



Office of the City Manager

25a

PUBLIC HEARING

March 25, 2014

To: Honorable Mayor and Members of the City Council

From:  Christine Daniel, City Manager

Submitted by: Eric Angstadt, Director, Planning and Development Department

Subject: Use Permit No. 2014-0004: Bicycle Repair/Rental and Vocational Training at 90 Bolivar Drive, Aquatic Park

RECOMMENDATION

Conduct a public hearing and upon conclusion adopt a Resolution affirming the Zoning Adjustments Board's approval of Use Permit No. 2014-0004, subject to the findings of BMC Section 23E.92.090, to occupy a vacant, City-owned building in Aquatic Park for use as a bicycle rental and repair outlet, with community meeting/lecture/classroom space and an incidental café with indoor seating in the Unclassified (U) District.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

On January 28, 2014, the City's Parks, Recreation and Waterfront Department submitted a Use Permit application that requested a bicycle rental and repair outlet with meeting space and an incidental café.

This Use Permit follows a different process than other Use Permits because it is for a use in the Unclassified (U) District. BMC Chapter 23E.92 outlines the following process this permit:

- The Planning Commission reviews the application and makes a recommendation to the Zoning Adjustments Board;
- The Zoning Adjustments Board takes an action to approve, conditionally approve or deny the application; and
- The Board's decision is automatically forwarded to the City Council, which may affirm, reverse, or modify the decision.
- On February 5, 2014, the Planning Commission voted to make the findings of non-detriment with an 8-0-0-1 vote (Ayes: Novosel, Clarke, Davis, Lindheim, Lam, Murphy, Poschman, Sheahan. Noes: None. Abstain: None. Absent:

Pollack.) At the February 27, 2014 meeting of the ZAB, the Board reviewed the staff report and voted to approve the Use Permit, pursuant to BMC Section 23E.92.030, with a 9-0-0-0 vote (Ayes: Allen, Alvarez Cohen, Donaldson, Harr (for Tregub), Hahn, Matthews, O'Keefe, Pinto, Williams. Noes: None. Abstain: None. Absent: None.).

BACKGROUND

The subject property is located in Aquatic Park. The park and the buildings within the park are owned by the City and managed by the City's Parks, Recreation and Waterfront Department. The property has been vacant for several years and requires a number of significant repairs and improvements. The City intends to lease the property to Waterside Workshops, a local non-profit 501(c)(3) organization whose mission is to use vocational education as a method of promoting youth development, encouraging sustainable and healthy lifestyles, and cultivating positive change in the Bay Area community.

Waterside Workshops already leases 82-84 Bolivar Drive. 90 Bolivar would be used to expand and add to their Street Level Cycles operation. The uses proposed for the subject property are:

- Low-cost bicycle rentals to the general public;
- Bicycle repair;
- Vocational training;
- Community meeting/lecture/classroom space; and
- A small indoor café/snack bar.

As part of the five-year lease agreement, Waterside Workshops would provide necessary upgrades, maintenance and repairs to the existing building. These repairs and upgrades would include bathroom renovations, ADA upgrades and electrical system improvements.

For more details on the proposed use and the upgrades to the building, see the February 27, 2014 ZAB report (Attachment 2).

ENVIRONMENTAL SUSTAINABILITY

The project is in compliance with all state and local environmental requirements. The proposed reuse of the building for bicycle rentals and repairs, vocational training and an incidental café would not have any additional negative effect on the environment.

RATIONALE FOR RECOMMENDATION

Pursuant to BMC Section 23E.92.090, the ZAB found that the proposed project will not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City for the following reasons:

1. Public benefit: The proposed lessee is a local non-profit organization that will provide recreational activity and vocational training for local youth. The proposed uses will attract visitors to the park during the week and throughout the year. The use will enhance Aquatic Park's recreational value to the City and the additional activity will help provide a more secure park environment.
2. Rehabilitation and re-use of a vacant City building: The proposed project will occupy a long vacant building with a use that will provide recreational opportunities for visitors to the park and provide training opportunities for youth. The proposed project will provide necessary upgrades, maintenance, and repairs to an existing building. Minor exterior changes will be subject to design review. These improvements will improve the City's property without impacting the physical environment of the area.
3. Impacts to wildlife: According to the Berkeley Aquatic Park Improvement Plan (2012), the park provides minimal value as habitat due to, among other reasons, its small size, local and regional isolation, and proximity to active recreational uses (pp. 4.2-2 and 4.2-3). The only important foraging or nesting opportunities identified in the report is the intertidal mudflat adjacent to the Rowing Club, on the south end of the park on the west side. Therefore, the use of this building on the east side of the park will not significantly impact wildlife at the park.
4. Traffic and parking: Parking impacts are not expected to be significant for several reasons:
 - a. The building and parking were developed for the park and the uses are not significantly different from past uses.
 - b. The uses or activities will be staggered throughout the day. Except for occasional talks/presentations, which may attract up to 30 people at a time, the use will not attract large numbers of patrons or youth interns at one time.
 - c. Most of the patrons are expected to travel to the site by bicycle.

Consideration of the Public Trust: Staff wishes to correct its long-standing erroneous assumption regarding the "public trust" status of Aquatic Park: the properties at 90 Bolivar and 2925/2945 Bolivar are **not** public trust lands, and are **not** subject to the Public Trust Doctrine.

On February 28, 2014, City staff contacted the State Lands Commission to seek clarification on the Berkeley lands under public trust. The State Lands Commission responded promptly, and, referencing the 1980 California Supreme Court ruling in *City of Berkeley v. Superior Court*, 26 Cal. 3d 515 (Supreme Court of California, February

22, 1980), reported that only the waters and submerged lands of Aquatic Park are subject to the trust. This means the upland areas of the park are not subject to public trust restrictions.

