

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
AUGUST 8, 2024

844 University Avenue

Use Permit #ZP2024-0034 to demolish 126 square feet from the side of the building, expand an access door within a non-conforming street-side setback, and convert a 3,406 vacant building to a school (K-12) for use by the Black Pine Circle School (adjacent to the site). The capacity would be for approximately 54 students.

I. Background

A. Land Use Designations:

- General Plan: Avenue Commercial (AC)
- Zoning District: Commercial West (C-W)

B. Zoning Permits Required:

- Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.204.020(A)(2) to establish a school use (K-12)
- Administrative Use Permit pursuant to BMC Section 23.324.050(D)(2) to enlarge an existing opening within a non-conforming setback

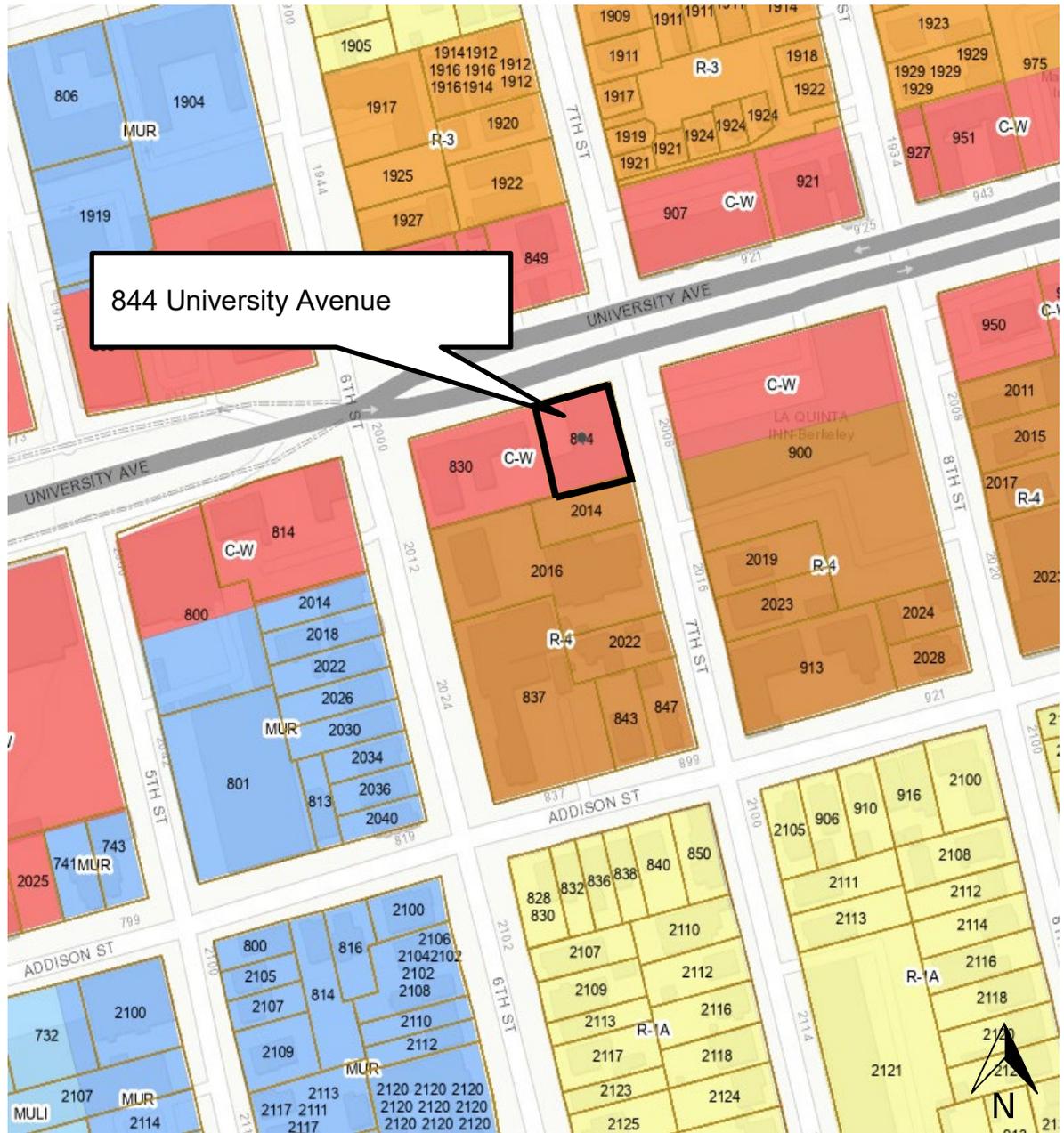
C. CEQA Recommendation:

It is staff's recommendation to the Zoning Adjustments Board (ZAB) that the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code Section 21000, et seq. and California Code of Regulations, Section 15000, et seq.) pursuant to CEQA Guidelines Section 15303 ("New Construction or Conversion of Small Structures").

D. Parties Involved:

- Applicant/Property Owner, Applicant/Property Owner Black Pine Circle School, 2024 Seventh Street, Berkeley

Figure 1: Vicinity and Zoning Districts Map



C-W Commercial West
M-UR Mixed Use-Residential District
R-1A Restricted Two-Family Residential District
R-3 Multiple Family Residential District

