



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

FOR BOARD ACTION  
NOVEMBER 30, 2023

## 1804 Harmon Street

Use Permit #ZP2023-0036 to construct a new 676 square foot, one-story (11 feet) single-family dwelling unit on a vacant non-conforming 1,586 square foot lot, and grant a Variance to open space and setback development standards.

### I. Background

#### A. Land Use Designations:

- General Plan: Medium Density Residential
- Zoning: Restricted Multiple Family Residential District (R2-A)

#### B. Zoning Permits Required:

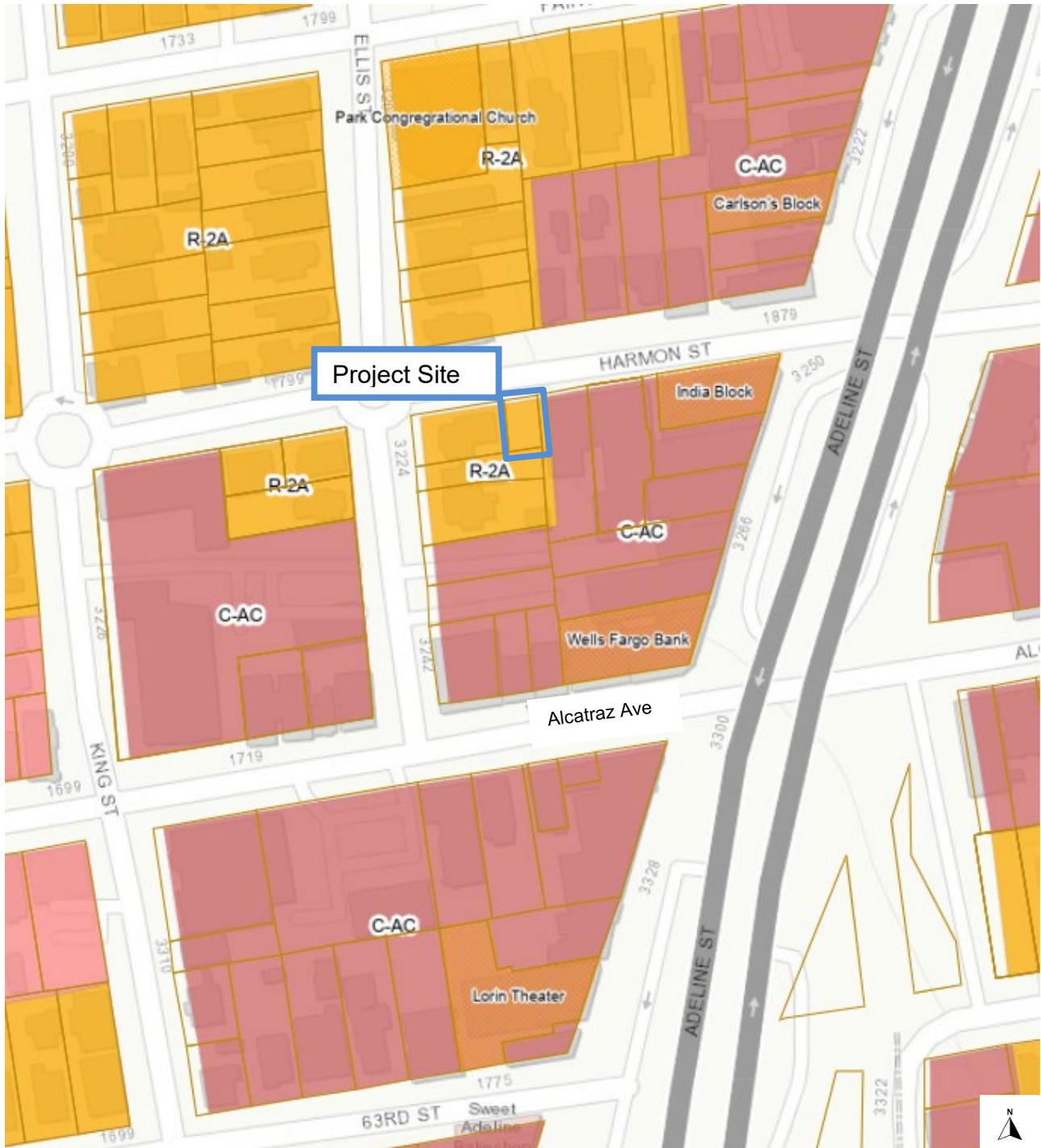
- **Use Permit** to establish a new dwelling unit on a vacant lot, under BMC Section 23.202.020
- **Variance** to exceed the setback requirements in the R2-A Zoning District, under Berkeley Municipal Code (BMC) Section 23.406.050
- **Variance** to establish a new dwelling unit without any open space, under BMC Section 23.406.050

**C. CEQA Recommendation:** It is staff's recommendation that the project is categorically exempt pursuant to Section 15303 of the CEQA Guidelines ("New Construction or Conversion of Small Structures"). The determination is made by ZAB.

#### D. Parties Involved:

- Applicant Alberto Devigal, Berkeley CA
- Property Owner Marilen Littlefield, Pinole CA

Figure 1: Vicinity Map



\*Map not to scale.

**Map Key**

R-2: Restricted Two-Family Residential District

C-AC: Adeline Corridor Commercial District

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Hatch: Historic Landmark or Structure of Merit

Figure 2: Site Plan

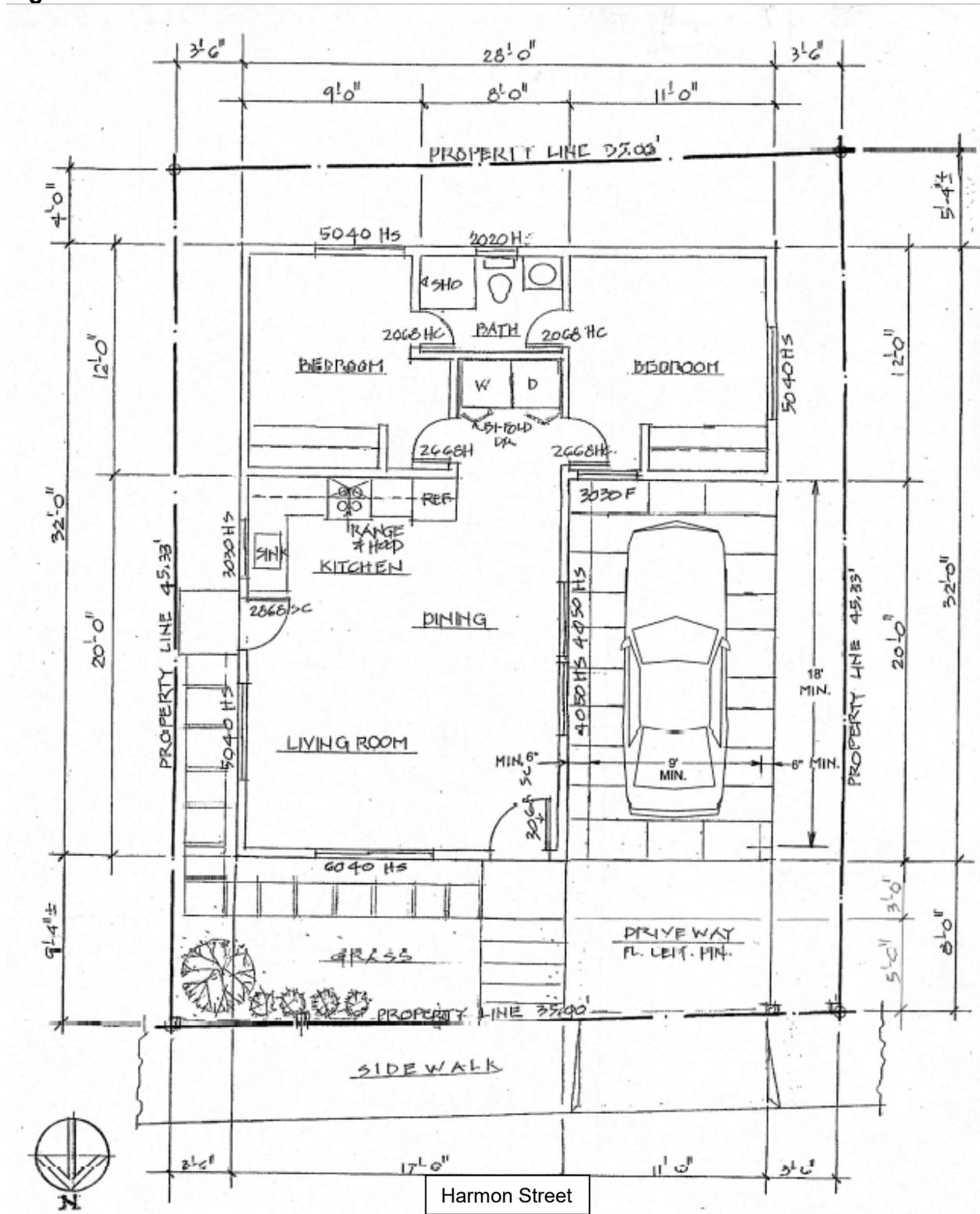
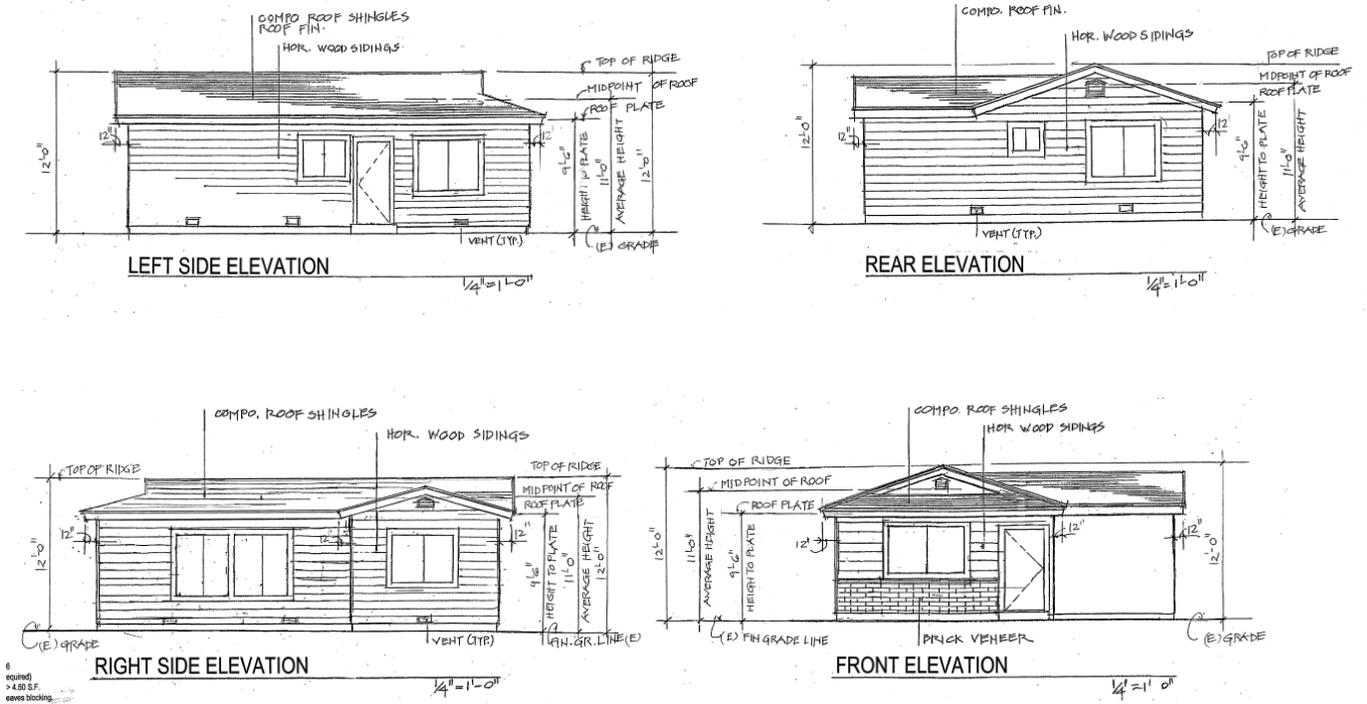


Figure 3: Proposed Elevations



6  
 required  
 >4.50 SF  
 eaves blocking

**Table 1: Land Use Information**

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Vacant lot	R2-A	Medium Density Residential
Surrounding Properties	North	Single-family dwelling		
	South			
	West			
East	Commercial	C-AC (Adeline Corridor Commercial District)	Medium Density Residential/	

**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	This fee applies to net newly constructed nonresidential gross floor area over 7,500 square feet. The project does not establish commercial floor area and therefore the fee does not apply.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)		
Affordable / Inclusionary Housing Requirements (BMC 23.328)	No	The project is a housing development project with 5,000 square feet or less of residential unit floor area, and is therefore exempt from the inclusionary housing in-lieu fee, per BMC Section 23.328.050(F)(2).
Alcohol Sales/Service	No	No alcohol sales or service is proposed on site.
Creeks	No	No creek or culvert, as defined by BMC Chapter 17.08, exists on or within 30 feet of the site.
Density Bonus	No	The project is not a Density Bonus project.
Natural Gas Prohibition (Per BMC 12.80.020)	Yes	This project includes new construction, and is therefore subject to the Natural Gas Prohibition.
Historic Resources	No	The project site is not designated as a Landmark by the City, nor is the application proposing to demolish an existing structure as the site is vacant.
Housing Accountability Act (Gov't Code Section 65589.5(j))	No	The project does not meet the definition of a "Housing Development Project" per Government Code Section 65589.5(h)(2) <sup>1</sup> . The project establishes one residential unit and does not comply with applicable, objective general plan and zoning standards, and thus section (j) of the Housing Accountability Act does not apply.

