

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

FOR BOARD ACTION
NOVEMBER 14, 2024

59 Arden Road

Administrative Use Permit #ZP2022-0127 to widen an existing curb cut, establish a parking pad, a 2-foot 6-inch retaining wall, a 6-foot fence, and gate within a required front setback on a lot with a single-family dwelling. The property is located within the Environmental Safety Residential (ES-R) Zoning District, and is considered a contributor to the historic status of the Panoramic Hill District which is listed on the California National Register of Historic Places.

I. Background

A. Land Use Designations:

- General Plan: Low-Density Residential (LDR)
- Zoning District: Environmental Safety-Residential District (ES-R)

B. Zoning Permits Required:

- Administrative Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.304.080(A) to construct a fence and gate exceeding 4 feet in height with a required setback in the ES-R;
- Administrative Use Permit pursuant to BMC Section 23.304.070(C)(1) to install a retaining wall within the minimum required front setback;
- Administrative Use Permit pursuant to BMC Section 23.202.070(G)(2) to expand parking within the Panoramic Hill District; and
- Administrative Use Permit pursuant to BMC Section 23.322.080(E)(2) to establish parking in the required front setback.

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C. CEQA Recommendation:

It is staff's recommendation that the Zoning Adjustments Board (ZAB) adopt the Initial Study Negative Declaration (IS/ND) prepared pursuant to Article 6 of the CEQA Guidelines (see Attachment 3).

D. Parties Involved:

- Applicant/Property Owner Michael Wallman, 59 Arden Road, Berkeley

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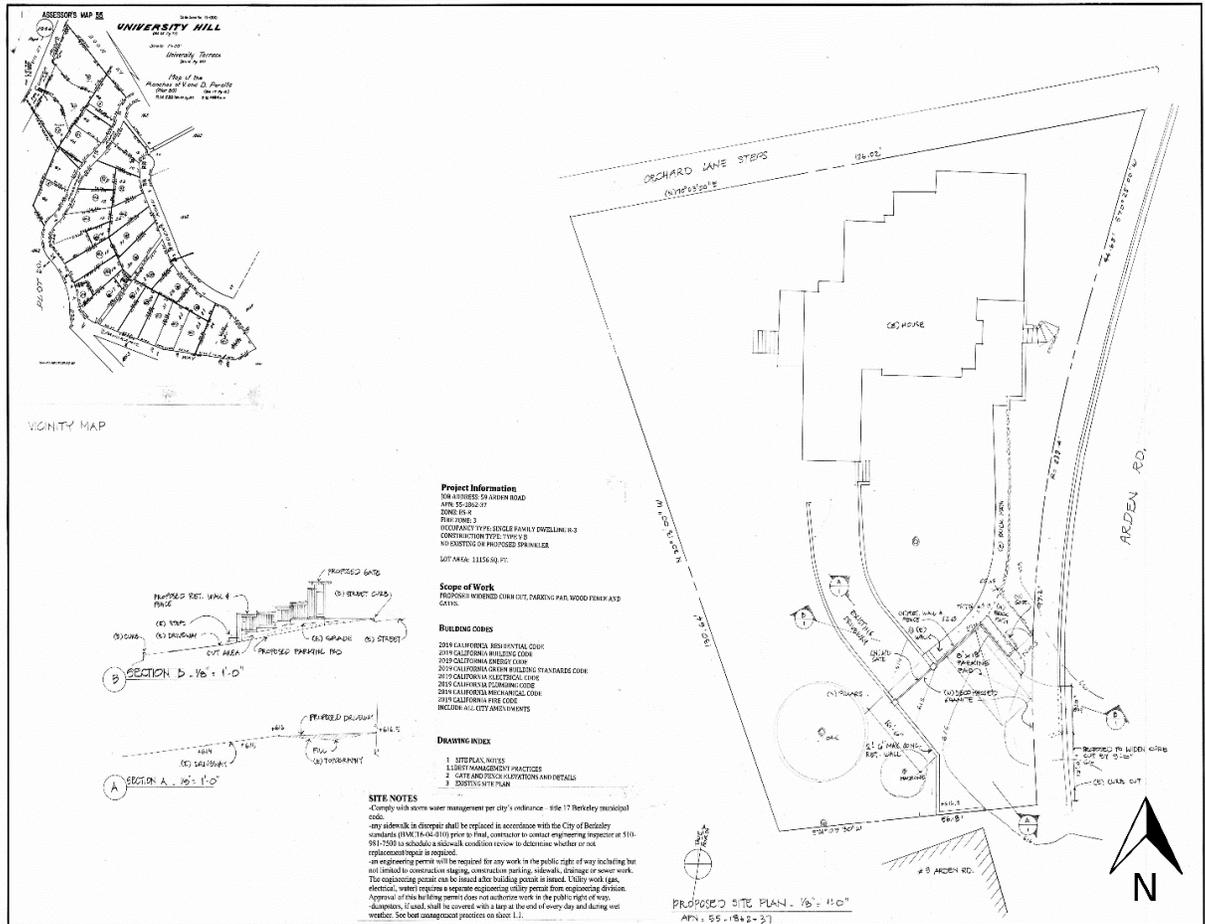
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Figure 1: Vicinity and Zoning Districts Map



Figure 2: Site Plan



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Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Single-Family dwelling	Environmental Safety Residential Zone	Low Density Residential
Surrounding Properties	North	Orchard Lane		
	South	Single-Family dwelling		
	East			
	West			

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 would not add new non-residential floor area; therefore, the affordable child care fee does not apply.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)	No	This fee applies to net newly constructed nonresidential gross floor area over 7,500 square feet. The project is not proposing new non-residential floor area; therefore, the affordable fee does not apply.
Affordable / Inclusionary Housing Requirements (BMC Chapter 23.328)	No	The project is a not housing development project, as defined in BMC 23.328.020. ^a Therefore, the inclusionary housing requirements do not apply.
Alcohol Sales/Service	No	The project does not propose Alcohol Sales/Service and therefore, public convenience and necessity findings are not required.
Coast Live Oak Trees (BMC Chapter 6.52)	Yes	There is one Coast Live Oak (<i>Quercus agrifolia</i>) on the project site. An arborist report was submitted on August 13, 2023 and was peer-reviewed by the City Arborist. The City Arborist concluded that the project would be outside the 12-foot tree protection zone. See Attachment 5.
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 utilizing a Density Bonus
Historic Resources	Yes	The subject property is included in the National Register Panoramic Hill Historic District. On September 5, 2024, the project was referred to the Landmarks Preservation Commission for advisory recommendations in accordance with BMC Section 23.202.070(G)(1). A summary of the Commission's comments is provided in Section IV.C of this report,

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Characteristic	Applicability	Explanation
		and their recommendations are reflected in draft Conditions of Approval #11; see Attachment 1.
Housing Accountability Act (HAA) (Gov't Code Section 65589.5(j))	No	The project does not meet the definition of a "Housing Development Project" per Government Code Section 65589.5(h)(2). ^b
Housing Crisis Act of 2019 (SB 330)	No	The project does not meet the definition of a "Housing Development Project" per Government Code Section 65589.5(h)(2). ^b The project is proposing a modification to the exterior of a single-family dwelling and does not include any new dwelling units; therefore, it is not a "housing development project" and SB 330 does not apply.
Rent Controlled Units	No	The project is not proposing to demolish, reconfigure, or alter rent controlled dwelling units.
Residential Preferred Parking (RPP)	Yes	The site is located in an RPP zone. The project is not eligible for RPP permits per BMC Section 14.72.080(C)(1) as no permits shall be issued to residents in newly constructed residential units.
Seismic Hazards (SHMA)	Yes	The project site is located within the E-SR Zoning District which is an area susceptible to landslide, liquefaction, and fault rupture as shown on the State Seismic Hazard Zones map. ^c As a result an Initial Study was required pursuant to BMC Section 23.202.070(F) ^d Please see attachment 4 for discussion on the proposed project's potential impacts.
Soil/Groundwater Contamination	No	The project site not located within the City's Environmental Management Area and is not on the Cortese List. ^e Standard Conditions of Approval related to hazardous materials would apply
Transit	Yes	The project site is within 1 mile of Alameda County (AC) Transit lines, #36, #52, #79, and the F which offers Transbay Service to San Francisco is than 1.25 miles from the downtown Berkeley Bay Rapid Transit Station (BART).
<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>		

