



Office of the City Manager

PUBLIC HEARING
May 6, 2025

To: Honorable Mayor and Members of the City Council
 From: Paul Buddenhagen, City Manager
 Submitted by: Jordan Klein, Director, Planning & Development Department
 Subject: ZAB Appeal: 1048 Keith Avenue, Use Permit ZP2024-0014

RECOMMENDATION

Conduct a public hearing, and upon conclusion adopt a Resolution denying the appeal and affirming the Zoning Adjustment Board (ZAB) decision approving a Use Permit to demolish a 2,760 square-foot single-family dwelling, and construct a two-story (25 feet tall), 3,600 square-foot single-family dwelling. The project includes a reduction of the rear building setback from 20 feet to 15 feet, two unenclosed off-street parking spaces within the front setback, the construction of a trellis within the front setback, and the installation of a fence and retaining wall along the lot line.

SUMMARY

On January 9, 2025, the ZAB approved Use Permit #ZP2024-0014 to demolish an existing 2,760-square-foot single-family dwelling and construct a new two-story, 25-foot-tall, 3,600-square-foot single-family residence. The approval was based on findings that the project would not be detrimental to the general welfare of the City, aligns with the purposes of the zoning district, and is compatible with surrounding uses and structures.

On January 25, 2025, the ZAB's decision was appealed by neighboring residents, who raised concerns that the approved project would encroach on their property and subsequently impact multiple neighboring properties due to shifting lot lines.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

On January 11, 2024, the applicant submitted a Use Permit application for the proposed project.

On September 12, 2024, after the project was deemed complete and reviewed for compliance and consistency with the Municipal Code, 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 at three nearby locations within the neighborhood.

On September 26, 2024, the Zoning Adjustment Board (ZAB) held a public hearing and received public comments. Neighbors raised concerns about the proposed project's impact on property boundaries and questioned the accuracy of the site survey. As a result, the ZAB continued the project to the October 10, 2024 hearing to allow the applicant additional time to update the site survey.

On October 10, 2024, the ZAB continued the project to a date uncertain, to allow the applicant additional time to submit a revised survey for staff review.

On October 15, 2024, the applicant submitted a revised survey prepared by Moran Engineering, dated October 10, 2024, that confirmed the accuracy of property boundaries to within an inch, based on three site survey monuments. Staff from the City's Public Works Department and Building and Safety Division reviewed the revised survey and confirmed that it meets surveying standards.

On December 19, 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 at three nearby locations within the neighborhood.

On January 9, 2025, the ZAB held a public hearing for the Use Permit and received additional public comments. See Attachment 3 for the staff report submitted for ZAB consideration. Neighbors expressed both support and opposition to the project. Supporters noted the conscientious design and the accuracy of the updated surveys, while opponents raised concerns regarding potential impacts on property privacy, views, and boundaries. The ZAB voted to approve the project with a 6-1-2-0 vote (Moved Allen, Second Kashani. Ayes: Kashani, Duffy, Gaffney, Allen, Kahn, Yung; Noes: Sanderson; Abstain: Thompson, Jersey; Absent: None.).

On January 25, 2025, the ZAB's decision was appealed by neighboring residents, who raised concerns that the approved project would encroach on their property at 1050 Keith Avenue, and subsequently impact multiple neighboring properties due to shifting lot lines.

BACKGROUND

The project site is located in the northern Berkeley Hills within the R-1H Single-Family Residential – Hillside Overlay District. The neighborhood consists primarily of one- to three-story single-family homes on generally rectangular lots, with some irregularities due to the area's natural slopes and curved roadways. The terrain slopes downward from the northeast to the southwest, offering west-facing views of the San Francisco Bay.

The 7,800-square-foot lot is rectangular, situated on the south side of Keith Avenue, and oriented northwest to southeast. It features a 20-foot downward slope from the street to a level section in the middle and rear portions. The property has 50 feet of frontage along Keith Avenue and a depth of approximately 128 feet. It is currently developed with a one-story, 2,760-square-foot single-family residence. Existing vegetation on the site includes various trees, such as Plum, Red Fir, Loquat, and Yucca, as well as dense shrubbery.

The proposed project would demolish the existing residence and construct a two-story (25 feet tall), 3,600 square-foot single-family dwelling. The project includes a reduction of the rear building setback from 20 feet to 15 feet (permissible with an administrative use permit (AUP) in the Hillside Overlay Zone), whereas the existing residence is set back approximately 17 feet from the rear lot line. Additionally, the proposal includes unenclosed off-street parking within the front setback, the construction of a trellis within the front setback, and the installation of a fence more than 6 feet in height and retaining wall along the lot line.

RATIONALE FOR RECOMMENDATION

The issues raised in the appellant's letter (Attachment 2) and staff's responses follow. For the sake of brevity, the appeal issues are not re-stated in their entirety.

Issue 1: Property Encroachment and Survey Accuracy

The appellant claims that the proposed project encroaches approximately 20 feet into their property at 1050 Keith Avenue, reducing property width and impacting neighboring properties. The appellant further claims that the survey conducted by Moran Engineering is inaccurate.

Response: The applicant was required to provide a boundary and topographic survey prepared and stamped by a licensed surveyor. The initial survey submitted acknowledged that historic land movement in the area could create some uncertainty in establishing exact property boundaries. In response to concerns, the applicant worked with their surveyor on an updated survey with a more precise basis of bearings. The updated survey submitted on October 15, 2024, confirmed the property boundaries within an inch of the property line, though variations could occur when referencing more distant markers. The updated survey was reviewed and verified for accuracy by staff from the Public Works Department and the Building and Safety Division.

The proposed project does not alter or modify existing lot lines, and staff finds no evidence to support the appellant's claim of encroachment.

Issue 2: Impact on Neighboring Properties

The appellant states that the project creates a lot line adjustment, which would shift property lines across multiple adjacent properties and create legal and logistical complications.

Response: The proposed project does not include a lot line adjustment. The updated boundary survey, reviewed and confirmed by staff from the Public Works Department and the Building and Safety Division, verifies that property boundaries remain unchanged. The proposed single-family dwelling complies with the established setbacks of the R-1H Zoning District, except for the allowable encroachment into the rear setback, and does not alter or shift any property lines.

Issue 3: Survey Accuracy & Need for Comprehensive Review

The appellants assert that a broader survey of surrounding properties is necessary to ensure equitable lot line adjustments.

Response: Development applications are evaluated based on site-specific conditions to determine feasibility and compliance. The scope of review does not extend to assessing adjacent properties, as each development is considered independently. This project has been reviewed for its compatibility with neighboring properties and its overall impact on the community.

Issue 4: Lack of Consideration for Neighbor Concerns

The appellants expressed concern that the ZAB approved the project despite opposition from affected neighbors. By not promoting property boundary adjustments, the appellants argue that this decision forces private property owners to resolve disputes individually, creating inconsistent outcomes.

Response: The ZAB held two public hearings and determined the project to be consistent with the public health, safety, peace, morals, comfort, and general welfare of the surrounding neighborhood. The project has been evaluated for its compatibility with adjacent properties and its potential impacts on the community. The project was found to balance reasonable development with maintaining the character of area. Further, the ZABs decision was within its appropriate responsibilities and quasi-judicial powers. Lot line adjustments and parcel map adjustments would be outside the responsibilities and powers of the ZAB.

Issue 5: Infrastructure and Utility Concerns

The appellants claim that the proposed project relocates the structure over existing sewer and storm drainage systems for 1050 Keith Avenue, without providing a relocation plan in the project documents.

Response: Staff reviewed the boundary survey and the Alameda County Assessor Parcel Map for any recorded sewer or storm drain easements, and found no such easements affecting the property and no infrastructure conflicts related to sewer or storm drainage systems. Additionally, there is a standard Condition of Approval which requires that if underground utilities leading to adjacent properties are uncovered or damaged during construction, the contractor must immediately notify the Public Works Department and the Building & Safety Division and take corrective action as needed.

Issue 6: Disputed Property Boundaries and Request

The appellants allege that the applicant demolished a shared fence on March 6, 2024 and subsequently demolished structures on disputed property including an animal sanctuary, pet burial sites and mature trees. The appellants also raise concerns over ongoing property boundary disputes and request the City of Berkeley to adjust property boundaries based on deeded square footage.

Response: The City of Berkeley does not have jurisdiction over property line disputes, as these are private civil matters between property owners. Adjustment of lot lines falls outside the scope of this project proposal.

ALTERNATIVE ACTIONS CONSIDERED

Pursuant to BMC Section 23.410.040(G), the Council may (1) continue the public hearing, (2) reverse, affirm, or modify the ZAB's decision, or (3) remand the matter to the ZAB.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The proposed project aligns with Berkeley's sustainability goals by incorporating energy-efficient design, water conservation measures, and compliance with Berkeley's Green Building Code. Additionally, the site is located in an established residential area and leverages existing infrastructure, thereby limiting new utility infrastructure. These measures ensure the project supports the City's climate action objectives while minimizing environmental impacts.

The proposed project is categorically exempt from the provisions pursuant to CEQA Guidelines Section 15303 ("New Construction or Conversions of Small Structures") and would not result in significant environmental effects.

CONTACT PERSON

Jordan Klein, Director, Planning & Development Department, (510) 981-7534
Anne Hersch, Land Use Planning Manager, (510) 981-7411
Robert Rivera, Senior Planner, (510) 981-7480

Attachments:

- 1: Draft Resolution
 - Exhibit A: Findings and Conditions, January 9, 2025
 - Exhibit B: Project Plans, dated December 9, 2025
- 2: ZAB Decision Appeal Letter, received January 25, 2025
- 3: ZAB Packet (Staff Report and attachments), dated January 9, 2025
- 4: Public Hearing Notice
- 5: Index to Administrative Record
- 6: Administrative Record

RESOLUTION NO. ##,###-N.S.

DENY THE APPEAL AND AFFIRM THE ZONING ADJUSTMENT BOARD DECISION TO APPROVE USE PERMIT #ZP2024-0014 TO DEMOLISH A 2,760 SQUARE-FOOT SINGLE-FAMILY DWELLING, AND CONSTRUCT A TWO-STORY (25 FEET TALL), 3,600 SQUARE-FOOT SINGLE-FAMILY DWELLING. THE PROJECT INCLUDE PARKING PAD WITHIN THE FRONT SETBACK, A REDUCTION IN THE REAR SETBACK FROM 20 FEET TO 15 FEET, CONSTRUCTION OF AN UNENCLOSED STRUCTURE WITHIN THE FRONT SETBACK, AND CONSTRUCTION OF A FENCE AND RETAINING WALL MORE THAN SIX FEET IN HEIGHT ON A LOT LINE

WHEREAS, on January 11, 2024 Lindsay Newman (“applicant”) submitted a Use Permit Application (ZP2024-0014) to demolish a 2,760 square-foot single-family dwelling, and construct a two-story (25 feet tall), 3,600 square-foot single-family dwelling, parking pad within the front setback, reduced rear setbacks, construction of an unenclosed structure within the front setback, and construction of a fence and retaining wall more than six feet in height on a lot line; and

WHEREAS, on September 12, 2024 the City mailed public hearing notices to all adjacent property owners and occupants within 300 feet of the subject property, and to interested neighborhood organizations. Staff also posted the Notice of Public Hearing at three locations within the immediate vicinity of the subject site; and

WHEREAS, on September 26, 2024, the ZAB conducted a public hearing for the Use Permit application (ZP2024-0014). After considering the staff report, the administrative record, and hearing comments from staff, the applicant, and the members of the public, the ZAB continued the project to a later date; and

WHEREAS, on October 10, 2024, the ZAB conducted a public hearing for the Use Permit application (ZP2024-0014). After considering the staff report, the administrative record, and hearing comments from staff, the applicant, and the members of the public, the ZAB continued the project to a later date; and

WHEREAS, on December 18, 2024, the City mailed public hearing notices to all adjacent property owners and occupants within 300 feet of the subject property, and to interested neighborhood organizations. Staff also posted the Notice of Public Hearing at three locations within the immediate vicinity of the subject site; and

WHEREAS, on January 09, 2025, the ZAB conducted a public hearing for the Use Permit application (ZP2024-0014). After considering the staff report, the administrative record, and hearing comments from staff, the applicant, and the members of the public, the ZAB approved the project by a vote of 6-1-2-0; and

WHEREAS, on January 27, 2025, neighbors of the proposed project (“appellants”) submitted an appeal of the ZAB decision to the City Clerk; and

WHEREAS, on or before April 22, 2025 staff posted the public hearing notice at the site and three nearby locations, and mailed notices to property owners and occupants within 300 feet of the project site, and to all registered neighborhood groups that cover this area. The Council must conduct a public hearing to resolve the appeal; and

WHEREAS, on May 6, 2025, the Council held a public hearing to consider the ZAB's decision, and in the opinion of this Council, the facts stated in, or ascertainable from the public record, including the staff report and comments made at the public hearing, warrant approving the project.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley hereby affirms the decision made by ZAB to approve a Use Permit #ZP2024-0014; adopts the Findings and Conditions of Approval in Exhibit A; and adopts the project plans in Exhibit B.

Exhibits

A: Findings and Conditions

B: Project Plans, dates December 9, 2025

Findings and Conditions

JANUARY 9, 2025

1048 Keith Avenue

Use Permit #ZP2024-0014 to demolish a 2,760-square-foot single-family dwelling, and construct a two-story (25 feet tall), 3,600-square-foot single-family dwelling within the rear setback and parking pad in the front setback.

ZONING PERMITS REQUIRED

- Use Permit, pursuant Berkeley Municipal Code (BMC) Section 23.326.030(B)(1) to demolish a dwelling unit
- Use Permit, pursuant to BMC Section 23.202.020(A) to construct a single-family dwelling unit
- Administrative Use Permit, pursuant to BMC Section 23.210.020(C)(4), to reduce the building setbacks in the Hillside Overlay Zone
- Administrative Use Permit, pursuant to BMC Section 23.322.080(E)(2)(b), to allow unenclosed off-street parking within the front setback
- Administrative Use Permit, pursuant to BMC Section 23.304.070(C)(1) to construct an unenclosed structure (trellis) within the front setback
- Administrative Use Permit, pursuant to BMC Section 23.304.080(A), to construct a fence more than 6 ft in height on lot line

I. CEQA FINDINGS

- A.** The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15303 of the CEQA Guidelines (“New Construction or Conversion of Small Structures”).

II. FINDINGS FOR APPROVAL

- A.** As required by Section 23.406.040(E) of the BMC, the project, under the circumstances of this particular case existing at the time at which the application is granted, will not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City for the reasons outlined below:

1. Shadows: Shadow studies submitted by the applicant documented sun angles at different times throughout the day, and during the summer and winter solstice. Although the project will create new shadows on neighboring residences, the projected impacts will only occur during certain times of the day at certain times of the year. Thus, the shadow impacts from the project on adjacent residences will be reasonable and not detrimental;
2. Air: The construction of the new residence will be consistent with the existing development and building-to-building separation pattern – or air – in this R-1H zoned neighborhood. The new residence’s rear building wall that encroaches into the required 20-foot rear setback is sited on the flatter portion of the lot to suit the site conditions while maintaining appropriate separation and air with neighboring residences;
3. Privacy: A rear primary bedroom with new window, door openings and a deck are proposed on the second story. The second-story rear deck and openings will not result in privacy concerns with any neighboring residences. In addition, to mitigate any potential privacy concerns, the project will incorporate fencing along the eastern, western, and southern lot lines and screening trees along the southeastern portion of the property, ensuring adequate visual separation from neighboring properties. Thus, the proposed project will not be detrimental regarding privacy;
4. Views: The proposed two-story residence will replace the existing one-story residence. The overall height will increase by eight feet. Although, the proposed residence will contribute to an already diminished view of the San Francisco Bay it will not completely obstruct it. Therefore, the proposed dwelling will not result in a significant impact to views in the area;
5. 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.

B. Pursuant to BMC Section 23.304.070 (B), unenclosed accessory structures require an AUP if placed on the ground within a required setback.

1. The project proposes installing a new 8-foot-tall unenclosed entry trellis strategically located on the southern end of the proposed parking pad within the required 20-foot front setback.
2. The trellis will be used as a provide access to the entry deck to the front of the proposed residence south of Keith Avenue and will be used as a privacy screen and will provide access to the entry deck to access the residence from the northern side of the property.
3. Its open design, scale, and use of wood materials align with nearby residences, ensuring compatibility with the neighborhood character, as well as minimizes potential impacts within its location of the required front setback.

- C. Pursuant to BMC Section 23.304.080(A), an AUP is required for fences more than 6 ft in height and on lot line or within required lot line setbacks for main building.
1. The project proposes a 12-foot fence along the eastern lot line, consisting of a 6-foot wood fence atop two 3-foot staggered concrete retaining walls – measuring 6 feet, that will be used for privacy screening for the main residence and the adjacent property at 1050 Keith Avenue.
The wood fence and concrete retaining walls will not contain barbed or razor wire, sharp or jagged glass, sharp or jagged metal components, or similar hazardous materials, adhering to the construction material restrictions in BMC Section 23.304.080(C).

III. OTHER FINDINGS FOR APPROVAL

- D. Pursuant to BMC Section 23.326.030(B), the Zoning Adjustments Board (ZAB) may approve a Use Permit to eliminate or demolish a dwelling unit only upon finding that eliminating the dwelling unit will not be materially detrimental to the housing needs and public interest of the affected neighborhood and Berkeley.
1. The proposed project will replace an existing dwelling unit with a newly constructed dwelling unit.
 2. The Rent Stabilization Board had reviewed that the existing residence has confirmed that the residence has not been removed from the rental market under the Ellis Act in the past five years, and there is no evidence of harassment or any threatened or actual illegal eviction over the past three years.
 3. The dwelling proposed for demolition was vacated in July of 2024, and is not subject to tenant relocation provisions under BMC Chapter 23.326, and it does not involve the displacement of any tenants.
- E. Per BMC Section 23.210.020(C)(4), the minimum required main building lot line setbacks in the underlying base district can be reduced upon finding that the reduction is consistent with BMC 23.210.020(A), Purpose of the Hillside Overlay.

The purpose of the Hillside Overlay district is to:

- Implement General Plan policies for hillside development;
 - Protect the safety and health of residents where steep topography, unusual street conditions and proximity to the wildland-urban interface create severe risk from wildfire;
 - Protect the character of Berkeley's hillside areas and their immediate environs;
 - Give reasonable protection to views yet allow appropriate development of all property;
 - Allow modifications in standard setback and height requirements when justified because of steep topography, irregular lot pattern, unusual street conditions, or other special aspects of the hillside areas.
1. The proposed two-story residence will be constructed and will encroach 5 feet into the required 20-foot required rear setback. The site is lot that has an irregular shape, and features a steep drop from the street down to a more level area, characteristics which limit the placement options for the residence and the parking pad.

2. The proposed residence is sited on the relatively flat area of the site, while the parking pad is placed within the front setback, close to the street, to eliminate the need for a steep driveway, (and its associated costs).
3. Consistent with the purpose of the Hillside Overlay district, the residence's design will allow for the structure to adhere to the aesthetic and character of the Berkeley hillside areas, through maintaining reasonable setbacks and by limiting the height to 23.5 feet, below the 35-foot maximum.

F. Pursuant to BMC Section 23.322.080(E)(2), no portion of an off-street parking space may be located in a required front, street side, or rear setback area unless: The Zoning Adjustments Board, in consultation with the Traffic Engineer, and the space meets all applicable requirements in this section.

1. The proposed project will enlarge the 12-foot driveway and construct a 16 1/4-foot-wide by 18-foot long two car parking pad within the required front setback, in order to minimize additional site grading.
2. A 2-foot-wide by 18-foot long landscaped buffer will be included to provide visual screening.
3. Residences along the southern frontages off Keith Avenue also include off-street parking within in the front setback due to limiting site conditions.
4. The proposed parking is authorized, as it was determined by the City's Traffic Engineer that the proposed parking pad, driveway approach, and increased curb cut do not present any traffic engineering concerns.

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. 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 16.28.030, 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)

- 12. Demolition.** Demolition of the existing building cannot commence until a complete application is submitted for the replacement building. In addition, all plans presented to the City to obtain a permit to allow the demolition are subject to these conditions.
- 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 \(arcgis.com\)](#)
 - 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

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.

16. 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.)

- 17. Electric Vehicle (EV) Charging.** Each dwelling unit shall install a listed raceway, wiring, and load capacity to allow for future Level 2 (40 amp) plug-in electric vehicle (EV) charging system installation, or any more stringent EV charging requirements as specified by the Berkeley Green Code (BMC Chapter 19.37). Readiness for EV charging and EV charging station installations 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's Recycling Program Manager, Julia A. Heath, at jheath@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. 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.
- 23. 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.

24. 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.

- 25. 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.
- 26. 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.)
- 27. Avoid Disturbance of Nesting Birds.** Initial site disturbance activities, including vegetation and concrete removal, shall be prohibited during the general avian nesting season (February 1 to August 30), if feasible. If nesting season avoidance is not feasible, the applicant shall retain a qualified biologist to conduct a preconstruction nesting bird survey to determine the presence/absence, location, and activity status of any active nests on or adjacent to the project site. The extent of the survey buffer area surrounding the site shall be established by the qualified biologist to ensure that direct and indirect effects to nesting birds are avoided. To avoid the destruction of active nests and to protect the reproductive success of birds protected by the MBTA and CFGC, nesting bird surveys shall be performed not more than 14 days prior to scheduled vegetation and concrete removal. In the event that active nests are discovered, a suitable buffer (typically a minimum buffer of 50 feet for passerines and a minimum buffer of 250 feet for raptors) shall be established around such active nests and no construction shall be allowed inside the buffer areas until a qualified biologist has determined that the nest is no longer active (e.g., the nestlings have fledged and are no longer reliant on the nest). No ground-disturbing activities shall occur within this buffer until the qualified biologist has confirmed that breeding/nesting is completed and the young have fledged the nest. Nesting bird surveys are not required for construction activities occurring between August 31 and January 31.
- 28. Archaeological Resources (Ongoing throughout demolition, grading, and/or construction).** Pursuant to CEQA Guidelines section 15064.5(f), "provisions for historical or unique archaeological resources accidentally discovered during construction" should be instituted. Therefore:
- A. In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist, historian or paleontologist to assess the significance of the find.
 - B. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified professional 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.
- 29. Human Remains (Ongoing throughout demolition, grading, and/or construction).** In the event that human skeletal remains are uncovered at the project site during ground-disturbing activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to Section 15064.5 (e)(1) of the CEQA Guidelines. If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.
- 30. Paleontological Resources (Ongoing throughout demolition, grading, and/or construction).** In the event of an unanticipated discovery of a paleontological resource during construction, excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified paleontologist (per Society of Vertebrate Paleontology standards [SVP 1995,1996]). The qualified paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the project on the qualities that make the resource important, and such plan shall be implemented. The plan shall be submitted to the City for review and approval.
- 31. 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.
- 32. 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.

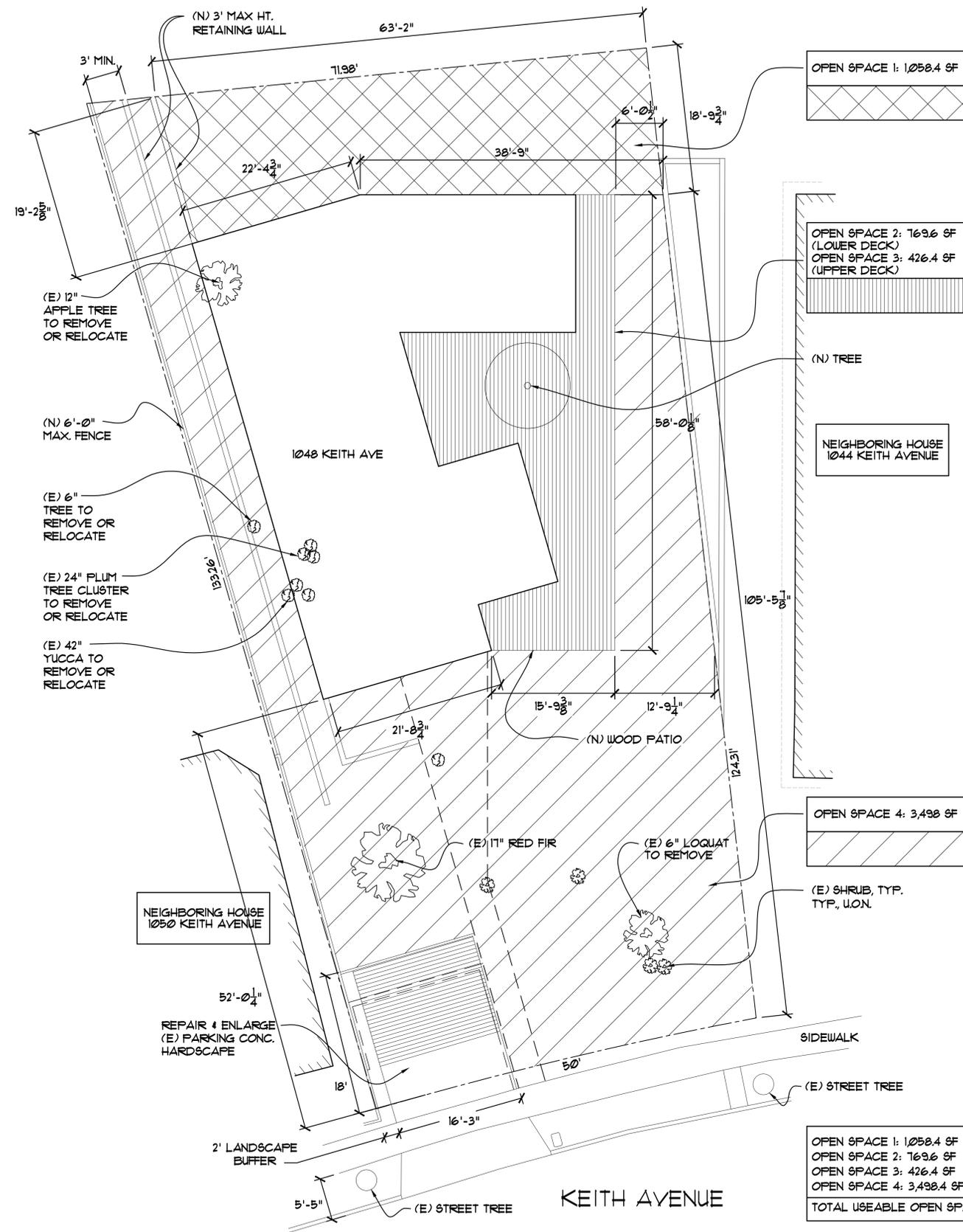
- K.** Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry to the storm drain system. If any cleaning agent or degreaser is used, wash water shall not discharge to the storm drains; 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.
- L.** 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.
- 33. 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.
- 34. Public Works.** All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter thick and secured to the ground.
- 35. Public Works.** The applicant shall ensure that all excavation accounts for surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.
- 36. Public Works.** The project sponsor shall maintain sandbags or other devices around the site perimeter during the rainy season to prevent on-site soils from being washed off-site and into the storm drain system. The project sponsor shall comply with all City ordinances regarding construction and grading.
- 37. Public Works.** Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season the applicant shall obtain approval of an erosion prevention plan by the Building and Safety Division and the Public Works Department. The applicant shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.
- 38. Public Works.** The removal or obstruction of any fire hydrant shall require the submission of a plan to the City's Public Works Department for the relocation of the fire hydrant during construction.
- 39. Public Works / 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:

- 40. Compliance with Conditions** The project shall conform to the plans and statements in the Use Permit. The developer is responsible for providing sufficient evidence to demonstrate compliance with the requirements throughout the implementation of this Use Permit.

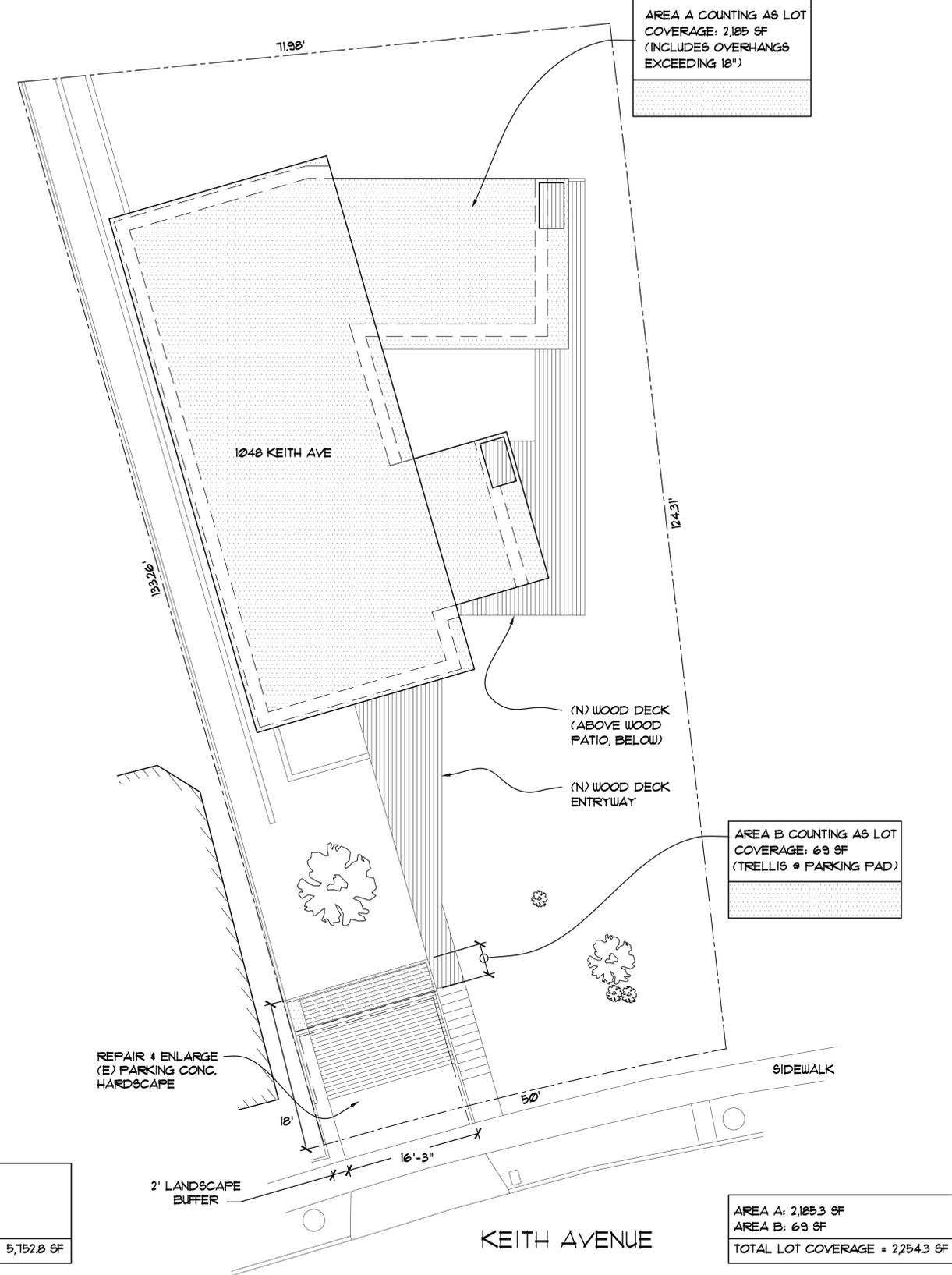
At All Times:

- 41. Compliance with Approved Plan.** The project shall conform to the plans and statements in the Use Permit.
- 42.** All landscape, site and architectural improvements shall be completed per the attached approved drawings dated December 9, 2024.
- 43. 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.
- 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 Electric Vehicle (EV) Charging.** Required Level 2 charging stations and low power Level 2 EV charging receptacles, as specified by the Berkeley Green Code (BMC Chapter 19.37) shall be maintained in good working condition and made available for building resident use. (Project required to meet applicable code at time of building permit application, if different from above.)



LANDSCAPE & USEABLE OPEN SPACE PLAN
1/8" = 1'-0"

USEABLE OPEN SPACE DEFINED PER BMC CHAPTER 23.502:
OUTDOOR SPACE, INCLUDING NATURAL AND LANDSCAPED GROUND AREAS, POOLS, PATIOS, DECKS & BALCONIES DESIGNED FOR ACTIVE OR PASSIVE RECREATIONAL USE AND WHICH IS ACCESSIBLE TO THE OCCUPANTS OF A BUILDING ON THE SAME LOT.

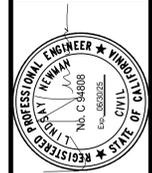


LOT COVERAGE DIAGRAM
1/8" = 1'-0"

LOT COVERAGE DEFINED PER BMC CHAPTER 23.502:
ALL THE AREA OF A LOT, AS PROJECTED ON A HORIZONTAL PLANE, WHICH IS:
1. ENCLOSED BY THE EXTERIOR WALLS OF BUILDINGS OR ENCLOSED ACCESSORY STRUCTURES, OR
2. COVERED BY DECKS, PORCHES, STAIRS AND/OR LANDINGS WHICH COVER AN ENCLOSED SPACE OR PAVED GROUND AREA.

