



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

FOR BOARD ACTION  
MAY 26, 2022

## 2600 Tenth Street

**Appeal of Zoning Officer's Decision to approve Administrative Use Permit #ZP2019-0090 to change the use of four existing tenant spaces on the first and second floors, totaling 20,367 square feet, from media production to a research and development use.**

At the April 28, 2022 Zoning Adjustments Board (ZAB) meeting, ZAB voted to continue this item to a date certain, May 26, 2022, for a full hearing as the first item on the action calendar.

### Background

At the January 13, 2022 ZAB meeting, staff presented the proposed project and appeal response, followed by the appellant's and applicant's presentations. After the ZAB heard public comment and discussed the project, ZAB requested that the Planning Department obtain an opinion from the City Attorney regarding the "protected use" status of spaces in the building, i.e. whether the existing use is Media Production or Art/Craft Studio. At that time, the item was continued to a date uncertain.

Art/Craft Studio is a protected use in the Mixed-Use Light-Industrial (MU-LI) Zoning District, meaning that its conversion to another use requires a Use Permit, replacement space, and special findings.

BMC Section 23.206.050.C (Protected Non-Industrial Uses in the MU-LI and MU-R Districts), states that an Art/Craft Studio "is classified as a protected non-industrial use, provided the use:

- (a) Was legally established as of July 6, 1989; and
- (b) Exists as a single stand-alone use or is combined with residential use in a live/work unit."

The current definition of Art/Craft Studio (amended in 2011) is: *An establishment engaged in the creation of art or crafts that requires artistic skill. Such an establishment may participate in periodic open studios, but otherwise is subject to the applicable zoning district's requirements for incidental sales of goods made on site. Art/craft studios also include rehearsal spaces not designed for public performances. Examples of individuals typically engaged in this work include woodworkers, potters/ceramicists, costume makers, set designers, stained-glass makers, glassblowers, textile artists and weavers, jewelry makers, painters, fine art printmakers, photographers/filmmakers, leather workers, metal workers,*

*musical instrument makers, model makers, papermakers, installation artists, sculptors, video artists, and other makers of art and crafts that the Zoning Officer determines to be consistent with this definition. The use of computers in an activity does not by itself prevent its classification as an art/craft studio. This use excludes architectural and landscape services, industrial or graphic design services, computer systems design services, and other commercial activities normally conducted in an office environment.*

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

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

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

Land Use Division records indicate that zoning certificate business licenses were issued to multiple enterprises leasing space from the Center since around 1998, i.e. after the cut-off for establishing a protected use. Therefore, the existing uses of the building are not protected use.

**Staff's recommendation to the ZAB to APPROVE Administrative Use Permit #ZP2019-0090** pursuant to Section 23B.28.060.C.1 and subject to the Findings and Conditions attached to the staff report dated January 13, 2022 (see Attachment 1) and **DISMISS the Appeal** remains unchanged.

**Attachments:**

1. Staff Report with attachments, dated January 13, 2022
2. Communication to ZAB members from ZAB Secretary, dated April 6, 2022
3. Notice of Public Hearing
4. Communication received WEBAIC

**Staff Planner:** Samantha Updegrave, Zoning Officer, [supdegrave@cityofberkeley.info](mailto:supdegrave@cityofberkeley.info), (510) 981-7414



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

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FOR BOARD ACTION  
JANUARY 13, 2022

## 2600 Tenth Street

**Appeal of Zoning Officer's Decision to approve Administrative Use Permit #ZP2019-0090 to change the use of four existing tenant spaces on the first and second floors, totaling 20,367 square feet, from media production to a research and development use.**

### I. Background

#### A. Land Use Designations:

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

#### B. Zoning Permit Required:

- Administrative Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23E.80.030.A to establish a research and development use.

#### C. CEQA Recommendation:

It is staff's recommendation that the project is categorically exempt pursuant to Section 15301 of the CEQA Guidelines ("Existing Facilities"). The determination is made by ZAB.

#### D. Parties Involved:

- Applicant/Owner: Chris Barlow, Wareham Development, 1120 Nye Street, Suite 400 San Rafael
- Appellants: Alex and Sae Wilmer, Wilmer Sound, 2600 Tenth Street, Suite 101C, Berkeley

Figure 1: Vicinity Map



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Figure 2 : Site Plan

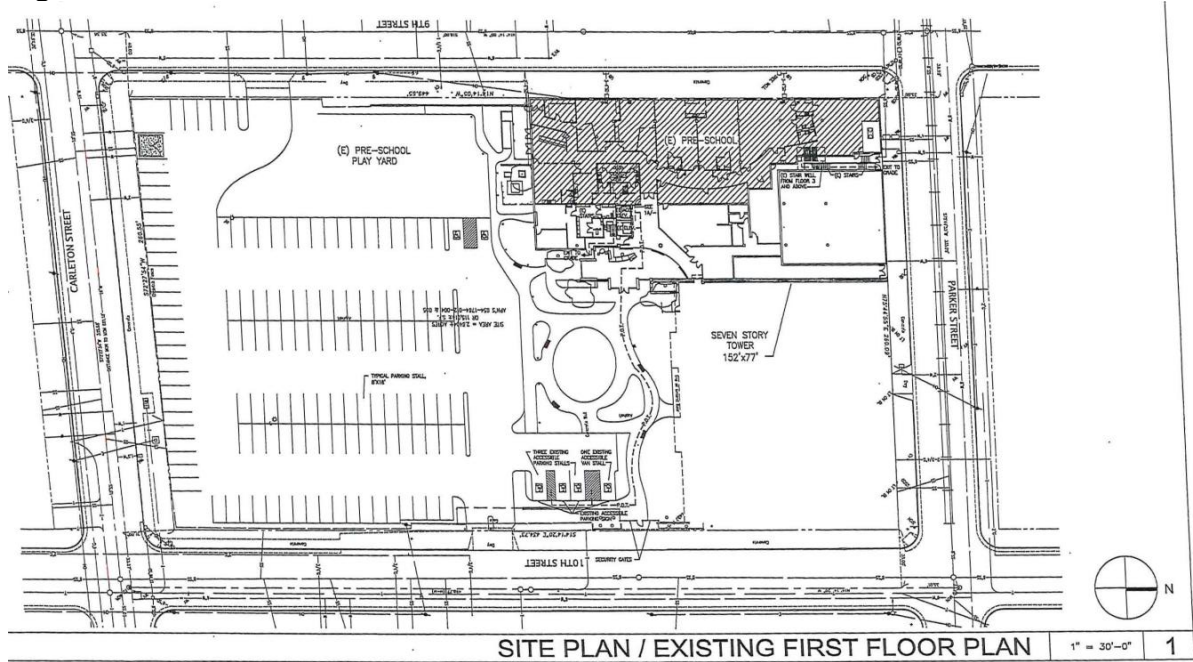
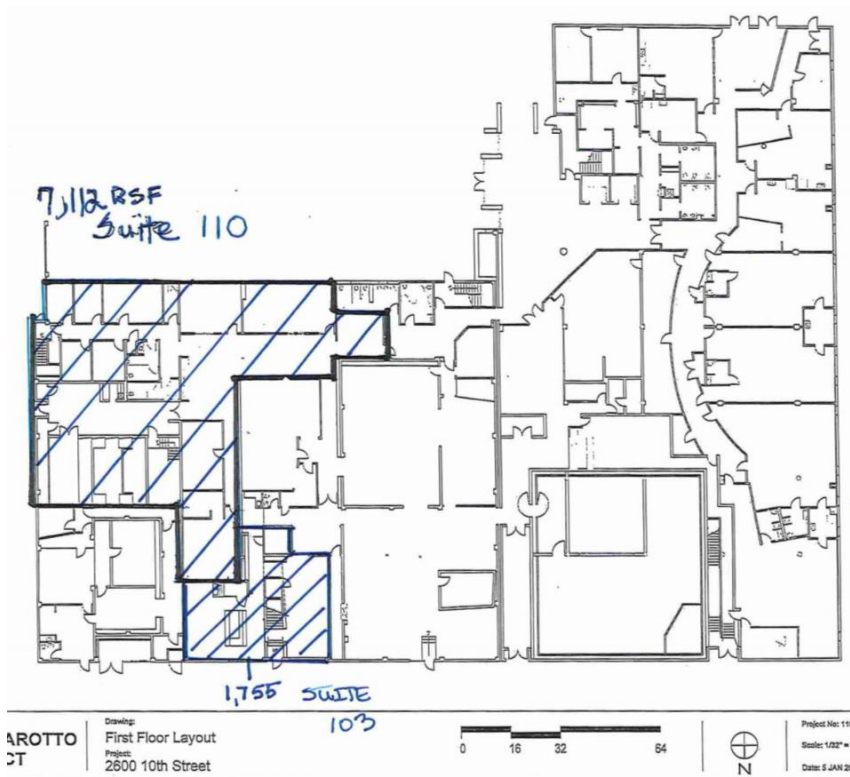
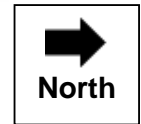
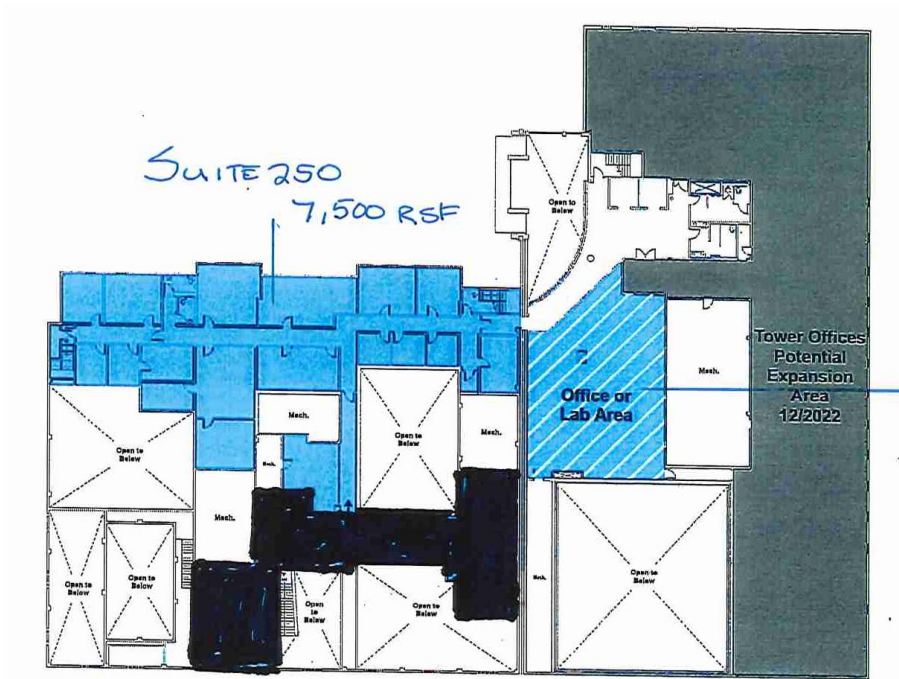