Figure 2: Site Plan

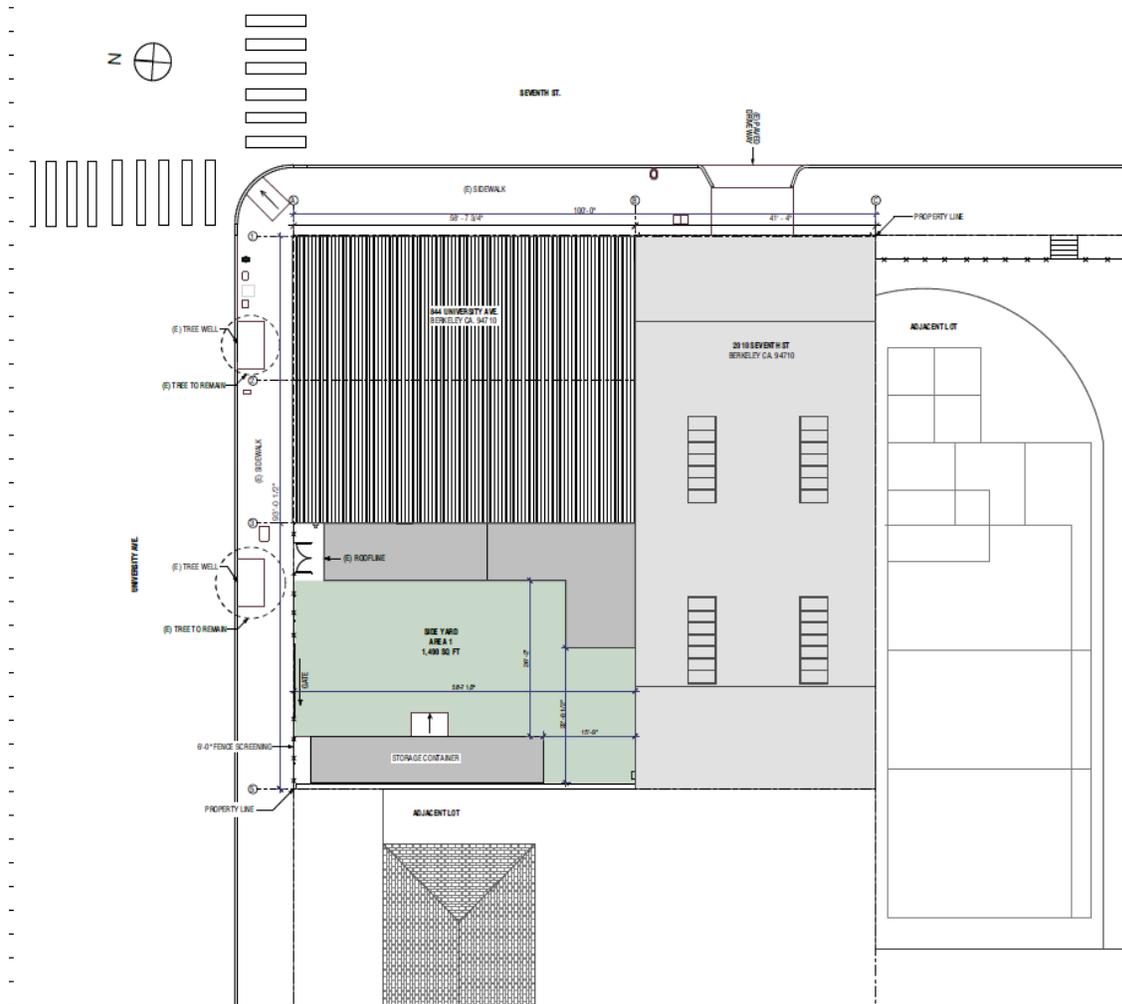


Figure 3: Proposed Floor Plans

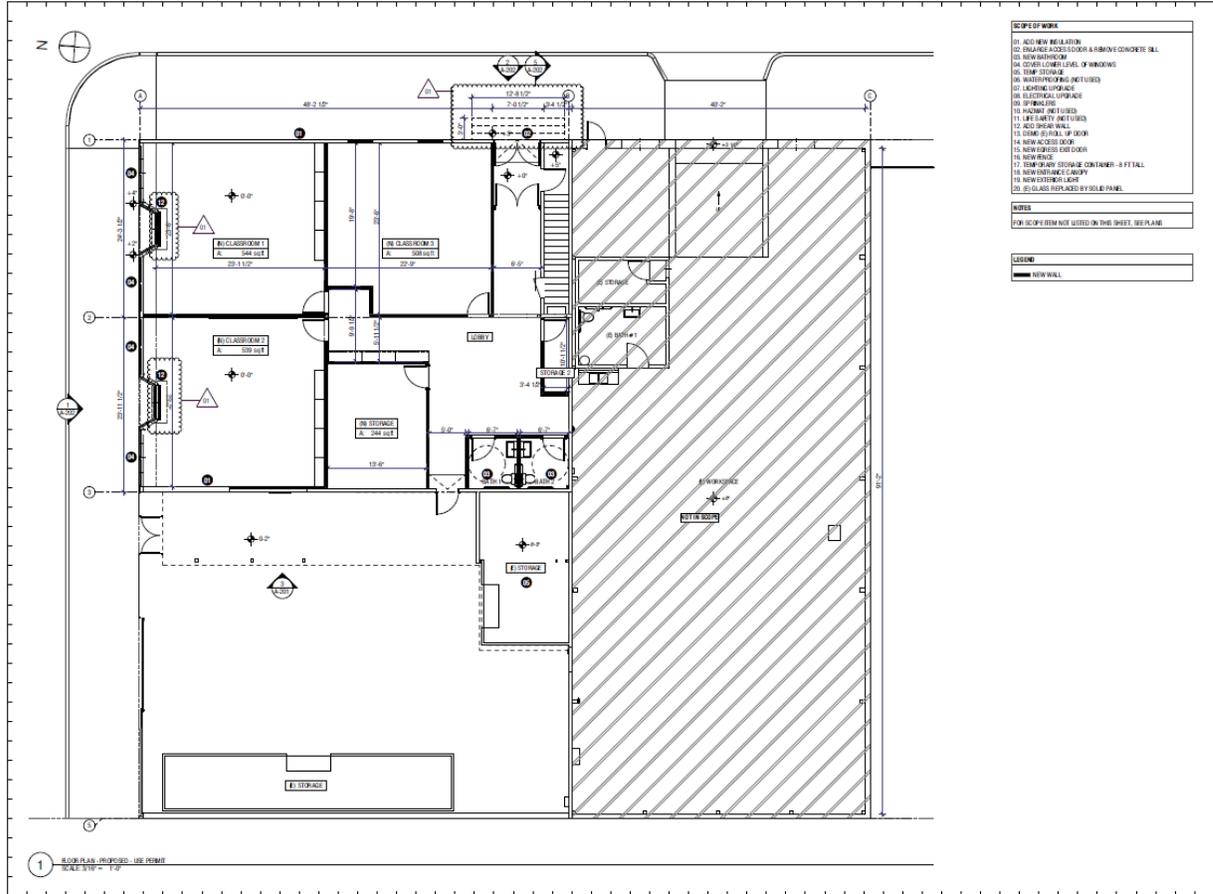


Figure 4: Elevations

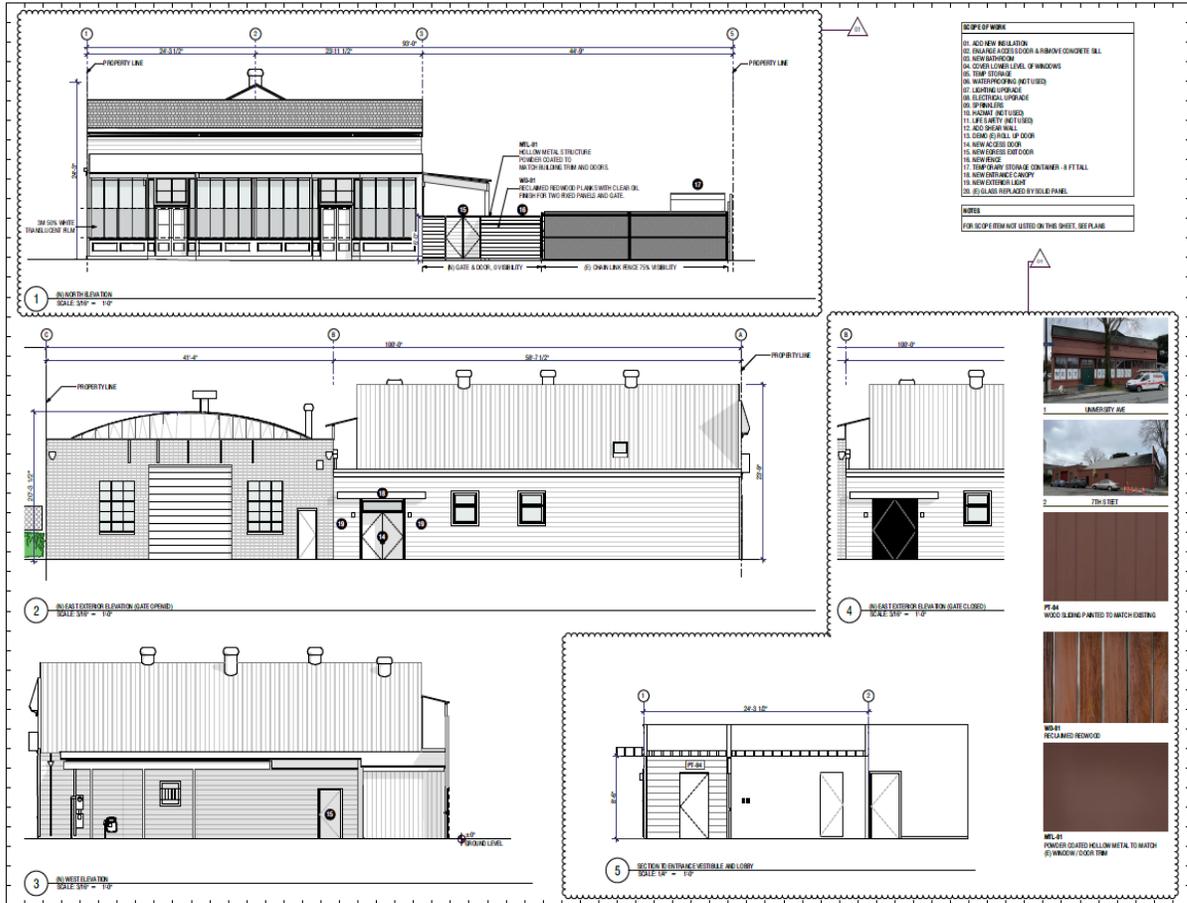


Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Retail	West Berkeley Commercial (C-W)	Avenue Commercial
Surrounding Properties	North	Fuel Station		
	South	K-12 School		
	East	Hotel		
	West	Medical Clinic		

Table 2: Special Characteristics

Characteristic	Applicability	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 proposes a conversion of an existing building from retail to a school use and does not propose new net floor area. 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 Chapter 23.328)	No	This is a nonresidential project, and is a not housing development project, as defined in BMC 23.328.020 ^a .
Alcohol Sales/Service Public Convenience or Necessity	No	The project is not proposing the sale or service of alcohol beverages; therefore, this does not apply.
Coast Live Oak Trees (BMC Chapter 6.52)	No	There are no Coast Live Oak (<i>Quercus agrifolia</i>) trees on the project site.
Creeks	No	No creek or culvert, as defined by BMC Chapter 17.08, exists on or within 30 feet of the project site.
Density Bonus	No	The project is not residential and would not utilize a density bonus.
Historic Resources	No	This project does not propose a substantial change to a structure of potential historical significance under the criteria of the Berkeley's Landmark Preservation Ordinance.
Housing Accountability Act (HAA) (Gov't Code Section 65589.5(j))	No	The project is nonresidential and does not meet the definition of a "Housing Development Project" per Government Code Section 65589.5(h)(2). ^b
Housing Crisis Act of 2019 (SB 330)		
Rent Controlled Units	No	There are no residential units on the project site; therefore, this does not apply.
Residential Preferred Parking (RPP)	No	The site is not located in an RPP zone.
Seismic Hazards (SHMA)	Yes	The project site is located within an area susceptible to landslide/liquefaction/fault rupture as shown on the State Seismic Hazard Zones map. ^c However, the project would not include any construction resulting in more than 50% of the current gross floor area and therefore a geotechnical report is not required.

Characteristic	Applicability	Explanation
Soil/Groundwater Contamination	Yes	The project site is within the City's Environmental Management Area. The applicant has submitted a Phase I report. No further investigation is recommended. Standard Conditions of Approval related to hazardous materials would apply.
Transit	Yes	The project is within 1 mile of Alameda County Transit bus lines 51B, 802, 72, 72 M, and 72 R, and the, Bay Area Rapid Transit, North Berkeley Station
<p>Notes:</p> <p>a. BMC 23.328.020(E) defines a "Housing Development Project" for purposes of inclusionary housing requirements as "a development project, including a Mixed-Use Residential project involving the new construction of at least one Residential Unit. Projects with one or more buildings or projects including multiple contiguous parcels under common ownership or control shall be considered as a sole Housing Development Project and not as individual projects.</p> <p>b. 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.</p> <p>c. California Department of Conservation. DOC Maps: Geologic Hazards. Available: https://maps.conservation.ca.gov/geologic Hazards/</p>		

Table 3: Project Chronology

Date	Action
March 14, 2024	Application submitted
March 29, 2024	Application deemed complete
July 11, 2024	Design Review posted
July 11, 2024	ZAB Public hearing notice mailed/posted
July 18, 2024	Design Review reissued and posted
July 18, 2024	ZAB hearing cancellation notice posted/mailed
July 25, 2024	ZAB Public hearing notice mailed/posted
August 8, 2024	ZAB hearing

II. Project Setting

A. Neighborhood/Area Description:

The neighborhood is a mixed-use area, with commercial uses along University Avenue and predominantly residential uses on the side streets. The neighborhood uses include a fuel station, hotel, retail, food establishments, a school, and some single-family and multi-family residential buildings.

B. Site Conditions:

The project site is a flat, square-shaped corner lot, approximately 9,309 square feet in area. The lot is developed with two single-story commercial buildings, 844 University Avenue and 2010 Seventh Street.

The building at 844 University Avenue is north-south oriented, approximately 3,400 square-feet, and vacant, with frontage on University Avenue and Seventh Street. There is approximately 1,490 square feet of undeveloped space to the right of the entrance on the western portion of the lot. Additionally, 844 University has one egress door facing Seventh Avenue. A 3,870 square foot building at 2010 Seventh Avenue directly abuts the project site to the south.

III. Project Description

A. Proposed Project Details: The proposed project would convert an existing vacant 3,406 retail building into three Kindergarten through 12th grade classrooms for use by the Black Pine Circle School, located adjacent to the project site. The building would serve its existing population of 324 students with the following primary components:

1. Demolition of 126 square feet of ancillary retail office space from the westside portion of the building
2. Demolition of the concrete overhang on the eastside of the building.
3. Expansion of a single egress door to a double door along Seventh Street within the non-conforming street-side setback.
4. Installation of a canopy over the doors on Seventh Street that would extend into the right of way. The installation of a canopy within the right-of-way would be subject to review and approval of an encroachment permit by Public Works.
5. Replacement of an approximately 18-foot portion of a chain-linked fence with a 6-foot gate and reclaimed redwood planked fence and gate in the front along University Avenue.