<sup>1</sup> Government Code Section 65589.5(h)(2) "Housing development project" means a use consisting of any of the following: (A) residential units only, (B) mixed-use developments consisting of residential and nonresidential uses in which at least two-thirds of the square footage is designated for residential use, and (C) transitional or supportive housing.

Characteristic	Applies to Project?	Explanation
Housing Crisis Act of 2019 (SB330)	No	The project does not meet the definition of a "Housing Development Project" per Government Code Section 65589.5(h)(2) <sup>2</sup> .
Oak Trees	No	There are no oak trees on site.
Rent Controlled Units	No	There are no existing dwelling units on the site. No rent-controlled units would be demolished.
Residential Preferred Parking (RPP)	No	Pursuant to BMC Section 14.72.080(C)(1), no RPP permits shall be issued to residents in newly constructed residential units which do not meet the parking requirements established by the Zoning Ordinance unless a variance for parking requirement set forth in the Zoning Ordinance was issued. Because the applicant is not requesting a variance for parking, the project is ineligible for the RPP Program.
Seismic Hazards (SHMA)	No	The site is not located within an area susceptible to liquefaction as shown on the <a href="#">State Seismic Hazard Zones</a> <sup>3</sup> map.
Soil/Groundwater Contamination	Yes	The project site is located within the City's Environmental Management Area, but is not on the Cortese List <sup>4</sup> . The City of Berkeley's Toxics Management Division confirmed that a Phase I/II site assessment is not required for the site.
Transit	Yes	The project site is located less than a block away from Alcatraz Avenue and Adeline Street, which are served by The Alameda-Contra Costa Transit District (AC) Transit Lines 688, 12 and F, respectively. The project site is located about 0.3 miles away from the Ashby Bay Area Rapid Transit (BART) Station. There are several designated bikeways within a half mile of the site.

<sup>2</sup> See footnote 2

<sup>3</sup> California Department of Conservation. DOC Maps: Geologic Hazards. Available: <https://maps.conservation.ca.gov/geologic Hazards/>

<sup>4</sup> The Cortese List is an annually updated list of hazardous materials sites compiled pursuant Government Code Section 65962.5.

**Table 3: Project Chronology**

Date	Action
March 22, 2023	Application submitted
April 20, 2023	Application deemed incomplete
August 14, 2023	Application resubmitted
September 13, 2023	Application deemed incomplete
September 30, 2023	Application resubmitted
October 5, 2023	Application resubmitted
October 5, 2023	Application deemed complete
November 16, 2023	Public hearing notices mailed/posted
November 30, 2023	ZAB hearing

**Table 4: Development Standards**

Standard		Existing	Proposed Total	Permitted/ Required
BMC Sections 23.202.090				
Lot Area (sq. ft.)		1,586	No change	5,000 min
Gross Floor Area (sq. ft.)		0	676	max
Dwelling Units	Total	0	1	0 max
	Affordable	0	0	0 min
Building Height	Average (ft.)	0	11	28 max
	Stories	0	1	3 max
Building Setbacks (ft.)	Front	0	8	15 min
	Rear	0	4	15 min
	Left Side	0	3'6"	3'5" min*
	Right Side	0	3'6"	3'5" min*
Lot Coverage (%)		0	43	45 max
Usable Open Space (sq. ft.)		0	0	300 min
Parking	Automobile	0	1	0 min
	Bicycle	0	0	0 min
<p>■ Shading: Variance applied to development standard</p> <p>Abbreviations: sq. ft. = square feet; max. = maximum; min. = minimum; n/a = not applicable; % = percent</p> <p>* = Pursuant to BMC 23.304.030, reduced setback permitted with a lot width less than 40 feet.</p>				

## II. Project Setting

**A. Neighborhood/Area Description:** The project site is located mid-block along Harmon Street, between Ellis Street (west) and Adeline Street (east) in south Berkeley. The site is located in a residential district that abuts the Adeline Commercial Corridor Plan Area and is about three blocks north of the Berkeley – Oakland border. The majority of the block maintains a mix of uses, including food service (e.g., traditional and fast-casual restaurants, cafes, takeout, etc.) and personal services, and commercial offices. The area west of Ellis Street, is primarily composed of single and multifamily residential buildings. Though varied, residential lots within the neighborhood typically have a lot area of 4,000- to 6,000 square feet.

**B. Site Conditions:** The site is a relatively flat, rectangular shaped, interior lot with about 35 feet of frontage along Harmon Street. Substandard in size, the lot is 1,586 square feet where the minimum requirement for a new lot in the underlying residential district is 5,000 square feet. The site is vacant, and can be accessed by one curb cut along Harmon Street.

## III. Project Description

The proposed project would construct a 676 square foot, single-story dwelling unit with two bedrooms and one bathroom. Given the size of the lot, applicable coverage requirements, and minimum standards for open space, no useable open space would be provided as part of the proposed dwelling unit.

As shown in Table 4, a Variance is requested to reduce the front and rear setbacks where 15 feet are required, respectively, and to waive the minimum requirement for useable open space in order to establish the proposed dwelling. Deviation from development standards may be allowed with a Use Permit if there are extenuating circumstances related to the property. Without a Variance, the strict application of development standards would create a unique hardship due to the unusual circumstances associated with the property (i.e., lot size), and would severely limit the ability to establish a residential use on site - a substantial property right. Existing, unique lot conditions limit the location, size, and the proposed residential use of the subject lot.

## IV. Community Discussion

**A. Neighbor/Community Concerns:** A pre-application poster was installed by the applicant in February 2023. On November 16, the City mailed public hearing notices to property owners and occupants, and to interested neighborhood organizations. The City also posted notices within the neighborhood at three nearby locations. At the time of this writing, staff has not received any communications regarding the project.

**B. Landmark Preservation Commission / Design Review Committee:** This project is not subject to review by the Design Review Committee or the Landmarks Preservation

Commission because it is not located in a residential district subject to design review, commercial or manufacturing district, and does not involve the demolition of a nonresidential building, respectively.

## V. Issues and Analysis

**A. General Non-detriment:** As required by BMC Section 23.406.040(E), the ZAB must find that the proposed structure will not be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons and adjacent properties for any Use Permit in the R2-A.

- 1) Views: The project site is located in South Berkeley, on a relatively flat lot. At an average height of 11 feet, the project does not obstruct any significant view corridors as defined in BMC Section 23.502.020(V)(12)<sup>5</sup>.
- 2) Shadows: The average height of the proposed dwelling unit is less than 14 feet. Shadow study analysis is not required for buildings with an average height of 14 feet or less. Staff believes that shadow impacts from the project would be reasonable and not detrimental.
- 3) Privacy: The project site abuts commercial uses to the east and residential uses to the west. The project may result in potential impacts to privacy to the existing dwelling unit adjacent to the site given the proposed infill development, but are limited due to the scale of the proposed building and its front-facing orientation towards Harmon Street.
- 4) The project is subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, thereby ensuring the project would not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.

**B. The project is requesting a Variance to deviate from development standards pursuant to BMC 23.202.090, as outlined below:**

- 1) **Allow for a Reduced Front and Rear Setback where 15 feet is Required:** Pursuant to BMC Section 23.202.090(D), Table 23.202-9, R2-A Setback and building Separation Standards, the required main building front and rear setback is 15 feet, respectively. The proposed dwelling unit would have a front setback of 8 feet and a rear setback of 4 feet.

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<sup>5</sup> View Corridor - A significant view of the Berkeley Hills, San Francisco Bay, Mt. Tamalpais, or a significant landmark such as the Campanile, Golden Gate Bridge, and Alcatraz Island or any other significant vista that substantially enhances the value and enjoyment of real property.

- 2) Allow for 0 square feet of Useable Open Space where 300 feet is Required:** Pursuant to BMC Section 23.202.090(D), Table 23.202-8. R2-A Lot and Height Standards, the minimum amount of useable open space per dwelling unit is 300 square feet. The proposed dwelling unit would not provide any useable open space.

The applicant considered several design iterations and found it necessary to request a Variance to the strict application of the front and rear setbacks, and useable open space.

**Variance Findings pursuant to BMC Section 23.406.050(F)**, the ZAB must make all required Variance Findings to approve a Variance. The applicant submitted their reasons for the variance request in support of the Findings. A summary of the Findings along with staff’s recommended conclusions follows.

*Finding (a): “There are exceptional circumstances applying to the property which do not apply generally in the same district.”*

With a lot area of 1,586 square feet and a lot width of less than 40 feet, the subject lot is exceptionally substandard compared to both existing lots improved with residential dwellings and the district standard of 5,000 square feet for new lots. Where lots within the immediate neighborhood average about 4,000 – 6,000 square feet in lot area, the subject interior lot is considered exceptionally small in comparison. Strict adherence to the useable open space, front, and setback requirements, would further limit the amount of buildable area on the lot. For instance, the strict application of the 300 square foot useable open space requirement would account for over 18 percent of the lot area. Additionally, a strict application of the front and rear setbacks, which would account for 1,050 square feet in lot area, in addition to the side setbacks (i.e., about 315 square feet), which would limit the amount of buildable area on site to less than 221 square feet, as shown in Table 5 below. There would be no detriment from the reduced front setback because the design would reduce apparent bulk of the structure, causing no visual impact on the streetscape in the neighborhood. Existing, unique lot conditions limit the location, size, and the proposed residential use of the subject lot. This Finding can be made.

**Table 5: Estimated Buildable Lot Area with Application of R2- A Setbacks Requirements**

Building Setback Standards (R2-A)	Estimated Coverage Area (square feet)
Existing Lot Area	1,586
Front and Rear Setbacks (15 feet)	(1,050)
Side Setbacks (3 feet and 5 inches)	(315)
<b>Estimated Total Remaining Buildable Area</b>	<b>221</b>

Note: Integers included in brackets “()” indicate a subtraction.

*Finding (b): “The Variance is necessary to preserve a substantial property right.”*

The property owner has a substantial property right to use and enjoy their property for dwelling, as the zoning intended. As described above, strict compliance with the development standards would limit the potential to develop the site with a single-family dwelling by limiting the size of the structure to 221 square feet. In comparison, according to BMC 23.202.090 a single-family dwelling within the R2-A zoning district should be about 1,650 square feet. Therefore, this Finding can be made.

*Finding (c): “The Variance will not adversely affect the health or safety of persons residing or working near the property.”*

- 5) The Variance for the useable open space, front, and rear setbacks would not adversely affect the health and safety of persons residing or working near the property since perceived impacts are characteristic of residential development. The proposed 675 square foot dwelling with an average height of 11 feet is smaller than Accessory Dwelling Units (ADU) that are approved ministerially and are statutorily exempt from environmental review. Similar in character to ADUs, this project would have limited potential impacts on the immediate environment. The Variance would allow for the proportional development of a single-family dwelling unit on residential district. Moreover, the project is subject to the City’s standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, as well as other applicable codes and regulations, and thereby ensures that the project would not adversely affect the health or safety of persons residing or working near the property. This Finding can be made.

*Finding (d): “The Variance will not be materially detrimental to the public welfare or injurious to nearby property or improvements.”*

The new single-family dwelling unit would comply with standards for lot coverage, building height, and side setbacks. Accordingly, the proposed project would not obstruct protected views, and would have minimal impact on light, or air flow. The proposed building is lower in height than neighboring structures with an average height of less than 14 feet. A shadow study analysis is not required for buildings with an average height of 14 feet or less, as structures below this height threshold generally do not contribute to shadow impacts on neighboring properties. Therefore, there would be minimal, if any, shadow impacts. The proposed eight-foot front setback maintained by the proposed dwelling unit would be greater than the respective front or side setbacks maintained by existing buildings on abutting lots along Harmon Street. Therefore, there would be minimal, if any, air impacts.

Staff believes that shadow and air impacts from the project would be reasonable and not detrimental. This Finding can be made.

*Finding (e): “The Variance will promote the municipal health, welfare, and safety and benefit the city as a whole.”*

The Variance would allow for the development of a single-dwelling unit that would have otherwise been precluded or exceptionally limited in size and location. The proposed residential unit will benefit the City as a whole by providing additional housing that will count towards the City’s Regional Housing Needs Allocation outlined in the Berkeley Housing Element Update. In addition, the proposed project would be generally compatible with existing development patterns in the area and would be subject to standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, as well as other applicable codes and regulations. Therefore, the project would not result in perceivable negative impacts on municipal health, welfare, and safety.

*Finding (f): “Any other Variance findings required by Zoning Ordinance can be made.”*

This Finding is not applicable to the Variance request.

**C. General Plan Consistency:** The 2002 General Plan contains several policies applicable to the project, including the following:

1. Policy LU-3 – Infill Development: Encourage infill development that is architecturally and environmentally sensitive, embodies principles of sustainable planning and construction, and is compatible with neighboring land uses and architectural design and scale.
2. Policy H-19 – Regional Housing Needs: Encourage adequate housing production to meet City needs and the City’s share of regional housing needs.

3. Policy T-16-Access by Proximity: Improve access by increasing proximity of residents to services, goods, and employment centers.

Staff Analysis: The project is consistent with the above General Plan policies because the infill development would construct one new dwelling unit proximate to public transit, bicycle boulevards, and commercial corridors that offer various goods and services to residents. The project would also count towards the City's share of regional housing needs.

## VI. Recommendation

Because of the project's consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board **APPROVE** Use Permit #ZP2023-0036 pursuant to BMC Sections 23.406.040(D) and 23.406.050(F) and subject to the attached Findings and Conditions (see Attachment 1).