Figure 3: First Floor Plan



**Figure 4 : Second Floor Plan**



**Table 1: Land Use Information**

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

**Table 2: Special Characteristics**

Characteristic	Applies to Project?	Explanation
Affordable Child Care Fee for qualifying non-residential projects (Per Resolution 66,618-N.S.)	No	These fees only apply to net additional, newly constructed gross floor area over 7,500 sq. ft. The project is a change of use of existing gross floor area. No new gross floor area would be constructed. Therefore, the fees do not apply.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)		

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Affordable Housing Mitigations for rental housing projects (Per BMC 22.20.065)	No	The project is not a residential housing project. Therefore, the fee does not apply.
Alcohol Sales/Service	No	The project does not propose any alcohol sales or service.
Coast Live Oaks	No	There are no existing oak trees on the site.
Creeks (Per BMC Section 17.08.045)	No	No creek or culvert, as defined by BMC Chapter 17.08, exists on or within 30' of the site.
Density Bonus	No	The project is not a residential housing project.
Natural Gas Prohibition (Per BMC 12.80.020)	No	The project would not construct a new building.
Historic Resources	No	The project does not propose the demolition or substantial alteration of a building over 40 years old.
Housing Accountability Act (Govt. Code 65589.5(j))	No	The project is not a "housing development project," as the building does not contain dwelling units and no additional units would be created. Therefore, the HAA findings do not apply to this project.
Housing Crisis Act of 2019 (SB330)	No	The project is not a project that is: all residential; a mixed-use project with at least two-thirds of the square-footage residential; or for transitional or supportive housing.
Rent Controlled Units (Per BMC Chapter 13.76)	No	The existing building contains non-residential uses, and thus not subject to the Rent Control Ordinance.
Residential Preferred Parking (RPP) (Per BMC Chapter 14.72)	No	The project site is not located in a zone of the Residential Preferred Parking program.
Seismic Hazards Mapping Act (Per State Hazards Mapping Act)	No	The project site is located in an area susceptible to liquefaction as defined by the State Seismic Hazards Mapping Act (SHMA). However, the project is a change of use. Thus, the project is not subject to additional review to comply with the Act.
Soil/Groundwater Contamination	No	The project site is located in the City's Environmental Management Area; however, the project is a change of use and is not subject to additional review.
Transit and Bicycle Access	Yes	The project site is one block west of the San Pablo Avenue transit corridor, and is approximately 1 mile southeast of the Berkeley Amtrak station. The site is adjacent to the bike boulevard on Ninth Street and the bikeway on Parker Street, which connect to transitways with access to the greater region.

**Table 3: Project Chronology**

Date	Action
May 17, 2019	Application submitted
June 7, 2019	Application deemed incomplete
December 18, 2020	Applicant requested to place application on hold
August 25, 2021	Revised application materials submitted
September 22, 2021	Application deemed complete
October 13, 2021	Notice of Administrative Decision issued
October 28, 2021	Appeal received
December 22, 2021	Public hearing notices mailed/posted
January 13, 2022	ZAB hearing

**Table 4: Development Standards**

Standard		Existing	Proposed/ Approved by Zoning Officer	Permitted/ Required
BMC Sections 23E.80.070-080				
Lot Area (sq. ft.)		115,095	No Change	N/A
Gross Floor Area (sq. ft.)		117,316	No Change	230,190 max.
Floor Area Ratio		1.12	No Change	2 max.
Building Height	Average (ft.)	51	No Change	45 max.
	Maximum (ft.)	90	No Change	45 max.
	Stories	7	No Change	3 max.
Building Setbacks (ft.)	Front	235	No Change	N/A
	Rear	0	No Change	N/A
	Left Side	0	No Change	N/A
	Right Side	0	No Change	N/A
Lot Coverage (%)		35	No Change	N/A
Automobile Parking		105	No Change	78 min.

## II. Project Setting

**A. Neighborhood/Area Description:** The subject site is located on the south side of Parker Street, between Tenth Street and Ninth Street in West Berkeley. The surrounding area contains a mixture of uses, including the recently constructed Kaiser Medical offices to the east, light manufacturing and warehousing to the north, offices to the west, and a parking lot serving the subject property directly south, with additional industrial and office uses further south across Carleton Street (see Figure 1: Vicinity Map).

**B. Site Conditions:** The project site is rectangular, consisting of the one-block area bounded by Park Street to the north, Tenth Street to the east, Carleton Street to the south, and Ninth Street to the west. The parcel is currently developed with two



buildings totaling 117,316 square feet: the two-story structure formerly occupied by the Saul Zaentz Media Center, and a seven-story building for media production and office uses, as well as a child care center serving both on-site employees and Pixar employees, many of whom live in Berkeley. Uses on the site are served by a 105-space surface parking lot with vehicular access from Ninth and Tenth Streets. Both buildings have pedestrian access via an interior landscaped plaza (see Figure 2: Site Plan). The current uses at the site conform to the zoning ordinance; however, the seven-story building, constructed in 1980, is non-conforming for height.

### III. Project Description

The project approved by the Zoning Officer would change the use of four existing tenant spaces on the first and second floors, totaling 20,367 square feet, from media production to research and development. Suite numbers 103, 110, and 250 are located in the two-story portion of the building and Suite 201 is located in the seven-story portion of the existing building (See Figures 3 and 4, Floor Plans).

### IV. Community Discussion

**A. Neighbor/Community Concerns:** Prior to submitting the application, the applicant installed a yellow poster at the site. Staff received communications from a current tenant and one other interested party inquiring about whether the existing space was a 'protected use' under BMC Section 23E.80.040. Staff determined that the existing media production use does not meet the definition of any protected use listed in Section 23E.80.040 of the Zoning Ordinance (see Section V.D below). On June 14, 2021, Staff posted the Notice of Administrative Decision at the site and two nearby locations, and sent notices to abutting and confronting property owners and occupants and to interested neighborhood groups. The appellants emailed Staff with questions and concerns and staff provided responses.

**B. Zoning Officer's Decision to Approve:** The Zoning Officer determined that the proposed project, which would convert four existing media production tenant spaces totaling 20,367 square feet to research and development, with no changes to the exterior of the building, nor added square footage, would not be detrimental to those living and working in the neighborhood because it would be at a location that is planned for mixed-use light industrial development. The project would conform to the applicable provisions of BMC Section 23E.80.070-080, and would not create additional floor area or alterations that would result in detrimental air, views, light, or privacy impacts.

The Zoning Officer also determined, under BMC Section 23E.80.090.B, that the project would be consistent with, and supports implementation of, relevant purposes of the Mixed-Use Light Industrial (MU-LI) District. Specifically, that the project would support the development of a mixed-use light industrial area for a range of compatible uses, encourage the creation and continuation of well-paid jobs which do not require advanced degrees, and will provide a location for research and

development while not interfering with light manufacturing uses or the light manufacturing building stock.

The Zoning Officer also determined that the change of use would be consistent with the West Berkeley Plan in that it would provide additional research and development space, keeping with the land use mix set forth in the Plan, and allowing for continued attraction of new and growth of existing business while maintaining the existing character of the area. This area of Berkeley is characterized by commercial and light industrial activity in close proximity to San Pablo Avenue, easily accessible for employees and patrons by public transportation or automobile. As such, the proposed research and development use would be consistent with surrounding development and contribute to the vitality of West Berkeley's neighborhood, and would not induce a change of use in other areas of West Berkeley where manufacturing and warehousing uses occur.

The Zoning Officer also determined that no additional performance standards are applicable to this project. The existing media production use conforms to the parking requirements in the District, and the project would not result in the creation of new floor area. Therefore, the project would not exceed the amount and intensity of use that can be served by available traffic capacity and parking supply. (see Attachment 1).

The appeal of the administrative decision was filed on October 28, 2021 by the tenant in Suite 101C. The appellant submitted an amended appeal on November 3, 2021 with 17 additional signatures of tenants occupying space used for media production within the building (see Attachment 3).

- C. Public Notice:** On November 6, 2021, Staff notified the applicant and appellant that the public hearing date had been tentatively scheduled for January 13, 2022. On December 22, 2021, the City mailed public hearing notices to all adjacent property owners and occupants within 300 feet of the subject property, and to interested neighborhood organizations. Staff also posted the Notice of Public Hearing at two locations within the immediate vicinity of the subject site. At the time of this writing, Staff has not received any communications regarding this project.

## V. Appeal Issues and Analysis

The issues raised in the appellants' letter and staff's responses are as follows. For the sake of brevity, the appeal issues are not re-stated in their entirety. Please refer to the appeal letter (Attachment 3) for the full text.

- A. Appeal Issue –** The appellants believe that the application should be denied in order to maintain the existing use of the tenant spaces for media production. The appellants contend that media production should be a protected use because it promotes a culture of artists in Berkeley, and as such, the applicant should maintain the existing use at this location in support of that goal. (*Attachment 3, page 2, paragraph 4*).

