

LAND USE PLANNING FEE WORKSHEET – FOR INTERNAL USE ONLY

Project Address: 3001 Telegraph

Intake Planner: pmj

PERMIT #1 – Project Description

(e.g., "New Building @ 123 Main St")

AUP Appeal @ 3001 Telegraph

Project Type Code: App1
Subtotal: \$ 200

Application #: 18-6

Project Data Maintenance		Zoning District(s):
Zoning Section	Description	
1) 23	Use Permit/AUP to	RECEIVED
2) 23	Use Permit/AUP to	
3) 23	Use Permit/AUP to	MAR 29 2013
4) 23	Use Permit/AUP to	
5) 23	Use Permit/AUP to	LAND USE PLANNING
6) 23	Use Permit/AUP to	

PERMIT #2 – Project Description

(e.g., "New Building @ 123 Main St")

Project Type Code: φ
Subtotal: \$ φ

Application #: φ-φ

Grand Total (Permits 1 and 2): \$ 200

Project Fees Maintenance				Provide quantity for all that apply. No check marks!
Qty.	Base Fee	15% GPP	Sub-Total	Description
200 AUP – Administrative Use Permits				
	\$2520 ⁰	\$378	\$2898	AUP Tier 1 - Most complex projects in or adjacent to Residential District
	\$1620 ⁰	\$243	\$1863	AUP Tier 2 – Intermediately complex projects in or adjacent to Residential District
	\$720 ⁰	\$108	\$828	AUP Tier 3 – Least complex projects in or adjacent to Residential District
	\$1440 ⁰	\$216	\$1656	AUP Tier 4 – Other Activities (residential or commercial) NOT in or adjacent to Residential District
	\$180 ⁰	\$27	\$207	AUP Teaching-Related Home Occupation (Moderate impact)
	\$320	---	\$320	Traffic Engineering Review (base fee, up to 2 hours)
	\$160	---	\$160	Traffic Engineering Review (per hour in excess of first 2 hours)
	\$360	\$54	\$414	Additional Use Permits
	⁰ \$50	---	\$50	Records Management

Qty	Base Fee	15% CPF	Sub Total	Description
100 UPPH – Use Permits				
	\$3092 ^{①②}	\$463.80	\$3555.80	UPPH Level 1 – Use Permit (all other projects)
	\$4320 ^{①②}	\$648	\$4968	UPPH Level 2 – Base fee (24 hours x \$180) <ul style="list-style-type: none"> • Non-residential projects in a Residential district • Mixed-Use buildings creating more than 20,000 gross sq. ft. • New construction or “major” renovation of a Landmarked building or site or Structure of Merit • Any new main building • Master Use Permit of Development Permit required by a Specific Plan
	\$180	\$27	\$207	UPPH Level 2 - \$207 per hour (includes CPF) of staff time in excess of that covered by the base fee
	\$640	---	\$640	Traffic Engineering Review (base fee, up to 4 hours)
	\$160	---	\$160	Traffic Engineering Review (per hour in excess of first 4 hours)
	\$360	\$54	\$414	Additional Use Permits (\$414 each)
	^① \$50	---	\$50	Records Management
	^② \$1025	---	\$1025	ZAB Public Hearing Fee
100 VAR – Variances (1 per code section)				
	\$880 ^{①②}	\$132	\$1012	VAR Tier 1 - Yard, Height, Useable Open Space, Lot Coverage, Parking
	\$3600 ^{①②}	\$540	\$4140	VAR Tier 2 – Inadvertent Demolition of Residential Structure
	\$7241 ^{①②}	\$1086	\$8327	VAR Tier 3 – All Others
	\$360	\$54	\$414	Additional Variances (\$414 each)
	^① \$50	---	\$50	Records Management
	^② \$1025	---	\$1025	ZAB Public Hearing Fee
700 MOD – Modifications				
	\$360 ^①	\$54	\$414	MOD Administrative Use Permit Modification
	\$960 ^①	\$144	\$1104	MOD Use Permit Modification (ZAB Review – No Public Hearing)
	\$2880 ^①	\$432	\$3312	MOD Use Permit Modification (ZAB Review – Public Hearing Required)
	^① \$50	---	\$50	Records Management
ER – Environmental Review				
	\$2897	---	\$2897	ER Negative Declaration or Mitigated Negative Declaration (or cost of CEQA consultant plus \$180 per hour for staff time)
	\$5068	---	\$5068	ER Environmental impact Report (deposit plus consultant cost plus \$180 per hour for staff time)
		---		ER Mitigation Monitoring (\$180 per hour; no charge for first hour)
	\$160	---	\$160	\$160 per staff hour. ER Peer review of traffic impact studies and EIRs submitted by traffic engineering consultants for large development projects
	\$180	---	\$180	\$180 per hour of staff time

