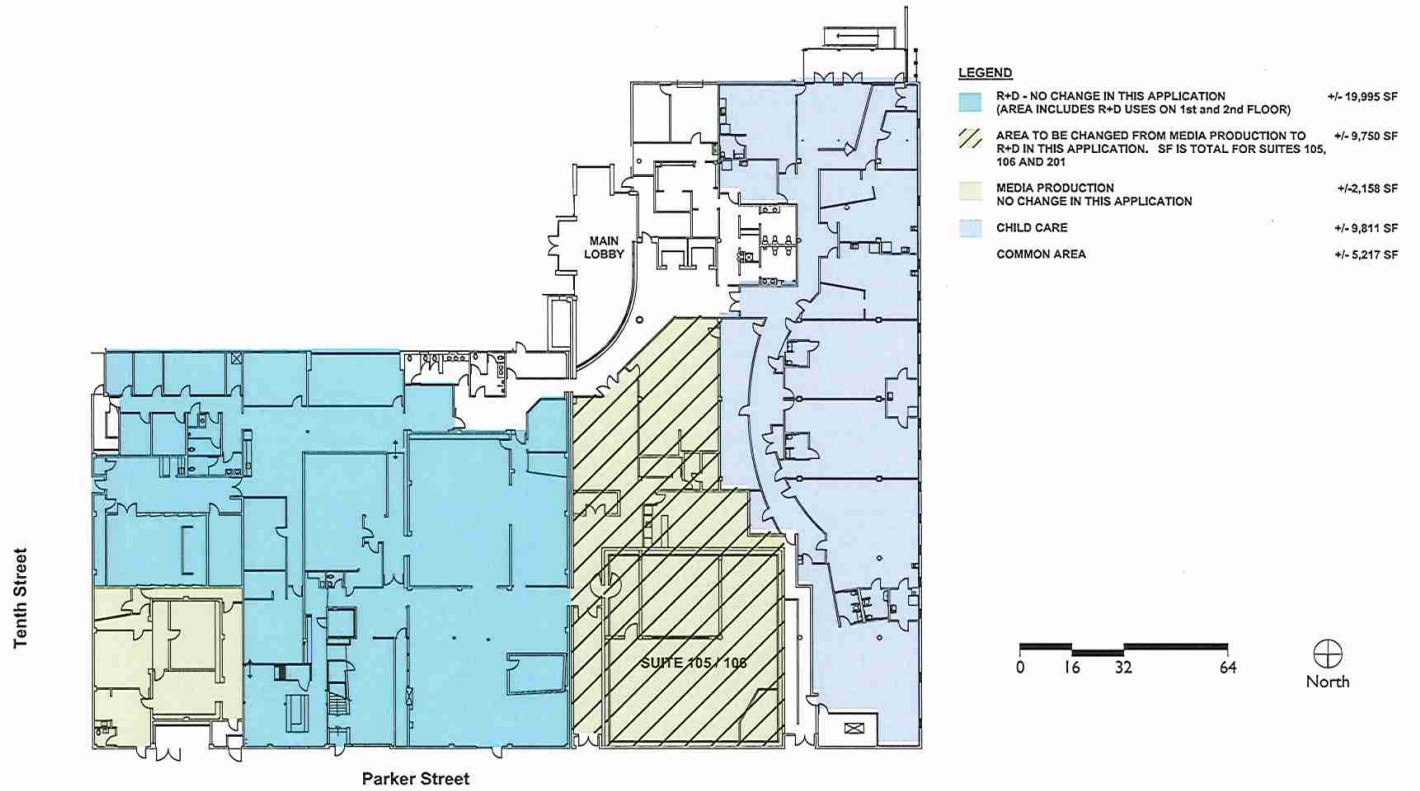
Prepared by: Nilu Karimzadegan
For Samantha Updegrave, Zoning Officer

2600 TENTH STREET, BERKELEY CA

**1ST FLOOR
USE CHANGE EXHIBIT**

19 December 2022

SCALE: 1/32"=1'-0"

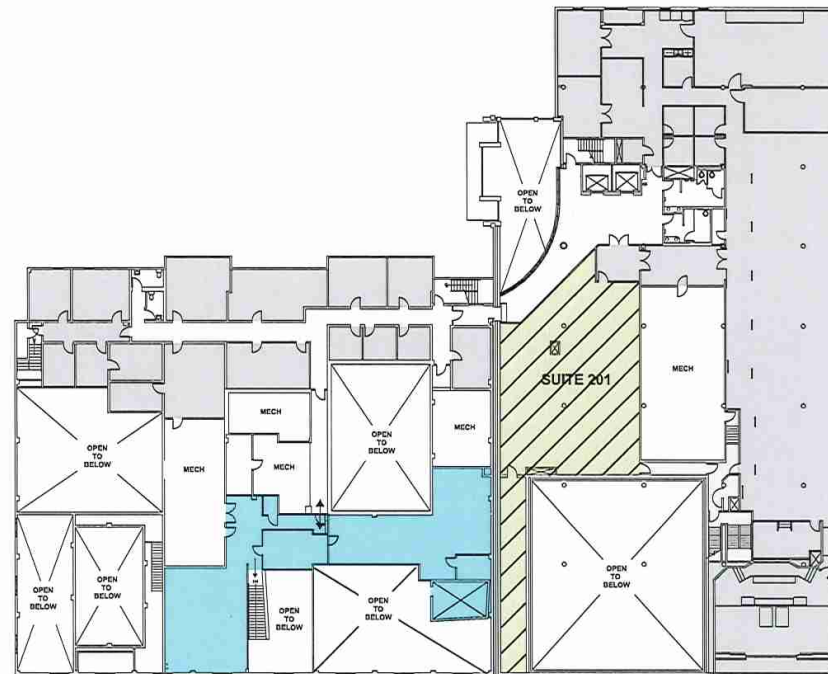


2600 TENTH STREET, BERKELEY CA

**2ND FLOOR
 USE CHANGE EXHIBIT**

19 December 2022

SCALE: 1/32"=1'-0"