**Attachments:**

1. Findings and Conditions
2. Project Plans, received October 5, 2023
3. Notice of Public Hearing

**Staff Planner:** Katrina Lapira, klapira@berkeleyca.gov, (510) 981-7488

# ATTACHMENT 1

## FINDINGS AND CONDITIONS

NOVEMBER 30, 2023

### 1804 Harmon Street

**Use Permit #ZP2023-0036 to construct a new 676 square foot, one-story (11 feet) single-family dwelling unit on a vacant non-conforming 1,586 square foot lot, and grant a Variance to open space and setback development standards.**

#### PERMITS REQUIRED

- **Use Permit** to establish a new dwelling unit on a vacant lot, under BMC Section 23.202.020
- **Variance** to exceed the setback requirements in the R2-A Zoning District, under Berkeley Municipal Code (BMC) Section 23.406.050
- **Variance** to establish a new dwelling unit without any open space, under BMC Section 23.406.050

#### I. 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 15303 of the CEQA Guidelines (“New Construction or Conversion of Small Structures”).
2. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project will not affect any historical resource.

#### II. FINDINGS FOR APPROVAL

1. As required by Section 23.406.050(F) of the BMC, the the Zoning Adjustments Board finds that the Variance from BMC Section 23.202.090(D) to allow a reduced front and rear setbacks where 15 feet is required and the provision of no useable open space where 300 square feet is required in the R2-A District is permissible because:
  - A. There are exceptional circumstances applying to the property which do not apply generally in the same district:

The property owner has a substantial property right to use and enjoy their property for dwelling, as the zoning intended. As described above, strict compliance with the development standards will limit the potential to develop the site with a single-family dwelling by limiting the size of the structure to 221 square feet. In comparison, according to BMC 23.202.090 a single-family dwelling within the R2-A zoning district should be about 1,650 square feet. Therefore, this Finding can be made.
  - B. The Variance is necessary to preserve a substantial property right:

The property owner has a substantial property right to use and enjoy their property for dwelling, as the zoning intended. As described above, strict compliance with the development standards will limit the potential to develop the site with a single-family dwelling by limiting the size of the structure to 221 square feet. In comparison, according

to BMC 23.202.090 a single-family dwelling within the R2-A zoning district should be about 1,650 square feet. Therefore, this Finding can be made.

**C. The Variance will not adversely affect the health or safety of persons residing or working near the property:**

The Variance for the useable open space, front, and rear setbacks will not adversely affect the health and safety of persons residing or working near the property since perceived impacts are characteristic of residential development. The proposed 675 square foot dwelling with an average height of 11 feet is smaller than Accessory Dwelling Units (ADU) that are approved ministerially and are statutorily exempt from environmental review. Similar in character to ADUs, this project will have limited potential impacts on the immediate environment. The Variance will allow for the proportional development of a single-family dwelling unit on residential district. Moreover, the project is subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, as well as other applicable codes and regulations, and thereby ensures that the project will not adversely affect the health or safety of persons residing or working near the property. This Finding can be made.

**D. The Variance will not be materially detrimental to the public welfare or injurious to nearby property or improvements:**

The new single-family dwelling unit will comply with standards for lot coverage, building height, and side setbacks. Accordingly, the proposed project will not obstruct protected views, and will have minimal impact on light, or air flow. The proposed building is lower in height than neighboring structures with an average height of less than 14 feet. A shadow study analysis is not required for buildings with an average height of 14 feet or less, as structures below this height threshold generally do not contribute to shadow impacts on neighboring properties. Therefore, there will be minimal, if any, shadow impacts. The proposed eight-foot front setback maintained by the proposed dwelling unit will be greater than the respective front or side setbacks maintained by existing buildings on abutting lots along Harmon Street. Therefore, there will be minimal, if any, air impacts. Staff believes that shadow and air impacts from the project will be reasonable and not detrimental. This Finding can be made.

**E. The Variance will promote the municipal health, welfare, and safety and benefit the city as a whole:**

The Variance will allow for the development of a single-dwelling unit that will have otherwise been precluded or exceptionally limited in size and location. The proposed residential unit will benefit the City as a whole by providing additional housing that will count towards the City's Regional Housing Needs Allocation outlined in the Berkeley Housing Element Update. In addition, the proposed project will be generally compatible with existing development patterns in the area and will be subject to standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, as well as other applicable codes and regulations. Therefore, the project will not result in perceivable negative impacts on municipal health, welfare, and safety.

2. As required by Section 23.406.040(E) of the BMC, the project, under the circumstances of this particular case existing at the time at which the application is granted, will 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:

- A. The project is located on a relatively flat lot in South Berkeley and does not obstruct any significant view corridors as defined in BMC Section 23.502.020(V)(12);
  - B. The average height of the proposed dwelling unit is less than 14 feet. Shadow study analysis is not required for buildings with an average height of 14 feet or less. Any resultant shadows will not be detrimental because limited in duration and will not persist for extended periods throughout the year; and
  - C. Also, the project is subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, thereby ensuring the project will not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.
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### III. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

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. Compliance Required (BMC Section 23.102.050)**

All land uses and structures in Berkeley must comply with the Zoning Ordinance and all applicable City ordinances and regulations. Compliance with the Zoning Ordinance does not relieve an applicant from requirements to comply with other federal, state, and City regulations that also apply to the property.

**3. Approval Limited to Proposed Project and Replacement of Existing Uses (BMC Sections 23.404.060.B.1 and 2)**

- A. This Permit authorizes only the proposed project described in the application. In no way does an approval authorize other uses, structures or activities not included in the project description.
- B. When the City approves a new use that replaces an existing use, any prior approval of the existing use becomes null and void when permits for the new use are exercised (e.g., building permit or business license issued). To reestablish the previously existing use, an applicant must obtain all permits required by the Zoning Ordinance for the use.

**4. Conformance to Approved Plans (BMC Section 23.404.060.B.4)**

All work performed under an approved permit shall be in compliance with the approved plans and any conditions of approval.

**5. Exercise and Expiration of Permits (BMC Section 23.404.060.C)**

- A. A permit authorizing a land use is exercised when both a valid City business license is issued (if required) and the land use is established on the property.
- B. A permit authorizing construction is exercised when both a valid City building permit (if required) is issued and construction has lawfully begun.
- C. The Zoning Officer may declare a permit lapsed if it is not exercised within one year of its issuance, except if the applicant has applied for a building permit or has made a substantial good faith effort to obtain a building permit and begin construction. The Zoning Officer may declare a permit lapsed only after 14 days written notice to the applicant. A determination that a permit has lapsed may be appealed to the ZAB in accordance with Chapter 23.410 (Appeals and Certification).
- D. A permit declared lapsed shall be void and of no further force and effect. To establish the use or structure authorized by the lapsed permit, an applicant must apply for and receive City approval of a new permit.

**6. Permit Remains Effective for Vacant Property (BMC Section 23.404.060.D)**

Once a Permit for a use is exercised and the use is established, the permit authorizing the use remains effective even if the property becomes vacant. The same use as allowed by the original permit may be re-established without obtaining a new permit, except as set forth in Standard Condition #5 above.

**7. Permit Modifications (BMC Section 23.404.070)**

No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Board. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project.

**8. Permit Revocation (BMC Section 23.404.080)**

The City may revoke or modify a discretionary permit for completed projects due to: 1) violations of permit requirements; 2) Changes to the approved project; and/or 3) Vacancy for one year or more. However, no lawful residential use can lapse, regardless of the length of time of the vacancy. Proceedings to revoke or modify a permit may be initiated by the Zoning Officer, Zoning Adjustments Board (ZAB), or City Council referral.

**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.

#### IV. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD

Pursuant to BMC 23.406.040.E, the Zoning Adjustments Board 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 an individual empowered to manage construction-related 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 #

11. Address Assignment. The applicant shall file an "Address Assignment Request Application" with the Permit Service Center (1947 Center Street) for any address change or new address associated with this Use Permit. The new address(es) shall be assigned and entered into the City's database prior to the applicant's submittal of a building permit application.

##### Prior to Issuance of Any Building & Safety Permit (Demolition or Construction)

12. Construction and Demolition Diversion. Applicant shall submit a Construction Waste Management Plan that meets the requirements of BMC Chapter 19.37 including 100% diversion of asphalt, concrete, excavated soil and land-clearing debris and a minimum of 65% diversion of other nonhazardous construction and demolition waste.

13. Toxics. The applicant shall contact the Toxics Management Division (TMD) at 1947 Center Street or (510) 981-7470 to determine which of the following documents are required and timing for their submittal:

A. Environmental Site Assessments:

- 1) Phase I & Phase II Environmental Site Assessments (latest ASTM 1527-13). A recent Phase I ESA (less than 2 years old\*) shall be submitted to TMD for developments for:
  - All new commercial, industrial and mixed use developments and all large improvement projects.
  - All new residential buildings with 5 or more dwelling units located in the Environmental Management Area (or EMA).
  - EMA is available online at: [http://www.cityofberkeley.info/uploadedFiles/IT/Level\\_3\\_-\\_General/ema.pdf](http://www.cityofberkeley.info/uploadedFiles/IT/Level_3_-_General/ema.pdf)
- 2) Phase II ESA is required to evaluate Recognized Environmental Conditions (REC) identified in the Phase I or other RECs identified by TMD staff. The TMD may require a third party toxicologist to review human or ecological health risks that may be identified. The applicant may apply to the appropriate state, regional or county cleanup agency to evaluate the risks.
- 3) If the Phase I is over 2 years old, it will require a new site reconnaissance and interviews. If the facility was subject to regulation under Title 15 of the Berkeley Municipal Code since the last Phase I was conducted, a new records review must be performed.

B. Soil and Groundwater Management Plan:

- 1) A Soil and Groundwater Management Plan (SGMP) shall be submitted to TMD for all non-residential projects, and residential or mixed-use projects with five or more dwelling units, that: (1) are in the Environmental Management Area (EMA) and (2) propose any excavations deeper than 5 feet below grade. The SGMP shall be site specific and identify procedures for soil and groundwater management including identification of pollutants and disposal methods. The SGMP will identify permits required and comply with all applicable local, state and regional requirements.
- 2) The SGMP shall require notification to TMD of any hazardous materials found in soils and groundwater during development. The SGMP will provide guidance on managing odors during excavation. The SGMP will provide the name and phone number of the individual responsible for implementing the SGMP and post the name and phone number for the person responding to community questions and complaints.
- 3) TMD may impose additional conditions as deemed necessary. All requirements of the approved SGMP shall be deemed conditions of approval of this Use Permit.

C. Building Materials Survey:

- 1) Prior to approving any permit for partial or complete demolition and renovation activities involving the removal of 20 square or lineal feet of interior or exterior walls, a building materials survey shall be conducted by a qualified professional. The survey shall include, but not be limited to, identification of any lead-based paint, asbestos, polychlorinated biphenyl (PBC) containing equipment, hydraulic fluids in elevators or lifts, refrigeration systems, treated wood and mercury containing devices (including fluorescent light bulbs and mercury switches). The Survey shall include plans on hazardous waste or hazardous materials removal, reuse or disposal procedures to be implemented that fully comply state hazardous waste generator requirements (22 California Code of Regulations 66260 et seq). The Survey becomes a condition of any building or demolition permit for the project. Documentation evidencing disposal of hazardous waste in compliance with the survey shall be submitted to TMD within 30 days of the completion of the demolition. If asbestos is identified, Bay Area Air Quality Management District Regulation 11-2-401.3 a notification must be made and the J number must be made available to the City of Berkeley Permit Service Center.

D. Hazardous Materials Business Plan:

- 1) A Hazardous Materials Business Plan (HMBP) in compliance with BMC Section 15.12.040 shall be submitted electronically at <http://cers.calepa.ca.gov/> within 30 days if on-site hazardous materials exceed BMC 15.20.040. HMBP requirement can be found at <http://ci.berkeley.ca.us/hmr/>

**Prior to Issuance of Any Building (Construction) Permit**

14. HVAC Noise Reduction. Prior to the issuance of building permits, the project applicant shall submit plans that show the location, type, and design of proposed heating, ventilation, and cooling (HVAC) equipment. In addition, the applicant shall provide product specification sheets or a report from a qualified acoustical consultant showing that operation of the proposed HVAC equipment will meet the City's exterior noise requirements in BMC Section 13.40.050. The City's Planning and Development Department shall review the submitted plans, including the selected HVAC equipment, to verify compliance with exterior noise standards.
15. Solar Photovoltaic (Solar PV) and Battery Energy Storage Systems (ESS). A solar PV system shall be installed, subject to specific limited exceptions, as specified by the Berkeley Energy

Code (BMC Chapter 19.36). Energy storage system (ESS) readiness (new single-family, duplex, and townhouse homes) or ESS installation (new multifamily and most nonresidential buildings) shall be completed as specified by BMC Chapter 19.36. Location of the solar PV system and the ESS, if applicable, shall be noted on the construction plans. (Project required to meet applicable code at time of building permit application, if different from above.)

16. Electric Vehicle (EV) Charging. Each dwelling unit shall install a listed raceway, wiring, and power to allow for future Level 2 (240 Volt/40 amp) plug-in electric vehicle (EV) charging system installation as specified by the Berkeley Green Code (BMC Section 19.37.040). Readiness for EV charging and EV charging station installations shall be noted on the construction plans.
17. Water Efficient Landscaping. Landscaping, totaling 500 square feet of more of new landscaping or 2,500 square feet or more of renovated irrigated area, shall comply with the State's Model Water Efficient Landscape Ordinance (MWELo). MWELo-compliant landscape documentation including a planting, grading, and irrigation plan shall be included in site plans. Water budget calculations are also required for landscapes of 2,500 square feet or more and shall be included in site plans. The reference evapotranspiration rate (ET<sub>o</sub>) for Berkeley is 41.8.
18. Prohibition of Natural Gas Infrastructure in New Buildings. The project shall comply with the City of Berkeley Prohibition of Natural Gas Infrastructure in New Buildings (BMC Chapter 12.80).
19. Recycling and Organics Collection. Applicant shall provide recycling and organics collection areas for occupants, clearly marked on site plans, which comply with the Alameda County Mandatory Recycling Ordinance (ACWMA Ordinance 2012-01).
20. Public Works ADA. Plans submitted for building permit shall include replacement of sidewalk, curb, gutter, and other streetscape improvements, as necessary to comply with current City of Berkeley standards for accessibility.

