



ZONING ADJUSTMENTS BOARD – STAFF REPORT

FOR BOARD ACTION

MARCH 27, 2025

0/1117 Virginia Street

Variance #ZP2024-0015 to construct a two-story (28-foot) residential building, including a two-story 1,900 square-foot single-family dwelling, and an attached 800 square-foot accessory dwelling unit (ADU) on the first floor, on a 2,694 square-foot lot. The proposed building has a front setback of 0 feet and a rear setback of 8 feet, where 20 feet is required, and 68 percent lot coverage, where 40 percent is the maximum allowed.

I. Background

A. Land Use Designations:

- General Plan: LMDR– Low Medium Density Residential
- Zoning District: R-2– Restricted Two-Family Residential District

B. Zoning Permits Required:

- Variance from Berkeley Municipal Code (BMC) Section 23.202.080(D), pursuant to BMC Section 23.406.050 to permit a front setback of 0 feet at the second floor, and a rear setback of 8 feet at the first floor, where 20 feet is required
- Variance from BMC Section 23.202.080(D), pursuant to BMC Section BMC 23.406.050 to permit 68 percent lot coverage, where 40 percent is the maximum
- Use Permit pursuant to BMC Section 23.202.020(A) to construct a dwelling unit
- Administrative Use Permit pursuant to BMC Section 23.304.080(A) to legalize a 7-foot fence

C. CEQA Recommendation:

It is staff's recommendation to the Zoning Adjustments Board 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. Project Recommendation:

Approval.

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E. Parties Involved:

- Applicant: Robert Nebolon, 801 Camelia Street, Suite E, Berkeley
- Owner: Wang Brothers Investments, 2417 Mariner Square Loop, Suite 247, Alameda

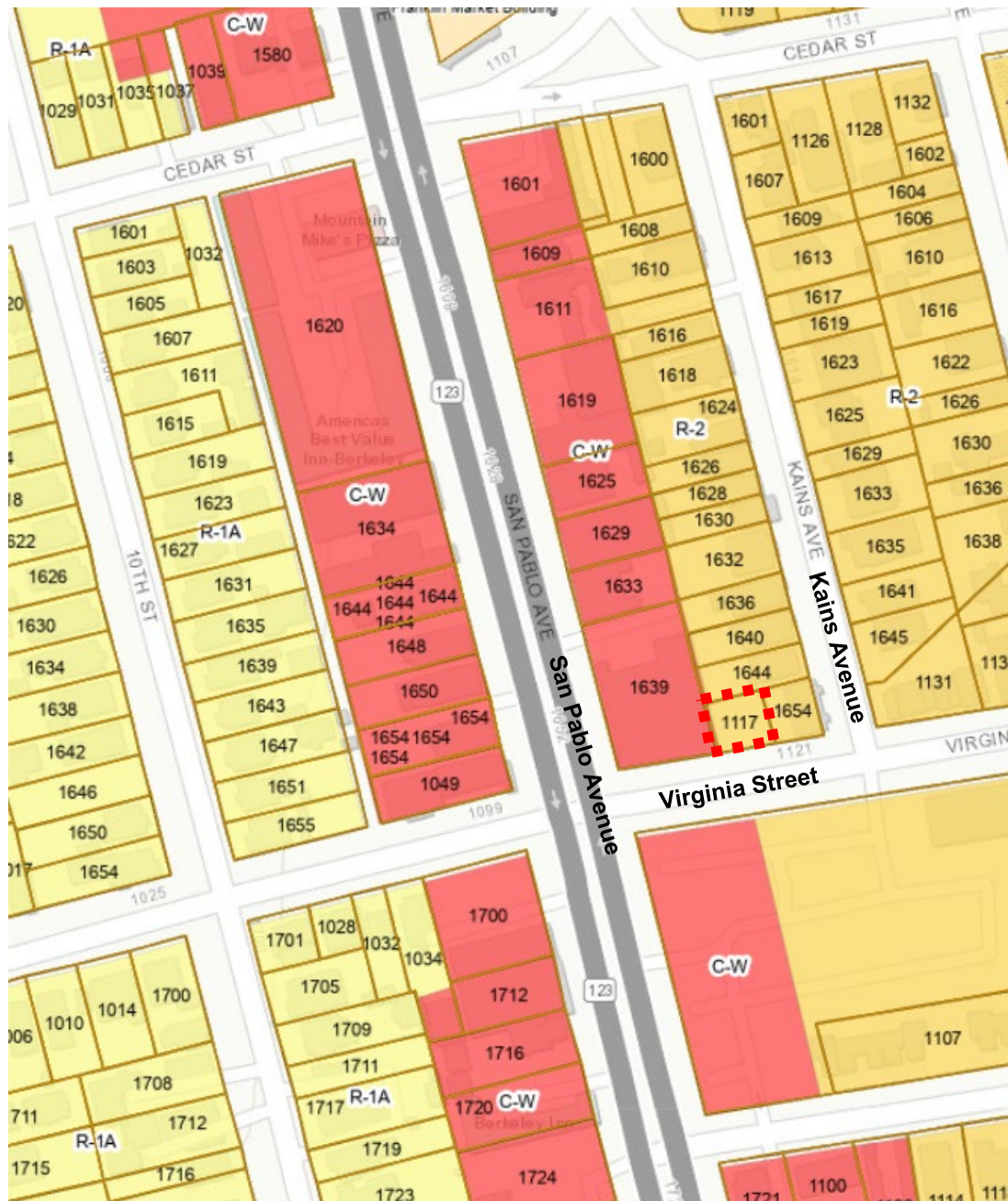
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Figure 1: Vicinity and Zoning Districts Map