LEGEND

- R+D - NO CHANGE IN THIS APPLICATION
 (AREA INCLUDES R+D USES ON 1st and 2nd FLOOR) +/- 19,995 SF
- AREA TO BE CHANGED FROM MEDIA PRODUCTION TO
 R+D IN THIS APPLICATION. SF IS TOTAL FOR SUITES 105,
 106 AND 201 +/- 9,750 SF
- NO CHANGES TO THESE AREAS IN THIS APPLICATION +/- 15,001 SF
- COMMON AREA +/- 2,744 SF





N O T I C E O F
A D M I N I S T R A T I V E
D E C I S I O N

2600 Tenth Street

Administrative Use Permit #ZP2023-0031

To change the use of four tenant spaces (9,750 square feet) from Media Production to a Research and Development use, and create up to nine tenant spaces within a seven-story building on a 114, 998 square-foot lot.

ZONING OFFICER DECISION: The Zoning Officer of the City of Berkeley has APPROVED the following permits pursuant to Berkeley Municipal Code (BMC) Section 23.406.030(F), and based on the attached findings and conditions (attachment 1) and plans (attachment 2):

- Administrative Use Permit (AUP) pursuant to Berkeley Municipal Code (BMC) Section 23.206.020 to establish a Research and Development use that is over 20,000 square foot in gross floor area.
- Administrative Use Permit pursuant to BMC Section 23.206.030(B)(3)(a) to create up to nine tenant spaces.

DATE NOTICE IS ISSUED: November 13, 2023

APPEAL PERIOD: November 14, 2023 to December 4, 2023

ATTACHMENTS:

1. Findings and Conditions
2. Project Plans, dated received March 9, 2023

FOR FURTHER INFORMATION:

All application materials for this project are available online at:

<https://aca.cityofberkeley.info/CitizenAccess/Welcome.aspx>. Questions about the project should be directed to the project planner, Nilu Karimzadegan at (510) 981-7430 or nkarimzadegan@berkeleyca.gov.

PUBLIC NOTICE, PURSUANT TO BMC SECTION [23.404.040\(A\)](#):

This Notice of Administrative Decision was:

1. Forwarded to the Zoning Adjustments Board and sent to the Main Library;
2. Posted at three visible locations in the vicinity of the subject property and at a bulletin board at the Zoning counter.
3. Mailed to neighborhood and community organizations for which the project falls within their expressed area of interest, as set forth in BMC Section [23.404.040\(E\)](#);
4. Mailed to owners and residents of properties abutting and confronting the subject property.

The validity of the proceedings, however, shall not be affected by the failure of any such property owner, occupant or neighborhood or community organization to receive such mailed notice.

1947 Center Street, 2nd Floor, Berkeley, CA 94704 Tel: 510.981.7410 TDD: 510.981.6903 Fax: 510.981.7420

E-mail: planning@berkeleyca.gov

TO APPEAL THIS DECISION, PURSUANT TO BMC CHAPTER [23.410](#):

To appeal this decision, you must:

1. Submit a letter clearly and concisely setting forth the grounds for the appeal, along with the required fee (see below) to the Zoning Officer, at the Permit Service Center, 1947 Center Street, 3rd Floor, Berkeley.
2. The appeal and required fee (see below) must be received **prior to 2:00 p.m. on the last day of the appeal period shown above (if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day).**
3. Submit the required fee to the Permit Service Center (see above; checks and money orders must be payable to 'City of Berkeley'):
 - A. The basic fee for appeals of a Zoning Officer decision to the Zoning Adjustments Board is \$500. This fee may be reduced to \$200 if the appeal is signed by persons who lease or own at least 35 percent of the parcels or dwelling units within 300 feet of the project site, or at least 20 such persons (not including dependent children), whichever is less.
 - B. The fee for appeals of affordable housing projects (defined as projects which provide 50 percent or more affordable units for households earning 80 percent or less of Area Median Income) is \$500, which may not be reduced.
 - C. The fee for all appeals by Applicants is \$3,680.

If an appeal is filed, the Zoning Officer shall set the matter for consideration by the Zoning Adjustments Board. An appeal stays the issuance and exercise of the AUP until a decision is rendered or the appeal is withdrawn. If no appeal is received, the permit will be issued on the first business day following expiration of the appeal period, and the project may proceed at that time.

NOTICE CONCERNING YOUR LEGAL RIGHTS:

If you object to this decision, the following requirements and restrictions apply:

1. If you challenge this decision in court, you may be limited to raising only those issues you or someone else raised in an appeal of the decision.
2. You must appeal to the Zoning Adjustments Board within twenty (20) days after the Notice of Decision of the action of the Zoning Officer is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, your appeal of this decision must include the following information:
 - A. That this belief is a basis of your appeal.
 - B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
 - C. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City and in court.