#### **During Construction:**

21. Construction Hours. Construction activity shall be limited to between the hours of 8:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and Noon on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.
22. Public Works - Implement Bay Area Air Quality Management District (BAAQMD)-Recommended Measures during Construction. For all proposed projects, BAAQMD recommends implementing all the Basic Construction Mitigation Measures, listed below to meet the best management practices threshold for fugitive dust:
  - A. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
  - B. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
  - C. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
  - D. All vehicle speeds on unpaved roads shall be limited to 15 mph.
  - E. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.

- F. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
- G. All construction equipment shall be maintained and properly tuned in accordance with manufacturer specifications. All equipment shall be checked by a certified visible emissions evaluator.

Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

**23. Air Quality - Diesel Particulate Matter Controls during Construction.** All off-road construction equipment used for projects with construction lasting more than 2 months shall comply with **one** of the following measures:

- A. The project applicant shall prepare a health risk assessment that demonstrates the project's on-site emissions of diesel particulate matter during construction will not exceed health risk screening criteria after a screening-level health risk assessment is conducted in accordance with current guidance from BAAQMD and OEHHA. The health risk assessment shall be submitted to the Land Use Planning Division for review and approval prior to the issuance of building permits; or
- B. All construction equipment shall be equipped with Tier 2 or higher engines and the most effective Verified Diesel Emission Control Strategies (VDECS) available for the engine type (Tier 4 engines automatically meet this requirement) as certified by the California Air Resources Board (CARB). The equipment shall be properly maintained and tuned in accordance with manufacturer specifications.
- C. In addition, a Construction Emissions Minimization Plan (Emissions Plan) shall be prepared that includes the following:
  - 1. An equipment inventory summarizing the type of off-road equipment required for each phase of construction, including the equipment manufacturer, equipment identification number, engine model year, engine certification (tier rating), horsepower, and engine serial number. For all VDECS, the equipment inventory shall also include the technology type, serial number, make, model, manufacturer, CARB verification number level, and installation date.
  - 2. A Certification Statement that the Contractor agrees to comply fully with the Emissions Plan and acknowledges that a significant violation of the Emissions Plan shall constitute a material breach of contract. The Emissions Plan shall be submitted to the Public Works Department for review and approval prior to the issuance of building permits.

**24. Construction and Demolition Diversion.** Divert debris according to your plan and collect required documentation. Get construction debris receipts from sorting facilities in order to verify diversion requirements. Upload recycling and disposal receipts if using [Green Halo](#) and submit online for City review and approval prior to final inspection. Alternatively, complete the second page of the

original [Construction Waste Management Plan](#) and present it, along with your construction debris receipts, to the Building Inspector by the final inspection to demonstrate diversion rate compliance. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement.

- 25. Low-Carbon Concrete.** The project shall maintain compliance with the Berkeley Green Code (BMC Chapter 19.37) including use of concrete mix design with a cement reduction of at least 25%. Documentation on concrete mix design shall be available at all times at the construction site for review by City Staff.
- 26. 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, 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 1947 Center Street or 981-7500 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.

- 27. Avoid Disturbance of Nesting Birds.** Initial site disturbance activities, including vegetation and concrete removal, shall be prohibited during the general avian nesting season (February 1 to August 30), if feasible. If nesting season avoidance is not feasible, the applicant shall retain a qualified biologist to conduct a preconstruction nesting bird survey to determine the presence/absence, location, and activity status of any active nests on or adjacent to the project site. The extent of the survey buffer area surrounding the site shall be established by the qualified biologist to ensure that direct and indirect effects to nesting birds are avoided. To avoid the destruction of active nests and to protect the reproductive success of birds protected by the MBTA and CFGC, nesting bird surveys shall be performed not more than 14 days prior to scheduled vegetation and concrete removal. In the event that active nests are discovered, a suitable buffer (typically a minimum buffer of 50 feet for passerines and a minimum buffer of 250 feet for raptors) shall be established around such active nests and no construction shall be allowed inside the buffer areas until a qualified biologist has determined that the nest is no longer active (e.g., the nestlings have fledged and are no longer reliant on the nest). No ground-disturbing activities shall occur within this buffer until the qualified biologist has confirmed that

breeding/nesting is completed and the young have fledged the nest. Nesting bird surveys are not required for construction activities occurring between August 31 and January 31.

**28. Archaeological Resources (Ongoing throughout demolition, grading, and/or construction).** Pursuant to CEQA Guidelines section 15064.5(f), “provisions for historical or unique archaeological resources accidentally discovered during construction” should be instituted. Therefore:

- A. In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist, historian or paleontologist to assess the significance of the find.
- B. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified professional will meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Berkeley. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by the qualified professional according to current professional standards.
- C. In considering any suggested measure proposed by the qualified professional, the project applicant shall determine whether avoidance is necessary or feasible in light of factors such as the uniqueness of the find, project design, costs, and other considerations.
- D. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while mitigation measures for cultural resources is carried out.
- E. If significant materials are recovered, the qualified professional shall prepare a report on the findings for submittal to the Northwest Information Center.

**29. Human Remains (Ongoing throughout demolition, grading, and/or construction).** In the event that human skeletal remains are uncovered at the project site during ground-disturbing activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to Section 15064.5 (e)(1) of the CEQA Guidelines. If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.

**30. Paleontological Resources (Ongoing throughout demolition, grading, and/or construction).** In the event of an unanticipated discovery of a paleontological resource during construction, excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified paleontologist (per Society of Vertebrate Paleontology standards [SVP 1995,1996]). The qualified paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the

project on the qualities that make the resource important, and such plan shall be implemented. The plan shall be submitted to the City for review and approval.

**31. Paleontological Resources (Ongoing throughout demolition, grading, and/or construction).**

- A. *Qualified Paleontologist.* The project applicant shall retain a Qualified Paleontologist prior to excavations or ground disturbance that will exceed three feet in depth. The Qualified Paleontologist shall direct all mitigation measures related to paleontological resources. A qualified professional paleontologist is defined by the SVP standards as an individual preferably with an M.S. or Ph.D. in paleontology or geology who is experienced with paleontological procedures and techniques, who is knowledgeable in the geology of California, and who has worked as a paleontological mitigation project supervisor for a least two years (SVP 2010).
- B. *Paleontological Worker Environmental Awareness Program (WEAP).* Prior to ground disturbance, the applicant shall incorporate information on paleontological resources into the Project's Worker Environmental Awareness Training (WEAP) materials, or a stand-alone Paleontological Resources WEAP shall be submitted to the Department of Planning and Development at the City of Berkeley. The Qualified Paleontologist or his or her designee shall conduct training for construction personnel regarding the appearance of fossils and the procedures for notifying paleontological staff should fossils be discovered by construction staff. The Paleontological WEAP training shall be fulfilled simultaneously with the overall WEAP training, or at the first preconstruction meeting at which a Qualified Paleontologist attends prior to ground disturbance. Printed literature (handouts) shall accompany the initial training. Following the initial WEAP training, all new workers and contractors must be trained prior to conducting ground disturbance work.
- C. *Paleontological Monitoring.* The extent of required paleontological monitoring for the project shall be determined by the Qualified Paleontologist based on an evaluation of the previously undisturbed geologic units exposed during ground disturbing activity. The Qualified Paleontologist shall conduct an initial spot check and evaluation of geologic conditions for ground disturbing activity for excavations between 5-10 feet below ground surface (BGS). The evaluation shall be based on field evidence including lithology of geologic units and results of microscreening or other inspections for fossil resources. If the paleontologist determines that geologic units exposed between 5-10 feet BGS have high paleontological sensitivity, then full-time monitoring shall be conducted for the duration of ground disturbing activity. If sediments between 5-10 feet BGS are determined to not be paleontological sensitive, spot checks should be conducted again for ground disturbance between 10-15 feet BGS and again for ground disturbance between 15-20 feet BGS, and again to the full depth of ground disturbance. If spot checks indicate low or no paleontological sensitivity, or if full time monitoring results in no fossil discoveries once the full depth of ground disturbance has been reached, paleontological monitoring can be discontinued for the remainder of project activity. Monitoring shall be reinstated if any new ground disturbances are required to depths exceeding previous depths of previous work, and reduction or suspension shall be reconsidered by the Qualified Paleontologist at that time.
- D. In the event of a fossil discovery by the paleontological monitor or construction personnel, all work in the immediate vicinity of the find shall cease. A Qualified Paleontologist shall evaluate the find before restarting construction activity in the area. If it is determined that the fossil(s) is (are) scientifically significant, the Qualified Paleontologist shall complete the following conditions to mitigate impacts to significant fossil resources:

- 1) *Salvage of Fossils.* If fossils are discovered, the paleontological monitor shall have the authority to halt or temporarily divert construction equipment within 50 feet of the find until the monitor and/or lead paleontologist evaluate the discovery and determine if the fossil may be considered significant. Typically, fossils can be safely salvaged quickly by a single paleontologist and not disrupt construction activity. In some cases, larger fossils (such as complete skeletons or large mammal fossils) require more extensive excavation and longer salvage periods. In this case, the Construction Contractor may be requested to supply heavy equipment and an operator to assist in the rapid removal of a large fossil specimen(s) or sediment sample(s). Bulk matrix sampling may be necessary to recover small invertebrates or microvertebrates from within paleontologically- sensitive Quaternary old alluvial deposits.
  - 2) *Preparation and Curation of Recovered Fossils.* Once salvaged, significant fossils shall be identified to the lowest possible taxonomic level, prepared to a curation-ready condition, and curated in a scientific institution with a permanent paleontological collection (such as the UCMP), along with all pertinent field notes, photos, data, and maps. Fossils of undetermined significance at the time of collection may also warrant curation at the discretion of the Qualified Paleontologist.
- E. *Final Paleontological Mitigation Report.* Upon completion of ground disturbing activity (and curation of fossils if necessary) the Qualified Paleontologist shall prepare a final report describing the results of the paleontological monitoring efforts associated with the project. The report shall include a summary of the field and laboratory methods, an overview of the project geology and paleontology, a list of taxa recovered (if any), an analysis of fossils recovered (if any) and their scientific significance, and recommendations. The report shall be submitted to the Department of Planning and Development at the City of Berkeley. If the monitoring efforts produced fossils, then a copy of the report shall also be submitted to the designated museum repository.
32. Halt Work/Unanticipated Discovery of Tribal Cultural Resources. In the event that cultural resources of Native American origin are identified during construction, all work within 50 feet of the discovery shall be redirected. The project applicant and project construction contractor shall notify the City Planning Department within 24 hours. The City will again contact any tribes who have requested consultation under AB 52, as well as contact a qualified archaeologist, to evaluate the resources and situation and provide recommendations. If it is determined that the resource is a tribal cultural resource and thus significant under CEQA, a mitigation plan shall be prepared and implemented in accordance with State guidelines and in consultation with Native American groups. If the resource cannot be avoided, additional measures to avoid or reduce impacts to the resource and to address tribal concerns may be required.
33. Stormwater Requirements. The applicant shall demonstrate compliance with the requirements of the City's National Pollution Discharge Elimination System (NPDES) permit as described in BMC Section 17.20. The following conditions apply:
- A. The project plans shall identify and show site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants to the City's storm drainage system, regardless of season or weather conditions.
  - B. Trash enclosures and/or recycling area(s) shall be covered; no other area shall drain onto this area. Drains in any wash or process area shall not discharge to the storm drain system;

these drains should connect to the sanitary sewer. Applicant shall contact the City of Berkeley and EBMUD for specific connection and discharge requirements. Discharges to the sanitary sewer are subject to the review, approval and conditions of the City of Berkeley and EBMUD.

- C. Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to stormwater pollution. Where feasible, landscaping should be designed and operated to treat runoff. When and where possible, xeriscape and drought tolerant plants shall be incorporated into new development plans.
  - D. Design, location and maintenance requirements and schedules for any stormwater quality treatment structural controls shall be submitted to the Department of Public Works for review with respect to reasonable adequacy of the controls. The review does not relieve the property owner of the responsibility for complying with BMC Chapter 17.20 and future revisions to the City's overall stormwater quality ordinances. This review shall be conducted prior to the issuance of a Building Permit.
  - E. All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.
  - F. All on-site storm drain inlets/catch basins must be cleaned at least once a year immediately prior to the rainy season. The property owner shall be responsible for all costs associated with proper operation and maintenance of all storm drainage facilities (pipelines, inlets, catch basins, outlets, etc.) associated with the project, unless the City accepts such facilities by Council action. Additional cleaning may be required by City of Berkeley Public Works Engineering Dept.
  - G. All on-site storm drain inlets must be labeled "No Dumping – Drains to Bay" or equivalent using methods approved by the City.
  - H. Most washing and/or steam cleaning must be done at an appropriately equipped facility that drains to the sanitary sewer. Any outdoor washing or pressure washing must be managed in such a way that there is no discharge or soaps or other pollutants to the storm drain. Sanitary connections are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
  - I. Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry to the storm drain system. If any cleaning agent or degreaser is used, wash water shall not discharge to the storm drains; wash waters should be collected and discharged to the sanitary sewer. Discharges to the sanitary sewer are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
  - J. The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations, or a project stop work order.
- 34. Public Works.** All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter thick and secured to the ground.
- 35. Public Works.** The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.