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Characteristic	Applicability	Explanation
<p>d. Due the Zoning District's vulnerability to natural hazards, projects subject to discretion, excluding alterations to create bedrooms or residential additions and create up to 10% of the lot area or 200 square feet or whichever is less, and requires Environmental Review pursuant to BMC Section 23.202.070(F)(1). An Initial Study was conducted to assess the impacts of the project on geology and soils and determined, the project would have less than a significant impact. e. The Cortese List is an annually updated list of hazardous materials sites compiled pursuant Government Code Section 65962.5</p>		

Table 3: Project Chronology

Date	Action
September 23, 2022	Administrative Use Permit Application submitted
May 23, 2023	Application deemed incomplete
June 14, 2024	Application resubmitted
June 23, 2023	Application deemed incomplete
August 14 to September 3, 2024	IS/ND posted for public review
September 5, 2024	Landmarks Preservation Commission hearing
September 10, 2024	Application deemed complete
October 31, 2024	Public hearing notices mailed/posted
November 14, 2024	ZAB hearing

II. Project Setting

A. Neighborhood/Area Description:

The Panoramic Hill District neighborhood is on the California State Register of Historic Places due to its collections of homes and structures designed in the First Bay Tradition Style associated with the Arts and Crafts movement. The neighborhood is located directly southeast of University of California, Berkeley's Memorial Stadium. It is developed with 1 to 3 story single-family homes, built into the steeply graded hillside. There is limited off-street parking with on street parking options constrained by the narrow streets that run throughout the neighborhood. The neighborhood includes mature trees and vegetation, and is directly adjacent to the Wildlife Urban Interface. The area is also known for its ample views of the San Francisco Bay, Alcatraz, and Golden Gate Bridge.

B. Site Conditions:

The project site is developed with a single-family dwelling and garage on an east-west oriented, interior, rectangular-shaped lot. The lot slopes downward to the west and is screened by mature vegetation. The lot is located in a landslide zone, on the Alquist-

Priolo fault line, and on a narrow street which is defined in BMC 23.502 (Glossary) as a street less than 26 feet wide. The main dwelling is accessed through a driveway on the western side of the parcel through an existing 13-foot curb cut.

III. Project Description

A. Proposed Project Details: The proposed project would include the following primary components:

1. A concrete parking pad 8 feet in width, 18 feet in length, within the front setback
2. A retaining wall, 2 feet, six inches, in height within the front setback
3. A pedestrian gate, 7 feet, 3 inches in height within the front setback
4. Widening an existing curb cut from 13 feet to 22 feet, subject to compliance review by Public Works

IV. Community Discussion

A. Neighbor/Community Concerns:

A pre-application poster was installed on site by the applicant on August 9, 2022. On October 31, 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 City also posted notices within the neighborhood at nearby three locations. At the time of writing this report, staff has received one letter in support of the project (see Attachment 6).

B. Design Review Committee Review:

The project proposes exterior changes to a residential property in the ES-R. As a result, this project is not subject to review by the Design Review Committee because it is not located in a residential district subject to design review, commercial or manufacturing district, and does not involve the demolition of a nonresidential building, respectively.

C. Landmarks Preservation Commission:

Due to the project site's local in the ES-R district and status as an individual contributor to the National Register (NR) Panoramic Hill Historic District, the project required environmental review for all topic areas as required by CEQA, including cultural resources. The requisite Initial Study evaluated potential impacts on the historic resource in accordance with the Secretary of Interior's (SOI) Standards for Rehabilitation of Historic Properties. Additionally, the proposal is subject to a referral to the Landmarks Preservation Commission (LPC) for the purpose of determining the

compatibility of the proposed design within this historic setting, in accordance with BMC Section 23.202.070(G)(1)(b) for the zoning ordinance for “LPC Review.”

The Initial Study concluded that the proposed project would be compliant with the SOI Standards and that potential impacts to the historic resource to be less than significant. At the LPC referral on September 5, 2024, the Commission reviewed the IS, SOI Standards findings and provided advisory comments on the consistency of proposed materials and design of the project with the NR Historic District’s characteristics.

The LPC agreed with Staff’s recommendation that the IS/ND provided sufficient evidence to substantiate the determination that the project would be compliant with the SOI standards and have less than a significant impact on the property’s contribution to the Panoramic Hill Historic District. However, to strengthen the project’s compatibility with the NR Historic District and compliance with the Secretary of Interior Standards for Rehabilitation of Historic Properties, the LPC offered the following recommendations on the project’s materials:

LPC Advisory Recommendations

- A rusticated surface, rather than the proposed smooth finish, for the new concrete retaining wall would be provide texture and would be more consistent with the architectural character of the Panoramic Hill district.
- If a rusticated or textured surface for the proposed concrete is not possible, then a vegetative screen would be preferable alternative

For these reasons, staff has included Conditions of Approval #11 for the Board’s consideration and recommends that they be included in any favorable action for this project entitlement.

V. Issues and Analysis

A. CEQA Approach and Recommendation:

Pursuant to CEQA Guidelines Section 15367, the City of Berkeley (City) is the lead agency for the project. The CEQA lead agency has the principal responsibility for carrying out or approving a project. The City has the authority for environmental review in accordance with CEQA and certification of the environmental documentation. Any responsible agency may elect to use this environmental analysis for discretionary actions associated with the implementation of the project.

In accordance with the CEQA (California Public Resources Code [PRC] §21000 et seq.) and the State CEQA Guidelines (California Code of Regulations [CCR], Title 14, §15000 et seq.), an Initial Study (IS) was prepared to evaluate the potential environmental effects associated with the construction and operation of the project. The IS included a description of the proposed project, evaluated each of the

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environmental issue areas identified in the environmental checklist form and recommended a Negative Declaration (ND) with standard conditions.

B. Initial Study/Negative Declaration Process:

In accordance with CEQA Guidelines Section 15105(b), the project was posted for public review for a period of 20 days, from August 15, 2024 to September 3, 2024. The City filed a Notice of Completion and Notice of Implementation (NOI) for the Final IS/ND with the California State Clearinghouse (SCH#202408701). The City also posted the NOI with the County Clerk and mailed the notice to all property owners within a 300-foot radius.

One comment letter was received during the public review period: One letter was in support of the project's proposal to provide an off-street parking space allowing for better emergency vehicle access and did not present substantial evidence of a fair argument that the project may have a significant impact on the environment were presented. The Final IS/ND includes responses to the comment received. All public comments shall be considered by ZAB prior to making a determination on the project.

C. As stated in the Final IS/ND, potential impacts to the environment would be reduced to a less-than-significant impact with implementation of the City's standards conditions of approval. 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. Sunlight: The project would not impede sunlight on neighboring properties. The retaining wall, fence and gate would be located within the front setback on a down sloping lot and as result, would not exceed the existing heights of neighboring properties. Due to the height and placement of the retaining wall, the proposed retaining wall and gate is not expected to cast new shadows creating detrimental impacts to sunlight.
2. Air: The project would not reduce setbacks or building separation. The proposed parking pad proposed within the front setback would establish an additional off-street parking space and would maintain an 8 foot distance from the closest neighboring lot to the south. The proposed fence and gate within the front setback would replace an existing 6-foot fence in the same location and would not further reduce existing building-to-building separation. As result, the project is not expected to create new detrimental impacts to air.

