



Office of the City Manager

26a

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. 2014-0005: Youth Musical Theater at 2925-2945 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. 2014-0005, subject to the findings of BMC Section 23E.92.090, to allow two vacant, City-owned buildings at Aquatic Park to be used by a theater company for rehearsal space, classes and workshops, and set design and construction, 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 to allow a musical theater company (Youth Musical Theater Company) to occupy two City-owned buildings at 2925 and 2945 Bolivar Drive in Aquatic Park.

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 a 6-0-2-1 vote (Ayes: Novosel, Clarke, Davis, Lindheim, Lam, Murphy. Noes: None. Abstain: Poschman, Sheahan. 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 5-3-1-0 vote (Ayes: Allen, Alvarez Cohen, Donaldson, Matthews, Pinto. Noes: Harr, Hahn, O'Keefe. Abstain: Williams. 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 buildings have been vacant for several years and require a number of significant repairs and improvements. The City intends to lease the buildings to Youth Musical Theater Company (YMTC), a local non-profit 501(c)(3) organization which produces musical theater and provides theater training to students from 7th grade to the university level.

The uses proposed for the 2945 Bolivar site (the southern building) include:

- Auditions and rehearsals for the three shows. The summer show requires four weeks of all-day rehearsals, while the school-year productions require seven weeks of rehearsals, generally held between 4:00 PM and 9:00 PM. The cast size averages between 20 and 35 performers. The entire cast would attend approximately half of the rehearsals; the early rehearsals would focus on shorter meetings with smaller groups of performers.
- Up to five theater and dance workshops. These would be held after school and on weekends, and would generally meet twice a week for four weeks. These workshops can have up to 30 participants and would use recorded music.
- One five-week summer camp. The summer camp runs from 9:00 AM until 3:00 PM and has approximately 20 participants.
- Up to six orchestra rehearsals with between six and 25 musicians.

The uses proposed at the 2925 Bolivar site include:

- Set design and construction.
- Costume design and fabrication.

These uses would occur on weekdays and weekends and could include evening hours.

As part of the five-year lease agreement, YMTC would provide necessary upgrades, maintenance and repairs to the existing buildings. These repairs and upgrades would include bathroom renovations, ADA upgrades, improvements to the heating system and floor upgrades. Exterior changes would not result in substantial changes to the building and would be limited to new decking or patios, new doors, awnings and security lighting. Exterior changes would be subject to Design Review. Any future designation of Aquatic Park as a historic district would subject exterior changes to Landmarks review.

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 musical theater training and practices for youth, including set design and construction, 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 and artistic activity for local youth. The proposed uses are expected to attract visitors to the park during the week and throughout the year. The additional activity will help provide a more secure park environment and will introduce more local residents to the park.
2. Re-use of a vacant City building: The proposed project will occupy two vacant buildings with a use that will provide recreational and artistic opportunities for local youth. These uses will enhance Aquatic Park's recreational value to the City.
3. Rehabilitation of a City building: The proposed project will provide necessary upgrades, maintenance, and repairs, such as bathroom renovations, ADA upgrades, improvements to the heating system, and floor restoration. Some exterior changes, such as new decking or patios, new doors, awnings and security lighting, are also planned and would be subject to Landmarks and Design Review. New planters are also proposed. The project will not impact the neighborhood's physical environment.
4. Attracting public to Aquatic Park: The proposed uses are expected to attract visitors to the park during the week and throughout the year. The additional activity will help provide a more secure park environment and will introduce more local residents to the park.
5. 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 these two buildings on the east side of the park will not significantly impact wildlife at the park.

6. Traffic and parking: Parking impacts are not expected to be significant for several reasons:
 - a. The southern end of Aquatic Park does not have significant levels of activity.
 - b. The vehicle trips will not add significantly to the traffic accessing the I-80 Freeway due to its low volume (40 trips maximum at one time) and fact that most trips will occur outside of peak hours.
 - c. A condition has been added that YMTC will provide a “flight plan” detailing the hours and volume of anticipated traffic, and any carpooling policies in place. This plan must be reviewed by the Transportation Division and deemed adequate prior to occupancy.

Zoning Adjustments Board Considerations

The Board focused on two main points of discussion: the types of uses that are permissible at the site per the State Tidelands Public Trust regulations; and the City’s responsibility to ensure that the site is safe for the lessee. There was also some concern expressed regarding the use’s impacts on birds in the area.

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.

Site safety improvements: The Board expressed concerns regarding the safety of the new tenants. The southern end of the Park is not well-used and has had a negative reputation. Additionally, the roads are in poor condition and parking at the site is limited.