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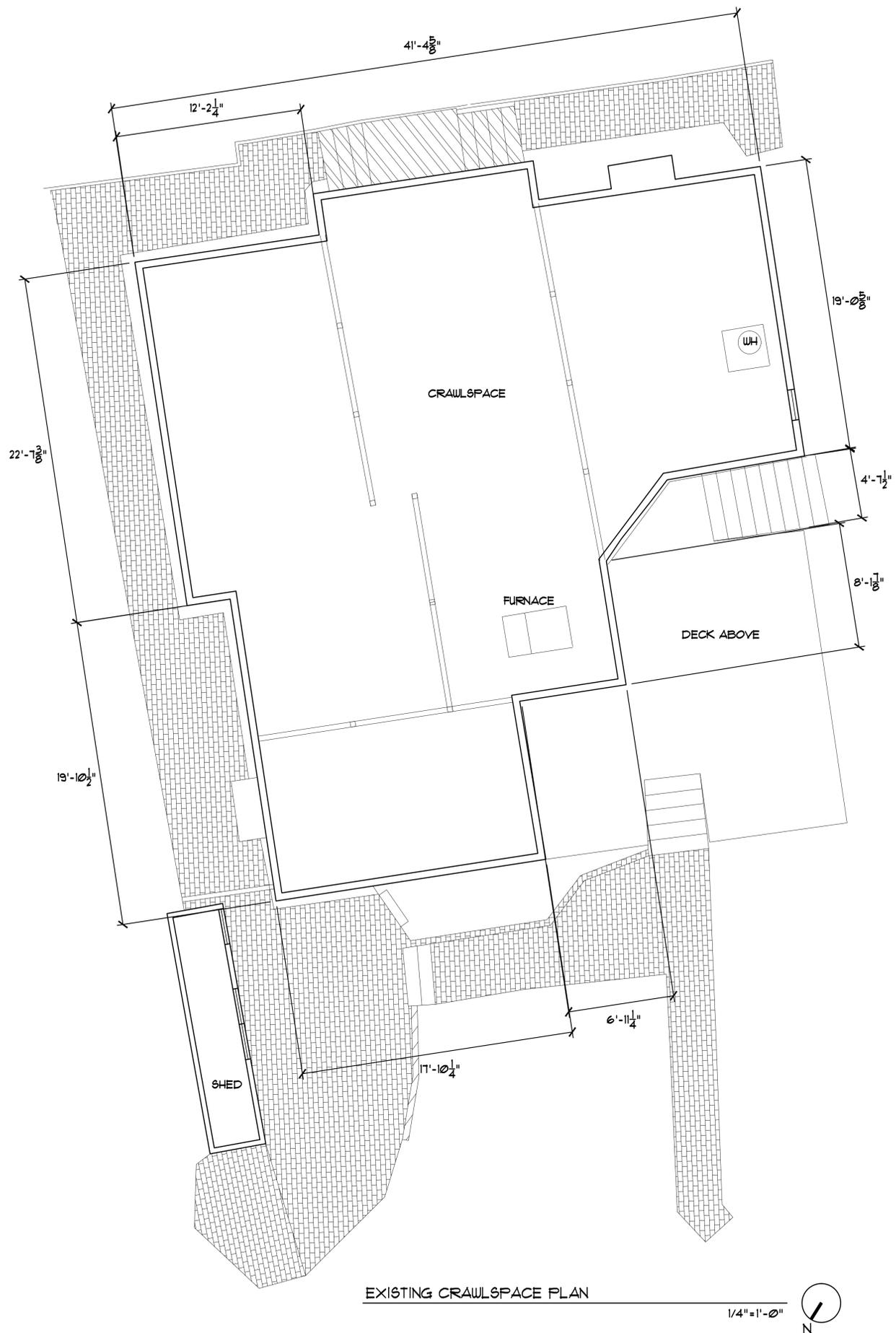
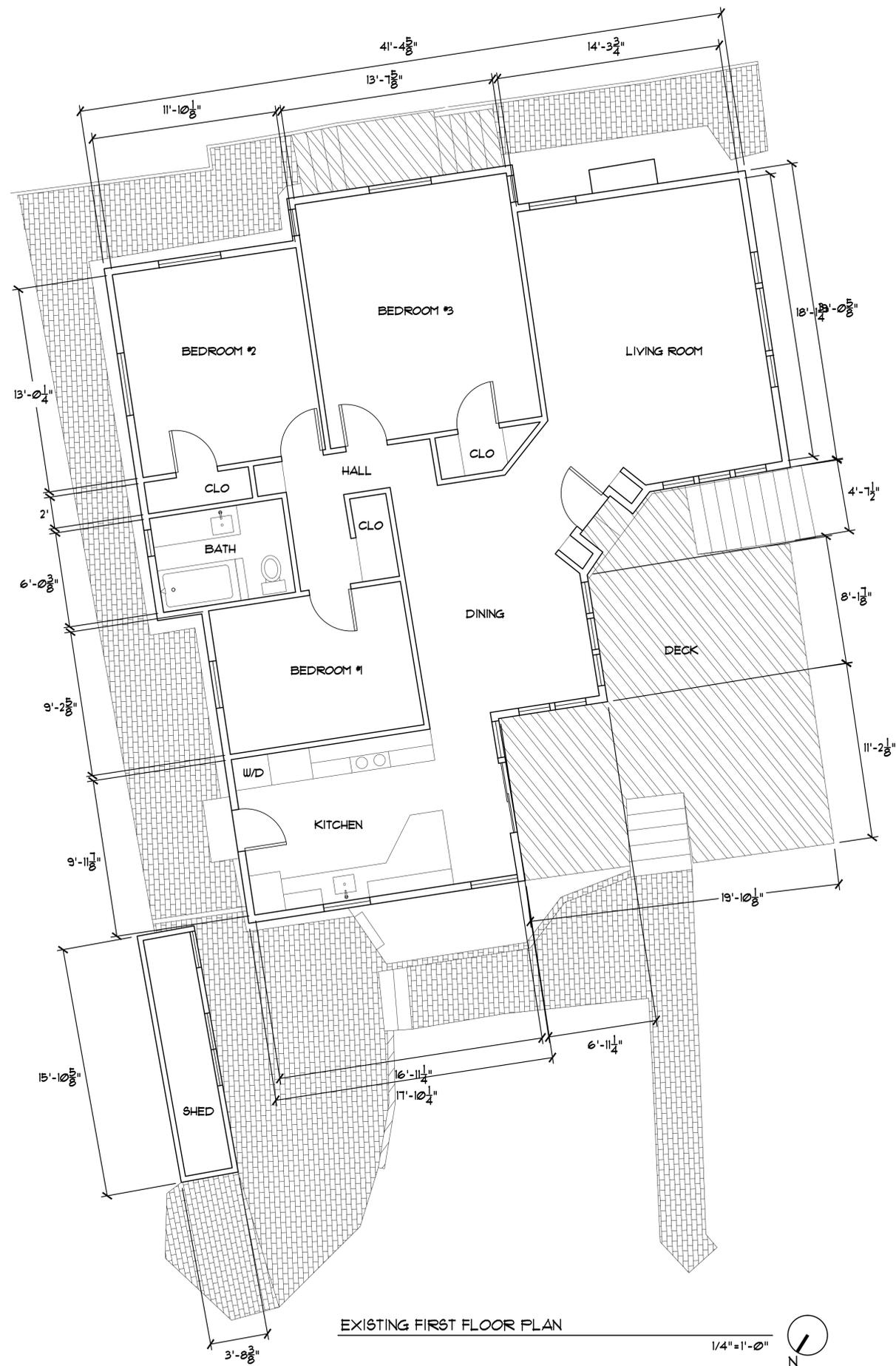
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NEW SINGLE-FAMILY RESIDENCE
1048 KEITH AVENUE
BERKELEY, CA 94708

USE PERMIT PLANS - 1048 KEITH
LANDSCAPE & USEABLE OPEN SPACE
PLAN & LOT COVERAGE DIAGRAM

DATE: 12/29/24
JOB NO: LN-1048
SCALE: 1/4" = 1'-0"
DRAWN: LN



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NEW SINGLE-FAMILY RESIDENCE
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 BERKELEY, CA 94708

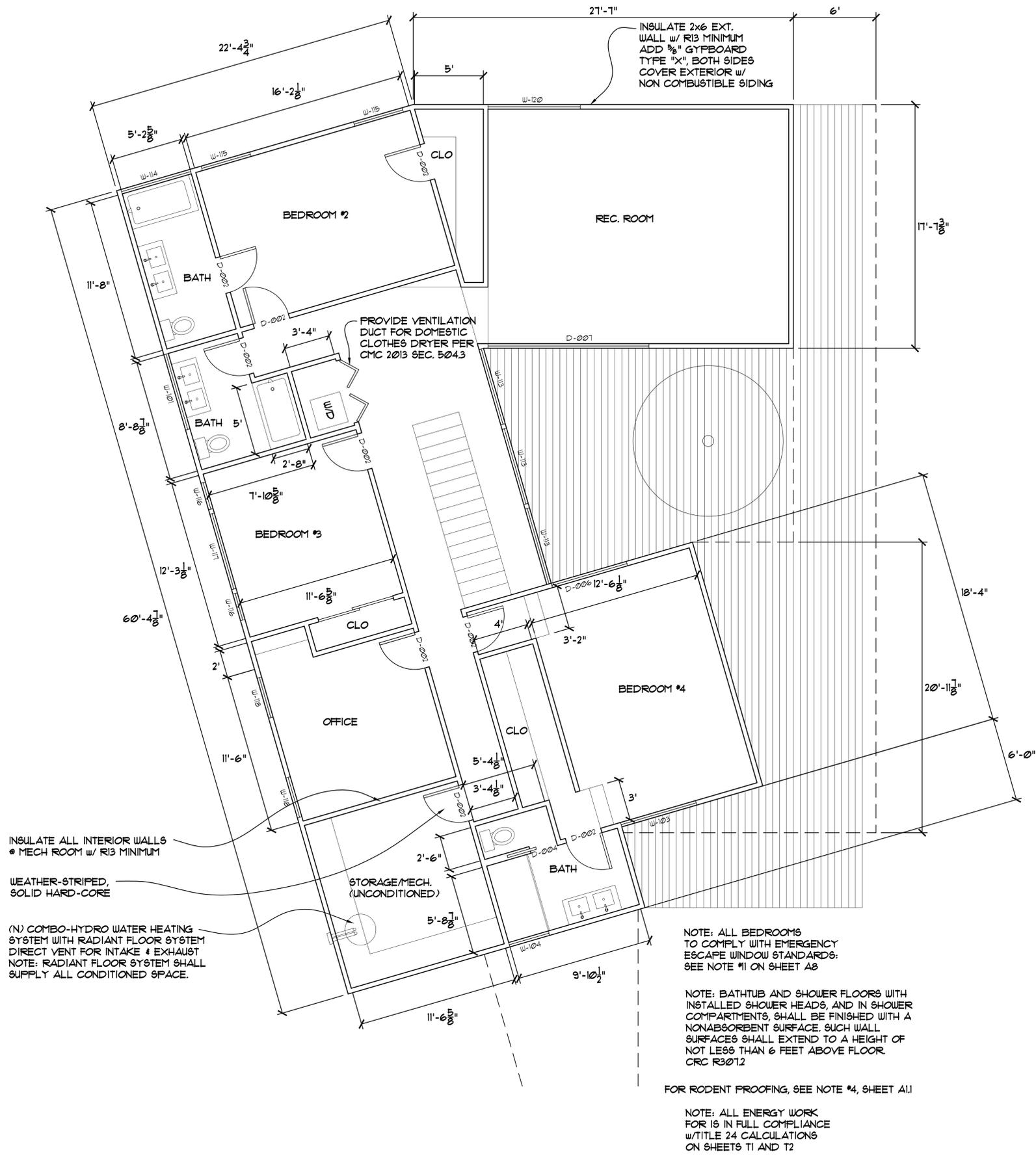
USE PERMIT PLANS - 1048 KEITH
 EXISTING FIRST FLOOR PLAN &
 EXISTING CRAWLSPACE PLAN

DATE: 12/29/24
 JOB NO: LN-1048
 SCALE: 1/4" = 1'-0"
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 OF 18 SHEETS

LEGEND

(N) 2x4 STUD WALL w/
3/8" GYP. EA. SIDE, U.O.N.



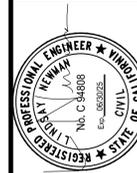
PROPOSED GROUND FLOOR PLAN

1/4" = 1'-0"



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NEW SINGLE-FAMILY RESIDENCE
1048 KEITH AVENUE
BERKELEY, CA 94708

USE PERMIT PLANS - 1048 KEITH
PROPOSED GROUND FLOOR PLAN

DATE: 12.09.24

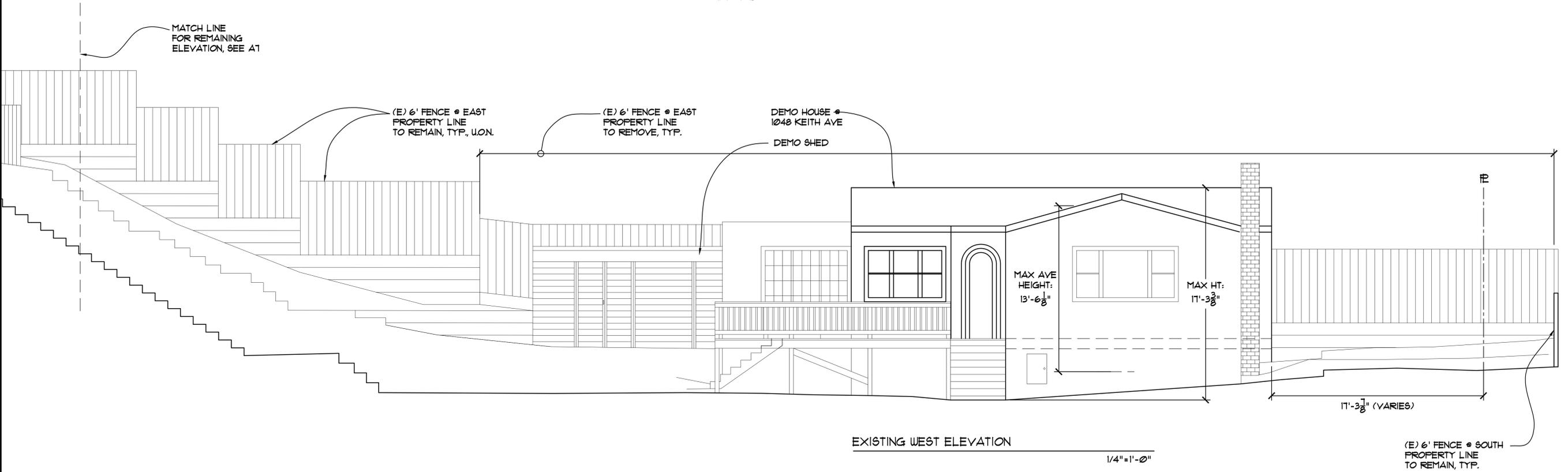
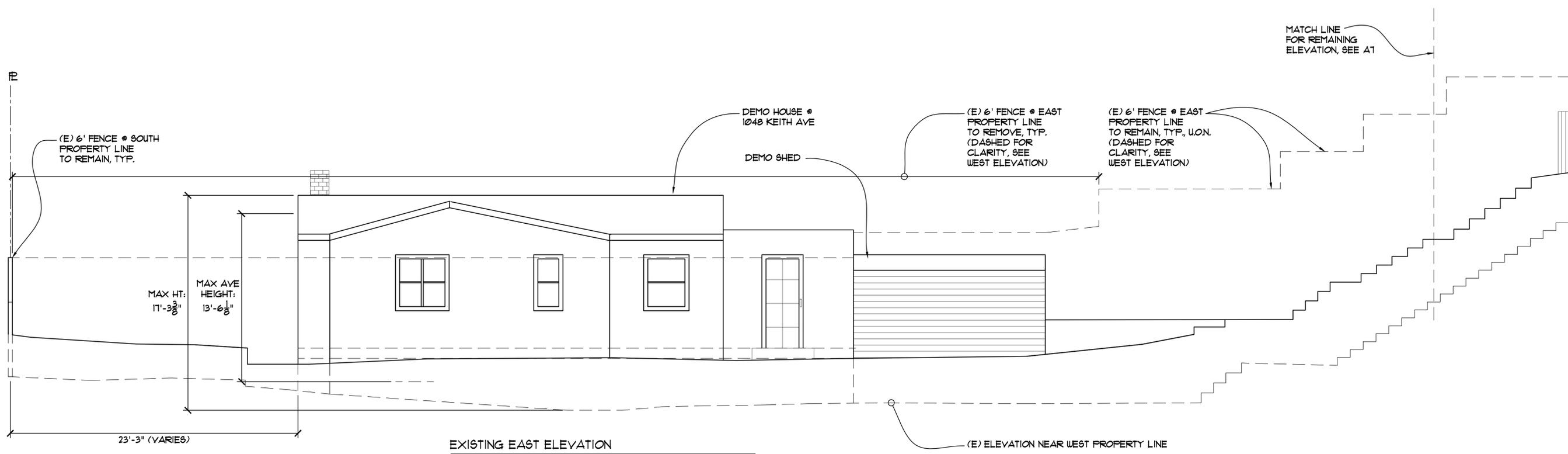
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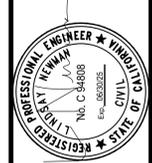
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OF 18 SHEETS



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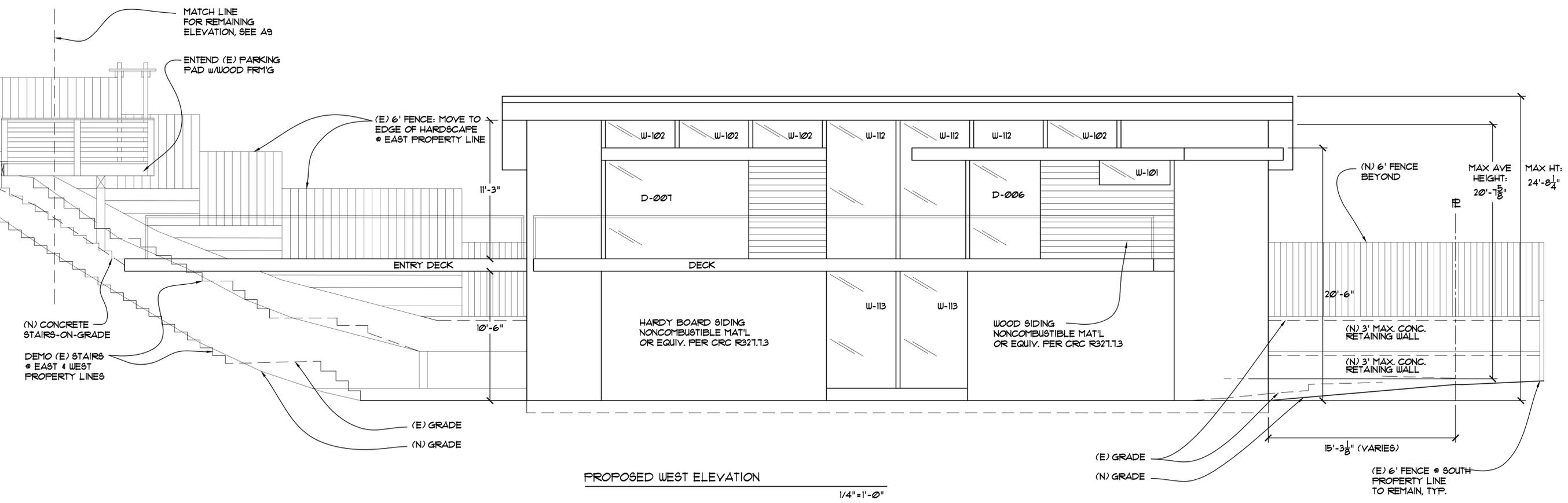
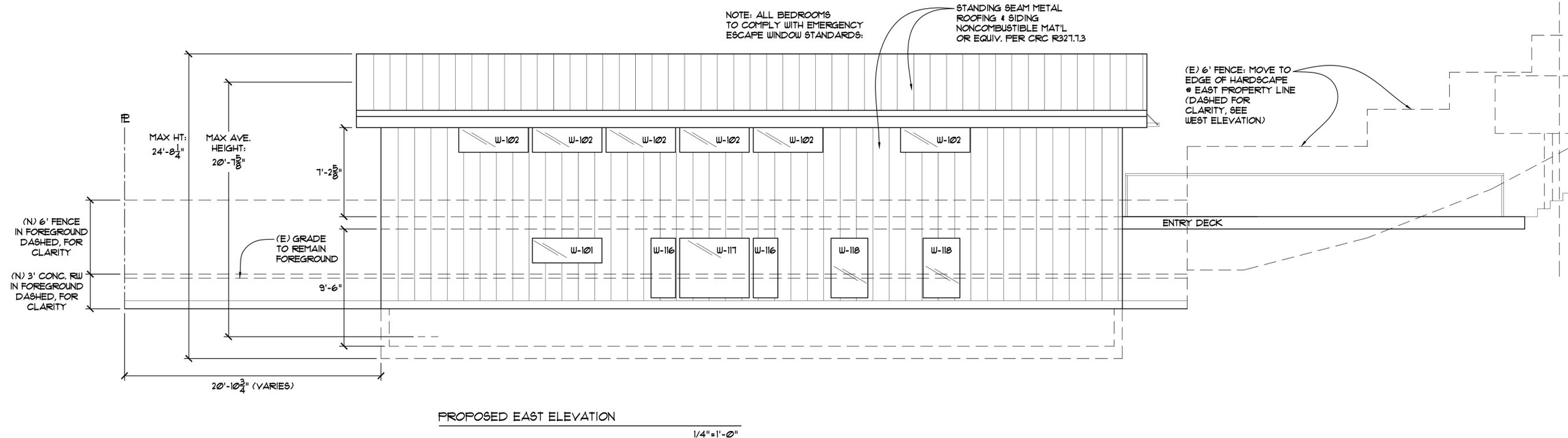
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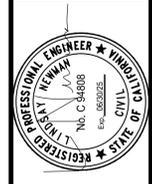
USE PERMIT PLANS - 1048 KEITH
 EXISTING EAST & WEST
 ELEVATIONS

DATE: 12/29/24
 JOB NO: LN-1048
 SCALE: 1/4" = 1'-0"
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REVISIONS	BY

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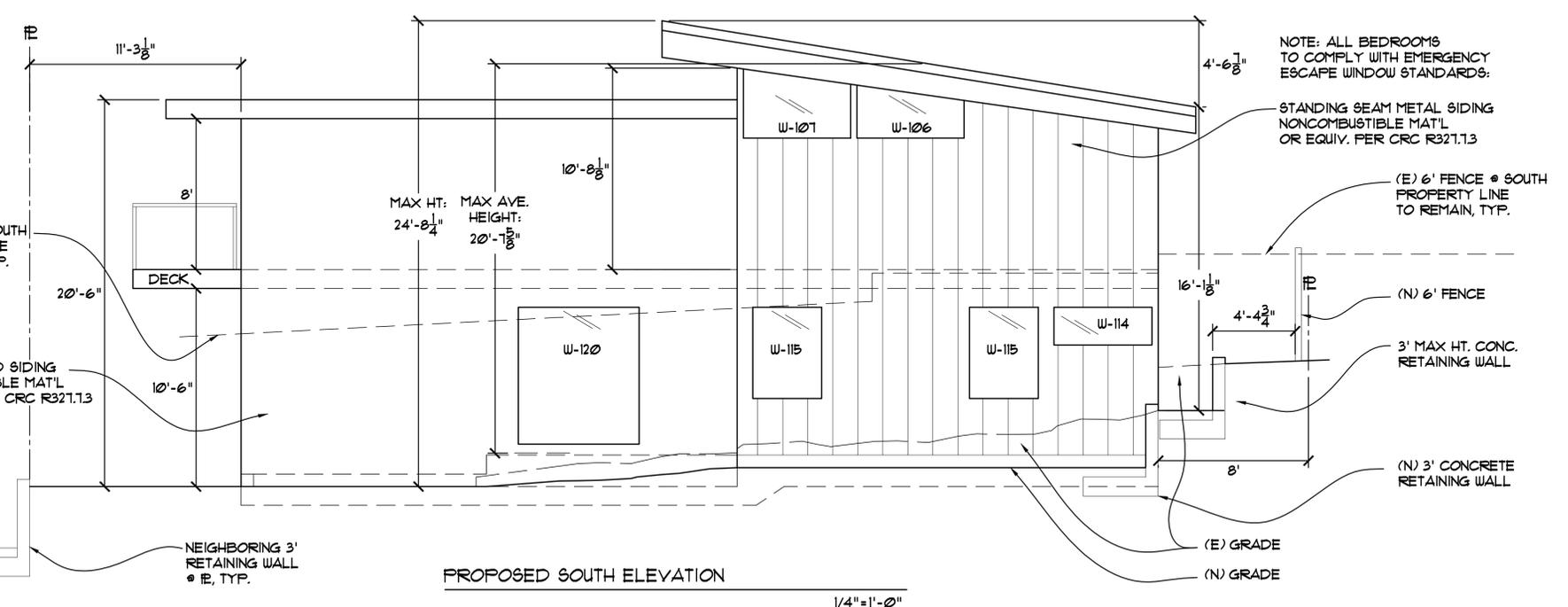
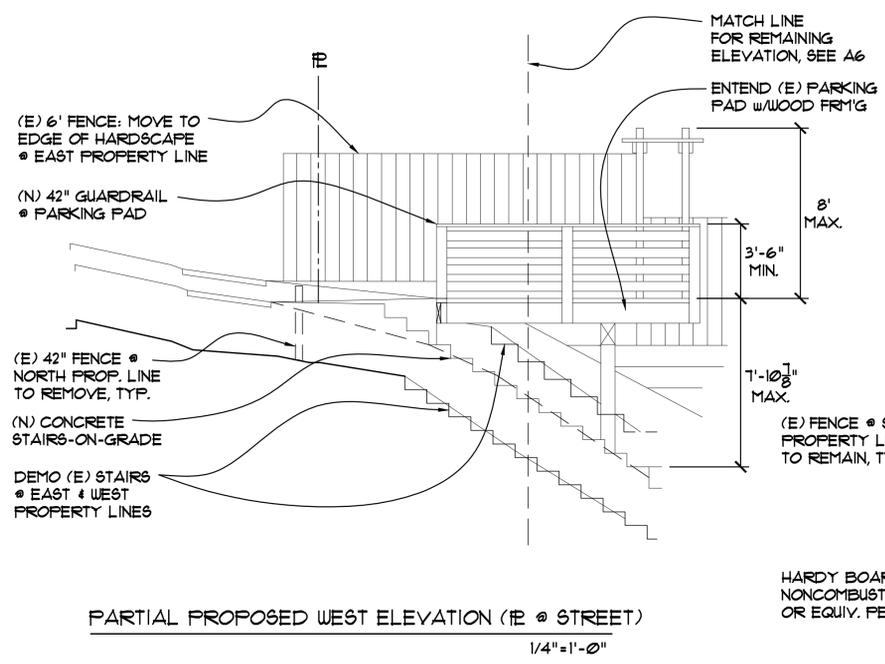
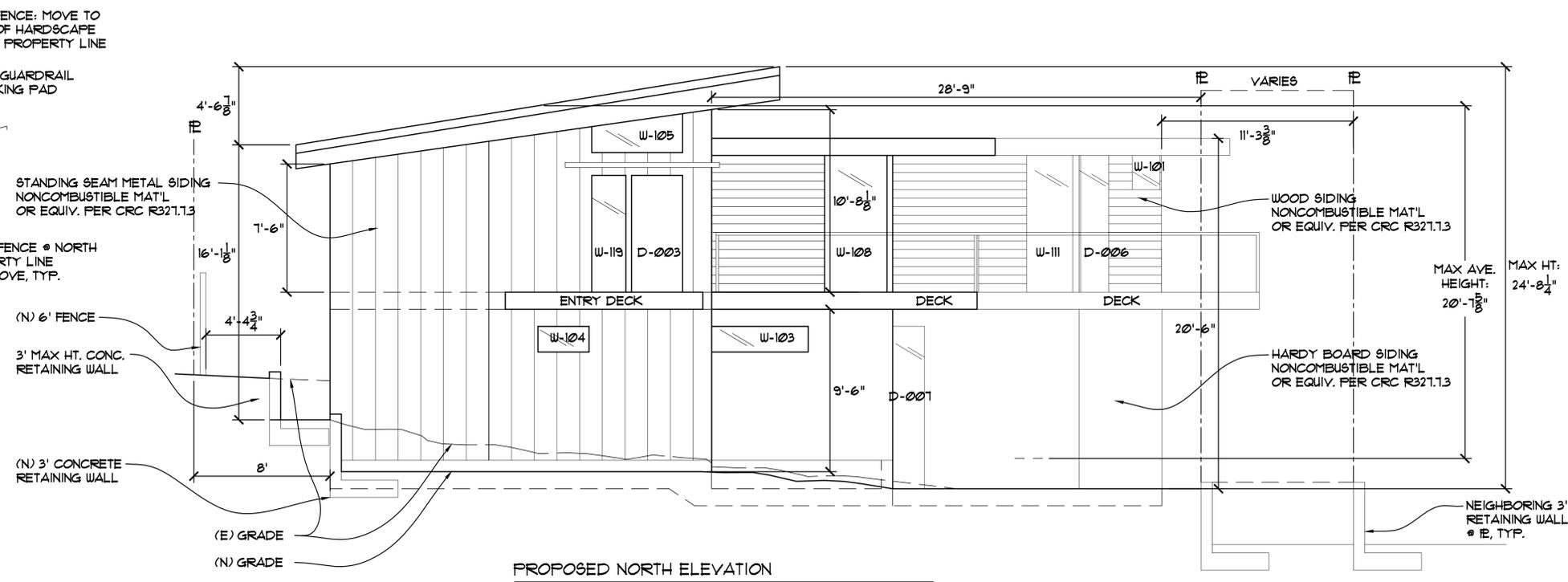
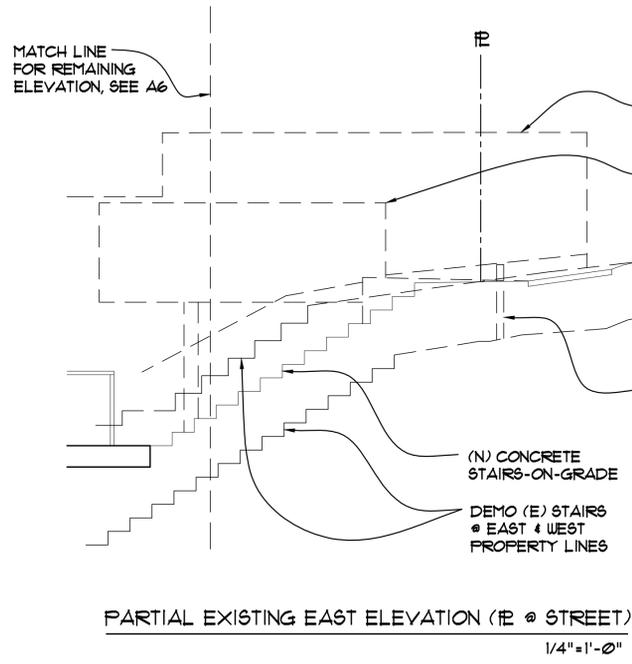


NEW SINGLE-FAMILY RESIDENCE
 1048 KEITH AVENUE
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USE PERMIT PLANS - 1048 KEITH
 PROPOSED EAST & WEST
 ELEVATIONS

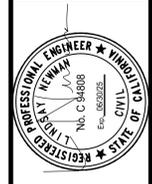
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 OF 18 SHEETS



REVISIONS	BY

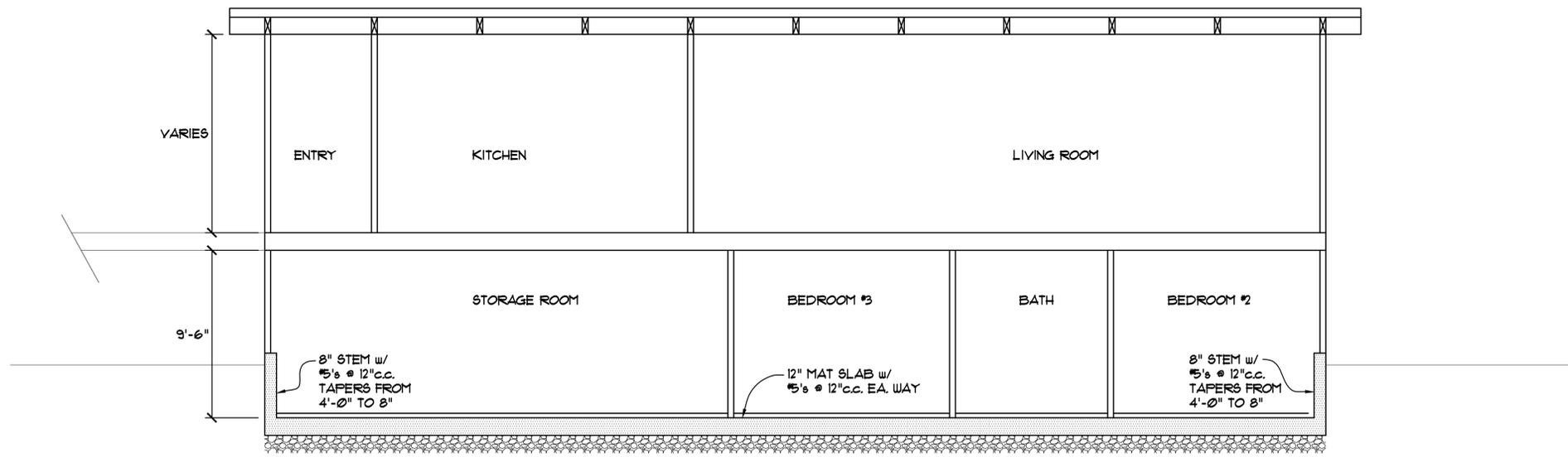
LINDSAY NEWMAN, PE
 CIVIL ENGINEER
 P. 313.615.9400
 newmanli26@gmail.com