The history of Aquatic Park lands, in brief, is as follows. In 1868, the State created a special body, called the Board of Tide Land Commissioners (BTLC) that was empowered to subdivide and sell parcels of shallow water tidal lands throughout California to private parties for the purpose of furthering the development of commerce and navigation (e.g., developing wharves, docks, and industry). At that time, the BTLC sold the parcels to private owners; in Berkeley, the tidelands now comprising Eastshore State Park and Aquatic Park were sold mostly to the Santa Fe Land Improvement Company. In the mid 1930's, the City purchased the Aquatic Park parcels from the Santa Fe Land Improvement Company.

The public trust status of the privately-held BTLC parcels was disputed from the very beginning. In 1980, the California Supreme Court clarified the public trust status of the BTLC lands. As of 1980, those parcels that were already filled or developed were not subject to the public trust, whereas those parcels still covered by bay water and tidal action were still subject to the public trust.

Note: This ruling applies to the "BTLC" lands, which do not include the present-day Berkeley Marina. Marina land was never sold to private parties, and as such continues to be held in the public trust.

ALTERNATIVE ACTIONS CONSIDERED

Pursuant to BMC Section 23E.92.030.B.5, the Council may: 1) affirm the ZAB decision; 2) reverse the ZAB decision; or 3) modify the ZAB decision.

CONTACT PERSON

Eric Angstadt, Director, Planning and Development Department, 510-981-7401
Elizabeth Greene, Senior Planner, Planning and Development Department, 510-981-7484

Attachments:

- 1: Resolution
 Exhibit A: Findings and Conditions
2. ZAB Staff Report, dated February 27, 2014
3. Index to the Administrative Record
4. Administrative Record
5. Public Hearing Notice

RESOLUTION NO. ##,###-N.S.

AFFIRMING THE ZONING ADJUSTMENTS BOARD'S APPROVAL OF USE PERMIT #2014-0004 TO OCCUPY A VACANT, CITY-OWNED BUILDING IN AQUATIC PARK FOR USE AS A BICYCLE RENTAL AND REPAIR OUTLET, WITH COMMUNITY MEETING/LECTURE/CLASSROOM SPACE AND AN INCIDENTAL CAFÉ WITH INDOOR SEATING IN THE UNCLASSIFIED (U) DISTRICT

WHEREAS, on January 28, 2014, the City's Parks, Recreation and Waterfront Department submitted a Use Permit application to occupy a vacant, City-owned building in Aquatic Park for use as a bicycle rental and repair outlet with meeting space and an incidental café at 90 Bolivar Drive; and

WHEREAS, on January 30, 2014, staff deemed this application complete; and

WHEREAS, on February 5, 2014, the Planning Commission voted to make the findings of non-detriment in accordance with BMC Section 23E.92.090; and

WHEREAS, on February 27, 2014, the ZAB voted to approve the application in accordance with BMC Section 23E.92.090; and

WHEREAS, on March 25, 2014, the Council considered the record of proceedings before the ZAB, and the staff report and correspondence presented to the Council, and, in the opinion of this Council, the facts stated in, or ascertainable from this information, do not warrant further hearing.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council hereby adopts the findings made by the ZAB in Exhibit A, affirms the decision of the ZAB to approve Use Permit #2014-0004, and adopts the conditions in Exhibit A.

Exhibit

A: Findings and Conditions

ATTACHMENT 1

FINDINGS AND CONDITIONS

FEBRUARY 27, 2014

90 Bolivar Drive

Use Permit #2014-0004 to occupy a vacant, City-owned building at Aquatic Park for use as a bicycle rental and repair outlet, with community meeting/lecture/classroom space and an incidental café with indoor seating in the Unclassified (U) District.

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

GENERAL NON-DETRIMENT FINDING

2. Pursuant to Berkeley Municipal Code Section 23B.92.090, the Zoning Adjustments Board finds that the proposed project, under the circumstances of the particular case existing at the time at which the application is granted, will not be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City, for the following reasons:
 - A. Public benefit: The proposed lessee is a local non-profit organization that will provide recreational activity and vocational training for local youth. The proposed uses will attract visitors to the park during the week and throughout the year. The use will enhance Aquatic Park’s recreational value to the City and the additional activity will help provide a more secure park environment.
 - B. Rehabilitation and re-use of a vacant City building: The proposed project will occupy a long vacant building with a use that will provide recreational opportunities for visitors to the park and provide training opportunities for youth. The proposed project will provide necessary upgrades, maintenance, and repairs to an existing building. Minor exterior changes will be subject to design review. These improvements will improve the City’s property without impacting the physical environment of the area.

- C. State Tidal Lands: The use of the building for bicycle repair and rentals, vocational training for youth and an indoor café will accommodate the public's use of State Trust Lands.
- D. Impacts to wildlife: According to the Berkeley Aquatic Park Improvement Plan (2012), the park provides minimal value as habitat due to, among other reasons, its small size, local and regional isolation, and proximity to active recreational uses (pp. 4.2-2 and 4.2-3). The only important foraging or nesting opportunities identified in the report is the intertidal mudflat adjacent to the Rowing Club, on the south end of the park on the west side. Therefore, the use of this building on the east side of the park will not significantly impact wildlife at the park.
- E. Traffic and parking: The ZAB may set forth development standards and include them in the Use Permit. Parking impacts are not expected to be significant for several reasons:
- a. The building and parking were developed for the park and the uses are not significantly different from past uses.
 - b. The uses or activities will be staggered throughout the day. Except for occasional talks/presentations, which may attract up to 30 people at a time, the use will not attract large numbers of patrons or youth interns at one time.
 - c. Most of the patrons are expected to travel to the site by bicycle.

STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

1. **Conditions Shall be Printed on Plans**

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

2. **Applicant Responsible for Compliance with Conditions**

The applicant shall ensure compliance with all of the following conditions, including submittal to the project planner of required approval signatures at the times specified. Failure to comply with any condition may result in construction being stopped, issuance of a citation, and/or modification or revocation of the Use Permit.

3. **Uses Approved Deemed to Exclude Other Uses (Section 23B.56.010)**

- A. This Permit authorizes only those uses and activities actually proposed in the application and excludes other uses and activities.
- B. Except as expressly specified herein, this Permit terminates all other uses at the location subject to it.

4. **Modification of Permits (Section 23B.56.020)**

No change in the use or structure for which this Permit is approved is permitted unless the Permit is modified by the Zoning Adjustments Board, in conformance with Section 23B.56.020.A.

5. **Plans and Representations Become Conditions (Section 23B.56.030)**

Except as expressly specified herein, the site plan, floor plans, building elevations and any additional information or representations submitted by the applicant during the Staff review and public hearing process leading to the approval of this Permit, whether oral or written, which indicated the proposed structure or manner of operation are deemed conditions of approval.

6. **Subject to all City and Other Regulations (Section 23B.56.040)**

The approved use and/or construction are subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies.

7. **Exercised Permit for Use Survives Vacancy of Property (Section 23B.56.080)**

Once a Permit for a use is exercised and the use is established, that use is legally recognized, even if the property becomes vacant, except as set forth in Standard Condition #8 below.

8. Exercise and Lapse of Permits (Section 23B.56.100)

- A. A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.
- B. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
- C. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has (1) applied for a building permit or (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

ADDITIONAL CONDITIONS OF APPROVAL

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

Prior to Issuance of Any Building Permit

10. Prior to issuance of a building permit, the applicant shall provide the project planner with the name and telephone number of the individual empowered to manage construction noise from the project. The individual's name, telephone number, and responsibility for noise management shall be posted at the project site for the duration of construction in a location easily visible to the public. The individual shall record all noise complaints received and actions taken in response, and submit this record to the project planner upon request.

Noise Management Individual _____
Name Phone #

11. The applicant and all persons associated with the project are hereby notified that a Transportation Management Permit (TMP) would be required under any of the following circumstances:

- Alterations, closures, or blockages to sidewalks or pedestrian paths
- Alterations, closures, or blockages to vehicle travel lanes (including bicycle lanes)
- Storage of building materials, dumpsters, debris anywhere in the public ROW
- Provision of exclusive contractor parking on-street
- Significant truck activity.

Contact the Permit Service Center (PSC) at 2120 Milvia Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and

accompanying dashboard permits). Public Works Traffic Engineering (981-6400) reviews all submitted TMP requests.

The TMP may include designation of a specific truck haul route. Meter heads (if in the construction area) shall be removed only by City staff. Contact the site inspector 72 hours in advance of required removal so arrangements can be made.

During Construction:

12. Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season (between October 15 and April 15), the applicant shall obtain approval of an erosion prevention plan by the Building and Safety Division and the Public Works Department. The applicant shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.
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 thick 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 ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.

Prior to Final Inspection or Issuance of Occupancy Permit:

20. The project shall conform to the plans and statements in the Use Permit.

- 21.** All landscape, site and architectural improvements shall be completed per the description below:

As part of the lease agreement, Waterfront Workshops will provide necessary upgrades, maintenance, and repairs to the existing building. These upgrades will include bathroom renovations, ADA upgrades, and electrical system upgrades. Minor exterior changes to windows and doors would be subject to Design Review. Any future designation of the site as a landmark would subject exterior changes to Landmarks review.

Waterside Workshops does not plan to make structural changes to the interior. The organization's final location of uses within the space may change depending on program needs, but the current plan is as follows (see Figure 3 for room references):

- The area marked "office", to the north, is planned to accommodate a fleet of approximately 15 rental bicycles, placed in racks; an area for workstands and tools where community members can work on their bikes; and a small multipurpose seating area, likely clustered around the fireplace area, for presentations, classes or community members to sit with a coffee.
- The area marked "storage" in the center of the building may be used for a coffee bar. This coffee bar may alternatively be placed in a corner of the northern building. In all cases, café-related activity is not anticipated to exceed 500 square feet.
- The area marked "office", to the south, is planned to house Waterside's vocational training program, and will include approximately 50 bicycle racks for building and repair of bicycles that will ultimately be donated or sold.

CONDITIONS BY PROJECT TYPE

FOOD SERVICE CONDITIONS

These requirements are in addition to any other requirements under the City's Building, Health or Fire Codes or by agencies such as the Alcoholic Beverage Control Department of the State of California. The applicant is responsible for contacting these and other departments and agencies to identify and secure all applicable permits and licenses.

- 22.** Changes in the nature of the operation including, but not limited to, the addition of outdoor seating, changes in hours, and the addition of live entertainment, shall require modification of this permit subject to approval by the Zoning Officer or the Zoning Adjustments Board.
- 23.** Cooking odors, noise, exterior lighting and operation of any parking area 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.

24. Garbage and trash containers that are suitably enclosed and screened from view shall be provided subject to approval of the Zoning Officer, the Health Department and, where applicable, the Design Review Planner. Any establishment selling beverages in cans or bottles that are subject to the State of California Container Deposit Law shall provide separate bins or cans for the placement of such cans or bottles to ensure recycling of such containers.
25. Containers used for the dispensing of prepared food shall identify the establishment. Polystyrene foam food packing is prohibited by Section 11.60.030 of the Berkeley Municipal Code.
26. Any establishment selling beverages in cans or bottles that are subject to the State of California Container Deposit Law shall recycle such containers.
27. The operator of the café shall place a waste receptacle near the entry way and shall insure that garbage on the sidewalk in front of the establishment and within 50 feet thereof will be picked up periodically during each day, so that the sidewalk remains clean.