Legend

Site Boundary 

R-1A: Limited Two-Family Residential

R-2: Restricted Two-Family Residential

C-W: West Berkeley Commercial



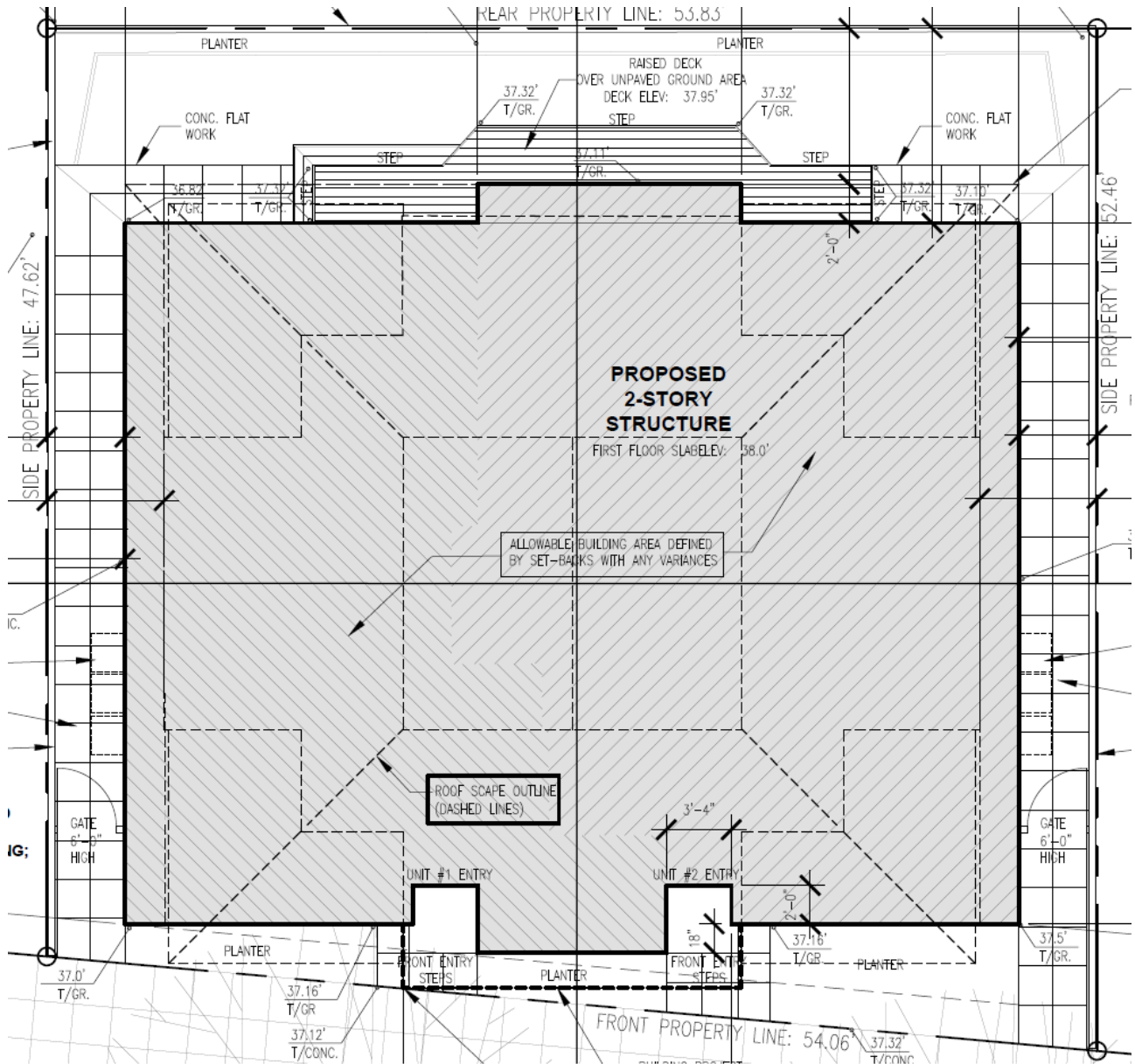
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Figure 2: SB 1214¹ Proposed Site Plan



¹ Effective January 1, 2023, Government Code Section 65103.5 (SB 1214) allows design professionals to limit the distribution and publication of copyrighted material associated with the review of development projects. A site plan and/or massing diagram was submitted with this application for public posting and distribution. The architectural plans cannot be posted online, provided electronically, or reproduced.

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Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Vacant	R-2	Low Medium Density Residential
Surrounding Properties	North	Single-family		
	South	School	C-W, R-2	Avenue Commercial, Institutional, Low Medium Density Residential
	East	Duplex	R-2	Low Medium Density Residential
	West	Commercial	C-W	Avenue Commercial

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 create nonresidential gross floor area, therefore the 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 would not create nonresidential gross floor area, therefore the fee does not apply.
Affordable / Inclusionary Housing Requirements (BMC Chapter 23.328)	No	The project is a housing development project, as defined in BMC Section 23.328.020, ^a would provide 5,000 square feet or less of residential unit floor area and is not part of a larger housing development project, and is exempt from the inclusionary housing provisions.
Bird Safe Buildings (BMC Section 23.304.150)	No	The project is exempt from these provisions because the proposed building is less than 10,000 square feet in size, and the average height is less than 35 feet.
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 would not utilize a density bonus.
Hard Hats (BMC Chapter 13.107)	No	These provisions do not apply to this project because the project does not involve the construction, alteration, or demolition of 50,000 square feet of floor area.
Historic Resources	No	This project does not propose a substantial change to a structure of potential historical significance under the criteria of Berkeley's Landmark Preservation Ordinance.
Housing Accountability Act (HAA) (Gov't Code Section 65589.5(j))	No	The project meets the definition of a "Housing Development Project" per Government Code Section 65589.5(h)(2) ^b , but the project does not

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Characteristic	Applicability	Explanation
		comply with applicable, objective general plan and zoning standards, and thus section (j) of the Housing Accountability Act does not apply. See Section V.B of this report for additional discussion on compliance with the Housing Accountability Act.
Housing Crisis Act of 2019 (SB 330)	Yes	The project meets the definition of a "Housing Development Project" per Government Code Section 65589.5(h)(2) ^b . See Section V.C of this report for additional discussion on the sections of SB 330 that apply to the project.
Residential Preferred Parking (RPP)	No	The site is not located in an RPP zone.
Seismic Hazards (SHMA)	No	The project site is not located within an area susceptible to landslide/liquefaction/fault rupture as shown on the State Seismic Hazard Zones map. ^c
Soil/Groundwater Contamination	No	The project site is not located within the City's Environmental Management Area and is not on the Cortese List. ^d Standard Conditions of Approval related to hazardous materials would apply.
Transit	Yes	The project is served by the AC Transit lines 51B, 52, and 72, and is within 0.6 miles from the Bay Area Rapid Transit North Berkeley Station.
Notes: 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. 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. c. California Department of Conservation. DOC Maps: Geologic Hazards. Available: https://maps.conservation.ca.gov/geologic/hazards/ d. Cortese List is an annually updated list of hazardous materials sites compiled pursuant Government Code Section 65962.5.		