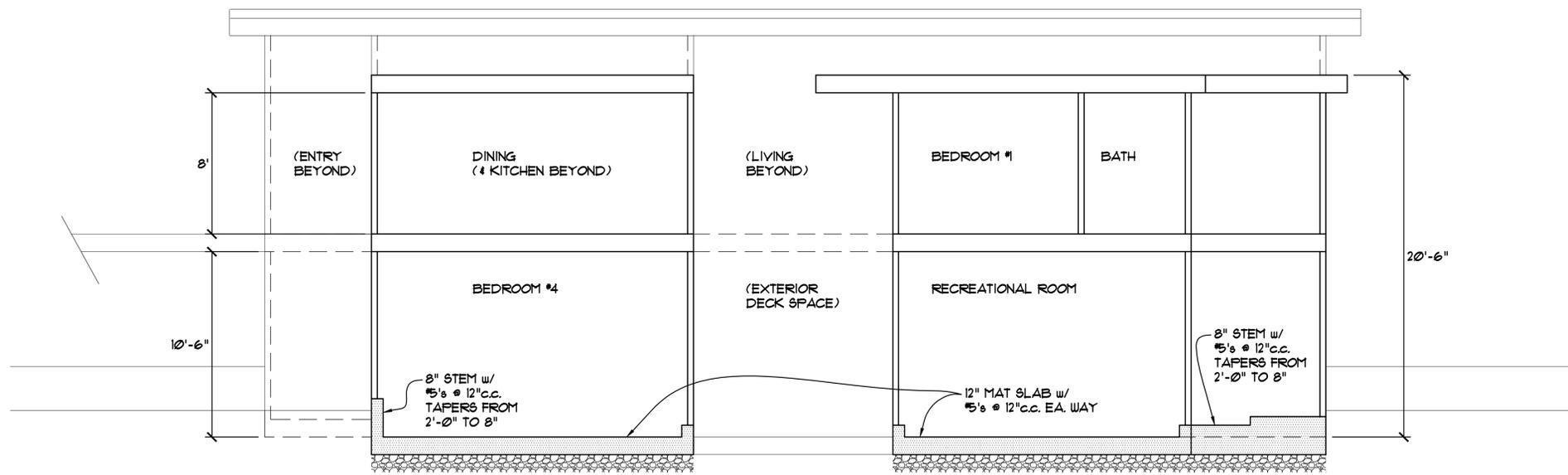
NEW SINGLE-FAMILY RESIDENCE
 1048 KEITH AVENUE
 BERKELEY, CA 94708

USE PERMIT PLANS - 1048 KEITH
 PROPOSED NORTH & SOUTH
 ELEVATIONS (& PARTIAL E/W)

DATE: 12/09/24
 JOB NO: LN-1048
 SCALE: 1/4" = 1'-0"
 DRAWN: LN



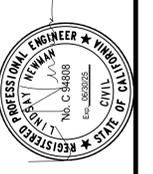
PROPOSED LONGITUDINAL SECTION @ MAIN HOUSE - NORTH TO SOUTH



PROPOSED LONGITUDINAL SECTION @ POP-OUTS - NORTH TO SOUTH

REVISIONS	BY

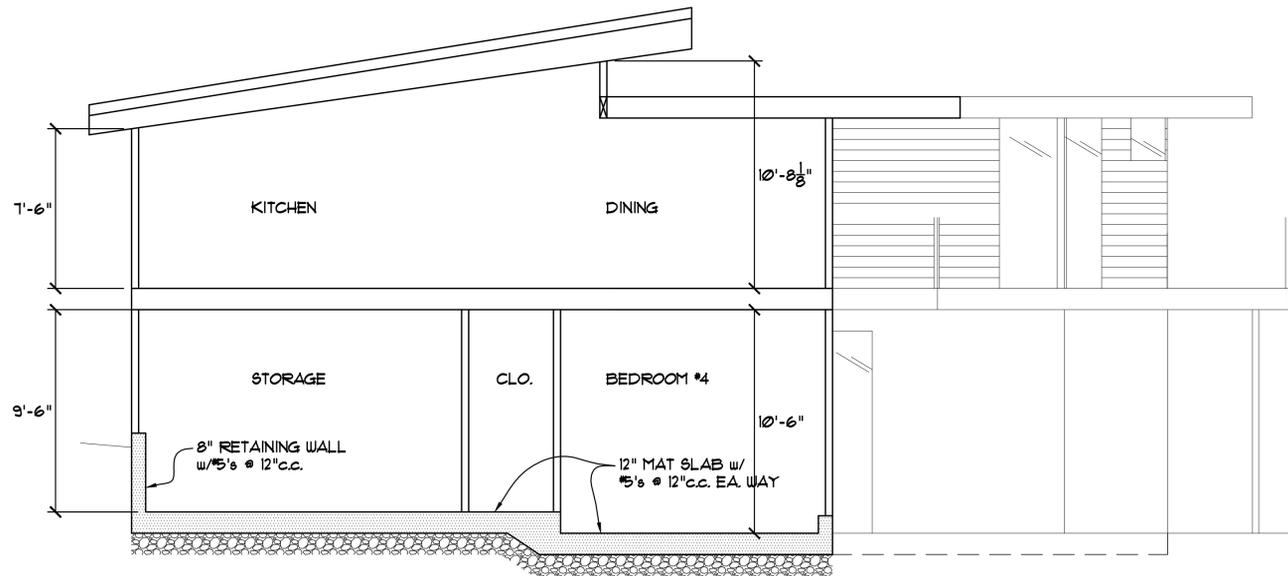
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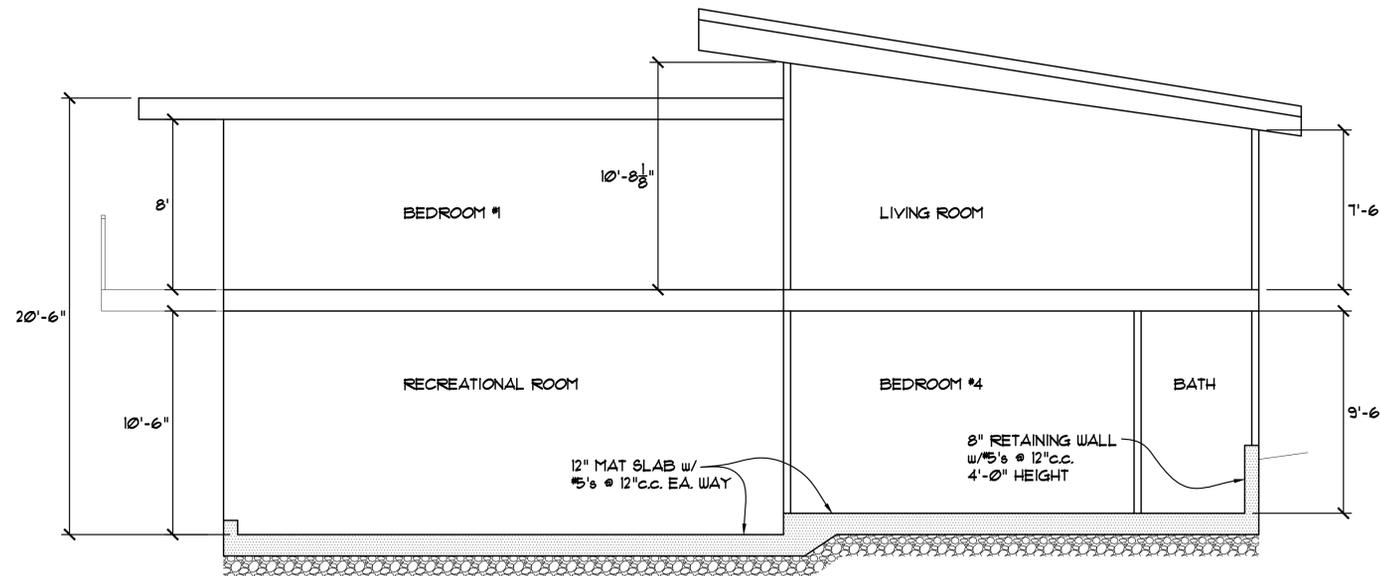
NEW SINGLE-FAMILY RESIDENCE
 1048 KEITH AVENUE
 BERKELEY, CA 94708

USE PERMIT PLANS - 1048 KEITH
 PROPOSED LONGITUDINAL
 SECTIONS

DATE: 12.09.24
 JOB NO: LN-1048
 SCALE: 1/4"=1'-0"
 DRAWN: LN



PROPOSED SECTION - EAST WEST @ DINING



PROPOSED SECTION - EAST WEST @ BEDROOM #1

REVISIONS	BY

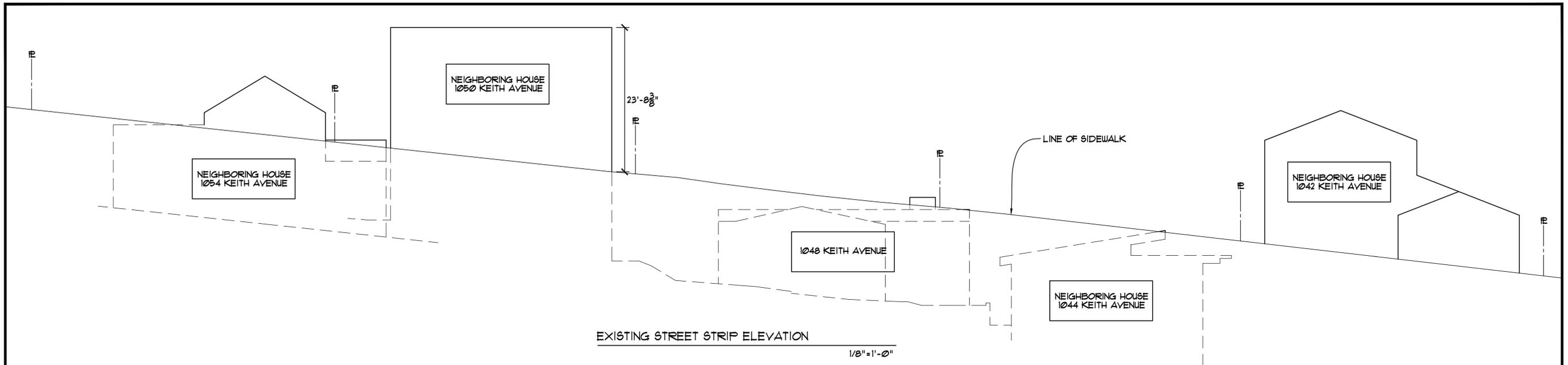
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 CIVIL ENGINEER
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 newmanli26@gmail.com



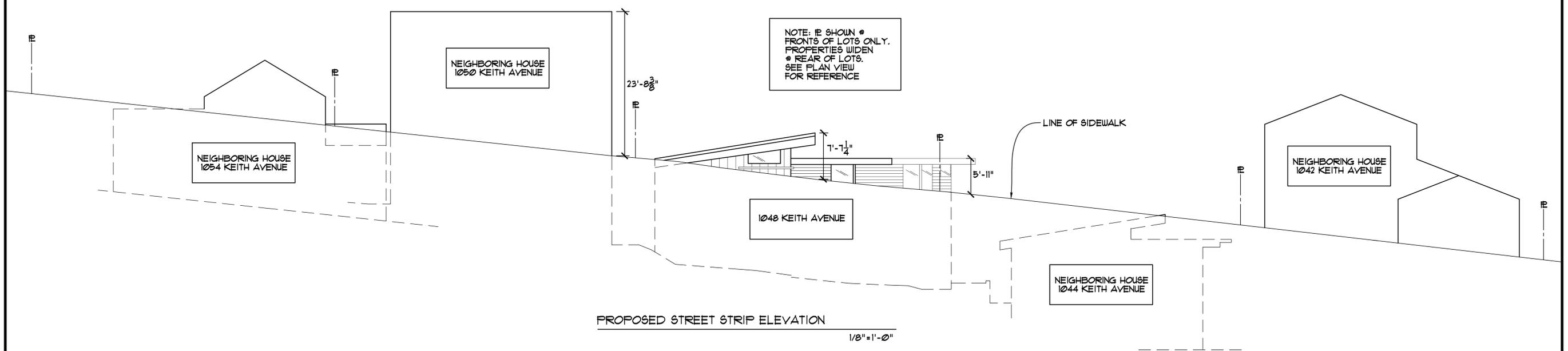
NEW SINGLE-FAMILY RESIDENCE
 1048 KEITH AVENUE
 BERKELEY, CA 94708

USE PERMIT PLANS - 1048 KEITH
 PROPOSED EAST WEST SECTIONS

DATE: 12/09/24
 JOB NO: LN-1048
 SCALE: 1/4"=1'-0"
 DRAWN: LN

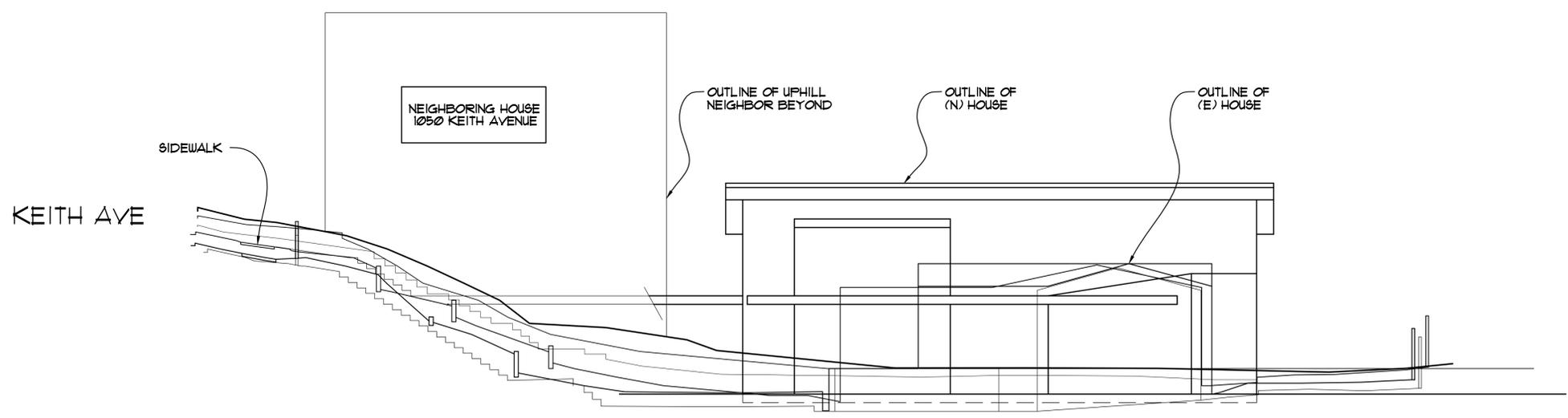


EXISTING STREET STRIP ELEVATION
1/8"=1'-0"



NOTE: IR SHOWN @
FRONTS OF LOTS ONLY.
PROPERTIES WIDEN
@ REAR OF LOTS.
SEE PLAN VIEW
FOR REFERENCE

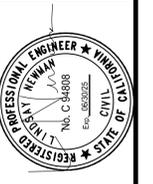
PROPOSED STREET STRIP ELEVATION
1/8"=1'-0"



COMPILATION OF NORTH-SOUTH SECTIONS WITH UPHILL NEIGHBOR
1/8"=1'-0"

REVISIONS	BY

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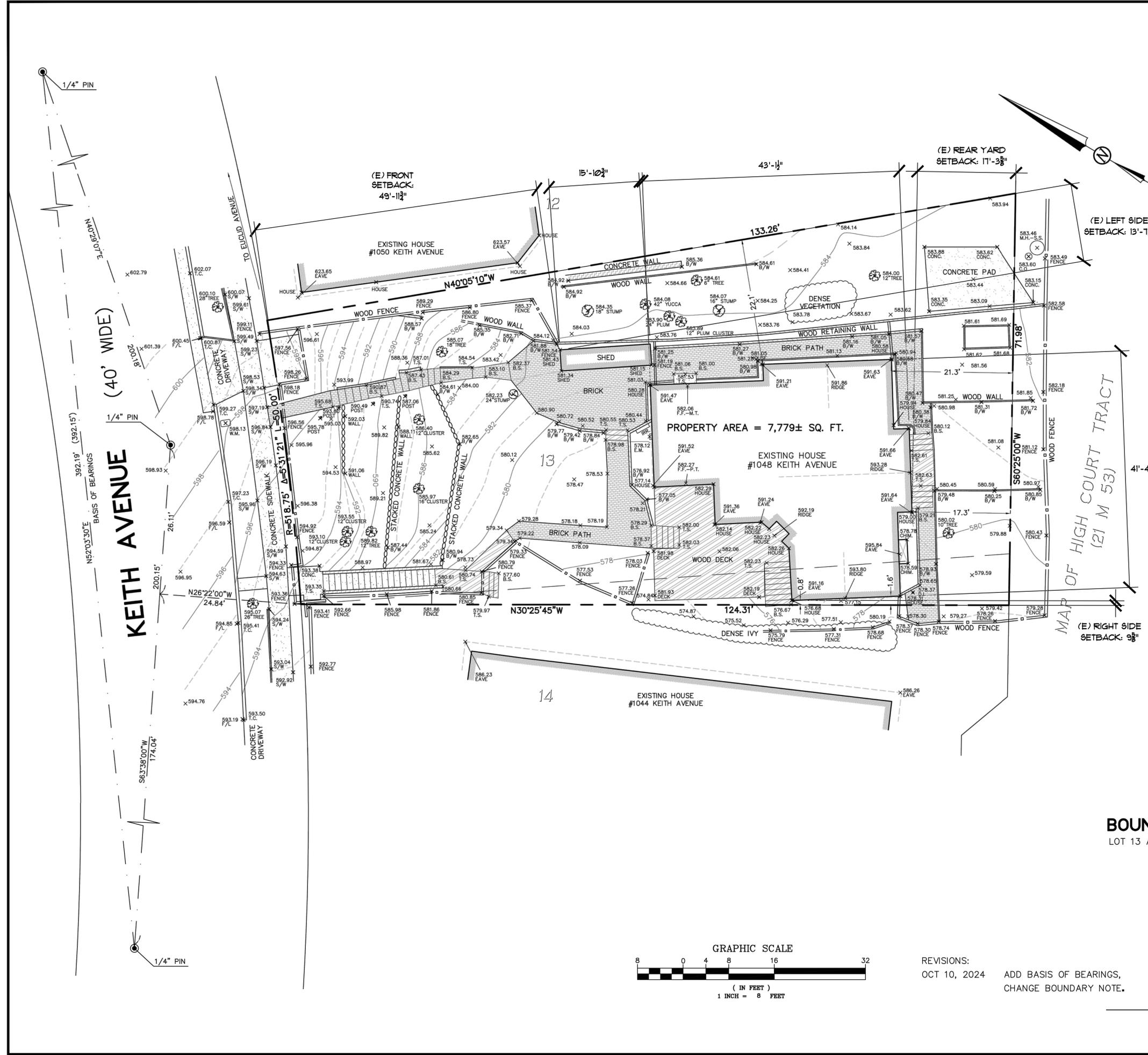


NEW SINGLE-FAMILY RESIDENCE
1048 KEITH AVENUE
BERKELEY, CA 94708

USE PERMIT PLANS - 1048 KEITH
STREET STRIP ELEVATIONS &
N-S SURVEY SECTION CUT

DATE: 12.09.24
JOB NO: LN-1048
SCALE: 1/4"=1'-0"
DRAWN: LN

A12
OF 18 SHEETS



- LEGEND**
- B.S. BASE OF STEPS
 - B/W BASE OF WALL
 - CHIM. CHIMNEY
 - C.O. CLEANOUT
 - CONC. CONCRETE
 - D.I. DRAIN INLET
 - E.M. ELECTRIC METER
 - F.F. FINISHED FLOOR
 - F/L FLOWLINE
 - IRR. IRRIGATION
 - M.H. MAINTENANCE HOLE
 - M.T. METAL THRESHOLD
 - P.T. PLASTIC THRESHOLD
 - S.S. SANITARY SEWER
 - S/W SIDEWALK
 - T.C. TOP OF CURB
 - T.S. TOP OF STEPS
 - W.M. WATER METER
- BUILDING LINE
 - BRICK
 - CONCRETE SURFACE
 - CONCRETE WALL
 - STACKED CONCRETE WALL
 - WOOD SURFACE
 - WOOD WALL
 - WOOD FENCE
 - FOUND CITY MONUMENT IN WELL, AS NOTED

GENERAL NOTES:
 DIMENSIONS ARE IN FEET AND DECIMAL FEET.
 NO TITLE REPORT WAS PROVIDED, EASEMENTS MAY EXIST.

BENCHMARK:
 ELEVATIONS ARE BASED ON CITY OF BERKELEY DATUM.
 THE PIN MONUMENT IN KEITH AVENUE, DESIGNATED "B1141" WAS TAKEN AS ELEVATION = 598.58' FEET PER CORNER RECORD 8339 (80 CR 5).

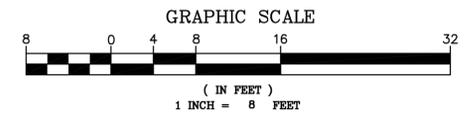
BASIS OF BEARINGS:
 THE BASIS OF BEARINGS OF N52°03'30"E BETWEEN THE MONUMENTS IN KEITH AVENUE IS BASED ON THE MAP OF NORTH CRAGMONT (23 M 84), CALCULATED FROM THE NORTH CRAGMONT CALCULATION MAP (ON FILE IN THE CITY ENGINEERING DEPARTMENT) ROTATED BY 23' 30".

BOUNDARY NOTE:
 THIS PROPERTY BOUNDARY SHOWN IS BASED ON THE SURVEY MONUMENTS AS DETAILED HEREON. THESE THREE MONUMENTS FIT TOGETHER WITHIN AN INCH. DUE TO HISTORIC LAND MOTION IN THIS AREA, BOUNDARIES DETERMINED FROM MONUMENTS FURTHER AWAY, OR FROM THE ADJACENT SUBDIVISION TO THE SOUTH, MAY NOT AGREE.

10-10-2024

BOUNDARY AND TOPOGRAPHIC SURVEY
 LOT 13 AND A PORTION OF LOT 14, BLOCK 2, NORTH CRAGMONT (23 M 84)
 LOCATED AT 1048 KEITH AVENUE
 CITY OF BERKELEY, COUNTY OF ALAMEDA, CALIFORNIA
 NOVEMBER 16, 2020 SCALE: 1" = 8'
 UPDATED APRIL 24, 2024

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

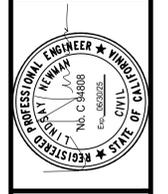


REVISIONS:
 OCT 10, 2024 ADD BASIS OF BEARINGS,
 CHANGE BOUNDARY NOTE.

F.B. NO. 1799 KEITH-TOPO.DWG JOB NO. 20-10544

REVISIONS	BY

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 newmanli26@gmail.com

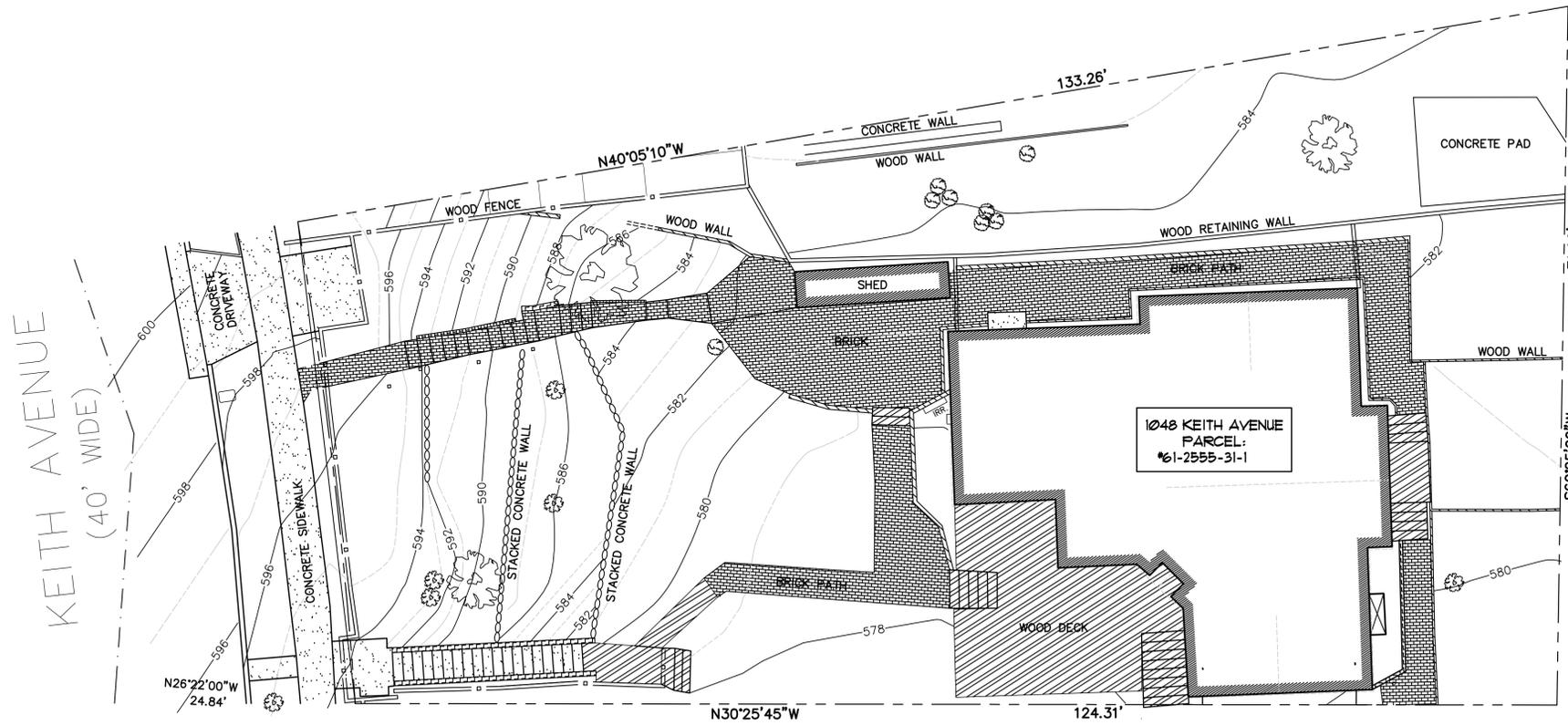


NEW SINGLE-FAMILY RESIDENCE
 1048 KEITH AVENUE
 BERKELEY, CA 94708

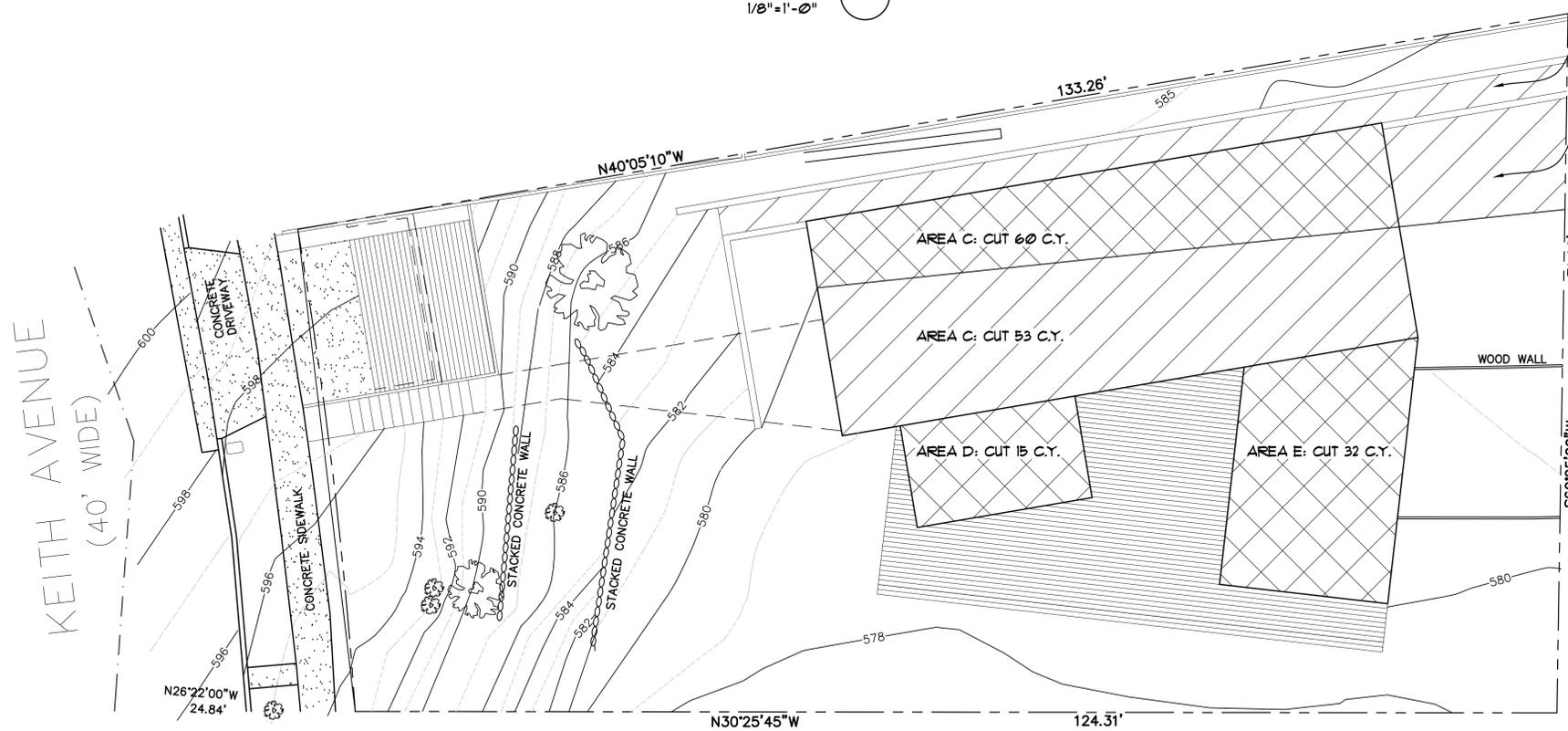
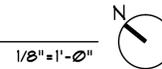
USE PERMIT PLANS - 1048 KEITH
 BOUNDARY &
 TOPOGRAPHIC SURVEY

DATE: 12/09/24
 JOB NO: LN-1048
 SCALE: 1/4"=1'-0"
 DRAWN: LN

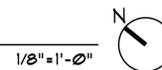
A13
 OF 18 SHEETS



EXISTING GRADING PLAN



PROPOSED GRADING PLAN



AREA A: CUT 48 C.Y.

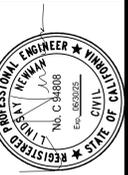
AREA B: CUT 20 C.Y.

NOTE: FOR ELEVATION VIEW OF CUTS, SEE A6

TOTAL CUT: 228 C.Y.