The site safety will be improved in the following ways:

- Add new signage, pathways and landscaping to southern park entrance (Berkeley Parks, Recreation and Waterfront Department);
- Plant Native plants, including trees, along the south end, and prune existing plants to ensure public and tree safety, and to protect bird roosting areas. (City Parks, Recreation and Waterfront Department);
- Repave Potter Street from the Bay Street Bridge to the Highway I-80 on-ramp in 2015 (City Public Works Department);
- Repave South Bolivar Drive in the park from Potter Street to the cul-de-sac in 2015 (City Public Works Department);
- Add new building-mounted lighting concentrated at building entrances and pedestrian paths to buildings. The conditions of approval specify that the lighting will be downward-facing. The conditions of the lease specify that the lighting will be downward facing and will be consistent with the Audubon Society's Bird Safe Building Guidelines; and
- Add security system to each building (Lessee).

The 'flight plan' called for in the conditions will allow the lessee and staff to determine how to accommodate student pick-ups and drop-offs with given the existing parking.

The Police Department's Community Service Bureau will be available to work with the tenant on an analysis of the property area, to develop strategies for crime prevention through environmental design (CPTED). In addition, the Police Department will raise awareness among officers about the new use.

Bird Impacts: The area is known for the birds that migrate to the lagoons. Some Board members asked about the impacts of the use on the birds that roost and feed in the area.

As mentioned above, the plans to prune trees and plants for better security include plans to protect bird roosting areas. New tree plantings will enhance the areas for bird roosting. The security lighting plans in the conditions call for downward-facing lighting, and the lease requires the lighting to meet the Audubon Society's standards for bird safety. Additionally, the singing during practices will usually be accompanied by a piano or recorded music. Practices will result in noise outside the buildings, but it is not expected to be excessive.

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 of Administrative Record
4. Administrative Record
5. Public Hearing Notice

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

AFFIRMING THE ZONING ADJUSTMENTS BOARD'S APPROVAL OF USE PERMIT NO. 2014-0005 TO ALLOW TWO VACANT, CITY-OWNED BUILDINGS AT AQUATIC PARK TO BE USED BY A THEATER COMPANY FOR REHEARSAL SPACE, CLASSES AND WORKSHOPS, AND SET DESIGN AND CONSTRUCTION, IN THE UNCLASSIFIED (U) DISTRICT

WHEREAS, on January 28, 2014, the City's Parks, Recreation and Waterfront Department submitted a Use Permit application to allow two vacant, City-owned buildings at Aquatic Park to be used by a theater company for rehearsal space, classes and workshops, and set design and construction, at 2925-2945 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 that the Council of the City of Berkeley hereby adopts the findings made by the ZAB in Exhibit A, affirms the decision of the ZAB to approve Use Permit No. 2014-0005, and adopts the conditions in Exhibit A.

Exhibit

A: Findings and Conditions

ATTACHMENT 1

FINDINGS AND CONDITIONS

FEBRUARY 27, 2014

2925 – 2945 Bolivar Drive

Use Permit #2014-0005 to allow two vacant, City-owned buildings at Aquatic Park to be used by a theater company for rehearsal space, classes and workshops, and set design and construction, 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 Sections 15301 and 15303(c) of the CEQA Guidelines (“Existing Facilities” and “New Construction or Conversion of Small Structures”). 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 and artistic activity for local youth. The proposed uses are expected to attract visitors to the park during the week and throughout the year. The additional activity will help provide a more secure park environment and will introduce more local residents to the park.
 - B. Re-use of a vacant City building: The proposed project will occupy two vacant buildings with a use that will provide recreational and artistic opportunities for local youth. These uses will enhance Aquatic Park’s recreational value to the City.
 - C. Rehabilitation of a City building: The proposed project will provide necessary upgrades, maintenance, and repairs, such as bathroom renovations, ADA upgrades, improvements to the heating system, and floor restoration. Some

exterior changes, such as new decking or patios, new doors, awnings and security lighting, are also planned and would be subject to Landmarks and Design Review. New planters are also proposed. The project will not impact the neighborhood's physical environment.

- D. Attracting public to Aquatic Park: The proposed uses are expected to attract visitors to the park during the week and throughout the year. The additional activity will help provide a more secure park environment and will introduce more local residents to the park.
- E. State Tidelands Public Trust: The use of the building for bicycle repair and rentals, vocational training for teens and an indoor café will accommodate the public's use of public trust lands.
- F. 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 these two buildings on the east side of the park will not significantly impact wildlife at the park.
- G. Traffic and parking: The ZAB may determine development standards and include them in the Use Permit. Traffic and parking impacts are not expected to be significant for several reasons:
- a. The southern end of Aquatic Park does not have significant levels of activity.
 - b. The vehicle trips will not add significantly to the traffic accessing the I-80 Freeway due to its low volume (40 trips maximum at one time) and fact that most trips will occur outside of peak hours.
 - c. A condition has been added that YMTC will provide a "flight plan" detailing the hours and volume of anticipated traffic, and any carpooling policies in place. This plan must be reviewed by the Transportation Division and deemed adequate prior to occupancy.