ATTACHMENT 1

FINDINGS AND CONDITIONS

NOVEMBER 13, 2023

2600 Tenth Street

Administrative Use Permit #ZP2023-0031

To change the use of four tenant spaces (9,750 square feet) from Media Production to a Research and Development use, and create up to nine tenant spaces within a seven-story building on a 114, 998 square-foot lot.

PERMITS REQUIRED

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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”).
2. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

FINDINGS FOR APPROVAL

3. As required by Section 23.406.040(E)(1) of the Zoning Ordinance, the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:
 - The subject property is a seven-story building that includes existing office use, Research and Development, Media Production and childcare. It is located in south west Berkeley on a full city block bounded by Parker Street to the north, Tenth Street to the east, Carleton Street to the south and Ninth Street to the west. The proposed project is a change of use from Media Production to Research and Development use within an existing building in the MU-LI (Mixed Use-Light Industrial) District. The project will convert three existing Media Production tenant spaces totaling 9,750 square feet to create additional space for Research and Development within the building, with no changes to the exterior of the

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6. As required by BMC Section 23.206.100(B)(2), the Zoning Officer finds that the project:
- (a) Is unlikely, under reasonably foreseeable circumstances, to induce a substantial change of use in buildings from manufacturing, wholesale trade, or warehousing uses; and
 - (b) Is designed in such a manner to be supportive of the industrial character of the district. Such physical compatibility shall include materials used; facade treatments; landscaping; lighting; type, size and placement of awnings, windows, and signs; and all other externally visible aspects of the design of the building and site. The proposed use is to expand the existing Research and Developmental gross floor area and therefore will not induce a substantial change of use in the building from a manufacturing use. Additionally, no exterior changes will occur due to the proposed project.
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4. Conformance to Approved Plans (BMC Section 23.404.060.B.4)

All work performed under an approved permit shall be in compliance with the approved plans and any conditions of approval.

5. Exercise and Expiration of Permits (BMC Section 23.404.060.C)

- A. A permit authorizing a land use is exercised when both a valid City business license is issued (if required) and the land use is established on the property.
- B. A permit authorizing construction is exercised when both a valid City building permit (if required) is issued and construction has lawfully begun.
- C. The Zoning Officer may declare a permit lapsed if it is not exercised within one year of its issuance, except if the applicant has applied for a building permit or has made a substantial good faith effort to obtain a building permit and begin construction. The Zoning Officer may declare a permit lapsed only after 14 days written notice to the applicant. A determination that a permit has lapsed may be appealed to the ZAB in accordance with Chapter 23.410 (Appeals and Certification).
- D. A permit declared lapsed shall be void and of no further force and effect. To establish the use or structure authorized by the lapsed permit, an applicant must apply for and receive City approval of a new permit.

6. Permit Remains Effective for Vacant Property (BMC Section 23.404.060.D)

Once a Permit for a use is exercised and the use is established, the permit authorizing the use remains effective even if the property becomes vacant. The same use as allowed by the original permit may be re-established without obtaining a new permit, except as set forth in Standard Condition #5 above.

7. Permit Modifications (BMC Section 23.404.070)

No change in the use or structure for which this Permit is issued is permitted unless approved by the review authority which originally approved the permit. 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.

8. Permit Revocation (BMC Section 23.404.080)

The City may revoke or modify a discretionary permit for completed projects due to: 1) violations of permit requirements; 2) Changes to the approved project; and/or 3) Vacancy for one year or more. However, no lawful residential use can lapse, regardless of the length of time of the vacancy. Proceedings to revoke or modify a permit may be initiated by the Zoning Officer, Zoning Adjustments Board (ZAB), or City Council referral.

9. Indemnification Agreement

The applicant shall hold harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments or other losses (including without limitation, attorney's fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval associated with the project. The indemnity includes without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn, set aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the project and granting any permit issued in accordance with the project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs shall include, without limitation, any attorney's fees, expert witness and consultant fees, court costs, and other litigation fees. City shall have the right to select counsel to represent the City at Applicant's expense in the defense of any action specified in this condition of approval. City shall take reasonable steps to promptly notify the Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.

ADDITIONAL CONDITIONS IMPOSED BY THE ZONING OFFICER

Pursuant to BMC Section 23.406.030.H.2, the Zoning Officer attaches the following additional conditions to this Permit:

Prior to Submittal of Any Building Permit:

10. Project Liaison. The applicant shall include in all building permit plans and post onsite the name and telephone number of an individual empowered to manage construction-related 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. **Please designate the name of this individual below:**

Project Liaison

Name

Phone #

11. The applicant shall file an "Address Assignment Request Application" with the Permit Service Center (1947 Center Street) for any address change or new address associated with this Administrative Use Permit. The new address(es) shall be assigned in accordance with BMC 16.28.030, and entered into the City's database after the building permit is issued but prior to final inspection

Standard Construction-related Conditions Applicable to all Projects:

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

13. If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.

14. Subject to approval of the Public Works Department, the applicant shall repair any damage to public streets and/or sidewalks by construction vehicles traveling to or from the project site.

15. All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter in thickness and secured to the ground.

16. All active construction areas shall be watered at least twice daily, and all piles of debris, soil, sand or other loose materials shall be watered or covered.

17. Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.

18. Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.

19. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way.

20. The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.
21. Any construction during the wet season shall require submittal of a soils report with appropriate measures to minimize erosion and landslides, and the developer shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.

Prior to Issuance of Occupancy Permit or Final Inspection:

22. All construction at the subject property shall substantially conform to the approved Use Permit drawings or to modifications approved by the Zoning Officer.
23. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated March 9, 2023.