REVISIONS	BY

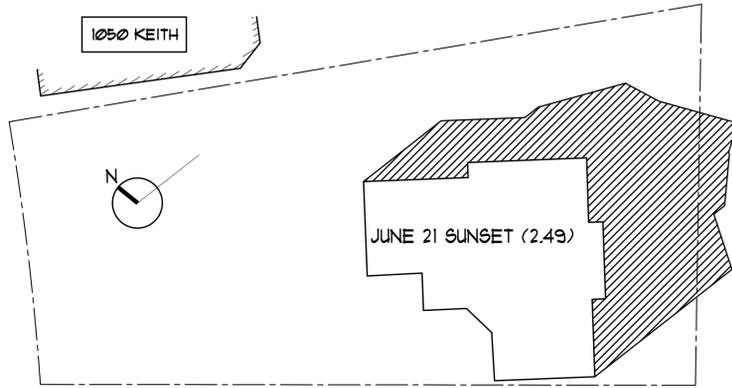
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NEW SINGLE-FAMILY RESIDENCE
 1048 KEITH AVENUE
 BERKELEY, CA 94708

USE PERMIT PLANS - 1048 KEITH
 GRADING PLAN

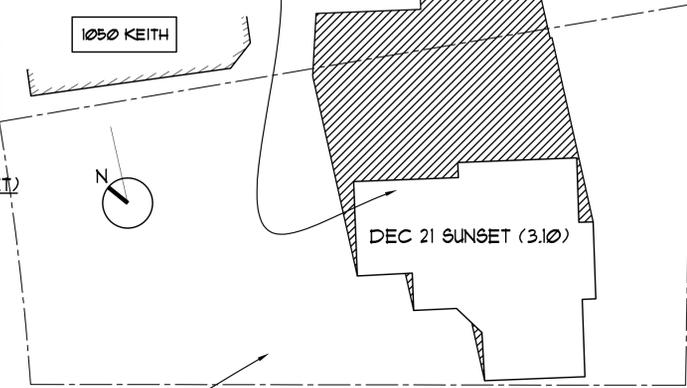
DATE: 12/09/24
 JOB NO: LN-1048
 SCALE: 1/4"=1'-0"
 DRAWN: LN



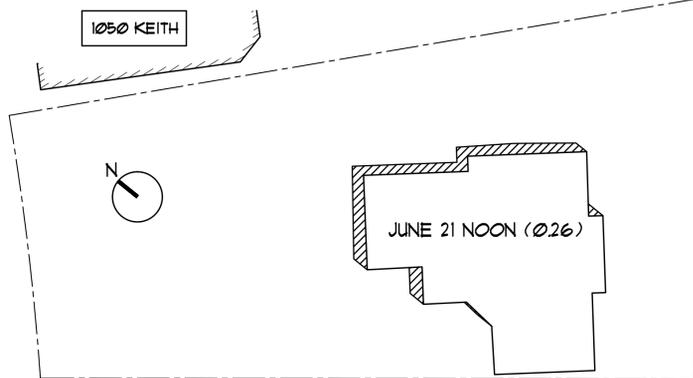
FRONT VIEW OF 1048 KEITH: 15.24 @ 3pm (-2h SUNSET)



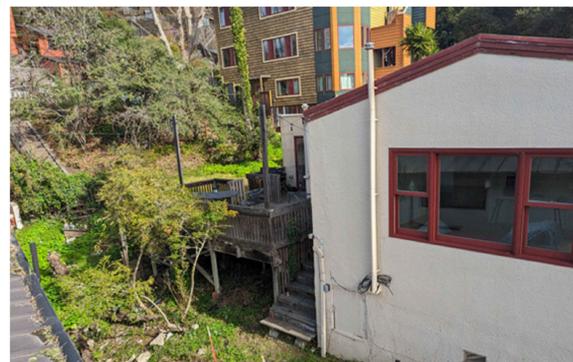
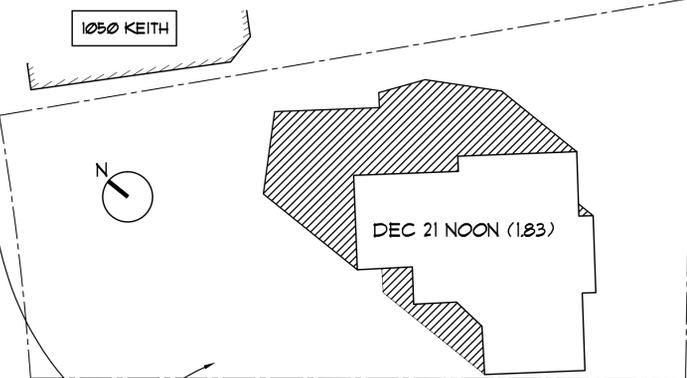
REAR ROOF VIEW: 15.24 @ 3pm (-2h SUNSET)



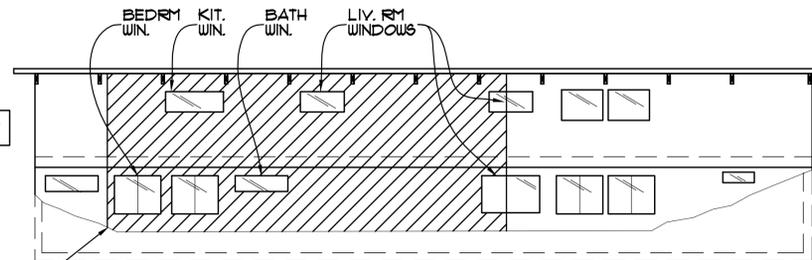
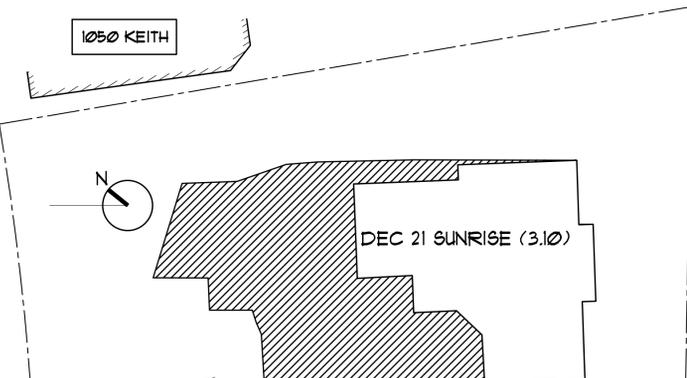
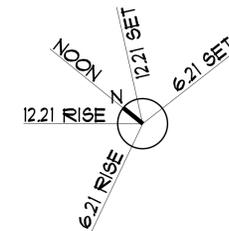
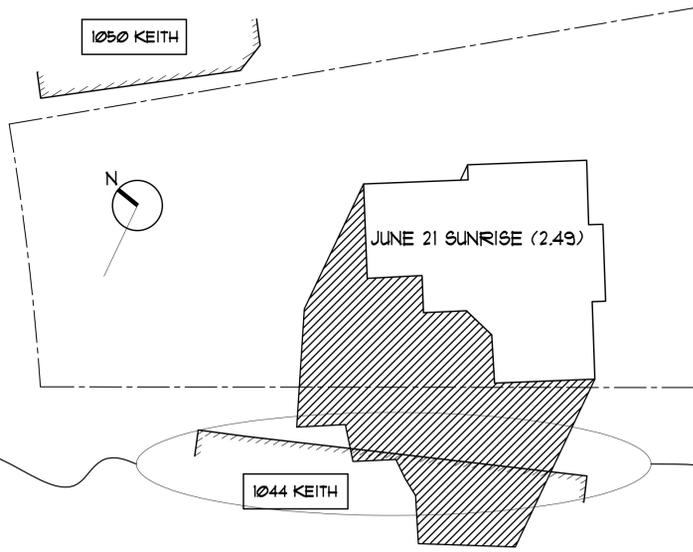
FRONT VIEW OF 1048 KEITH: 12.30.23 @ NOON



FRONT VIEW OF 1048 KEITH: 12.29.23 @ 9:30am (2h + SUNRISE)



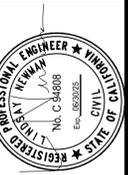
REAR SIDE VIEW: 12.29.23 @ 9:30am (2h + SUNRISE)



NEIGHBORING HOUSE @ 1044 KEITH: EAST ELEVATION
SHADOW FOR EXISTING HOUSE @ 1048: JUNE 21 SUNRISE 1/8"=1'-0"

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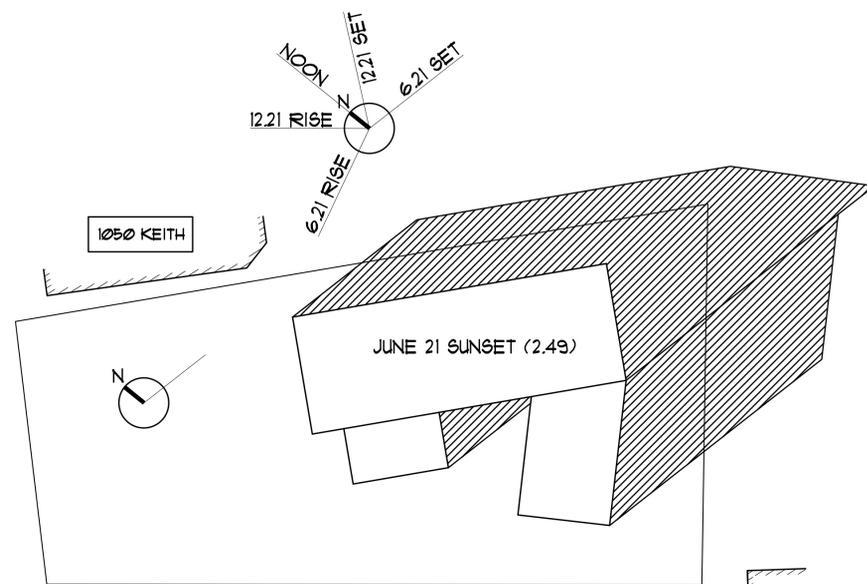


NEW SINGLE-FAMILY RESIDENCE
1048 KEITH AVENUE
BERKELEY, CA 94708

USE PERMIT PLANS - 1048 KEITH
SHADOW STUDY OF EXISTING
DWELLING @ 1048 KEITH AVE

DATE: 12.09.24
JOB NO: LN-1048
SCALE: 1/16"=1'-0"
DRAWN: LN

A16
OF 18 SHEETS



NOON
1221 RISE
621 SET
621 SET
221 SET

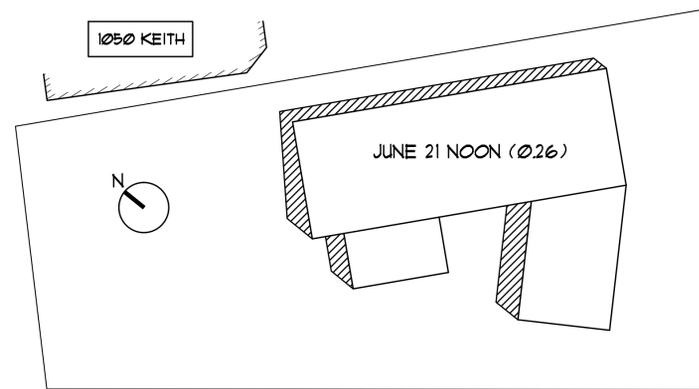
1050 KEITH

JUNE 21 SUNSET (2.49)



1044 KEITH

1109 HIGH CT



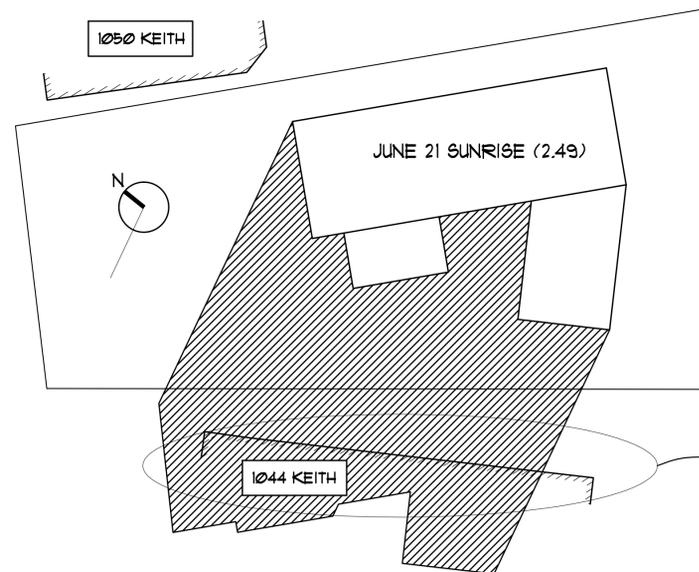
1050 KEITH

JUNE 21 NOON (0.26)



1044 KEITH

1109 HIGH CT



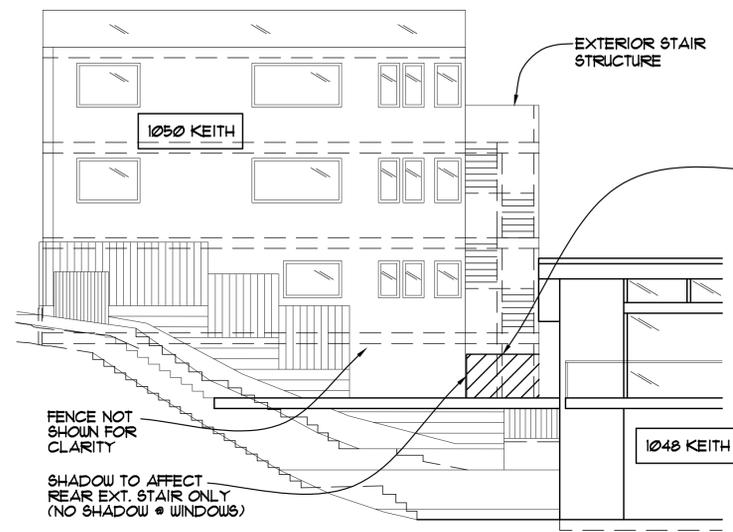
1050 KEITH

JUNE 21 SUNRISE (2.49)



1044 KEITH

1109 HIGH CT



EXTERIOR STAIR STRUCTURE

1050 KEITH

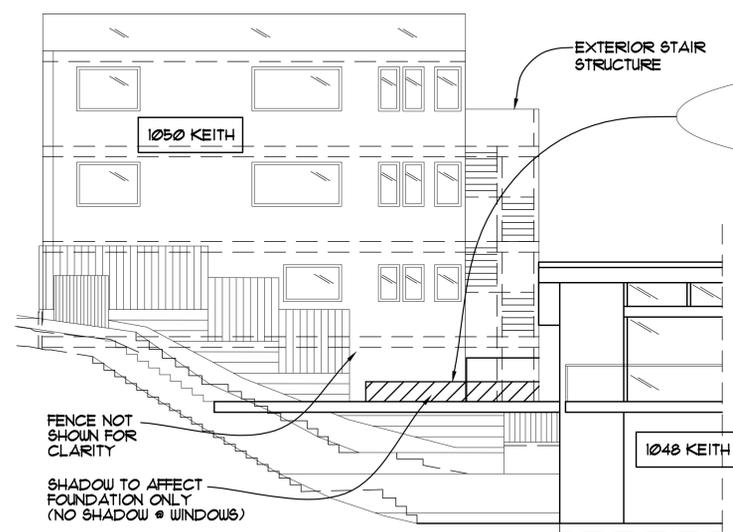
1048 KEITH

FENCE NOT SHOWN FOR CLARITY
SHADOW TO AFFECT REAR EXT. STAIR ONLY (NO SHADOW • WINDOWS)

NEIGHBORING HOUSE • 1050 KEITH: WEST ELEVATION

SHADOW FOR PROPOSED HOUSE • 1048: DEC 21 SUNSET

1/8" = 1'-0"



EXTERIOR STAIR STRUCTURE

1050 KEITH

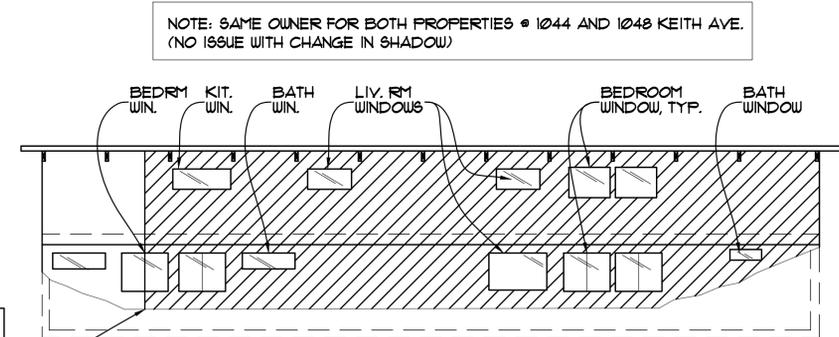
1048 KEITH

FENCE NOT SHOWN FOR CLARITY
SHADOW TO AFFECT FOUNDATION ONLY (NO SHADOW • WINDOWS)

NEIGHBORING HOUSE • 1050 KEITH: WEST ELEVATION

SHADOW FOR PROPOSED HOUSE • 1048: DEC 21 NOON

1/8" = 1'-0"

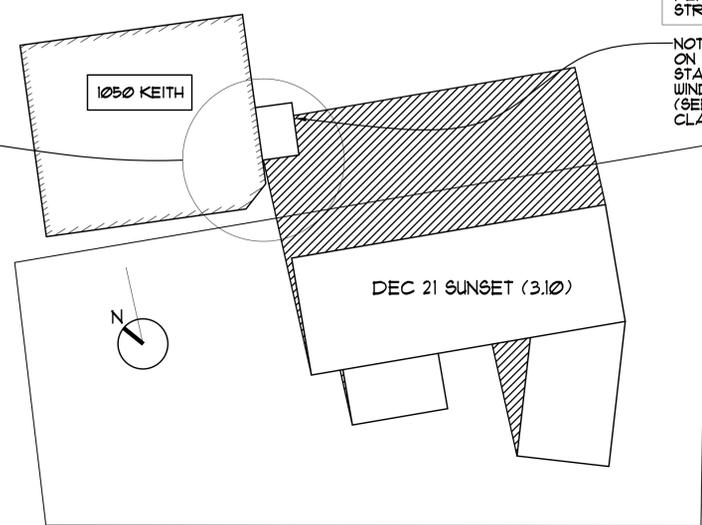


NOTE: SAME OWNER FOR BOTH PROPERTIES • 1044 AND 1048 KEITH AVE. (NO ISSUE WITH CHANGE IN SHADOW)

NEIGHBORING HOUSE • 1044 KEITH: EAST ELEVATION

SHADOW FOR PROPOSED HOUSE • 1048: JUNE 21 SUNRISE

1/8" = 1'-0"



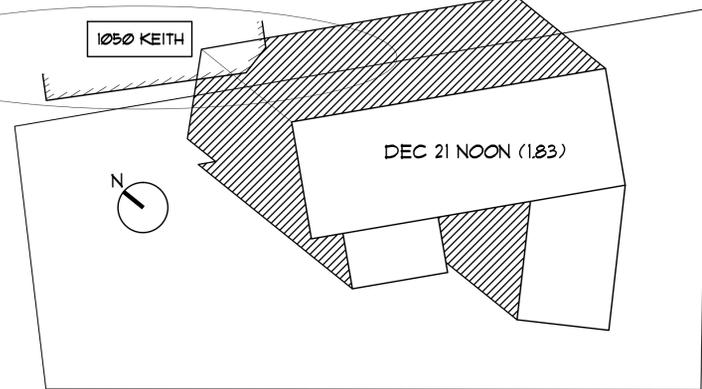
1050 KEITH

DEC 21 SUNSET (3.10)



1044 KEITH

1109 HIGH CT



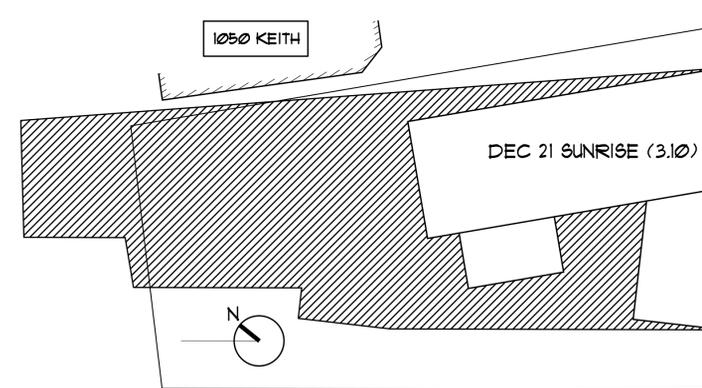
1050 KEITH

DEC 21 NOON (1.83)



1044 KEITH

1109 HIGH CT



1050 KEITH

DEC 21 SUNRISE (3.10)



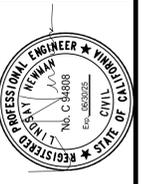
1044 KEITH

NOTE THAT GRADE IS SLOPING UPWARDS PER ELEVATIONS & STREET STRIP VIEWS

NOTE: SHADOW CAST ON EXTERIOR OPEN STAIR ONLY. NO WINDOWS AFFECTED. (SEE ELEVATION FOR CLARITY)

REVISIONS	BY

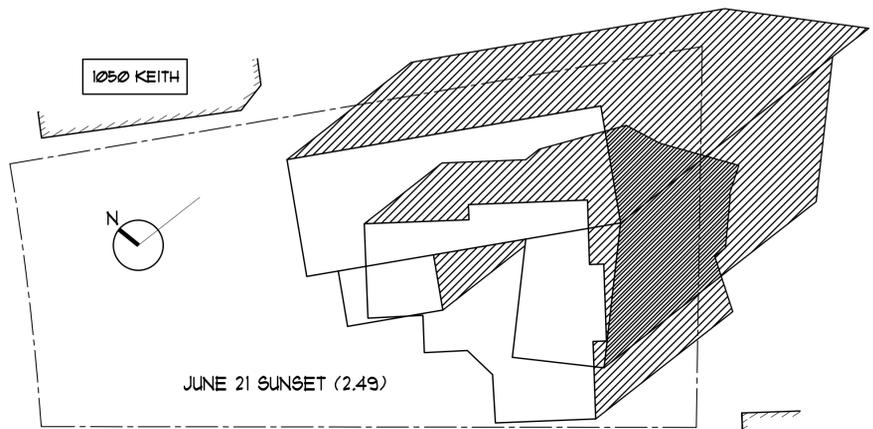
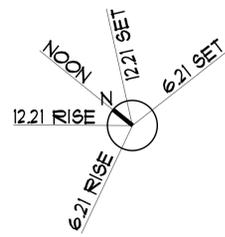
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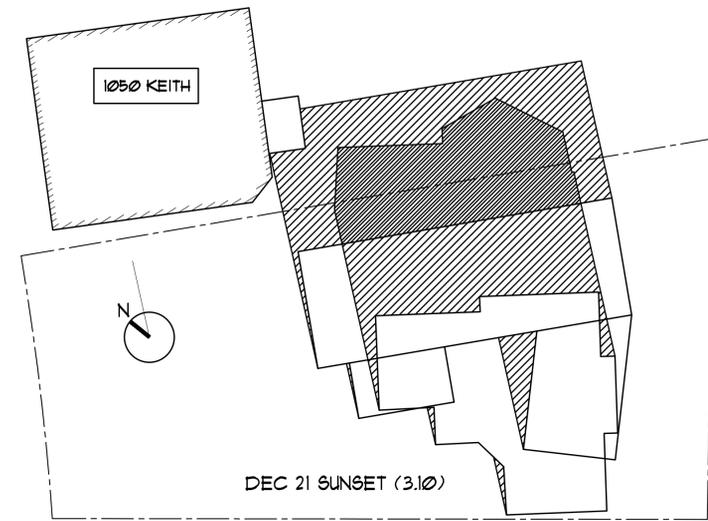
NEW SINGLE-FAMILY RESIDENCE
1048 KEITH AVENUE
BERKELEY, CA 94708

USE PERMIT PLANS - 1048 KEITH
SHADOW STUDY OF PROPOSED
DWELLING @ 1048 KEITH AVE

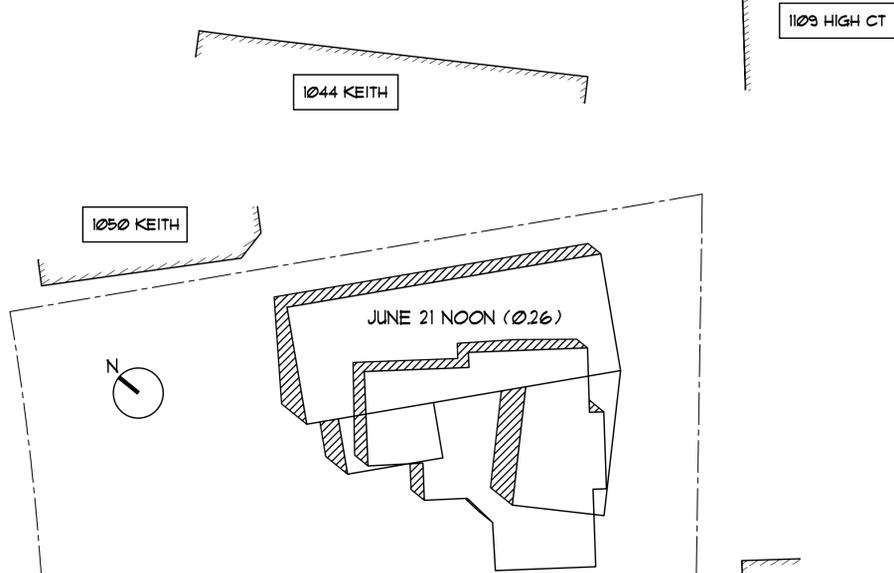
DATE: 12.09.24
JOB NO: LN-1048
SCALE: 1/4" = 1'-0"
DRAWN: LN



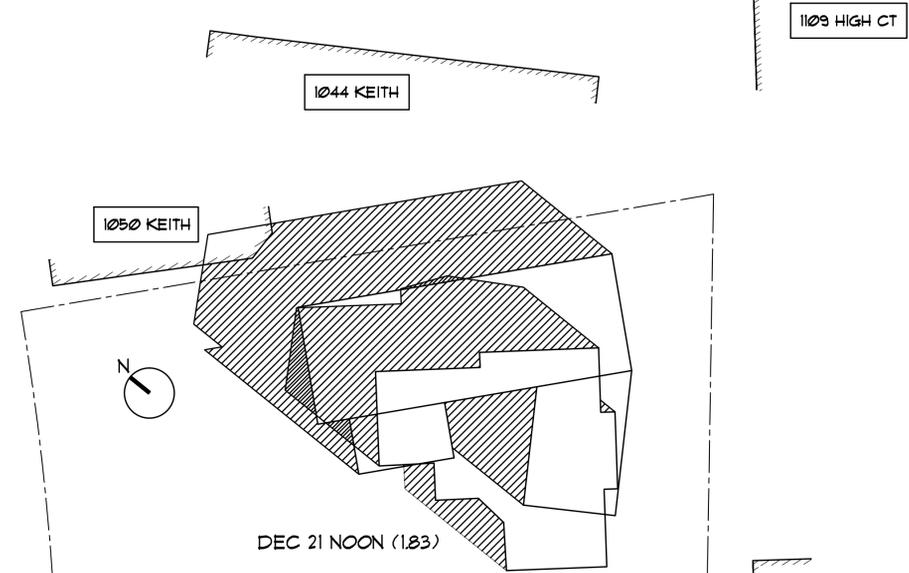
JUNE 21 SUNSET (2.49)



DEC 21 SUNSET (3.10)



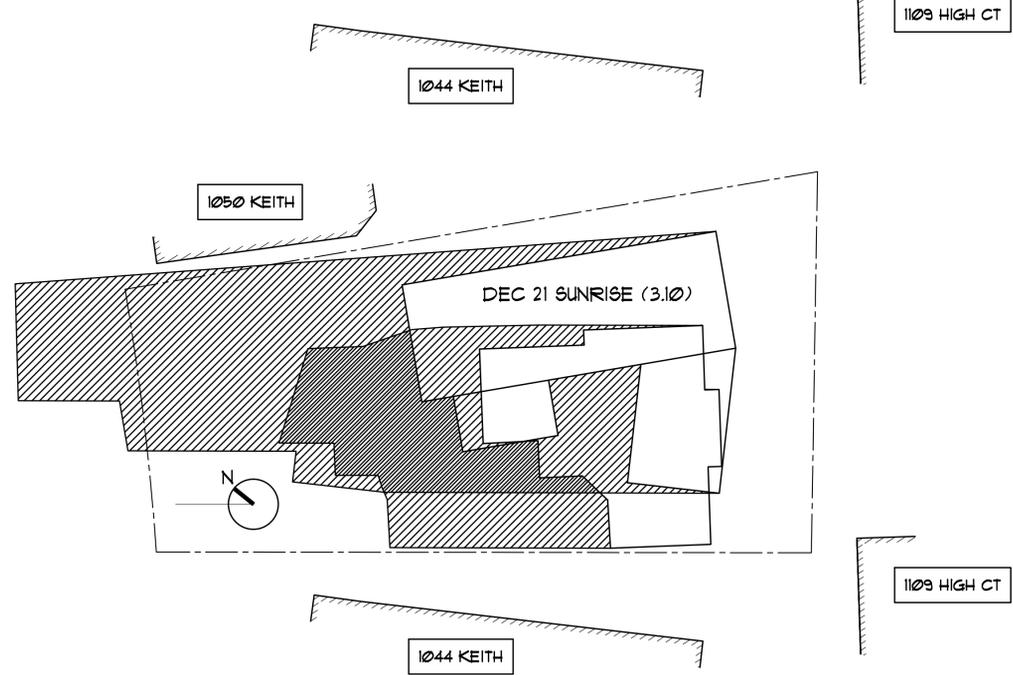
JUNE 21 NOON (0.26)



DEC 21 NOON (1.83)



JUNE 21 SUNRISE (2.49)



DEC 21 SUNRISE (3.10)

REVISIONS	BY

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NEW SINGLE-FAMILY RESIDENCE
 1048 KEITH AVENUE
 BERKELEY, CA 94708

USE PERMIT PLANS - 1048 KEITH
 SHADOW STUDY OF EXISTING
 & PROPOSED DWELLING

DATE: 12.09.24
 JOB NO: LN-1048
 SCALE: 1/4"=1'-0"
 DRAWN: LN

A18
 OF 18 SHEETS

CITY OF BERKELEY - CITY CLERK
2025 JAN 27 AM 9:37

To: The Mayor and City Council Members
c/o: City Clerk – 1947 Center Street, 3rd Floor, Berkeley, CA 94704

Re: 1048 Keith Avenue Use Permit ZP#2024-0014
Appeals Letter: 1050 Keith Ave. & Neighboring homeowners
Date: 01/25/2025

Dear Mayor and City of Berkeley Councilmembers,

We are writing to appeal Zoning Adjustments Board's Notice of Decision approving the new home to be built at 1048 Keith Avenue because the lot line adjustment made under this use permit encroaches on me, the uphill neighbor at 1050 Keith Avenue, and impacts 12 other homes up to Euclid Avenue and multiple homes on High Court, the backyard neighbors to 1048 Keith. This is a serious legal error, setting an unparalleled precedent for Berkeley, while a quiet deed lawsuit and mediation are in effect to resolve the underlying property dispute.

We have listed points of concern that need to be mitigated (with your help) for a fair and reasonable lot line adjustment around the immediate applicant's address to amicably mediate and resolve the issue, rather than forcing the hardship indefinitely to a domino effect across properties in the block and public right of ways. The current approved use permit will impose a multiple class action lawsuit amongst neighbors that could be prevented by the City, were it to set an equitable path, using the deeded square footages for each immediate property.

We have no objection to the proposed building itself, but to its location. Simply put, the applicants appear to be attempting to build partially on 1050 Keith property, based on nothing more than a survey with a disclaimer stating that the accuracy of the survey due to significant landslide motion in this area to be 5-feet or more. Thereafter, the applicant obtained in Moran's supplemental October 2024 supplemental survey, it reports that the street monument's accuracy is within 1". On January 14, 2025, Transit Land Surveying hired by me (1050 Keith) also confirmed the accuracy of the street monuments, but refused to do a survey because of the inability to accurately identify the neighboring property boundaries, as coordinates carried to the backyard start to go through the home at 1054 Keith and so on.

Below is a list of concerns from the neighboring community to consider:

1. The applicant of use permit ZP#2024-0014 for the property at 1048 Keith Avenue completed a preliminary historical land survey that resulted in an encroachment of approximately 20 feet into my property at 1050 Keith Avenue. That encroachment reduces the 1050 Keith Avenue deeded property width of 65 feet to 39 feet. Please note that 1050 Keith Avenue currently measures at a width of 61 feet to provide the 1054 Keith Avenue neighbor proper access around their home. In 2001 we at 1050 Keith Avenue, understood and honored the arrangement due to the ongoing landslide

conditions for this and adjacent properties. Many land survey companies do not survey properties in the Berkeley Hills due to the landslides and inaccuracies of data. We finally contracted Transit Land Surveying to survey our property at 1050 Keith Avenue. After about 4 hours of work, Transit Land Surveying decided not to complete the survey due to the shifting lot line that would run directly through the neighboring home at 1054 Keith Avenue. (Note: While the applicant used the Moran Engineering survey to absorb 20 feet of uphill property at 1050 Keith, it claims that the survey is not accurate enough to provide the land identified by the survey as 1111 High Court's property on 1048's side of the historic fence, even though it is this land that the City is using for the setback required from 1111 High Court. To be clear, the applicant uses the survey to take land uphill but refuses to use the survey to cede land to their backyard neighbor, claiming the disclaimer in the survey makes it to inaccurate to do so.)

2. Consequently, use permit ZP#2024-0014 forces the lot-line adjustment to be carried over to the property of 1054 Keith Avenue by a similar distance that will then go right through the house of that property. Applying the same methodology at the property of 1060 Keith Avenue, the lot line adjustment runs straight through the middle of the permitted structure. On the corner of Keith and Euclid Avenue, at the address 1060 Euclid Avenue, the lot line adjustment will run through the center of the street, Euclid Avenue.

3. I visited Moran Engineering which completed the survey for 1048 Keith Avenue and they stated that completion of a surrounding homes boundary alignment is crucial for equitable lot line adjustments. Moran Eng. was going to investigate with a boundary subject matter expert retired colleague for more detailed verification process for boundaries. I am awaiting this information.

4. It is of great concern that the Zoning Adjustments Board disregarded the letters and opposition from immediately affected neighbors. By not promoting proper boundary adjustments to be made amicably, all immediate neighbors on Keith Avenue and High Court are forced to settle property line disputes locally, creating inconsistent and uneven resolutions amongst the neighbors. (Note: Commissioner Todd Jersey voted to abstain, noting that 1048 Keith bought themselves the issues they are facing by not staying within the stamp of the prior house at Keith.)

5. The proposed building design of the property at 1048 Keith Avenue is to demolish and relocate their existing structure into the disputed area. The new construction would then be over the present sewer line and storm drainage for 1050 Keith Avenue, with no relocation shown or planned for in the documents. A mediation for the disputed area between 1048 Keith Avenue and 1050 Keith Avenue is scheduled for 3/25/25.

6. The applicant of use permit ZP#2024-0014 stopped talking to us in March of 2024 and unilaterally demolished our shared fence on 3/6/24. The fence was built in 2001 with the location having been agreed upon between Mr. Peter Berk, the previous owner of 1048 Keith Avenue and us. Thereafter, the applicant of use permit ZP#2024-0014 proceeded to demolish existing structures of 1050 Keith Avenue on the disputed

property. The demolished structures include my sons' animal Sanctuary, as well as our deceased animal tombstones, and numerous plants and fruit trees ranging from 15 to 40 plus years old. To this date, daily trespassing and the intimidation of my family continues. Video footage of digging on our beloved pet graves for over a year. Notably, on Christmas day the applicant was intentionally digging over our family beloved pet graves to further inflict pain and sorrow which brought tears to my wife and younger son. As well as a destructive handling of an over-40-year-old apple tree on new year's Eve that were both reported via videos to the Berkeley Police.

With this petition, we ask the City of Berkeley to revise the ZAB's decision and make property line adjustments based on deeded square footage for immediate adjacent properties to settle the issue within a few homes around 1048 address rather than pushing the hardship and uncertainties throughout the community indefinitely.

Best Regards,

Bahram Gangei and affected neighbors at:

1064, 1062, 1060, 1058, 1056, 1054, 1050, 1044, 1042 Keith Avenue

1105, 1109, 1111, 1113, 1117, 1119, 1137 High Court & 1060 Euclid Ave. AND more neighbor's signed petition with major concerns.

.....