IV. Community Discussion

A. Neighbor/Community Concerns:

A pre-application poster was installed on site by the applicant in May 2024. On July 11, 2024, the City mailed public hearing notices to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations. The project was scheduled to be heard at the July 25, 2024, ZAB hearing but the hearing was subsequently canceled. Cancellation notices were mailed and posted on July 18, 2024. The City mailed new public hearing notices as on July 25, 2024 for the rescheduled Zoning Adjustments Board Meeting and also posted notices within the neighborhood at three nearby locations. At the time of writing this report, staff had not received any communications regarding the project.

B. Design Review:

The project proposes exterior changes and is subject to design review in the C-W zoning district. It was the recommendation of the Design Review Secretary and the Design Review Committee Chair, that the project be reviewed at the staff level. Design Review staff reviewed the proposed exterior changes (Design Review #DRCP2024-0001) and concluded that, from a design standpoint, the project components would be compatible with the existing commercial neighborhood character (Attachment 3).

V. Issues and Analysis

A. CEQA Approach and Recommendation

- It is staff's recommendation that the project qualifies for a Class 3 Categorical Exemption pursuant to CEQA Guidelines Section 15303 ("New Construction or Conversion of Small Structures"). The project complies with this exemption because it is proposing a partial demolition of 126 square feet from the side of an existing structure, expansion of an existing egress door, replacement of a fence, and interior renovations to accommodate a conversion from an existing retail use to a school use. The project would not construct dwellings units or add new floor area, and as a result remains consistent with the criteria listed under this exemption. In addition, none of the exceptions to eligibility for a categorical exemption as listed under CEQA Guidelines Section 15300.2, apply to the project: The project is currently characterized as developed by the California Natural Diversity Database;¹ therefore, it is not located in an environmentally sensitive area;
- The cumulative impact of successive projects of the same type in the same place, over time would not be significant;
- There are no "unusual circumstances" at the project site that would result in significant environmental effects;
- There are no eligible or designated scenic highways within the City of Berkeley;² therefore, the project site is not in view of a state scenic highway;
- The site is not included on a list compiled pursuant to Government Code Section 65962.5;³ and
- The project would not result in a substantial adverse change in the significance of a historical resource.
- The CEQA determination is made by ZAB, as the decision-making body.

¹ California Department of Fish and Wildlife. California Natural Diversity Database. Available: <https://apps.wildlife.ca.gov/bios6/?tool=cnddbqv>

² California Department of Transportation. California Scenic Highway Program's Scenic Highway System List. Available: <https://dot.ca.gov/programs/design/lap-landscape-architecture-and-community-livability/lap-liv-i-scenic-highways>

³ California Environmental Protection Agency. Cortese List Data Resources. Available: <https://calepa.ca.gov/sitecleanup/corteselist/>

B. General Non-Detriment Finding:

BMC Section 23.406.040(E) states that before the ZAB approves an application for a Use Permit, it must find that the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City.

1. The proposed project would change the use of a vacant commercial space from retail to a school that would serve grades Kindergarten through 12th grade (K-12). The project would reuse an existing building and the proposed modifications include replacing a portion of the existing chain-linked fence with a redwood planked fence and gate which would improve the frontage along University Avenue. The project also includes an expansion of an egress door within a non-conforming street-side setback on a corner lot and the demolition of 126 square feet of the side of the building not viewable from the street. The changes to the building are minor in nature and would not be detrimental.
2. Sunlight. The project would not increase the building footprint or the existing height and as a result would not create new impacts to sunlight on neighboring properties, and therefore would not be detrimental.
3. Air. New floor area is not proposed. The demolition of 126 square feet on the western elevation would increase building-to-building separation on the western side of the parcel. As a result, the project would not create detrimental impacts to air.
4. Views. A view corridor as defined in BMC Section 23.502.020 (Glossary) includes views of the Berkeley Hills, San Francisco Bay, Mt. Tamalpais, or a significant landmark such as the campanile, Golden Gate Bridge, or any other views that substantially enhances the value and enjoyment of real property. The project's proposed location is in a generally flat neighborhood and the building itself does not exceed the height of neighboring buildings. Because these views are not generally available in this neighborhood due to grade and current development patterns, and the proposal would not increase the building's current height, no detrimental impacts to views are expected as a result.
5. The proposed project would replace a vacant retail storefront with K-12 school classrooms on the main thoroughway of University Avenue. If approved, the project would enrich the urban fabric of the street and the abutting residential area by activating a vacant use. Additionally, the proposed improvements to the streetscape would contribute to an aesthetically pleasing environment, thereby enhancing the pedestrian experience. This project would not be detrimental.

6. 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.

C. C-W Permit Findings (BMC 23.204.140(F)). Use Permit in the Commercial West (C-W) and District Purposes: To approve a Use Permit in the C-W Zoning District, ZAB must find that the proposed use or structure meets the following:

1. Is consistent with the purposes of the district;

Analysis: The project would be consistent with the District's Purpose because it would reuse and improve a vacant building through exterior improvements and convert to a school use, which would be compatible with existing commercial uses in the district. Additionally, the project would strengthen the services provided by the Black Pine Circle school by adding classrooms to on a commercial thoroughway accessible by public transit, making it convenient for present and future students and employees. The proposed school use would not result in an increase in student enrollment and is not expected to be accompanied by detriments such as noise, fumes, and other environmental impacts, nor would the project conflict with any of the other listed principles of the district purpose and, therefore would be consistent.

2. Is compatible with the surrounding uses and buildings;

Analysis: The project will be compatible with surrounding uses and buildings because neither the footprint nor height is increasing. Additionally, the project would replace a vacant space with three classrooms to serve the existing student population of Black Pine Circle School located on an adjacent site. The school has been operating since 1975 and would not create new impacts that would conflict with the surrounding uses.

3. Complies with the adopted West Berkeley Plan;

Analysis: The proposed use would contribute to the full range of land uses and economic activity in West Berkeley through the expansion of private educational services for current K-12 students of Black Pine Circle. The site is accessible by public transit. The proposed exterior changes to the fence along University Avenue would contribute to the street frontage and improve the neighborhood aesthetic for West Berkeley residents and workers and would not conflict with West Berkeley's goal to maintain ethnic and economic diversity not any other principles of the West Berkeley Plan;

1. Supports an increase in the continuity of retail and service facilities at the ground level to the degree feasible;

Analysis: The one-story building is currently vacant which disrupts the continuity of retail and services on the ground level. The project would occupy the vacant building with a school use, which would expand the adjacent Black Pine Circle School through the conversion of vacant space into three classrooms, thereby increasing the continuity of service facilities on the ground level;

2. Does not substantially degrade the existing urban fabric of the street and area;

Analysis: The conversion of the existing vacant retail space to a school use and replacement of an 18-foot portion of an existing chain-linked fence with a redwood fence and gate, which would enhance the urban fabric and streetscape through site improvements and the occupation of a vacant building with a school, and as a result would not contribute to a reduction of service availability in the area;

3. If the project includes the construction of new floor area, provides an intensity of development which does not underutilize the property;

Analysis: The project does not include the addition of new floor area and would utilize and improve a vacant building through the conversion of this space to a school use with three additional classrooms.

4. Meets any applicable performance standards for off-site impacts; and

Analysis: The project would expand an existing school and would not create off-site such as noise, fumes, glare, and other impacts otherwise associated with other commercial and industrial uses that require conformance with performance standards;

5. Does not exceed the amount and intensity of use that can be served by available traffic capacity and potential parking supply;

Analysis: The proposed expansion will serve Black Pine Circle's current school population. The project site is near off-street parking and is accessible by a major public transit line. As a result, the project would not exceed available traffic capacity and potential parking supply.

D. Administrative Use Permit to make an alteration within a nonconforming setback:

To approve an Administrative Use Permit for an alteration to a portion of a building within a required setback (23.324.050(D)(2) (including windows and openings), ZAB must find that the use is conforming and the proposed change does not increase or exacerbate any nonconforming setbacks and does not exceed maximum or calculated height limits.

Analysis: The project proposes to remove an existing concrete overhang and expand an egress door on the side (east) elevation within a nonconforming side-street setback. The door would expand from a single to a double-door opening. With approval of this Use Permit, the school will be a lawfully conforming for use. The alteration of the door opening in the existing location would not increase or exacerbate nonconforming setbacks or exceed maximum height limits.

VI. Other Considerations (Zoning and Land Use Considerations)

The following analyses of conformance with the 2002 General Plan goals and policies.

A. General Plan Consistency:

The 2002 General Plan contains several policies applicable to the project, including the following:

- 1. Policy LU-7 Neighborhood Quality of Life, Action A:** Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area.

Analysis: The proposed project would convert an existing vacant retail building and storefront to a school use which would serve an established school use on an adjacent lot. The school would serve the existing population of 324 students and would not create new impacts that would conflict with surrounding commercial uses and the abutting residential district, therefore compatible; and

The project proposes to demolish a 126 square-foot portion from the side of the building, and replace a portion of the existing chain-linked fence with a redwood planked fence and gate, on University Avenue, and expand an existing egress opening on Seventh Street. The changes would reduce the footprint, not increase the height, and improve the streetscape through exterior changes to the fencing. As a result, the building would remain compatible with the scale and historic character of the neighborhood.

- 2. Policy LU-13 Basic Goods and Services:** Ensure that neighborhoods are well served by commercial districts and community services and facilities, such as parks, school, child-care facilities, and religious institutions.

Analysis: The proposed project would expand an existing school use for K-12 students on University Avenue along a transit corridor. Expansion of the existing school into a vacant retail building would further strengthen a community service that could serve the surrounding neighborhoods.