At All Times (Operation):

24. 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.
25. Noise and exterior lighting shall be controlled so as to prevent verified complaints from the surrounding neighborhood. This shall include noise created by employees working on the premises before or after patrons arrive.
26. Design Review. Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to design review's review and approval.
27. 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.
28. Transit Subsidy. If 10 or more employees, the business operator 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.



Prepared by: Nilu Karimzadegan
For Samantha Updegrave, Zoning Officer

2600 TENTH STREET, BERKELEY CA

**1ST FLOOR
 USE CHANGE EXHIBIT**

19 December 2022

SCALE: 1/32"=1'-0"

PLANS APPROVED by

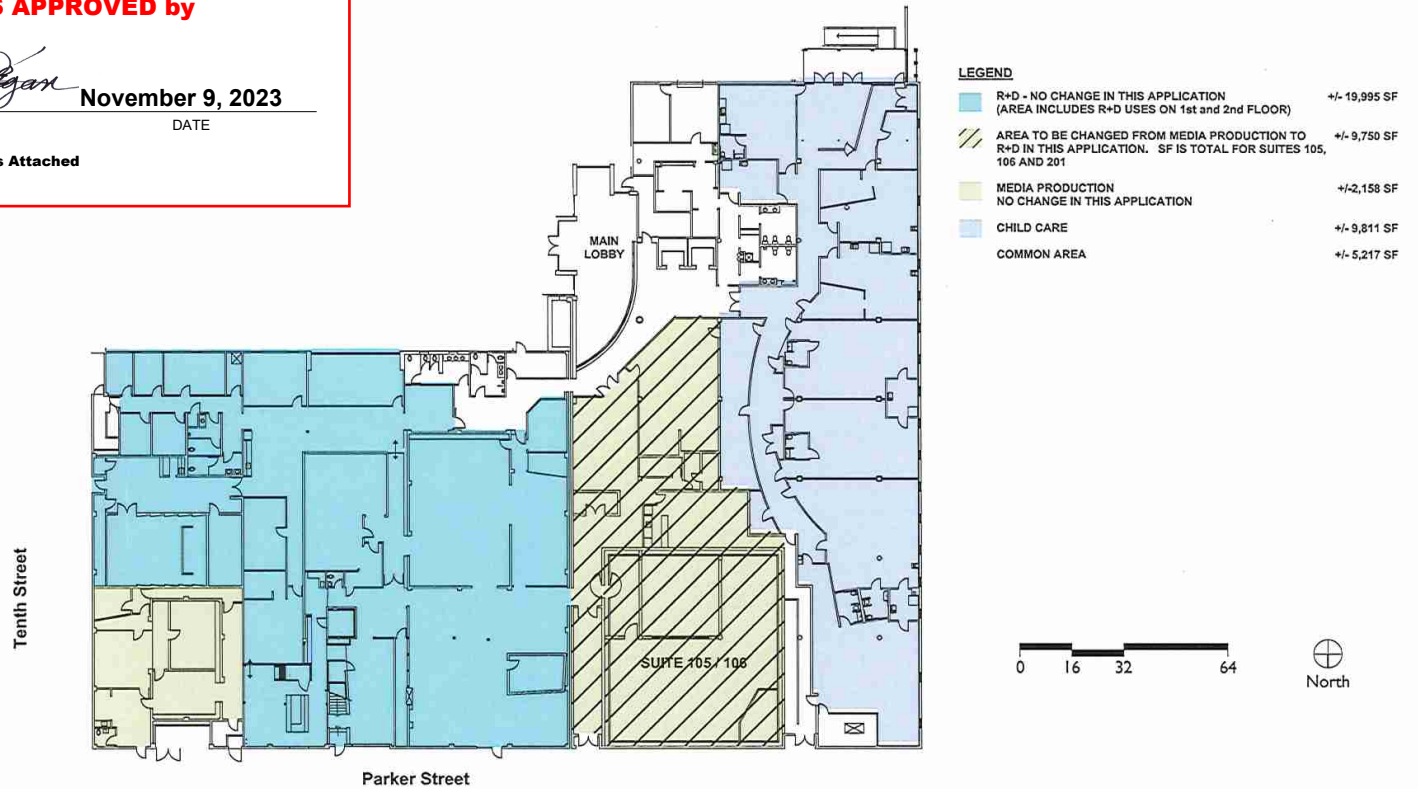


November 9, 2023

SIGNATURE

DATE

***AUP Findings and Conditions Attached**



2600 TENTH STREET, BERKELEY CA

**2ND FLOOR
 USE CHANGE EXHIBIT**

19 December 2022

SCALE: 1/32"=1'-0"