AT ALL TIMES:

28. The hours of operation for all uses on the site shall be limited to **10:00 AM to 6:30 PM daily**. Hours of operation refer to the arrival of the first patron and the departure of the last patron. Any change in the hours of operation shall be approved according to Berkeley Municipal Code Chapter 23E.92.
29. Changes to the building's facade, including doors or windows, site plans, landscaping, signage, and awnings are subject to design review and approval prior to issuance of a building permit.
30. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
31. 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.
32. 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.
33. The lessee shall abide by the conditions of the lease with the City of Berkeley.



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
FEBRUARY 27, 2014

90 Bolivar Drive

Use Permit #UP2014-0004 to occupy a vacant, City-owned building in Aquatic Park for use as a bicycle rental and repair outlet, with community meeting/lecture/classroom space and an incidental café with indoor seating in the U District.

I. Background

A. Land Use Designations:

- General Plan: OS Open Space
- Zoning: U Unclassified District

B. Zoning Permits Required:

- Use Permit to establish a use, pursuant to BMC Section 23E.92.030

C. CEQA Determination: Categorically exempt pursuant to Sections 15301 and 15303(c) of the CEQA Guidelines (“Existing Facilities” and “New Construction or Conversion of Small Structures”).

D. Parties Involved:

- Applicant City of Berkeley
- Property Owner City of Berkeley

Figure 1: Vicinity Map – Aquatic Park

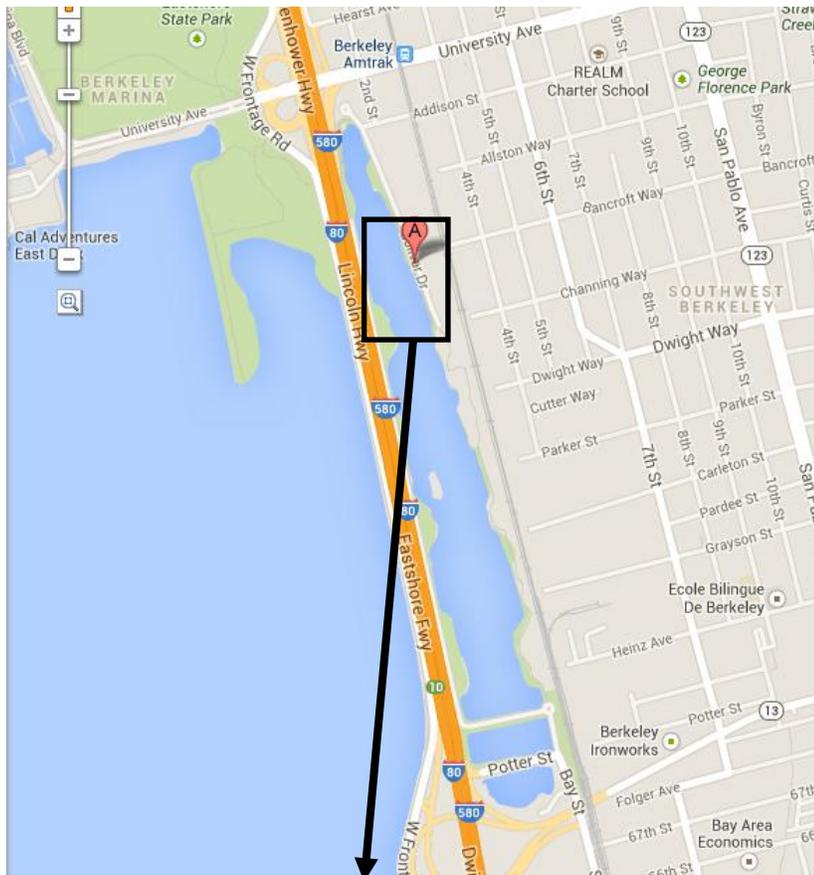


Figure 2 : Vicinity Map – Subject Location

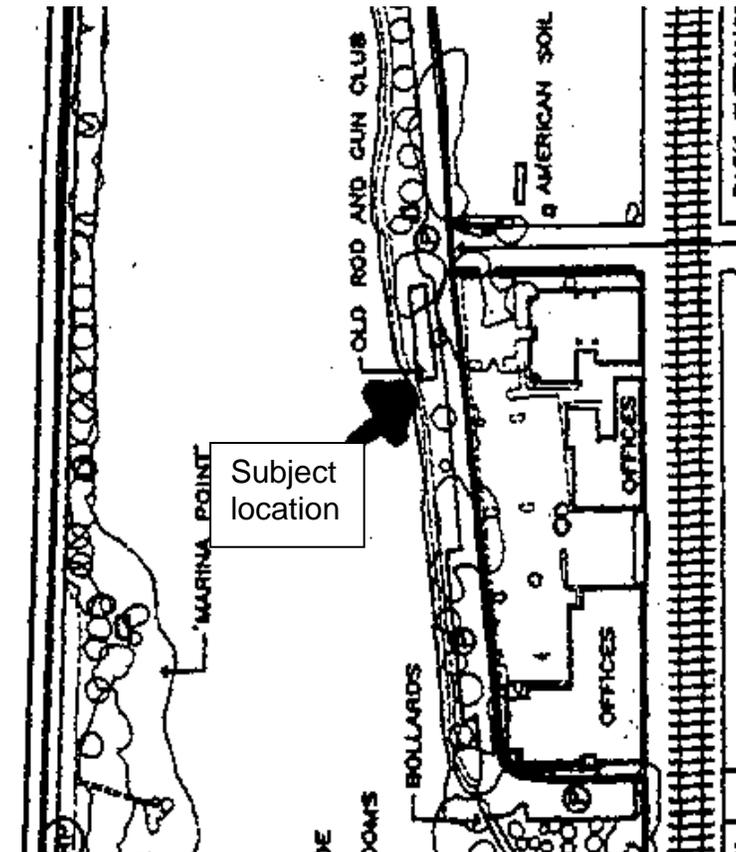


Figure 3: Floor Plan

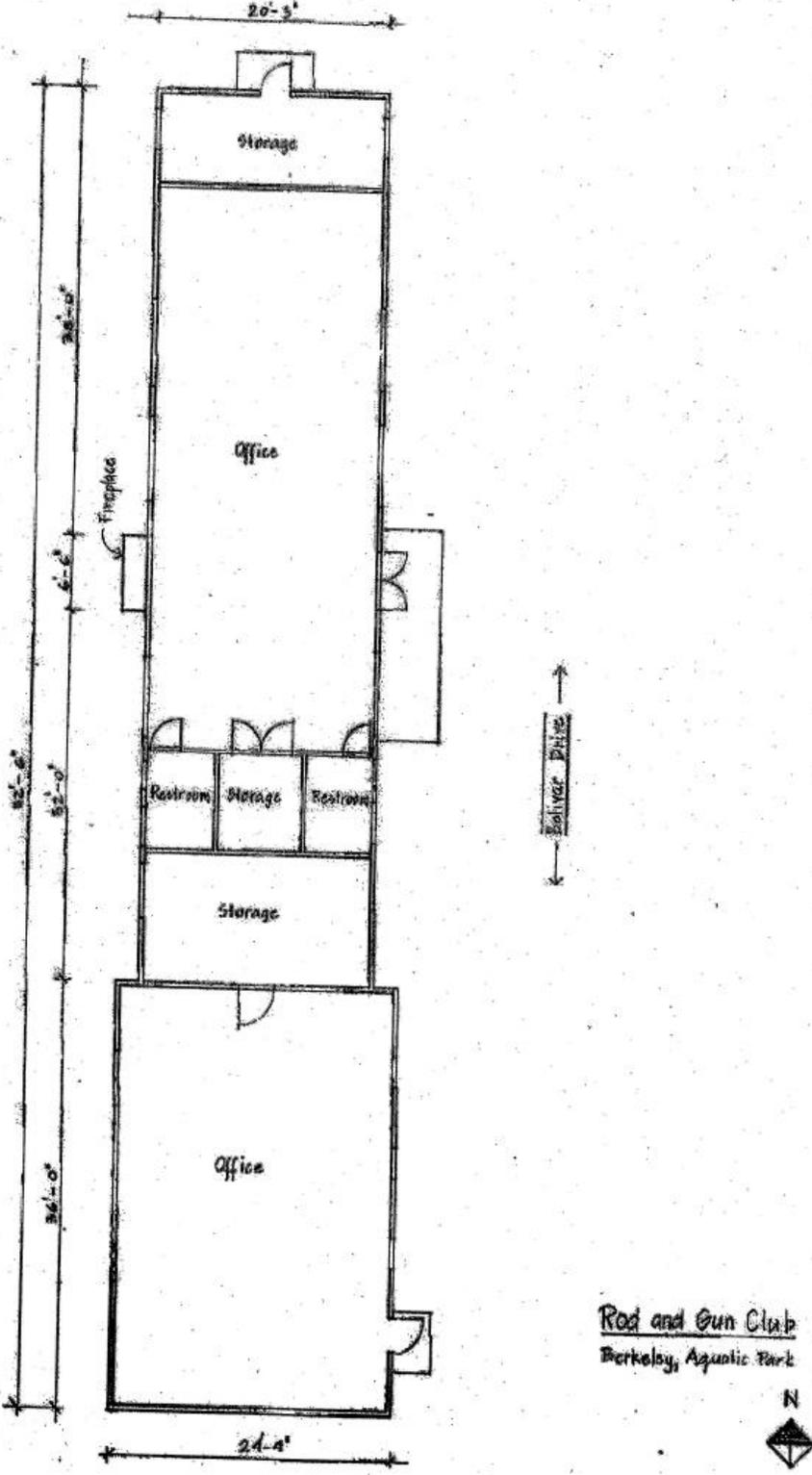


Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Aquatic Park	Unclassified (U)	Open Space
Surrounding Properties	North	Aquatic Park	Unclassified (U)	Open Space
	South	Aquatic Park	Unclassified (U)	Open Space
	East	Union Pacific railroad tracks and R&D uses (biotech business park)	Mixed-Use-Light Industrial (MU-LI) and Mixed Manufacturing (MM)	Manufacturing
	West	Aquatic Park	Unclassified (U)	Open Space

Table 2: Special Characteristics

Characteristic	Applies to Project?	Explanation
Alcohol Sales/Service	No	
Creeks	No	
Flood Map	Yes	Project is located in the 100-year flood zone
Density Bonus	No	
Historic Resources	No	Aquatic Park and the buildings within it was initiated as a historic district in 2012, but the item was continued off-calendar by the Landmarks Preservation Commission and has not been designated.
Inclusionary Housing	No	
Oak Trees	No	
Seismic Hazards	No	
Soil/Groundwater Contamination	No	Aquatic Park is located in an Environmental Management Area, but the site is not on the Cortese List.
Green Building Score	No	