VII. Recommendation

Because of the project's consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board:

FIND that the project is categorically exempt from the provisions of the CEQA pursuant to Section 15303 of the CEQA Guidelines ("New Construction or Conversion of Small Structures"); and

APPROVE #ZP2024-0034 pursuant to Section 23.406.040(D) and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

1. Findings and Conditions
2. Design Review Posting, July 18, 2024
3. Project Plans, received May 24, 2024
4. Notice of Public Hearing, dated July 11, 2024
5. Notice of Public Hearing Cancellation, July 18, 2024
6. Notice of Public Hearing, July 25, 2024

Staff Planner: Cecelia Mariscal, cmariscal@berkeleyca.gov, (510) 981-7439

ATTACHMENT (1)

FINDINGS AND CONDITIONS

AUGUST 8, 2024

844 University Avenue

Use Permit #ZP2024-0034 to demolish 126 feet square feet from the side of the building, expand an access door within a non-conforming street-side setback, and convert a 3,406 vacant building to a K-12 school for use by Black Pine Circle School (adjacent to the site). The capacity would be for approximately 54 students.

ZONING PERMITS REQUIRED

- Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.204.020(A)(2) to convert an existing retail use to a school use (K-12)
- Administrative Use Permit pursuant to BMC Code Section 23.324.050(D)(2) to expand an opening within a non-conforming setback

I. CEQA FINDINGS

- A. 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”).

II. FINDINGS FOR APPROVAL

- A. 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:

1. The proposed conversion of an existing vacant retail space to a school use will support the services offered by the existing Black Pine Circle School located will not introduce new impacts to surrounding neighborhoods and commercial uses. Additionally, the utilization of a long-standing vacant use by Black Pine Circle will contribute to an increase in pedestrian foot traffic on University Avenue; and
2. The project will demolish 126 square feet, formerly used as an ancillary retail office, enlarge an existing egress door on Seventh Street within a non-conforming street-side setback, replace an 18-foot portion of a chain link fence with a redwood planked fence, and gate along University Avenue. The project does not include an increase to the existing height or footprint and will not result in detrimental impacts to sunlight, air, or views. The Project will not be detrimental; and
3. The project will be subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, which will ensure that 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.

III. OTHER FINDINGS FOR APPROVAL

- A. As required by Section 23.204.140(F) C-W Permit Findings, the Zoning Adjustments Board finds that project meets the requirements for approval because:
 1. The project will be consistent with the district purpose. It will reuse and convert a vacant building to a school, including exterior upgrades, and the new use is compatible with the commercial and residential use within the area. The project will strengthen the services provided by the Black Pine Circle school by adding classrooms to on a commercial thoroughway accessible by public transit. The proposed project will not introduce new impacts to surrounding uses and will not conflict with any other listed principle in the district purpose and therefore, the project would be consistent with the District Purposes.
 2. The conversion to school will be compatible with the surrounding uses and buildings. Conversion to classrooms will expand the area of the Black Pine School on the adjacent lot. The project will not add new floor area, and will expand an existing access door within a non-conforming side-street setback along Seventh Street, and replace a portion of a chain-linked fence with a redwood fence and gate along University Avenue. The proposal reduces the footprint and does not increase the height; therefore, it will not conflict with the scale of surrounding buildings.
 3. The project complies with the adopted West Berkeley Plan. It will occupy a vacant storefront with a school use contributing to the full range of land uses and economic activity accessibly by public transit in West Berkeley. The proposed occupation of a vacant retail space with a school use will not conflict with West Berkeley's goal to maintain ethnic and economic diversity.

4. The project supports an increase in the continuity of retail and service facilities at the ground level to the degree feasible. The project will activate a vacant space by expanding the existing abutting school along University Avenue which will maintain the continuity of service facilities on the ground level.
 5. The project will not degrade the existing urban fabric of the street and area. The project will support an existing educational service being offered on a nearby site, and will make exterior improvements that enhance the area.
 6. The project does not create new floor area, and will activate a vacant retail building with a school use to serve Black Pine Circle's existing school population.
 7. The project will not create additional off-site impacts. The project will expand an existing school that proposes exterior changes that include the demolition of 126 square feet of the side of the building, expansion of an existing egress door, and the replacement of a 18-foot portion of a chain linked fence with a redwood fence and gate which will not create off-site impacts such as noise, fumes, and glare, typically associated with other commercial and industrial uses.
 8. The project does not exceed the amount and intensity of use that can be served by available traffic capacity and potential parking supply. The new classrooms and expansion of the abutting Black Pine Circle School will serve the existing staff and student population, is accessible by public transit, and is located on University that has off-street parking. The project will not exceed available traffic capacity and potential parking supply.
- B.** As required by Section 23.324.050(D) ZAB finds that the alterations to the portion of the building in the nonconforming side-street setback is permissible because:
1. the school is conforming use, and the project will not increase or exacerbate a nonconforming setback or exceed maximum or calculated height limits.

IV. 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.
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 re-establish 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 comply 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. **Hold Harmless.** The permittee agrees as a condition of approval of this application to indemnify, protect, defend with counsel selected by the City, and hold harmless, the City, and any agency or instrumentality thereof, and its elected and appointed officials, officers, employees and agents, from and against any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorney's fees and disbursements (collectively, "Claims") arising out of or in any way relating to the approval of this application, any actions taken by the City related to this entitlement, or any environmental review conducted under the California Environmental Quality Act, Public Resources Code Section 210000 et seq., for this entitlement and related actions. The indemnification shall include any Claims that may be asserted by any person or entity, including the permittee, arising out of or in connection with the approval of this application, whether or not there is concurrent, passive or active negligence on the part of the City, and any agency or instrumentality thereof, and its elected and appointed officials, officers, employees and agents. The permittee's duty to defend the City shall not apply in those instances when the permittee has asserted the Claims, although the permittee shall still have a duty to indemnify, protect and hold harmless the City.

V. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD

Pursuant to BMC 23.404.050(H), 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. Encroachment Permit The applicant shall contact Public Works and Engineering at 1947 Center Street, 4th Floor Berkeley, CA 94704, 510-981-6400, publicworks@berkeleyca.gov to coordinate submittal of the Encroachment Permit Application in compliance with the requirements set-forth in Chapter 16.18 of the Berkeley Municipal Code, for review of any work proposed in the Public-Right-of-Way.

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 percent diversion of asphalt, concrete, excavated soil and land-clearing debris and a minimum of 65 percent 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. Phase I and Phase II Environmental Site Assessment (ESA) (per ASTM 1527). A recent Phase I ESA (less than 2 years old) shall be submitted to the Toxics Management Division for developments for: all new commercial, industrial and mixed-use developments and all improvement projects that require work 5 or more feet below grade, and all new residential buildings with more than four dwelling units located in the Environmental Management Area (or EMA). The EMA can be viewed at: [City of Berkeley Community GIS Portal \(arcgis.com\)](http://arcgis.com)

B. Depending on the findings in the Phase I, a Phase II or additional investigation may be necessary. Any available soils and groundwater analytical data available for projects listed in this section must also be submitted to TMD.

C. Environmental Site Clearance. The applicant shall provide environmental screening clearance from either the San Francisco Bay Regional Water Quality Control Board (RWQCB), Department of Toxic Substances Control (DTSC), or the Alameda County Department of Environmental Health's Local Oversight Program (LOP). Clearance from one of these regulatory agencies will ensure that the property meets development investigation

and cleanup standards for the specific use proposed on the property. Environmental screening clearance shall be submitted to the City of Berkeley's Toxics Management Division prior to issuance of any building permits.

- D. Soil and Groundwater Management Plan.** A site-specific Soil and Groundwater Management Plan (SGMP) shall be submitted to Toxics Management Division (TMD) for all non-residential projects, and residential or mixed-use projects with more than four dwelling units, that: (1) are in the Environmental Management Area (EMA), as shown on the most recent City of Berkeley EMA map, and (2) propose any excavations deeper than 5 feet below grade or if significant soils removal is anticipated. The SGMP shall be submitted to the TMD with the project's building permit application and shall be approved by TMD prior to issuance of the building permit.

The SGMP shall comply with the hazardous materials and waste management standards required by BMC Section 15.12.100, the stormwater pollution prevention requirements of San Francisco Bay Regional Water Quality Control Board's Order No. R2-2009-0074, California hazardous waste generator regulations (Title 22 California Code of Regulations (CCR) 66260 et seq.), and the East Bay Municipal Utility District's Ordinance 311, and shall include the following:

- i. procedures for soil and groundwater management including identification of pollutants and disposal methods;
- ii. procedures to manage odors, dust and other potential nuisance conditions expected during development;
- iii. notification to TMD within 24 hours of the discovery of any previously undiscovered contamination; and
- iv. the name and phone number of the individual responsible for implementing the SGMP and who will respond to community questions or complaints.

TMD may require additional information or impose additional conditions as deemed necessary to protect human health and the environment. All requirements of the approved SGMP shall be deemed conditions of approval.

- E. Demolitions & Renovations – Building Materials Survey.** A hazardous materials survey for building materials and plans on hazardous materials and hazardous waste removal and disposal is required and must be prepared by qualified professionals, and submitted to the Toxics Management Division (TMD) prior to issuance of the building permit.

- i. The survey shall include the identification of all materials to be disturbed for lead-based paints, PCB containing equipment and caulking, hydraulic fluids, refrigerants, treated wood, and mercury containing devices (including fluorescent light bulbs and mercury switches), asbestos and other hazardous materials and chemicals.
- ii. 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. Contractors must follow state regulations where there is asbestos-related work involving 100 square feet or more of asbestos containing material (8 Cal. Code Regs. §1529, §341.6 et seq.)

- iii. The report to the TMD shall include, in addition to the survey, plans on hazardous materials and hazardous waste removal and disposal that comply with State and Federal codes including California Code of Regulations (CCR) 66260 et seq.
- iv. 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.

Please note, the PCB Screening Form required by Public Works, Engineering, is a separate requirement and does not address the PCB identification requirement of the Toxics Management Division.

F. Hazardous Materials Business Plan. A Hazardous Materials Business Plan (HMBP) in compliance with BMC Section 15.12.040 and California Health & Safety Code, Chapter 6.95 Div. 20, shall be submitted to the Toxics Management Division through the California Environmental Reporting System: <http://cers.calepa.ca.gov/> for chemicals used or stored on site during construction that exceed reporting thresholds. The reporting is required if your facility stores or handles hazardous materials in aggregate quantities equal to or greater than 55 gallons for liquids, 500 pounds for solids, or 200 cubic feet of compressed gases, or generates any quantity of hazardous waste. This includes welding gases, emergency generator fuel, paints, etc.