Bahram Gangei

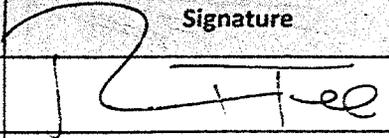
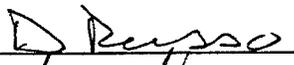
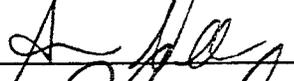
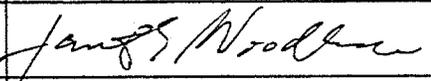
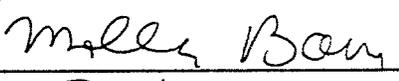
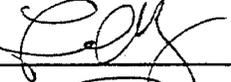
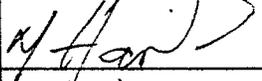
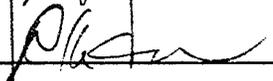
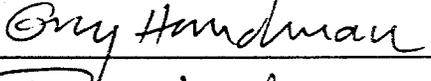
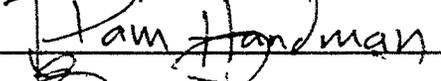
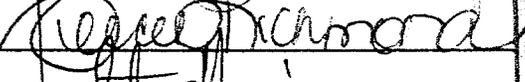
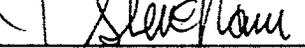
1050 Keith Ave,

Berkeley, CA 94708

Tel (510) 612-5821

bgangei@comcast.net

To, the Mayor and City Council Members
c/o City Clerk: 2180 Milvia St. Berkeley, CA 94704
Re: 1048 Keith Avenue Use Permit ZP#2024-0014
Appeals Letter: 1050 Keith Ave. & Neighboring home owners
Date: 01/23/2025

No.	Home Address	Name	Date	Signature
1	1053 KEITH AVE	ROBERT TRON	1/25/25	
2	1053 Keith Ave	Deborah Russo	1/23/25	
3	1051 Keith Ave	AARON NEE	1/23/25	
4	1056 KEITH AVE	GAUTAM JAGANNATH	1/23/25	
5	1056 KEITH AVE	EMILY ABRAHAM	1/23/25	
6	1059 Keith Ave	Janet Woodhams	1/23/25	
7	1060 Keith Ave	Mollie Boers	1/23/25	
8	1066 KEITH AVE	TIM NICHOLS	1/23/25	
9	1066 Keith Ave	Shannon Nicholls	1-23-25	
10	1060 EUCLID AVE	MICHAEL HAROLD	1 23 25	
11	1060 Euclid Ave	Denise Harold	1 23 25	
12	1119 High Ct.	Gary Handman	1/23/25	
13	1119 High ct	Pam Handman	1/23/25	
14	1113 High ct.	Ellice Richmond	1/23/25	
15	1113 High Ct	Steve Nani	1/23/25	

To, the Mayor and City Council Members
 c/o City Clerk: 2180 Milvia St. Berkeley, CA 94704
 Re: 1048 Keith Avenue Use Permit ZP#2024-0014
 Appeals Letter: 1050 Keith Ave. & Neighboring home owners
 Date: 1/23/2025

No.	Home Address	Name	Date	Signature
16	1060 Keith Ave Berkeley CA 94708	Robert Matthews	1/23/25	R. Matthews
17	1057 Keith Ave	Tom Johnston	1/23/25	Tom Johnston
18	1057 Keith Ave Berkeley CA 94708	Elisha Guchman	1/23/25	Elisha Guchman
19	1049 Keith Ave Berkeley	Hester Sobel	1/23/25	Hester Sobel
20	1058A Keith Av 94708	Margit Stange	1/23/25	M Stange
21	1050 Keith Ave 94708	Erica Eagle	1/23/25	Erica Eagle
22	1069 Keith Ave 94708	Frank Boening	1/24/25	Frank Boening
23	1058 Keith Berkeley CA 94708	Anthony Acosta	1/24/25	Anthony Acosta
24	1051 KEITH BERKELEY CA 94708	JOHN DORPKE	1/24/2025	John Dorpke
25	1111 High Ct Berkeley CA 94708	Maureen Bessette	1/24/2025	Maureen Bessette
26	1111 High Ct Berkeley CA 94708	John Orban	1/24/2025	John Orban
27	1137 High Ct APT A Berkeley 94708	Melissa Nance	1/25/2025	Melissa Nance
28	1117 High Ct Berkeley, CA 94708	Clinton Loo	1/25/2025	Clinton Loo
29	1117 High Ct Berkeley, CA 94708	Jessica Lin	1/25/2025	Jessica Lin
30	1050 Keith Ave Berkeley 94708	Behram Gungor	1/25/2025	Behram Gungor

To, the Mayor and City Council Members

c/o City Clerk: 2180 Milvia St. Berkeley, CA 94704

Re: 1048 Keith Avenue Use Permit ZPH2024-0014

Appeals Letter: 1050 Keith Ave. & Neighboring home owners

Date: 1/23/2025

No.	Home Address	Name	Date	Signature
31	1054 Keith Avenue	Lee Bridges	1/23/25	Lee Bridges
32	1054 Keith Avenue	Mark Bridges	1/23/25	MB
33	1115 Arch St	Lee Goodwin	1/26/25	Lee Goodwin
34	1115 Arch St	RICHARD SCHWARZMAN	1-26-25	Richard Schwarzman
35	1114 Arch St	MARIE COCCANESE	1/26/25	Marie Cocanesse
36	1114 Arch St	MARCOS TARDUCCI Al. Tarducci	1/26/25	Al. Tarducci
37	1154 Arch St	HINDA AURICCHIO	1/26/25	Hinda Aurichio
38	1156 Arch St	REIEN PEARCE	1/26/2025	Reien Pearce
39	1136 Arch St	Lynn Adler	1/26/25	Lynn Adler
40	1136 Arch St	JAMES LOCKER	1/26/25	James Locker
41	1124 Arch St	ALEXANDER BRENNEN	1/26/25	Alexander Brennen
42	1124 Arch St	WENDY NILES	1/26/25	Wendy Niles
43	1166 Arch St	Mark Nitzberg	1/26/25	Mark Nitzberg
44	1105 High Court	Sarah Valor	1/26/25	Sarah Valor
45	1105 High Court	Darrell Valor	1/26/25	Darrell Valor



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
JANUARY 9, 2025

1048 Keith Avenue

Use Permit #ZP2024-0014 to demolish a 2,760-square-foot single-family dwelling, and construct a two-story (25 feet tall), 3,600-square-foot single-family dwelling within the rear setback and parking pad in the front setback.

I. Background

A. Land Use Designations:

- General Plan: Low Density Residential (LDR)
- Zoning District: Single-Family Residential – Hillside Overlay (R-1H) District

B. Zoning Permits Required:

- Use Permit, pursuant Berkeley Municipal Code (BMC) Section 23.326.030(B)(1) to demolish a dwelling unit
- Use Permit, pursuant to BMC Section 23.202.020(B) to construct a single-family dwelling unit
- Administrative Use Permit, pursuant to BMC Section 23.210.020(C)(4), to reduce the building setbacks in the Hillside Overlay Zone
- Administrative Use Permit, pursuant to BMC Section 23.322.080(E)(2)(b), to allow unenclosed off-street parking within the front setback
- Administrative Use Permit, pursuant to BMC Section 23.304.070(B) to construct an unenclosed structure (trellis) within the front setback
- Administrative Use Permit, pursuant to BMC Section 23.304.080(A), to construct a fence more than 6 ft in height on the lot line

C. CEQA Recommendation:

It is staff's recommendation to the Zoning Adjustments Board (ZAB) that the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code Section 21000, et seq. and California Code of

ZONING ADJUSTMENTS BOARD
January 9, 2025

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Regulations, Section 15000, et seq.) pursuant to CEQA Guidelines Section 15303 (“New Construction or Conversion of Small Structures”).

D. Project Recommendation:

Approval. The project is, on balance, consistent with the Zoning Ordinance and General Plan.

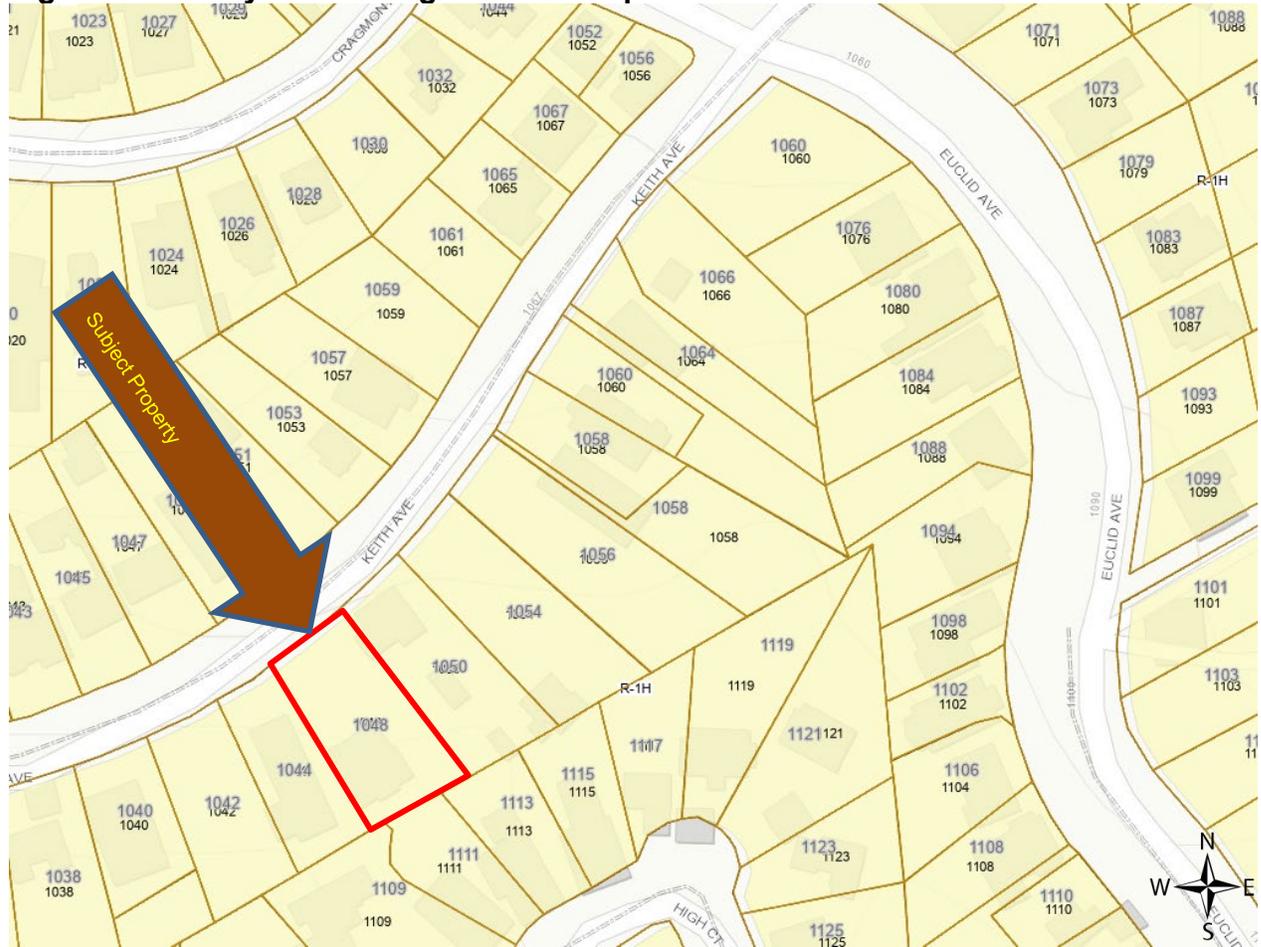
E. Parties Involved:

- Applicant/Property Owner: Lindsay Newman, 1048 Keith Avenue, Berkeley, CA, 94708

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January 9, 2025

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Figure 1: Vicinity and Zoning Districts Map

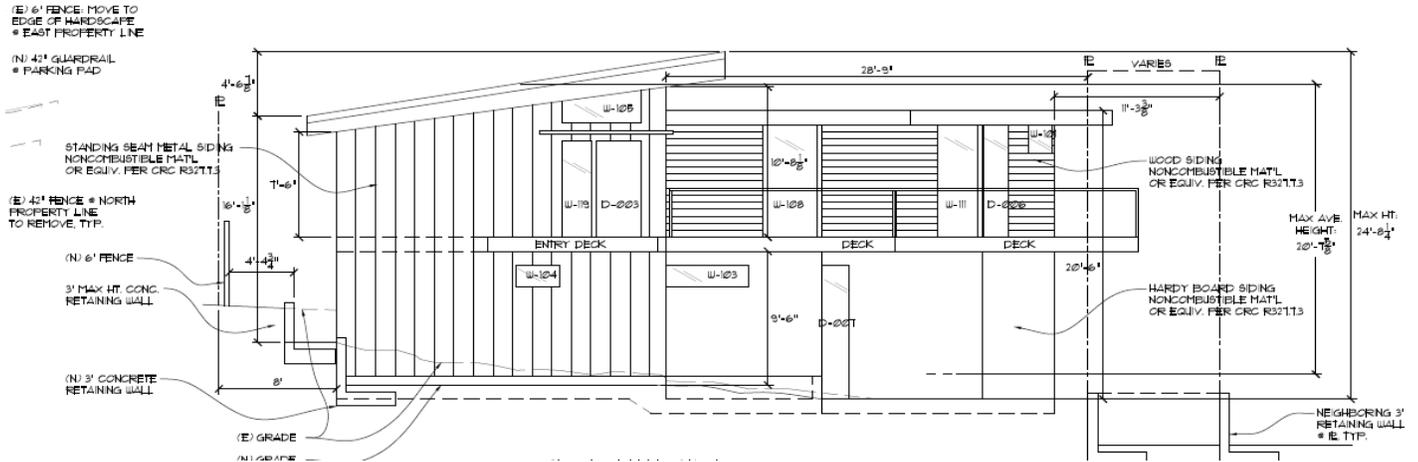


R-1H = Single-Family Residential – Hillside Overlay (R-1H) District

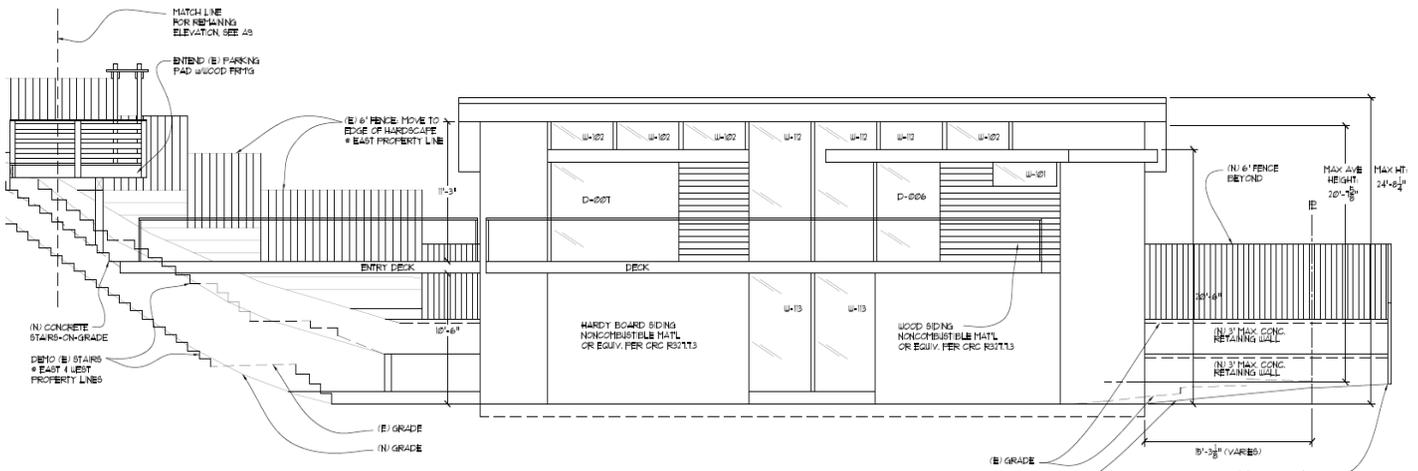
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Figure 3: Elevations



Proposed Front (North) Elevation



Proposed Side (West) Elevation

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Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Single Family Residences	Single-Family Residential – Hillside Overlay District (R-1H)	Low Density Residential (LDR)
Surrounding Properties	North			
	South			
	East			
	West			

Table 2: Special Characteristics

Characteristic	Applicability	Explanation
Affordable Housing Fee for qualifying non-residential projects (Resolution 66,617-N.S.)	No	These fees apply to projects with net new non-residential floor area over 7,500 square feet. The project only proposes new residential floor area; therefore, these requirements do not apply.
Affordable / Inclusionary Housing Requirements (BMC Chapter 23.328)	No	The proposed project is a housing development project, as defined in BMC 23.328.020(E), ⁶ would provide less than 5,000 square feet of residential unit floor area, and is not part of a larger housing development project. Therefore, this project is exempt from the inclusionary housing provisions.
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 does not utilize a density bonus.
Historic Resources	No	The project would demolish an existing residential building that is greater than 40 years old. An historic resource evaluation was prepared by Mark Hulbert on January 5, 2021 and was revised on April 10, 2024, which concludes that this property is not eligible for listing in the California Register of Historic Resources.
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 . The project proposes to construct one dwelling; therefore, the Housing Accountability Act does not apply.
Housing Crisis Act of 2019 (SB 330)	Yes	The project proposes only one dwelling unit and is not considered a "housing development project" ⁷ ; therefore SB 330 does not apply.

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Characteristic	Applicability	Explanation
Rent Controlled Units	No	There are no rent-controlled units at the site, nor would the new dwelling unit be subject to rent control restrictions.
Residential Preferred Parking (RPP)	No	The site is not located in an RPP zone. Should an RPP zone be established in the future, 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 a newly constructed residential unit.
Seismic Hazards (SHMA)	Yes	The site is located within an area susceptible to liquefaction, Fault Rupture, or Landslides as shown on the State Seismic Hazard Zones map ⁸ . A geotechnical report prepared by Rutherford + Keene (October 30, 2017) was submitted by the applicant, however, the project is exempt from this requirement because it includes the construction of one, two-story, single-family dwelling unit.
Soil/Groundwater Contamination	No	The project site is not listed on the Cortese List ⁹ , nor is it within the City's Environmental Management Area.
Transit	Yes	The project area is served by AC Transit line 65. There is an existing bus stop within 0.2 miles to the east near the intersection of Keith Avenue and Euclid, serving AC Transit line 65.
<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> <p>d. 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
January 11, 2024	Use Permit Application submitted
February 8, 2024	Application deemed incomplete
February 15, 2024	Application resubmitted
February 27, 2024	Application deemed incomplete
February 27, 2024	Application resubmitted
February 29, 2024	Application deemed complete

ZONING ADJUSTMENTS BOARD
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Date	Action
March 22, 2024	Application Processing letter issued
April 29, 2024	Application resubmitted
May 23, 2024	Application Processing letter issued
June 27, 2024	Application resubmitted
June 27, 2024	Application Processing letter issued
June 27, 2024	Application resubmitted
July 10, 2024	Complete Application Processing letter issued
August 12, 2024	Revised application materials resubmitted.
September 12, 2024	Public hearing notices mailed/posted
September 26, 2024	ZAB hearing – project continued to October 10, 2024
October 10, 2024	ZAB hearing - project continued to date uncertain
October 15, 2024	Revised final survey dated October 10, 2024 received
December 18, 2024	Public hearing notices mailed/posted
January 9, 2025	ZAB hearing

Table 4: R-1H Development Standards BMC Sections 23.202.050 and 23.210.020, and 23.322 Parking and Loading

Standard		Existing	Proposed Total	Permitted/ Required
Lot Area (sq. ft.)		7,800	7,800	5,000 min
Dwelling Units	Total	1	1	1 max
	Average	13'-6"	20'-8"	28' max
Building Height (ft. - in.)	Maximum	17' - 3"	24'-8"	35' max
	Stories	1	2	3 max
	Front (Keith Avenue)	50'-0"	52'-0"	20' min
Building Setbacks (ft. - in.)	Rear	17'-4"	15'-0"	20' min
	Left Side	13'-8"	8'-0"	4' min
	Right Side	0'-10"	11'-1"	4' min
	Lot Coverage (%)	18%	29%	40% max
Usable Open Space (sq. ft.)		6,378	5,753	400 sq. ft. min (400 sq. ft. per dwelling unit)
Parking	Automobile	1	2	1 min (for roadway width less than 26 ft.)

II. Project Setting

A. Neighborhood/Area Description:

The project site is located in the northern area of the Berkeley hills in the R-1H, Single-Family Residential – Hillside Overlay District. The area is characterized by a residential development pattern of one- to three-story single-family dwellings. Lots in the neighborhood are generally rectangular with some irregularities due to existing slopes and curved roadways. The neighborhood hills generally slope downward from the northeast to the southwest and provide west facing views of the San Francisco Bay.

B. Site Conditions:

The 7,800 square-foot lot is rectangular-shaped, located on the south side of the street, and oriented in a northwest and southeast direction. The lot slopes downward by 20 ft. from Keith Avenue to a level section towards the middle and rear portions of the property where the front of the lot is set at a higher elevation. The lot has 50-feet of frontage along Keith Avenue, is approximately 128 feet deep, and developed with a one-story 2,760 square-foot residence. Existing vegetation on the lot includes various trees such as Plum, Red Fir, Loquat, and Yucca, as well as dense shrubbery. There are no, nor has there recently been, protected Coast Live oak trees on this project site.

III. Project Description

A. Proposed Project Details: The proposed project would demolish the one-story 2,760 square-foot residence built in 1924 and construct a two-story 3,600 residence in its place. The new residence would include five bedrooms including an office, a recreation room, first and second story decks along the southern face of the residence. In addition, the project would include two new parking spaces that would encroach into the northern front setback, and fence and retaining walls along the eastern property line that are in the required side setback.

IV. Community Discussion

A. Neighbor/Community Concerns:

Prior to application submittal, a pre-application poster was installed on site by the applicant in January 2024. On September 12, 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 at nearby three locations within the neighborhood on these dates. Prior to the first hearing on September 26, a neighbor raised questions about the surveyed lot lines.

During the September 26 hearing, neighbors raised concerns about the impact of landslides on property boundaries, boundary disputes, landslide impacting shifting property lines, and questioned the accuracy of the site survey dated November 16, 2020. As a result, staff recommended that the project be continued to October 10. The project

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January 9, 2025

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was continued a second time to a date uncertain to allow the applicant time to obtain a revised survey for staff review.

On December 18, 2024, the City mailed public hearing notices to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations for the hearing on January 9, 2024. At the time of writing this report, staff has received nine letters opposing the project, stating concerns regarding project impacts related to views, privacy, and the location of property lines (Attachment 4).

B. Landmark Preservation Commission / Design Review Committee Review:

The project is not subject to review by the Landmarks Preservation Commission because it does not propose the demolition of a nonresidential building. The project is not subject to review by the Design Review Committee because it is located in a residential district that is not subject to design review, or in a commercial or manufacturing district.

V. Issues and Analysis

A. CEQA Approach and Recommendation

It is staff's recommendation that the project is exempt from the provisions of CEQA pursuant to CEQA Guidelines Section 15303 ("New Construction or Conversion of Small Structures"). The proposed project is consistent with the example projects listed under this categorical exemption and is below the size threshold. In addition, none of the exceptions to eligibility for a categorical exemption as listed under CEQA Guidelines Section 15300.2, apply to the project:

1. The project is currently developed/characterized as developed by the California Natural Diversity Database;¹ therefore, it is not located in an environmentally sensitive area;
2. The cumulative impact of successive projects of the same type in the same place, over time would not be significant;
3. There are no "unusual circumstances" at the project site that would result in significant environmental effects;
4. There are no eligible or designated scenic highways within the City of Berkeley;² therefore, the project site is not in view of a state scenic highway;
5. The site is not included on a list compiled pursuant to Government Code Section 65962.5;³ and
6. The project would not result in a substantial adverse change in the significance of a

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

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

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

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January 9, 2025

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historical resource.

The CEQA exemption determination is made by ZAB, as the decision-making body.

B. Site Survey

The original site survey prepared and stamped by Moran Engineering and dated November 16, 2020 contains a note indicating that the exact location of the property boundaries shown on the survey could vary up to five feet, due to significant historic land motion in the area.⁴ Due to the uncertainty of the property boundary locations on the survey, staff was unable to review the project for compliance with district development standards. Staff requested that the survey be revised and the boundary lines confirmed.

The applicant submitted a revised survey prepared by Moran Engineering, dated October 10, 2024, that confirmed the accuracy of property boundaries to within an inch, based on three site survey monuments.⁵ (See Attachment 2, Project Plans, Sheet A13.) The Public Works Department and Building and Safety Division reviewed the revised survey and confirmed that it meets surveying standards. Staff reviewed the project design with the revised survey and determined the project is in compliance with applicable development standards.

C. General Non-Detriment Finding:

BMC Section 23.406.040(E) "Findings for Approval" establishes that before the ZAB approves an application for a Use Permit, it must find that the project 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.

Staff recommends that the ZAB find that these potential impacts are not detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood, for the reasons outlined below.

1. Shadows: Shadow studies submitted by the applicant documented sun angles at different times throughout the day during the summer and winter solstice. The studies indicate that new shadows would affect the following property:

- 1044 Keith Avenue (west of the project site): New shadows would be cast two hours after sunrise during the summer solstice onto the windows of two of the

⁴ The Boundary Note on the original survey reads: "Due to significant land motion in this area, it is not possible to establish the property boundary with certainty. The boundary shown could vary based on the consideration of alternate survey reference points. This variance is very likely on the order of 5.0 feet or more in magnitude."

⁵ The Boundary Note on the October 10, 2024 revised survey reads: "This property boundary shown is based on the survey monuments as detailed hereon. These three monuments fit together within an inch"

bedrooms and bathrooms, kitchen, and living room (Attachment 2, Project Plans, Sheet A17).

Although the project would create new shadows on neighboring residences, the projected impacts would only occur during certain times of the day and limited times of the year. The shadow impacts from the project on adjacent residential uses would be reasonable and not detrimental.

2. Air: The construction of the new residence would be consistent with the existing development pattern and building-to-building separation (air criterion) in this R-1H zoned neighborhood. The proposed residence complies with the 20-foot front setback and 5-foot side setbacks. However, the rear building wall would encroach 5 feet into the required 20-foot rear setback. This encroachment is proposed to position the residence on the flatter portion of the lot, accommodating site conditions while maintaining appropriate separation from neighboring residences.
3. Privacy: The proposed residence would result in reduced setbacks from the rear property line, and complies with the other required minimum setbacks. A rear primary bedroom with an attached deck and new windows and doors openings is proposed on the second story. The second-story deck and openings would not result in privacy concerns onto the abutting properties. The resident at the adjacent property to the south (1111 High Court), has expressed privacy concerns to the applicant. In response, the applicant has proposed improvements to address these concerns, including the installation of a fence that measures over 6 feet tall along the eastern and southern lot lines, as well as the planting of screening trees along the southeastern portion of the property to screen views (Attachment 2, Project Plans, Sheet A1). Staff believes the proposed dwelling would not be detrimental regarding privacy.
4. Views: The proposed project would not result in obstruction of a View Corridor ⁶ as defined in BMC Section 23.502 (Glossary). As described above under Project Settings, the neighborhood hills generally slope downwards from the northeast to the southwest and provide primary views westward towards the San Francisco Bay. However, the view to the San Francisco Bay in this location is partially obstructed by existing structures and mature trees.
The proposed two-story residence would replace the existing one-story residence. The overall height would increase by eight feet. Story poles installed in August 2024, revealed that the views of the San Francisco Bay from at least one residence, 1050 Keith Avenue, may be marginally diminished due to the height and width of the proposed two-story residence. Therefore, the proposed dwelling would not result in a significant impact to views in the area.
5. 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

⁶ *View Corridor*. A significant view of the Berkeley Hills, San Francisco Bay, Mt. Tamalpais, or a significant landmark such as the Campanile, Golden Gate Bridge, and Alcatraz Island or any other significant vista that substantially enhances the value and enjoyment of real property.

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property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.

D. Demolition of Residential Unit

Per BMC Section 23.326.030(B), the ZAB approves a Use Permit to eliminate or demolish one or more Residential Units, upon finding that the demolition is necessary to permit construction approved pursuant to this Chapter of at least the same number of Dwelling Units.

The proposed project would replace an existing dwelling unit with a newly constructed dwelling unit. The Rent Stabilization Board confirmed that the existing residence has not been removed from the rental market under the Ellis Act in the past five years and there is no evidence of harassment or any threatened or actual illegal eviction over the past three years. Furthermore, the dwelling proposed for demolition was vacated in July of 2024, and is not subject to tenant relocation provisions under BMC Chapter 23.326, as it does not involve the displacement of any tenants.

E. Off-Street Parking Space in Front Setback

Per BMC Section 23.322.080(E)(2), to approve an AUP for unenclosed parking in the front setback, ZAB must find that the space meets all applicable requirements in this section.

The proposed project would enlarge the 12-foot wide driveway and construct a 16 ¼ foot wide by 18-foot long concrete parking pad within the required front setback, in order to minimize additional site grading. A 2-foot-wide by 18-foot long landscaped buffer would be included to provide visual screening. In addition, nearby residences along the southern frontages off Keith Avenue also have off-street parking within in the front setback due to restrictive site conditions. After review of the proposed parking, the City's Traffic Engineer determined that the proposed parking pad, driveway approach, and increased curb cut do not present any traffic engineering concerns. The proposed parking location would meet all parking layout and design requirements in BMC Section 23.322.080.

F. Reduced rear building setback in the H Overlay Zone

Per BMC Section 23.210.020(C)(4), the minimum required main building lot line setbacks in the underlying base district can be reduced upon finding that the reduction is consistent with BMC 23.210.020(A), Purpose of the Hillside Overlay.

The purpose of the Hillside Overlay district is to:

- Implement General Plan policies for hillside development;
- Protect the safety and health of residents where steep topography, unusual street conditions and proximity to the wildland-urban interface create severe risk from wildfire;
- Protect the character of Berkeley's hillside areas and their immediate environs;

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- Give reasonable protection to views yet allow appropriate development of all property;
- Allow modifications in standard setback and height requirements when justified because of steep topography, irregular lot pattern, unusual street conditions, or other special aspects of the hillside areas.

The project proposes to construct a two-story residential structure that would encroach 5 feet into the required 20-foot required rear setback. The site has an irregular shape and features a 20 ft. drop from the street elevation to a level area. These site characteristics limit the building and off-street parking placement. The proposed residence is sited on the relatively flat area of the site, while the parking pad is located within the front setback, at the street, eliminating the need for a steep driveway and associated costs. The project design otherwise maintains setback and height requirements by limiting the height to 23.5 feet, below the 35-foot maximum and is consistent with the aesthetic and character of the Berkeley hillside area.

G. Unenclosed Accessory Structures Within A Required Lot Line Setback

Per BMC Section 23.304.070 (B), unenclosed accessory structures require an AUP if placed on the ground within a required setback.

The project proposes the installation of a new 8-foot-tall unenclosed entry trellis located on the southern end of the proposed parking pad within the required 20-foot front setback (Attachment 2, Project Plans, Sheet A8). The trellis is designed to serve as a privacy screen for the main residence, shielding the main residence from public view. Additionally, the entry trellis also provides for an access to the entry deck to access the residence from the front or northern side of the property. Its open design, scale, and wood materials align with nearby residences, ensuring compatibility with the neighborhood character.

H. Fences more than 6 ft in height and On the Lot Line

Per BMC Section 23.304.080(A), an AUP is required for fences more than 6 ft in height and on lot line or within required lot line setbacks for main building.

The project proposes a 12-foot fence along the eastern lot line, consisting of a 6-foot wood fence atop two 3-foot staggered concrete retaining walls – measuring 6 feet, that would be used for privacy screening for the main residence and the adjacent property at 1050 Keith Avenue (Figure 3). The wood fence and concrete retaining walls would not contain barbed or razor wire, sharp or jagged glass, sharp or jagged metal components, or similar hazardous materials, adhering to the construction material restrictions in BMC Section 23.304.080(C).

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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-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-16 Context:** The design and scale of new or remodeled buildings should respect the built environment in the area, particularly where the character of the built environment is largely defined by an aggregation of historically and architecturally significant buildings.
3. **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.
4. **Policy UD-33 Sustainable Design:** Promote environmentally sensitive and sustainable design in new buildings.

Staff Analysis: The proposed residence was designed to be architecturally compatible with the neighboring residences by maintaining a similar ridge height and massing with neighboring two-story residences. Additionally, the design includes Hardie board exterior siding similar to the neighboring residences. It is consistent with development standards of the Hillside Overlay Zone and the R-1H Single-Family Residential zoning district. The project would not cause substantial air, sunlight, or privacy issues for the adjacent properties, and it would be compatible with the General Plan policy to encourage housing production in the city.

VII. Recommendation

The project is consistent with the Zoning Ordinance and General Plan, and will have 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 of the CEQA Guidelines (“New Construction or Conversion of Small Structures”) and
2. **APPROVE** Use Permit #ZP2024-0014 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 December 9, 2024
3. Revised Site Survey, dated October 10, 2024
4. Neighbor Correspondences

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5. Notice of Public Hearing

Staff Planner: Waqar Shah, wshah@berkeleyca.gov, (510) 981-7469

ATTACHMENT (1)

FINDINGS AND CONDITIONS

JANUARY 9, 2025

1048 Keith Avenue

Use Permit #ZP2024-0014 to demolish a 2,760-square-foot single-family dwelling, and construct a two-story (25 feet tall), 3,600-square-foot single-family dwelling within the rear setback and parking pad in the front setback.