Table 3: Project Chronology

Date	Action
February 1, 2024	Use Permit Application submitted
February 22, 2024	Application deemed incomplete
February 22, 2024	Application resubmitted
March 21, 2024	Application deemed complete
April 19, 2024	Application processing ^a
May 2, 2024	Application resubmitted

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Date	Action
May 13, 2024	Application resubmitted
May 30, 2024	Application processing
June 13, 2024	Application resubmitted
July 12, 2024	Application processing
March 13, 2025	Public hearing notices mailed/posted
March 27, 2025	ZAB hearing
Notes: a. Application processing reflects the project compliance review, including CEQA if applicable, after the application is deemed complete. Submittals are reviewed within 30 days of receipt, pursuant to the Permit Streamlining Act.	

**Table 4: R-2 Development Standards BMC Sections 23.202.080 and 23.322
Parking and Loading**

Standard		Existing	Proposed Total	Permitted/ Required
Lot Area (sq. ft.)		2,694	No change	5,000 min
Gross Floor Area (sq. ft.)		N/A	2,683	N/A
Dwelling Units	Total	0	1	One dwelling per 2,500 sq. ft. of lot area
Building Height (ft. - in.)	Average	N/A	27 ft. – 11 in.	28 ft. max
	Stories	N/A	2	3 max
Building Setbacks (ft. - in.)	Front (Virginia Street)	N/A	0 ft.	20 ft. min
	Rear	N/A	8 ft.	20 ft. min
	Left Side	N/A	4 ft.	4 ft. min
	Right Side	N/A	4 ft.	4 ft. min
Lot Coverage (%)		N/A	68	40 max
Usable Open Space (sq. ft.)		N/A	508	400 min
Parking	Automobile	0	No change	0 required
Shading: Variance applied to development standard Abbreviations: sq. ft. = square feet; max. = maximum; min. = minimum; n/a = not applicable; % = percent; avg. = average, ft = feet ('). in. = inches (")				

II. Project Setting

A. Neighborhood/Area Description:

The subject site is located on the north side of Virginia Street, between San Pablo Avenue and Kains Avenue in North Berkeley. The proposed project is located in a

mixed-use neighborhood that consists of commercial and institutional uses, and one- and two-story residential properties.

B. Site Conditions:

The lot is square-shaped and oriented south to north, with frontage on Virginia Street. The project site is relatively flat and is vacant. The lot is 2,694 square feet where the minimum requirement for a new lot in the underlying residential district is 5,000 square feet. Fencing is 6 feet in height along the left/west and rear/north property lines, and 7 feet at the right/east property line.

III. Project Description

A. Proposed Project Details:

The proposed project would construct an 1,878 square-foot, two-story, 4-bedroom, three-bathroom single-family dwelling. An 805 square-foot ADU would be attached at the first floor, and is shown only for reference since it is not subject to this discretionary review. More than 400 square feet of useable open space would be provided at the rear yard and at the four balconies off the second floor.

Variances are requested to reduce the front and rear setbacks where 20 feet is required, and to allow the lot coverage to exceed 40 percent, in order to establish the proposed dwelling. Deviation from development standards may be allowed with a Variance if there are extenuating circumstances related to the property. Without a Variance, the strict application of development standards would create a unique hardship due to the unusual circumstances associated with the property (i.e., lot size), and would severely limit the ability to establish a residential use on site - a substantial property right. Existing, unique lot conditions limit the location, size, and the proposed residential use of the subject lot.

IV. Community Discussion

A. Neighbor/Community Concerns:

Prior to submitting this application to the city, a pre-application poster was installed on site by the applicant in January 2024. On March 13, 2025, 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 had not received any communications regarding the project.

B. Design Review Committee Review / Landmark Preservation Commission:

This project is not subject to review by the Design Review Committee because it is located in a residential district not subject to design review. The project is not subject to review by the Landmark Preservation Commission because it does not involve the demolition of a nonresidential building over 40 years in age.

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 a dwelling unit is proposed in a residential zone in an urbanized area, and is below the size threshold for 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 developed/characterized as developed by the California Natural Diversity Database;² 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;³ 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;⁴ 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.

B. Housing Accountability Act Analysis:

Pursuant to the Housing Accountability Act (HAA), California Government Code Section 65589.5(j), when a proposed housing development complies with the applicable, objective general plan and zoning standards, but a local agency proposes to deny the project or approve it only if the density is reduced, the agency must base its decision on written findings supported by substantial evidence that:

1. The development would have a specific adverse impact on public health or safety⁵ unless disapproved, or approved at a lower density; and

² California Department of Fish and Wildlife. California Natural Diversity Database. Available: <https://apps.wildlife.ca.gov/bios6/?tool=cnddbqv>

³ 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>

⁴ California Environmental Protection Agency. Cortese List Data Resources. Available: <https://calepa.ca.gov/sitecleanup/corteselist/>

⁵ A "specific, adverse impact" means "a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete."

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2. There is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval, or approval at a lower density.

The project is a “housing development project” consisting of all residential uses. As shown in Table 4, Development Standards, above, the project does not comply with the zoning standards for setbacks and lot coverage, and thus Section 65589.5(j), of the Housing Accountability Act does not apply.