3. Views: The project would not impede the View Corridor, which includes views of the Berkeley Hills, San Francisco Bay, Mt. Tamalpais, or a significant landmark such as the Campanile, Golden Gate Bridge, and Alcatraz Island as defined in the BMC 23.502 (Glossary). The proposed retaining wall and fence would not exceed the existing heights of immediately adjacent properties and would be located downhill from confronting properties leaving existing views intact. For these reasons, the project is not expected to create new detrimental impacts to protected views.
4. The project is subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, thereby ensuring the project would not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.

D. Projects in the Panoramic Hill District:

BMC 23.202.070(G) states that before the final decision-making body approves an application for a project in the Panoramic Hill District, it must find that the project would not adversely affect the exterior architectural relationship between the subject structure and its neighboring structures and surroundings including façade, massing, scale, materials, setbacks, height, orientation, site design, and landscaping; and would not detract from or adversely affect the special historical, architectural, and aesthetic characteristics of the Panoramic Hill District.

1. The project proposes to replace a deteriorating fence and gate with a new retaining wall, fence and gate and parking pad within the front setback. The proposed project does not propose exterior changes to the Panoramic Hill District's contributing structure itself and a result there would be impacts to the façade or massing. Additionally, the new retaining wall, fence, and gate would be placed in the same location as the existing fence, it would not result in changes to the existing setback, orientation or site design. The project would be subject to conditions of approval that require low-lying vegetation or rusticated concrete if to further reinforce compatibility with existing the existing aesthetic.
2. The materials and design of the proposed retaining wall and fence, gate, and parking pad were evaluated by the LPC for potential adverse impacts to the to the historical, architectural, and aesthetic characteristics of the Panoramic Hill District and determined that the design and materials presented would be compatible with the design of the main structure subject to compliance with condition #11.

E. Parking within a required front setback (BMC Section 23.322.080(E)(2))

The proposed parking space within the front setback would be 8 feet in width and 18 feet in length, on finished grade, would be screened on the western lot line, and would not exceed more than 50 percent of the required setback. The proposed parking spot would provide off-street parking on a narrow street and would potentially contribute to an improved roadway access for emergency vehicles through the reduction of on-street parking. The parking space would meet the minimum engineering requirements as noted above and would be subject to review of compliance with requirements and standards for parking and driveways by Public Works.

VI. Other Considerations (Zoning and Land Use Considerations)

A. District Purpose 23.202.070(A):

One of the principles listed in the district purpose is to ensure projects or alterations require analysis and mitigation of geologic, seismic, and fire hazards. This is in alignment with the district purpose because it is subject to the Initial Study requirement (Attachment 4), pursuant to BMC Section 23.202.070(F) which reviewed the project's potential impacts to geology, soils, wildfire risk, and cultural resources. The IS/ND prepared for the proposed project concluded that the project would not have a significant impact on the environment.

In addition, the district purpose aims to limit the uses of land permitted to those which are necessary to serve the housing and access needs of the district's inhabitants and will not put either current or future residents at risk due to the area's inadequate infrastructure and special vulnerability to hazards. The project would be consistent with the goals of the district purpose because it is proposing to expand off-street parking which would eliminate a need for one on-street space, thereby potentially increasing public right-of-way roadway surface allowing for improved emergency vehicle access and potential resident evacuation.

The district also aims to give reasonable protection of views while allowing appropriate development of property and protect the integrity of the Panoramic Hill District by ensuring alterations to existing buildings are appropriate to the hillside setting and do not impair the architectural significance of contributing structures. The retaining wall and fence within the front setback would be located downhill of confronting neighbors and would not exceed the heights of immediate adjacent neighboring properties and therefore would not create new impacts to protected views.

The project does not propose exterior changes to the Panoramic Hill Historic District's contributing structure and the proposed fence, gate, retaining wall would be compatible in design and materials.

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Because the project would not have a significant impact on geology, soils, or wildfire risk, and would remain compatible with the Panoramic Hill's Historic District, the project would be consistent with the ES-R's district purpose and would not conflict with any other district purpose listed in BMC Section 23.202.070(A).

VII. 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.
- 2. Policy UD-24 Area Character:** Regulate new construction and alterations to ensure that they are truly compatible with and, where feasible, reinforce the desirable design characteristics of the particular area they are in.

Staff Analysis: The placement of a retaining wall and fence and gate is permissible in the ES-R, would not alter the exterior of the contributing structures and would result in minimal changes that would enhance the lot through the replacement of a deteriorating fence, gate, and establishing an off-street parking space on a narrow street. The project would not propose a change in use of the contributing residential structure itself allowing it to remain compatible with scale, historic character in the surrounding area.

VIII. 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:

- 1. ADOPT** the Initial Study/Negative Declaration; and
- 2. APPROVE** Administrative Use Permit #ZP2022-0127 pursuant to Section 23.406.040(D) and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

1. Findings and Conditions
2. Project Plans, received August 28, 2024
3. Notice of Public Hearing

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4. [Final Initial Study/Negative Declaration](#)
5. Arborist Memo, dated August 20, 2024
6. Correspondence Received

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

ATTACHMENT 1

FINDINGS AND CONDITIONS

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Administrative Use Permit #ZP2022-0127 to widen an existing curb cut, establish a parking pad, a 2-foot 6-inch retaining wall, a 6-foot fence, and gate within a required front setback on a lot with a single-family dwelling. The property is located within the Environmental Safety Residential (ES-R) Zoning District, and is considered a contributor to the historic status of the Panoramic Hill District which is listed on the California National Register of Historic Places.

ZONING PERMITS REQUIRED:

- Administrative Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.304.080(A) to construct a fence and gate exceeding 4 feet in height within a required setback in the ES-R.;
- Administrative Use Permit pursuant to BMC Section 23.304.070(C)(1) to install a retaining wall within the minimum required front setback;
- Administrative Use Permit pursuant to BMC Section 23.202.070(G)(2) to expand parking within the Panoramic Hill District; and
- Administrative Use Permit pursuant to BMC Section 23.322.080(E)(2) to establish parking in the required front setback.:

I. CEQA FINDINGS:

- A.** In accordance with the CEQA (California Public Resources Code [PRC] §21000 et seq.) and the State CEQA Guidelines (California Code of Regulations [CCR], Title 14, §15000 et seq.), an Initial Study (IS) was prepared to evaluate the potential environmental effects associated with the construction and operation of the project. The IS included a description of the proposed project, evaluated each of the environmental issue areas identified in the environmental checklist form and recommended a Negative Declaration (ND) with standard conditions.

One comment letter was received during the public review period: One letter of support was received from a member of the public in support of improvements to the off-street parking space stating that the movement of cars off street in the neighborhood would positively benefit the neighborhood. None of the comments presented were in opposition of the project or offered substantial evidence of a fair argument that the project may have a significant impact on the environment. The Final IS/ND includes responses to the comment received. All public comments shall be considered by ZAB prior to deciding on the project.

As stated in the Final IS/ND, potential impacts to the environment would be reduced to a less-than-significant impact with implementation of the City's standards conditions of approval.

The Zoning Adjustments Board has considered the Final IS/ND together with comments received during the public review process, and finds, on the basis of the whole record before it, that: (1) no potentially significant effects were identified that could not be reduced to less than significant levels by implementation of the City's standard conditions of approval, (2) there is no substantial evidence the project will have a significant effect on the environment, and (3) the Final IS/ND reflects the lead agency's independent judgment and analysis. The record of proceedings upon which this decision is based is located at the Permit Service Center, 1947 Center Street, 2nd Floor, Berkeley, California 94704.

