

ATTACHMENT 1

FINDINGS AND CONDITIONS

MARCH 12, 2008

1911 Russell Street

Use Permit #07-1000040/#08-7000019

PROJECT DESCRIPTION

1. The project would:
 - A. Remove the limitation that on-site food sales be only for special events, occurring no more than three times per year to allow such events to occur every Sunday for no more than 200 persons with food service hours of 10:00 AM - 1:00 PM;
 - B. Relocate the food service from the rear yards of 1911-1913 Russell Street to the MLK Jr. parcel;
 - C. Demolish the 14' by 26' sanctuary building that is located behind the 1911 Russell Street building and the 76' by 14' shed structure that is located behind the 1913 & 1915 Russell Street buildings;
 - D. Create eight off-street parking spaces for staff, with a 12' wide drive aisle to connect to MLK, Jr. Way;
 - E. Construct a 16' by 24' sanctuary to contain three Buddha statues on a raised platform within an ornamented, 44' total height, structure;
 - F. Construct a 10' by 36' food service pavilion to serve the food that is prepared within the 1913 Russell Street building;
 - G. Construct two 84' long unenclosed shade structures for the Sunday food service;
 - H. Install two 10' by 20' tent structures to be used during Sunday food service; and
 - I. Construct a 6' high landscaped wall between the food service or consumption areas and the adjacent residential properties.

CEQA FINDINGS

2. The project does not trigger any exception found in Section 15300.2 and that a CEQA exemption can be used for the following reasons:
 - A. Location. The project site and the area are not mapped or known to contain any environmental resource of hazardous or critical concern.
 - B. Cumulative Impact. The project would not add to any cumulative impact because there are no known or pending projects in the vicinity that would combine to create significant cumulative environmental impacts.
 - C. Significant Effect. The project is located in an urban area, developed for over 100 years with residential and commercial uses. It would be unreasonable to expect that this project would have a significant effect on the environment due to unusual circumstances.
 - D. Scenic Highways. There are no mapped scenic resources, such as trees, historic buildings, rock outcroppings or similar resources, within the project site or area. The site is not located near an officially designated as a state scenic highway.
 - E. Hazardous Waste Sites. The site is not on any list compiled pursuant to Section 65962.5 of the Government Code.
 - F. Historical Resources. There are no mapped historic resources within the project site or area.

3. The project is exempt from CEQA per Section 15061(b)(3) of the CEQA Guidelines because there is no possibility that the Sunday food service as proposed by this project would have a significant effect on the environment as defined by CEQA. This determination is made because the project was designed to limit off-site noise and odor impacts and would not create sufficient vehicle trips to reduce a level of service at any nearby intersection.

GENERAL NON-DETRIMENT FINDING

4. Pursuant to Berkeley Municipal Code Section 23B.32.040, the Zoning Adjustments Board finds that the project described in Section 1 above, 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:

Sunday Food Service:

- A. Regular Sunday food service is integral to the religious expression of the Thai Buddhist faith, and is, thus, part of the primary Religious Assembly use;
- B. Off-site impacts of Sunday food service will be minimized by the implementation of the following:
- 1) All food shall be prepared indoors to reduce noise and odor impacts;
 - 2) The food service shall be relocated away from adjacent residential properties;
 - 3) Hours will be limited to 10:00 AM - 1:00 PM, with food preparation to start after 8:00 AM;
 - 4) The food consumption area shall be relocated away from adjacent residential properties to reduce noise and odor impacts to adjacent residential properties;
 - 5) The public entrance shall be relocated from Russell Street to MLK Jr. Way to reduce noise impacts along Russell Street and to refocus the area that guests look for parking to the west adjacent to Grove Park and the BUSD maintenance yard;
 - 6) Occupancy shall be limited to 200 persons at one time;
 - 7) The City's standard food service conditions will be implemented to address noise, litter, odor and nuisance impacts;
 - 8) The off-site parking agreement shall be reinstated for 32-spaces at 2747 Adeline Street;
 - 9) On and off-site bicycle parking will be provided; and
 - 10) A six-foot landscape wall shall be erected to buffer noise and to screen the food service and consumption areas from the adjacent residential properties.