C. Housing Crisis Act of 2019 – Senate Bill (SB) 330:

The Housing Crisis Act, also known as Senate Bill 330, seeks to boost homebuilding throughout the State with a focus on urbanized zones by expediting the approval process for and suspending or eliminating restrictions on housing development. A “housing development project” can include any of the following: residential units only; mixed use consisting of residential and nonresidential uses in which at least two-thirds of the square-footage is designated residential, and transitional or supportive housing. Sections of SB 330 that apply to the proposed project include the following:

1. **Government Code Section 65913.10(a)** requires that the City determine whether the proposed development project site is a historic site at the time the application for the housing development project is deemed complete. The determination as to whether the parcel is a historic site must remain valid during the pendency of the housing development project, unless any archaeological, paleontological, or tribal cultural resources are encountered during any grading, site disturbance, or building alteration activities.
2. **Government Code Section 65950(a)(5)** requires a public agency to approve or disapprove a project within 60 days from the determination that the project is exempt from the CEQA. Should ZAB determine the application is categorically exempt from CEQA at the March 27, 2025 public hearing, the application must be approved or disapproved by May 25, 2025.

D. 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. **Shadows:** The average height of the proposed two-story single-family dwelling is about 28 feet. The applicant submitted shadow studies documenting sun angles at three times throughout the day during the summer and winter solstice. New shadows would affect dwellings at the following locations:

- 1644 Kains Avenue, north of the project site, casting new shadows on the winter solstice at noon at a window on the first floor on the west elevation, and two windows on the south elevation.
- 1644 Kains Avenue, north of the project site, casting new shadows on the winter solstice two hours before sunset at five windows on the south elevation.
- 1654 and 1656 Kains Avenue, east of the project site, casting new shadows on the summer solstice two hours before sunset at three windows on the west elevation.

Though the project would create new shadow impacts on neighboring residences, the projected impacts would be in line with what is expected within a built urban environment. Shadow impacts to neighboring residences will be limited to certain times of year, and during certain hours of the day, and shadow impacts will not be detrimental.

2. Views: The 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 location is in a generally flat neighborhood, developed with one- to two-story buildings, and includes some mature vegetation that obscures these views from off-street angles. Because significant views are generally not available in this neighborhood due to grade, current development patterns, and mature vegetation, the proposed project would not create detrimental impacts to views.
3. The project is subject to the City's standard conditions of approval regarding construction noise, 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.
4. **New Dwelling Units in the R-2 District and Neighborhood Compatibility:** Pursuant to BMC Section 23.202.080(A), the proposed project is consistent with the purposes of the R-2 District because it would strengthen the residential concentration in this residential neighborhood. The project would protect neighboring residents from unreasonably detrimental effects of nonresidential uses, such as noise, vibration, odors, smoke, fumes, gases, dust, heat and glare because the proposal would add a dwelling adjacent to existing residential buildings, and would separate existing residences from commercial uses to the west. Staff finds that the proposal is consistent with the overall scale and development pattern of the one-, and two-story residences in the neighborhood.

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E. The project is requesting Variances to deviate from development standards pursuant to BMC 23.202.080, as outlined below:

- a. Allow for reduced front and rear setbacks where 20 feet is required:**
Pursuant to BMC Section 23.202.080(D), Table 23.202-6, R-2 Setback and Building Separation Standards, the required main building front and rear setback is 20 feet, respectively. The proposed dwelling unit would have a front setback of 2 feet at the first floor, and 0 feet at the second floor, and a rear setback of 8 feet at the first floor, and 10 feet at the second floor.
- b. Allow for 68 percent lot coverage where 40 percent is the maximum:**
Pursuant to BMC Section 23.202.080(D), Table 23.202-7, R-2 Lot Coverage Standards, the lot coverage maximum for a two-story building on an interior lot is 40 percent. The proposed dwelling would have a lot coverage of 68 percent.

The applicant considered several design iterations and found it necessary to request Variances to the strict application of the front and rear setbacks, and lot coverage.

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

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

The subject lot is 2,694 square feet in area, which is substandard compared to the district standard of 5,000 square feet for new lots. The lot is an approximately 54-foot by 50-foot square, where rectangular lots are much more common in residential districts, and setback requirements were developed with rectangular lots in mind. Strict adherence to the setback and lot coverage requirements limits the amount of buildable area on the lot. For instance, a strict application of the front and rear setbacks, which would account for 2,158 square feet in lot area, in addition to the side setbacks (80 square feet), would limit the amount of buildable area on site to 456 square feet, as shown in Table 5 below. Applying the required setback areas to the lot would allow for a building that is approximately 45 feet by 10 feet, or 450 square feet. Existing, unique lot conditions limit the location, size, and the proposed residential use of the subject lot. This Finding can be made.

Table 5: Estimated Buildable Lot Area with Application of R-2 Setback Requirements

Building Setback Standards (R-2)	Estimated Coverage Area (square feet)
Existing Lot Area	2,694
Front and Rear Setbacks (20 feet)	(2,158)
Side Setbacks (4 feet)	(80)
Estimated Total Remaining Buildable Area	456
Note: Integers included in brackets “()” indicate a subtraction.	

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

The property owner has a substantial property right to use and enjoy their property for a dwelling, as the zoning intended. In the R-2 District, a 2,000 square foot dwelling would comply with the 40 percent lot coverage limit on a 5,000 square-foot lot. The dimensions of the subject lot make it impossible to build a dwelling that complies with lot coverage and setback requirements, and is of a similar size to neighboring dwellings. Therefore, this Finding can be made.

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

The Variances for the lot coverage, and front and rear setbacks would not adversely affect the health and safety of persons residing or working near the property since perceived impacts are characteristic of residential development. The Variances would allow for the proportional development of a single-family dwelling in a residential district.

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

The new single-family dwelling unit would comply with standards for usable open space, building height, and side setbacks. The proposed project would not obstruct protected views, and would have minimal impact on light, or air flow. Many of the nearby lots on Kains Avenue are of similar size, and feature dwellings with reduced front setbacks. The adjacent commercial lot has a 0-foot front setback, and the adjacent residential lot has a negligible street-side setback. Concentrating the building mass at the front of the lot would allow for more open space to the rear. Staff finds that shadow and air impacts from the project would be reasonable and not detrimental. This Finding can be made.

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

The Variance would allow for the development of a single-dwelling unit that would have otherwise been precluded or exceptionally limited in size and location. The proposed residential unit would benefit the City as a whole by providing additional housing that would count towards the City’s Regional Housing Needs Allocation outlined in the Berkeley Housing Element Update. The project would not result in perceivable negative impacts on municipal health, welfare, and safety.

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

This Finding is not applicable to the Variance request.