Table 3: Project Chronology

Date	Action
January 28, 2014	Application submitted
January 30, 2014	Application deemed complete
February 5, 2014	Planning Commission hearing
February 12, 2014	Public hearing notices mailed/posted
February 12, 2014	Parks and Waterfront Commission meeting
February 24, 2014	Children, Youth and Recreation Commission meeting
February 27, 2014	ZAB hearing
March 25, 2014	Council meeting

Table 4: Development Standards

Standard		Existing	Proposed Total	Permitted/ Required
BMC Section 23E.92.070				
Lot Area (sq. ft.)		102 acres	102 acres	Determined by Use Permit – See Section II.A of report for details.
Gross Floor Area (sq. ft.)		2,435	2,435	
Floor Area Ratio		N/A	N/A	
Dwelling Units	Total	0	0	N/A
	Affordable	0	0	N/A
Building Height	Average (ft.)	Approx 14'6"	Approx 14'6"	Determined by Use Permit – See Section II.A of report for details.
	Maximum (ft.)	16'9"	16'9"	
	Stories	1	1	
Building Setbacks (ft.)	Front	N/A	N/A	
	Rear	N/A	N/A	
	Left Side	N/A	N/A	
	Right Side	N/A	N/A	
Lot Coverage (%)		N/A	N/A	
Parking	Automobile	25	25	
	Bicycle	0	0	

II. Project Setting

A. Zoning District Description and Process:

This Use Permit is unusual because it is for a use in the Unclassified (U) District. Use Permits for projects in the U District follow a different process and have different requirements from other Zoning Districts. Therefore, it may be helpful to go over these processes and requirements at the beginning of the report.

The purpose of the District is to implement the General Plan's designation for areas included in the U District, and to provide a Zoning District designation until such areas are classified into residential, commercial, or manufacturing districts. The City has four areas in the U district; Aquatic Park; the Marina; the Clark Kerr campus (UC), and the North Berkeley BART Station.

There are no permitted uses called out in the U District. Instead, all uses that are not otherwise prohibited by law are permitted subject to a Use Permit. To establish a new use or building in the U District, the Zoning Ordinance requires a different process than for a similar project in other Districts, as noted below:

1. The Planning Commission shall review the application and make a recommendation to the Zoning Adjustments Board;

2. The Zoning Adjustments Board shall take an action to approve, conditionally approve, or deny the application; and
3. The Zoning Adjustments Board's decision shall be automatically forwarded to the City Council, which may affirm, reverse, or modify the decision.

Pursuant to Section 23E.92.090, the review of this Use Permit is subject to the Finding of Non-Detriment found in Section 23B.32.040.

The U District has no defined development standards. Instead, development standards may be set forth in the Use Permit.

B. Neighborhood/Area Description:

Aquatic Park is a 102-acre park in West Berkeley. It is located west of the Union Pacific railroad tracks, east of the 80 Freeway and extends between Addison Street to the north and Potter Street to the south. It has three separate lagoons totalling 68 acres. While the lagoons support wildlife, the 2012 Berkeley Aquatic Park Improvement Plan (BAPIP) determined that the park has limited habitat value.

Aquatic Park is used by City residents for activities such as waterskiing, kayaking, frisbee-golf, cycling and hiking. There are 14 structures currently located at the park. Some of these structures are buildings which house clubs related to water recreation such as sailing, rowing and waterskiing. Other structures include the water ski club judging tower and stands, and two restroom facilities. In 2012, Aquatic Park and the buildings within it were initiated as a historic district. The initiation application, however, is incomplete and the site has not been designated as historic.

C. Site Conditions:

The subject building is located at 90 Bolivar. It is at the northeastern edge of Aquatic Park lagoon, just south of the intersection of Bancroft Avenue and Bolivar Drive. It is in a grassy area with Bolivar Drive running along the east side of the building, and the San Francisco Bay Trail along the west side. The northern portion of the building was built in 1937. The subject building was created in the 1960s, when a school building was incorporated into the south side of the building.

The building is owned by the City of Berkeley and is managed by the City's Parks, Recreation and Waterfront Department. The original use of the building was a clubhouse for the Rod and Gun Club. It has been unoccupied for at least five years and requires a number of significant repairs and improvements.

Approximately 25 parking spaces are available in a parking area just south of the subject building.

III. Project Description

A. Proposed Use and Lessee:

The City intends to lease the building at 90 Bolivar Drive in Aquatic Park to Waterside Workshops. Waterside Workshops is a non-profit 501(c)(3) whose mission is to use vocational education as a method of promoting youth development, encouraging sustainable and healthy lifestyles, and cultivating positive change in the Bay Area community. Their organization consists of two primary programs: Street Level Cycles and Berkeley Boathouse. They have leased City property at 82 and 84 Bolivar Drive since 2006. During that period, they have fully renovated the facilities and built a diverse and supportive community around their organization and Aquatic Park as a whole.

Street Level Cycles is a full-service community bicycle shop that combines a do-it-yourself studio with a youth education program, creating a space where members of the community can fix their bicycles for free while supporting local vocational training for at-risk youth. During their daily after school program, youth interns learn every aspect of bicycle repair and maintenance as well as retail sales and use of a Point of Sale System. In the open studio, youth interns exercise their skills in mechanics and customer service while helping community members learn to repair their bicycles. Street Level Cycles serves hundreds of community members each week.

Waterside Workshops will use the property at 90 Bolivar Drive to expand their Street Level Cycles operation, currently operating at 82-84 Bolivar Drive. The uses proposed for the subject property are:

- low-cost bicycle rentals to the general public;
- bicycle repair;
- vocational training;
- a community meeting/lecture/classroom space; and
- the possible addition of a small indoor café/snack bar.

With their expansion to 90 Bolivar Drive, Street Level Cycles will provide a space for the public to learn to repair their bikes for free or rent a bike to explore Aquatic Park and the Bay Shore.

