



L A N D M A R K S  
P R E S E R V A T I O N  
C O M M I S S I O N

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S T A F F R E P O R T

FOR COMMISSION ACTION  
JULY 6, 2023

## 1850 Berryman Street - Maybeck House vacant lot

**Structural Alteration Permit #LMSAP2023-0004 to construct a new multi-unit residential building on a vacant lot that is part of City of Berkeley Landmark No. 294 – APN 60-2447-36**

### I. Application Basics

**A. Land Use Designations:** Restricted Multiple-Family Residential District (R-2A)

**B. CEQA Determination:** pending

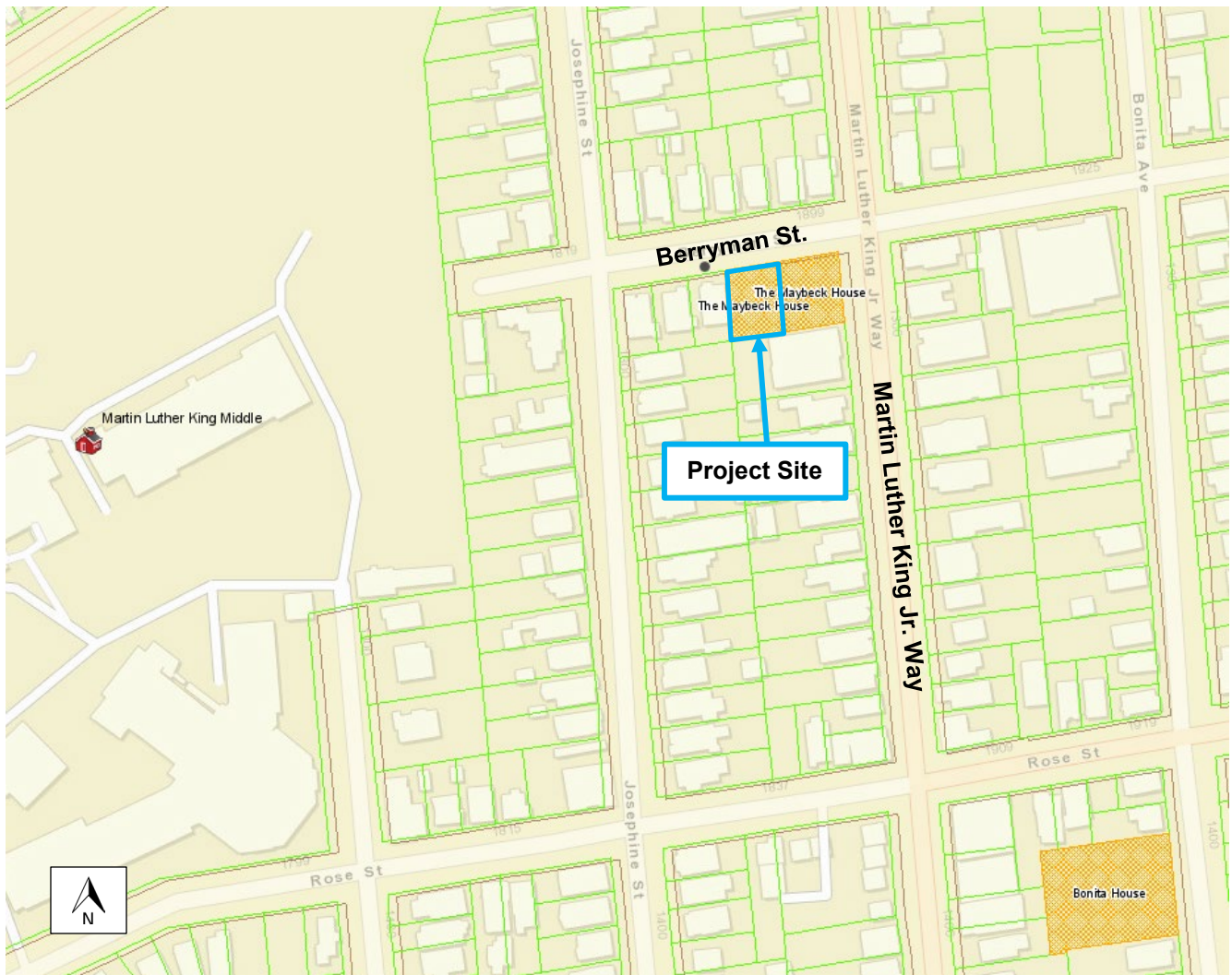
#### C. Parties Involved







• **Property Owners:** Behrouz Mazandarani and Homayoun Meshkin  
1524 Campus Drive  
Berkeley, CA 94708

• **Applicant:** Michael Pourzand  
Gehl Design Build  
79 Arlington Avenue  
Kensington, CA 94707

**D. Staff Recommendation:** Open the hearing, allow for public comment, and then continue the hearing without discussion to a future LPC meeting.