ZONING PERMITS REQUIRED

- Use Permit, pursuant Berkeley Municipal Code (BMC) Section 23.326.030(B)(1) to demolish a dwelling unit
- Use Permit, pursuant to BMC Section 23.202.020(A) to construct a single-family dwelling unit
- Administrative Use Permit, pursuant to BMC Section 23.210.020(C)(4), to reduce the building setbacks in the Hillside Overlay Zone
- Administrative Use Permit, pursuant to BMC Section 23.322.080(E)(2)(b), to allow unenclosed off-street parking within the front setback
- Administrative Use Permit, pursuant to BMC Section 23.304.070(C)(1) to construct an unenclosed structure (trellis) within the front setback
- Administrative Use Permit, pursuant to BMC Section 23.304.080(A), to construct a fence more than 6 ft in height on lot line

I. CEQA FINDINGS

- A. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15303 of the CEQA Guidelines (“New Construction or Conversion of Small Structures”).

II. FINDINGS FOR APPROVAL

- A. As required by Section 23.406.040(E) of the BMC, the project, under the circumstances of this particular case existing at the time at which the application is granted, will not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City for the reasons outlined below:

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1. Shadows: Shadow studies submitted by the applicant documented sun angles at different times throughout the day, and during the summer and winter solstice. Although the project will create new shadows on neighboring residences, the projected impacts will only occur during certain times of the day at certain times of the year. Thus, the shadow impacts from the project on adjacent residences will be reasonable and not detrimental;
 2. Air: The construction of the new residence will be consistent with the existing development and building-to-building separation pattern – or air – in this R-1H zoned neighborhood. The new residence's rear building wall that encroaches into the required 20-foot rear setback is sited on the flatter portion of the lot to suit the site conditions while maintaining appropriate separation and air with neighboring residences;
 3. Privacy: A rear primary bedroom with new window, door openings and a deck are proposed on the second story. The second-story rear deck and openings will not result in privacy concerns with any neighboring residences. In addition, to mitigate any potential privacy concerns, the project will incorporate fencing along the eastern, western, and southern lot lines and screening trees along the southeastern portion of the property, ensuring adequate visual separation from neighboring properties. Thus, the proposed project will not be detrimental regarding privacy;
 4. Views: The proposed two-story residence will replace the existing one-story residence. The overall height will increase by eight feet. Although, the proposed residence will contribute to an already diminished view of the San Francisco Bay it will not completely obstruct it. Therefore, the proposed dwelling will not result in a significant impact to views in the area;
 5. 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.
- B.** Pursuant to BMC Section 23.304.070 (B), unenclosed accessory structures require an AUP if placed on the ground within a required setback.
1. The project proposes installing a new 8-foot-tall unenclosed entry trellis strategically located on the southern end of the proposed parking pad within the required 20-foot front setback.
 2. The trellis will be used as a provide access to the entry deck to the front of the proposed residence south of Keith Avenue and will be used as a privacy screen and will provide access to the entry deck to access the residence from the northern side of the property.
 3. Its open design, scale, and use of wood materials align with nearby residences, ensuring compatibility with the neighborhood character, as well as minimizes potential impacts within its location of the required front setback.

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- C. Pursuant to BMC Section 23.304.080(A), an AUP is required for fences more than 6 ft in height and on lot line or within required lot line setbacks for main building.
1. The project proposes a 12-foot fence along the eastern lot line, consisting of a 6-foot wood fence atop two 3-foot staggered concrete retaining walls – measuring 6 feet, that will be used for privacy screening for the main residence and the adjacent property at 1050 Keith Avenue.
The wood fence and concrete retaining walls will not contain barbed or razor wire, sharp or jagged glass, sharp or jagged metal components, or similar hazardous materials, adhering to the construction material restrictions in BMC Section 23.304.080(C).

III. OTHER FINDINGS FOR APPROVAL

- D. Pursuant to BMC Section 23.326.030(B), the Zoning Adjustments Board (ZAB) may approve a Use Permit to eliminate or demolish a dwelling unit only upon finding that eliminating the dwelling unit will not be materially detrimental to the housing needs and public interest of the affected neighborhood and Berkeley.
1. The proposed project will replace an existing dwelling unit with a newly constructed dwelling unit.
 2. The Rent Stabilization Board had reviewed that the existing residence has confirmed that the residence has not been removed from the rental market under the Ellis Act in the past five years, and there is no evidence of harassment or any threatened or actual illegal eviction over the past three years.
 3. The dwelling proposed for demolition was vacated in July of 2024, and is not subject to tenant relocation provisions under BMC Chapter 23.326, and it does not involve the displacement of any tenants.
- E. Per BMC Section 23.210.020(C)(4), the minimum required main building lot line setbacks in the underlying base district can be reduced upon finding that the reduction is consistent with BMC 23.210.020(A), Purpose of the Hillside Overlay.

The purpose of the Hillside Overlay district is to:

- Implement General Plan policies for hillside development;
 - Protect the safety and health of residents where steep topography, unusual street conditions and proximity to the wildland-urban interface create severe risk from wildfire;
 - Protect the character of Berkeley's hillside areas and their immediate environs;
 - Give reasonable protection to views yet allow appropriate development of all property;
 - Allow modifications in standard setback and height requirements when justified because of steep topography, irregular lot pattern, unusual street conditions, or other special aspects of the hillside areas.
1. The proposed two-story residence will be constructed and will encroach 5 feet into the required 20-foot required rear setback. The site is lot that has an irregular shape, and features a steep drop from the street down to a more level area, characteristics which limit the placement options for the residence and the parking pad.

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2. The proposed residence is sited on the relatively flat area of the site, while the parking pad is placed within the front setback, close to the street, to eliminate the need for a steep driveway, (and its associated costs).
 3. Consistent with the purpose of the Hillside Overlay district, the residence's design will allow for the structure to adhere to the aesthetic and character of the Berkeley hillside areas, through maintaining reasonable setbacks and by limiting the height to 23.5 feet, below the 35-foot maximum.
- F.** Pursuant to BMC Section 23.322.080(E)(2), no portion of an off-street parking space may be located in a required front, street side, or rear setback area unless: The Zoning Adjustments Board, in consultation with the Traffic Engineer, and the space meets all applicable requirements in this section.
1. The proposed project will enlarge the 12-foot driveway and construct a 16 1/4-foot-wide by 18-foot long two car parking pad within the required front setback, in order to minimize additional site grading.
 2. A 2-foot-wide by 18-foot long landscaped buffer will be included to provide visual screening.
 3. Residences along the southern frontages off Keith Avenue also include off-street parking within in the front setback due to limiting site conditions.
 4. The proposed parking is authorized, as it was determined by the City's Traffic Engineer that the proposed parking pad, driveway approach, and increased curb cut do not present any traffic engineering concerns.

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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.

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- 11. Address Assignment.** The applicant shall file an “Address Assignment Request Application” with the Permit Service Center (1947 Center Street) for any address change or new address associated with this Use Permit. The new address(es) shall be assigned in accordance with BMC 16.28.030, 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)

- 12. Demolition.** Demolition of the existing building cannot commence until a complete application is submitted for the replacement building. In addition, all plans presented to the City to obtain a permit to allow the demolition are subject to these conditions.
- 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 \(arcgis.com\)](#)
 - 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.

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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.

16. 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.)

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17. **Electric Vehicle (EV) Charging.** Each dwelling unit shall install a listed raceway, wiring, and load capacity to allow for future Level 2 (40 amp) plug-in electric vehicle (EV) charging system installation, or any more stringent EV charging requirements as specified by the Berkeley Green Code (BMC Chapter 19.37). Readiness for EV charging and EV charging station installations 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's Recycling Program Manager, Julia A. Heath, at jheath@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. **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.
23. **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.

1048 KEITH AVENUE - USE PERMIT #ZP2024-0014

FINDINGS & CONDITIONS

January 9, 2025

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- 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.

24. 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.

1048 KEITH AVENUE - USE PERMIT #ZP2024-0014

FINDINGS & CONDITIONS

January 9, 2025

Page 12 of 16

- 25. 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.
- 26. 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.)
- 27. Avoid Disturbance of Nesting Birds.** Initial site disturbance activities, including vegetation and concrete removal, shall be prohibited during the general avian nesting season (February 1 to August 30), if feasible. If nesting season avoidance is not feasible, the applicant shall retain a qualified biologist to conduct a preconstruction nesting bird survey to determine the presence/absence, location, and activity status of any active nests on or adjacent to the project site. The extent of the survey buffer area surrounding the site shall be established by the qualified biologist to ensure that direct and indirect effects to nesting birds are avoided. To avoid the destruction of active nests and to protect the reproductive success of birds protected by the MBTA and CFGC, nesting bird surveys shall be performed not more than 14 days prior to scheduled vegetation and concrete removal. In the event that active nests are discovered, a suitable buffer (typically a minimum buffer of 50 feet for passerines and a minimum buffer of 250 feet for raptors) shall be established around such active nests and no construction shall be allowed inside the buffer areas until a qualified biologist has determined that the nest is no longer active (e.g., the nestlings have fledged and are no longer reliant on the nest). No ground-disturbing activities shall occur within this buffer until the qualified biologist has confirmed that breeding/nesting is completed and the young have fledged the nest. Nesting bird surveys are not required for construction activities occurring between August 31 and January 31.
- 28. Archaeological Resources (Ongoing throughout demolition, grading, and/or construction).** Pursuant to CEQA Guidelines section 15064.5(f), "provisions for historical or unique archaeological resources accidentally discovered during construction" should be instituted. Therefore:
- A. In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist, historian or paleontologist to assess the significance of the find.
 - B. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified professional 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.

1048 KEITH AVENUE - USE PERMIT #ZP2024-0014

FINDINGS & CONDITIONS

January 9, 2025

Page 13 of 16

- C. In considering any suggested measure proposed by the qualified professional, the project applicant shall determine whether avoidance is necessary or feasible in light of factors such as the uniqueness of the find, project design, costs, and other considerations.
- D. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while mitigation measures for cultural resources is carried out.
- E. If significant materials are recovered, the qualified professional shall prepare a report on the findings for submittal to the Northwest Information Center.

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

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

31. 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.

32. 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:

1048 KEITH AVENUE - USE PERMIT #ZP2024-0014

FINDINGS & CONDITIONS

January 9, 2025

Page 14 of 16

- A. The project plans shall identify and show site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants to the City's storm drainage system, regardless of season or weather conditions.
- B. Trash enclosures and/or recycling area(s) shall be covered; no other area shall drain onto this area. Drains in any wash or process area shall not discharge to the storm drain system; these drains should connect to the sanitary sewer. Applicant shall contact the City of Berkeley and EBMUD for specific connection and discharge requirements. Discharges to the sanitary sewer are subject to the review, approval and conditions of the City of Berkeley and EBMUD.
- C. Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to stormwater pollution. Where feasible, landscaping should be designed and operated to treat runoff. When and where possible, xeriscape and drought tolerant plants shall be incorporated into new development plans.
- D. Design, location and maintenance requirements and schedules for any stormwater quality treatment structural controls shall be submitted to the Department of Public Works for review with respect to reasonable adequacy of the controls. The review does not relieve the property owner of the responsibility for complying with BMC Chapter 17.20 and future revisions to the City's overall stormwater quality ordinances. This review shall be shall be conducted prior to the issuance of a Building Permit.
- E. All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.
- F. All on-site storm drain inlets/catch basins must be cleaned at least once a year immediately prior to the rainy season. The property owner shall be responsible for all costs associated with proper operation and maintenance of all storm drainage facilities (pipelines, inlets, catch basins, outlets, etc.) associated with the project, unless the City accepts such facilities by Council action. Additional cleaning may be required by City of Berkeley Public Works Engineering Dept.
- G. All on-site storm drain inlets must be labeled "No Dumping – Drains to Bay" or equivalent using methods approved by the City.
- H. Most washing and/or steam cleaning must be done at an appropriately equipped facility that drains to the sanitary sewer. Any outdoor washing or pressure washing must be managed in such a way that there is no discharge or soaps or other pollutants to the storm drain. Sanitary connections are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
- I. All loading areas must be designated to minimize "run-on" or runoff from the area. Accumulated waste water that may contribute to the pollution of stormwater must be drained to the sanitary sewer or intercepted and pretreated prior to discharge to the storm drain system. The property owner shall ensure that BMPs are implemented to prevent potential stormwater pollution. These BMPs shall include, but are not limited to, a regular program of sweeping, litter control and spill cleanup.
- J. Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry to the storm drain system. If any cleaning agent or degreaser is used, wash water shall not discharge to the storm drains; wash waters should be collected and discharged to the

1048 KEITH AVENUE - USE PERMIT #ZP2024-0014

FINDINGS & CONDITIONS

January 9, 2025

Page 15 of 16

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.** 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.
- L.** 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.
- 33. 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.
- 34. Public Works.** All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter thick and secured to the ground.
- 35. Public Works.** The applicant shall ensure that all excavation accounts for surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.
- 36. Public Works.** The project sponsor shall maintain sandbags or other devices around the site perimeter during the rainy season to prevent on-site soils from being washed off-site and into the storm drain system. The project sponsor shall comply with all City ordinances regarding construction and grading.
- 37. Public Works.** Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season the applicant shall obtain approval of an erosion prevention plan by the Building and Safety Division and the Public Works Department. The applicant shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.
- 38. Public Works.** The removal or obstruction of any fire hydrant shall require the submission of a plan to the City's Public Works Department for the relocation of the fire hydrant during construction.
- 39. Public Works / 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:

- 40. Compliance with Conditions** The project shall conform to the plans and statements in the Use Permit. The developer is responsible for providing sufficient evidence to demonstrate compliance with the requirements throughout the implementation of this Use Permit.

1048 KEITH AVENUE - USE PERMIT #ZP2024-0014

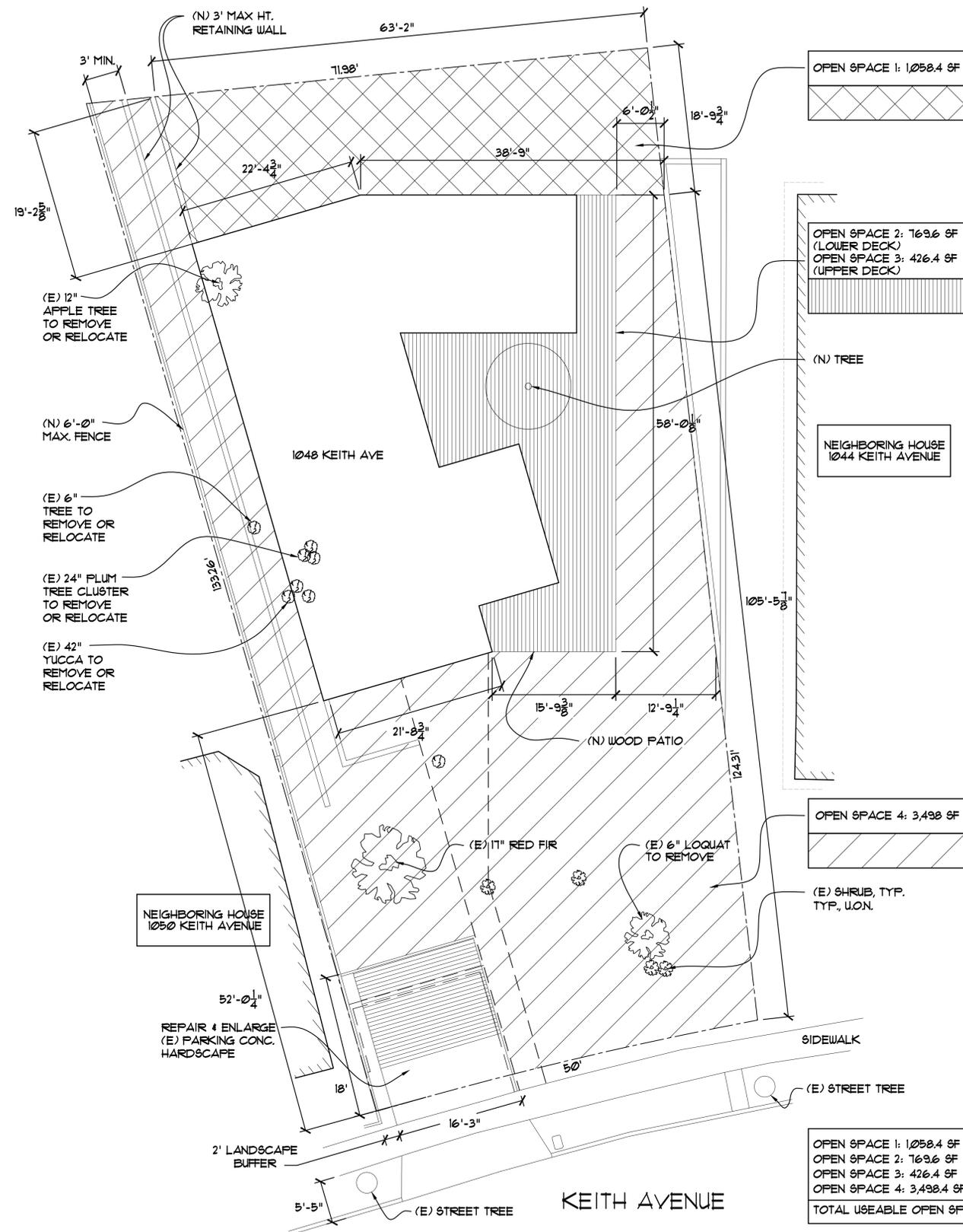
FINDINGS & CONDITIONS

January 9, 2025

Page 16 of 16

At All Times:

41. **Compliance with Approved Plan.** The project shall conform to the plans and statements in the Use Permit.
42. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated December 9, 2024.
43. **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.
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 Electric Vehicle (EV) Charging.** Required Level 2 charging stations and low power Level 2 EV charging receptacles, as specified by the Berkeley Green Code (BMC Chapter 19.37) shall be maintained in good working condition and made available for building resident use. (Project required to meet applicable code at time of building permit application, if different from above.)

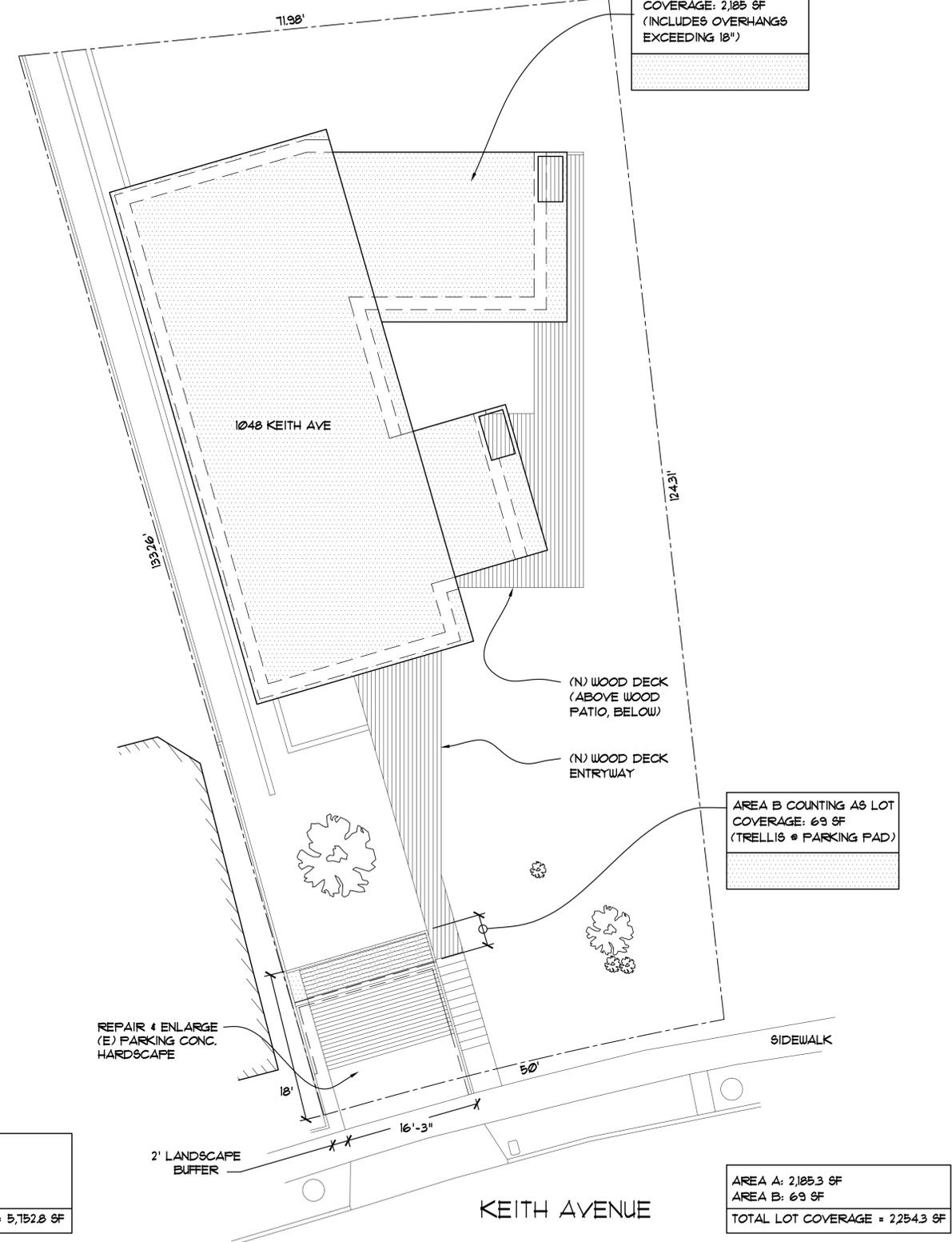


LANDSCAPE & USEABLE OPEN SPACE PLAN

1/8" = 1'-0"



USEABLE OPEN SPACE DEFINED PER BMC CHAPTER 23.502:
OUTDOOR SPACE, INCLUDING NATURAL AND LANDSCAPED GROUND AREAS, POOLS, PATIOS, DECKS
& BALCONIES DESIGNED FOR ACTIVE OR PASSIVE RECREATIONAL USE AND WHICH IS ACCESSIBLE
TO THE OCCUPANTS OF A BUILDING ON THE SAME LOT.



LOT COVERAGE DIAGRAM

1/8" = 1'-0"



LOT COVERAGE DEFINED PER BMC CHAPTER 23.502:
ALL THE AREA OF A LOT, AS PROJECTED ON A HORIZONTAL PLANE, WHICH IS:
1. ENCLOSED BY THE EXTERIOR WALLS OF BUILDINGS OR ENCLOSED ACCESSORY STRUCTURES, OR
2. COVERED BY DECKS, PORCHES, STAIRS AND/OR LANDINGS WHICH COVER AN ENCLOSED SPACE OR PAVED GROUND AREA.

REVISIONS	BY

LINDSAY NEWMAN, PE
CIVIL ENGINEER
P. 313.615.9400
newmanl26@gmail.com

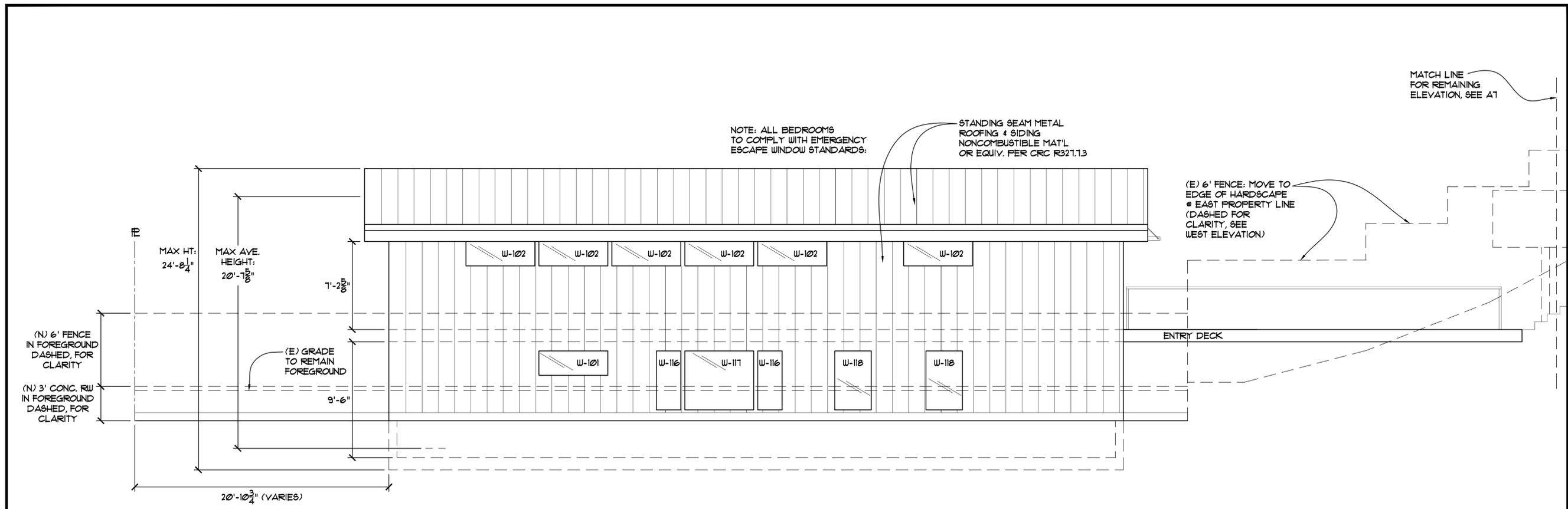


NEW SINGLE-FAMILY RESIDENCE
1048 KEITH AVENUE
BERKELEY, CA 94708

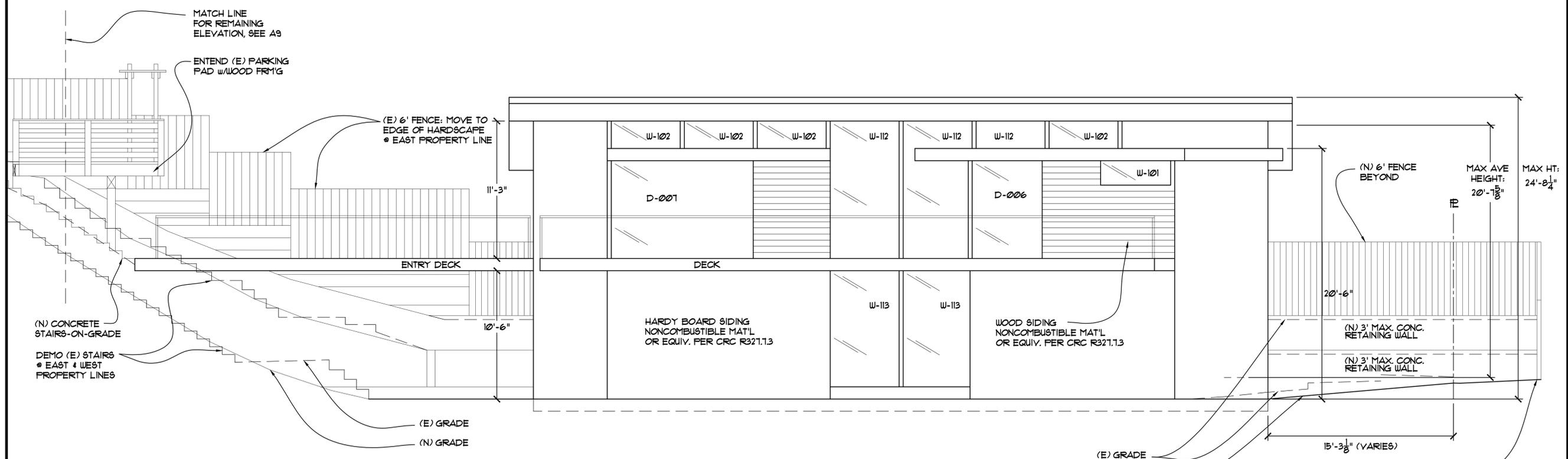
USE PERMIT PLANS - 1048 KEITH
LANDSCAPE & USEABLE OPEN SPACE
PLAN & LOT COVERAGE DIAGRAM

DATE: 12.03.24
JOB NO: LN-1048
SCALE: 1/4" = 1'-0"
DRAWN: LN

A2
OF 18 SHEETS



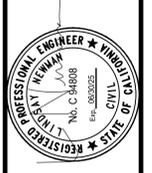
PROPOSED EAST ELEVATION
1/4" = 1'-0"



PROPOSED WEST ELEVATION
1/4" = 1'-0"

REVISIONS	BY

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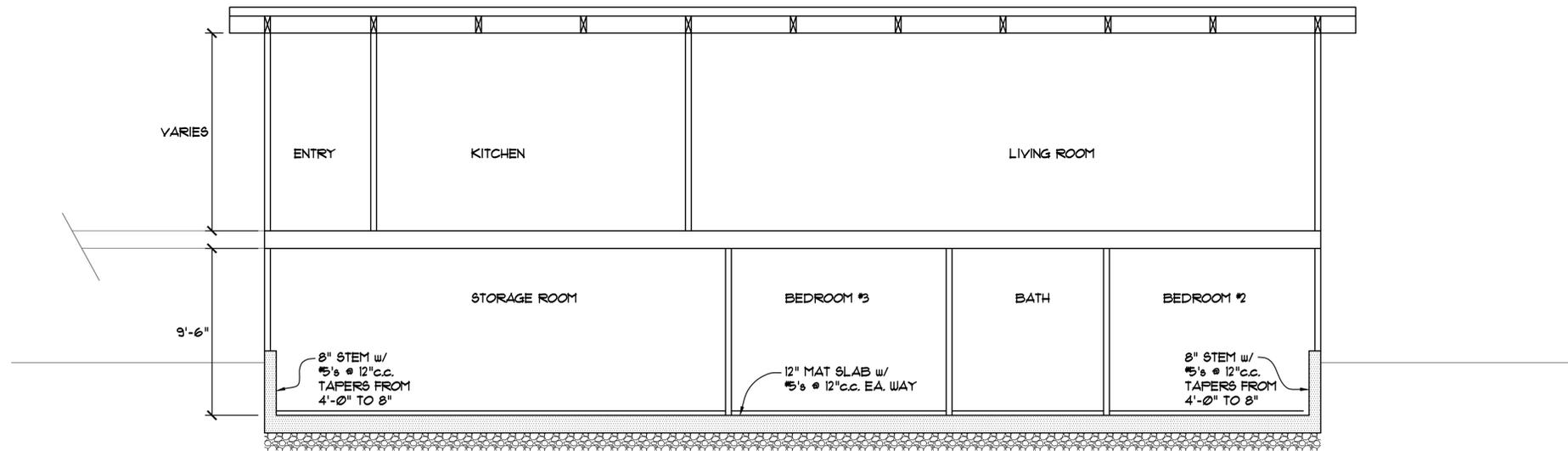


NEW SINGLE-FAMILY RESIDENCE
1048 KEITH AVENUE
BERKELEY, CA 94708

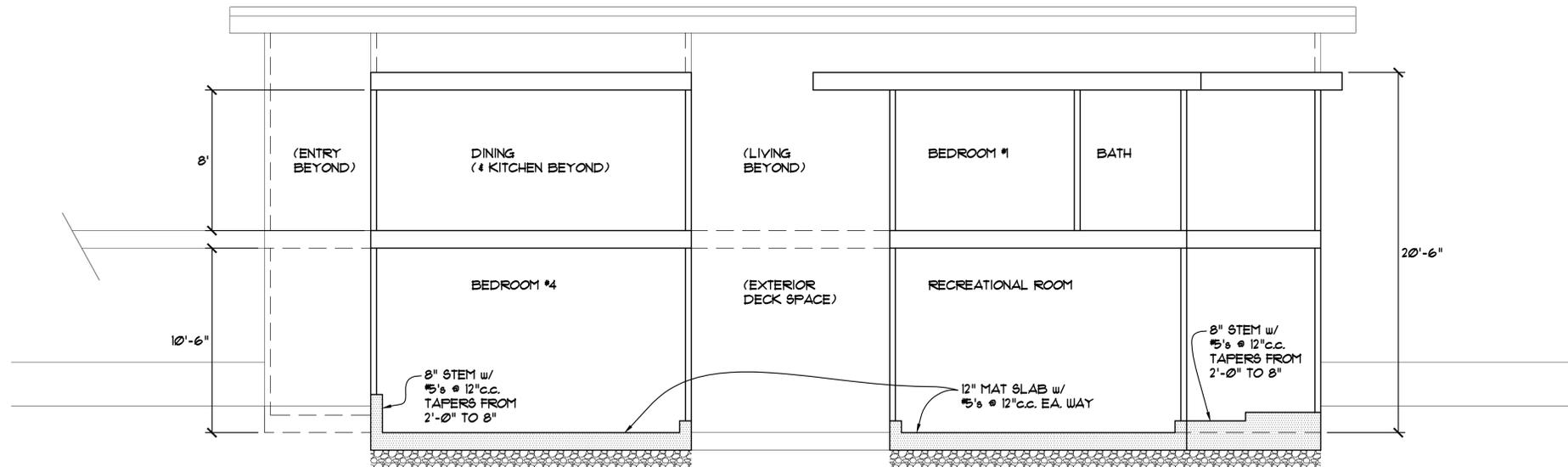
USE PERMIT PLANS - 1048 KEITH
PROPOSED EAST & WEST
ELEVATIONS

DATE: 12.03.24
JOB NO: LN-1048
SCALE: 1/4" = 1'-0"