The property at 90 Bolivar will be in use year round, Wednesday-Sunday from 10am-6pm. The operation could be expanded to seven days a week, subject to the lease agreement. At any given time, the building is planned to have approximately 4 interns and 4 staff. Each week, 4 to 6 classes may be held for younger kids (starting at age 8); classes typically include about 4 kids and 1 instructor, and run for 1.5 hours. Waterside Workshops currently attracts an average of 35 people per weekend day for community bike repair; and a similar level of participation is expected to continue for the new location. Waterside Workshop will have about one workshop or class per day for its youth members and/or the public; these workshops will have approximately five people. There will also be occasional presentations; up to 30 people would be expected to attend those talks.

B. Building Modifications:

As part of the lease agreement, Waterfront Workshops will provide necessary upgrades, maintenance, and repairs to the existing building. These upgrades will include bathroom renovations, ADA upgrades, and electrical system upgrades. Minor exterior changes to windows and doors would be subject to Design Review. Any future designation of the site as a landmark would subject exterior changes to Landmarks review.

Waterside Workshops does not plan to make structural changes to the interior. The organization's final location of uses within the space may change depending on program needs, but the current plan is as follows (see Figure 3 for room references):

- The area marked "office", to the north, is planned to accommodate a fleet of approximately 15 rental bicycles, placed in racks; an area for workstands and tools where community members can work on their bikes; and a small multipurpose seating area, likely clustered around the fireplace area, for presentations, classes or community members to sit with a coffee.
- The area marked "storage" in the center of the building may be used for a coffee bar. This coffee bar may alternatively be placed in a corner of the northern building. In all cases, café-related activity is not anticipated to exceed 500 square feet.
- The area marked "office", to the south, is planned to house Waterside's vocational training program, and will include approximately 50 bicycle racks for building and repair of bicycles that will ultimately be donated or sold.

C. Lease Process:

In the fall of 2013, the City conducted a process to identify a tenant that would: a) commit to a five-year maintenance and capital improvement plan for the property in return for a favorable annual rent; b) attract the public to Aquatic Park; and c) comply with the uses permitted by the State Tidal Land Agreement.

The City performed extensive advertising of the lease opportunity by posting a sign on the 90 Bolivar building, placing flyers at City building, and emailing commercial listing agents and community agencies. Eleven for-profit and non-profit organizations expressed interest and attended a site visit; the City ultimately received three proposals. The proposals were first reviewed by the City Attorney's office and were all found to be in compliance with the terms of the State Tideland Public Trust requirements. A panel comprised of City staff from different departments then reviewed the proposals and conducted interviews with the top two applicants.

The panel recommended that Waterside Workshops be awarded the lease. Waterside Workshops demonstrated that it has: a) the financial means to improve and maintain the building; b) a public-serving program and a well-established organization; and c) a compelling means of attracting the public to Aquatic Park.

IV. Community Discussion

A. Neighbor/Community Concerns:

The City advertised the lease opportunity by posting the site and placing information flyers throughout the City. A yellow pre-application poster was erected by the City in February 2014. On February 12, 2014, the City mailed notices to 219 adjoining property owners and occupants, and to interested neighborhood organizations. As of the writing of this report, no comments had been received.

B. Committee Review:

Per the U District process, the Planning Commission reviewed this Use Permit at its February 5, 2014 meeting. Discussion at the meeting focused on the uses that would occur at the site, as well as the Planning Commission's responsibility to make findings related to the State Tidal Land Trust. The Commission voted (8-0-0-1) to make the finding of non-detriment.

Per the lease process, the Parks and Waterfront Commission (PWC) and the Children, Youth and Recreation Commission (CYRC) shall both review the lease. The PWC considered the lease at its February 12, 2014 meeting and had no comment. The CYRC will review the lease at its February 24, 2014 meeting; comments from that meeting will be presented to the Zoning Adjustments Board at the February 27th hearing.

When plans for exterior changes are more developed, the changes to the exterior of the building will be subject to Design Review. Any future designation of the site as a landmark would subject exterior changes to Landmarks review.

V. Issues and Analysis

A. Key Issues:

1. Public benefit: The proposed lessee is a local non-profit organization that will provide recreational activity and vocational training for local youth. The proposed uses will attract visitors to the park during the week and throughout the year. The use will enhance Aquatic Park's recreational value to the City and the additional activity will help provide a more secure park environment.
2. Rehabilitation and re-use of a vacant City building: The proposed project will occupy a long vacant building with a use that will provide recreational opportunities for visitors to the park and provide training opportunities for youth. The proposed project will provide necessary upgrades, maintenance, and repairs to an existing building. Minor exterior changes will be subject to design review. These improvements will improve the City's property without impacting the physical environment of the area.
3. State Tidal Lands: The use of the building for bicycle repair and rentals, vocational training for youth and an indoor café will accommodate the public's use of State Trust Lands.

4. Impacts to wildlife: According to the Berkeley Aquatic Park Improvement Plan (2012), the park provides minimal value as habitat due to, among other reasons, its small size, local and regional isolation, and proximity to active recreational uses (pp. 4.2-2 and 4.2-3). The only important foraging or nesting opportunities identified in the report is the intertidal mudflat adjacent to the Rowing Club, on the south end of the park on the west side. Therefore, the use of this building on the east side of the park will not significantly impact wildlife at the park.
5. Traffic and parking: The ZAB may set forth development standards and include them in the Use Permit. Parking impacts are not expected to be significant for several reasons:
 - a. The building and parking were developed for the park and the uses are not significantly different from past uses.
 - b. The uses or activities will be staggered throughout the day. Except for occasional talks/presentations, which may attract up to 30 people at a time, the use will not attract large numbers of patrons or youth interns at one time.
 - c. Most of the patrons are expected to travel to the site by bicycle.