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, YMTC will provide necessary upgrades, maintenance, and repairs to the existing buildings. Generally, these upgrades will

include bathroom renovations, ADA upgrades, improvements to the heating system and floor upgrades. Exterior changes will not result in substantial changes to the building and would be limited to new decking or patios, new doors, awning and security lighting. Exterior changes would be subject to Design Review. Any future designation of the site as a landmark would subject exterior changes to Landmarks review.

No proposed floor plan has been submitted for either of the buildings. However, the changes are described as follows:

- 2925 Bolivar: The interior walls will remain as shown in the existing conditions plan. The bathroom in the south-west corner currently has a toilet, sink and shower. The shower will be removed and the bathroom will be modified to meet ADA standards for accessibility. The exterior door leading to the bathroom will be walled off, and the doorway leading into the bathroom from the office area will be widened if necessary. The second bathroom will be converted to storage space. The kitchen will be used as storage space, but there are no plans to remove the existing sink and countertop. The door leading to the porch on the north-west corner will be widened to provide ADA access to the building. Finally, the door at the top of the stairs on the east side of the building may be widened to double doors to provide access for sets and materials.
- 2945 Bolivar: The walls separating the two office spaces would be removed, creating one large room. A 6' by 7.5' ADA-accessible bathroom would be added in the south-east corner of the building. The exterior doors leading to the porch on the west side of the building would be widened if they are not already ADA-compliant.

CONDITIONS BY PROJECT TYPE

AT ALL TIMES:

22. The hours of operation for all uses on the site shall be limited to **6:00 AM to 10:00 PM seven days a week**. Hours of operation refer to the arrival of the first patron and the departure of the last patron. No practices or workshops shall begin prior to 9:00 AM or end later than 9:00 PM. Any change in the hours of operation shall be approved according to Berkeley Municipal Code Chapter 23E.92. Special event permits may be requested for occasional exceptions to hours of operation, and are subject to Parks, Recreation and Waterfront Director approval.
23. 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.
24. Alert Landlord, Parks Superintendent, and Utilities Authority, and other agencies as required by law (USA), before conducting digging of any kind on this property to ensure proper caution is exercised around the jet fuel line that runs under the property.

- 25.** All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
- 26.** YMTC will provide a “flight plan” detailing the hours and volume of anticipated traffic, and any carpooling policies in place. This plan must be reviewed by the Transportation Division and deemed adequate prior to occupancy.
- 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.** 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.
- 29.** 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

2925 - 2945 Bolivar Drive

Use Permit #UP2014-0005 to allow two vacant, City-owned buildings at Aquatic Park to be used by a theater company for rehearsal space, classes and workshops, and set design and construction, in the Unclassified (U) District.

I. Background

Land Use Designations:

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

A. 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”).

A. Parties Involved:

- Applicant City of Berkeley
- Property Owner City of Berkeley

Figure 1: Vicinity Map – Aquatic Park

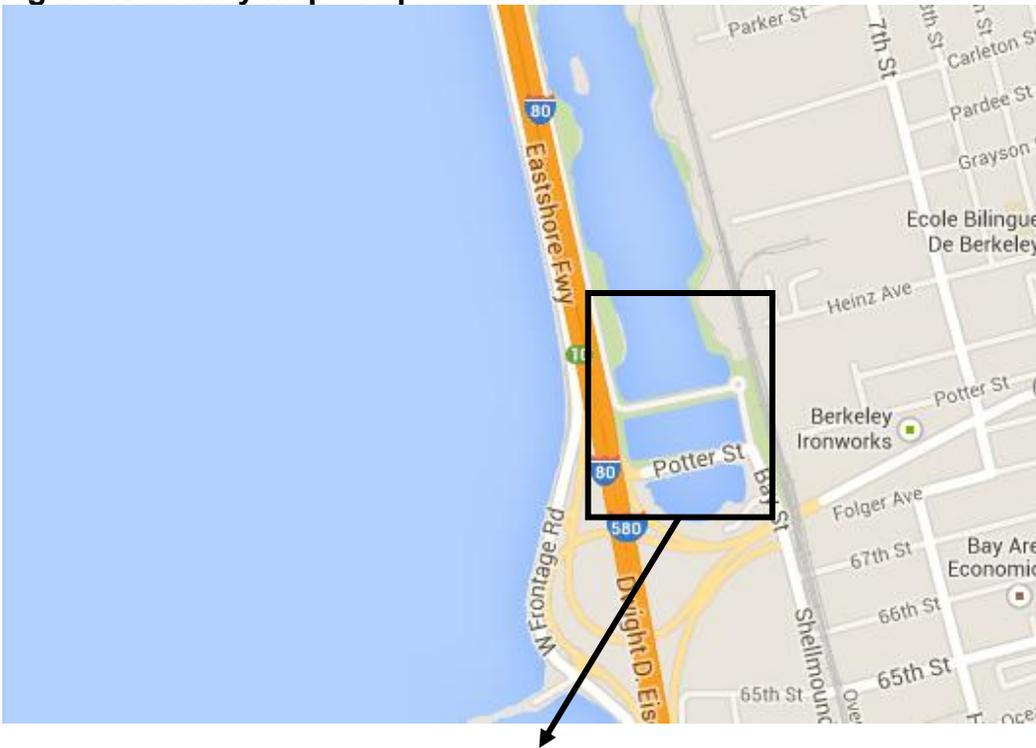


Figure 2 : Vicinity Map – Subject Location

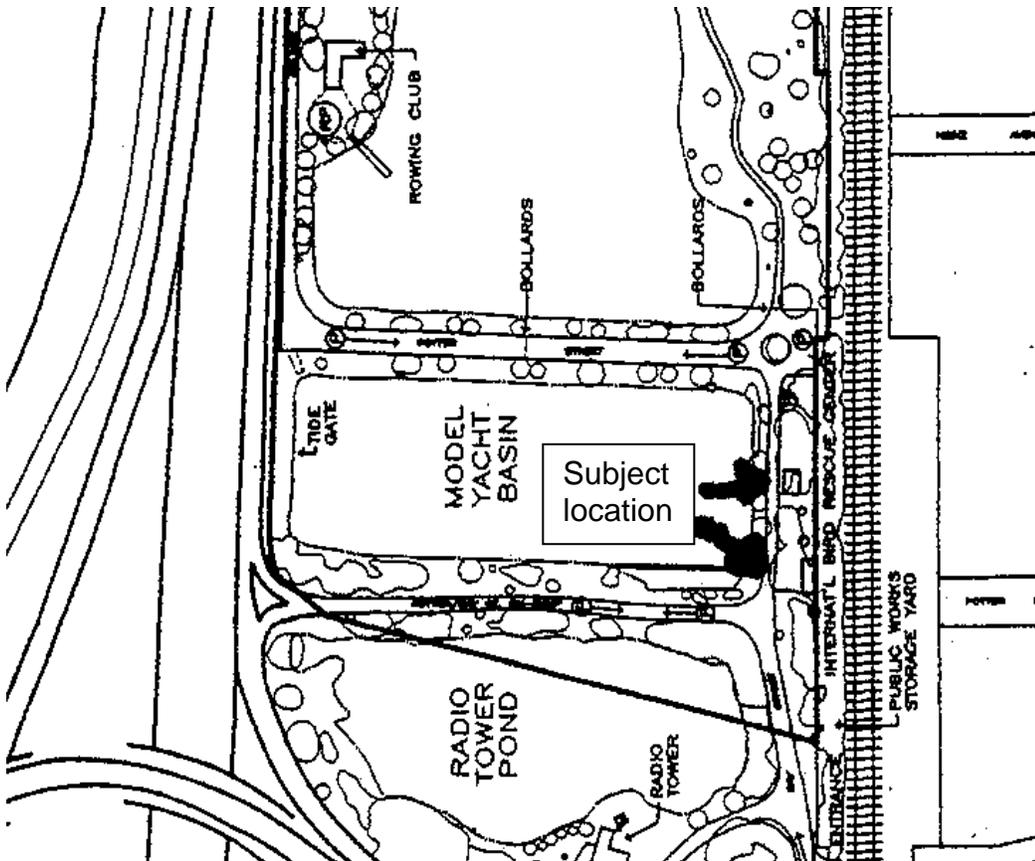


Figure 3: Floor Plans – Existing Conditions

2925 Bolivar Drive (Model Boat Building)

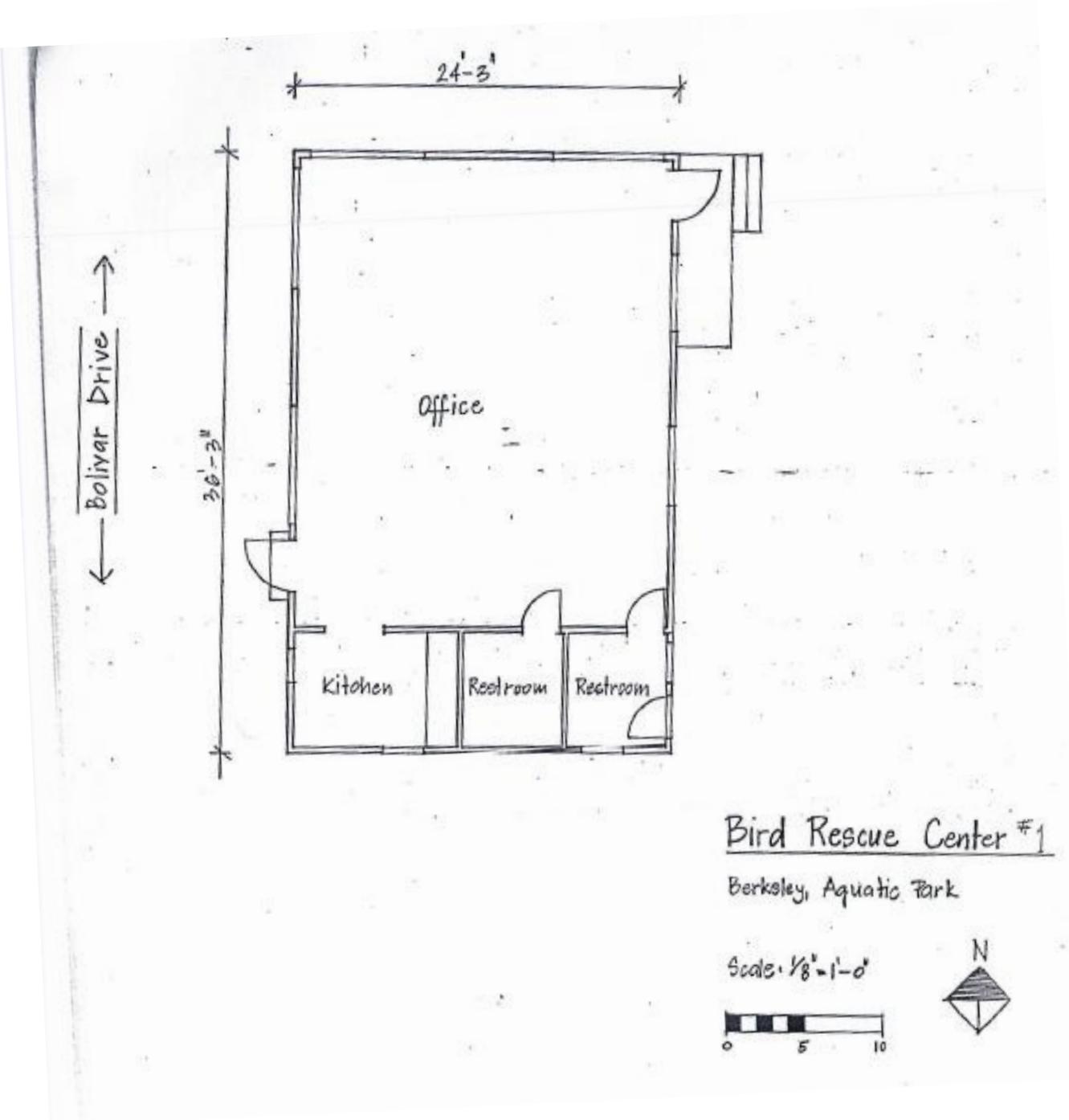


Figure 4: Floor Plans – Existing Conditions

2945 Bolivar Drive (Bird Rescue Building)

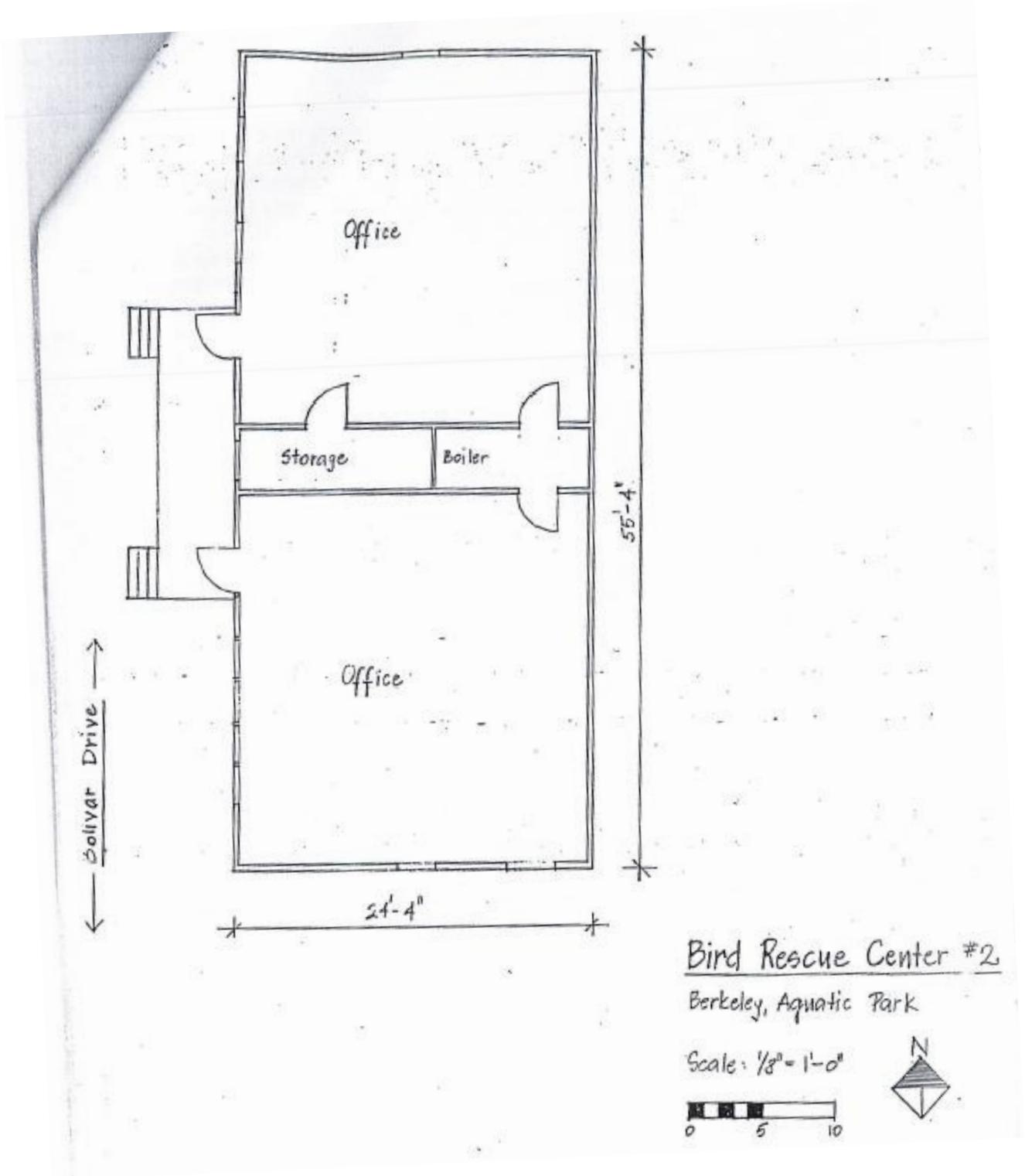


Table 1: Land Use Information

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 manufacturing uses (Weatherford BMW and Aquatic Park Center)	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	A historical trace of Potter Creek runs along Potter Street to the south of the buildings into the southern-most lagoon.
Density Bonus	No	
Flood Map	Yes	Project is located in the 100-year flood zone.
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	Yes	The project is located within a liquefaction zone