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. Sunlight: The retaining wall, fence, and gate will not exceed the height of adjacent or confronting neighboring properties and would maintain an 8-foot distance from the closest neighboring property to the south. Due to height and placement, the project will not create new impacts to sunlight;
 2. Air: The project will not propose changes to the existing main structure. Instead, the retaining wall, fence, and gate will be replacing a fence and gate in the same location within the front setback and maintain an 8-foot distance from the closest neighboring property to the south. The existing setbacks and building-to-building separation will not be further reduced nor create new detrimental impacts to air; and
 3. Views: The project will not impede views of the Berkeley Hills, San Francisco Bay, Mt. Tamalpais, or significant landmark such as the Campanile, Golden Gate Bridge or Alcatraz Island because it will be located downhill of confronting properties well below the maximum height of abutting structures on adjacent properties. The project will not create new detrimental impacts to views.
 4. 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 23.202.070(G) of the BMC, the Zoning Adjustments Board finds the project will not adversely affect the exterior architectural relationship between the subject structure and its neighboring structures and surroundings including façade, massing, scale, materials, setbacks, height, orientation, site design, and landscaping, and would not detract from or adversely affect the special historical, architectural, and aesthetic characteristics of the Panoramic Hill District because:
1. The project will not propose changes to Panoramic Hill's contributing structure itself and as a result, the massing and façade will not be impacted;
 2. The proposed retaining wall, fence, and gate, will replace a fence and gate in its existing location which will maintain current setbacks and site orientation and will not result in changes to existing orientation or site design ; and
 3. The proposed fence, retaining wall, gate and parking pad will be confined within the front setback and will not require any changes or detract from the contributing structure which is not viewable from the street. Additionally, the retaining wall, fence and gate were reviewed by the LPC for compliance with the SOI Standards for Rehabilitation and deemed compatible in design with the neighborhoods' current aesthetic while offering the recommendation to use rusticated concrete or, if unavailable, low-lying vegetation to screen the retaining wall to reinforce compatibility. The proposed design and materials will be compatible with design of the main structure subject to compliance with condition #11.
- B. As required by BMC Section 23.222.080(E)(2) the Zoning Adjustments Board finds parking within the front setback will be permissible because:
1. The project is located on a narrow street, less than 26 feet in width which requires an off-street parking space which will improve roadway access for emergency vehicles as a result of reduced on-street parking. The parking space will meet the minimum dimensions of 8 feet in width, 18 feet in length, on finished grade and, will not exceed more than 50 percent of the required setback area which meets engineering requirements and subject to compliance review with parking requirements and standards by Public Works.
- C. As required by BMC Section 23.222.070(A) the Zoning Adjustments Board finds the project will be in alignment with the district purpose because:
1. The proposed project is consistent with the district's purpose because the project was subject to the Initial Study requirement (Attachment 4), pursuant to BMC Section 23.202.070(F). The IS/ND determined the project will not have an adverse impact to geology, soils, wildfire risk, cultural resources;
 2. The project will be consistent with the goal of the district purpose to serve the access needs of the district's inhabitants because the project will expand off-street parking and eliminate the need for one on-street space which will potentially improve emergency vehicle access and resident evacuation through increased public right-of way roadway surface; and

3. The project will provide reasonable protection to views and allow the appropriate development of property and protect the integrity of the Panoramic Hill District because the project will place a retaining wall, fence within the front setback which will not result in an alteration to the existing building that would impair the architectural significance of the contributing structure, nor will it exceed the heights of immediate neighboring properties. Creating new impacts to views.

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. Revised Project Plans – retaining wall design. Prior to submittal of any building permit for this project, the applicant shall revise the proposed project plans to include either a rusticated or other kind of textured surface for the proposed concrete retaining wall or, alternatively, a vegetative screen for the retaining wall, to the satisfaction of the Zoning Officer.

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. 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.
- 16. 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:

- 17. 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:

- 18. Construction Hours.** Construction activity shall be limited to between the hours of 8:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and Noon on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.
- 19. Survey Required.** The height and location of the proposed structure, property lines and spot elevations shall be verified by a licensed surveyor or engineer on site after foundation forms are placed, but before pouring concrete or placing construction material in its permanent position. This verification shall be to the satisfaction of the Zoning Officer.
- 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:

- A. In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist, historian or paleontologist to assess the significance of the find.

- B. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified professional 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.
- C. In considering any suggested measure proposed by the qualified professional, the project applicant shall determine whether avoidance is necessary or feasible in light of factors such as the uniqueness of the find, project design, costs, and other considerations.
- D. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while mitigation measures for cultural resources is carried out.
- E. If significant materials are recovered, the qualified professional shall prepare a report on the findings for submittal to the Northwest Information Center.
- 26. Human Remains (Ongoing throughout demolition, grading, and/or construction).** In the event that human skeletal remains are uncovered at the project site during ground-disturbing activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to Section 15064.5 (e)(1) of the CEQA Guidelines. If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.
- 27. 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.

- 28. Halt Work/Unanticipated Discovery of Tribal Cultural Resources.** In the event that cultural resources of Native American origin are identified during construction, all work within 50 feet of the discovery shall be redirected. The project applicant and project construction contractor shall notify the City Planning Department within 24 hours. The City will again contact any tribes who have requested consultation under AB 52, as well as contact a qualified archaeologist, to evaluate the resources and situation and provide recommendations. If it is determined that the resource is a tribal cultural resource and thus significant under CEQA, a mitigation plan shall be prepared and implemented in accordance with State guidelines and in consultation with Native American groups. If the resource cannot be avoided, additional measures to avoid or reduce impacts to the resource and to address tribal concerns may be required.
- 29. Stormwater Requirements.** The applicant shall demonstrate compliance with the requirements of the City's National Pollution Discharge Elimination System (NPDES) permit as described in BMC Section 17.20. The following conditions apply:
- A.** The project plans shall identify and show site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants to the City's storm drainage system, regardless of season or weather conditions.
 - B.** Trash enclosures and/or recycling area(s) shall be covered; no other area shall drain onto this area. Drains in any wash or process area shall not discharge to the storm drain system; these drains should connect to the sanitary sewer. Applicant shall contact the City of Berkeley and EBMUD for specific connection and discharge requirements. Discharges to the sanitary sewer are subject to the review, approval and conditions of the City of Berkeley and EBMUD.
 - C.** Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to stormwater pollution. Where feasible, landscaping should be designed and operated to treat runoff. When and where possible, xeriscape and drought tolerant plants shall be incorporated into new development plans.
 - D.** Design, location and maintenance requirements and schedules for any stormwater quality treatment structural controls shall be submitted to the Department of Public Works for review with respect to reasonable adequacy of the controls. The review does not relieve the property owner of the responsibility for complying with BMC Chapter 17.20 and future revisions to the City's overall stormwater quality ordinances. This review shall be conducted prior to the issuance of a Building Permit.
 - E.** All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.
 - F.** All on-site storm drain inlets/catch basins must be cleaned at least once a year immediately prior to the rainy season. The property owner shall be responsible for all costs associated with proper operation and maintenance of all storm drainage facilities (pipelines, inlets, catch basins, outlets, etc.) associated with the project, unless the City accepts such facilities by Council action. Additional cleaning may be required by City of Berkeley Public Works Engineering Dept.
 - G.** All on-site storm drain inlets must be labeled "No Dumping – Drains to Bay" or equivalent using methods approved by the City.

- H. Most washing and/or steam cleaning must be done at an appropriately equipped facility that drains to the sanitary sewer. Any outdoor washing or pressure washing must be managed in such a way that there is no discharge or soaps or other pollutants to the storm drain. Sanitary connections are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
- I. 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.
- 30. 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.
- 31. 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.
- 32. 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.
- 33. 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.
- 34. 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.
- 35. 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.

- 36. 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:

- 37. 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. Occupancy

- 38.** All landscape, site and architectural improvements shall be completed per the attached approved drawings dated August 28, 2024.