PLANS APPROVED by

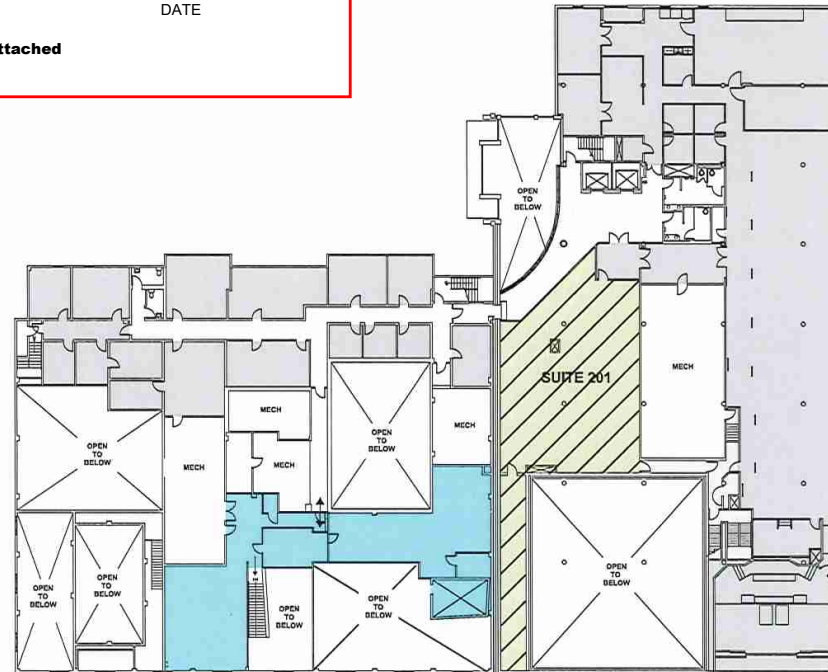


November 9, 2023

SIGNATURE

DATE

***AUP Findings and Conditions Attached**



LEGEND

- R+D - NO CHANGE IN THIS APPLICATION
 (AREA INCLUDES R+D USES ON 1st and 2nd FLOOR) +/- 19,995 SF
- AREA TO BE CHANGED FROM MEDIA PRODUCTION TO
 R+D IN THIS APPLICATION. SF IS TOTAL FOR SUITES 105,
 106 AND 201 +/- 9,750 SF
- NO CHANGES TO THESE AREAS IN THIS APPLICATION +/- 15,001 SF
- COMMON AREA +/- 2,744 SF



Received
DEC 04 2023
Land Use Planning

1.

To: The City of Berkeley Zoning Officer, City of Berkeley Planning Department:

From: Appellants of Administrative Use Permit #ZP2023-0031 –

- Rick Auerbach (for WEBAIC), Jed Riffe, Connie Field, Vivian Kleinman, Jim Lebrecht

Appeal of 2600 Tenth Street Administrative Use Permit #ZP2023-0031

We, the Appellants of this Use Permit, contend that the conditions cited in Planning staff's November 13, 2023 Notice of Administrative Decision to approve Administrative Use Permit #ZP2023-0031 have not been met and therefore this Use Permit should not have been approved and should be rescinded. The reasons for our contention are:

- 1.) Contrary to applicant's and staff's assertion that the spaces at issue are not subject to Zoning Ordinance Table 23.206-8, Section 23.206.050 C of the Berkeley Municipal Code - Protected Non-Industrial arts studio uses, we contend that they are covered under this provision. From the inception of the zoning Ordinance's Arts protections, "filmmakers", and later "video artist" were always included as one of the protected uses in this section of the BMC. It seems a classification calling them "Media Production" was implemented many years after protection was conferred upon them by Zoning Ordinance Table 23.206-8, Section 23.206.050 C. Contrary to staff's classification of these studio spaces as having been used as Media Production spaces, we contend that the previous use of these spaces by "filmmakers" and "video artists" confers "protected" status upon these spaces, meaning they can not be converted to a non-protected use without "equivalent space" being provided as required by BMC section 23.206.050 C. 4 (a).

A.) Berkeley Municipal Code evidence that the spaces are "Protected Non-Industrial Uses."

Section 23.206.050 C. addresses and defines **Protected Non-Industrial Uses** in the MULI. **Table 23.206-8** in **Section 23.206.050 C.** establishes 2 categories of Protected Non-Industrial Uses in MULI;

Category 1 - Art/Craft Studio, and

Category 2 – 4). Fine arts performance, instruction and rehearsal studios (dance, music, theater)

5). Theaters, stage performance, but excluding motion picture theaters

The definition of an Art/Craft Studio in Table 23.206-8 and the activities that take place there are found in BMC Chapter 23.502 GLOSSARY, 23.502.020, Defined terms:

22. *Art/Craft Studio*: "An establishment engaged in the creation of art or crafts that requires artistic skill. Examples of individuals typically engaged in this work include...photographers/filmmakers,..video artists...and other makers of art and crafts that the Zoning Officer determines to be consistent with this definition.

23.206.050 - Protected Uses.,1. Protected Non-Industrial Uses Defined further clarifies that "A use in the MU-LI...district listed in **Table 23.206-8** is classified as a protected non-industrial use, provided the use: (a) Was legally established as of July 6, 1989;

2.

Since the studios under discussion were "legally established as of July 6, 1989" and have been significantly and extensively used by "filmmakers" and "video artists", therefore these studios fall under BMC Section 23.206.050 C. - **Protected Non-Industrial Uses in the MULI**, and therefore **can not be converted to a non-protected use** without triggering the replacement requirement found in the C.4 (a) Findings provision of **23.206.050 C. 2. Permit Required for Change of Use:**

"To approve a permit required by Table 23.206-9, the review authority must find that space occupied by the existing non-industrial protected use will be replaced with a comparable space in the West Berkeley Plan area, which is reserved for use by any protected use in the same category."