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	The project will involve tenant improvements within both buildings. The area involved is less than 2,500 square feet and will not trigger the Green Building requirements.

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	City Council Review

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 - 2925 Bolivar	Average (ft.)	13'	13'	Determined by Use Permit – See Section II.A of report for details
	Maximum (ft.)	17'	17'	
	Stories	1	1	
Building Height - 2945 Bolivar	Average (ft.)	14'	14'	Determined by Use Permit – See Section II.A of report for details
	Maximum (ft.)	17'	17'	
	Stories	1	1	
Building Setbacks (ft.)	Front	N/A	N/A	Determined by Use Permit – See Section II.A of report for details
	Rear	N/A	N/A	
	Left Side	N/A	N/A	
	Right Side	N/A	N/A	
Lot Coverage (%)		N/A	N/A	Determined by Use Permit – See Section II.A of report for details
Parking	Automobile	12	12	
	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 totaling 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 buildings are located at 2925 - 2945 Bolivar Drive. They are at the southern end of Aquatic Park, just north of Bay Street entrance. They are located on the east side of Bolivar Drive, just south of a small parking lot. A jet fuel line runs under both buildings. The site is accessed from Bay Street, just before the on-ramp to the 880 freeway. There is no vehicular access to the site from the northern side of Aquatic Park.

The buildings are owned by the City of Berkeley and are managed by the City's Parks, Recreation and Waterfront Department. The northern building, 2925 Bolivar, was originally used as the Model Yacht Clubhouse. It is an 880 square-foot, single-story building known as the "Model Boat Building". 2945 Bolivar is a single-story building approximately 1,350 square feet in area. It is known as the "Bird Rescue Building" and was originally used as the Audubon Nature Study Center. Both buildings were occupied by the International Bird Rescue Research Center in the

1970s – through 1990s, and 2925 Bolivar was occupied by EGRET from approximately 2001 through 2011. Both buildings are now vacant.

Twelve parking spaces are available in a parking area just north of the subject buildings and approximately 10 cars can be accommodated on the east side of Bolivar Drive in front of the two buildings. Additional parking is available in a parking area on north side of Potter Street between the two smaller lagoons; this parking area has room for approximately 10 cars.