^① Subject to Records Management Fee (\$50)

REGISTRATION
 Date: 3/29/13 01 Receipt no: 168442
 Total tendered \$200.00
 Total payment \$200.00

999 MISC – Miscellaneous Zoning Fees				
	\$180	---	\$180	MISC Housing Density Bonus Analysis (\$180 per hour)
		---		MISC Other Zoning Fees
	\$180	---	\$180	MISC Zoning Research (\$180 per hour)
	\$180	---	\$180	MISC Oak Tree Review (\$180 per hour)
	\$180	---	\$180	MISC Use Permit Monitoring (\$180 per hour)
	\$180	---	\$180	MISC Transfer (Use Permit or Variance)
	\$750	---	\$750	MISC Pre-Application Review – Staff Level
	\$3000	---	\$3000	MISC Pre-Application Review – ZAB or PC
	\$160	---	\$160	MISC Pre-Application consultation of walk-in requests for Traffic Engineering Review

Add-on Fees - These fees must be applied to a permit type (above) – cannot be applied alone				
		---		Penalty for Legalization of Work w/o Permits (only when NOV has been filed; enter total project fees)
	\$180	---	\$180	Zoning Certificates – Staff Time Beyond 1 Hour (\$180 per hour)
	\$1000	---	\$1000	Dedicated Project Review – Deposit Toward Hourly Fee
	\$180	---	\$180	Dedicated Project Review – Hourly Fee (\$180 per hour)

600 APPL – Appeals				
<u>1</u>	\$200	---	\$200	APPEAL of AUP - Non Applicant
	\$75	---	\$75	APPEAL Fee Reduced of AUP – Non Applicant
	\$500	---	\$500	APPEAL of AUP - Affordable Housing Project (Non Applicant)
	\$2500	---	\$2500	APPEAL of AUP - Applicant
	\$95	---	\$95	APPEAL of DRC or DRSL - Non Applicant
	\$1734	---	\$1734	APPEAL of DRC or DRSL - Applicant
	\$842	---	\$842	APPEAL of SUBD to PC / CC – Applicant
	\$102	---	\$102	APPEAL of SUBD to CC – Non-Applicant

900 - ZC - Zoning Certificate				
	\$60	----	\$60	ZC Low Impact Home Occupation
	\$180	---	\$180	ZC Building Permit Residential ADU
	\$180	---	\$180	ZC Business License – New Use
	\$60	---	\$60	ZC Business License – Continuation of Lawful Existing Use

Qty	Base Fee	15% CPF	Sub-Total	Description
300 DRCL – Design Review Committee Level				
	\$1738 ^①	---	\$1738	DRCL Preliminary – Valuation \$50k or less
	\$1103 ^①	---	\$1103	DRCL Final – Valuation \$50k or less
	\$2608 ^①	---	\$2608	DRCL Preliminary – Valuation \$50,001 – \$1,999,999
	\$1286 ^①	---	\$1286	DRCL Final – Valuation \$50,001 – \$149,999
	\$4500 ^①	---	\$4500	DRCL Preliminary – Valuation \$2 million or more – Base Fee (25 hours)
	\$180	---	\$180	DRCL Preliminary – Valuation \$2 million or more – staff time in excess of that covered by the base fee
	\$3684 ^①	---	\$3684	DRCL Final – Valuation \$150k or more
	\$456 ^①	---	\$456	DRCL Preview
	\$547 ^①	---	\$547	DRCL Modifications
	^① \$50	---	\$50	Records Management
300 DRSL – Design Review Staff Level				
	\$532 ^①	---	\$532	DRSL Signs/Awnings
	\$1158 ^①	---	\$1158	DRSL Staff – Valuation \$50k or less
	\$1883 ^①	---	\$1883	DRSL Staff – Valuation \$50,001 – \$1,999,999 Million
	\$2160 ^①	---	\$2160	DRSL Staff – Valuation \$2 million or more – Base Fee (12 hours)
	\$180	---	\$180	DRCL Staff – Valuation \$2 million or more – staff time in excess of that covered by the base fee
	^① \$50	---	\$50	Records Management