The appellants also express their belief that the subject building is uniquely zoned and built for media production, that it provides a unique opportunity for artists to produce content at the highest possible caliber, and that the change of use would result in the gradual death of exceptional, internationally recognized art coming from Berkeley. (*Attachment 3, page 2, paragraph 2*).

Staff Response: The existing building contains several tenant spaces that are currently used for media production and office, which are allowable uses in the MU-LI District. The following uses are considered 'protected' in the District (see BMC Section 23E.80.040):

Category 1	Art/Craft Studio
Category 2	Art Galleries, ancillary to Art/Craft Studios and when located in the same building Child Care Facility Family Daycare Home Fine arts performance, instruction and rehearsal studios (dance, music, theater) Theaters, Stage Performance, but excluding Motion Picture Theaters

Media production and office uses allowed in the zone but are not included in the list of 'protected' uses, therefore the special provisions related to changes of use from a protected use to any other use do not apply to this project. A change of use from media production to research and development is allowed subject to approval of an AUP, and the Zoning Officer has determined that the change of use meets the required findings under the Zoning Ordinance, including consistency with the purposes of the District and general non-detriment (see Section IV.B above).

The Zoning Officer and other decision makers, such as the ZAB or City Council, must base the decision to approve or deny a project on the required findings in the Berkeley Municipal Code, in this instance, BMC Sections 23B.28.050.A and 23E.80.090.B. A project cannot be denied or approved based on speculation, unsubstantiated opinions, or the level of support or opposition of various parties regarding its potential economic or social impacts.

**B. Other Issues Raised in Appeal Letter:**

1. The appellants list six observations about the applicant's actions as the owner of the property and landlord of the tenants. These observations include increases in common area maintenance fees and commencement of interior demolition and construction work without prior notice, lack of responsiveness, and leasing space to a tenant without the proper zoning approval. (*Attachment 3, page 1, paragraph 1, 2 and bulleted list*).
2. The appellants contend that, because they are completely surrounded by space that is part of the change of use, their space will also be rezoned and occupied by Bayer when their lease expires. (*Attachment 3, page 2, paragraph 3*).

Staff Response: The observations listed in the appeal letter do not address the findings made by the Zoning Officer regarding the proposed project, and are extraneous,

private tenant-landlord matters. Regarding the observation that the applicant informed the appellant of demolition work that would occur in an adjacent tenant space prior to issuance of the AUP, Staff has referred the appellant to Code Enforcement in the event that work was being conducted without the proper permits. As of this writing, Staff is not aware of any violations that have occurred related to this observation. Regarding the observation that the applicant has been leasing space approved as media production to a tenant operating a general office use without the proper approvals, these observations are unrelated to the findings, and Staff is following up on the matter.

The appellant's current tenant space (101C) is not within the scope of this application. A lease negotiation between a tenant and landlord is a private matter outside the purview of the Zoning Officer or other decision makers, such as the ZAB or City Council. In the event that the applicant submits a new application to change the use of the tenant space currently occupied by the appellant, the proposed change of use would be subject to the provisions of the Zoning Ordinance.

## VII. 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: **APPROVE Administrative Use Permit #ZP2019-0090** pursuant to Section 23B.28.060.C.1 and subject to the attached Findings and Conditions (see Attachment 1) and **DISMISS the Appeal**.

### Attachments:

1. Findings and Conditions, #ZP2019-0090, October 13, 2021
2. Project Plans, received August 25, 2021
3. Letter of Appeal, received October 28, 2021
4. Notice of Public Hearing

**Staff Planner:** Ashley James, [ajames@cityofberkeley.info](mailto:ajames@cityofberkeley.info), (510) 981-7458



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

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## 2600 Tenth Street

### Administrative Use Permit #ZP2019-0090

**To change the use of four existing tenant spaces on the first and second floors, totaling 20,367 square feet, from media production to a research and development use.**

**ZONING OFFICER DECISION:** The Zoning Officer of the City of Berkeley has APPROVED, pursuant to Zoning Ordinance Section 23B.28.050 and subject to the attached findings and conditions (attachment 1), and based on the attached approved plans (attachment 2), an Administrative Use Permit pursuant to:

- Administrative Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23E.80.030.A to establish a research and development use.

**DATE NOTICE IS ISSUED:** October 13, 2021

**APPEAL PERIOD:** October 14, 2021 to November 3, 2021

**ATTACHMENTS:**

1. Findings and Conditions
2. Project Plans, dated received August 13, 2021

**FOR FURTHER INFORMATION:**

All application materials for this project are available online at: <http://www.cityofberkeley.info/zoningapplications> and at the Permit Service Center, Third Floor, at 1947 Center Street, between 8:30 AM to 4 PM Monday, Wednesday - Friday & 8:30 AM to 2:30 PM Tuesday (closed 2<sup>nd</sup> Friday of every month). Questions about the project should be directed to the project planner, Ashley James, at (510) 981-7458 or [AJames@cityofberkeley.info](mailto:AJames@cityofberkeley.info).

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**PUBLIC NOTICE, PURSUANT TO SECTION 23B.28.040 B&C OF THE BERKELEY MUNICIPAL CODE:**

This Notice of Administrative Decision was:

1. Forwarded to the Zoning Adjustments Board and sent to the Main Library;
2. Posted at three visible locations in the vicinity of the subject property and at a bulletin board at the Zoning counter.
3. Mailed to neighborhood and community organizations for which the project falls within their expressed area of interest, as set forth in Section [23B.24.060](#);
4. Mailed to owners and residents of properties abutting and confronting the subject property -or- when for a major residential additions in the R-1(H) District, or any project within the C-T District, to property owners and residents in a 300 foot radius.

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

**TO APPEAL THIS DECISION, PURSUANT TO SECTION 23B.28.060 OF THE BERKELEY MUNICIPAL CODE:**

To appeal this decision, you must:

1. Submit a letter clearly and concisely setting forth the grounds for the appeal, along with the required fee (see below) to the Zoning Officer, at the Permit Service Center, 1947 Center Street, 3rd Floor, Berkeley.
2. The appeal and required fee (see below) must be received prior to 4:00 p.m. on the last day of the appeal period shown above (if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day).
3. Submit the required fee to the Permit Service Center (see above; checks and money orders must be payable to 'City of Berkeley'):
  - a. The basic fee for appeals of a Zoning Officer decision to the Zoning Adjustments Board is \$200. This fee may be reduced to \$75 if the appeal is signed by persons who lease or own at least 35 percent of the parcels or dwelling units within 300 feet of the project site, or at least 20 such persons (not including dependent children), whichever is less.
  - b. The fee for appeals of affordable housing projects (defined as projects which provide 50 percent or more affordable units for households earning 80% or less of Area Median Income) is \$500, which may not be reduced.
  - c. The fee for all appeals by Applicants is \$2500.

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

**NOTICE CONCERNING YOUR LEGAL RIGHTS:**

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

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

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

# ATTACHMENT 1

## FINDINGS AND CONDITIONS

OCTOBER 13, 2021

### 2600 Tenth Street

#### Administrative Use Permit #ZP2019-0090

**To change the use of four existing tenant spaces on the first and second floors, totaling 20,367 square feet, from media production to a research and development use.**

#### PERMITS REQUIRED

- Administrative Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23E.80.030.A to establish a research and development use.

#### 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 would not affect any historical resource.

#### FINDINGS FOR APPROVAL

2. As required by Section 23B.28.050.A of the Zoning Ordinance, the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:
  - Suite numbers 103, 110, and 250 are located in the two-story portion of the building and suite 201 is located in the seven-story portion of the existing building.
  - The proposed project is a change of use that will create a research and development use in the MU-LI (Mixed Use-Light Industrial) District at a location that is planned for mixed-use light industrial development. The project will convert four existing media production tenant spaces totaling 20,367 square feet to research and development, with no changes to the exterior of the building, nor added square footage. The project will conform to the applicable provisions of BMC Section 23E.80.070-080, including floor area ratio, height, yards, and minimum on-site parking.
  - The proposed project is consistent with, and supports implementation of, relevant policies set forth in the adopted West Berkeley Plan in that it will provide additional

research and development space, keeping with the land use mix set forth in the Plan, and allowing for continued attraction of new and growth of existing business while maintaining the existing character of the area.

- The immediate surrounding neighborhood includes properties zoned for MU-LI to the north and west, properties zoned MU-R (Mixed Use-Residential) to the south, and properties zoned C-W (West Berkeley Commercial) to the east. Businesses in the immediate vicinity include offices, medical offices, light manufacturing and warehousing, and food service establishments. The project site has a General Plan designation of Manufacturing. This area of Berkeley is characterized by commercial and light industrial activity in close proximity to San Pablo Avenue, easily accessible for employees and patrons by public transportation or automobile. Therefore, the proposed research and development use is consistent with surrounding development and will contribute to the vitality of West Berkeley's neighborhood.
3. As required by BMC Section 23E.80.090.B, the Zoning Officer finds that the project is: (1) consistent with the purposes of the District; (2) compatible with the surrounding uses and buildings; (3) consistent with the adopted West Berkeley Plan; (4) is unlikely, under reasonably foreseeable circumstances, to either induce a substantial change of use in buildings in the District from manufacturing, wholesale trade or warehousing uses; (5) is designed in such a manner to be supportive of the light industrial character of the district; and (6) is capable of meeting any applicable performance standards for off-site impacts. The project is permissible for the following reasons:
- The change of use from media production to research and development is consistent with the purposes of the MU-LI District because it will support the development of a mixed-use light industrial area for a range of compatible uses, encourage the creation and continuation of well-paid jobs which do not require advanced degrees, and will provide a location for research and development while not interfering with light manufacturing uses or the light manufacturing building stock.
  - The change of use is compatible with the surrounding uses and buildings, as it will not result in any changes to the exterior of the building.
  - The change of use is consistent with the West Berkeley Plan because, as noted above, the project will provide a location for research and development while not interfering with light manufacturing uses or the light manufacturing building stock, and will thus not induce a change of use in other areas of West Berkeley where manufacturing and warehousing uses occur.
  - The Zoning Officer finds that no additional performance standards are applicable to this project. The existing media production use conforms to the parking requirements in the District, and the project will not result in the creation of new floor area. Therefore, the project will not exceed the amount and intensity of use that can be served by available traffic capacity and parking supply.
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## STANDARD CONDITIONS

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The following conditions, as well as all other applicable provisions of the Zoning Ordinance, apply to this Permit:

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

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

**2. 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 issued is permitted unless the Permit is modified by the Zoning Officer, except that the Zoning Officer may approve changes that do not expand, intensify, or substantially change the use or building.