**Figure 1: Vicinity Map – highlighting nearby City Landmarks & Structures of Merit (City of Berkeley GIS, 2023)**



 Landmarks / Structure of Merit; LM,	 Parcels
 Features	 Demolished
 Districts	 Partially Demolished

**Figure 2: Subject Property, Existing Site Conditions, Aerial View (Google Maps, 2023)**



## II. Background

On May 9, 2023, the applicant submitted a Structural Alteration Permit (SAP) application for construction of a new three unit multiple-family residential building on the subject property, in accordance with Berkeley Municipal Code (BMC) Section 3.24.200. On June 8, 2023, staff deemed the application incomplete and awaits receipt of additional information and application materials.

On June 12, 2023 and June 21, 2023, the City received correspondence from the property owner's legal representative; see Attachment 1. The concerns raised in the correspondence are currently under consideration, and staff will provide direction to the Commission as needed prior to any future hearing.

On or just before June 26, 2023, staff mailed and posted ten-day advance notices for tonight's meeting, in accordance with BMC Section 3.24.230.

## III. Rationale for Recommendation

BMC Section 3.24.220.C requires the Commission to open an SAP hearing within 70 days of receiving an application. The Commission must open the hearing on this matter tonight in order to satisfy this requirement. However, the application is incomplete and staff has not yet completed its review of the record for this consideration. Therefore, staff respectfully requests that the Commission continue this hearing on this matter until the necessary materials and analysis can be presented for consideration.

## IV. Recommendation

Staff recommends that the Commission open the hearing on this matter, allow for public comment, and then continue the hearing to a date to be determined.

**Attachment:**

1. Correspondence

**Prepared by:** Reina Kapadia, AICP, Senior Planner; rkapadia@berkeleyca.gov, (510) 981-7485

**Reviewed by:** Fatema Crane, Principal Planner/LPC Secretary; fcrane@berkeleyca.gov, (510) 981-7413

**Howard Smukler**  
Attorney-at-Law  
532 S. Coronado St. #109  
Los Angeles, CA 90057  
[hsmukler@gmail.com](mailto:hsmukler@gmail.com)

June 21, 2023

**RE: 1850 Berryman St. - LMSAP 2023-0004**

TO: Reina Kapadia, Senior Planner, Land Use Planning Division, City of Berkeley and  
Fatema Crane, Landmark Preservation Commission Secretary, City of Berkeley

Dear Ms. Kapadia and Ms. Crane

I have had an opportunity to further review your letter of May 8, 2023 and the file for 1850 Berryman and have come to several additional legal conclusions.

You are making the claim that “The subject property is designated as part of a City of Berkeley Landmark, “The Maybeck House,” which encompasses the parcel at 1300 Martin Luther King Jr. Way, and the contiguous vacant parcel at 1850 Berryman St.” Based on the assumption that 1850 Berryman is a contiguous vacant parcel of 1850 Berryman, you are requiring a Structural Alteration Permit and a hearing before the Landmarks Preservation Commission.

**1. Contiguous vacant parcel:** I have search the Berkeley Municipal Code and related case law and was unable to find any reference to or definition of the term “continuous vacant parcel.” Is this a legal term which appears in the Code, a case litigated in a court of law, a term the Landmark’s Commission has used for THIS property or a term of art which you have created. Before I can give you a complete legal analysis to your May 8<sup>th</sup> letter, I need to know where the phrase “continuous vacant parcel” comes from.

**2. Assessor’s Designation:** I have been in communications with the Alameda Assessor’s Office and 1850 Berryman is a separate, new, legally created parcel with a Parcel # 60-2447-36, a separate address of 1850 Berryman and a specific designation as “vacant apartment land, capable of 5 or more units.”

**3A. Landmark Designation:** The Berkeley Heritage website, which is the definitive and possibly only index of all Berkeley landmarks, provides a detailed description of the #297 Bernard & Annie Maybeck House No. 1. The description, however does NOT provide any reference or photo to the backyard, a garden, or a continuous vacant parcel.  
[http://berkeleyheritage.com/berkeley\\_landmarks/maybeck\\_on\\_grove.html](http://berkeleyheritage.com/berkeley_landmarks/maybeck_on_grove.html)

**3B. Landmark Descriptions:** I have carefully review all the documents, agreements and decisions related to the “Maybeck Home” and the backyard, a garden or continuous vacant parcel has NEVER been part of the Landmark Designation of the Maybeck Home. The LPC specifically designated “the particular features to be preserved” as the windows, roof and dormers, and DID NOT designate the backyard, garden or continuous vacant parcel. In fact, I have never encountered the term “continuous vacant parcel” in any of my very extensive research of the Maybeck Home.