B. Description by Applicant and City Planning Staff in Planning Staff reports of "recording and mixing studios"...and "screening rooms" as "Protected Uses":

On the 2600 Tenth St website it stated: According to the Center's own website, the Center "provide(s) services for the **music, film, video...communities**. We are available for **film, video...and special events**." According to Berkeleyside, since Wareham's purchase, "The Fantasy Building has been used since then by independent **filmmakers...**"

The applicant (Wareham Development) and City staff, in 2008 in three instances within two separate COB Planning staff reports have declared "recording and mixing studios"...and "screening rooms" in 2600 Tenth St to be "protected uses" in the MULI district." These are the exact same uses staff now describes as non-protected "industrial" uses. Nothing has changed in the BMC since 2008 that would support planning staff's present redetermination in Use Permit #ZP2023-0031 that such spaces were not occupied by "protected uses" and are now "Media Production."

From FEBRUARY 14, 2008 Staff Report - 2600 Tenth Street Variance Request #07-10000132 to operate a child care center for children of Pixar employees: : Attachment 1-Findings and Conditions - VARIANCE FINDINGS:" "D. The facility houses over 40 different businesses and organizations that contribute to an interactive arts community. To support the operation's long term success, over the years the owner's (Wareham) have invested in very specialized tenant improvements, including screening rooms and award-winning recording and mixing studios, **which are "protected uses" in the MULI district.**"

GENERAL NON-DETRIMENT FINDING F. "The applicant could theoretically choose to convert existing recording studios or screening rooms to a child care center (a "protected use") with an administrative use permit because the MULI District **allows the conversion of one protected use to another** by the granting of an administrative use permit."

ZONING ADJUSTMENTS BOARD Staff Report - FOR BOARD ACTION FEBRUARY 14, 2008 2600 Tenth Street Variance #07-10000132

"Finally, the MULI District allows the conversion of one protected use to another by the granting of an administrative use permit. However, the conversion of such space would be contrary to the applicant's goal of retaining the **existing protected uses**, and therefore, the applicant requests a Variance to convert space that has been used as offices and storage to the proposed child care center."

3.

In addition, the City of Berkeley has given numerous Use Permits for “film” uses in the exact kind of spaces that City staff and Wareham claim are “Media Production.” Some examples of this are permits given to:

Frame X for “Video Post Production”

KuKu Studios for “Video Production”

PictureStartEdit permit for “Film/video”

Pizzicato Productions Documentary Film Production for “continuing legal use.”

IMDSRV Zoning Certificate for “Post Production Sound Services” for film

3. FINDINGS FOR APPROVAL of Administrative Use Permit #ZP2023-0031

Planning staff states that: “As required by Section 23.406.040(E)(1) of the Zoning Ordinance, the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the...general welfare of the persons...working in the neighborhood of such proposed use...or to the general welfare of the City...:

The appellants contend that the proposed project will be detrimental to those working in the neighborhood (in 2600 Tenth St) and to the general welfare of the City because:

- 1.) The storied documentary filmmakers, video artists and sound engineers working on film and video at 2600 Tenth St. are a long-standing and interconnected community where there is significant cross-pollination between the different artists. The conversion of this arts studio space to R&D removes space that has previously been used by artists and thus diminishes the opportunities for robust collaboration between artists, limiting their output, economic opportunities, and cultural and economic contributions to the “general welfare of the City.” Maintaining the spaces at issue as art spaces helps to keep the existing community of artists intact, bettering their opportunities for productive collaboration and economic success.

The Zoning Officer states that:

Appeal point 4

4. As required by BMC Section 23.206.030(B)(3) for the MULI District, the Zoning Officer finds that the reconfiguration of three existing spaces up to nine is allowable because the reconfiguration will not create or contribute to a shortage of industrial spaces in West Berkeley for spaces of the size being converted, and that the reconfiguration can be reasonably expected to better serve the purposes of the district (BMC 23.206.080 (A) than leaving the space intact because:

“Both the existing Media Production and proposed Research and Development uses are classified as “Industrial and Heavy Commercial Uses” so there is no change in the industrial nature of activities that can occur onsite”

“Research and Development is an allowed Land Use and the proposed project is consistent with, and supports implementation of, relevant policies set forth in the adopted West Berkeley Plan in that it will provide additional Research and Development space...”

4.

The 2600 Tenth Street Administrative Use Permit #ZP2023-0031 states that, “as required by BMC Section 23.206.100 (A), “the Zoning Officer finds that the project is: (1) consistent with the purposes of the District; (2)... (and) (3) Complies with the adopted West Berkeley Plan;

1

The Appellants contend that the proposed Change of Use does not better serve the purposes of the district because:

- 1.) The previous use of the spaces – as Staff makes clear in their 2008 Staff Reports that the spaces at issue were - and are - not “Industrial and Heavy Commercial Uses”, but Arts Uses clearly spelled out in BMC section Zoning Ordinance Table **23.206.050 C. 4 (a)**.
- 2.) The proposed R&D use is not consistent with “relevant policies set forth in the adopted West Berkeley Plan.”
- 3.) The proposed change of use is not (1) “consistent with the purposes of the District;”

The Appellants contend that the proposed Change of Use is not “consistent with the purposes of the District,” as found in 23.206.080 MU-LI Mixed Use-Light Industrial District, because:

The # 4 Purpose of the MULI District is to:

4. Encourage the creation and continuation of well-paid jobs which do not require advanced degrees;

The West Berkeley Plan is clear that the majority of jobs in Research & Development require “advanced degrees” while there is no requirement for a degree to work in film and many who work as filmmakers, video, and sound artists are self-taught or have apprenticed or interned with others in order to learn their skills. Converting space that provides for “well-paid jobs which do not require advanced degrees” to space for those requiring advanced degrees is diametrically opposed to the MULI’s #4 Purpose.