F. Administrative Use Permit for a Fence that Exceeds 6 Feet in Height

BMC Section 23.304.080(A) requires an Administrative Use Permit for fences that exceed 6 feet in height. The project would legalize a 7-foot fence along the east property line. Since the fence is only one foot taller than what is allowed by-right, shadows from the fence will not be detrimental, and the fence would provide privacy between neighbors.

VI. Other Considerations (Zoning and Land Use Considerations)

A. General Plan Consistency:

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

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

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Staff Analysis: The project is consistent with the above General Plan policies because the infill development would construct one new dwelling unit that would also count towards the City's share of regional housing needs.

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:

1. **FIND** that the project is categorically exempt from the provisions of the CEQA pursuant to Section 15303 ("New Construction or Conversion of Small Structures") of the CEQA Guidelines; and
2. **APPROVE** ZP2024-0015 pursuant to Section 23.406.040(D) and subject to the attached Findings and Conditions (see Attachment 1 and Attachment 2).

Attachments:

1. Findings
2. Conditions of Approval
3. SB 1214 Site Plan, dated June 13, 2024
4. Notice of Public Hearing

Staff Planner: Allison Riemer, ariemer@berkeleyca.gov, (510) 981-7433



ZONING ADJUSTMENTS BOARD – FINDINGS

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0/1117 Virginia Street

Variance #ZP2024-0015 to construct a two-story (28-foot) residential building, including a two-story 1,900 square-foot single-family dwelling, and an attached 800 square-foot accessory dwelling unit (ADU) on the first floor, on a 2,694 square-foot lot. The proposed building has a front setback of 0 feet and a rear setback of 8 feet, where 20 feet is required, and 68 percent lot coverage, where 40 percent is the maximum allowed.

ZONING PERMITS REQUIRED

- Variance from Berkeley Municipal Code (BMC) Section 23.202.080(D), pursuant to BMC Section 23.406.050 to permit a front setback of 0 feet at the second floor, and a rear setback of 8 feet at the first floor, where 20 feet is required
- Variance from BMC Section 23.202.080(D), pursuant to BMC Section BMC 23.406.050 to permit 68 percent lot coverage, where 40 percent is the maximum
- Use Permit pursuant to BMC Section 23.202.020(A) to construct a dwelling unit
- Administrative Use Permit pursuant to BMC Section 23.304.080(A) to legalize a 7-foot fence

I. CEQA FINDINGS

- A.** 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 Section 15303 of the CEQA Guidelines ("New Construction or Conversion of Small Structures").

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- B.** Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project will not affect any historical resource.

II. HOUSING ACCOUNTABILITY ACT FINDINGS

- A.** The Housing Accountability Act, Government Code Section 65589.5(j) requires that when a proposed housing development complies with applicable, objective general plan and zoning standards, a local agency may not deny the project or approve it with reduced density unless the agency makes written findings supported by substantial evidence that: (1) the development would have a specific adverse impact on public health or safety unless disapproved or approved at a lower density; and (2) there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval or approval at a lower density.
- B.** The project includes construction of a dwelling unit and an attached ADU. The project does not comply with the zoning standards for setbacks and lot coverage, and thus Section 65589.5(j), of the Housing Accountability Act does not apply.

III. FINDINGS FOR APPROVAL

- A.** As required by BMC Section 23.406.040(E), Findings for Approval, 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. Shadows: The average height of the proposed two-story single-family dwelling is about 28 feet. The applicant submitted shadow studies documenting sun angles at different three times throughout the day during the summer and winter solstice.

Though the project will create new shadow impacts on neighboring residences, the projected impacts will be in line with what is expected within a built urban environment. Shadow impacts to neighboring residences will be limited to certain times of year, and during certain hours of the day, and shadow impacts will not be detrimental.

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2. Views: The 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 location is in a generally flat neighborhood, developed with one- to two-story buildings, and includes some mature vegetation that obscures these views from off-street angles. Because significant views are generally not available in this neighborhood due to grade, current development patterns, and mature vegetation, the proposed project will not create detrimental impacts to views.
3. The project will be subject to the City's standard conditions of approval regarding construction noise, 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.
4. **New Dwelling Units in the R-2 District and Neighborhood Compatibility:** Pursuant to BMC Section 23.202.080(A), the proposed project is consistent with the purposes of the R-2 District because it will strengthen the residential concentration in this residential neighborhood. The project will protect neighboring residents from unreasonably detrimental effects of nonresidential uses, such as noise, vibration, odors, smoke, fumes, gases, dust, heat and glare because the proposal will add a dwelling adjacent to existing residential buildings, and will separate existing residences from commercial uses to the west. Staff finds that the proposal is consistent with the overall scale and development pattern of the one-, and two-story residences in the neighborhood.

IV. OTHER FINDINGS FOR APPROVAL

- A. As required by BMC Section 23.406.050(F), the Zoning Adjustments Board finds that variances from BMC Section 23.202.080(D) for reduced front and rear setbacks where 20 feet is required, and to allow 68 percent lot coverage where 40 percent is the maximum in the R-2 District is permissible because:
 1. There are exceptional circumstances applying to the property which do not apply generally in the same district:

The subject lot is 2,694 square feet in area, which is substandard compared to the district standard of 5,000 square feet for new lots. The lot is an approximately 54-foot by 50-foot square, where rectangular lots are much more common in residential districts, and setback requirements were developed with rectangular lots in mind. Strict adherence to the setback and lot coverage requirements limits the amount of buildable area on the lot. For instance, a strict application of the front and rear setbacks, which would account for 2,158 square feet in lot area, in addition to the side setbacks (80 square feet), would limit the amount of buildable area on site to 456 square feet. Since the lot's depth is 50 feet, applying the required front and rear setback areas would only allow for a building that is 450 square feet (45 feet wide by