Additionally, the business occupant must submit an HMBP within 30 days of starting operations.

G. Petroleum Storage. An (SPCC) Plan is required to be prepared and implemented for facilities with any one of the following:

- i. aggregate aboveground petroleum storage capacities of 1,320 gallons or more stored in aboveground storage containers, tanks, oil-filled equipment, or
- ii. one or more tank(s) in an underground area (TIUGA) with petroleum storage capacities of 55 gallons or greater. More information on TIUGAs can be found here: <https://osfm.fire.ca.gov/divisions/pipeline-safety-and-cupa/certified-unified-program-agency-cupa/aboveground-petroleum-storage-act/tank-in-an-underground-area-tiuga/>

The SPCC plan must be prepared prior to beginning operations and you must submit facility information to Toxics Management Division (TMD) through the California Environmental Reporting System: <http://cers.calepa.ca.gov/>. The SPCC plan will be reviewed during the site inspection and shall not be submitted in CERS or to the TMD.

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. 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_o) for Berkeley is 41.8.
- 16. Recycling and Organics Collection.** Applicant shall provide recycling and organics collection areas for occupants, clearly marked on plans, which comply with the Alameda County Organics Reduction and Recycling Ordinance (2021-02). Contact the Zero Waste Division's Recycling Program Manager, Julia A. Heath, at jheath@berkeleyca.gov.
- 17. 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.

Prior to Demolition or Start of Construction:

- 18. Construction/No Parking Permits.** 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.

During Construction:

- 19. Construction Hours.** Construction activity shall be limited to between the hours of 7:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and 4:00 PM on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.
- 20. 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.
- H. 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.

21. 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:
 - i. 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.
 - ii. 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.

- 22. 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 [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.
- 23. 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 percent. Documentation on concrete mix design shall be available at all times at the construction site for review by City Staff. (Project required to meet applicable code at time of building permit application, if different from above.)
- 24. 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.
- 25. 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:
- D. 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.
 - E. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified professional would 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.

- F. 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.
- G. 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.
- H. If significant materials are recovered, the qualified professional shall prepare a report on the findings for submittal to the Northwest Information Center.

26. 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.

27. 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 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. All loading areas must be designated to minimize “run-on” or runoff from the area. Accumulated waste water that may contribute to the pollution of stormwater must be drained to the sanitary sewer or intercepted and pretreated prior to discharge to the storm drain system. The property owner shall ensure that BMPs are implemented to prevent potential stormwater pollution. These BMPs shall include, but are not limited to, a regular program of sweeping, litter control and spill cleanup.
 - J. 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.
 - K. 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.
- 28. Public Works.** Subject to approval of the Public Works Department, the applicant shall repair any damage to public streets and/or sidewalks by construction vehicles traveling to or from the project site.
- 29. 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.
- 30. Public Works.** The applicant shall ensure that all excavation accounts for surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.

- 31. 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.
- 32. 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.
- 33. 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.
- 34. Public Works / Building and Safety.** 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:

- 35. 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.
- 36.** All landscape, site and architectural improvements shall be completed per the attached approved drawings dated May 24, 2024.

At All Times:

- 37. Compliance with Approved Plan.** The project shall conform to the plans and statements in the Use Permit.
- 38. 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.
- 39. 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.
- 40. Transit Subsidy Condition.** If 10 or more employees, the business operator shall reimburse employees the maximum non-taxable cost of commuting to and from work on public transportation (e.g., monthly passes) if they so commute, and a notice informing employees of the availability of such subsidy shall be permanently displayed in the employee area as per BMC Chapter 9.88.
- 41. Periodic Review and Reporting.** The City may require periodic review of this approved project to verify compliance with permit requirements and conditions of approval. The permit holder or property owner is responsible for complying with any periodic reporting, monitoring, or assessments requirement. This permit is subject to the provisions of BMC Section 23.404.080 (Permit Revocation) if violations of the permit requirements are found by the Zoning Officer.

- 42.** This permit is subject to review, imposition of additional conditions, or revocation if factual complaint is received by the Zoning Officer that the maintenance or operation of this establishment is violating any of these or other required conditions or is detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the neighborhood or is detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.

CITY OF BERKELEY
NOTICE OF PROPOSED DESIGN REVIEW ACTION-STAFF LEVEL
Chapter 23.406.070 of the Zoning Ordinance
DESIGN REVIEW DRCP2024-0003

A PROJECT has been proposed for this site which is subject to Design Review by Land Use Planning Staff as per Chapter 23.406.070 of the Zoning Ordinance of the City of Berkeley. Under this section, the design can be approved administratively by staff with no public hearing.

PROJECT LOCATION:	844 University Avenue
APPLICANT:	Black Pine Circle School c/o Rhoades Planning Group
ZONING DISTRICT:	C-W, West Berkeley Commercial
PROPOSED ACTION:	Approved, According to Conditions on Page 2 (see attached drawings)
DATE OF POSTING:	July 11, 2024
APPEAL PERIOD EXPIRES AT 4:00 P.M. ON:	July 25, 2024

Any concerned party may appeal the proposed action by submitting a letter specifying the reason(s) for the appeal prior to 4 p.m. on the expiration date with the appeal fee that is required at that time.

You may review project materials online at [ACA Wrapper - City of Berkeley, CA](#). Under the “Zoning” tab, enter the Design Review number into the “Permit Number” field. The approved drawings and conditions of approval can be accessed via the “Attachments” located under the “Record Info” drop down list. Written responses should be mailed to 1947 Center Street, 3rd Floor Berkeley, CA 94704, or can be sent via email to Anne Burns at aburns@cityofberkeley.info. Based on comments received, Design Review Staff may extend the appeal period, revise the proposed design review action, or determine that a public meeting will be required in order to process this application.

If Design Review Staff determines that no changes are warranted based on the issues raised, and or comments received, and if no appeal is received during the review period time, the proposed permit will be issued after the first working day following the expiration of the appeal period. Questions! Please call the Design Review Staff at (510) 981-7410.

NOTICE: If you object to this project or to any City action or procedure relating to this project application, any lawsuit which you may later file may be limited to those issues raised by you or someone else at the public hearing on this project or in written communications presented at or prior to the public hearing. The time limit within which to commence any lawsuit or legal challenge related to this application is governed by Section 1094.6 of the Code of Civil Procedure, unless a shorter limitations period is specified by any other provision. Under Section 1094.6, any lawsuit or legal challenge to any quasi-adjudicative decision made by the City must be filed no later than the 90th day following the date on which such decision becomes final. Any lawsuit or legal challenge, which is not filed within that 90-day period, will be barred.

REQUIRED CONDITIONS:

- 1) The proposed project for six new dwelling units is approved as shown on the drawings "received 05/24/2024" subject to the following conditions.
- 2) No changes can be made to these approved plans without Design Review approval.
- 3) **COLORS** Prior to Design Review sign-off of the Building Permit set of drawings, the applicant shall submit color and materials information for review and approval by Design Review Staff or note where they match existing.
- 4) **CLEAR GLASS** All glass is assumed to be clear glass. Any proposed glass that is not clear glass, or includes signage, shall be indicated on all drawings, and shall be reviewed for approval by design review staff
- 5) **DETAILS** Prior to Design Review sign-off of the Building Permit set of drawings, the applicant shall submit door, canopy, security gate, and fence/gate details for review and approval by the Design Review Staff.
- 6) **ROOF EQUIPMENT** Any above ground or roof equipment, such as transformer(s), utilities, fire apparatus, air conditioning units, compressors, etc. shall be shown to scale on the architectural drawings of the building permit set of drawings in both plan and elevation, in order to determine if additional screening and design review may be required.
- 7) **SIGNAGE** General directional and wayfinding signage is included in this approval. Prior to Design Review sign-off of the building permit set of drawings, the applicant shall submit complete design information for this signage, including sections, color, text, sign type, catalogue cuts of sign lighting fixture.
- 8) **LIGHTING** Prior to Design Review sign-off of the building permit set of drawings, the applicant shall submit lighting details showing all existing and proposed site and building lighting. All exterior lighting shall be downcast and not cause glare on the public right-of-way or adjacent parcels.
- 9) **USE PERMIT** Design Review approval is contingent upon use permit approval.
- 10) The applicant shall be responsible for identifying and securing all applicable permits from the Building and Safety Division and all other affected City divisions/departments prior to the start of work.
- 11) The applicant is responsible for complying with all the above conditions. Failure to comply with any condition could result in construction work being stopped, issuance of citations, as well as further review by the Design Review Committee, which may modify or impose additional conditions, or revoke the zoning approval.

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- 12) All building permit drawings and subsequent construction shall substantially conform to the final design review plans as outlined in Condition #1. Any modifications must be reviewed by the Zoning Officer or his designee to determine whether the modification requires additional approvals by the Zoning Adjustments Board or the Design Review Committee.
- 13) 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.

ATTEST: 
Anne Burns, Senior Planner - Design Review (510) 981-7410

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LEGAL NOTICE CONCERNING YOUR LEGAL RIGHTS

If you object to a decision by the Design Review Staff, the following requirements and restrictions apply:

1. If you challenge the decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Design Review Committee at, or prior to, the public hearing.
2. You must appeal to the Design Review Committee within fourteen (14) days of the date of this post notice.
3. Pursuant to Code of Civil Procedure Section 1094.6(b), 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 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.
5. 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.
6. 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.