The # 2 Purpose of the MULI District is to:

2. Encourage development of a mixed use-light industrial area for a range of compatible uses;

Since there are multiple millions of square feet available for R&D in the MULI District while there is likely only a few tens of thousands of square feet available for filmmakers, video artists, and sound artists, it is clear that any loss or conversion of this precious space would limit the “range” of compatible uses by further minimizing the film arts uses in the MULI.

Appeal point 5

The Appellants contend that the proposed Change of Use does not does not comply with the adopted West Berkeley Plan because:

The West Berkeley Plan clearly seeks to support arts and crafts enterprises, employment, and culture. The various Goals, Policies, and statements supporting the arts that are found in the Plan are cited below. WEBAIC believe that Use Permit #ZP2019-0090 not only does not abide by Plan Goals and Policies on protected arts uses, but violates and actively works in contradiction to these Goals and Policies:

5.

The Economic Development Chapter (2) of the West Berkeley Plan provides direct guidance on the issue of Arts and Crafts and their protections. The most critical and applicable provision of the West Berkeley Plan as it relates to this issue is found in:

Economic Development - Goals and Policies - Goal 7: "Protect small businesses, particularly arts and crafts businesses, so they can continue to flourish in West Berkeley."

"Rationale: Small businesses, especially arts and crafts businesses, are key in creating the unique character of West Berkeley. The City has developed Arts and Crafts zoning to protect these businesses. However, the zoning has not always worked as intended. It is vital to assure that arts and crafts enterprises are genuinely protected from displacement."

5. Policy: A. Use available mechanisms, including zoning, property purchase assistance, and direct City assistance to artists, to assure that artists and craftspeople remain a vital part of the West Berkeley community.

WEBAIC Comment: Administrative Use Permit #ZP2023-0031 violates Goal 7's commitment to "protect arts and crafts...businesses...from displacement." It additionally violates Goal 7's Policy to "use zoning... to assure that artists and craftspeople remain a vital part of the West Berkeley community." In contradiction to the above WB Plan Goals and Policies, **AUP #ZP2023-0031 as constituted is a mechanism to displace arts and crafts enterprises and assures that artists (particularly endangered film and sound artists) do not "remain a vital part of the West Berkeley community"**.

Economic Development (Chapter 2), A. Strategies for Business Retention VII. Implementation Measures, states:

. 2. Arts and Crafts--Review the functioning of the arts and crafts Ordinance. Goals and Policies Implemented: Goal 7, Policy 7A - Responsibility: City Planning Department, in consultation with affected parties. Funding: Regular staff funding

Economic Development III. The Economic Future of West Berkeley - Economic Prospects by Sector: "One of Berkeley's economic roles as a city--with a strong contribution from West Berkeley firms--is as a reservoir of ... artistic talent for the East Bay, the Bay Area, and... an even larger area."

Under The West Berkeley Plan's Economic Development section, **VII. Implementation Measures - Priority Implementation Activities, A. Ordinances, Regulation and Policy Development, is**

West Berkeley Plan Appendices - Appendix B - Cultural Resources of West Berkeley

5. "West Berkeley is an important locale for artists and craftspeople..." The strong community of artists and craftspeople which exists in West Berkeley is clearly such a resource." "In addition to being a locale where culture is enjoyed, it is also one where cultural products are created and produced."

The West Berkeley Plan's overriding goal is to retain the area's dynamic "economic mix" of uses. To accomplish this the West Berkeley Plan specifically called out R&D as a use that could displace Arts & Crafts because it is "supported by the market" while Arts & Crafts uses are NOT "supported by the market" and therefore require special zoning support (Arts/Crafts protections) to assure they "remain part of the mix."

6.

6.

4.) (a) West Berkeley Plan Policies & statements regarding R&D being “supported by the market:

I. Economic Rationale of the Plan: The City's economic policy must ...strike a balance between working within market... realities on the one hand, and guiding and regulating economic actors to achieve City goals on the other. ...a policy which passively followed dominant market forces would not necessarily achieve City economic goals (and would not require a Plan). Market forces...strongly support the development of advanced services (e.g. research laboratories).” “While support for advanced services (research laboratories) ...is also important, these sectors are generally supported, rather than threatened, by market developments. Thus, the policy structure for these sectors should be different.”

In their application, the applicant states that

3.) An abundance of existing and potential Research & Development space (millions of sq ft) exist in West Berkeley, thus this 20,000 sq ft does not need to be converted to R&D. What IS NEEDED in West Berkeley is the preservation of rare and in-demand studio space for film and sound artists:

In 2012 ,WEBAIC - in negotiations with City staff and councilmembers - agreed to allow 270,000 sq ft of industrially-protected warehouse space to be converted to Research and Development. The square footage limitation of such conversions sun-setted in 2016, allowing the millions of square feet of existing warehouse space to be opened to Research and Development uses, eliminating any need for this 20,000 sq ft to be converted. Additionally, Planning staff – with WEBAIC input - recently updated the definition of R&D which more easily allows this use to occupy West Berkeley’s millions of sq ft of warehouse space previously off-limits to R&D.

The applicant – Wareham Development _ currently has close to one million square feet of space in Berkeley devoted to R&D and Life Sciences. They also have approximately four million square feet of mostly R&D and bioscience in the near East Bay.