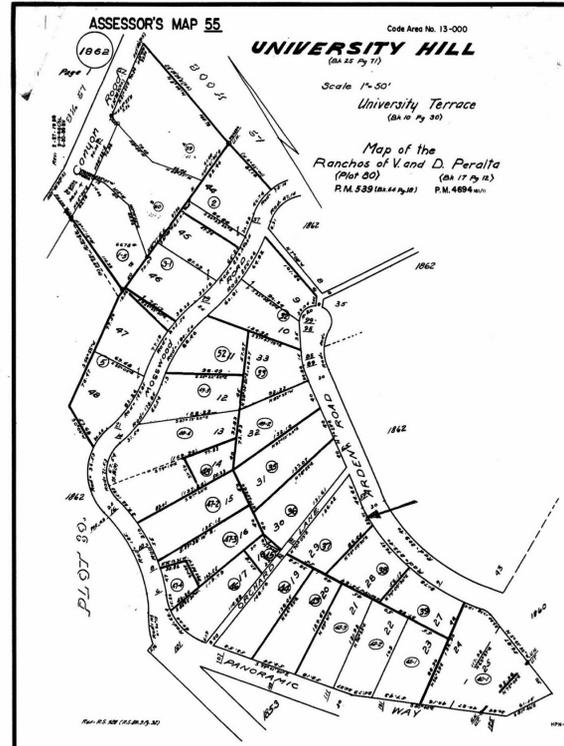
At All Times:

- 39. Compliance with Approved Plan.** The project shall conform to the plans and statements in the Use Permit.

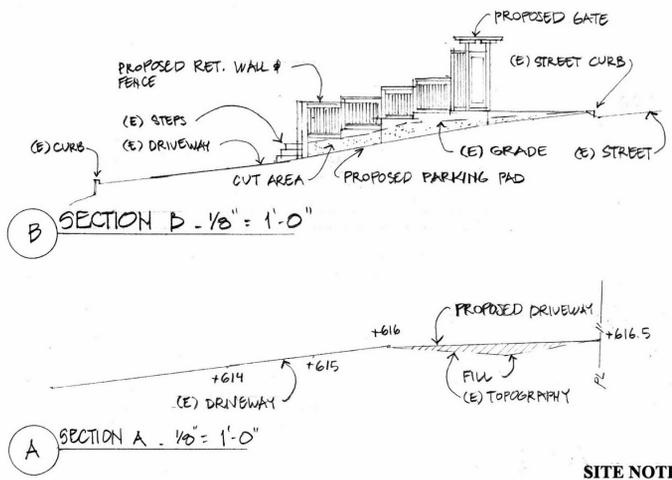
- 40. Exterior Lighting.** All exterior lighting shall be energy efficient where feasible; and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.

- 41. Drainage Patterns.** The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.

- 42. 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.



VICINITY MAP



Project Information

JOB ADDRESS: 59 ARDEN ROAD
 APN: 55-1862-37
 ZONE: ES-R
 FIRE ZONE: 3
 OCCUPANCY TYPE: SINGLE FAMILY DWELLING R-3
 CONSTRUCTION TYPE: TYPE V B
 NO EXISTING OR PROPOSED SPRINKLER
 LOT AREA: 11156 SQ. FT.

Scope of Work

PROPOSED WIDENED CURB CUT, PARKING PAD, WOOD FENCE AND GATES.

BUILDING CODES

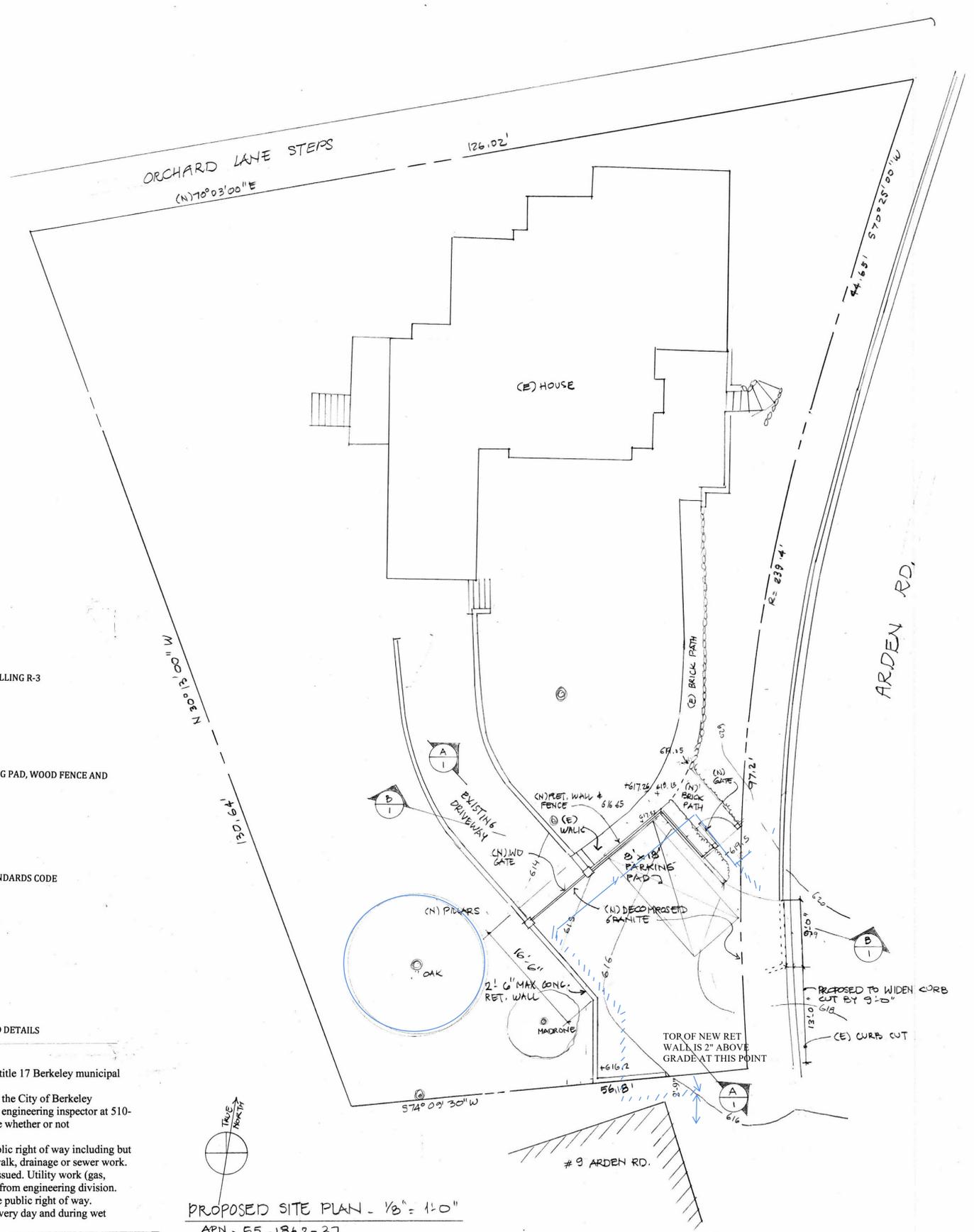
- 2019 CALIFORNIA RESIDENTIAL CODE
- 2019 CALIFORNIA BUILDING CODE
- 2019 CALIFORNIA ENERGY CODE
- 2019 CALIFORNIA GREEN BUILDING STANDARDS CODE
- 2019 CALIFORNIA ELECTRICAL CODE
- 2019 CALIFORNIA PLUMBING CODE
- 2019 CALIFORNIA MECHANICAL CODE
- 2019 CALIFORNIA FIRE CODE
- INCLUDE ALL CITY AMENDMENTS

DRAWING INDEX

- 1 SITE PLAN, NOTES
- 1.1 BEST MANAGEMENT PRACTICES
- 2 GATE AND FENCE ELEVATIONS AND DETAILS
- 3 EXISTING SITE PLAN

SITE NOTES

-Comply with storm water management per city's ordinance -- title 17 Berkeley municipal code.
 -any sidewalk in disrepair shall be replaced in accordance with the City of Berkeley standards (BMC16-04-010) prior to final, contractor to contact engineering inspector at 510-981-7500 to schedule a sidewalk condition review to determine whether or not replacement/repair is required.
 -an engineering permit will be required for any work in the public right of way including but not limited to construction staging, construction parking, sidewalk, drainage or sewer work. The engineering permit can be issued after building permit is issued. Utility work (gas, electrical, water) requires a separate engineering utility permit from engineering division. Approval of this building permit does not authorize work in the public right of way.
 -dumpsters, if used, shall be covered with a tarp at the end of every day and during wet weather. See best management practices on sheet 1.1.