844 UNIVERSITY AVE. - USE PERMIT

5/17/2024

DESIGNER:
ClaudioMartonffy Design
381 Valencia St
San Francisco, CA 94103
415 218 9212 (t)
claudio@martonffy.com (e)

DIRECTORY:

CLIENT: BLACK PINE CIRCLE SCHOOL BILL SHEA 844 UNIVERSITY AV BERKELEY CA 94710 USA	ARCHITECT: CLAUDIO MARTONFFY DESIGN CLAUDIO MARTONFFY 381 VALENCIA ST. SAN FRANCISCO, CA 94103 415-218-9212 LIC: 34835	CONTRACTOR: TBD
--	--	--------------------

SITE PHOTOGRAPHS:



ZONING REQ AND BUILDING DATA:

THE PROPOSED PROJECT CONFORMS TO THE FOLLOWING BERKELEY MUNICIPAL CODE

PROJECT:
APN# 56-1966-2-1
844 UNIVERSITY AV BERKELEY CA 94710
2010 7TH STREET, BERKELEY CA 94710

PARCEL:
ID: 056 196600201
SIZE: 9309 SQ FT

PARCEL AREA:
9,300 SQ FT

ZONE:
ZONING C-W
SUPERVISOR DISTRICT 5

EXISTING USE CODE : 3300 MISCELLANEOUS IMPROVED COMMERCIAL
PROPOSED USE CODE: 6400 INSTITUTIONAL - SCHOOL

SETBACKS:
NO SETBACK REQUIREMENTS APPLICABLE B/C 2010 7TH ST. IS EXISTING NON-CONFORMING AT THE PROPERTY LINE.

BUILDING TYPE:
TYPE V-5

SPRINKLERS:
NO SPRINKLERS CURRENTLY IN THE BUILDING.

LOT COVERAGE

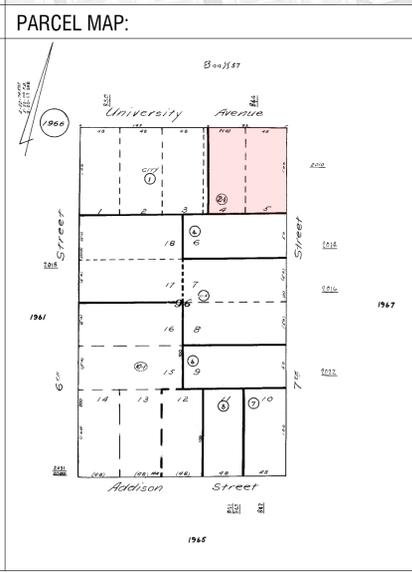
EXISTING	7654 SQ FT	FLOOR AREA	ADDRESS	844 UNIVERSITY AVE	2010 7TH STREET
PROPOSED	7654 SQ FT (NO CHANGE)	EXISTING		3,568 SQ FT	3,795 SQ FT
		PROPOSED		3,406 SQ FT	3,795 SQ FT

LOT	844 UNIVERSITY AVE		2010 7TH STREET	
USE	(EXISTING) RETAIL	(NEW) SCHOOL K-12	(EXISTING) AUTOMOTIVE REPAIR WAREHOUSE	(NEW) SCHOOL K-12
OCCUPANCY	(EXISTING) MERCANTILE	(NEW) EDUCATION	(EXISTING) S-1	(NEW) EDUCATION
SCOPE OF WORK	CHANGE OF USE PERMIT FROM MERCANTILE AND STORAGE AUTOMOTIVE REPAIR TO SCHOOL			



SHEET INDEX:

USE PERMIT (ISSUED)	ISSUED
A-00 COVER SHEET	<input checked="" type="checkbox"/>
A-01 GENERAL NOTES	<input checked="" type="checkbox"/>
A-101 SITE PLAN	<input checked="" type="checkbox"/>
A-102 LANDSCAPE & USABLE OPEN SPACE PLAN	<input checked="" type="checkbox"/>
A-103 STREET STRIP ELEVATION	<input checked="" type="checkbox"/>
A-110 EXISTING FLOOR PLAN	<input checked="" type="checkbox"/>
A-111 DEMO FLOOR PLAN	<input checked="" type="checkbox"/>
A-112 PROPOSED FLOOR PLAN	<input checked="" type="checkbox"/>
A-201 EXISTING BUILDING ELEVATIONS	<input checked="" type="checkbox"/>
A-202 PROPOSED BUILDING ELEVATIONS	<input checked="" type="checkbox"/>



RECEIVED STAMP

BLACK PINE CIRCLE SCHOOL
844 UNIVERSITY AV BERKELEY CA 94710
USA

03/13/2024 USE PERMIT

REV DATE DESCRIPTION

SEAL & SIGNATURES



BLACK PINE CIRCLE SCHOOL
844 UNIVERSITY AV BERKELEY CA
94710 USA

COVER SHEET

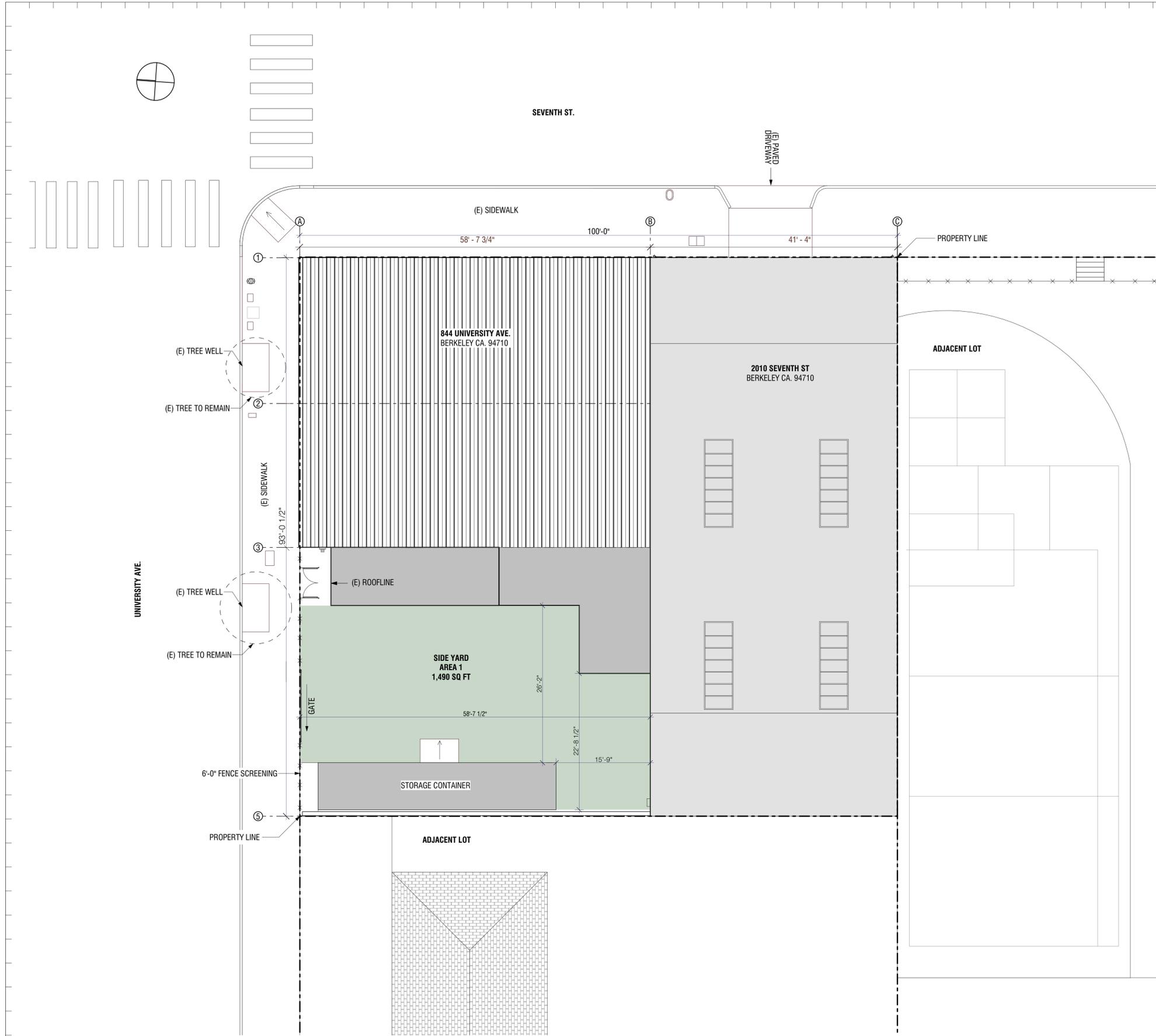
DRAWN BY: CM CHECKED BY: CM DATE: 5/17/2024

SCALE: AS NOTED SHEET SIZE: Arch D

X:\000_PROJECT NAME\02_GRAPHICS\01_AUTOCAD\02-DESIGNS

SHEET NO:

A-00



DESIGNER:
Claudio Martonffy Design
 381 Valencia St
 San Francisco, CA 94103
 415 218 9212 (t)
 claudio@martonffy.com (e)

DATE STAMP

BLACK PINE CIRCLE SCHOOL
 844 UNIVERSITY AV BERKELEY CA 94710
 USA

REV	DATE	DESCRIPTION
03/13/2024	USE PERMIT	



BLACK PINE CIRCLE SCHOOL
 844 UNIVERSITY AV BERKELEY CA
 94710 USA

LANDSCAPE & USABLE OPEN SPACE PLAN

DRAWN BY	CHECKED BY	DATE
CM	CM	5/17/2024

SCALE: AS NOTED SHF SIZE: Arch D

X:\XXX_PROJECT\NAME\02_GRAPHICS\01_AUTOCAD\DM-DESIGNS
 SHEET NO: **A-102**

1 LANDSCAPE & USABLE OPEN SPACE PLAN
 SCALE: 1/8" = 1'-0"

DESIGNER:
ClaudioMartonffy Design
 381 Valencia St
 San Francisco, CA 94103
 415 218 9212 (t)
 claudio@martonffy.com (e)