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- 10 feet deep). Existing, unique lot conditions limit the location, size, and the proposed residential use of the subject lot.
2. The Variances are necessary to preserve a substantial property right:
The property owner has a substantial property right to use and enjoy their property for a dwelling, as the zoning intended. In the R-2 District, a 2,000 square foot dwelling would comply with the 40 percent lot coverage limit on a 5,000 square-foot lot. The dimensions of the subject lot make it impossible to build a dwelling that complies with lot coverage and setback requirements, and is of a similar size to neighboring dwellings.
 3. The Variances will not adversely affect the health or safety of persons residing or working near the property:
The Variances for the lot coverage, and front and rear setbacks will not adversely affect the health and safety of persons residing or working near the property since perceived impacts are characteristic of residential development. The Variances will allow for the proportional development of a single-family dwelling in a residential district.
 4. The Variances will not be materially detrimental to the public welfare or injurious to nearby property or improvements:
The new single-family dwelling unit will comply with standards for usable open space, building height, and side setbacks. The proposed project will not obstruct protected views, and will have minimal impact on light, or air flow. Many of the nearby lots on Kains Avenue are of similar size, and feature dwellings with reduced front setbacks. The adjacent commercial lot has a 0-foot front setback, and the adjacent residential lot has a negligible street-side setback. Concentrating the building mass at the front of the lot would allow for more open space to the rear. Shadow and air impacts from the project will be reasonable and not detrimental.
 5. The Variances will promote the municipal health, welfare, and safety and benefit the city as a whole:
The Variances will allow for the development of a single-dwelling unit that will have otherwise been precluded or exceptionally limited in size and location. The proposed residential unit will benefit the City as a whole by providing additional housing that will count towards the City's Regional Housing Needs Allocation outlined in the Berkeley Housing Element Update. The project will not result in perceivable negative impacts on municipal health, welfare, and safety.
- B.** As required by BMC Section 23.304.080(A), Administrative Use Permit for a Fence that Exceeds 6 Feet in Height, the Zoning Adjustments Board finds:
1. The project will legalize a 7-foot fence along the east property line, which provides privacy between neighbors. Since the fence is only one foot taller than what is allowed by-right, shadows from the fence will not be detrimental, and the fence would provide privacy between neighbors.



USE PERMIT ZP2024-0015

CONDITIONS OF APPROVAL

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0/1117 Virginia Street

Variance #ZP2024-0015 to construct a two-story (28-foot) residential building, including a two-story 1,900 square-foot single-family dwelling, and an attached 800 square-foot accessory dwelling unit (ADU) on the first floor, on a 2,694 square-foot lot. The proposed building has a front setback of 0 feet and a rear setback of 8 feet, where 20 feet is required, and 68 percent lot coverage, where 40 percent is the maximum allowed.

I. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

Pursuant to Berkeley Municipal Code (BMC) Title 23 Zoning Ordinance and Title 13 Public Peace, Morals, and Welfare, 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 BMC 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. HARD HATS (BMC Section 13.107). Pursuant to BMC Chapter 13.107 “Establishing Healthcare and Apprenticeship Standards for Private Development” projects within City limits consisting of construction of either a new building, addition to an existing building, alteration of existing floor area, or demolition of 50,000 square feet or more of floor area shall be subject to the requirements of this Chapter. The combination of alterations, additions and/or demolition that impacts 50,000 square feet or more of floor area shall be subject to the requirements of this Chapter. This includes compliance with the requirements contained in BMC Sections 13.107.040 - 13.107.090.

A. Prior to Building Permit issuance and during project construction, the applicant shall comply with the following sections and submit the required document(s):

- i. BMC Section 13.107.040(a)-(d), Apprenticeship Requirements
- ii. BMC Section 13.107.050(a)-(e), Health Care Expenditures
- iii. Submit: Contractor Prequalification Questionnaire

B. At the time Building Permit Issuance, the applicant shall comply with the following section and submit the required document(s):

- i. BMC Section 13.107.060, Required Applicant and Contractor Statements
- ii. Submit: Applicant Declaration
- iii. Submit: Statement of Compliance seven days before contractor starts work

C. Within 30 Days of completing each contractor’s respective work

- i. BMC Section 13.107.060, Required Applicant and Contractor Statements
- ii. Submit: Contractor Satisfaction Statement

D. Prior to Issuance of Certificate of Occupancy, or prior to approved final inspection for alterations, additions, or demolition projects that do not change the occupancy class of the structure or space:

- i. BMC Section 13.107.060, Required Applicant and Contractor Statements
- ii. Submit: Applicant Certification of Compliance

E. During Project Construction, the applicant shall comply with the following sections:

- i. BMC Section 13.107.070(a)-(b), Notice and Posting
- ii. BMC Section 13.107.080, Retaliation Prohibited

F. On-Going and at least three years after receiving approved Final Inspection, the applicant shall comply with the following section:

- i. BMC Section 13.107.090, Retention of Records

10. 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

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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.

II. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD

Pursuant to BMC Section 23.404.050(H) Conditions of Approval, the Zoning Adjustments Board attaches the following additional conditions to this Permit:

Prior to Submittal of Any Building Permit:

- 11. 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 #

- 12. Address Assignment.** The applicant shall file an "Address Assignment Request Application" with the Permit Service Center (1947 Center Street) for any address change or new address associated with this Use Permit. The new address(es) shall be assigned in accordance with BMC Section 16.28.030 Assignment and Installation of Numbers, and, except for new buildings on vacant lots, entered into the City's database after the building permit is issued but prior to final inspection.

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

- 13. 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.
- 14. 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://City of Berkeley Community GIS Portal (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.

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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

15. 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.

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- 16. Interior Noise Levels.** Prior to issuance of a building permit, the applicant shall submit a report to the Building and Safety Division and the Zoning Officer by a qualified acoustic engineer certifying that the interior residential portions of the project will achieve interior noise levels of no more than 45 Ldn (Average Day-Night Levels). If the adopted Building Code imposes a more restrictive standard for interior noise levels, the report shall certify compliance with this standard.
- 17. Solar Photovoltaic (Solar PV) and Battery Energy Storage Systems (ESS).** A solar PV system shall be installed, subject to specific limited exceptions, as specified by the Berkeley Energy Code (BMC Chapter 19.36). Energy storage system (ESS) readiness (new single-family, duplex, and townhouse homes) or ESS installation (new multifamily and most nonresidential buildings) shall be completed as specified by BMC Chapter 19.36. Location of the solar PV system and the ESS, if applicable, shall be noted on the construction plans. (Project required to meet applicable code at time of building permit application, if different from above.)
- 18. 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 at RecyclingProgram@berkeleyca.gov.
- 19. 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:

- 20. 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:

- 21. Construction Hours.** Construction activity shall be limited to between the hours of 8:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and Noon on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.
- 22. Public Works - Implement Bay Area Air Quality Management District (BAAQMD)-** Recommended Measures during Construction. For all proposed projects, BAAQMD recommends implementing all the Basic Construction Mitigation Measures, listed below to meet the best management practices threshold for fugitive dust:
- A.** All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
 - B.** All haul trucks transporting soil, sand, or other loose material off-site shall be covered.