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

Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

**6. Subject to All Applicable Laws and Regulations (Section 23B.56.040)**

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments.

**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. Indemnification Agreement**

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

**ADDITIONAL CONDITIONS IMPOSED BY THE ZONING OFFICER**

Pursuant to BMC 23B.28.050.D, the Zoning Officer attaches the following additional conditions to this Permit:

**Prior to Submittal of Any Building Permit:**

- 10. Project Liaison. The applicant shall include in all building permit plans and post onsite the name and telephone number of the individual empowered to manage complaints generated from the project. The individual's name, telephone number, and responsibility for the project shall be posted at the project site for the duration of the project in a location easily visible to the public. The individual shall record all complaints received and actions taken in response, and submit written reports of such complaints and actions to the project planner on a weekly basis. **Please designate the name of this individual below:**

**Project Liaison**

\_\_\_\_\_ Name

\_\_\_\_\_ Phone #

**During Construction:**

11. Transportation Construction Plan. The applicant and all persons associated with the project are hereby notified that a Transportation Construction Plan (TCP) is required for all phases of construction, particularly for the following activities:
- Alterations, closures, or blockages to sidewalks, pedestrian paths, or vehicle travel lanes (including bicycle lanes);
  - Storage of building materials, dumpsters, debris anywhere in the public ROW;
  - Provision of exclusive contractor parking on-street; or
  - Significant truck activity.

The applicant shall secure the City Traffic Engineer's approval of a TCP. Please contact the Office of Transportation at 981-7010, or 1947 Center Street, 4<sup>th</sup> floor, and ask to speak to a traffic engineer. In addition to other requirements of the Traffic Engineer, this plan shall include the locations of material and equipment storage, trailers, worker parking, a schedule of site operations that may block traffic, and provisions for traffic control. The TCP shall be consistent with any other requirements of the construction phase.

Contact the Permit Service Center (PSC) at 981-7500, or 1947 Center Street, 3<sup>rd</sup> floor for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dashboard permits). Please note that the Zoning Officer and/or Traffic Engineer may limit off-site parking of construction-related vehicles if necessary to protect the health, safety or convenience of the surrounding neighborhood. A current copy of this Plan shall be available at all times at the construction site for review by City Staff.

12. Construction activity shall be limited to between the hours of 8:00 a.m. and 6:00 p.m. on Monday through Friday, and between 9:00 a.m. and noon on Saturday. No construction-related activity shall occur on Sunday or on any Federal Holiday.
13. 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.
14. All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter in thickness and secured to the ground.

**Prior to Issuance of Occupancy Permit or Final Inspection:**

15. All construction at the subject property shall substantially conform to the approved Use Permit drawings or to modifications approved by the Zoning Officer.
16. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated August 13, 2021.

**At All Times (Operation):**

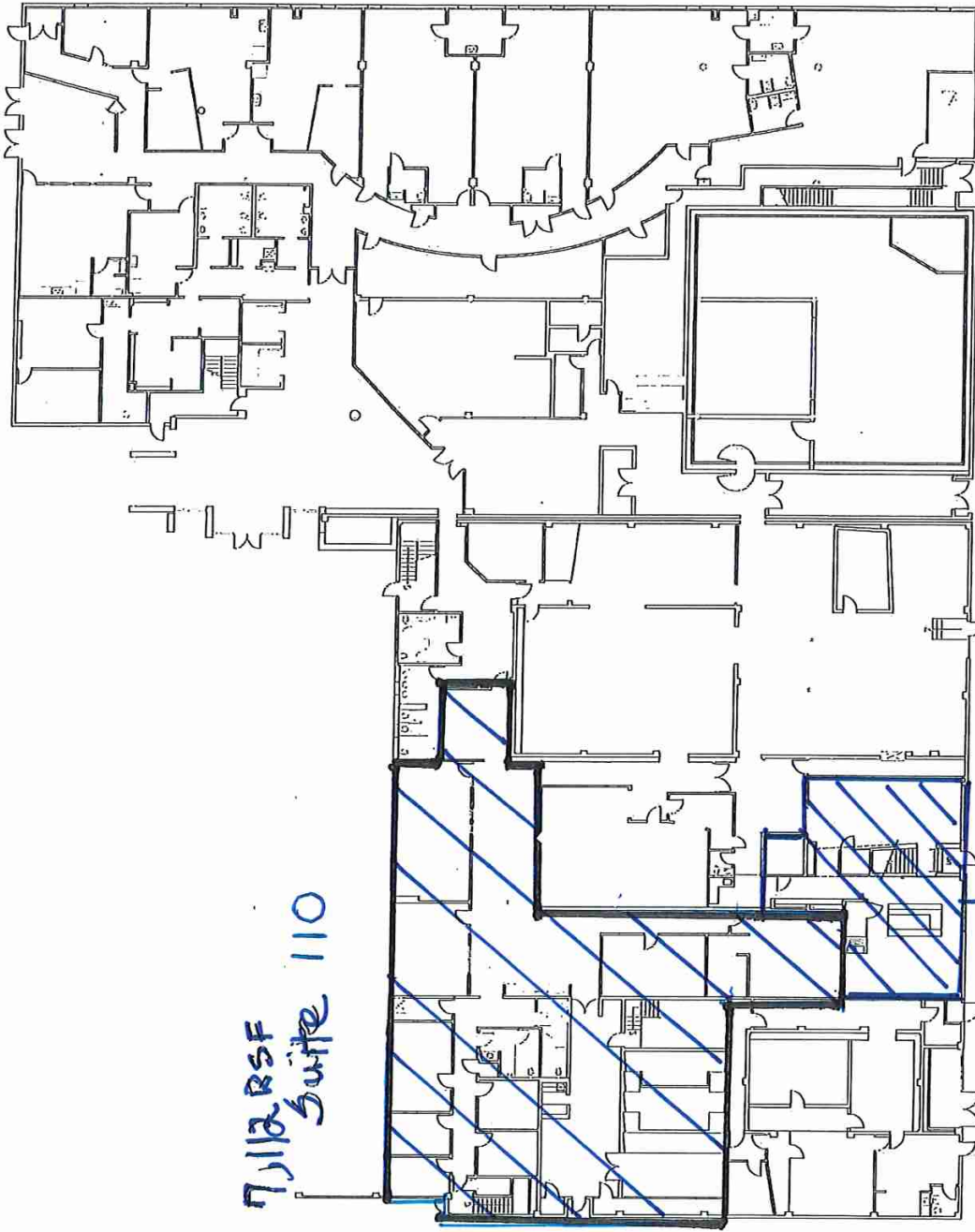
17. This permit is subject to review, imposition of additional conditions, or revocation if factual complaint is received by the Zoning Officer that the maintenance or operation of this establishment is violating any of these or other required conditions or is detrimental to the health, safety, peace, 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.
18. 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.
19. Transit Subsidy. The business operator shall reimburse employees the maximum non-taxable cost of commuting to and from work on public transportation (e.g., monthly passes) if they so commute, and a notice informing employees of the availability of such subsidy shall be permanently displayed in the employee area, pursuant to BMC Section 9.88.



---

Prepared by: Ashley James, Associate Planner  
For Samantha Updegrave, Zoning Officer

PLANS APPROVED by  
  
October 13, 2021  
SIGNATURE DATE  
\*ALP Findings and Conditions Attached





7,112 RSF  
Suite 110

1,756 SUITE  
103

**ROLAND LAZZAROTTO ARCHITECT**

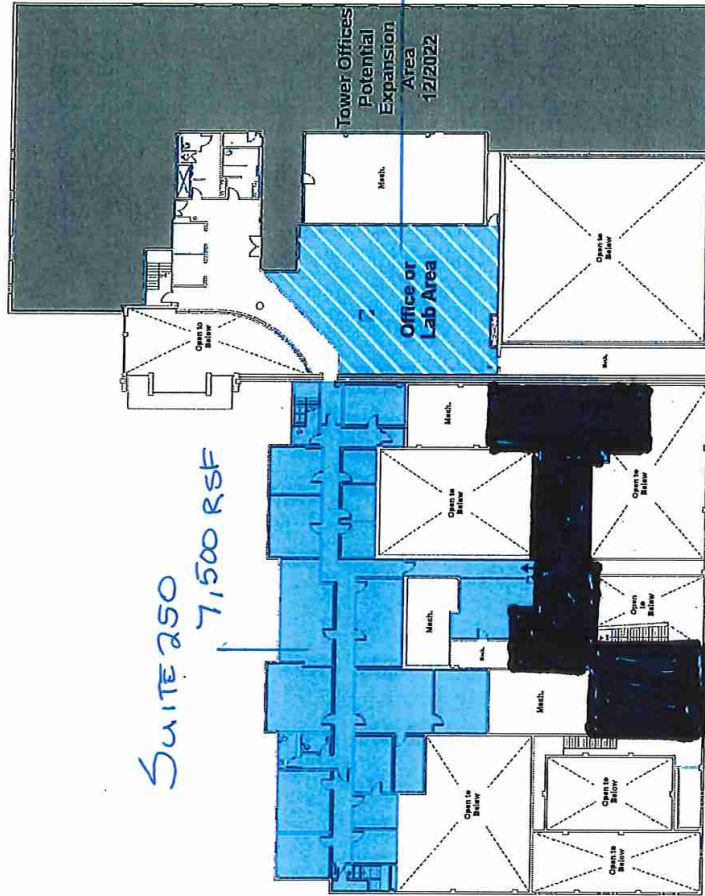
Drawing: First Floor Layout  
Project: 2600 10th Street