REVISIONS	BY
6.6.23	
SECTION 1	



Carolyn Van Lang
 Architect

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 510-207-4186

cvlarch@gmail.com

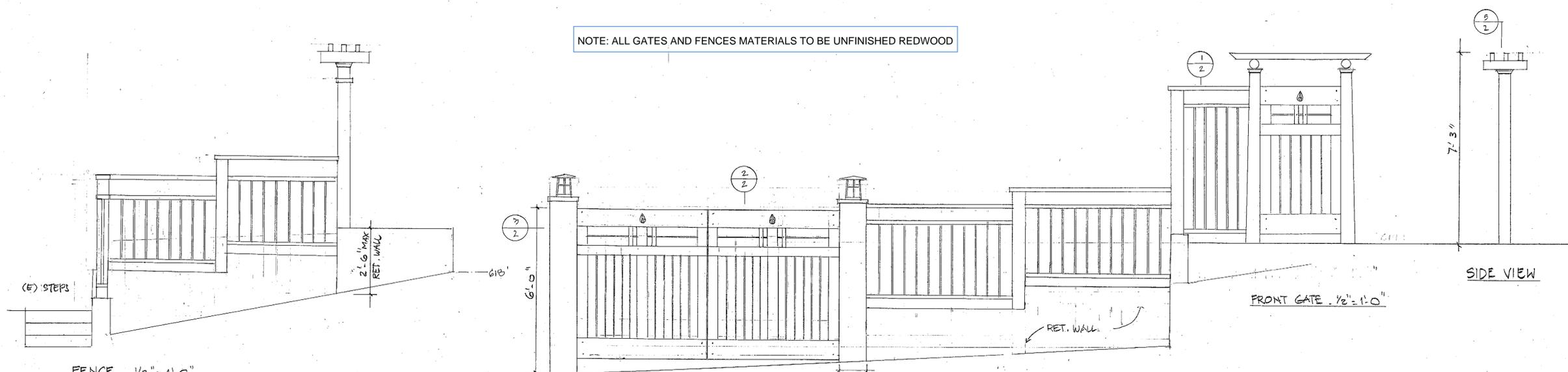


FENCE & DRIVEWAY
 MICHAEL WALLMAN & LAURA ARECHIGA
 59 ARDEN RD
 BERKELEY, CA

SITE PLAN & NOTES

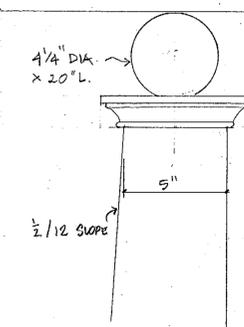
Date	1.25.22
Scale	AS NOTED
Drawn	
Job	
Sheet	1
Of	Sheets

WALLMAN
 FENCE

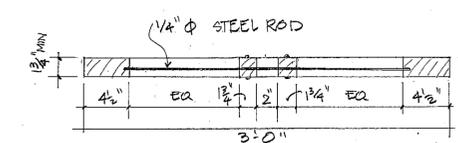


FENCE - 1/2" = 1'-0"
 VIEW FROM PARKING PAD
 NOTE = CONTACT ARCHITECT FOR ANY
 RET. WALL HEIGHT OVER 20"

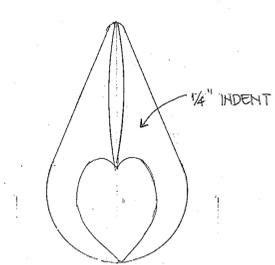
DRIVEWAY GATE - 1/2" = 1'-0"



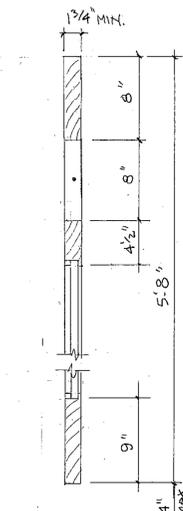
5 SECTION OF GATE POST - 3" = 1'-0"



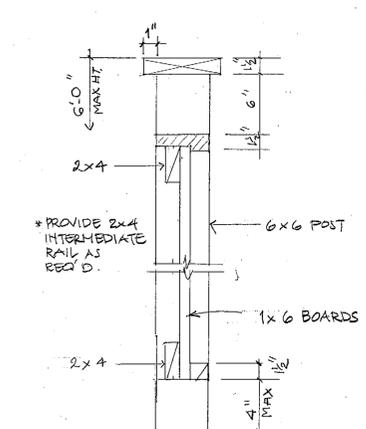
3 GATE HORIZ. SECTION - 1/2" = 1'-0"