DRAWN: LN
AS
OF 18 SHEETS



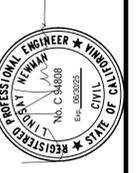
PROPOSED LONGITUDINAL SECTION @ MAIN HOUSE - NORTH TO SOUTH



PROPOSED LONGITUDINAL SECTION @ POP-OUTS - NORTH TO SOUTH

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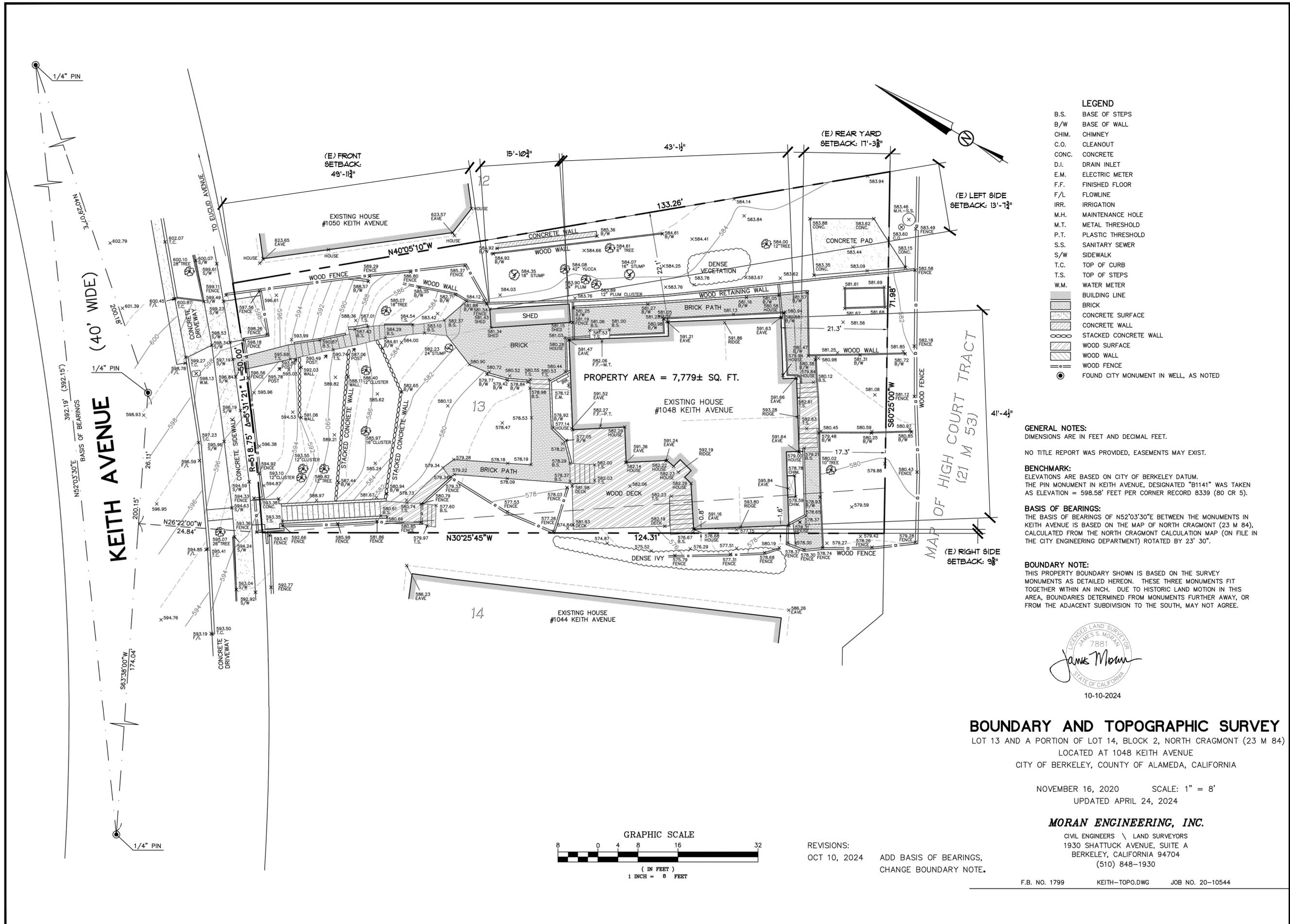


NEW SINGLE-FAMILY RESIDENCE
1048 KEITH AVENUE
BERKELEY, CA 94708

USE PERMIT PLANS - 1048 KEITH
PROPOSED LONGITUDINAL
SECTIONS

DATE: 12/23/24
JOB NO: LN-1048
SCALE: 1/4"=1'-0"
DRAWN: LN





BOUNDARY AND TOPOGRAPHIC SURVEY
LOT 13 AND A PORTION OF LOT 14, BLOCK 2, NORTH CRAGMONT (23 M 84)
LOCATED AT 1048 KEITH AVENUE
CITY OF BERKELEY, COUNTY OF ALAMEDA, CALIFORNIA

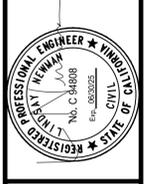
NOVEMBER 16, 2020 SCALE: 1" = 8'
UPDATED APRIL 24, 2024

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

F.B. NO. 1799 KEITH-TOPO.DWG JOB NO. 20-10544

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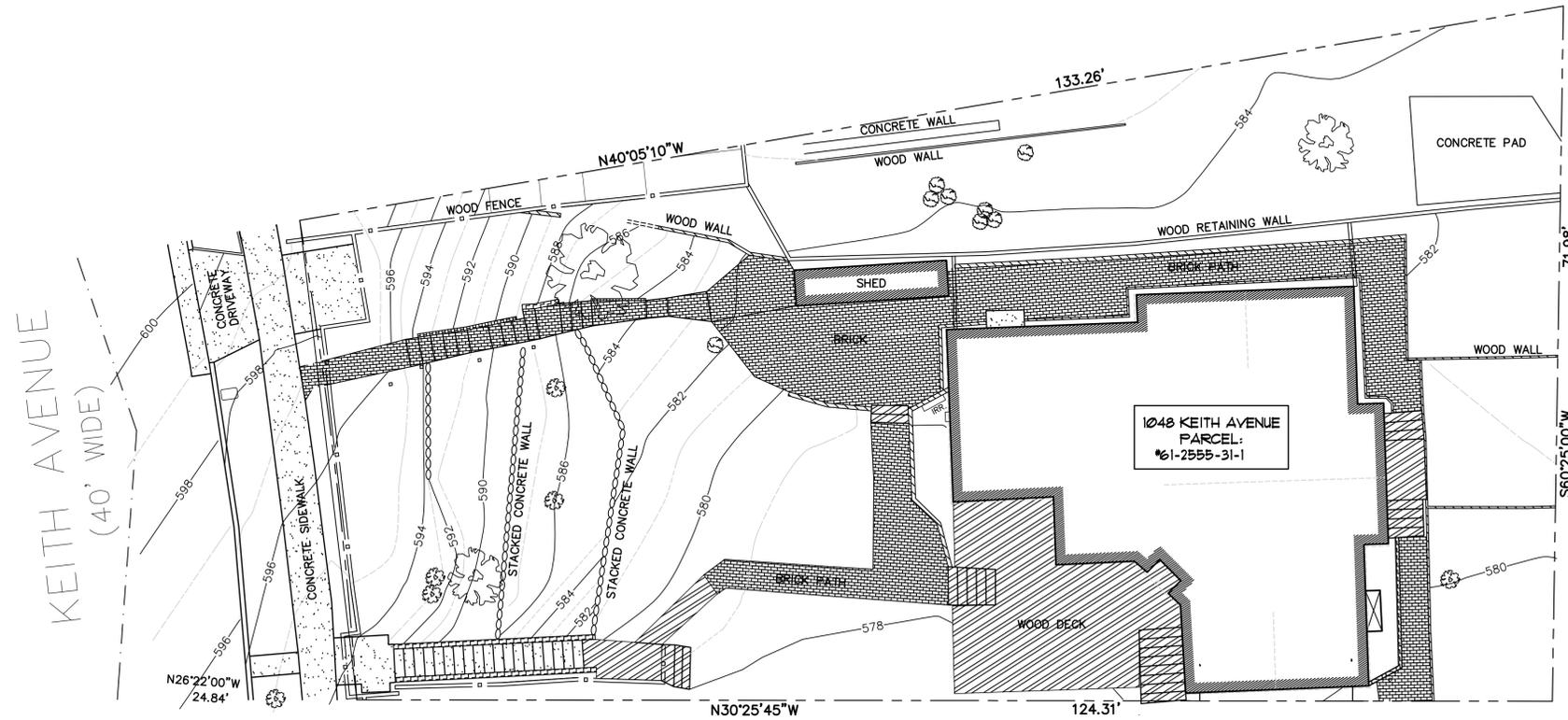


NEW SINGLE-FAMILY RESIDENCE
1048 KEITH AVENUE
BERKELEY, CA 94708

USE PERMIT PLANS - 1048 KEITH
BOUNDARY &
TOPOGRAPHIC SURVEY

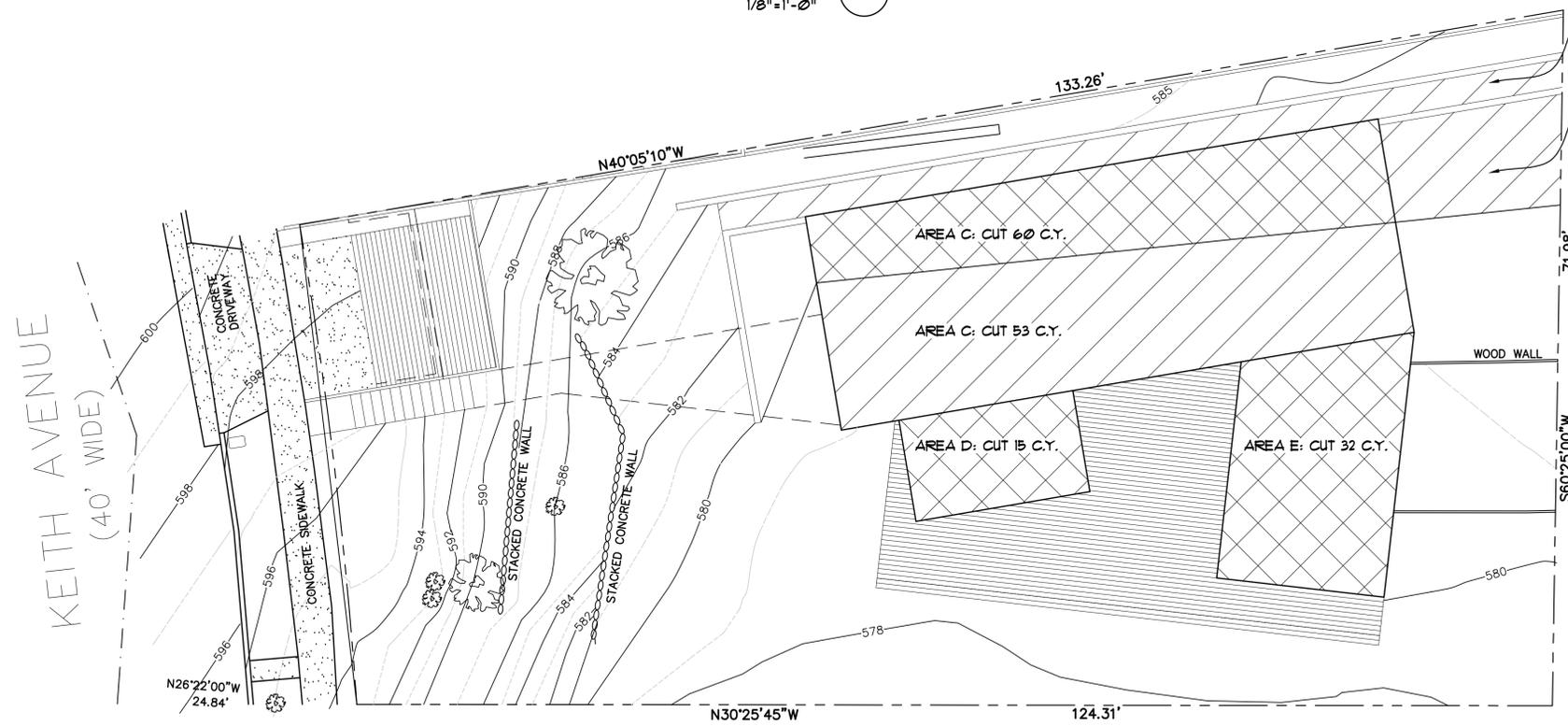
DATE: 12.09.24
JOB NO: LN-1048
SCALE: 1/4"=1'-0"
DRAWN: LN

A13
OF 18 SHEETS



EXISTING GRADING PLAN

1/8" = 1'-0"



PROPOSED GRADING PLAN

1/8" = 1'-0"

AREA A: CUT 48 C.Y.

AREA B: CUT 20 C.Y.

AREA C: CUT 60 C.Y.

AREA C: CUT 53 C.Y.

AREA D: CUT 15 C.Y.

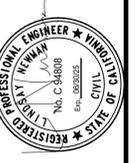
AREA E: CUT 32 C.Y.

NOTE: FOR ELEVATION VIEW OF CUTS, SEE A6

TOTAL CUT: 228 C.Y.

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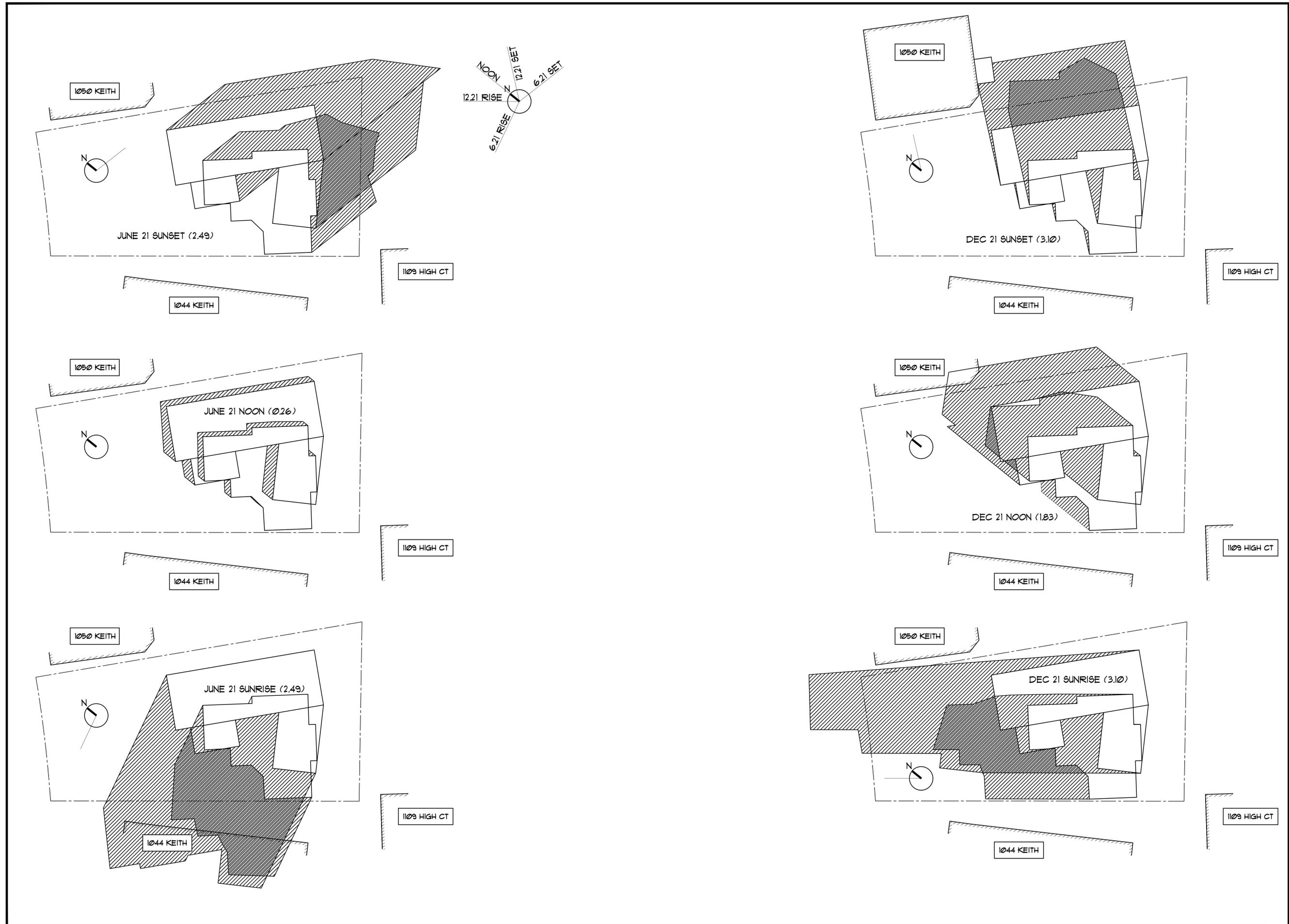


NEW SINGLE-FAMILY RESIDENCE
1048 KEITH AVENUE
BERKELEY, CA 94708

USE PERMIT PLANS - 1048 KEITH
GRADING PLAN

DATE: 12.03.24
JOB NO: LN-1048
SCALE: 1/4" = 1'-0"
DRAWN: LN





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NEW SINGLE-FAMILY RESIDENCE
1048 KEITH AVENUE
BERKELEY, CA 94708

USE PERMIT PLANS - 1048 KEITH
SHADOW STUDY OF EXISTING
& PROPOSED DWELLING

DATE: 12.03.24
JOB NO: LN-1048
SCALE: 1/4"=1'-0"
DRAWN: LN

A18
OF 18 SHEETS

Jacob, Melinda

From: Zoning Adjustments Board (ZAB)
Subject: FW: Use Permit application #ZP2024-0014 1048 Keith Agenda item for 10/10

From: John Doppke <john@doppke.com>
Sent: Wednesday, October 9, 2024 7:13 PM
To: Zoning Adjustments Board (ZAB) <Planningzab@berkeleyca.gov>
Subject: Use Permit application #ZP2024-0014 1048 Keith Agenda item for 10/10

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.

Hello,

I live at 1051 Keith Ave, and wanted to add a comment to the permit application for 1048 Keith:

Like a number of my neighbors I've spoken to, I'm very concerned by the prospect of my neighbors trying to claim land from one another in a well-known landslide zone. I have no interest in being the judge of who should own the disputed area—that's not my job. But if this process continues, it threatens to upend our whole street, leading to a chain of neighbors suing one another only to wind up with the same amount of land, just a few feet up the hill. That seems like madness to me, and not the spirit in which we've lived alongside each other for years.

I'm also disturbed by the fact that the permit applicant has already destroyed property in the disputed area—the fence, an unused chicken coop, and I believe some trees. It's possible that those actions were provoked; I don't claim to know everything that has transpired. But regardless, I think it's only fair to block any further permanent actions, including building in the disputed area, until the dispute has been resolved.

Thank you,
John Doppke

Jacob, Melinda

From: Zoning Adjustments Board (ZAB)
Subject: FW: 1048 Keith Avenue
Attachments: Greetings Berkley ZAP.pdf

From: Darius Gangei <dariusgangei@gmail.com>
Sent: Monday, September 23, 2024 11:08 PM
To: Zoning Adjustments Board (ZAB) <Planningzab@berkeleyca.gov>
Subject: 1048 Keith Avenue

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.

Hi there, Zoning Adjustment Board,

I've attached our letter to add to the September 26th Meeting for the ZP2024-0014 permit. We are objecting to the permit and will be there in person to share our grievances.

Sincerely,

Darius Gangei | Lighting Designer & Architectural Designer
dariusgangei@gmail.com
Mobile Line (415) 706-3902

Please keep in mind that the contents of this e-mail and any attachments are private, confidential, and intended for the recipient. They may contain information subject to legal privilege and protected by the Electronic Communications Privacy Act, 18 U.S.C. §2510 et seq. Please also be sure to check any attachments for viruses before opening them. Thank you for your cooperation and understanding.

Greetings Berkeley Zoning Adjustment Board,

My name is Darius Gangei, Son of the Gangei Family residing at 1050 Keith since 2001. I Graduated from my Alma mater, Berkeley High School, in 2011. Growing up in a community such as Berkeley has been a blessing.

Many of you may already know that Berkeley Hills is in a Fault Zone and Landslide Zone and that movement of the land beneath our homes has caused Fences, Yards, and entire buildings to slip downhill, causing each neighbor's historically identified property corners to encroach into the neighbors and vice versa. Most good neighbors mitigate conflict by accepting the status quo. Lose some ground on the uphill side and gain some ground on the downhill side. Some neighbors wish to fight the status quo, keep their gained downhill ground, and take back land from their uphill neighbor. This is what is happening to my family.

On 9/24/2019, the Newman/ Kainz Family residing at 1044 Keith bought the next uphill home, 1048 Keith, from Peter and Cyndi Berck, which abuts 1050 Keith uphill from it. On 11/16/20 Mr. Kainz hired Moran Engineering to perform a survey of 1048 Keith, the survey showed that 20 feet of land being used at 1050 Keith for the previous 23 years, fence line, Mature 50+ year-old apple trees were inside of 1048 Keith's property lines. Subsequently, they developed a plan to Demolish the existing home at 1048 Keith and build a new 2-story house in a new location, requiring the demolition and construction of a retaining wall in what is currently my family's backyard. All are based on a survey where the surveyor states that the survey is not reliable by 5 or MORE feet. see (Exhibit A. and B).

Rather than go through the legal route to obtain approval and mutual agreement, on 4/7/24, Newman/ Kainz CUT DOWN my family's fence himself with a power saw. My family awoke to this invasion and called the police, but the police did nothing. Kainz ignored cease-and-desist letters and in-person pleas to stop as he used powered tools to clear-cut the land, rip out trees, tear down chicken coops, and remove pet grave markers to erase their existence. The invasion, harassment, and destruction has been nearly everyday since. Even as I write this letter they are creating a hostile environment in the neighborhood. My family is fearful to go into their own yard.

Neighbors have experienced and some have even called the cops as they witness the harassment and have been there to condole us as this invasion happens on a daily basis. As it states in the Berkeley city ordinance no noise on weekends before 9am but Mr. Kainz starts at 7am to remind us and the whole neighborhood of their presence while abusing the rights of the cease-and-desist, lawsuit and lis pendens filed against the property.

Multiple conversations have taken place since October of 2023 Bahram Gangei and Erica Eagle have objected in person, over email and on the phone dating back before the community outreach (Exhibit D) that stated we have not been informed and that a letter was sent certified to avoid our objection to their plans for submittal. We had tried the mediation through the city personal in recommendation from both parties but no resolution or agreement could be reached.

We ask you the Zoning Adjustment Board to halt all permit progress until a resolution in the courts can be reached.

Exhibit A.

BOUNDARY NOTE: DUE TO SIGNIFICANT LAND MOTION IN THIS AREA, IT IS NOT POSSIBLE TO ESTABLISH THE PROPERTY BOUNDARY WITH CERTAINTY. THE BOUNDARY SHOWN COULD VARY BASED ON THE CONSIDERATION OF ALTERNATE SURVEY REFERENCE POINTS. THIS VARIANCE IS VERY LIKELY [SIC] ON THE ORDER OF 5.0' OR MORE IN MAGNITUDE.

Exhibit B.

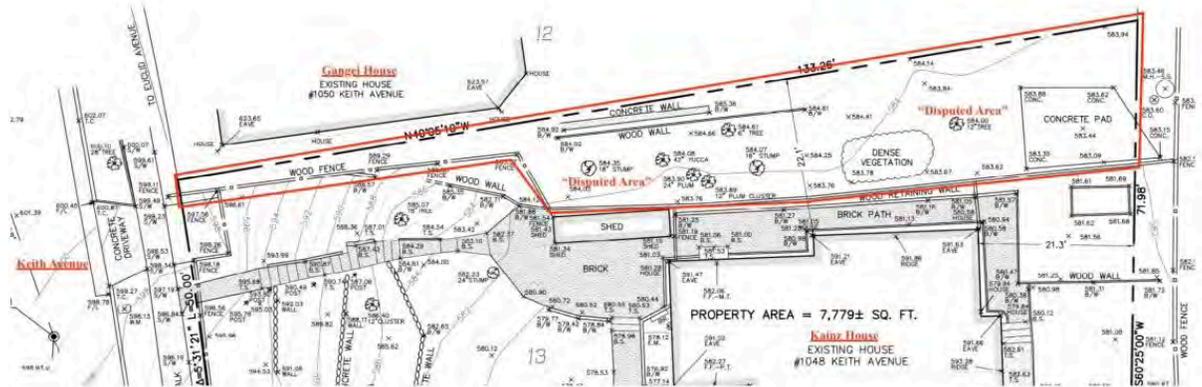


Exhibit C. A cascade of encroachments 1058 > 1056 > 1054 > 1050 > 1048 > 1044 > 1042

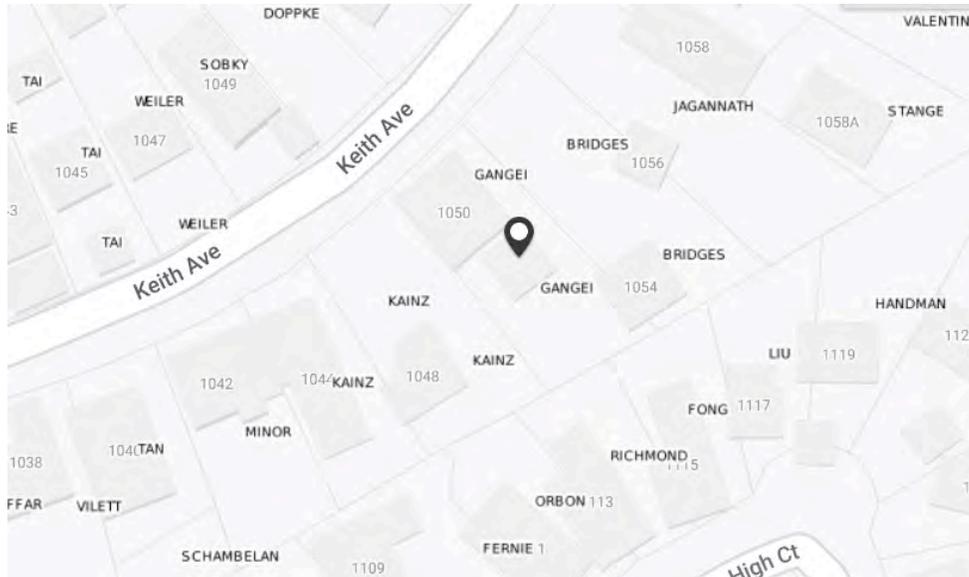


Exhibit D.

I have reviewed plans at 1048 Keith Ave for a proposed 2-story single family dwelling.

NAME (PRINTED)	SIGNATURE	ADDRESS	RENTER OR OWNER	HAVE NO OBJECTIONS	HAVE OBJECTIONS (STATE BRIEFLY)	HAVE NO COMMENT
LINDSAY NEWMAN	<i>L. Newman</i>	1044 KEITH AVE	OWNER	✓		✓
Lisa Rose	<i>Lisa Rose</i>	1047 KEITH AVE	OWNER	✓		
<see below>		1049 KEITH AVE				
<see below>		1050 KEITH AVE				
<see below>		1051 KEITH AVE				
CHRIS FERRE	<i>Chris Ferre</i>	1109 HIGH CT	owner	✓		✓
Margen Bessie	<i>Margen Bessie</i>	1111 HIGH CT	owner			✓
Ellie Richmond	<i>Ellie Richmond</i>	1113 HIGH CT	owner	✓		

→ Not home 11/9/24 or 11/10/24. Stopped by 3 times each. sent by certified mail 11/11/24 (see receipts)

From: [Bahram Gangei](#)
To: [Shah, Waqar](#)
Subject: RE: ZAB - Use Permit#ZP2024-0014 - 1048 Keith Ave. Berkeley
Date: Tuesday, November 19, 2024 5:52:31 PM
Attachments: [image002.png](#)

Hi Mr. Shah,

The Newman family specially Joachim, has become more aggressive in their conduct being emboldened by the city allowing them to put the story poles in a disputed area. On a daily basis they destroy our trees/plants and leave the debris/trash scattered on our property.

Please ask the Newman family to remove the story poles from the disputed area until it is mitigated either amicably as it should be or with the lawsuit.

He came close to me this afternoon on several occasions while cleaning the grounds in my own yard and shouted at me and my gardner and proceeded to block me from walking to my back shed and followed me for minutes not giving me an inch of space. He came back with a pair of loppers while continuing to get dangerously close and proceeded to grab a chair and gaze into our yard for 2 hours.

This is just one example of why my wife at this moment does not feel safe living in this environment, forcing her to spend her time elsewhere causing extreme emotional distress to my family.

Our neighbors are very concerned with this unsafe condition and the implications it may cause.

We appreciate your support to resolve this issue amicably and hope you can support in providing peace for my family and the greater Keith Ave community.

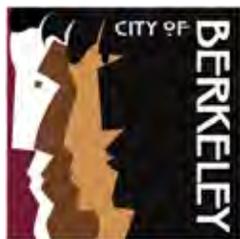
Best Regards,
Bahram Gangei.

On 11/12/2024 4:55 PM PST Shah, Waqar <wshah@berkeleyca.gov> wrote:

Hi Bahram—Thank you for your email. At this time, it is still pending.

Best,

Waqar



Waqar Shah (he/him)

Associate Planner

Planning and Development, Land Use Division

1947 Center St., 2nd Floor, Berkeley, CA 94704

Phone: (510) 981.7469

Website: www.berkeleyca.gov

Email: wshah@berkeleyca.gov .

The [Permit Service Center \(PSC\)](#), including the zoning counter, is open between 8:30 am – 2:30 pm (final check in at 2:00 pm) Monday through Thursday.

To limit the spread of COVID-19, face masks and social distancing are required when visiting our offices, and some Planning staff continue to work remotely.

All permit-related and Zoning services are available online. Please visit us [online](#) for more information.

From: BG Personal <bgangei@comcast.net>
Sent: Tuesday, November 12, 2024 1:49 PM
To: Shah, Waqar <wshah@berkeleyca.gov>
Subject: Re: ZAB - Use Permit#ZP2024-0014 - 1048 Keith Ave. Berkeley

Hi Mr. Shah,

We are anticipating the city decision on the referenced permit that will ripple effect multiple immediate neighbors property deeded area square footage with property vales and taxes etc.,

Please let me know if the city is planning to postpone the permit until the dispute is settled.

The Newman family have been emboldened to increase their aggression of threatening, stealing and damaging our properties and caught on video last Sunday in the disputed area saying there is going to be a bulldozer coming to clear 60-year old apple trees, walls etc.,

Please let us know the status of this permit while we are trying to make sence of their conduct and with City's help to amicably resolve this issue.

Best Regards,
Bahram Gangei.

Sent from my iPhone

On Oct 15, 2024, at 4:18 PM, BG Personal <bgangei@comcast.net> wrote:

Hi Mr, Shah,
Thank you for the update. Much appreciated.
My attorney and other neighbors are inquiring if the city is considering the property line dispute logistics to mitigate, in addition to the standard plan check reviews?

Thank you,
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Best,

Waqar

Waqar Shah (he/him)

Associate Planner

Planning and Development, Land Use Division

1947 Center St., 2nd Floor, Berkeley, CA 94704

Phone: (510) 981.7469

Website: www.berkeleyca.gov

-----Original Message-----

From: Bahram Gangei <bgangei@comcast.net>

Sent: Tuesday, October 15, 2024 11:55 AM

To: Zoning Adjustments Board (ZAB)
<Planningzab@berkeleyca.gov>; Garcia, Claudia
<CGarcia@berkeleyca.gov>; dariusgangei@gmail.com

Subject: ZAB - Use Permit#ZP2024-0014 - 1048 Keith Ave. Berkeley

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.

Dear ZAB Board Members & Ms. Garcia,

Attached, please find the documents and exhibits for your review in regards to the encroachment intended by the new peoject at the referenced site.

The 44-page geological report was sent to Mr. Shah with respect to the 15-page max. limit submittal to the ZAB board members.

Please let me know if you have any questions.

Best Regards,

Bahram Gangei.

Mobile: 510-612-5821

Email: bgangei@comcast.net

<attachment 1.pdf>

Jacob, Melinda

From: Zoning Adjustments Board (ZAB)
Subject: FW: ZAB - Use Permit#ZP2024-0014 - 1048 Keith Ave. Berkeley
Attachments: attachment 1.pdf

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Please let me know if you have any questions.

Best Regards,
Bahram Gangei.
Mobile: 510-612-5821
Email: bgangei@comcast.net

From: [Bahram Gangei](#)
To: [Shah, Waqar](#)
Subject: Re: ZAB - Use Permit#ZP2024-0014 - 1048 Keith Ave. Berkeley
Date: Wednesday, December 4, 2024 10:01:00 AM

Hi Mr. Shah,
Hope all is well.
Please let us know the results of the new survey as referenced in your email.
I had cancelled my appointment for a new survey based on your recommendation on 10/3 to hold off.
Please let me know if the city has a new survey that aligns with the downhill neighbors added GSF parcels.
Best Regards,
Bahram Gangei.

On 11/20/2024 2:15 PM PST BG Personal <bgangei@comcast.net> wrote:

Hi Mr. Shah,

Could you elaborate on what a revised survey means?

We and the immediate neighbors are expecting the City/Newman family to follow the deeded square footage for all properties with an equitable and fair adjustment to all parties.

Given the hearing being pushed back to January, could we please have the story poles taken down on the disputed area as they have already been reviewed by the city and will be adjusted based on the outcome of the dispute.

Also we have called the police several times and we are consistently told there is nothing to be done until the land dispute is finalized. We as a community feel the city has the power to find an equitable agreement/solution to end this dispute and prevent any further property line issues of this magnitude in the future.

Best Regards,

Bahram Gangei

On Nov 20, 2024, at 9:23 AM, Shah, Waqar <wshah@berkeleyca.gov> wrote:

Hi Bahram—Your message is received. The applicant has submitted a revised survey with the most current information and is now scheduled for the January 9th, 2024 ZAB hearing. As I work in the planning department, I am only able to address zoning-related matters and am unable to assist with neighborhood relations concerns. For those issues, please contact the police department.