- C. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- D. All vehicle speeds on unpaved roads shall be limited to 15 mph.
- E. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- F. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
- G. All construction equipment shall be maintained and properly tuned in accordance with manufacturer specifications. All equipment shall be checked by a certified visible emissions evaluator.
- 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.

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

- A. The project applicant shall prepare a health risk assessment that demonstrates the project's on-site emissions of diesel particulate matter during construction will not exceed health risk screening criteria after a screening-level health risk assessment is conducted in accordance with current guidance from BAAQMD and OEHHA. The health risk assessment shall be submitted to the Land Use Planning Division for review and approval prior to the issuance of building permits; or
- B. All construction equipment shall be equipped with Tier 2 or higher engines and the most effective Verified Diesel Emission Control Strategies (VDECS) available for the engine type (Tier 4 engines automatically meet this requirement) as certified by the California Air Resources Board (CARB). The equipment shall be properly maintained and tuned in accordance with manufacturer specifications.
- C. In addition, a Construction Emissions Minimization Plan (Emissions Plan) shall be prepared that includes the following:
 - 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.

24. Construction and Demolition Diversion. Divert debris according to your plan and collect required documentation. Get construction debris receipts from sorting facilities in order to verify diversion requirements. Upload recycling and disposal receipts if using [Green Halo](#) and submit online for City review and approval prior to final inspection. Alternatively, complete the [Construction Waste Management Plan](#) and present it, along with your construction debris receipts, to the Building Inspector by the final inspection to demonstrate diversion rate compliance. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement.

25. Low-Carbon Concrete. The project shall maintain compliance with the Berkeley Green Code (BMC Chapter 19.37) including use of concrete mix design with a cement reduction of at least 25 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.)

26. 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.

27. 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.
- 28. 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.

29. 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.

30. 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.

31. 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.
- 32. 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.

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33. **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.
34. **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.
35. **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.
36. **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.
37. **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.
38. **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:

39. **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.
40. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated June 12, 2024.

At All Times:

41. **Compliance with Approved Plan.** The project shall conform to the plans and statements in the Use Permit.
42. **Exterior Lighting.** All exterior lighting shall be energy efficient where feasible; and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
43. **Rooftop Projections.** No additional rooftop or elevator equipment shall be added to exceed the approved maximum roof height without submission of an application for a Use Permit Modification, subject to Board review and approval.

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USE PERMIT CONDITIONS

March 27, 2025

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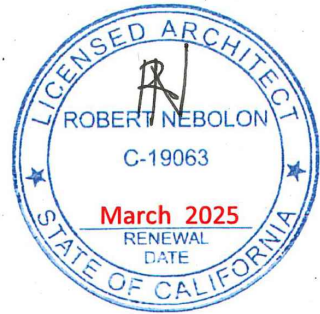
- 44. Drainage Patterns.** The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.
- 45. Electrical Meter.** Only one electrical meter fixture may be installed per dwelling unit.
- 46. Loading.** All loading/unloading activities associated with deliveries to all uses shall be restricted to the hours of 7:00 a.m. to 10:00 p.m. daily.
- 47. Residential Permit Parking.** No Residential Permit Parking (RPP) permits shall be issued to project residents, nor shall commercial placards be issued to non-residential occupants and/or users of the site. The Finance Department, Customer Service Center shall add these addresses to the list of addresses ineligible for RPP permits. The property owner shall notify all tenants of rental units, and/or buyers of condominium units, of this restriction in leases and/or contracts.

I HAVE REVIEWED THE PLANS FOR A PROPOSED NEW OFF-STREET PARKING LOCATED AT 1119 VIRGINIA STREET (APN 059-2287-020).
THE OWNER WANTS TO BUILD A 2-STORY HOUSE

NAME (PRINTED)	SIGNATURE	ADDRESS	OWNER OR RENTER	DATE	HAVE NO OBJECTIONS	HAVE OBJECTIONS (STATE BRIEFLY)	HAVE NO COMMENT
*		1644 KAINS STREET					
*		1654 KAINS STREET					
*		1656 KAINS STREET					
WANG BROTHER INVESTMENTS		SAN PABLO AVE. COMMERCIAL BUILDING	OWNER	1-30-2024	NO OBJECTIONS		

* NO RESPONSE AFTER SENDING TWO LETTERS: THE FIRST BY USPS FIRST CLASS MAIL. THE SECOND BY USPS CERTIFIED/REGISTERED MAIL (SIGNATURE REQUIRED)
* NO RESPONSE AFTER SENDING TWO LETTERS: THE FIRST BY USPS FIRST CLASS MAIL. THE SECOND BY USPS CERTIFIED/REGISTERED MAIL (SIGNATURE REQUIRED)
* NO RESPONSE AFTER SENDING TWO LETTERS: THE FIRST BY USPS FIRST CLASS MAIL. THE SECOND BY USPS CERTIFIED/REGISTERED MAIL (SIGNATURE REQUIRED)

NOTE: SIGNATURE BLOCK ABOVE MEETS THE CITY OF BERKELEY REQUIRED SIGNATURE BLOCK AS PER PLANNING DOCUMENT "INSTRUCTIONS REGARDING NEIGHBORS' SIGNATURES", DATED OCTOBER 27, 2004