Project No: 1102.02  
Scale: 1/32" = 1'-0"  
Date: 5 JAN 2021



2600 TENTH STREET, BERKELEY, CA  
13 August 2021  
2ND FLOOR PLAN -  
EXISTING CONDITIONS  
SCALE: 1/32" = 1'-0"

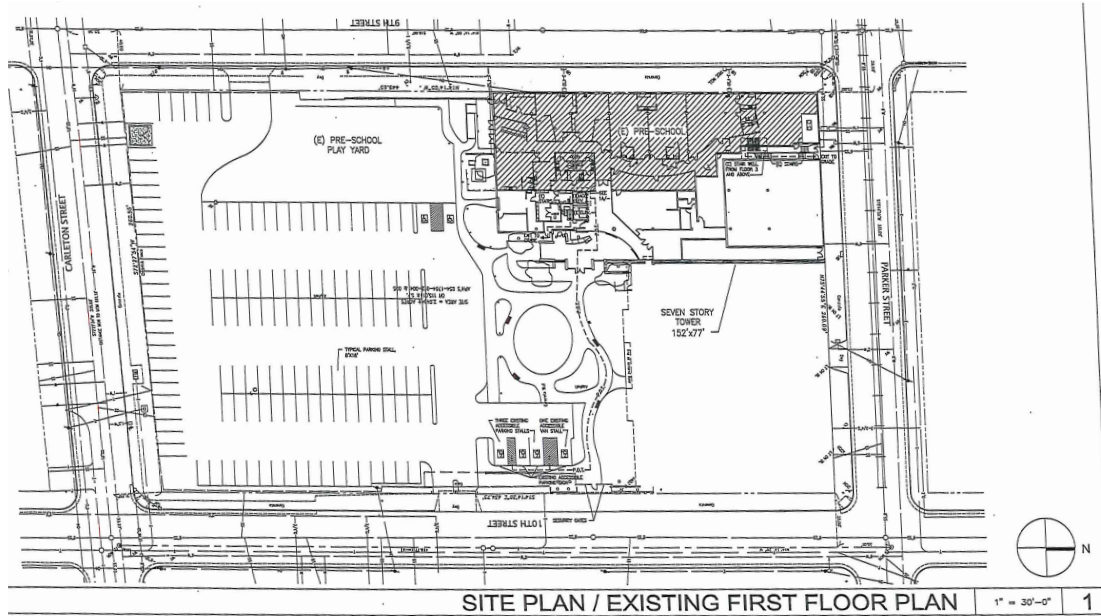
PLANS APPROVED by  
  
October 13, 2021  
SIGNATURE DATE  
\*AUP Findings and Conditions Attached

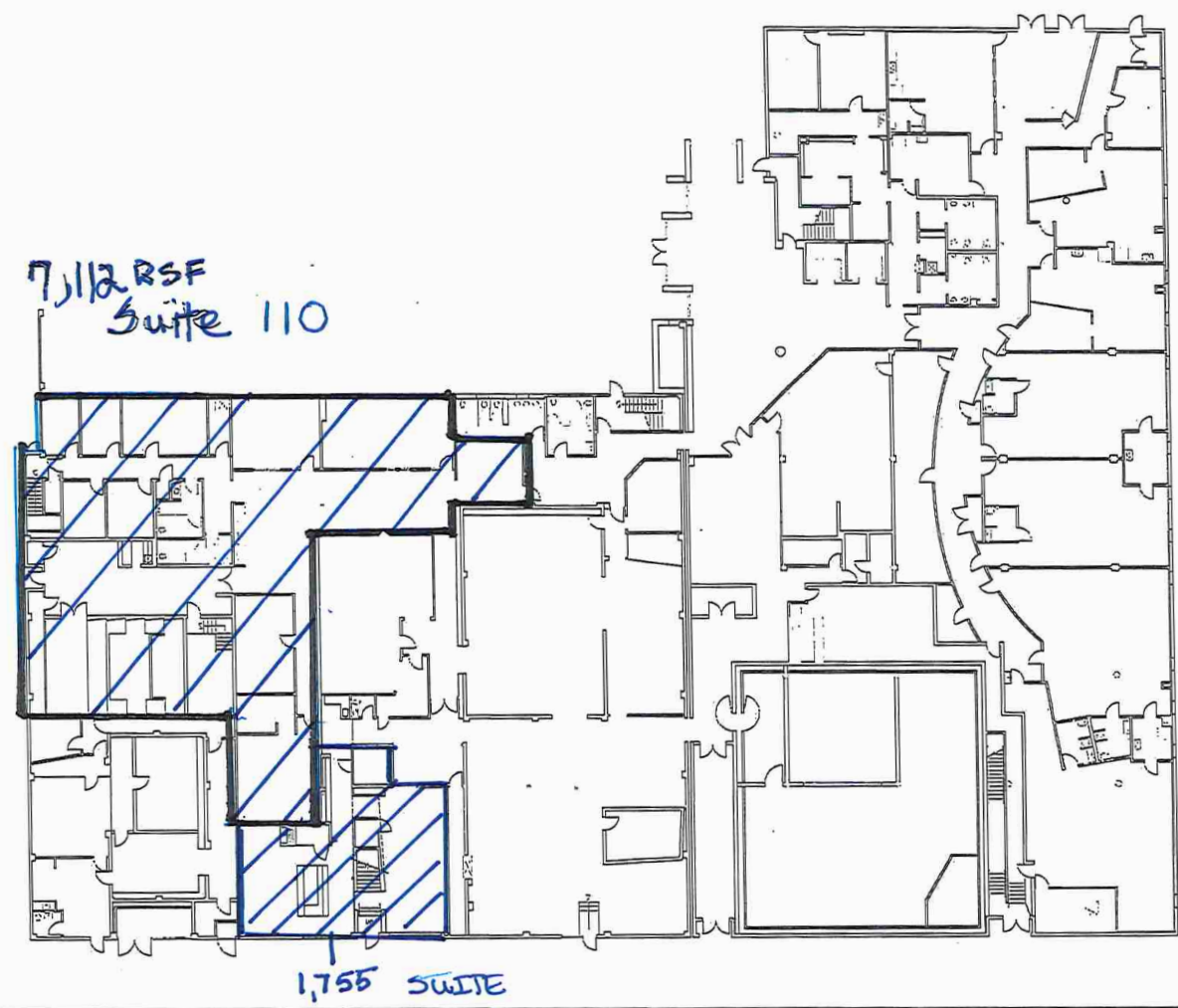


TOTAL 11,500 RSF

WAREHAM  
DEVELOPMENT







ROLAND LAZZAROTTO  
ARCHITECT

Drawing:  
First Floor Layout  
Project:  
2600 10th Street

1,755 SUITE  
103



Project No: 1102.02  
Scale: 1/32" = 1'-0"  
Date: 5 JAN 2021

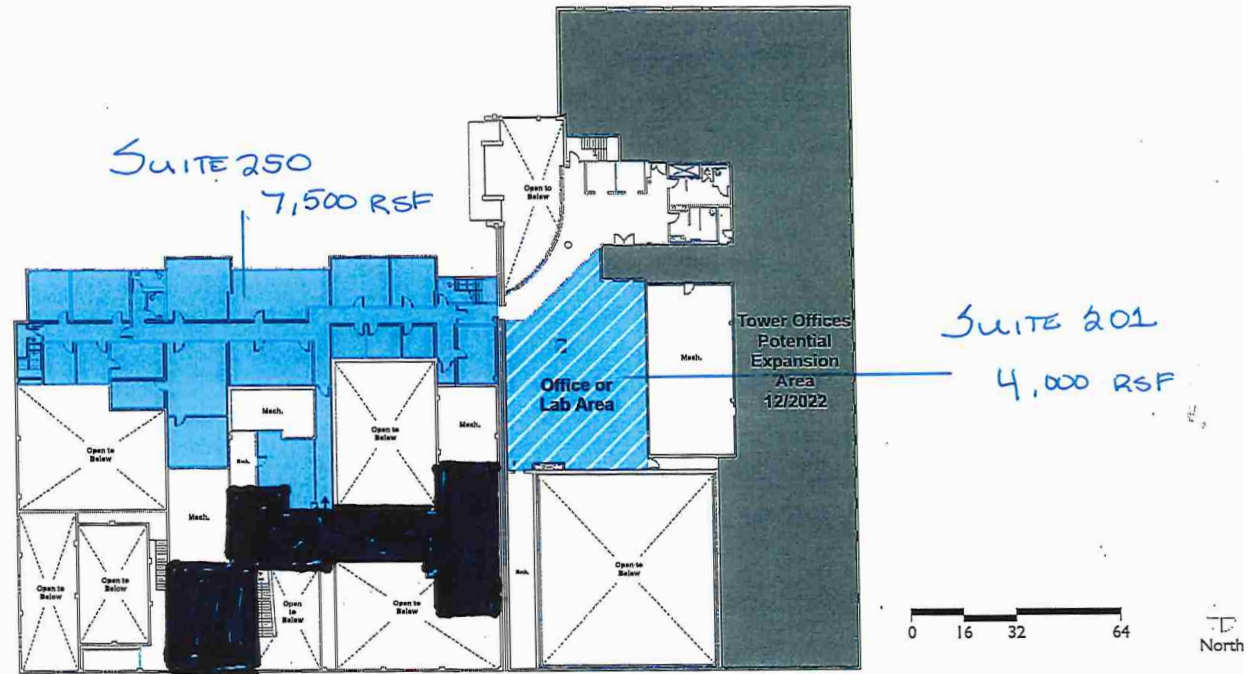


2600 TENTH STREET, BERKELEY, CA

2ND FLOOR PLAN -  
EXISTING CONDITIONS

13 August 2021

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



TOTAL 11,500 RSF

Received  
NOV 03 2021  
Land Use Planning

WILMER



SOUND

Alex Wilmer | Wilmer Sound, 2600 10th St. Ste101C, Berkeley, CA 94710 | alex@wilmersound.com | +1-510-325-0239

Berkeley Permit Services Center  
1947 Center St. Third Floor  
Berkeley, CA 94704

November 2nd, 2021

Re: A Letter to Appeal Permit #ZP2019-0090

To whom it may concern,

A version of this letter was submitted on October 28, 2021. Since then, the appeal has gained the support of many artists and tenants working at 2600 Tenth St. It has come to our attention that all of the current tenants on the 6th floor of the building are being relocated to make space for the Bay Area Academy, a non-media production company. Their signatures appear at the end of this letter. It is important to stress the impact that these people have had on the arts.