^① Subject to Records Management Fee (\$50)

Qty	Base Fee	15% CPF	Sub Total	Description
400 LPC – Landmarks Preservation Commission				
	\$50 ^①	---	\$50	LPC Initiation – Structure
	\$50 ^①	---	\$50	LPC Initiation – District
	\$0 ^①	---	\$0	LPC Alteration – Res. Project / Non-Res. Project in Res. District
	\$818 ^①	---	\$818	LPC Signs/Awnings
	\$1055	---	\$1055	LPC Demolition Review – Non-Res. Project over 40 years old
				LPC Alteration – Non-Res. Project in Non-Res. District
	\$1738 ^①	---	\$1738	• Project valued under \$50,000
	\$2608 ^①	---	\$2608	• Project valued between \$50,001 and \$1,999,999
	\$4500 ^①	---	\$4500	• Project valued between \$2,000,000 or more – Base Fee (25 hours)
	\$180	---	\$180	• Project valued between \$2,000,000 or more – staff time in excess of that covered by the base fee
	\$3600 ^①	---	\$3600	LPC Mills Act Contract Application Processing
	\$2160 ^①	---	\$2160	LPC Mills Act Contract Monitoring (payable upon contract execution and every 5 years thereafter)
	^① \$50	---	\$50	Records Management
000 SUBD – Subdivisions/Condo Conversions				
	\$6748 ^①	---	\$6748	SUBD Condo Conversion – 1-4 units
	\$10121 ^①	---	\$10121	SUBD Condo Conversion – 5+ units (includes PC Public Hearing Fee)
	\$2978 ^①	---	\$2978	SUBD Notice of Local Law Compliance
	\$120	---		SUBD Rent Board Review (\$120 per unit)
	^① \$50	---	\$50	Records Management

^① Subject to Records Management Fee (\$50)

^② Subject to Public Hearing Fee (\$1025)

Zoning Officer
City of Berkeley
Permit Service Center
2120 Milvia Street, 1st Floor
Berkeley, California

RECEIVED

MAR 29 2013

March 29, 2013

LAND USE PLANNING

RE: Appeal of Administrative Use Permit #13-20000024 for 3001 Telegraph Avenue

To the Zoning Officer:

This letter is submitted to appeal the decision of the City of Berkeley to issue Administrative Use Permit #13-20000024 for 3001 Telegraph Avenue (the "Subject Property") to allow the use of approximately 2,063 sq ft of the ground floor commercial space for a coffee shop.

Identity of Appellants

Appellant Bateman Neighborhood Association ("BNA") is a nonprofit mutual benefit corporation. The "Bateman Neighborhood" includes all that property located in the City of Berkeley, County of Alameda, State of California within the area bounded on the North by the center of Ashby Avenue, on the South by the boundary line of the City of Oakland, on the East by the center of College Avenue, and on the West by the center of Telegraph Avenue.

The purposes of BNA are (1) to provide a means by which the residents, property owners and business owners of the Bateman Neighborhood can identify and resolve issues that affect the quality of life in the Bateman Neighborhood, including but not limited to land use, safety, traffic, and parking; (2) to represent the residents of the Bateman Neighborhood on matters that affect them to other neighborhood associations, institutions, City officials and staff, City Boards and Commissions, and the Berkeley City Council; (3) to educate the residents of the Bateman Neighborhood about the issues that affect, or may affect, the quality of life and to educate members of institutions that affect the Bateman Neighborhood about the Bateman Neighborhood's concerns; (4) to set priorities for the Bateman Neighborhood, and to plan for its future; and (5) to promote personal and property safety, and a sense of well-being in the Bateman Neighborhood.

Appellant James D. Smith is a resident of the Bateman neighborhood. Mr. Smith resides at 3031 Dana Street, approximately two blocks from the Subject Property.