III. Project Description

A. Proposed Use and Lessee:

The City intends to lease the buildings at 2925 - 2945 Bolivar Drive in Aquatic Park to Youth Musical Theater Company (YMTC). YMTC is a Berkeley-based non-profit 501(c)(3) organization which produces musical theater and provides theater training to students from 7th grade to the university level. Their year-round programming includes three fully-mounted musicals, as well as multiple after-school, weekend, and summer training workshops, as well as a summer camp. YMTC conducts outreach to local middle schools, high schools and colleges to draw singers and actors for their productions, workshops and classes.

YMTC was established in 2004 and trains over 200 young performers annually. It holds performances at theaters throughout the East Bay, including the Julia Morgan Performing Arts Center/Berkeley Playhouse, El Cerrito High School's Performing Arts Center, Mills College Lisser Theater and the Malonga Casquelord Center for the Arts.

The proposed location would be the first permanent location for the YMTC. It is currently located at the North Oakland Community Charter School, and has had many other temporary locations, such as Willard Middle School, Eppworth Church and the Cal dance studios.

The uses proposed at the 2945 Bolivar site include:

- Auditions and rehearsals for the three shows. The summer show requires about 4 weeks of all-day rehearsals, while the school-year productions need about 7 weeks of rehearsals, generally held between 4:00 PM and 9:00 PM. The cast size averages between 20 and 35 performers. The entire cast would attend approximately half of the rehearsals; the early rehearsals would focus on shorter meetings with smaller groups of performers.
- Up to five theater and dance workshops. These would be held after school and on weekends, and would generally meet twice a week for four weeks. These workshops can have up to 30 participants and would use recorded music.
- One five-week summer camp. The summer camp runs from 9:00 AM until 3:00 PM and has approximately 20 participants.
- Up to six orchestra rehearsals with between six and 25 musicians.

The uses proposed at the 2925 Bolivar site include:

- Set design and construction.
- Costume design and fabrication.

These uses would occur on weekdays and weekends and could include evening hours.

The properties would be in use year-round. During the school year, the buildings would be used primarily after school and on weekends. During the summer months, there would be activity up to seven days a week. Specific hours would be subject to the lease agreement and the conditions of approval.

The uses at YMTC are expected to attract a range of 10 – 40 persons to their various events. The events with the greatest number of attendees will be the full cast rehearsals taking place in the four weeks prior to the summer show, and in the three weeks prior to the school year shows. Depending on the show, the number of cast members and instructors at the site could range from 20 – 40 people. The standard hours of the use are expected to be from 4:00 PM – 9:00 PM on weekdays, some weekend and summer workshops, and from 9:00 AM until 4:00 PM on weekdays for approximately eight weeks in the summer.

Most of the performers would be dropped off and picked up at the site. YMTC staff anticipates that the carpooling that has occurred at their other sites will continue here as well. There will be no dedicated parking for the use, but there is public parking in the parking lot north of the site and along Bolivar Drive.

This project would not include on-site performances. If performances are proposed at the site in the future, the applicant would need to modify the lease and the Use Permit.

B. Building Modifications:

As part of the lease agreement, YMTC will provide necessary upgrades, maintenance, and repairs to the existing buildings. Generally, these upgrades will include bathroom renovations, ADA upgrades, improvements to the heating system and floor upgrades. Exterior changes will not result in substantial changes to the building and would be limited to new decking or patios, new doors, awning and security lighting. Exterior changes would be subject to Design Review. Any future designation of the site as a landmark would subject exterior changes to Landmarks review.

No proposed floor plan has been submitted for either of the buildings. However, the changes are described as follows:

- 2925 Bolivar: The interior walls will remain as shown in the existing conditions plan. The bathroom in the south-west corner currently has a toilet, sink and shower. The shower will be removed and the bathroom will be modified to meet ADA standards for accessibility. The exterior door leading to the bathroom will be walled off, and the doorway leading into the bathroom from the office area will be widened if necessary. The second bathroom will be converted to storage space. The kitchen will be used as storage space, but there are no plans to remove the existing sink and countertop. The door leading to the porch on the north-west

corner will be widened to provide ADA access to the building. Finally, the door at the top of the stairs on the east side of the building may be widened to double doors to provide access for sets and materials.

- **2945 Bolivar:** The walls separating the two office spaces would be removed, creating one large room. A 6' by 7.5' ADA-accessible bathroom would be added in the south-east corner of the building. The exterior doors leading to the porch on the west side of the building would be widened if they are not already ADA-compliant.

C. Lease Process:

In the fall of 2013, the City conducted a process to identify a tenant for another city-owned building in Aquatic Park: 90 Bolivar Drive. The City was looking for 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 Tidelands Public Trust requirements.

City staff performed extensive advertising of the lease opportunity by posting a sign at 90 Bolivar, 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 for conformance with the State Tidelands Public Trust requirements and were all found to be in compliance. A panel comprised of City staff from different departments then reviewed the proposals and conducted interviews with the top two applicants, one of which was YMTC.