Contrasting Wareham Development’s millions of square feet available for R&D to the very, very small amount (20-50 thousand?) of square feet of space in 2600 Tenth St that is available to artists making film, video, and sound, it is clear which use desperately requires space more to remain viable and which use doesn’t. Staff states in its required “Findings” that “additional Research and Development space, (will) maintain(ing) the existing character of the area.” The conversion of this unique film, video, and sound art space to R&D will absolutely NOT “maintain the existing character of the area.”

It will further displace an extremely unique world renown film arts community – one of, if not the, largest concentration of documentary filmmakers who have been nominated for and won numerous Academy Awards, Peabody Awards, Sundance Awards, and many, many “Best” awards at film festivals world-wide. There are millions of square feet available for R&D – at present a one million sq ft project at Aquatic Park ready for R&D leasing and another project with hundreds of thousands of square feet for R&D between 4th and 5th St, a few Blocks away from 2600 Tenth St. The conversion of this space and the other Arts space in the Fantasy building that Wareham has clearly stated it intends to convert as soon as it can will irreparably harm the “existing character of the area” that is now known as a nation center for film, video, and sound production.



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

NOTICE OF PUBLIC HEARING

2600 Tenth Street

Appeal of the Zoning Officer decision to approve the Administrative Use Permit #ZP2023-0031 to change the use of three tenant spaces (9,750 square feet) from Media Production to a Research and Development resulting in a total of 29,745 square feet of Research and Development space, and create up to nine tenant spaces within a seven-story building on a 114,998 square-foot lot.

The Zoning Adjustments Board of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance, Section [23.404.050 \(Public Hearings and Decisions\)](#)

When: Thursday, April 25, 2024, 7:00 pm

Where: Berkeley Unified School District meeting room, 1231 Addison Street, (wheelchair accessible) with remote/hybrid option (via Zoom).

Please visit: <https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board> and click on the hearing date to access the most up-to-date meeting information, or call the Land Use Planning division (510) 981-7410.

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED IN A HYBRID MODEL WITH BOTH IN-PERSON ATTENDANCE AND VIRTUAL PARTICIPATION AVAILABLE FOR MEMBERS OF THE PUBLIC.

For in-person attendees, face coverings or masks that cover both the nose and mouth are encouraged. If you're feeling sick, please do not attend the meeting in-person as a public health precaution.

Currently, there are no physical distancing requirements in place by the State of California or the Local Health Officer for an indoor event similar to a Commission meeting. However, all attendees are requested to be respectful of the personal space of other attendees. An area of the public seating area will be designated as "distanced seating" to accommodate persons that need to distance for personal health reasons.

A. Land Use Designations:

- General Plan: General Plan: M - Manufacturing
- Zoning: Zoning: MU-LI - Mixed-Use Light Industrial District

B. Zoning Permits Required:

- Administrative Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.206.020 to establish a Research and Development use that is over 20,000 square foot in gross floor area.
- Administrative Use Permit pursuant to BMC Section 23.206.030(B)(3)(a) to create up to nine tenant spaces.

C. CEQA Recommendation: Categorically exempt pursuant to Section 153301 of the CEQA Guidelines (“Existing Facilities”).

D. Parties Involved:

- Applicant Lisa Vogel, Wareham Development
- Property Owner 2600 Tenth Street, LLC
- Appellant Rick Auerbach (WEBAIC), Jed Riffe, Connie Field, Vivian Kleinman, Jim Lebrecht

Further Information:

All application materials are available online at:
<https://aca.cityofberkeley.info/CitizenAccess/Welcome.aspx>.

The Zoning Adjustments Board final agenda and staff reports will be available online 6 days prior to this meeting at: <https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board>.

Questions about the project should be directed to the project planner, Nilu Karimzadegan, at (510) 981-7430 or NKarimzadegan@berkeleyca.gov.

Written comments or a request for a Notice of Decision should be directed to the Zoning Adjustments Board Secretary at zab@berkeleyca.gov.

Communication Disclaimer:

Communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the relevant board, commission or committee for further information.

Written Comments, Communications, and Reports:

Written comments must be directed to the ZAB Secretary at the Land Use Planning Division (Attn: ZAB Secretary), or via e-mail to: zab@berkeleyca.gov. All materials will be made available via the Zoning Adjustments Board Agenda page online at this address: <https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board>

All persons are welcome to attend the hearing and will be given an opportunity to address the Board. Comments may be made verbally at the public hearing and/or in writing before the hearing. The Board may limit the time granted to each speaker.

Correspondence received by 5:00 PM, eight days before this public hearing, will be provided with the agenda materials provided to the Board. Note that if you submit a hard copy document of more than 10 pages, or in color, or with photos, you must provide 15 copies. Correspondence received after this deadline will be conveyed to the Board in the following manner:

- **Correspondence received by 5:00 PM two days before** this public hearing, will be conveyed to the Board in a Supplemental Communications and Reports, which is released around noon one day before the public hearing; or
- **Correspondence received after 5:00 PM two days before** this public hearing will be saved in the project administrative record.



Accessibility Information / ADA Disclaimer:

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date.

SB 343 Disclaimer:

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available to the public. Please contact the Land Use Planning Division (zab@berkeleyca.gov) to request hard-copies or electronic copies.

Notice Concerning Your Legal Rights:

If you object to a decision by the Zoning Adjustments Board regarding a land use permit project, the following requirements and restrictions apply:

1. If you challenge the decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice.
2. You must appeal to the City Council within 14 days after the Notice of Decision of the action of the Zoning Adjustments Board is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than 90 days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that 90-day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, the following requirements apply:
 - a. That this belief is a basis of your appeal.
 - b. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
 - c. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above. If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.