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Grounds of Appeal

The grounds of appeal are:

1. The permit was granted in error because the finding that the proposed use is compatible with existing commercial and residential uses is not supported by substantial evidence in the record. The proposed use is the same as numerous existing local businesses and threatens the continued commercial viability of those existing businesses. The proposed use generates unquantified and unmitigated negative traffic congestion and safety impacts, and unquantified and unmitigated parking impacts on the surrounding residential areas.

2. The permit was granted in error because the finding that the proposed use is compatible with existing commercial and residential uses because it “would complement the neighborhood by providing a new amenity” is not supported by substantial evidence in the record. This finding is contradicted by the significant number of commercial establishments that already serve the neighborhood and passing pedestrians, including, but not limited to Whole Foods, located across the street from the Subject Property, and one and a half blocks away at Mokka; and several other existing coffee shops within a five block radius of the property.

3. The permit was granted in error because the finding the proposed use is compatible with adjacent commercial and residential uses would “encourage pedestrian-oriented activity” is not supported by substantial evidence in the record. In fact, the proposed use will increase automobile traffic congestion and reduce traffic safety on Ashby and Telegraph.

4. The permit was granted in error because the finding that the proposed use is compatible with existing commercial and residential uses by contributing to a “mix of uses to improve neighborhood identity and the continuity of retail services at the ground level” is not supported by substantial evidence in the record.

5. The permit was granted in error because the Zoning Officer did not comply with Berkeley Municipal Code Section 23E.36.080. Section 23E.36.080 requires a quick serving food establishment to provide one off-street parking space for every 300 square feet of the floor area of the establishment. The proposed use will occupy 2,063 square feet. The AUP record states that seven spaces are required. However, the Zoning Officer applied a requirement of only three off-street parking spaces. The AUP record

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also states that 38 of the available parking spaces in the enclosed garage are reserved for the residential units. By increasing the allocation of off-street parking to the residential units, Applicant appears to be operating the project out of compliance with Use Permit #08-10000092 because it allows only 34 of those garage spaces to be used for the residential units. (See January 26, 2010 memo to City Council from the City Manager re appeal of Use Permit #08-10000092, attachment 1, Exhibit A, at 2, paragraph B.) No further permit should have been granted in this circumstance.

6. The permit was granted in error because the finding that the off street parking requirement can be waived because the proposed use “would likely increase pedestrian activity” is not supported by substantial evidence in the record.

7. The permit was granted in error because the finding that the off-street parking requirement can be waived because the proposed use “would primarily serve residents and workers in the neighborhood who are most likely to walk to the establishment rather than drive” is not supported by substantial evidence in the record. This use would be located on two major commute corridors for automobile traffic moving through Berkeley and would likely exacerbate traffic congestion and reduce traffic safety in the area as drivers stop for food and/or drinks on their way to work.

8. The permit was granted in error because the finding that off-street parking requirement can be waived because the proposed use “would primarily serve those residing and working within the neighborhood and not a broader city-wide clientele and therefore would not significantly increase the traffic circulation or parking demand in the area” is not supported by substantial evidence in the record. The Zoning Officer failed to consider the effect of the proposed use on traffic congestion and safety; the effect of the proposed use and the off-street parking waiver on the acute parking shortage in the neighborhood due to the location of Alta Bates hospital one block from the proposed use; the proximity to the Elmwood shopping district; the proximity to the UC campus; and the proximity to other commercial uses, all of which generate significant demand for parking.

9. The permit was granted in error because the Zoning Officer did not comply with the findings requirements of Berkeley Municipal Code Sections 23E.36.090 and 23E.28.140. The Zoning Officer failed to make any finding required by Section 23E.28.140C. The Zoning Officer failed to make any finding required by 23E.28.140B regarding whether the proposed use would substantially reduce the availability of on-street parking in the vicinity of the use. The other findings the Zoning Officer made

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pursuant to other provisions of Section 23E.28.140 are not supported by substantial evidence in the record as set forth above. For example, the Zoning Officer counted 12 bike rack spaces as grounds for the reduction in the off-street parking requirement, as if these bike spaces would reduce the traffic and parking impacts of the proposed commercial use. However, these bike spaces are located in the enclosed garage and are not accessible to the customers of the proposed use. (See Applicant's revised project description, administrative record at 201, Permit #08-10000092 for 3001 Telegraph Avenue).