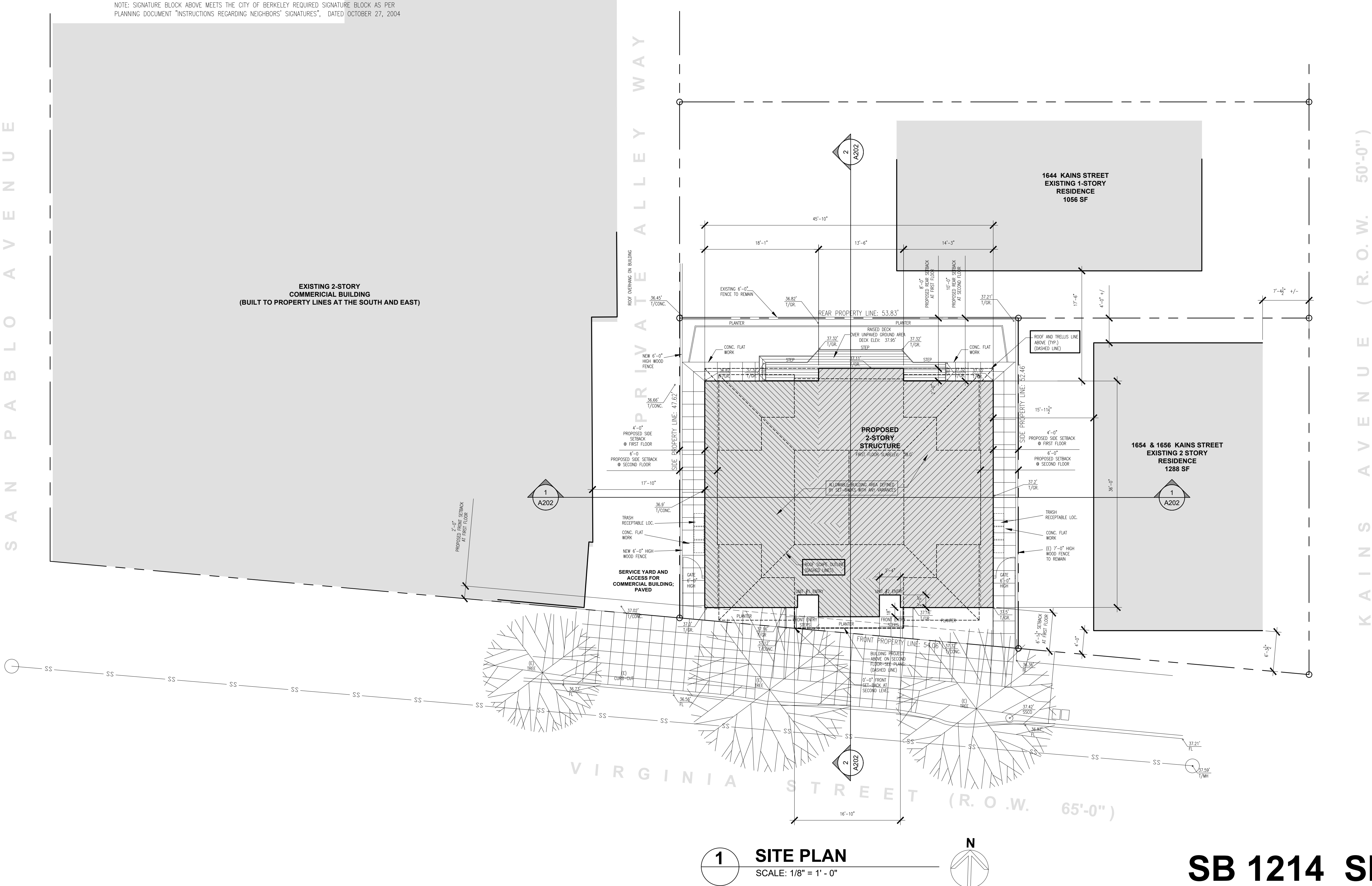
Revisions:	Date:

Preliminary Set	
Design Review Set	X
Plan Check Set	
Permit Set	
Construction Set	

NEW HOUSE & ATTACHED ADU
O / 1117 VIRGINIA STREET
BERKELEY, CA 94710
APN: 59-2287-20

Date:	JUNE 12, 2024
Scale:	AS-NOTED
Drawn by:	RN
Job:	WANG INVESTMENTS

Sheet:
A101
of:





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

0/1117 Virginia Street

Variance #ZP2024-0015 to construct a two-story (28 foot) residential building, including a two-story 1,900 square-foot single-family dwelling, and an attached 800 square-foot accessory dwelling unit (ADU) on the first floor, on a 2,694 square-foot lot. The proposed building has a front setback of 0 feet and a rear setback of 8 feet, where 20 feet is required, and 63 percent lot coverage, where 40 percent is the maximum allowed.

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, March 27, 2025, 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.

0/1117 VIRGINIA STREET
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NOTICE OF PUBLIC HEARING
Posted MARCH 13, 2025

A. Land Use Designations:

- General Plan: LMDR– Low Medium Density Residential
- Zoning: R-2– Restricted Two-Family Residential District

B. Zoning Permits Required:

- Variance from Berkeley Municipal Code (BMC) Section 23.202.080(D), pursuant to BMC Section 23.406.050 to permit a front setback of 0 feet at the second floor, and a rear setback of 8 feet at the first floor, where 20 feet is required
- Variance from BMC Section 23.202.080(D), pursuant to BMC Section BMC 23.406.050 to permit 68 percent lot coverage, where 40 percent is the maximum
- Use Permit pursuant to BMC Section 23.202.020(A) to construct a dwelling unit
- Administrative Use Permit pursuant to BMC Section 23.304.080(A) to legalize a 7-foot fence

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

D. Project Recommendation: Approve Variance #ZP2024-0015, pursuant to BMC Section 23.406.040(D)

E. Parties Involved:

- Applicant Robert Nebolon, 801 Camelia Street, Suite E, Berkeley
- Property Owner Wang Brothers Investments, 2417 Mariner Square Loop, Suite 247, Alameda

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NOTICE OF PUBLIC HEARING
Posted MARCH 13, 2025

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, Allison Riemer, at (510) 981-7433 or ariemer@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 #1, which is released around noon one day before the public hearing.
- **Correspondence received by 12:00 PM, the day of** this public hearing, will be conveyed to the Board in a Supplemental Communications and Reports #2, which is released around noon the day of the public hearing.
- **Correspondence received after 12:00 PM, the day of** 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.