**4. Purpose of the LPC:** According to BMC §23.406.020 “The LPC shall serve as the review authority for Structural Alteration Permits for designated landmarks, structures of merit, and buildings within a historic district.” Structural Alterations are further defined as “Any physical change to or removal of the supporting members of a building.” The proposed building on 1850 Berryman is a new construction, it has no historical significance, there are no alterations to its

structure, it is currently not being considered for landmark status and it is not a structure of merit. Like all of the non-historical buildings in the neighborhood, the new proposed building sits on its own parcel and merely faces the Maybeck Home. Accordingly, the LPC does not have review authority over the structural alterations permit of this new, non-historically significant building.

In conclusion, it is my legal opinion that the proposed building on 1850 Berryman does not require design review by the LPC. If you disagree with my conclusion, then either you need to provide me with a fuller legal explanation, or if you prefer, I would like to immediately seek input from the City Attorney or other qualified legal authority.

Looking forward to your response and avoiding any further complications or delays in the approval process.

Regards,

Howard Smukler, attorney for applicant Behrouz Mazandarani.

**Howard Smukler**  
Attorney-at-Law  
532 S. Coronado St. #109  
Los Angeles, CA 90057  
[hsmukler@gmail.com](mailto:hsmukler@gmail.com)

June 11, 2023

**RE: 1850 Berryman St. - LMSAP 2023-0004**

TO: Reina Kapadia, Senior Planner, Land Use Planning Division, City of Berkeley

Dear Ms. Kapadia,

I am an attorney representing Behrouz Mazandarani in the above entitled case. I am also the author of the 2007 Appeal LLPC Decision Application #06-4000003 which limited the scope of the Landmark Commission's Decision on 1300 MLK Jr. Way to ONLY the Maybeck Home. (Attached below)

I am especially concerned about your inaccurate statement in a letter to Michael Pourzand on June 8, 2023 that "The subject property is designated as part of a City of Berkeley Landmark, "The Maybeck House," which encompasses the parcel at 1300 Martin Luther King Jr. Way, and the contiguous vacant parcel at 1850 Berryman St."

That statement is both factually and legally incorrect. This exact issue was debated extensively at the 2007 hearing and was the specific subject of my appeal. There was virtually no discussion of the "backyard", the amended application deleted references to an "orchard", the decision itself makes only a very incidental, inconsequential reference to the "garden" and of course, there was no 1850 Berryman St. at the time of the decision.

Following the decision, I met with Gerhard Blendstrup who suggested that I might want to withdraw my appeal if the Commission decision directly addressed my concerns about NOT including the "backyard." I agreed to withdraw the appeal and Gerhard then drafted an agreement which limited the Landmark status to the Maybeck Home and its specified characteristics. The "backyard" was intentionally excluded from that agreement.

Legally, the address at 1850 Berryman has its own distinct parcel number with the Alameda Tax Assessor and taxes are paid only on that parcel #60-2447-37. The parcel also has its own postal address and is recorded separately as a map with the Alameda County Recorder on 7/25/2022 as Instrument # 2022132274. It is legally separated from the adjoining parcel #600-2447-36 which only contains the "Maybeck Home." See attached plot map.

Based on the above stated arguments, I intend to oppose your decision that "this application for a Structural Alteration Permit will be subject to a public hearing before the Landmarks Preservation Commission (LPC), pursuant to BMC 3.24.220.C." What do you think is the best way for me to formally object to your decision, as I am open to meeting & conferring with you before proceeding. There is a court procedure, a Writ of Mandamus, which is available, but should definitely be avoided if at all possible. If you could suggest an in-house mediation process, I believe Mr. Mazandarani would accept a neutral 3<sup>rd</sup> party determination of the issue.

Looking forward to working out this problem with you.

Regards,

Howard Smukler, attorney for Behrouz Mazandarani

July 31, 2007

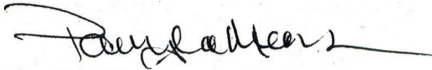
Gerhard Blendstrup  
1841 Berryman Street  
Berkeley, CA 94703

RE: 1300 Martin Luther King Jr. Way – Appeal LPC Decision Application #06-40000033

Dear Gerhard Blendstrup:

On June 12, 2007, the appeal submitted by Howard Smukler was withdrawn. Therefore, the decision of the Landmarks Preservation Commission designating the Maybeck House a City of Berkeley Landmark, and that the particular features to be preserved include: the central portion of the existing brown shingle structure with the shallow-pitched gable roof with wide eaves with knee braces; the two stacked dormers on the west slope of the roof; the one dormer on the east slope of the roof; on the west façade, the windows on the south side; on the east façade, the two small first floor bay windows on the south side with their sunshades and existing window configuration stands.

Sincerely,



Pamyla Means, MMC  
City Clerk