36. Public Works. The project sponsor shall maintain sandbags or other devices around the site perimeter during the rainy season to prevent on-site soils from being washed off-site and into the storm drain system. The project sponsor shall comply with all City ordinances regarding construction and grading.
37. Public Works. Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season the applicant shall obtain approval of an erosion prevention plan by the Building and Safety Division and the Public Works Department. The applicant shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.
38. Public Works. The removal or obstruction of any fire hydrant shall require the submission of a plan to the City's Public Works Department for the relocation of the fire hydrant during construction.
39. Public Works. If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.

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

40. Compliance with Conditions. The project shall conform to the plans and statements in the Use Permit. The developer is responsible for providing sufficient evidence to demonstrate compliance with the requirements throughout the implementation of this Use Permit.
41. Compliance with Approved Plan. The project shall conform to the plans and statements in the Use Permit. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated October 5, 2023, except as modified by conditions of approval.

**At All Times:**

42. Exterior Lighting. All exterior lighting shall be energy efficient where feasible; and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
43. Rooftop Projections. No additional rooftop or elevator equipment shall be added to exceed the approved maximum roof height without submission of an application for a Use Permit Modification, subject to Board review and approval.
44. Drainage Patterns. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.
45. Electrical Meter. Only one electrical meter fixture may be installed per dwelling unit.
46. Loading. All loading/unloading activities associated with deliveries to all uses shall be restricted to the hours of 7:00 a.m. to 10:00 p.m. daily.

- 47. Residential Permit Parking.** No Residential Permit Parking (RPP) permits shall be issued to project residents, nor shall commercial placards be issued to non-residential occupants and/or users of the site. The project planner shall notify the Finance Department, Customer Service Center, to add these addresses to the list of addresses ineligible for RPP permits. The property owner shall notify all tenants of rental units, and/or buyers of condominium units, of this restriction in leases and/or contracts, and shall provide sample leases and/or contracts including such notification to the project planner prior to issuance of an occupancy permit or final inspection.

**GENERAL NOTES**

- Provide an illuminated address number on a contrasting background and a minimum 1/2 inches stroke by 4 inches minimum height that is visible from the street. (CRC 319.1)
- That all coverings shall be a class B or better roof covering assembly. (CBC 1505)
- That bathtub and shower floors and walls above bathtub with installed shower heads and in shower compartments shall be finished with a nonabsorbent surface. Such surfaces shall extend to a height of not less than 6 feet above the floor. [CRC R307.2]
- That landings for new exterior doors shall not be more than 7-3/4 inches below the top of the threshold of the door. [CRCR311.3]
- That smoke alarms shall be interconnected so that the activation of one alarm will activate all of the alarms and be clearly audible in all bedrooms over background noise levels. [CRC R314.4]
- That smoke alarms shall receive their primary power from the building wiring and shall be equipped with a battery backup. [CRC R314.6]
- That a carbon monoxide alarm shall receive their primary power from the building wiring and where primary power is interrupted, shall receive power from a battery. [CRC R315.5]
- That where more than one carbon monoxide alarm is required, the alarms shall be interconnected in a manner that activation of one alarm shall activate all of the alarms. [CRC R315.7]
- That installed luminaires shall be high-efficacy in accordance with Table 150.0-A [CEC 150.0(A)(1A)]
- That roofing product shall have a minimum aged solar reflectance of 0.20 and a minimum thermal emittance of 0.75, or a minimum SRI of 16. [CEC 150.1(11A)]
- The maximum flow rates for the following plumbing fixtures: [CGBSC 4.303.1]
  - Water closets shall not exceed 1.28 gallons per flush. Tank-type water closets shall be certified to the performance criteria of the U.S. EPA WaterSense Specification for tank-type Toilets.
  - Single showerheads shall have a maximum flow rate of not more than 1.8 gallons per minute at 80 psi. Shower heads shall be certified to the performance criteria of the U.S. EPA WaterSense Specification for Showerheads.
  - When a shower is served by more than one showerhead, the combined flow rate of all showerheads and/or other shower outlets controlled by a single valve shall not exceed 1.8 gallons per minute at 80 psi, or the shower shall be designed to allow only one shower outlet to be in operation at a time.
  - Residential lavatory faucets shall have a maximum flow rate that does not exceed 1.2 gallons per minute at 60 psi. The minimum flow rate shall not be less than 0.8 gallons per minute at 20 psi.
  - Shower compartments, regardless of shape, shall have a minimum finished interior of 1024 square inches and shall also be capable of encompassing a 30-inch circle. The minimum required area and dimensions shall be measured at a height equal to the top of the threshold and at a point tangent to its centerline. The area and dimensions shall be maintained to a point of not less than 70-inches above the shower drain outlet. (CPC 408.6)
- That each bathroom shall be mechanically ventilated and shall comply with the following:
  - ENERGY STAR compliant and ducted to terminate outside the building.
  - Unless component of whole house ventilation system, fans must be controlled by a humidity control that shall be capable of adjustment between a humidity range of less than 50% to a maximum of 80%, utilizing either manual or automatic means of adjustment. Humidity control may be a separate component to the exhaust fan.
- That the minimum exhaust rate of the bathroom fans shall be 50 cfm [CMC Table 403.7]
- That showers and tub/shower combinations shall be provided with individual pressure balance or thermostatic mixing control valves to provide scald and thermal shock protection. Handle position stops shall be adjusted to deliver a maximum mixed water setting of 120 degree F. [CPC 408.3]
- That at least one 120-volt, 20-ampere branch circuit shall be provided to supply a bathroom receptacle outlet (s) and shall have no other outlets. [CEC 210.11(c)(3)]
- That all nonlocking-type 125-volt, 14- and 20-ampere receptacles shall be listed tamper-resistant receptacles unless located 66 inches above the floor or are part of a luminaire or appliance. [CEC 408.12(A)]
- That a radiant barrier with an emittance less than or equal to 0.05 as tested in accordance with ASTM C1371 or ASTM E408 will be applied, to match what is indicated in the energy compliance calculations.

**ELECTRICAL CODE**

- That all electrical conductor materials shall be copper per (DCMC) 1524.100).
  - That all 15 and 20 ampere receptacles installed within the new construction and alteration shall be Tamper-Resistant Receptacles (CRC 406.12) 14.
- SERVICE PANEL REQUIREMENTS**
- When upgrading service panel, busbar shall be rated at a minimum of 200 amperes (230.79 (C) and CEC 110.10 (e) (2).

**2020 Code Language:**

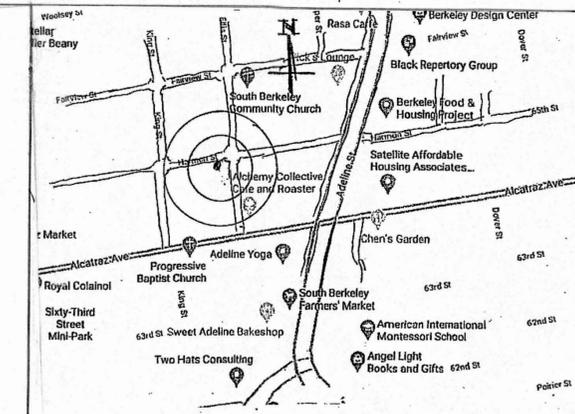
**410.10(D) Bathtub and Shower Areas.** A luminaire installed in a bathtub or shower area shall meet all of the following requirements:

**N (1)** No parts of cord-connected luminaires, chain-, cable-, or cord-suspended luminaires, lighting track, pendants, or ceiling-suspended (paddle) fans shall be located within a zone measured 900 mm (3 ft) horizontally and 2.5 m (8 ft) vertically from the top of the bathtub rim or shower stall threshold. This zone is all-encompassing and includes the space directly over the tub or shower stall.

**N (2)** Luminaires located within the actual outside dimension of the bathtub or shower to a height of 2.5 m (8 ft) vertically from the top of the bathtub rim or shower threshold shall be marked suitable for damp locations or marked suitable for wet locations. Luminaires located where subject to shower spray shall be marked suitable for wet locations.

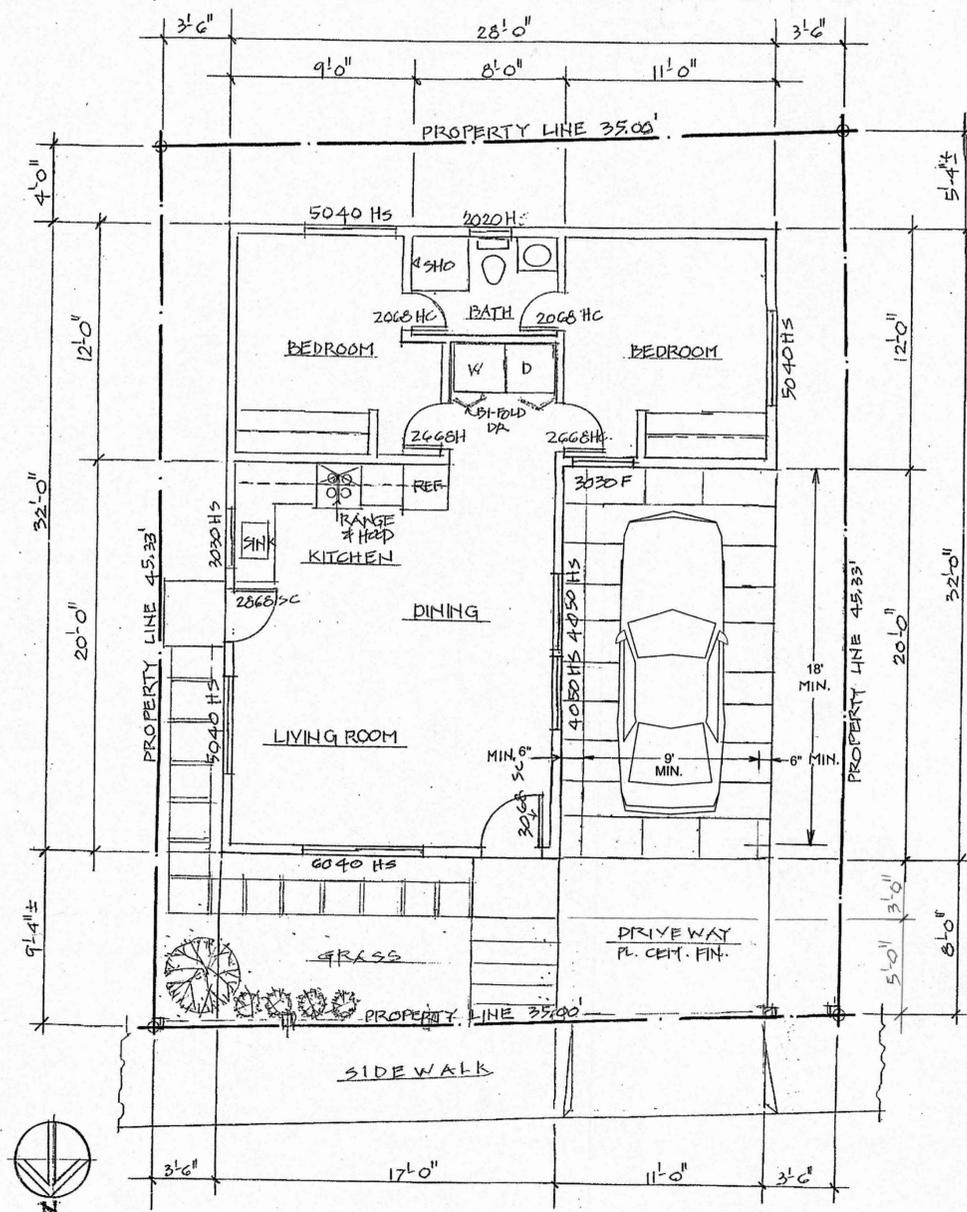
**ADDITIONAL NOTES:**

Natural Gas infrastructure shall be prohibited in Newly Constructed Buildings



REVISIONS	BY

**LITTLEFIELD RESIDENCE**  
1804 HARMON ST., BERKELEY, CA 94703



**SITE AND FLOOR PLAN**

1/4" = 1'-0"

**PROJECT DATA**

Project Name: **LITTLEFIELD RESIDENCE**  
Project Owner: Marlen Littlefield  
Project Address: 1804 Harmon St., Berkeley, CA 94703  
Owner Tel. No.: (510) 734-2904

**GEN. INFORMATION**

Occupancy Group: R-3/U  
Type of Construction: V-B  
No. of Stories: One  
Use: Residence  
APN: 52-1531-15

**SCOPE OF WORK**

PROPOSED NEW CONSTRUCTION OF A 676 SQ. FT. ONE STORY RESIDENCE A LIVING ROOM, KITCHEN, DINING AREA, TWO BEDROOMS, A WASHER & DRYER AND A THREE FIXTURE BATHROOM

**PROPERTY DESCRIPTION**

Floor Area: 676 sq. ft.  
Approximate Lot Area: 1,586.33 Sq. Ft.  
  