It has come to our attention that Wareham has been granted an application to convert media production space at 2600 Tenth street into research and development with the likely intention of having Bayer to occupy it. We do not believe that this is in the best interest of the City of Berkeley. We have intimate knowledge of this situation as we are tenants with offices that are completely surrounded by the space that they have requested to be rezoned. We believe that our space will also be rezoned and demolished when our lease expires. We would like to list a number of key observations that we have made regarding this matter that might help to clarify our objection to this decision.

1. In 2019, Wareham tried to move us out of our space and into a similar space. After we outlined the improvements necessary, Wareham decided to not continue the conversation.
2. Wareham increased our CAM (common area maintenance fee) from \$15.29 a month in 2018 to \$1122.51 a month in 2021. This was done without explanation even after requesting details necessitating this increase for more than a year.
3. In 2020, Wareham performed very loud and prolonged demolition of two recording studios, Fantasy Studios' Studio A and Studio B, along with echo chambers during regular

business hours without notice. This impeded our ability to conduct business. When we asked for a schedule of the construction, we were not provided one.

4. Wareham has not responded to requests to extend our lease and to lease more space to grow our current business and to house a new media enterprise that we are looking to locate.
5. Wareham has informed us that they plan to begin demolition of an adjacent media space on November 1st, 3 days before their property is rezoned.
6. To the best of our knowledge, Wareham has been leasing media production space to The Bay Area Academy, which is not a media production company.

Our business, Wilmer sound, produces audio for Motion Pictures, Television and Video Games. We work on children's entertainment like the animated cartoon series, *Go Go Cory Carson* on Netflix. We broadcast and stream live events like *Black Voices in Gaming*. A show that promotes the work of Black independent video game developers that has over 5 million views.

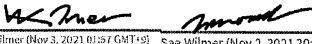
This building is uniquely zoned and built for our exact purposes, and the purposes of many other great storytellers and entertainers that occupy it. There is no other building like it in Berkeley or the Bay Area. It provides a unique opportunity for artists to produce content at the highest possible caliber. The demolition of two recording studios has been the equivalent of watching the pyramids be torn down to make way for an office building. It reflects a complete lack of understanding of the value that this building has to our culture and society. Were it to be rezoned, we would see the gradual death of exceptional, internationally recognized art, coming from Berkeley.

Like every other artist in this building, we have dedicated our careers to enhancing and enriching the lives of everyone on this planet by creating entertainment with a positive message. It is a difficult path that requires a lot of support. Support that we believed that we had by our landlords, because of the nature of the building. Wilmer Sound invested one quarter of a million dollars in tailoring its studio to its needs, an investment that we believed would slowly pay for itself in the years to come. Instead, we find that we are being choked to death to make way for a company that was found guilty of inadequately informing the public about the toxicity of their product, resulting in over 42,000 people developing cancer.

The measure of a civilization is how it treats its weakest members. Artists are weak when compared with almost any other business. They must be protected in order to thrive. Zoning this building for media production protects them and promotes a culture of artists in Berkeley. We do not have the resources to fight with Wareham; we require the help of the city. This letter is all we have. We believe that the choice that Berkeley City has is simple. We believe that not every building needs to be about maximizing profit. Some buildings exist to promote culture. And we believe that those who own them, need to accept them for what they are.

Thank you for your attention.

Sincerely,



---

Alex Wilmer (Nov 3, 2021 01:57 GMT+9) Sae Wilmer (Nov 2, 2021 20:46 GMT+9)

Alex Wilmer & Sae Wilmer, BAFTA Nominated Audio & Music Supervisor and Audio Producer

Sincerely,

*N. Jed Riffe*

N Jed Riffe (Nov 2, 2021 11:35 PDT)

---

Jed Riffe, Filmmaker

Sincerely,

*Nancy Kates*

Nancy Kates (Nov 2, 2021 16:28 PDT)

Nancy Kates, Producer/Director

Sincerely,

*kim christensen*  
kim christensen (Nov 2, 2021 14:52 PDT)

Kim B Christensen, Sound Designer, Re-recording mixer

Sincerely,



---

Stanley Moore (Nov 3, 2021 08:55 EDT)

Stanley Moore, Emmy Winning Director



Sincerely,



---

James LeBrecht, Academy Award Nominated Filmmaker

Sincerely,

*David A. Wolf*

David A. Wolf (Nov 2, 2021 11:26 PDT)

David A. Wolf, Filmmaker

Sincerely,

*Tim Hahn*

---

Tim Hahn (Nov 2, 2021 10:44 PDT)

Tim Hahn, Executive Producer

Sincerely,

*Alex Woo*

---

Alex Woo (Nov 2, 2021 19:54 PDT)

Alex Woo, Emmy Winning Director

Sincerely,

*Vivian Kleiman*  
Vivian Kleiman (Nov 2, 2021 11:18 PDT)

Vivian Kleiman, Award Winning Filmmaker

Sincerely,

*Tom Christopher*

Tom Christopher (Nov 2, 2021 16:58 PDT)

Tom Christopher, Academy Award Nominated and Emmy Nominated Filmmaker

Sincerely,

*John Douglas White*  
John Douglas White (Nov 2, 2021 16:04 PDT)  
John D White, Filmmaker

Sincerely,

  
Marilyn Mulford (Nov 2, 2021 11:30 PDT)

Marilyn Mulford, Academy Award Nominated Filmmaker



Sincerely,

*Steven Okazaki*

steven okazaki (Nov 2, 2021 16:49 PDT)

Steven Okazaki, Academy Award and Emmy Winning Filmmaker

Sincerely,

*Jason Cohen*

Jason Cohen (Nov 2, 2021 10:26 PDT)

Jason Cohen, Academy Award Nominated Filmmaker

Sincerely,

A handwritten signature in black ink, appearing to read "J. Capobianco", written in a cursive style.

---

Jim Capobianco, Academy Award Nominated Filmmaker

Sincerely,



---


Alex D. da Silva, Filmmaker

Sincerely,

Connie Field  
Connie Field (Nov 4, 2021 02:08 GMT+0)

Connie Field, Academy Award Nominated and Emmy Winning Director

Sincerely,

  
Frank Zamacona (Nov 2, 2021 15:34 CDT)  
Frank Zamacona, Director and Producer

11/3/21, 1:13 PM

Invoice\_Custom - Report Viewer

1 of 1 Find | Next



Permit Service Center  
 Building and Safety Division  
 1947 Center St. 3rd Floor  
 Berkeley, CA 94704

# INVOICE

Date: 10/28/21

Invoice #: 478798

Record #: ZP2019-0090

Bill to:

Address: 2600 TENTH ST

Chris Barlow  
 2600 10TH ST  
 BERKELEY CA 94710-2597

Date Assessed	Invoiced Fee Item	Fee	Paid	Balance
10/28/2021	APPEAL of AUP - Non Applicant APPL010	\$200.00	(\$200.00)	\$0.00
<b>Totals:</b>		\$200.00	(\$200.00)	\$0.00

COB1\N Armour

Print Date: 11/3/2021



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

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NOTICE OF PUBLIC HEARING

## 2600 Tenth Street

**Appeal of Zoning Officer's Decision to approve Administrative Use Permit #ZP2019-0090 to change the use of four existing tenant spaces on the first and second floors, totaling 20,367 square feet, from media production to a research and development use.**

The Zoning Adjustments Board of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 23B.32.020, on January 13, 2021, **conducted via Zoom, see the Agenda for details:**

[https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_ZAB/2022-01-13\\_ZAB\\_Agenda.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_ZAB/2022-01-13_ZAB_Agenda.pdf). The meeting starts at 7:00 p.m.

**PUBLIC ADVISORY:** Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the Zoning Adjustments Board (ZAB) will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.

**A. Land Use Designations:**

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

**B. Zoning Permit Required:**

- Administrative Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23E.80.030.A to establish a research and development use.

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

**D. Parties Involved:**

- Applicant/Owner: Chris Barlow, Wareham Development, 1120 Nye Street, Suite 400 San Rafael
- Appellants: Alex and Sae Wilmer, Wilmer Sound, 2600 Tenth Street, Suite 101C, Berkeley



**Further Information:**

All application materials are available at the Land Use Planning Division, during normal office hours or online at: <http://www.cityofberkeley.info/zoningapplications>. The Zoning Adjustments Board agenda and all agenda materials regarding this project will be available online 6 days prior to this meeting at: <http://www.cityofberkeley.info/zoningadjustmentsboard>.

Questions about the project should be directed to the project planner, Ashley James, at (510) 981-7458 or [ajames@cityofberkeley.info](mailto:ajames@cityofberkeley.info).

Written comments or a request for a Notice of Decision should be directed to the Zoning Adjustments Board Secretary at [zab@cityofberkeley.info](mailto:zab@cityofberkeley.info).

**Communication Disclaimer:**

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

**Communications and Reports:**

Written comments must be directed to the ZAB Secretary at the Land Use Planning Division (Attn: ZAB Secretary), or via e-mail to: [zab@cityofberkeley.info](mailto:zab@cityofberkeley.info). All materials will be made available via the Zoning Adjustments Board Agenda page online at this address: <https://www.cityofberkeley.info/zoningadjustmentboard/>.