Buddha Sanctuary:

- C. The new sanctuary would replace an existing Buddha sanctuary and thus will not expand the existing intensity of use;
- D. The new sanctuary would not be open to the general public and is intended to provide a permanent and more appropriate sanctuary to conform with traditional Thai architecture;
- E. The location of the structure and the small profile would not create significant off-site shadow impacts;
- F. The height exception to allow the Monthop to project above the District height limit by 16-feet is consistent with the provisions of Section 23D.04.020.C of the Zoning

Ordinance in that the projection does not represent more than 15% of the average floor area of the building, does not contain habitable space or provide a commercial purpose; and

- G. Many residential neighborhoods in Berkeley include not only dwellings, but also religious organizations; most such organizations include structures that are taller and represent divergent architectural styles than the adjacent dwellings.

Parking:

- H. The parking spaces will comply with Zoning and Traffic Engineering standards and will help reduce the demand for parking in the neighborhood; and
- I. The parking spaces would be paved with a pervious surface to allow on-site infiltration, thereby reducing off-site water quality impacts that are typically associated with automobile parking.

Unenclosed Accessory Structures:

- J. The low height and distance from any residential use ensure that the accessory structures would not create off-site shade or bulk impacts.
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STANDARD CONDITIONS

1. Conditions Shall be Printed on Plans

The conditions of this Permit shall be printed on the second sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions'. 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 exclude 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 for which this Permit is approved is permitted unless the Permit is modified by the Zoning Adjustments Board, in conformance with Section 23B.56.020.A.

Changes in the plans for the construction of a building or structure, may be modified prior to the completion of construction, in accordance with Section 23B.56.030.D. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project. The Zoning Officer may also approve a maximum two-foot variation to Board approved plans, provided, that such variation does not increase a structure's height, reduce the minimum distance to any property line, and/or does not conflict with any special objective sought by the Board.

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

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

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

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

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

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

- 8. Exercise and Lapse of Permits** (Section 23B.56.100)
- A. A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.
 - B. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
 - C. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has (1) applied for a building permit or (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.
9. The applicant shall hold the City of Berkeley and its officers harmless in the event of any legal action related to the granting of this Permit, shall cooperate with the City in defense of such action, and shall indemnify the City for any award of damages or attorneys fees that may result.

ADDITIONAL CONDITIONS

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. Prior to issuance of a building permit, the applicant shall complete a "Construction and Demolition Recycling Plan," submit the plan to the Solid Waste Management Division for approval, and attach the approved plan to the construction drawings. The plan is available at www.ci.berkeley.ca.us/onlineservice/forms.htm#planning (look under "Land Use Planning") or by contacting Land Use Planning at 510-981-7410. After completing the form contact Solid Waste Management at 981-6368 for approval.

- City Monitor: Solid Waste Mgmt. Staff _____
Signature Date

12. Prior to issuance of a building permit, the applicant shall secure the City Traffic Engineer's approval of a construction traffic management plan. Please contact the Office of Transportation at 981-7010, or 1947 Center Street, 3rd floor, and ask to speak to a traffic engineer. In addition to other requirements of the Traffic Engineer, this plan shall include the locations of material and equipment storage, trailers, worker parking, a schedule of site operations that may block traffic, and provisions for traffic control. The City Zoning Officer and/or Traffic Engineer may limit off-site parking of construction-related vehicles if necessary to protect the health, safety, or convenience of the surrounding neighborhood.

□ City Monitor: Traffic Engineer _____
Signature Date

13. Prior to issuance of a building permit, the project shall demonstrate compliance with the requirements of the City's National Pollution Discharge Elimination System (NPDES) permit as described in Berkeley Municipal Code Section 17.20. The following conditions apply to the maximum extent practical, in addition to controlling construction-related drainage and erosion:

- A. The project plans shall identify site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants into the City's storm drainage system, regardless of season or weather conditions.
- B. The project plans shall include erosion control measures to prevent soil, dirt, and debris from entering the storm drain system, in accordance with BMC Chapter 17.20.
- C. Landscaping shall be designed with efficient irrigation to reduce runoff and promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to stormwater pollution. Where feasible, landscaping should be designed and operated to treat runoff. When and were feasible, xeriscape and drought tolerant plants shall be incorporated into new development plans.
- D. Site design measures to reduce impervious surfaces, promote infiltration, and reduce water quality impacts.