676 / 1,586.55 = 0.426 or 43% < 45%

**GENERAL INFORMATION**

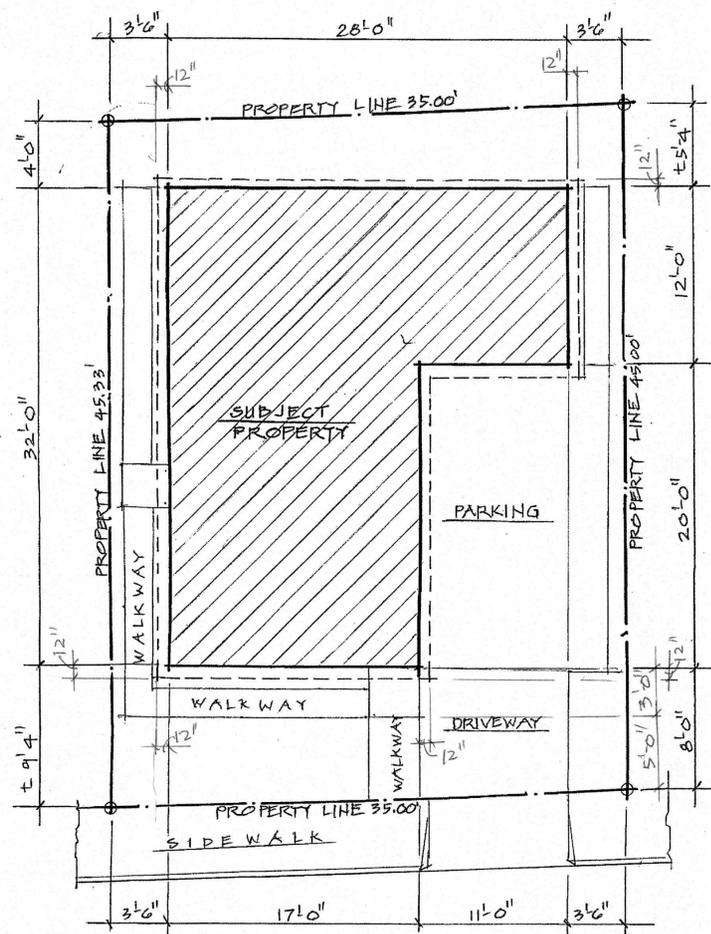
All construction work shall comply with 2022 the California Code to the and Regulations Title 24 included  
2022 Building Code  
2022 Residential Code  
2022 Plumbing Code  
2022 Electrical Code  
2022 Mechanical Code  
2022 California Green Building Standards  
2022 California Energy Code (2022 Energy Efficiency Standards) and  
2022 City of Berkeley Municipal Code

**DRAWING INDEX**

- SHEET 1 SITE PLAN, GEN. NOTES AND PROJECT DATA
- SHEET 1A LOT AND OPEN SPACE COVERAGE DIAGRAM AND STREET STRIP ELEVATION
- SHEET 2 CROS & LONG. SECTIONS AND EXTERIOR ELEVATIONS
- SHEET 3 FOUNDATION & ROOF FRAMING PLAN AND DETAILS
- SHEET S1 SITE SURVEY PLAN

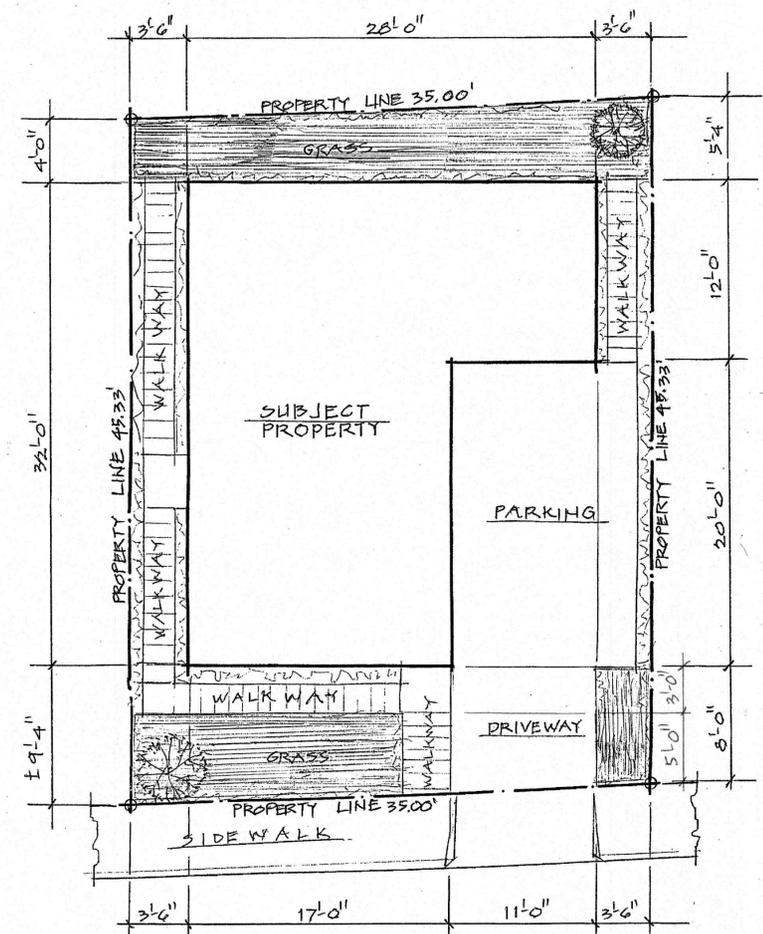
**AD DESIGN**  
1231 West 2nd St.  
Berkeley, CA 94510  
510 599-9234  
alberto.devigal@gmail.com

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CHECKED BY: AD  
DATE: 2-23-2023  
SCALE: AS SHOWN  
JOB NO.:  
SHEET: 1  
OF - SHEET



LOT COVERAGE DIAGRAM  
 3/16" = 1'-0"

**Lot Coverage**  
 Lot Coverage 676 Sq. Ft.  
 Lot Approximate Area 1,586.55 Sq. Ft.  
 $676 / 1,586.55 = 0.246$  or 43 %



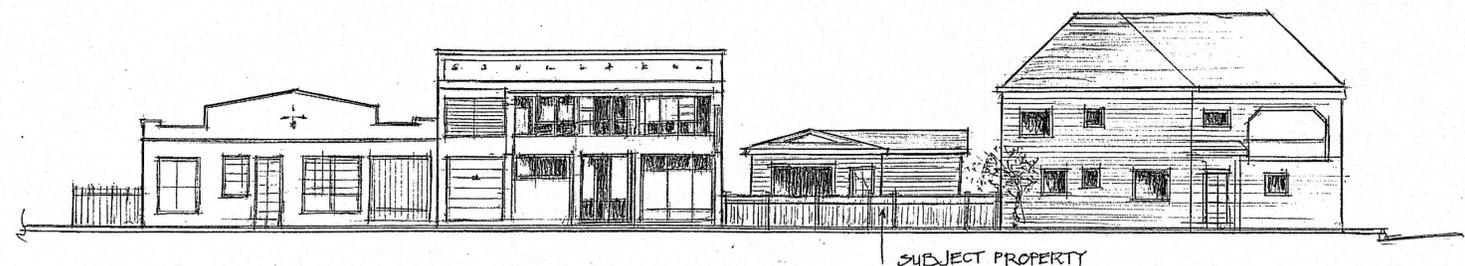
OPEN SPACE DIAGRAM  
 3/16" = 1'-0"

**Open Space Diagram**  
 Open Space Area  
 Do not qualify because of the small lot area.

**Landscape Area**  
 Landscape Area 298.75 Sq. Ft.  
 Approximate Lot Area 1,586.55 Sq. Ft.  
 $298.75 / 1,586.55 = 0.188$  or 19 %

LANDSCAPE AREA: LESS THAN  
 500.00 SQ. FT.

**NOTE:**  
 MINIMUM 3" MULCH DEPTH  
 AND COMPOST TO ACHIEVE  
 A MINIMUM 6% ORGANIC  
 MATTER IN SOIL COMPOSITION



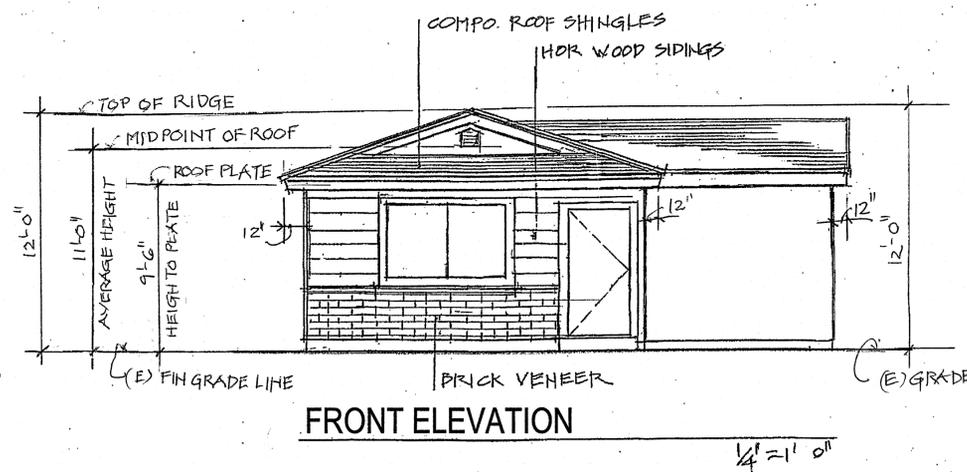
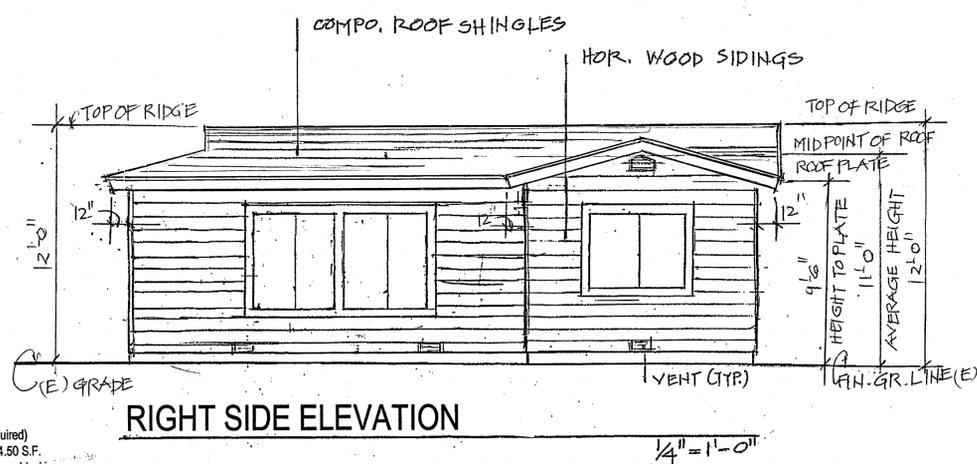
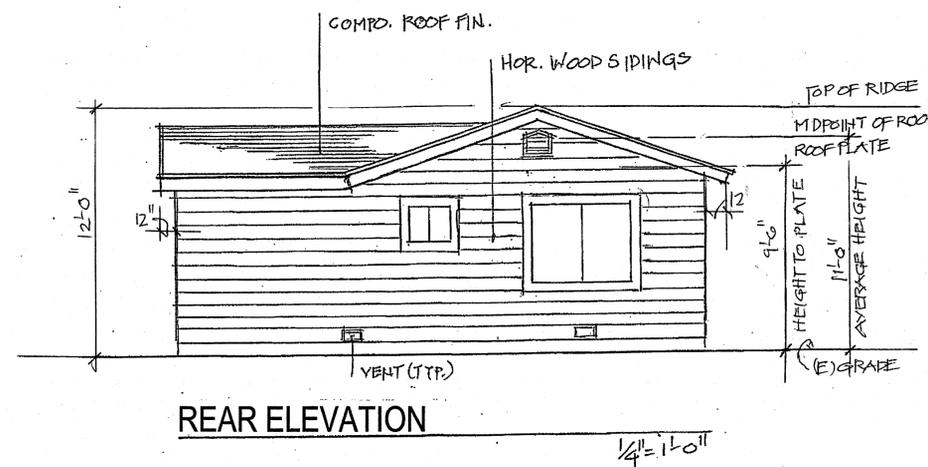
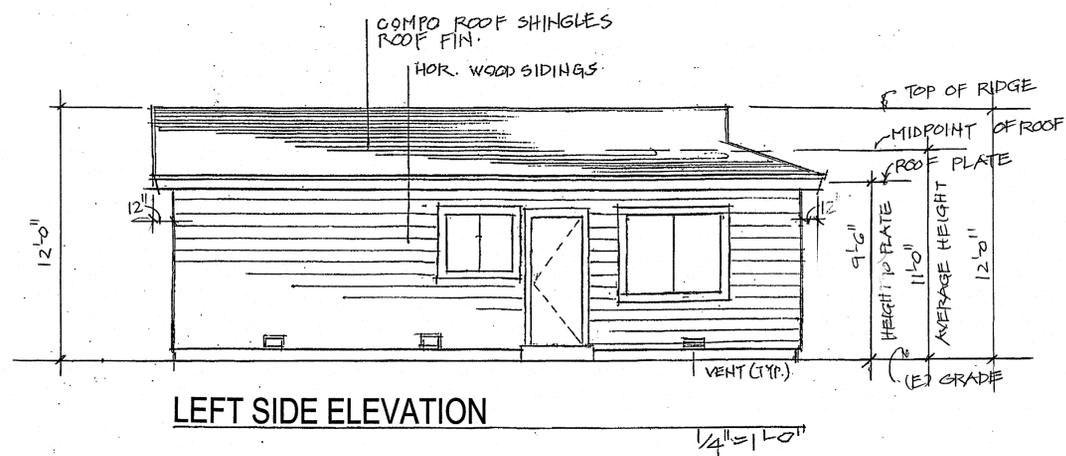
STREET STRIP ELEVATION  
 N.T.S.