4 TULIP MOTIF - FULL SIZE



2 GATE SECTION
 1/2" = 1'-0"



1 TYPICAL FENCE DET.
 1/2" = 1'-0"

REVISIONS	BY
8/26/24	



Carolyn Van Lang
 Architect

43 Prospect Road
 Piedmont, CA 94610
 510-207-4186

cvlarch@gmail.com

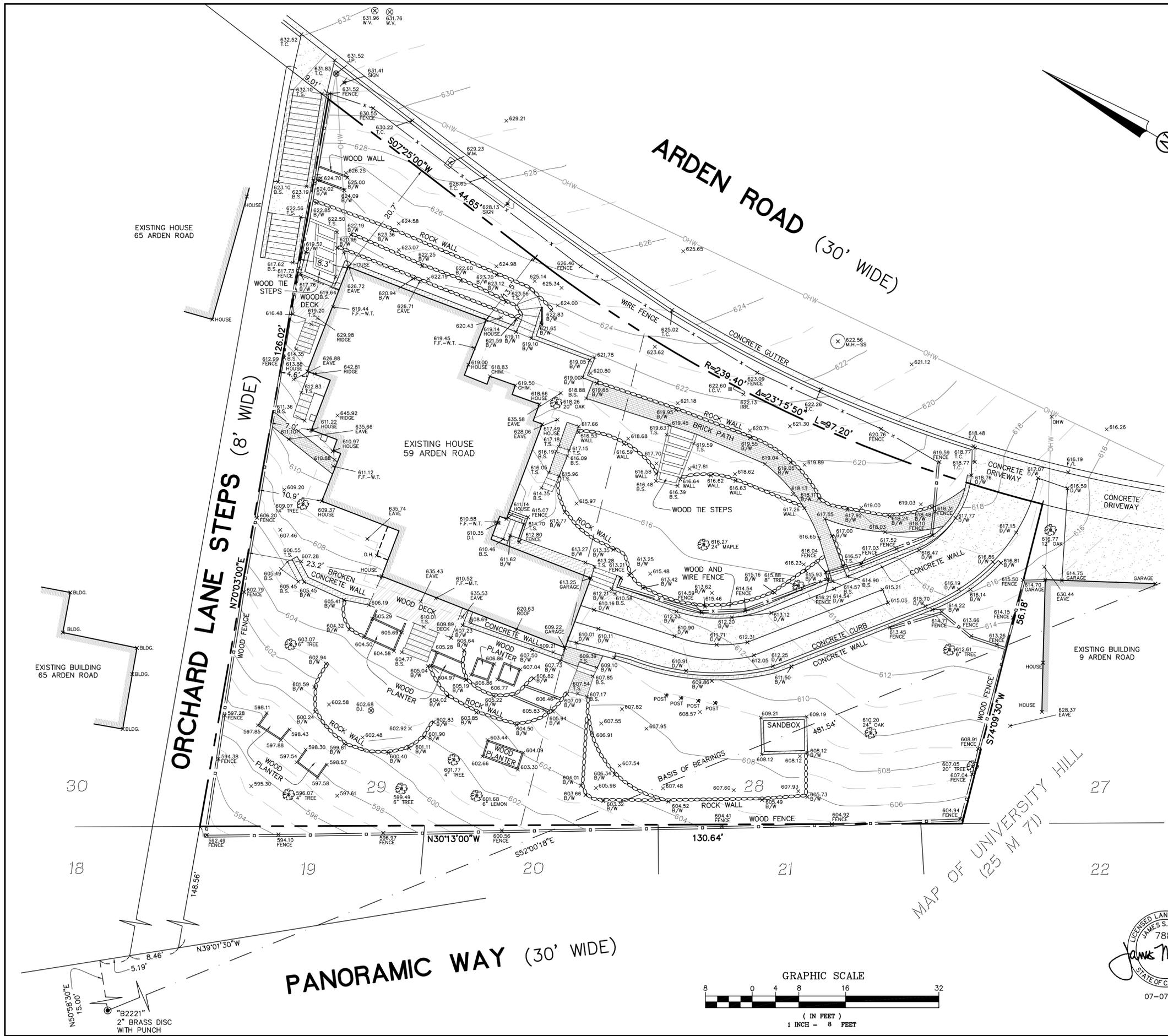


MICHAEL WALLMAN & LAURA ARECHIGA
 55 ARDEN RD
 BERKELEY, CA

GATES & FENCE

Date 1.25.22
 Scale AS NOTED
 Drawn
 Job
 Sheet
 Of Sheets

WALLMAN



- LEGEND**
- B.S. BASE OF STEPS
 - B/W BASE OF WALL
 - CHIM. CHIMNEY
 - CONC. CONCRETE
 - D.I. DRAIN INLET
 - D/W DRIVEWAY
 - E.M. ELECTRIC METER
 - F.F. FINISHED FLOOR
 - F/L FLOWLINE
 - G.M. GAS METER
 - I.C.V. IRRIGATION CONTROL VALVE
 - IRR. IRRIGATION
 - J.P. JOINT POLE
 - M.H. MANHOLE
 - M.T. METAL THRESHOLD
 - O.H. OVERHANG
 - OHW OVERHEAD WIRE
 - SS SANITARY SEWER
 - T.C. TOP OF CURB
 - T.S. TOP OF STEPS
 - W.M. WATER METER
 - W.T. WOOD THRESHOLD
 - W.V. WATER VALVE
- BRICK
 - BUILDING LINE
 - CONCRETE SURFACE
 - CONCRETE WALL
 - WOOD SURFACE
 - WOOD WALL
 - ROCK WALL
 - WIRE FENCE
 - WOOD FENCE
 - WOOD AND WIRE FENCE
 - FOUND CITY MONUMENT IN WELL, AS NOTED

GENERAL NOTES:
DIMENSIONS ARE IN FEET AND DECIMAL FEET.

CHICAGO TITLE COMPANY PRELIMINARY REPORT, TITLE NUMBER 14-58416401-RH, DATED JANUARY 17, 2014 DOES NOT REFERENCE ANY EASEMENTS RELATED TO THIS PROPERTY.

DIMENSIONS TO PROPERTY LINES ARE MEASURED FROM BUILDING CORNERS.

APN'S: 055-1862-037 & 055-1862-038

BASIS OF BEARINGS:
THE CALCULATED MONUMENT LINE IN PANORAMIC WAY BETWEEN MONUMENTS B2221 AND B2225 WAS CALCULATED TO BE SOUTH 52°00'18" EAST PER MAP OF UNIVERSITY HILL (25 M 71).

BENCHMARK:
ELEVATIONS ARE BASED ON CITY OF BERKELEY DATUM.
THE 2" BRASS DISC WITH PUNCH AT THE INTERSECTION OF PANORAMIC WAY AND ARDEN ROAD, DESIGNATED "B2225" WAS TAKEN AS ELEVATION = 572.67 FEET PER CORNER RECORD 14057 (131 CR 95).

PROPERTY AREA:
11,156± SQUARE FEET

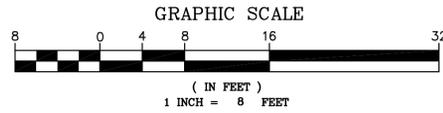
DATE OF FIELD SURVEY:
MAY 5th AND 13th, 2021

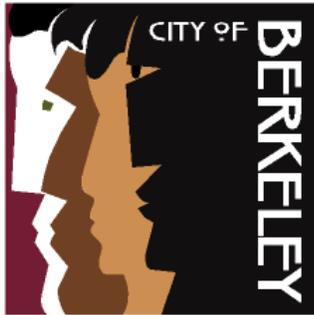
BOUNDARY AND TOPOGRAPHIC SURVEY

LOTS 28 AND 29, MAP OF UNIVERSITY HILL (25 M 71)
LOCATED AT 59 ARDEN ROAD
CITY OF BERKELEY, COUNTY OF ALAMEDA, CALIFORNIA

JULY 7, 2021 SCALE: 1" = 8'
MORAN ENGINEERING, INC.

CIVIL ENGINEERS \ LAND SURVEYORS
1930 SHATTUCK AVENUE, SUITE A
BERKELEY, CALIFORNIA 94704
(510) 848-1930





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

59 Arden Road

Administrative Use Permit #ZP2022-0127 to widen an existing curb cut, establish a parking pad, a 2-foot 6-inch retaining wall, a 6-foot fence, and gate within a required front setback on a lot with a single-family dwelling. The property is located within the Environmental Safety Residential (ES-R) Zoning District, and is considered a contributor to the historic status of the Panoramic Hill District which is listed on the California National Register of Historic Places.

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

When: Thursday, November 14, 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: Low-Density Residential (LDR)
- Zoning: Environmental Safety-Residential District (ES-R)

B. Zoning Permits Required:

- Administrative Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.304.080(A) to construct a fence and gate exceeding 4 feet in height with a required setback in the ES-R;
- Administrative Use Permit pursuant to BMC Section 23.304.070(C)(1) to install a retaining wall within the minimum required front setback;
- Administrative Use Permit pursuant to BMC Section 23.202.070(G)(2) to expand parking within the Panoramic Hill District; and
- Administrative Use Permit pursuant to BMC Section 23.322.080(E)(2) to establish parking in the required front setback.

C. CEQA Recommendation: Initial Study Negative Declaration (IS/ND) prepared pursuant to Article 6 of the CEQA Guidelines (see Attachment 3).

D. Parties Involved:

- Applicant/Owner Michael Wallman, 59 Arden Road, 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@cityofberkeley.info.

Communication Disclaimer:

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

Written Comments, Communications, and Reports:

Written comments must be directed to the ZAB Secretary at the Land Use Planning Division (Attn: ZAB Secretary), or via e-mail to: zab@cityofberkeley.info. 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@cityofberkeley.info) to request hard-copies or electronic copies.

Notice Concerning Your Legal Rights:

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

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

From: [Darya Barar](#)
To: [Mariscal, Cecelia](#)
Subject: RE: FW: Arborist report for review-59 Arden Road
Date: Friday, August 16, 2024 12:30:43 PM

Thank you! You too!

DARYA BARAR MANAGING CONSULTING URBAN FORESTER AND ARBORIST

ISA Certified Arborist No. WE-6757A; ISA Tree Risk Assessment Qualified; Registered Consulting Arborist #693

HortScience | Bartlett Consulting

2550 Ninth, Berkeley, CA 94710

p 9257504109

e dbarar@Bartlett.com

facebook.com/bartletttreeexperts

hortscience.com | bartlett.com

From: Mariscal, Cecelia <CMariscal@berkeleyca.gov>
Sent: Friday, August 16, 2024 12:04 PM
To: Darya Barar <dbarar@Bartlett.com>
Subject: RE: FW: Arborist report for review-59 Arden Road

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Great, thanks for you help on this one. Have a great weekend!