The panel recommended another non-profit for the 90 Bolivar site, but was very impressed with YMTC. Staff determined that YMTC could be a good use for the City properties at 2925 and 2945 Bolivar, which were also vacant and in need of tenants. YMTC demonstrated that it has: a) the financial means to improve and maintain the buildings; 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 for 90 Bolivar 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 23 adjoining property owners and occupants within 300-feet of the site, and to interested neighborhood organizations. As of this time, staff has received three letters regarding this use. The letters are included as Attachment 5.

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 public trust lands. The Commission voted to make the finding of non-detriment (6-0-2-1).

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. The Commission had a positive response to the proposal because of its activities for youth and perceived ability to bring more visitors to the park. 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 and artistic activity for local youth. The proposed uses are expected to attract visitors to the park during the week and throughout the year. The additional activity will help provide a more secure park environment and will introduce more local residents to the park.
2. Re-use of a vacant City building: The proposed project will occupy two vacant buildings with a use that will provide recreational and artistic opportunities for local youth. These uses will enhance Aquatic Park's recreational value to the City.
3. Rehabilitation of a City building: The proposed project will provide necessary upgrades, maintenance, and repairs, such as bathroom renovations, ADA upgrades, improvements to the heating system, and floor restoration. Some exterior changes, such as new decking or patios, new doors, awnings and security lighting, are also planned and would be subject to Landmarks and Design Review. New planters are also proposed. The project will not impact the neighborhood's physical environment.
4. Attracting public to Aquatic Park: The proposed uses are expected to attract visitors to the park during the week and throughout the year. The additional activity will help provide a more secure park environment and will introduce more local residents to the park.
5. State Tidelands Public Trust: The use of the building for bicycle repair and rentals, vocational training for teens and an indoor café will accommodate the public's use of public trust lands.

6. 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 these two buildings on the east side of the park will not significantly impact wildlife at the park.
7. Traffic and parking: The U District does not have development standards, including parking requirements. The ZAB may determine development standards and include them in the Use Permit. Traffic and parking impacts are not expected to be significant for several reasons:
 - a. The southern end of Aquatic Park does not have significant levels of activity.
 - b. The vehicle trips will not add significantly to the traffic accessing the I-80 Freeway due to its low volume (40 trips maximum at one time) and fact that most trips will occur outside of peak hours.
 - c. A condition has been added that YMTC will provide a “flight plan” detailing the hours and volume of anticipated traffic, and any carpooling policies in place. This plan must be reviewed by the Transportation Division and deemed adequate prior to occupancy.

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 Aquatic Park Master Plan (drafted in 1990, not adopted). Only the General Plan and the 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.

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

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

Staff Analysis: YMTC is a Berkeley-based non-profit that trains middle school through college-aged students to perform in professional-level musical theater. Students are trained in dance, singing and acting skills and given the opportunity

to perform throughout the community. Allowing this use in Aquatic Park would serve local youth by providing a convenient location for local youth to participate in performing arts.

2. Draft Aquatic Park Master Plan Policy Analysis: The 1990 Draft Aquatic Park Master Plan (not adopted), contains one goal 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.

Staff Analysis: YMTC trains over 200 performers annually. These performers, along with their parents and instructors, will be in the park for afterschool and weekend auditions, rehearsals, classes and workshops. Staff preparatory work and a summer camp will also provide daytime activity. These uses will provide activity at the south end of the park which will make it a more secure environment and increase the use of the park.

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 2014-0005 pursuant to Section 23E.92.090 and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

1. Findings and Conditions
2. Draft Plans
3. Description of proposed lessee, YMTC and proposed use of site
4. Notice of Public Hearing
5. Correspondence Received

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

INDEX TO ADMINISTRATIVE RECORD

2925 & 2945 BOLIVAR DRIVE

UP2014-0005

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, supplemental items, speaker cards and late item	2/27/2014	13	
B	CAPTIONER'S RECORD or minutes of all hearings			
	3 Planning Commission minutes	2/5/2014	96	
	4 ZAB captioner's record	2/27/2014	97	
C	REMAINDER OF ADMIN RECORD			
	5 Application Materials	1/28/2014	121	
	6 Resubmittal: yellow sign	2/11/2014	135	
	7 Public hearing notices with mailing list	2/12/2014	137	



Administrative Record
Use Permit No. 2014-0005:
2925-2945 Bolivar Drive

Attachment 4 to this report, Use Permit No. 2014-0005: Youth Musical Theater at 2925-2945 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 #2014-0005: YOUTH MUSICAL THEATER AT 2925-2945 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 #2014-0005, to allow two vacant, City-owned buildings at Aquatic Park to be used by a theater company for rehearsal space, classes and workshops, and set design and construction, 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.