REVISIONS

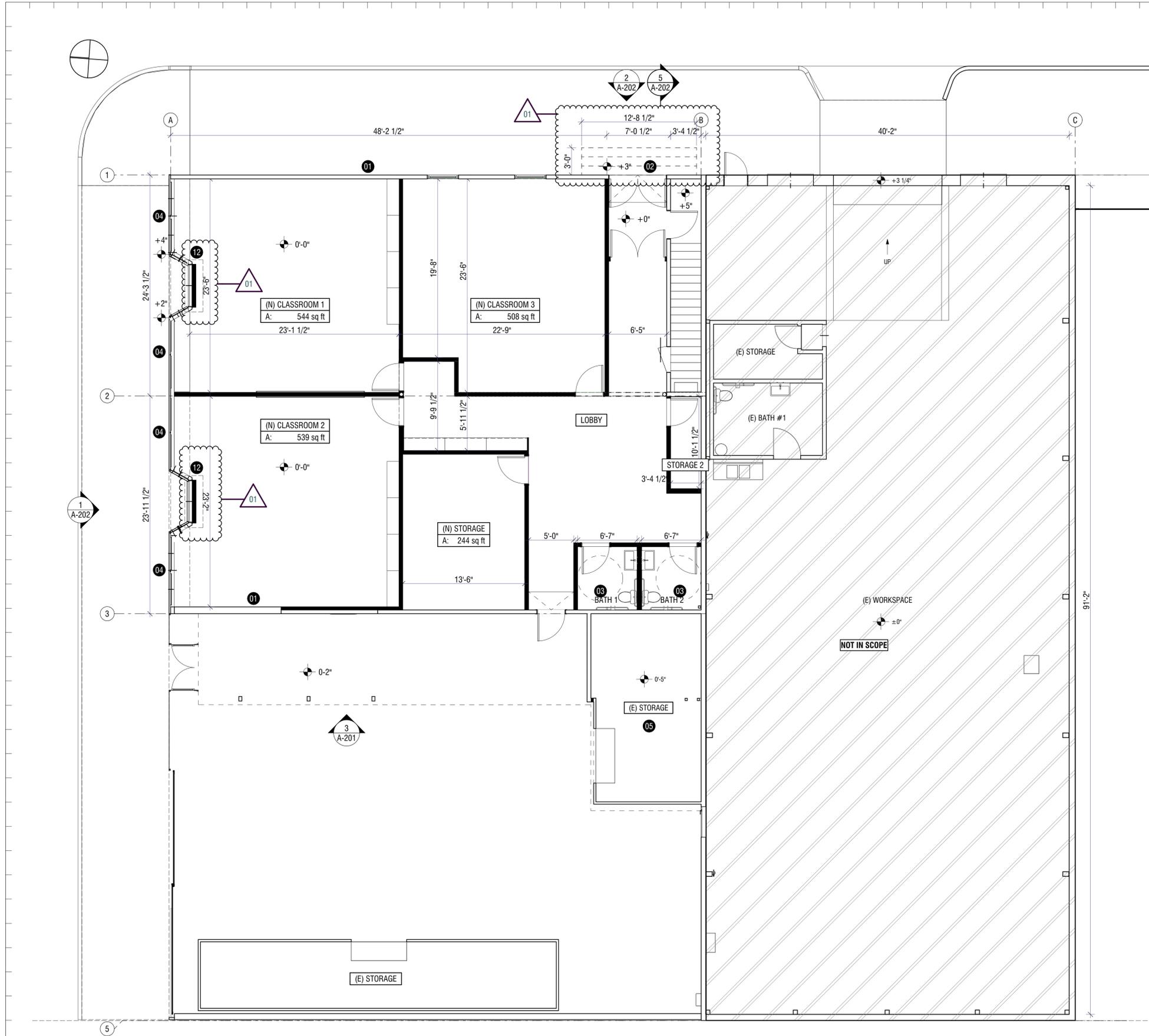
DATE

DESCRIPTION

BY

DATE

</



- SCOPE OF WORK**
01. ADD NEW INSULATION
 02. ENLARGE ACCESS DOOR & REMOVE CONCRETE SILL
 03. NEW BATHROOM
 04. COVER LOWER LEVEL OF WINDOWS
 05. TEMP STORAGE
 06. WATERPROOFING (NOT USED)
 07. LIGHTING UPGRADE
 08. ELECTRICAL UPGRADE
 09. SPRINKLERS
 10. HAZMAT (NOT USED)
 11. LIFE SAFETY (NOT USED)
 12. ADD SHEAR WALL
 13. DEMO (E) ROLL UP DOOR
 14. NEW ACCESS DOOR
 15. NEW EGRESS EXIT DOOR
 16. NEW FENCE
 17. TEMPORARY STORAGE CONTAINER - 8 FT TALL
 18. NEW ENTRANCE CANOPY
 19. NEW EXTERIOR LIGHT
 20. (E) GLASS REPLACED BY SOLID PANEL
- NOTES**
- FOR SCOPE ITEM NOT LISTED ON THIS SHEET, SEE PLANS
- LEGEND**
- NEW WALL

Claudio Martonffy Design
 381 Valencia St
 San Francisco, CA 94103
 415 218 9212 (t)
 claudio@martonffy.com (e)

BLACK PINE CIRCLE SCHOOL
 844 UNIVERSITY AV BERKELEY CA 94710
 USA

REV	DATE	DESCRIPTION
01	05/17/2024	RESPONSE SET
	03/13/2024	USE PERMIT



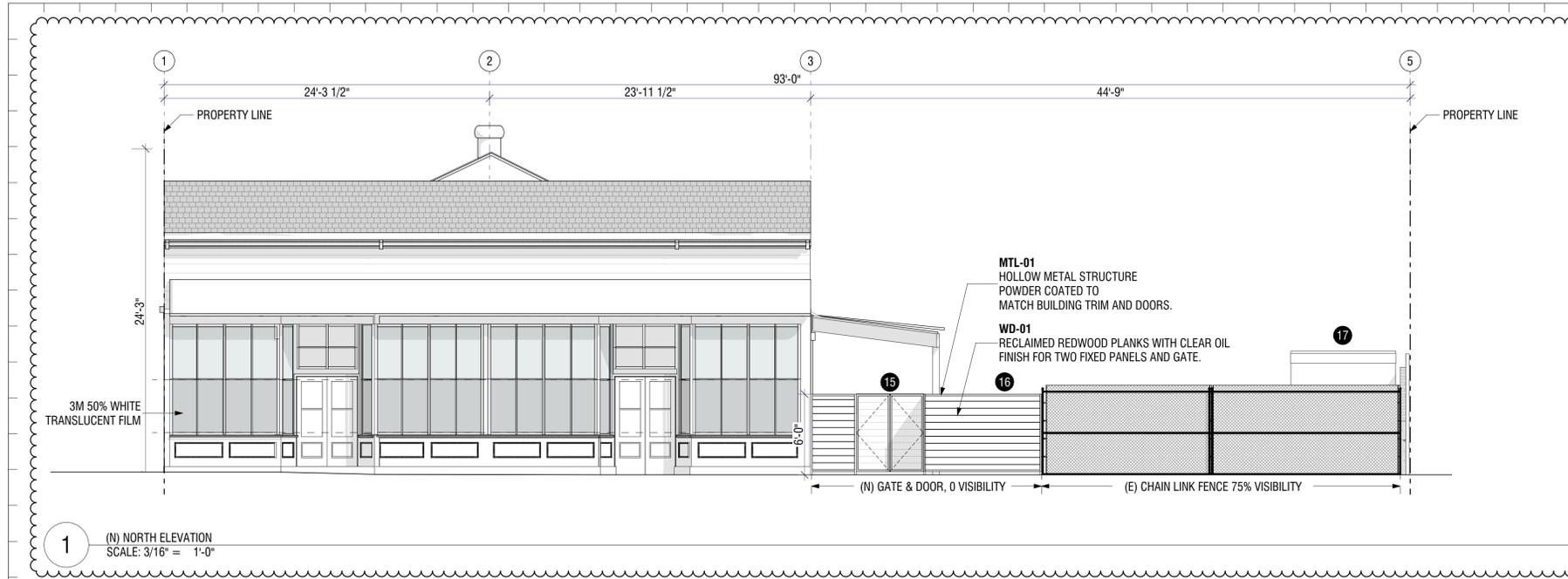
BLACK PINE CIRCLE SCHOOL
 844 UNIVERSITY AV BERKELEY CA
 94710 USA

PROPOSED FLOOR PLAN

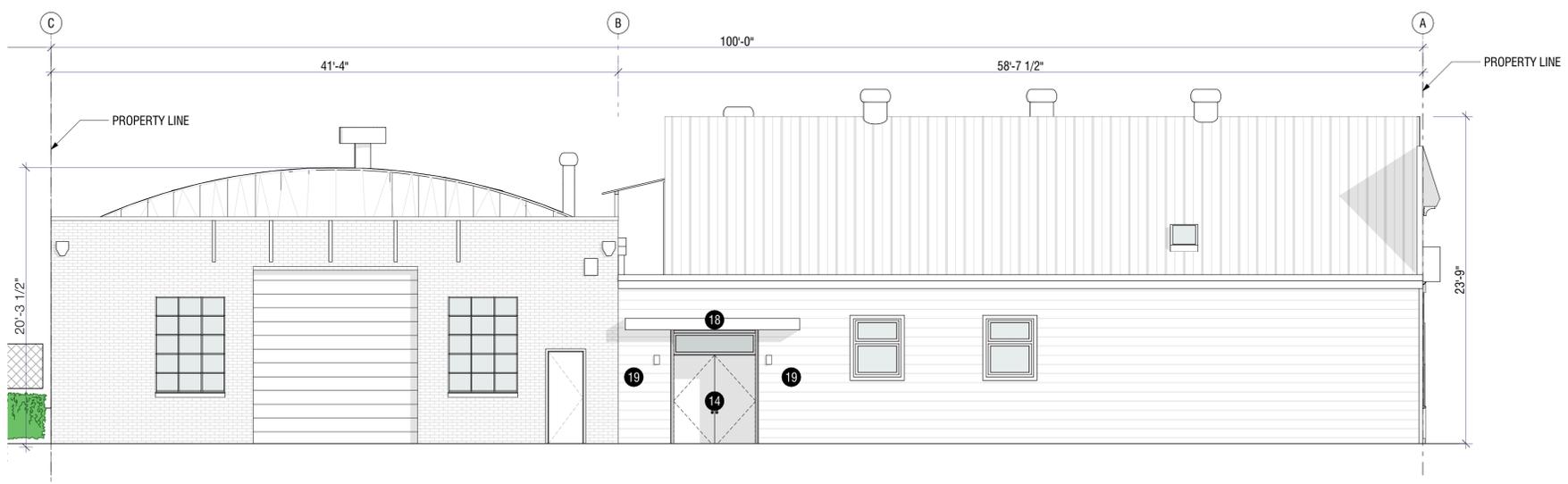
DRAWN BY:	CHECKED BY:	DATE:
CM	CM	5/17/2024
SCALE:	AS NOTED	SHT SIZE: Arch D