10. The permit was granted in error because the finding made pursuant to Berkeley Municipal Code Section 23B.28.050 that the proposed use will not be detrimental to the welfare of persons residing or working the vicinity of the proposed use is not supported by substantial evidence in the record as set forth above.

11. The permit was granted in error because it is inconsistent with the purposes of the C-1 Zoning District as set forth in Berkeley Municipal Code Section 23E.36.020D because it is not compatible with adjacent commercial development, and instead threatens the economic viability of existing neighborhood-serving businesses.

12. The permit was granted in error because it is inconsistent with the purposes of the C-1 Zoning District as set forth in Berkeley Municipal Code Section 23E.36.020B because it undermines the purpose of providing a wide variety of commercial uses by repetition of the same use already provided.

13. The permit was granted in error because it is inconsistent with the City of Berkeley General Plan, including, but not limited to Land Use Element Policy LU-3 (“...infill development... [should be]... compatible with neighboring land uses”); Policy LU-9 (requires development decisions to “minimize or eliminate traffic impacts on residential areas from... commercial uses through careful land use decisions.”); Policy LU-26 (“...ensure that Neighborhood Commercial areas fully serve neighborhood needs.”); LU-26E (“Maintain and encourage a wide range of community and commercial services, including basic goods and services.”); Policy LU-27 (“[e]nsure that Avenue [commercial] areas fully serve neighborhood needs as well as a broader spectrum of needs.”); and LU-27E (“Maintain and encourage a wide range of community and commercial services, including basic goods.”). The permit is also inconsistent with other provisions of the General Plan, including, but not limited to, the Transportation Element, Policy T-24 Ashby Avenue (“Take actions necessary to reduce congestion, improve pedestrian and bicycle crossings, and improve the quality of life for residents

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on Ashby Avenue.”); and the Citizen Participation Element, Policy CP7-I, (“Provide for effective citizen participation in the AUP process through staff outreach to persons interested in and affected by the project.”)

14. The permit was granted in error because it violates equal protection of the laws under the constitutions of the United States and the State of California. In granting an exemption from the applicable off-street parking requirements, it treats the Subject Property and the Proposed Use more leniently than other projects located in the same area which have lesser impacts on parking and traffic due to lower residential and commercial density and location away from the intersection of Ashby and Telegraph. Other similar mixed-use properties have been required to obtain a variance, or undergo other more expensive and time-consuming procedures for a reduction of the off-street requirements. The permit also violates equal protection because this permit, and the off-street parking waiver, were granted in a closed administrative use permit proceeding involving only planning department staff and the applicant. There was no public input, no notice to the affected public and no public hearing. By contrast, a similar but smaller commercial occupancy for a quick-service coffee shop, in another nearby similar mixed-use property, with lower impacts and no waiver request, was required to proceed through a public notice and hearing process taking many months in order to obtain an administrative use permit.

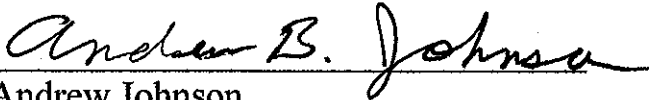
15. The permit was granted in error because it states in the first paragraph describing the Zoning Officer decision that the permitted hours of operation are 5:30 to 9 pm daily, and then states in paragraph 28 of Attachment 1, Findings and Conditions, that the permitted hours of operation are 5:30 am to midnight daily. Similarly, the permit is titled “Administrative Use Permit # 12-20000024” on page 1 of the Notice of Administrative Decision, but referred to as “AUP #13-20000024” (emphasis added) on every other page of the decision, the findings, and the appeal procedure.

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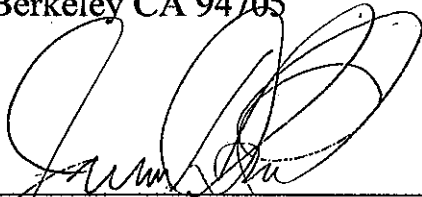
For the reasons stated above, Appellants request that the Zoning Appeal Board rescind Administrative Use Permit #13-20000024 and deny applicant's request for an AUP for a quick-service coffee shop.

Respectfully submitted:

Dated: March 29, 2013



Andrew Johnson,
Secretary, Bateman Neighborhood Association
3073 Bateman Street
Berkeley CA 94705



James D. Smith
3031 Dana Street
Berkeley CA 94705