REVISIONS	BY
▲	
▲	
▲	

LITTLEFIELD RESIDENCE  
 1804 HARMON ST., BERKELEY, CA 94703

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 510 599-9234  
 alberto.devigal@gmail.com

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OF SHEETS

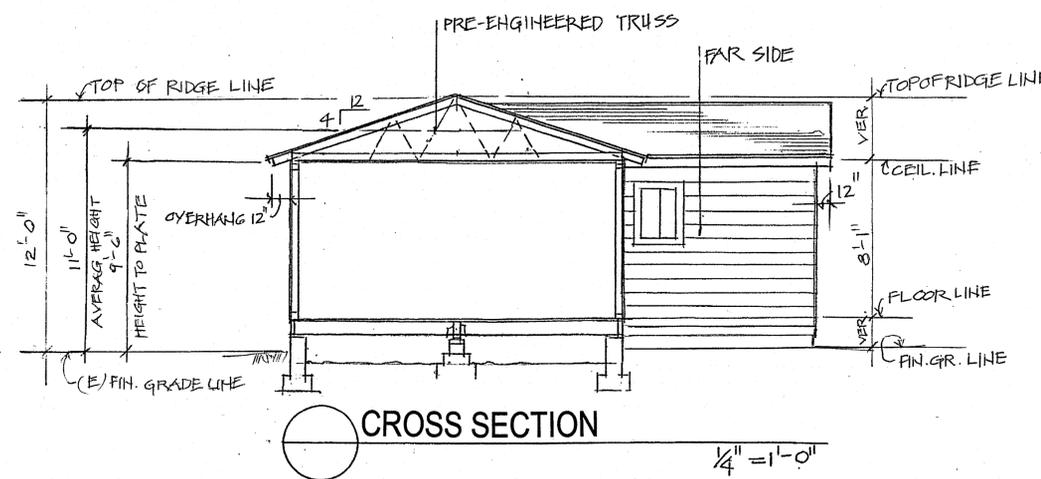
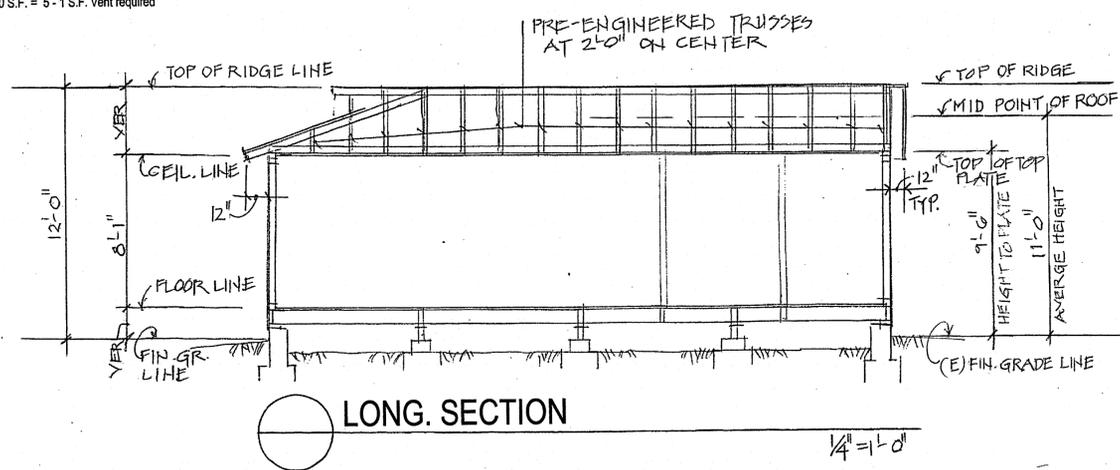


**Attic Ventilation**

Attic Area 676 S.F.  
 Divided 150 = 4.50  
 Vent Size = 3-2 1/2" dia. holes = 0.16 S.F.  
 Number of Vented Eaves Block Required 16  
 (Additional venting or larger vents may be required)  
 0.16 X 16 = 2.56 plus 2-1 S.F. = 4.56 S.F. > 4.50 S.F.  
 Attic area shall be ventilated by opening in eaves blocking,  
 and eaves vents covered by corrosion resistant mesh screen  
 either not greater than 1/4" opening to total not less than 1 S.F.  
 of attic area or per UBC 1505.3.

**Under Floor Ventilation**

Under Floor Area 676 S.F.  
 Divided 150 = 4.50 S.F. = 5 - 1 S.F. Vent required

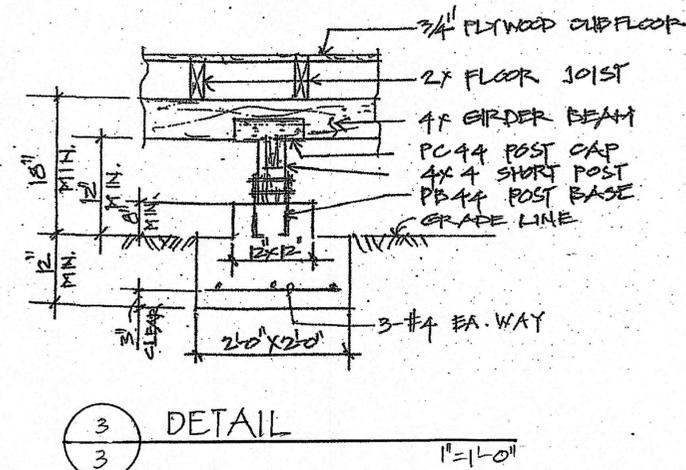
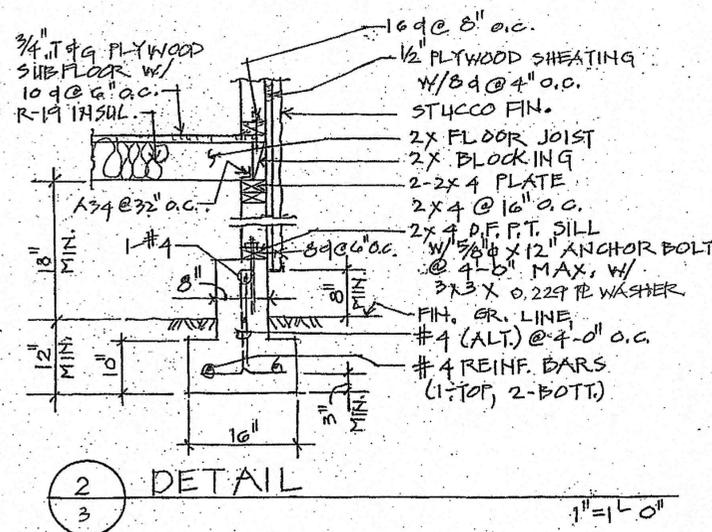
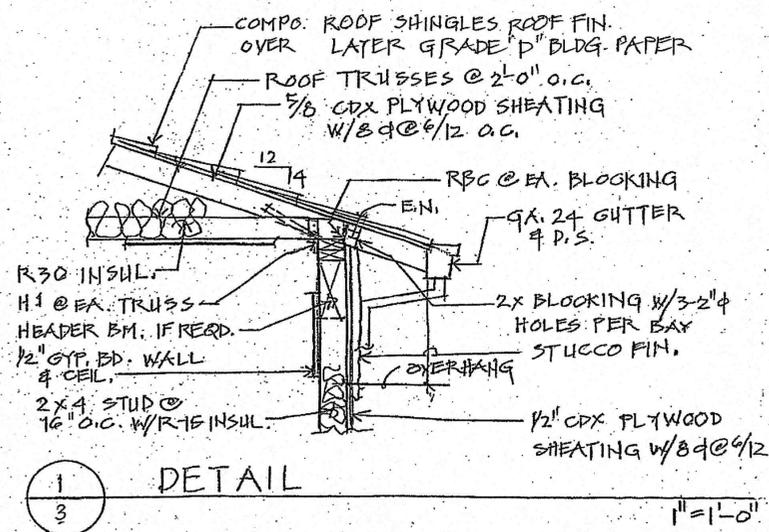


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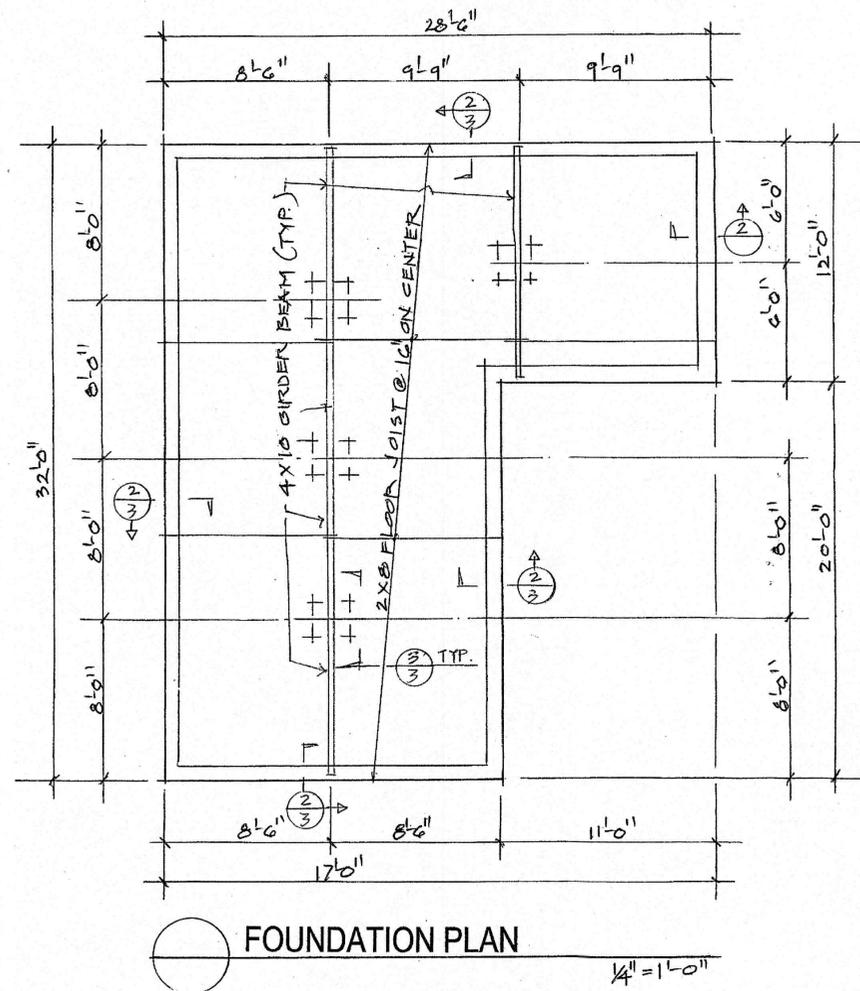
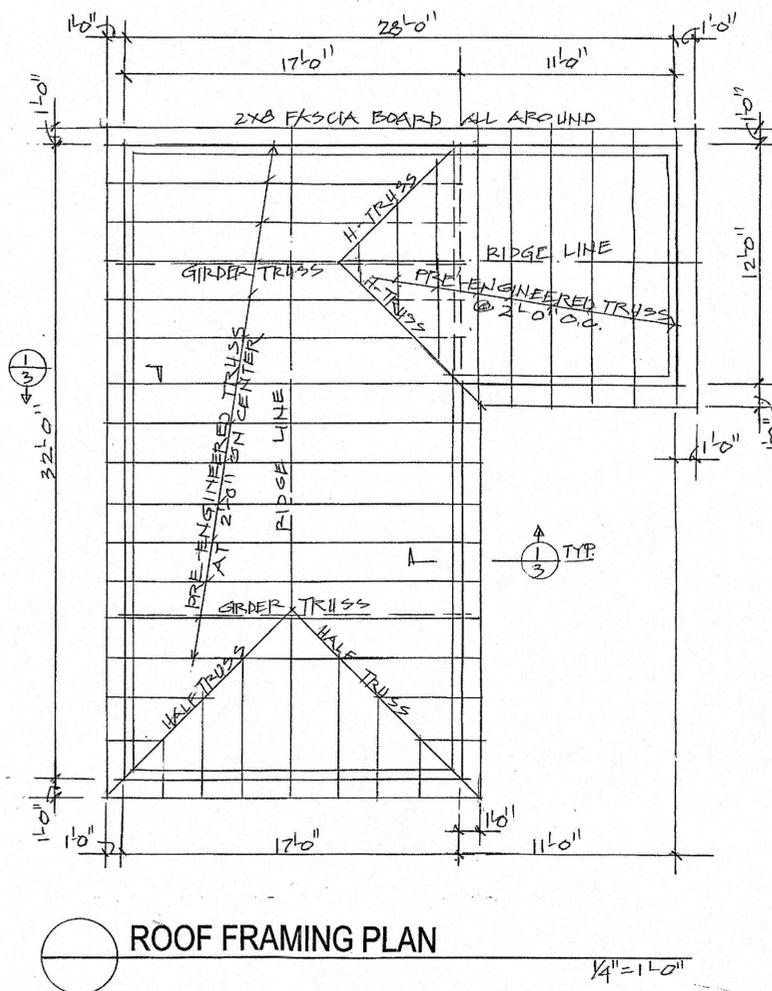
**TRUSS NOTES:**

- 1.0 Manufactured Wood Trusses-Deferred submittal
  - a. Design manufacture and quality assurance of metal plate-connected wood trusses shall be in accordance with 2019 CBC Section 2303.4 and TPI-1.
  - b. Truss design drawings shall bear the seal and signature of the designer. Where a cover sheet and a truss index sheet are separately provided and attached to the set of truss design drawings. The cover sheet and the truss index sheet are the only documents required to be sign and sealed by the truss designer.
  - c. The truss submittal package shall be submitted to the E.O.R. for review and acceptance before submitting to the building official for approval prior to installation.
  - d. Design Loads as Applicable
 

1. top chord	DL = 10 psf
	LL = 20 psf
2. bot. cord	DL = 5 psf
	LL = 10 psf-ceiling load only
  - e. See architectural drawings for truss slope, dimensions and sections and elevations
- 2.0 Wood trusses are supported by exterior walls. All interior walls are non-bearing walls.