During Construction:

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

15. 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.

16. 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.

17. 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.

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

Prior to Issuance of Occupancy Permit or Final Inspection:

21. The project shall conform to the plans and statements in the Use Permit.
22. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated **January 29, 2009**.
23. The applicant shall secure approval of any parcel merger and/or lot line adjustment associated with this Use Permit.
24. The shed structures within the rear yard of 1913-1915 Russell Street will be removed.
25. A statement shall be recorded in the Office of the County Recorder on the title for 1911-1915 Russell and 2747 Adeline Street that restricts the use of the property and designates the off-street parking that is to serve the other property. The deed restrictions shall state that the property cannot be used so as to prevent the use of the parking that is being provided in compliance with the requirements of the City, unless the restriction is removed by the City. Upon submission of satisfactory evidence either that other parking space meeting the requirements of this Ordinance has been provided or that the building or use has been removed or altered in use so as to not longer require the parking space, the City shall remove the restriction from the property.
26. Bicycle parking shall be provided. The design, location and number shall be subject to the review and approval of the Zoning Officer.
27. The existing concrete shall be removed and landscaping shall be installed within the rear yard of 1913 and 1915 Russell Street. Said landscaping shall be similar to that proposed for the perimeter of the Oregon Street parcel.

At All Times:

28. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
29. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.

30. 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.
31. The conditions of approval of Use Permits A2054, A2230 & 96-1000020 still apply except as modified herein.
32. No food sales shall occur Monday through Saturday.
33. No food that is to be sold shall be prepared onsite before 8:00 AM.
34. All food shall be prepared indoors.
35. No activities related to food sales shall occur behind 1913 or 1915 Russell Street.
36. No food that is to be sold may be consumed within the Russell Street properties.
37. On Sundays, the public shall only enter the site from MLK, Jr Way. All signage used by the Temple shall inform the public of this entrance and shall note that access from Russell Street or Oregon Street is prohibited.
38. All landscaping shall be maintained. If necessary, irrigation shall be installed.
39. As shown on Sheet A-1, the BELTRAC 3000 or similar fencing shall be utilized for the duration of any Sunday food service to limit public access to only the areas noted as 'dining' or 'food-serving'.

Standard Food Service Conditions

40. 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.
41. Changes in the nature of the operation including, but not limited to, the addition of seating, modifications to the site plan or change in hours, shall require modification of this permit subject to approval by the Zoning Adjustments Board.
42. The approved site plan, including the number of seats, shall be followed and the operation shall be conducted as presented to the Board. The maximum occupancy shall not exceed 200 unless otherwise limited by applicable regulations.
43. Food sales shall be limited to 10:00 a.m. to 1:00 p.m. Sunday and the last diner shall be gone by 2:00 PM. Any change in the hours of operation shall be subject to the approval of the Zoning Adjustments Board. Hours of operation are subject to review and amendment by the Zoning Adjustments Board as necessary to avoid detriment to the neighborhood or to achieve conformance with revised City standards or policies.

44. Cooking odors, 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.
45. Smoke and odor control equipment approved by the City's Environmental Health Division shall be installed to provide adequate protection to adjacent residential uses.
46. Garbage and trash containers that are suitably enclosed and screened from view shall be provided subject to approval of the Zoning Officer and the Health Department. Any establishment selling beverages in cans or bottles that are subject to the State of California Container Deposit Law shall recycle such containers.
47. 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.
48. Waste receptacles shall be placed adjacent to any public access point.
49. The owner or operator of the establishment shall take reasonable measures to prevent disturbances by patrons in the immediate vicinity. Such measures shall include signs reminding patrons of nearby residences and requests to not congregate or loiter near such residences nor operate vehicles in a noisy manner on residential streets. The operator shall give surveillance to public areas near the establishment, keep such areas free of trash and litter, provide lighting, and otherwise attempt to prevent conduct that might disturb the peace and quiet of residences in the vicinity.
50. The operator shall assume reasonable responsibility for ensuring that patrons do not block the entrance or interfere with pedestrian activity on the adjacent public sidewalks.