B. General and Area Plan Consistency:

Staff reviewed the General Plan and the following area plans: West Berkeley Plan (1993), the Berkeley Waterfront Specific Plan (1986), and the Draft Aquatic Park Master Plan (drafted in 1990, not adopted). Only the General Plan and the Draft Aquatic Park Master Plan contain policies applicable to the project. The Berkeley Waterfront Specific Plan contains policies related to construction of a sound wall along the western edge of Aquatic Park and construction of bicycle/pedestrian facilities connecting the Marina, Aquatic Park and 50th Street. The West Berkeley Plan contains policies related to construction of a sound wall along Aquatic Park, and encourages implementation of the Aquatic Park Master Plan. In the 1990s, the City attempted to, but was unable to obtain Caltrans approval for the sound wall because of engineering considerations at that time. Implementation of a sound wall still remains a long term goal of the City.

General Plan Policy Analysis: The 2002 General Plan contains several policies applicable to the project, including the following:

1. Policy OS-9–Aquatic Park, Action E: Encourage lessees of City buildings in the park to serve local youth.

Staff Analysis: Waterside Workshops currently provides vocational training to local youth in the form of bicycle repair training and customer service training through the café concession. The proposed use would allow these uses to expand and also provide a recreational activity (bicycle rentals) to the general

public. These activities would serve local youth and make Aquatic Park more accessible and useable as a neighborhood park.

Draft Aquatic Park Master Plan Policy Analysis: The 1990 Draft Aquatic Park Master Plan (not adopted), contains one goal and objective applicable to the project, including the following:

Goal 3: Increase the number of park recreational uses, encourage a larger park user group, and improve park safety and security.

Objective 6: Introduce concessions for food, beverages and sports including public roller-skate, bicycle and boat rentals.

Staff Analysis: The project would allow the expansion of the bicycle repair program and the creation of a bicycle rental concession and an indoor café/snack bar. These uses will increase the use of the park through afterschool programs and through the provision of recreational activities for the general public.

VI. Recommendation

Because of the project's consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board:

A. APPROVE Use Permit 2014-0004 pursuant to Section 23B.92.090 and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

1. Findings and Conditions
2. Description of lessee, Waterside Workshops, and proposed use
3. Notice of Public Hearing

Staff Planner: Elizabeth Greene, egreene@ci.berkeley.ca.us, (510) 981-7484

INDEX TO ADMINISTRATIVE RECORD

Attachment 3

90 BOLIVAR DRIVE

UP2014-0004

Prepared: February 28, 2014

	DOCUMENT	DATE	PAGE	# of pages
A	STAFF REPORTS			
1	Planning Commission: staff report and late items	2/5/2014	1	
2	ZAB Materials: staff report, attachments	2/27/2014	12	
B	CAPTIONER'S RECORD or minutes of all hearings			
3	Planning Commission minutes	2/5/2014	36	
4	ZAB captioner's record	2/27/2014	37	
C	REMAINDER OF ADMIN RECORD			
5	Application Materials	1/28/2014	40	
6	Resubmittal: yellow sign	2/11/2014	50	
7	Public hearing notice with mailing list	2/12/2014	51	



Administrative Record
Use Permit No. 2014-0004:
90 Bolivar Drive

Attachment 4 to this report, Use Permit No. 2014-0004: Bicycle Repair/Rental and Vocational Training at 90 Bolivar Drive, Aquatic Park is on file and available for review at the City Clerk Department, or can be accessed from the City Council Website. Copies of the attachment are available upon request.

City Clerk Department
2180 Milvia Street
Berkeley, CA 94704
(510) 981-6900

or from:

The City of Berkeley, City Council's Web site
<http://www.cityofberkeley.info/citycouncil/>

**NOTICE OF PUBLIC HEARING-BERKELEY CITY COUNCIL
CITY COUNCIL CHAMBERS, 2134 MARTIN LUTHER KING JR. WAY
USE PERMIT #2014-0004: BICYCLE REPAIR/RENTAL AND VOCATIONAL
TRAINING AT 90 BOLIVAR DRIVE, AQUATIC PARK**

Notice is hereby given by the City Council of the City of Berkeley that on **MARCH 25, 2014** at 7:00 PM a public hearing will be conducted to consider the Zoning Adjustments Board's approval of Use Permit #2014-0004, to occupy a vacant, City-owned building in Aquatic Park for use as a bicycle rental and repair outlet, with community meeting/lecture/classroom space and an incidental café with indoor seating, in the Unclassified (U) District.

A copy of the agenda material for this hearing will be available on the City's website at www.CityofBerkeley.info as of **March 13, 2014**.

For further information, please contact Elizabeth Greene, Planning and Development, 981-7410.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council 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 the City Council, 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 City Clerk. 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 City Clerk at 981-6900 or clerk@cityofberkeley.info for further information.



Mark Numainville, CMC, City Clerk

Mailed: March 11, 2014

NOTICE CONCERNING YOUR LEGAL RIGHTS: *If you object to a decision by the City Council to approve or deny (Code Civ. Proc. §1094.6(b)) or approve (Gov. Code 65009(c)(5)) an appeal, the following requirements and restrictions apply: 1) Pursuant to Code of Civil Procedure Section 1094.6, no lawsuit challenging a City decision to reverse, modify or affirm a Zoning Adjustments Board decision may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a Zoning Adjustments Board decision, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.*

If you challenge the above in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Berkeley at, or prior to, the public hearing. Background information concerning this proposal will be available at the City Clerk Department and posted on the City of Berkeley webpage at least 10 days prior to the public hearing.