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 SHEET NO. **A-112**

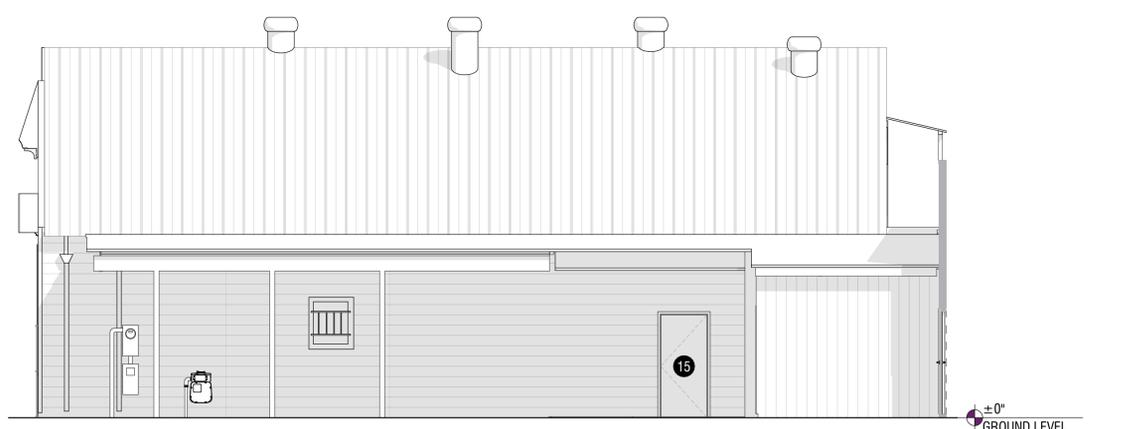
1 FLOOR PLAN - PROPOSED - USE PERMIT
 SCALE: 3/16" = 1'-0"



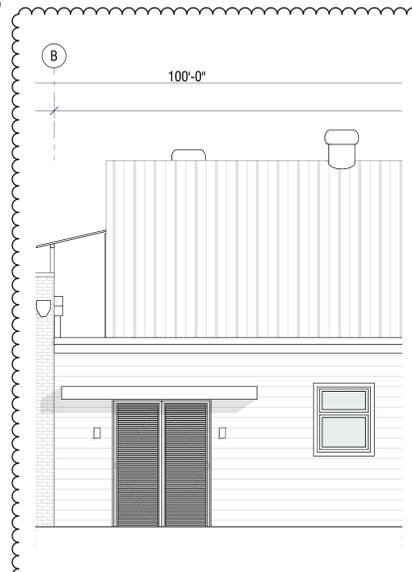
1 (N) NORTH ELEVATION
 SCALE: 3/16" = 1'-0"



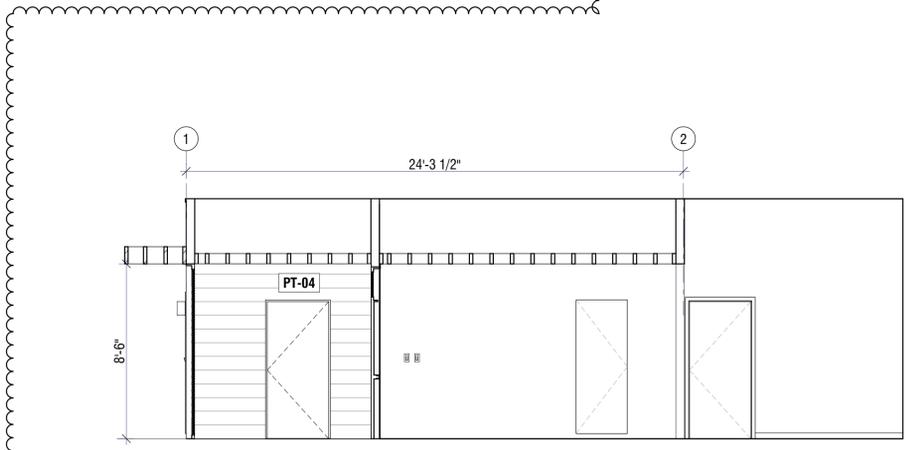
2 (N) EAST EXTERIOR ELEVATION (GATE OPENED)
 SCALE: 3/16" = 1'-0"



3 (N) WEST ELEVATION
 SCALE: 3/16" = 1'-0"

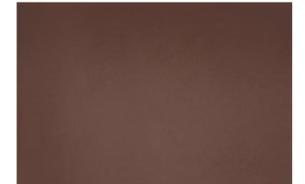


4 (N) EAST EXTERIOR ELEVATION (GATE CLOSED)
 SCALE: 3/16" = 1'-0"



5 SECTION TO ENTRANCE VESTIBULE AND LOBBY
 SCALE: 1/4" = 1'-0"

- SCOPE OF WORK**
01. ADD NEW INSULATION
 02. ENLARGE ACCESS DOOR & REMOVE CONCRETE SILL
 03. NEW BATHROOM
 04. COVER LOWER LEVEL OF WINDOWS
 05. TEMP STORAGE
 06. WATERPROOFING (NOT USED)
 07. LIGHTING UPGRADE
 08. ELECTRICAL UPGRADE
 09. SPRINKLERS
 10. HAZMAT (NOT USED)
 11. LIFE SAFETY (NOT USED)
 12. ADD SHEAR WALL
 13. DEMO (E) ROLL UP DOOR
 14. NEW ACCESS DOOR
 15. NEW EGRESS EXIT DOOR
 16. NEW FENCE
 17. TEMPORARY STORAGE CONTAINER - 8 FT TALL
 18. NEW ENTRANCE CANOPY
 19. NEW EXTERIOR LIGHT
 20. (E) GLASS REPLACED BY SOLID PANEL
- NOTES**
- FOR SCOPE ITEM NOT LISTED ON THIS SHEET, SEE PLANS



DESIGNER:
Claudio Martonffy Design
 381 Valencia St
 San Francisco, CA 94103
 415 218 9212 (t)
 claudio@martonffy.com (e)

BLACK PINE CIRCLE SCHOOL
 844 UNIVERSITY AV BERKELEY CA 94710
 USA

REV	DATE	DESCRIPTION
01	05/17/2024	RESPONSE SET
	03/13/2024	USE PERMIT



BLACK PINE CIRCLE SCHOOL
 844 UNIVERSITY AV BERKELEY CA
 94710 USA

PROPOSED BUILDING ELEVATIONS

DRAWN BY	CHECKED BY	DATE
CM	CM	5/17/2024

SCALE: AS NOTED SHF SIZE: Arch D

X:\XXX_PROJECT\NAME\02_GRAPHICS\01_AUTOCAD\MD-DESIGNS

SHEET NO:

A-202



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

844 University Avenue

Use Permit #ZP2024-0034 to demolish a 126 square-foot portion at the rear of the building and convert the 7,564 square feet vacant retail space to a K-12 school for use by the Black Pine Circle School, located adjacent to the site. The capacity would be for approximately 54 students.

The Zoning Adjustments Board of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance, Section [23.404.050 \(Public Hearings and Decisions\)](#)

When: Thursday, July 25, 2024, 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: Avenue Commercial (A-C)
- Zoning: Commercial West (C-W)

B. Zoning Permits Required:

- Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.204.020(A)(2) to establish a school use (K-12)

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

D. Parties Involved:

- Applicant Applicant/Property Owner Black Pine Circle School, 2024 Seventh Street, Berkeley

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, Cecelia Mariscal, at (510) 981-7439 or cmariscal@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.

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@berkeleyca.gov. 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.

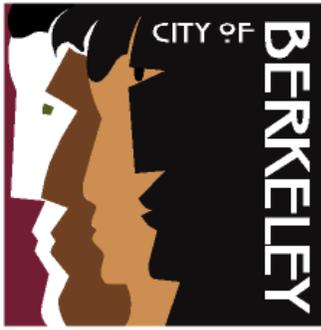
SB 343 Disclaimer:

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) 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 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 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 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.



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

**NOTICE OF CANCELLATION OF
PUBLIC HEARING**

844 University Avenue

Use Permit #ZP2024-0034 to demolish a 126 square-foot portion at the rear of the building and convert the 7,564 square feet vacant retail space to a K-12 school for use by the Black Pine Circle School, located adjacent to the site. The capacity would be for approximately 54 students.

The Zoning Adjustments Board of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance, Section [23.404.050 \(Public Hearings and Decisions\)](#)

When: Thursday, July 25, 2024, 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.

Due to a noticing error, the scheduled meeting of the Zoning Adjustments Board on the above date is hereby cancelled. There will be no public hearing of the ZAB held on this date. Notice with the new meeting date will be mailed two weeks prior to the hearing.

A. Land Use Designations:

- General Plan: Avenue Commercial (A-C)
- Zoning: Commercial West (C-W)

B. Zoning Permits Required:

- Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.204.020(A)(2) to establish a school use (K-12)

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

D. Parties Involved:

- Applicant Applicant/Property Owner Black Pine Circle School, 2024 Seventh Street, Berkeley

Further Information:

All application materials are available online at:
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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, Cecelia Mariscal, at (510) 981-7439 or cmariscal@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.

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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.

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- **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

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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.
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 - 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.



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

844 University Avenue

Use Permit #ZP2024-0034 to demolish 126 square feet from the side of the building, expand an access door within a non-conforming street-side setback, and convert a 3,406 vacant building to a school (K-12) for use by the Black Pine Circle School (adjacent to the site). The capacity would be for approximately 54 students.

The Zoning Adjustments Board of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance, Section [23.404.050 \(Public Hearings and Decisions\)](#)

When: Thursday, August 8, 2024, 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.

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A. Land Use Designations:

- General Plan: Avenue Commercial (A-C)
- Zoning: Commercial West (C-W)

B. Zoning Permits Required:

- Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.204.020(A)(2) to establish a school use (K-12)
- Administrative Use Permit pursuant to BMC Section 23.324.050(D)(2) to enlarge an existing opening within a non-conforming setback

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

D. Parties Involved:

- Applicant/Property Owner: Black Pine Circle School, 2024 Seventh Street, Berkeley

AUGUST 8, 2024
Page 3 of 4

NOTICE OF PUBLIC HEARING
Posted JULY 25, 2024

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>.

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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@berkeleyca.gov. 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) 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 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 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 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.