**Correspondence received by 8:00 AM, on the Thursday before this public hearing, will be provided with the agenda materials provided to the Board.** Note that if you submit a document of more than 10 pages, or in color, or with photos, you must provide 15 copies. Correspondence received after this deadline will be conveyed to the Board in the following manner:

- **Correspondence received by Noon Tuesday**, the week of this public hearing, will be conveyed to the Board in Supplemental Communications and Reports #1, which is released the end of the day Tuesday, two days before the public hearing;
- **Correspondence received by Noon Wednesday**, the week of this public hearing, will be conveyed to the Board in Supplemental Communications and Reports #2, which is released the end of the day Wednesday, one day before the public hearing; or
- **Correspondence received by 3 PM Thursday** will be given to the Zoning Adjustment Board just prior to the public hearing.

Members of the public may submit written comments themselves at the meeting. To distribute correspondence at the meeting, please provide 15 copies and submit to the Zoning Adjustments Board Clerk. Correspondence received later, and after the meeting, will be posted to the web site following the meeting.



**Accessibility Information / ADA Disclaimer:**

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

**SB 343 Disclaimer:**

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the Land Use Planning Division, during regular business hours.

**Notice Concerning Your Legal Rights:**

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

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

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

**From:** [Updegrave, Samantha](mailto:supdegrave@cityofberkeley.info)  
**To:** [zab@cityofberkeley.info](mailto:zab@cityofberkeley.info)  
**Subject:** Clarification on memo from the City Attorney re: 2600 Tenth Street  
**Date:** Tuesday, April 5, 2022 5:10:00 PM  
**Attachments:** [image001.png](#)  
[image003.png](#)

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Dear Zoning Adjustments Board members,

We received questions from some ZAB members about the confidential nature of the memo that the City Attorney's office provided to you last month, per your request made at the January 13, 2022 hearing. I hope this email provides context and answers your questions.

The Zoning Adjustments Board (ZAB) is one of six quasi-judicial commissions, meaning it has the authority to make binding decisions that require or restrict the actions of individuals ([Commissioner's Manual](#), page 19). Under [Section 23.402.040.C](#) of the Berkeley Municipal Code (BMC), the Zoning Officer, as Secretary to the ZAB, may transmit requests for legal opinions on pending applications to the City Attorney. The City Attorney's office advises the City Council and City departments, and the legal analysis they provide is attorney-client privileged.

After closing the public hearing on the 2600 Tenth Street appeal at the ZAB meeting on January 13, 2022, ZAB passed a motion requesting a legal opinion from the City Attorney's office on whether the existing use is Media Production or if it is Art/Craft Studio, a protected use under certain circumstances, and continued the item to a date uncertain.

On March 25, 2022, the City Attorney's office provided a confidential memo to the ZAB of their analysis of the categorization of the existing use and applicability of the protected use provisions in Title 23 of the BMC. As the City's legal advisors, the response to ZAB's request is confidential.

Please note that this communication will be attached to the hearing packet, which will be published no later than April 21, 2022 (seven days prior to the hearing).

Best,  
Samantha

---

**Samantha Updegrave**, LEED AP (she/her)  
Zoning Officer, Principal Planner  
Planning and Development, Land Use Division  
1947 Center St., 2<sup>nd</sup> Floor, Berkeley, CA 94704

**Phone:** (510) 981.7414

**Website:** [www.cityofberkeley.info](http://www.cityofberkeley.info)

**Email:** [supdegrave@cityofberkeley.info](mailto:supdegrave@cityofberkeley.info)





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

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NOTICE OF PUBLIC HEARING

## 2600 Tenth Street

**Appeal of Zoning Officer's Decision to approve Administrative Use Permit #ZP2019-0090 to change the use of four existing tenant spaces on the first and second floors, totaling 20,367 square feet, from media production to a research and development use.**

The Zoning Adjustments Board of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 23.406.040.D, on April 28, 2022, **conducted via Zoom, see the Agenda for details at:**

[https://www.cityofberkeley.info/uploadedFiles/Planning\\_and\\_Development/Level\\_3\\_-\\_ZAB/2022-04-28\\_ZAB\\_Agenda.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_ZAB/2022-04-28_ZAB_Agenda.pdf). The meeting starts at 7:00 p.m.

**PUBLIC ADVISORY:** Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the Zoning Adjustments Board (ZAB) will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.

**A. Land Use Designations:**

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

**B. Zoning Permit Required:**

- Administrative Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23E.80.030.A to establish a research and development use.

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

**D. Parties Involved:**

- Applicant/Owner: Chris Barlow, Wareham Development, 1120 Nye Street, Suite 400 San Rafael
- Appellants: Alex and Sae Wilmer, Wilmer Sound, 2600 Tenth Street, Suite 101C, Berkeley

**Further Information:**

All application materials are available at the Land Use Planning Division, during normal office hours or online at: <http://www.cityofberkeley.info/zoningapplications>. The Zoning Adjustments Board agenda and all agenda materials regarding this project will be available online 6 days prior to this meeting at: <http://www.cityofberkeley.info/zoningadjustmentsboard>.

Questions about the project should be directed to the project planner, Ashley James, at (510) 981-7458 or [ajames@cityofberkeley.info](mailto:ajames@cityofberkeley.info).

Written comments or a request for a Notice of Decision should be directed to the Zoning Adjustments Board Secretary at [zab@cityofberkeley.info](mailto:zab@cityofberkeley.info).

**Communication Disclaimer:**

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

**Communications and Reports:**

Written comments must be directed to the ZAB Secretary at the Land Use Planning Division (Attn: ZAB Secretary), or via e-mail to: [zab@cityofberkeley.info](mailto:zab@cityofberkeley.info). All materials will be made available via the Zoning Adjustments Board Agenda page online at this address: <https://www.cityofberkeley.info/zoningadjustmentboard/>.

**Correspondence received by 8:00 AM, on the Thursday before this public hearing, will be provided with the agenda materials provided to the Board.** Note that if you submit a document of more than 10 pages, or in color, or with photos, you must provide 15 copies. Correspondence received after this deadline will be conveyed to the Board in the following manner:

- **Correspondence received by Noon Tuesday**, the week of this public hearing, will be conveyed to the Board in Supplemental Communications and Reports #1, which is released the end of the day Tuesday, two days before the public hearing;
- **Correspondence received by Noon Wednesday**, the week of this public hearing, will be conveyed to the Board in Supplemental Communications and Reports #2, which is released the end of the day Wednesday, one day before the public hearing; or
- **Correspondence received by 3 PM Thursday** will be given to the Zoning Adjustment Board just prior to the public hearing.

Members of the public may submit written comments themselves at the meeting. To distribute correspondence at the meeting, please provide 15 copies and submit to the Zoning Adjustments Board Clerk. Correspondence received later, and after the meeting, will be posted to the web site following the meeting.



**Accessibility Information / ADA Disclaimer:**

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

**SB 343 Disclaimer:**

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the Land Use Planning Division, during regular business hours.

**Notice Concerning Your Legal Rights:**

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

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

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

# WEST BERKELEY ARTISANS & INDUSTRIAL COMPANIES WEBAIC

2743 NINTH ST. BERKELEY, 94710 WEBAIC.ORG 510-910-0568

**To: Berkeley Board of Adjustments members,  
Re: appeal of Administrative Use Permit #ZP2019-0090 for 2600 Tenth St:**

The West Berkeley Artisans & Industrial Companies Association (WEBAIC) **supports the appeal** of the City of Berkeley Zoning Officer's decision to approve Administrative Use Permit #ZP2019-0090 to change the use of four existing tenant spaces on the first and second floors at 2600 Tenth St. totaling 20,367 square feet, from media production to a research and development use.

**WEBAIC contends that Wareham Corporation was erroneously given change of use permits from media to research and development on these spaces because:**

**1.) These spaces are, and have been, "Protected Non-Industrial" arts studios as defined in the Zoning Ordinance Table 23.206-8, Section 23.206.050 C that can not legally be converted to non-protected uses without creation of equivalent replacement space as required by BMC section 23.206.050 C. 4 (a). See 1. for details below.**

**(a) In response to 2008 Wareham Use Permit requests at 2600 Tenth St. two separate 2008 ZAB Planning Staff reports staff and Wareham Corporation statements in 3 separate places definitively define the spaces now at issue as "existing protected uses", i.e. "To support the operation's long term success, over the years the owner's have invested in very specialized tenant improvements, including screening rooms and award-winning recording and mixing studios, which are "protected uses" in the MULI district." – from FEBRUARY 14, 2008 Staff Report - 2600 Tenth Street Variance #07-10000132 to operate a child care center for children of Pixar employees. See 1.(a) below.**

Present staff **can not** remove a determination that previous staff has made that these spaces are "protected uses" when nothing has changed in the BMC that would support such a re-determination.

**2. Evidence that the spaces at issue were in use as protected arts uses prior to the determinate date of July 6, 1989. See 2. (a) below.**

**3. Use Permit #ZP2019-0090 Inconsistent with West Berkeley Plan Goals and Policies:**

Allowing the conversion of these spaces from protected Arts Uses to research and development violates Goals and Policies of the West Berkeley Plan specifically intended to protect and encourage Arts uses, arts employment, and the cultural enrichment that arts activities bring to the City and its citizens. The Plan specifically seeks to "protect arts and crafts uses from displacement" while strongly identifying Research and Development as a use that - unlike the Arts - is "strongly supported by the market" and can easily displace arts and industrial uses if they're not protected or protections are not enforced. See 3.(a) below.