From: Darya Barar <dbarar@Bartlett.com>
Sent: Friday, August 16, 2024 10:07 AM
To: Mariscal, Cecelia <CMariscal@berkeleyca.gov>
Subject: RE: FW: Arborist report for review-59 Arden Road

Thanks.

The good conditioned coast live oak has a 26 inch diameter. It will be 15 ft. from the closest impacts. The calculated tree protection zone for a tree like this is 12 ft.

I am fine with the plans as is.

Thanks again.

DARYA BARAR MANAGING CONSULTING URBAN FORESTER AND ARBORIST

ISA Certified Arborist No. WE-6757A; ISA Tree Risk Assessment Qualified; Registered Consulting Arborist #693

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2550 Ninth, Berkeley, CA 94710

p 9257504109

e dbarar@Bartlett.com

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From: Mariscal, Cecelia <CMariscal@berkeleyca.gov>
Sent: Friday, August 16, 2024 9:50 AM
To: Darya Barar <dbarar@Bartlett.com>
Subject: FW: FW: Arborist report for review-59 Arden Road

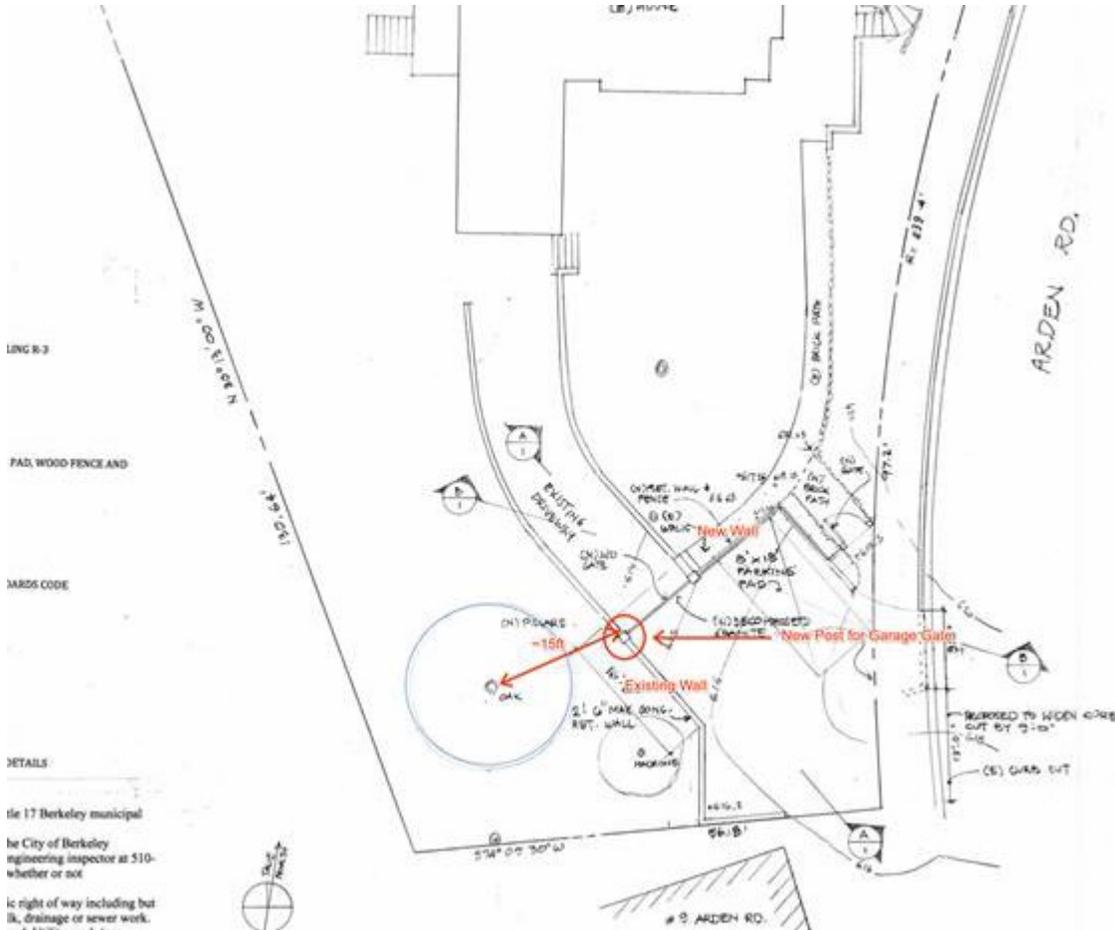
Caution: This is an External E-mail From Outside Bartlett. Do Not Click On Links And Attachments Unless You Know The Content Is Safe.

Hi Darya,

Let me know if this works. Fingers crossed.

-C

From: Michael Wallman <michaelwallman@gmail.com>
Sent: Friday, August 16, 2024 9:48 AM
To: Mariscal, Cecelia <CMariscal@berkeleyca.gov>
Subject: Re: FW: Arborist report for review-59 Arden Road



On Fri, Aug 16, 2024 at 9:42 AM Mariscal, Cecelia <CMariscal@berkeleyca.gov> wrote:

Hi Michael,

Can you revise the drawing to address Darya's comment below?

-Cecelia

From: Darya Barar <dbarar@Bartlett.com>
Sent: Friday, August 16, 2024 9:17 AM
To: Mariscal, Cecelia <CMariscal@berkeleyca.gov>
Subject: RE: Arborist report for review-59 Arden Road

Hi Cecelia,

The measurement they provided is to the farther edge of construction. What I am looking for is a measurement from the trees trunk to the closes impacts.

DARYA BARAR MANAGING CONSULTING URBAN FORESTER AND ARBORIST
ISA Certified Arborist No. WE-6757A; ISA Tree Risk Assessment Qualified; Registered Consulting Arborist
#693

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2550 Ninth, Berkeley, CA 94710

p 9257504109

e dbarar@Bartlett.com

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hortscience.com | bartlett.com

From: Mariscal, Cecelia <CMariscal@berkeleyca.gov>

Sent: Thursday, August 15, 2024 4:48 PM

To: Darya Barar <dbarar@Bartlett.com>

Subject: FW: Arborist report for review-59 Arden Road

Caution: This is an External E-mail From Outside Bartlett. Do Not Click On Links And Attachments Unless You Know The Content Is Safe.

Hi Darya,

This is what the applicant sent me. They did add a measurement thought pretty small. Let me know if you can use this or if you'd like me to request additional information. Thanks.

-Cecelia

From: Michael Wallman <michaelwallman@gmail.com>

Sent: Thursday, August 15, 2024 4:08 PM

To: Mariscal, Cecelia <CMariscal@berkeleyca.gov>

Cc: Laura Arechiga <laura.arechiga@gmail.com>

Subject: Re: Arborist report for review-59 Arden Road

Hey Cecelia,

Please share this pick with Darya.

Hi Cecelia.

Can the arborist show a photo or can someone add measurements to the plan? I need to see how far the wall is from the trunk.

Thanks.
Darya~

DARYA BARAR MANAGING CONSULTING URBAN FORESTER AND ARBORIST

ISA Certified Arborist No. WE-6757A; ISA Tree Risk Assessment Qualified; Registered Consulting Arborist #693

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[hortscience.com](https://www.hortscience.com) | [bartlett.com](https://www.bartlett.com)

From: [Wxbyrne](#)
To: [Mariscal, Cecelia](#)
Subject: 59 Arden Road Project
Date: Tuesday, August 27, 2024 12:24:49 PM

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

To Whom It May Concern --

We support this project; it is beneficial to get cars off the narrow roads of Panoramic Hill.

Based on the letter we received dated 8/14/24, we assume this means we support the "Negative Declaration".
(We are not fluent in "CEQA speak".)

Warren & Lorna Byrne
23 Panoramic Way