**GENERAL NOTES**

1. All work shall conform to the California Building Code, 2019 Edition, and all local ordinances.
2. The contractor shall verify existing job conditions and review all drawings and specifications. Any discrepancies are to be brought to the attention of the Engineer of record for clarification prior to commencing work.
3. The contractor shall be responsible for the safety of the building during construction. The contractor shall be responsible for all shoring, bracing and demolition procedures.
4. All dimension lines on the plans are to face of studs, unless noted otherwise.
5. Concrete shall have the minimum compressive strength of 2500 psi. at 28 days.
6. Reinforcing steel shall conform to ASTM A-615, Grade 40 for #3, and Grade 60 for #4 and larger.
7. Minimum grades of sawn lumber (unless noted otherwise "UNO"):
  - posts and beams (6x and larger): DF #1.
  - joists, rafters, braces and plates: DF #2.
  - 2x4, 2x6 studs: construction grade.
 The maximum moisture content of wood at the time of installation shall not be more than 19%. Nails shall be of common wire.
8. Anchor Bolts used shall be unfinished machine bolts per ASTM-307, UNO.
9. Metal framing clips, hangers, strap ties and other connectors used shall be by Simpson Strong Tie or approved equal.
10. All Parallel Strand Lumber (PSL) shall be as manufactured by Weyerhaeuser. "PARALAM" or approved equal shall be fabricated and installed in accordance with ICC ES ESR-1387.
11. Roof Truss calculations and shop drawings shall be submitted to the Engineer of Record and the city building department for review and approval prior to fabrication.



REVISIONS	BY

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alberto.devigal@gmail.com

DRAWN BY  
A DeVigal  
CHECKED BY

DATE  
2-23-2023

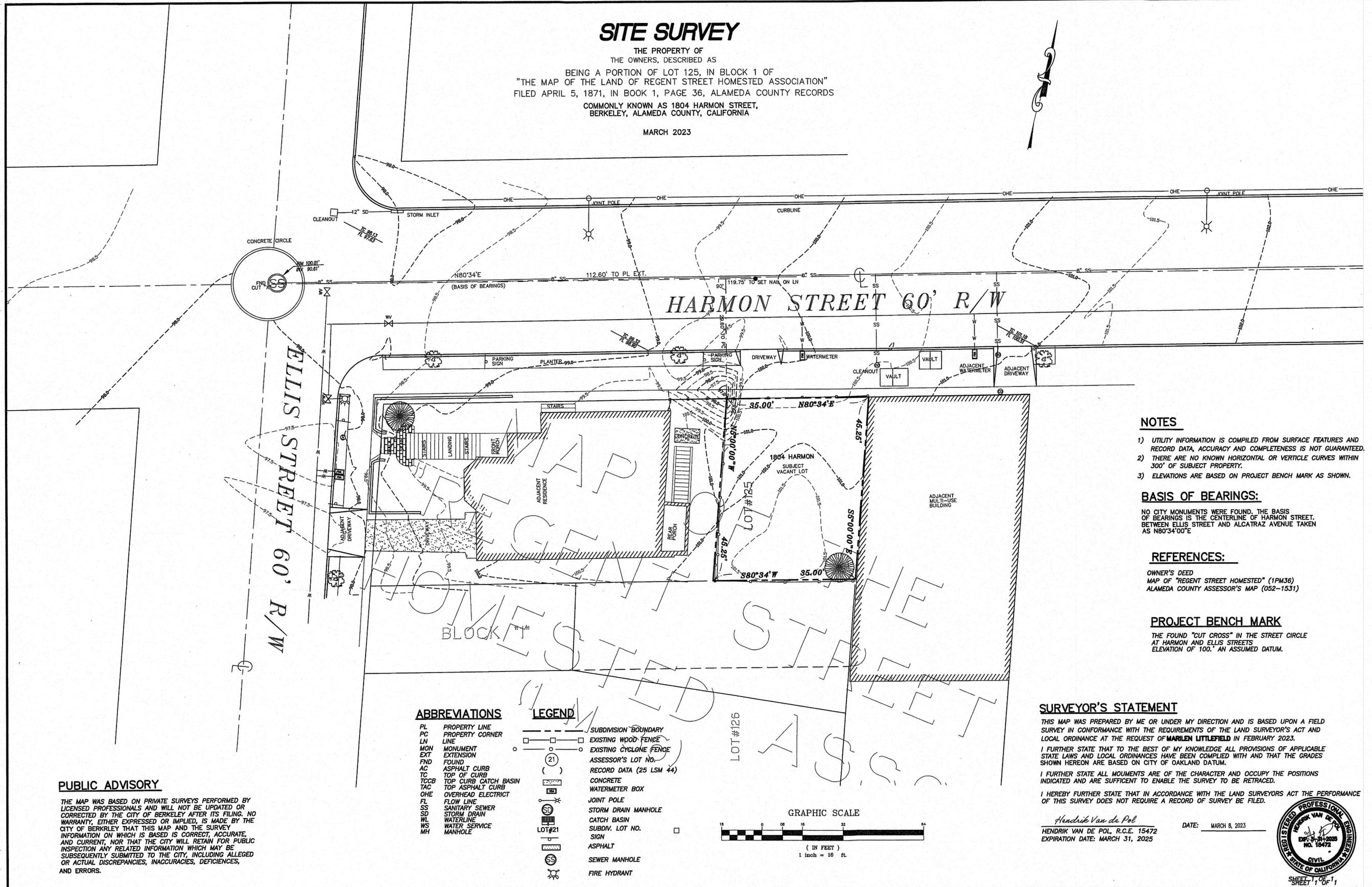
SCALE  
AS SHOWN

JOB NO.

SHEET  
3

# SITE SURVEY

THE PROPERTY OF  
THE OWNERS, DESCRIBED AS  
BEING A PORTION OF LOT 125, IN BLOCK 1 OF  
"THE MAP OF THE LAND OF REGENT STREET HOMESTED ASSOCIATION"  
FILED APRIL 5, 1871, IN BOOK 1, PAGE 36, ALAMEDA COUNTY RECORDS  
COMMONLY KNOWN AS 1804 HARMON STREET,  
BERKELEY, ALAMEDA COUNTY, CALIFORNIA  
MARCH 2023



### NOTES

- 1) UTILITY INFORMATION IS COMPILED FROM SURFACE FEATURES AND RECORD DATA, ACCURACY AND COMPLETENESS IS NOT GUARANTEED.
- 2) THERE ARE NO KNOWN HORIZONTAL OR VERTICLE CURVES WITHIN 300' OF SUBJECT PROPERTY.
- 3) ELEVATIONS ARE BASED ON PROJECT BENCH MARK AS SHOWN.

### BASIS OF BEARINGS:

NO CITY MONUMENTS WERE FOUND, THE BASIS OF BEARINGS IS THE CENTERLINE OF HARMON STREET, BETWEEN ELLIS STREET AND ALCATRAZ AVENUE TAKEN AS N80°34'00"E

### REFERENCES:

OWNER'S DEED  
MAP OF "REGENT STREET HOMESTED" (1PM36)  
ALAMEDA COUNTY ASSESSOR'S MAP (052-1531)

### PROJECT BENCH MARK

THE FOUND "CUT CROSS" IN THE STREET CIRCLE AT HARMON AND ELLIS STREETS  
ELEVATION OF 100.1 AN ASSUMED DATUM.

### SURVEYOR'S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE LAND SURVEYOR'S ACT AND LOCAL ORDINANCE AT THE REQUEST OF MARILEN LITTLEFIELD IN FEBRUARY 2023.

I FURTHER STATE THAT TO THE BEST OF MY KNOWLEDGE ALL PROVISIONS OF APPLICABLE STATE LAWS AND LOCAL ORDINANCES HAVE BEEN COMPLIED WITH AND THAT THE GRADES SHOWN HEREON ARE BASED ON CITY OF OAKLAND DATUM.

I FURTHER STATE ALL MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED AND ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

I HEREBY FURTHER STATE THAT IN ACCORDANCE WITH THE LAND SURVEYORS ACT THE PERFORMANCE OF THIS SURVEY DOES NOT REQUIRE A RECORD OF SURVEY BE FILED.

Hendrik Van de Pol  
HENDRIK VAN DE POL, R.C.E. 15472  
EXPIRATION DATE: MARCH 31, 2025

DATE: MARCH 8, 2023



### PUBLIC ADVISORY

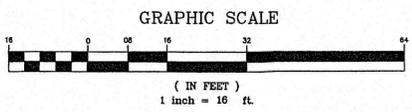
THE MAP WAS BASED ON PRIVATE SURVEYS PERFORMED BY LICENSED PROFESSIONALS AND WILL NOT BE UPDATED OR CORRECTED BY THE CITY OF BERKELEY AFTER ITS FILING. NO WARRANTY, EITHER EXPRESSED OR IMPLIED, IS MADE BY THE CITY OF BERKELEY THAT THIS MAP AND THE SURVEY INFORMATION ON WHICH IS BASED IS CORRECT, ACCURATE, AND CURRENT, NOR THAT THE CITY WILL RETAIN FOR PUBLIC INSPECTION ANY RELATED INFORMATION WHICH MAY BE SUBSEQUENTLY SUBMITTED TO THE CITY, INCLUDING ALLEGED OR ACTUAL DISCREPANCIES, INACCURACIES, DEFICIENCIES, AND ERRORS.

### ABBREVIATIONS

- PL PROPERTY LINE
- PC PROPERTY CORNER
- LN LINE
- MON MONUMENT
- EXT EXTENSION
- FND FOUND
- AC ASPHALT CURB
- TC TOP OF CURB
- TCCB TOP CURB CATCH BASIN
- TAC TOP ASPHALT CURB
- OHE OVERHEAD ELECTRICT
- FL FLOW LINE
- SS SANITARY SEWER
- SD STORM DRAIN
- WL WATERLINE
- WS WATER SERVICE
- MH MANHOLE

### LEGEND

- SUBDIVISION BOUNDARY
- EXISTING WOOD FENCE
- EXISTING CYCLONE FENCE
- ASSESSOR'S LOT NO.
- RECORD DATA (25 LSM 44)
- CONCRETE
- WATERMETER BOX
- JOINT POLE
- STORM DRAIN MANHOLE
- CATCH BASIN
- SUBDIV. LOT NO.
- SIGN
- ASPHALT
- SEWER MANHOLE
- FIRE HYDRANT



51



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

## NOTICE OF PUBLIC HEARING

### 1804 Harmon Street

**Use Permit #ZP2023-0036 to construct a new 676 square foot, one-story (11 feet) single-family dwelling unit on a vacant non-conforming 1,586 square foot lot, and grant a Variance to open space and setback development standards.**

The Zoning Adjustments Board of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 23.404.

**When:** Thursday, November 30, 2023, 7:00 PM.

**Where:** Berkeley Unified School District meeting room, 1231 Addison Street, (wheelchair accessible) with remote/hybrid option (via Zoom).

Please visit: <https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board> and click on the hearing date to access the most up-to-date meeting information, or call the Land Use Planning division (510) 981-7410.

***PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED IN A HYBRID MODEL WITH BOTH IN-PERSON ATTENDANCE AND VIRTUAL PARTICIPATION AVAILABLE FOR MEMBERS OF THE PUBLIC.***

*For in-person attendees, face coverings or masks that cover both the nose and mouth are encouraged. If you're feeling sick, please do not attend the meeting in-person as a public health precaution.*

*Currently, there are no physical distancing requirements in place by the State of California or the Local Health Officer for an indoor event similar to a Commission meeting. However, all attendees are requested to be respectful of the personal space of other attendees. An area of the public seating area will be designated as "distanced seating" to accommodate persons that need to distance for personal health reasons.*

#### **A. Land Use Designations:**

- General Plan: Medium Density Residential
- Zoning: Restricted Multiple Family Residential District (R2-A)

#### **B. Zoning Permits Required:**

- Use Permit to establish a new dwelling unit on a vacant lot, under BMC Section 23.202.020

- Variance to exceed the setback requirements in the R2-A Zoning District, under Berkeley Municipal Code (BMC) Section 23.406.050
- Variance to establish a new dwelling unit without any open space, under BMC Section 23.406.050

**D. CEQA Recommendation:** Categorically exempt pursuant to Section 15303 of the CEQA Guidelines (“New Construction or Conversion of Small Structures”).

**E. Parties Involved:**

- Applicant Alberto Devigal, Berkeley CA
- Property Owner Marilen Littlefield, Pinole CA

**Further Information:**

All application materials are available online at:

<https://aca.cityofberkeley.info/CitizenAccess/Welcome.aspx>.

The Zoning Adjustments Board final agenda and staff reports will be available online 6 days prior to this meeting at: <https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board>.

Questions about the project should be directed to the project planner, Katrina Lapira, at (510) 981-7488 or [klapira@berkeleyca.gov](mailto:klapira@berkeleyca.gov).

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

**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.

**Written Comments, 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://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board>

All persons are welcome to attend the hearing and will be given an opportunity to address the Board. Comments may be made verbally at the public hearing and/or in writing before the hearing. The Board may limit the time granted to each speaker.

**Correspondence received by 5:00 PM, eight days before this public hearing, will be provided with the agenda materials provided to the Board.** Note that if you submit a hard copy 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 5:00 PM two days before** this public hearing, will be conveyed to the Board in a Supplemental Communications and Reports, which is released around noon one day before the public hearing; or
- **Correspondence received after 5:00 PM two days before** this public hearing will be saved in the project administrative record.



**Accessibility Information / ADA Disclaimer:**

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.

**SB 343 Disclaimer:**

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available to the public. Please contact the Land Use Planning Division ([zab@berkeleyca.gov](mailto:zab@berkeleyca.gov)) to request hard-copies or electronic copies.

**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.
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.