**4. The West Berkeley Plan's identifies R&D uses as "supported by the market", as opposed to industrial and arts uses, thus clarifying why the "protected uses" provisions were installed into the West Berkeley Plan and the zoning. See 4. (a) below.**

**5. Creation of the Arts Protections in the West Berkeley Plan and the BMC. See 5 (a) below.**



**Corroborating information for the above contentions are found in the West Berkeley Plan, the Berkeley Municipal Code, the spaces' historical use records, public and Planning staff documents:**

**1. Berkeley Municipal Code evidence that the spaces are "Protected Non-Industrial Uses."**

**Staff contention that spaces at issue are not "protected uses.":**

In the ZAB Staff Report for Board Action January 13, 2022, under IV. Community Discussion - A. Neighbor/Community Concerns, staff writes: "Staff determined that the existing media production use does not meet the definition of any protected use listed in Section 23E.80.040 of the Zoning Ordinance. Under V. - Appeal Issues and Analysis, staff writes that "Media production and office uses (are) allowed in the zone but are not included in the list of 'protected' uses, therefore the special provisions related to changes of use from a protected use to any other use do not apply to this project."

**WEBAIC rebuttal to staff contention. The spaces at issue are absolutely "protected uses.":**

**Section 23.206.050 C.** addresses and defines **Protected Non-Industrial Uses** in the MULI. In support of their contention staff posts **Table 23.206-8** from **Section 23.206.050 C.** showing "Art/Craft Studio" as a protected use:

Category 1 - **Art/Craft Studio**, and  
Category 2 – 4). Fine arts performance, instruction and rehearsal studios (dance, music, theater)  
5). Theaters, stage performance, but excluding motion picture theaters

While referring to this table to prove that the existing uses (or any arts/crafts occupations) are not listed as protected, staff failed to refer to BMC Chapter 23.502 GLOSSARY, 23.502.020, Defined terms, to determine what ARE the activities taking place in an Art/Craft Studio that define it as "protected" under the Zoning's Arts Protections.

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

It is WEBAIC's contention that staff did not refer to the Glossary of Defined Terms in their Use Permit determination, and therefore did not understand that the consistent historical uses of these spaces absolutely deems them as "protected uses."

Clearly, "filmmakers" and "video artists" occupying an Arts Studio qualify it as what the BMC defines as "Protected Non-Industrial Space" which **can not** be converted, except without complying with the C.4 (a) Findings provision of **23.206.050 C. 2. Permit Required for Change of Use**: "To approve a permit required by Table 23.206-9, the review authority must find that space occupied by the existing non-industrial protected use will be replaced with a comparable space in the West Berkeley Plan area, which is reserved for use by any protected use in the same category."

**An additional requirement for a studio to be deemed a “protected use” is found here:**

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

It is clear in the public and COB records (see below) that these protected uses were established as early as 1971, clearly well before the cut-off date of July 6,1989. Therefore, the spaces at issue ARE “Non-Industrial protected use” space.

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

**1.(a) Planning Staff’s 2008 definitive determination that the spaces at issue are “protected uses.”**

**In 2008 Wareham Corporation applied for a variance to operate a child care center at 2600 Tenth St. The following is from two staff reports on this variance request that define the existing spaces at issue as “protected uses.”:**

Zoning Adjustments Board 2600 Tenth Street Variance Request #07-10000132 to operate a child care center for children of Pixar employees: Attachment 1 - Findings and Conditions - VARIANCE FINDINGS:

“D. The facility houses over 40 different businesses and organizations that contribute to an interactive arts community. To support the operation’s long term success, over the years the owner’s have invested in very specialized tenant improvements, including screening rooms and award-winning recording and mixing studios, **which are “protected uses” in the MULI district.**”

GENERAL NON-DETRIMENT FINDING

G. The MULI district identifies child care centers as “protected uses” and the West Berkeley Plan and General Plan promote a mix of uses.

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

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 - F O R B O A R D A C T I O N  
FEBRUARY 14, 2008 2600 Tenth Street Variance #07-10000132

“Finally, the MULI District allows the conversion of one protected use to another by the granting of an administrative use permit. In other words, if the applicant chooses to convert studios or screening rooms to a child care center, he could hypothetically do it with an administrative use permit. However, the conversion of such space would be contrary to the applicant’s goal of retaining the **existing protected uses**, and therefore, the applicant requests a Variance to convert space that has been used as offices and storage to the proposed child care center.”

**2. (a) Evidence that the spaces at issue were established as uses deemed “protected” previous to the July 6, 1989 date of determination:**

**From COB 2008 Staff Report to ZAB:** Applicant’s (Wareham) statements: - “Note that the 1985 Academy award winning sound productions work for Amadeus was all performed at the building.”

- “The Fantasy recording studios were first opened in 1971...”

A. The buildings have been used as a multi-media center since they were constructed over 30 years ago  
VARIANCE FINDINGS: “A. The two buildings on the project site were built in 1974 (2-story annex) and 1981 (five story tower constructed on top of a 2-story building, resulting in a 7-story tower) to house recording studios, screening rooms, and related media uses. They have been used as a multi-media center since they were constructed.”

From July 28, 2019 Berkeleyside article by Frances Dinkelspiel:

“Fantasy Studios, internationally renowned film and music studio, to close its doors”: “The financial success of *One Flew Over the Cuckoo’s Nest* enabled Zaentz to add a new seven-story building in 1980 that became one of the defining features of West Berkeley’s skyline. The new structure contained a fully equipped dubbing stage and picture and sound editing suites.” “We offer services such as ISDN to link to studios worldwide, comprehensive media transfer work, editing and on-site mastering. We are available for film, video, photo shoots, live streaming, conferences, and special events.”

**City of Berkeley’s West Berkeley Arts Survey:** The City of Berkeley’s Arts Commission under the Office of Economic Development commissioned a West Berkeley Arts Survey between 2007 and 2010. This survey documented 33 protected arts uses at 2600 Tenth St, most of which were deemed to be established before 1989. This document is available through the City of Berkeley or through WEBAIC.

**3. (a) WEBAIC rebuttal to staff’s contention that AUP #ZP2019-0090 is consistent with the West Berkeley Plan. AUP #ZP2019-0090 Inconsistency with West Berkeley Plan Goals and Policies:**

In the staff report “the Zoning Officer finds that the project is: (1) consistent with the purposes of the District; (2) (and)...; (3) consistent with the adopted West Berkeley Plan;

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

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

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

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

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

**WEBAIC Comment:** Administrative Use Permit #ZP2019-0090 violates Goal 7's commitment to "protect arts and crafts...businesses...from displacement." It additionally violates Goal 7's Policy to "use zoning... to assure that artists and craftspeople remain a vital part of the West Berkeley community." In contradiction to the above WB Plan Goals and Policies, **AUP #ZP2019-0090 as constituted is a mechanism to displace arts and crafts enterprises and assures that artists (particularly endangered film and sound artists) do not "remain a vital part of the West Berkeley community".**

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

**2. Arts and Crafts--Review the functioning of the arts and crafts Ordinance, and develop recommendations about how it can best be implemented.**

### **Other West Berkeley Plan policies supporting Arts & Crafts Uses:**

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

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

**2. Arts and Crafts--Review the functioning of the arts and crafts Ordinance, and develop recommendations about how it can best be implemented.**

Goals and Policies Implemented: Goal 7, Policy 7A - Responsibility: City Planning Department, in consultation with affected parties. Funding: Regular staff funding

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

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

**The West Berkeley Plan specifically called out R&D as a use that is "supported by the market" that could displace uses such as Arts & Crafts uses that are NOT "supported by the market", and therefore require special zoning support (Arts/Crafts protections) to "remain part of the mix**

The West Berkeley Plan's overriding goal is to retain the area's dynamic "economic mix" of uses. To accomplish this it recognizes some sectors are "supported by the market" and thus do not require special zoning support, while other sectors that bring important economic, social, and cultural value to our City are not supported by the market and require special zoning to assure they "remain part of the mix." The West Berkeley Plan clearly recognizes R&D as economically "supported by the market" while recognizing Arts & Crafts and Industrial uses as not being supported by the market. To assure these uses "remain part of the mix" the the WB Plan installed Arts & Crafts and Industrial protection zoning provisions into the zoning:

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

**I. Economic Rationale of the Plan:** The City's economic policy must ...strike a balance between working within market... realities on the one hand, and guiding and regulating economic actors to achieve City goals on the other. ...a policy which passively followed dominant market forces would not necessarily achieve City economic goals (and would not require a Plan). Market forces...strongly support the development of advanced services (e.g. research laboratories).”

“While support for advanced services (research laboratories) ...is also important, these sectors are generally supported, rather than threatened, by market developments. Thus, the policy structure for these sectors should be different.” “Perhaps the strongest benefit from advanced services (e.g. software preparation, research laboratories, architecture & engineering) come from the high salaries paid to the professional element of its workforce.”

**Goal 4: Rationale:**...research activities generally provide jobs solely for the highly trained...

**5. (a) Creation of the Arts Protections in the West Berkeley Plan and the BMC.**

As representative of Southwest Berkeley Merchants, Artists, Artisans, and Residents (MAARS), Rick Auerbach sat on the West Berkeley Plan subcommittee of the Planning Commission for 8 years where the original Arts Protections were conceived of. It was during this period that the list of protected arts uses was created with extensive staff and community input.

In the subsequent creation of the zoning language to reflect the intentions of the WB Plan, Planning staff consulted with Mr. Auerbach and SW Berkeley MAARS on the language and content of the Arts Protections. From the inception of the Arts protections, “filmmakers” was always included as one of the protected uses in this section of the BMC. Around 2008 the Arts Commission was charged with updating this definition to reflect modern changes to arts occupations and processes. As a working artist, WEBAIC representative, and consultant on the West Berkeley Arts Survey, Mr. Auerbach was invited by the Arts Commission to participate in the discussion and creation of the updated definition of Arts and Crafts. It is with this direct experience of the original creation and further delineation of the BMC’s definition of “protected” arts uses that WEBAIC believes the existing definition of “protected” Arts and Crafts Studio uses definitively includes the “filmmakers” (including sound artists) and video artists historically, and presently occupying and working in the studios at issue at 2600 Tenth St.