Best regards,

Waqar

<image003.png>

Waqar Shah (he/him)

Associate Planner

Planning and Development, Land Use Division

1947 Center St., 2nd Floor, Berkeley, CA 94704

Phone: (510) 981.7469

Website: www.berkeleyca.gov

Email: wshah@berkeleyca.gov .

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Best Regards,

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Best,

Waqar

<image004.png>

Waqar Shah (he/him)

Associate Planner

Planning and Development, Land Use Division

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Phone: (510) 981.7469

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Sent: Tuesday, November 12, 2024 1:49 PM
To: Shah, Waqar <wshah@berkeleyca.gov>
Subject: Re: ZAB - Use Permit#ZP2024-0014 - 1048 Keith Ave.
Berkeley

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Best,

Waqar

Waqar Shah (he/him)

Associate Planner

Planning and Development, Land Use
Division

1947 Center St., 2nd Floor, Berkeley, CA
94704

Phone: (510) 981.7469

Website: www.berkeleyca.gov

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-----Original Message-----

From: Garcia, Claudia
<CGarcia@berkeleyca.gov>

Sent: Tuesday, October 15, 2024 12:02 PM

To: Shah, Waqar
<wshah@berkeleyca.gov>; Updegrave,
Samantha <SUpdegrave@berkeleyca.gov>

Subject: FW: ZAB - Use Permit#ZP2024-
0014 - 1048 Keith Ave. Berkeley

Internal

Hi Waqar and Samantha,

Please see email and attached document. I'm assuming this is from the neighboring property owner?

@Shah, Waqar: perhaps you should respond to acknowledge receipt of the information.
@Updegrave, Samantha: what do you think?

Best,

Claudia

-----Original Message-----

From: Bahram Gangei
<bgangei@comcast.net>

Sent: Tuesday, October 15, 2024 11:55 AM

To: Zoning Adjustments Board (ZAB)
<Planningzab@berkeleyca.gov>; Garcia,
Claudia <CGarcia@berkeleyca.gov>;
dariusgangei@gmail.com

Subject: ZAB - Use Permit#ZP2024-0014 -
1048 Keith Ave. Berkeley

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Dear ZAB Board Members & Ms. Garcia,

Attached, please find the documents and exhibits for your review in regards to the encroachment intended by the new project at the referenced site.

The 44-page geological report was sent to Mr. Shah with respect to the 15-page max. limit submittal to the ZAB board members.

Please let me know if you have any questions.

Best Regards,

Bahram Gangei.

Mobile: 510-612-5821

Email: bgangei@comcast.net

<attachment 1.pdf>

Jacob, Melinda

From: Zoning Adjustments Board (ZAB)
Subject: FW: Comments on Public Hearing for 1048 Keith Avenue on 9.26.24

-----Original Message-----

From: khortan@mac.com <khortan@mac.com>
Sent: Thursday, September 26, 2024 5:52 PM
To: Zoning Adjustments Board (ZAB) <Planningzab@berkeleyca.gov>
Subject: Comments on Public Hearing for 1048 Keith Avenue on 9.26.24

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.

Dear Zoning Adjustment Board Members,

We are homeowners of 1040 Keith Avenue. We respectfully request that you do NOT issue a permit to build in the disputed area until after this land dispute is resolved. To issue a permit at this time when the land dispute has not been resolved would unnecessarily further complicate matters. It would also suggest that the Board is already taking sides prematurely in favor of one side of this dispute over the other when there is no formal resolution on this land dispute.

As a matter of consistent practice, it seems prudent NOT to issue any new building permit in any disputed area in our City which has not been officially resolved.

Thank you for considering this.

Respectfully Yours,

Shu Yang Tan & Karen Khor
Homeowners of 1040 Keith Avenue, Berkeley, CA 94708

Jacob, Melinda

From: Zoning Adjustments Board (ZAB)
Subject: FW: Use Permit application #ZP2024-0014 1048 Keith Agenda item for 10/10

-----Original Message-----

From: Margit Stange <mkstange@sbcglobal.net>
Sent: Tuesday, October 8, 2024 4:02 PM
To: Zoning Adjustments Board (ZAB) <Planningzab@berkeleyca.gov>
Subject: Use Permit application #ZP2024-0014 1048 Keith Agenda item for 10/10

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.

ATTN: ZAB Secretary
RE: Use Permit application #ZP2024-0014 1048 Keith OBJECTION
FROM: Margit Stange 1058A Keith Ave. 510 693 7032

I own the property at 1058A Keith Ave., four plots uphill from 1048 Keith. I oppose granting the referenced demo/building permit or allowing any building on the site until the ongoing property line dispute with the uphill neighbor at 1050 Keith has been settled. We on the lower side of Keith Ave. sit on the Keith Avenue Landslide. Since the original property lines were laid out more than a century ago, the land--and our structures and property lines -- has been moving downhill (S/SW) by as much as two inches a year. As long as we retained the use of the original square footage shown on the deed, we have lived peaceably with the situation, refraining from interfering with our neighbors' use of their original plot area. The owners of 1048 Keith contend there has been no land movement. Their building plan is based on a survey which redraws the property lines such that 1050's plot would shrink significantly. But this survey, like previous surveys on the Slide, includes a disclaimer: "Due to significant land motion. . . . The boundary shown could vary . . . on the order of 5.0' or more." (11/16/20 Moran Engineering Survey of 1048 Keith). Do not approve use permit application #ZP2024-0014, as it is based on uncertain and disputed plot boundaries.

From: [Lindsay Newman](#)
To: [Shah, Waqar](#)
Subject: Re: September 26, 2024 ZAB meeting comment on 1048 Keith
Date: Monday, September 23, 2024 5:40:01 PM

Thank you for sending this. I will email her later tonight.

[Yahoo Mail: Search, Organize, Conquer](#)

On Mon, Sep 23, 2024 at 5:07 PM, Shah, Waqar
<wshah@berkeleyca.gov> wrote:

From: kelly hammargren <kellyhammargren@gmail.com>
Sent: Friday, September 20, 2024 10:49 PM
To: Zoning Adjustments Board (ZAB) <Planningzab@berkeleyca.gov>
Subject: September 26, 2024 ZAB meeting comment on 1048 Keith

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.

Hello,

This parcel at 1048 Keith looks like a foolish place to add density as this parcel sits in the fire zone, earthquake fault zone, landslide zone trifecta.

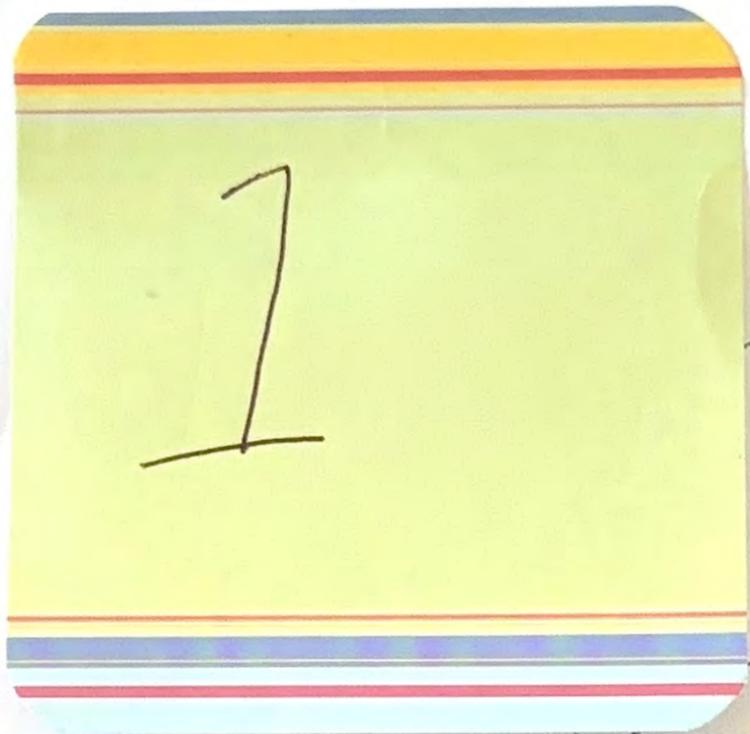
My bigger question is, if this project is what it looks like, speculation building for sale, is the developer required to inform potential buyers they have hit the Berkeley hazard trifecta of fire, earthquake and landslide? If the "two houses" are for rent instead of sale, is the same notification required?

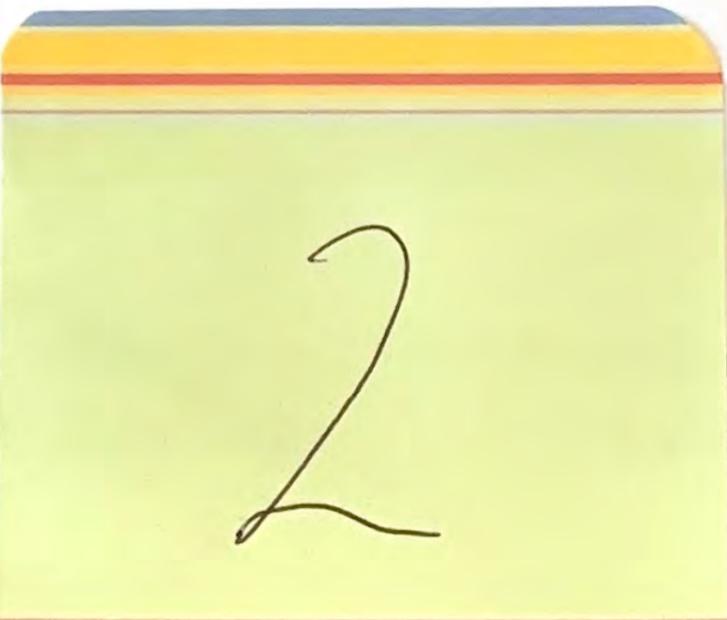
Checked the Earthquake Zones of Required Investigation map and found **THIS PARCEL IS IN THE EARTHQUAKE FAULT ZONE practically on top of the mapped fault and A LANDSLIDE ZONE** <https://maps.conservation.ca.gov/cgs/EQZApp/app/>

kelly hammargren

Table of content for exhibits/documents attached for ZAB review

Exhibit #	Description	
Documents & References	<p>Name: Bahram Gangei Address: 1050 Keith Ave, Berkeley, Ca. 94708 Mobile: 510-612-5821 Email: bgangei@comcast.net</p>	<p>Permit# ZP2024-0014 Name: Lindsay Newman Address: 1048 Keith Ave. Berkeley Ca. 94708</p>
1	Current Berkeley public utility plan show the existence of a 24" sewer manhole at 1050 Keith Ave. back yard. Ironically, three days ago city engineers came over to 1050 Keith ave to schedule an appointment for the sewer line inspection. It validates the accuracy of the manhole placement since it was built in 1908 or there of.	
2	Letter submitted to ZAB from Cyndi Berk (Previous owner of 1048 Keith Ave address) stating the fact that Peter Berk had claims on the 1044 Keith Ave. eastern property line since 1979. The letter also confirms that the fence replaced in 2002 was installed where it was known to Mr. Berk since 1979 or beyond, possibly built in 1949 as we discussed.	
3	Notice filed by Peter Berk in 08/25/2000 that references the dashed area on the site plan attached as exhibit-3. The last paragraph references the encroachment of the deck retaining wall on the South west of the house.	
4	Recent survey map denoting inaccuracy of the results with a huge disclaimer that the survey could be wrong by 5 or more feet.	
5	Alan Kropp extensive Geological research, studies and other legal cases compiled in collaboration with other subject matter experts providing the facts for Keith Ave. and Berkeley hills area having shifted 10-20 feet since community inception in year 1908, since Keith Ave. area is situated in a three fault line zone. The 44-page geological report was submitted to Mr. Shah via. email for your reference.	
6	Lawsuit Case #24CV083292 filed with superior court Alameda County on 07/12/24	
7	Plot map of Keith Ave. for ready reference. It shows 1050 back yard distance to be 65.29-feet, but we currently only have 61-feet. All other neighbors distances above us toward Euclid Ave. are also different from the distances shown on the plot-map with a few feet less than expected.	
8	Email from Mr. Shah W/City of Berkeley on 3/25/24 clarifying that there are no permits issued for the referenced project, where Newman family unilaterally began demolishing the fence starting on 04/14/24 and continuing to date destroying our property, invading our privacy daily, and intentionally stealing our belongings.	
9	Summary of the damages and abusive code of conduct since 03/06/24 that has taken a big toll on my family's mental health, as we have from the start looked for ways to resolve the matter amicably for both parties while the Newman family continue to harass and terrorize. Petition signed by concerned neighbors disputing the property take over by inaccurate surveys and changing the taxing brackets etc.,	
Reference	The Missing 20-feet from 1048 Keith Ave, has to be claimed from the properties down the hill as supported in Exhibit-2.	
Reference	There was a public pathway between 1048 and 1040 Keith Ave. address since inception in year 1908. Peter Berk told me that the pathway was discontinued to be maintained by the City of Berkeley and was distributed to the neighboring properties and the deeds. This could also attribute to the confusion to properly address the discrepancies. I could not find more specific data on the pathway with the Berkeley City staff and other city departments. ZAB board members may have resources available to investigate this matter further as this is a known subject amongst Keith Ave. neighbors.	





c
a

of you in this forwarded email. I wish
g this matter.

I
to ZAB. The last sentence, referring to
the knowledge, should read "1997 to
2019."

Sincerely,
Cyndi

----- Forwarded message -----

From: **Cyndi Berck** <cyndi.berck@gmail.com>

Date: Tue, Sep 24, 2024, 1:35 PM

Subject: 1048 Keith - application # ZP2024-0014

To: <zab@berkeleyca.gov>

Dear Zoning Board:

I previously owned and lived at 1048 Keith. I have no opinion or
interest as to the outcome of this application. The owners of 1050

Keith, Bahram Gangei and Erica Eagle, have asked me to share some information.

As background, my late husband, Peter Berck, owned 1048 from 1979 (initially with his first wife) until his death in 2018. I inherited the house from Peter, and sold it to Lindsay Newman (owner and resident at 1044 Keith) in 2019.

I lived at 1048 with Peter from 1997 to 2016, except for two academic sabbatical years, when the house was rented out. The house was again rented out 2016-19.

Before I sold 1048, I contacted a surveyor about the possibility of having a survey done. I was told that it is difficult to get accurate results because of land movement on that block.

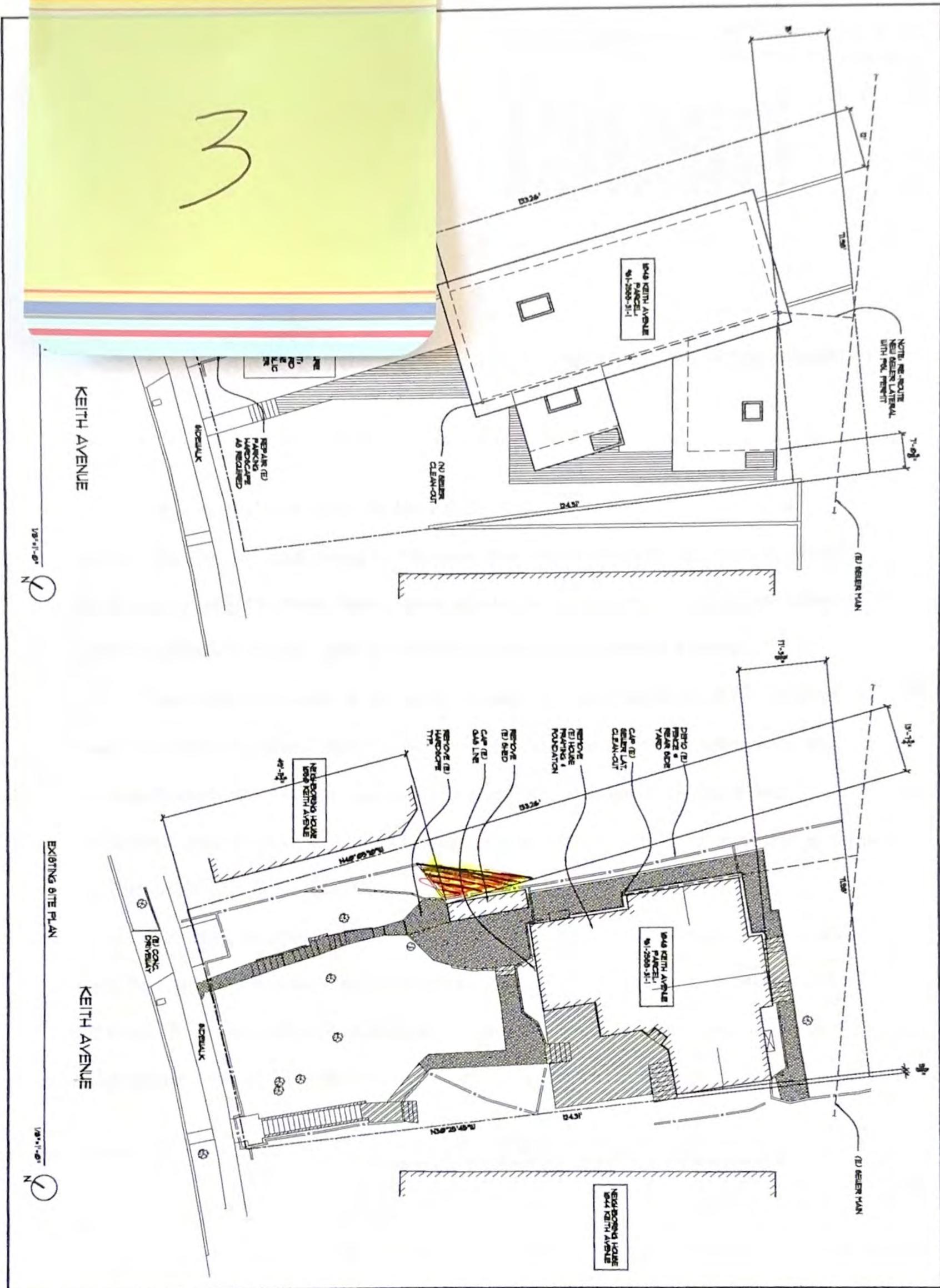
During the time of my personal knowledge (1997-2019), the yard used by the residents of 1044 included some land that was part of 1048, according to a survey marker that was located in the yard used by 1044. As of 1997, these yards were separated by a hedge and, I believe, some damaged fencing. In 2000, Peter built a new fence between the yards used by 1044 and 1048. Peter

included a gate in the fence and on occasion entered onto the portion of his property located in the yard used by the residents of 1044.

In 2000, Peter had a notice of encroachment filed with the county recorder's office, regarding encroachment of a structure from 1050 onto the front yard of 1048. The notice gave revocable permission for that encroachment.

In 2000 or 2001, Bahram and Erica asked Peter for permission to build a new fence between the back yards used by 1048 and 1050, to replace a dilapidated fence. Peter gave permission and the fence was built. It followed the line of the dilapidated fence that had separated 1048's back yard from 1050's back yard prior to the construction of the new fence. During the period of my personal knowledge (1979-2019), this was the practical demarcation of the back yards.

Sincerely,
Cynd Berck



3

DATE: 08/2023
 JOB NO.: LA-2024
 SCALE: 1/8"=1'-0"
 DRAWN BY: LNS

EXISTING SITE PLAN &
 PROPOSED SITE PLAN

NEW SINGLE-FAMILY RESIDENCE
 1048 KEITH AVENUE
 BERKELEY, CA 94708



LINDSAY NEWMAN, PE
 CIVIL ENGINEER
 P. 313.615.9400
 newmank26@gmail.com

REVISIONS

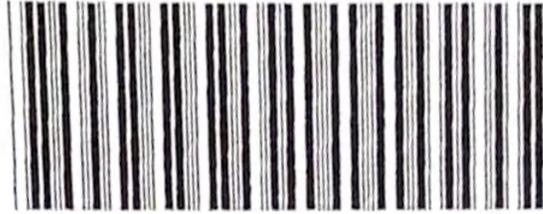
2000266681

09/01/2000 11:21 AM

OFFICIAL RECORDS OF
ALAMEDA COUNTY
PATRICK O'CONNELL

RECORDING FEE: 20.00

RECORDING REQUESTED BY

Peter Berck
1048 Keith Avenue
Berkeley, CA 94708

3 PGS

WHEN RECORDED MAIL TO:

Peter Berck
1048 Keith Avenue
Berkeley, CA 94708A
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20**NOTICE OF CONSENT TO USE OF LAND AND NOTICE OF ENCROACHMENT**

APN: 61-2555-031-01

APN: 61-2555-32

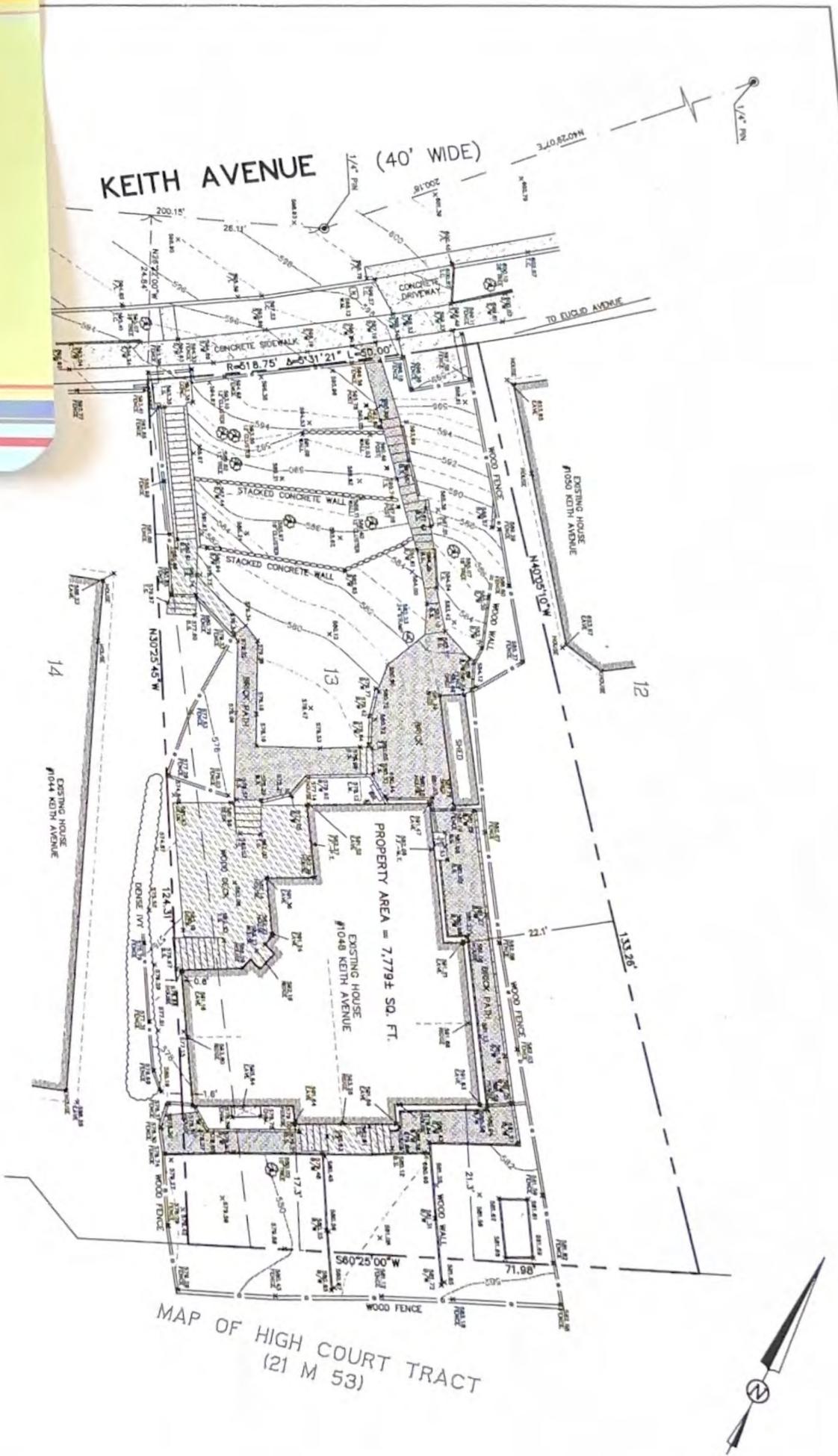
The parcel of land owned by Peter Berck (APN 61-2555-031-01) is affected by this notice. The parcel of land owned by Margaret Webb (APN 61-2555-32), which is adjacent to the parcel owned by Peter Berck, also is affected by this notice. The legal descriptions of APN 61-2555-031-01 and APN 61-2555-32 are set forth on Exhibit A hereto.

The right of the public or any person to make any use whatsoever of the parcel of land owned by Peter Berck, APN 61-2555-031-01, described in Exhibit A hereto, or any portion thereof (other than any use expressly allowed by a written or recorded map, agreement, deed or dedication), is by permission and subject to control of the owner pursuant to Section 813, California Civil Code.

This instrument also shall serve as notice that a portion of the retaining wall located near the southwest portion of the house on the property owned by Margaret Webb, APN 61-2555-32, described on Exhibit A, encroaches upon the adjacent parcel of land owned by Peter Berck, APN 61-2555-031-01, described on Exhibit A.

Dated: 8/25/2000


Peter Berck



MAP OF HIGH COURT TRACT
(21 M 53)



LEGEND

B.S.	BASE OF STEPS
B/W	BASE OF WALL
CHALK	CHALK
CONC.	CONCRETE
D.L.	DRAIN INLET
E.M.	ELECTRIC METER
F.F.	FINISHED FLOOR
F/L	FLOWLINE
I.R.	IRRIGATION
M.T.	METAL THRESHOLD
P.T.	PLASTIC THRESHOLD
S/W	SIDEWALK
T.C.	TOP OF CURB
T.S.	TOP OF STEPS
W.M.	WATER METER
W.L.	WOOD FENCE
---	BUILDING LINE
---	BRICK
---	CONCRETE SURFACE
---	CONCRETE WALL
---	STACKED CONCRETE WALL
---	WOOD SURFACE
---	WOOD WALL
---	WOOD FENCE
---	FOUND CITY MONUMENT IN WELL AS NOTED

GENERAL NOTES:
DIMENSIONS ARE IN FEET AND DECIMAL FEET.
NO TITLE REPORT WAS PROVIDED, EASEMENTS MAY EXIST.

BENCHMARK:
ELEVATIONS ARE BASED ON CITY OF BERKELEY DATUM.
THE P.M. MONUMENT IN KEITH AVENUE, DESIGNATED "81141" WAS TAKEN
AS ELEVATION = 588.58 FEET PER CORNER RECORD 8339 (80 OR 5).

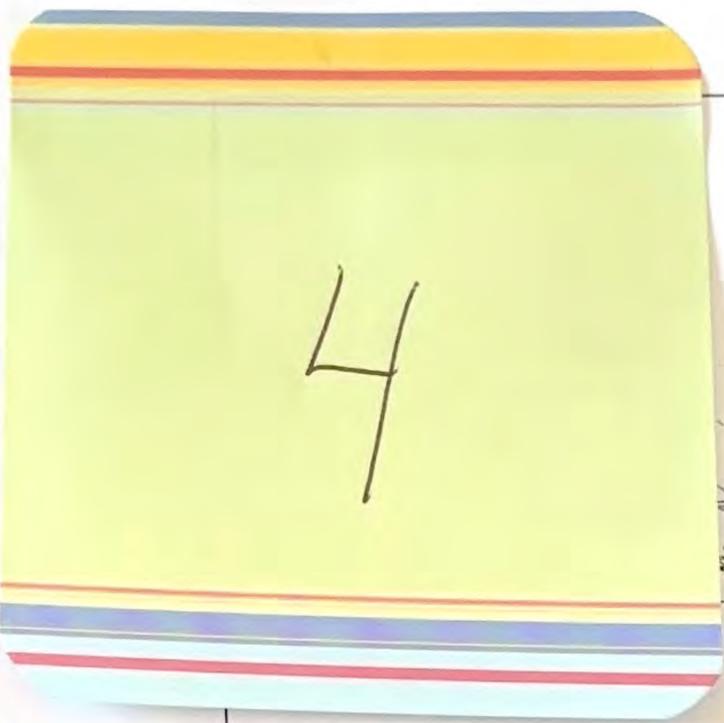
BOUNDARY NOTE:
DUE TO SIGNIFICANT LAND MOTION IN THIS AREA, IT IS NOT POSSIBLE TO
ESTABLISH THE PROPERTY BOUNDARY WITH CERTAINTY. THE BOUNDARY
SHOWN COULD VARY BASED ON THE CONSIDERATION OF ALTERNATE
SURVEY REFERENCE POINTS. THIS VARIANCE IS VERY UNLIKELY ON THE
ORDER OF 3.0' OR MORE IN MAGNITUDE.

BOUNDARY AND TOPOGRAPHIC SURVEY
LOT 13 AND A PORTION OF LOT 14, BLOCK 2, NORTH CRAWMONT (23 M 84)
LOCATED AT 1048 KEITH AVENUE
CITY OF BERKELEY, COUNTY OF ALAMEDA, CALIFORNIA

NOVEMBER 16, 2020 SCALE: 1" = 8'

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

F.B. NO. 1789 KEITH-TOPOG.MAP JOB NO. 20-10244



From: Alan Kropp akropp@akropp.com
Subject: Gangei Property Movement
Date: Sep 24, 2024 at 5:55:33 PM
To: Bahram Gangei bgangei@comcast.net

Bahram-

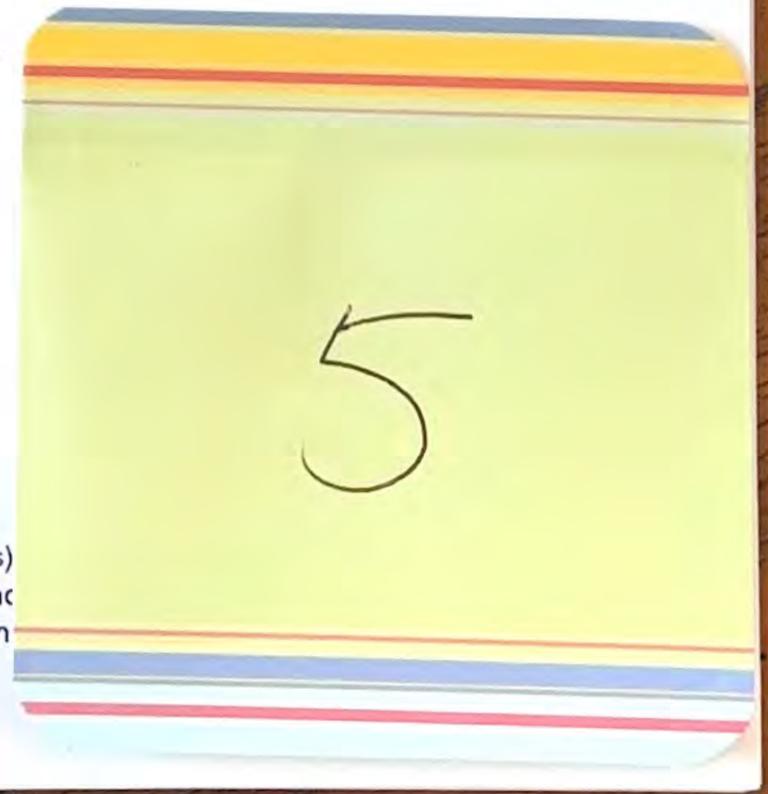
You asked that I comment on the issue of property line movement in the active Keith Avenue Landslide area where you live. You indicated that a neighbor had a survey performed and wants to build a new structure within their surveyed property lines. The problem is that the land has moved between 10 and 20 feet in your area since the property lines were established, so houses and improvements have partially migrated across property lines and this is no longer the normal situation where a person can just rely on a standard survey map. I have attached a series of articles and professional papers on this topic to help demonstrate the complexity of the situation and show how extensive the problem is. The first article is from the San Francisco Chronicle 20 years ago and focusses on this specific problem in your neighborhood, but also shows how it impacts other properties on other slowly moving landslides in the Berkley Hills and Kensington. The movement of the Keith Avenue Landslide was also highlighted in my firm's recent study of the Oxford School site located within the slide (a copy of our report can be found on our website).

I have been an expert witness in litigation on four such property line disputes in the area, and I can say that litigation never really resolved the issues. In my experience, the best way dozens of people I have worked with the situation is to acknowledge the property lines are not a good determiner of the lot limits, but simply to take the property dimensions and fit them as well as possible to the existing improvements. However, this takes cooperation between neighbors so the cascading problem from lot to lot for entire blocks can be avoided.

I hope this is helpful. Let me know if you have any questions.

Alan Kropp, G.E.
President, Principal Engineer
Alan Kropp & Associates
2140 Shattuck Avenue, Suite 910
Berkeley, CA 94704
(510) 841-5095 (office)
(510) 841-8357 (fax)
www.akropp.com

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Schorr Law
A Professional
Corporation

ELECTRONICALLY FILED
Superior Court of California,
County of Alameda
07/12/2024 at 04:27:41 PM
By: Mar Thomas,
Deputy Clerk

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SCHORR LAW
A Professional Corporation
ZACHARY D. SCHORR (SBN 222510)
JAYANT TRIPATHY (SBN 330900)
1901 Avenue of the Stars, Suite 615
Los Angeles, California 90067
Telephone: (310) 954-1877
Facsimile: (310) 402-5972
Email: zschorr@schorr-law.com
Email: jtripathy@schorr-law.com

Attorneys for Plaintiffs
BAHRAM GANGEI AND ERICA LORENE EAGLE

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

ALAMEDA COUNTY

BAHRAM GANGEI, an individual; and ERICA
LORENE EAGLE, an individual,

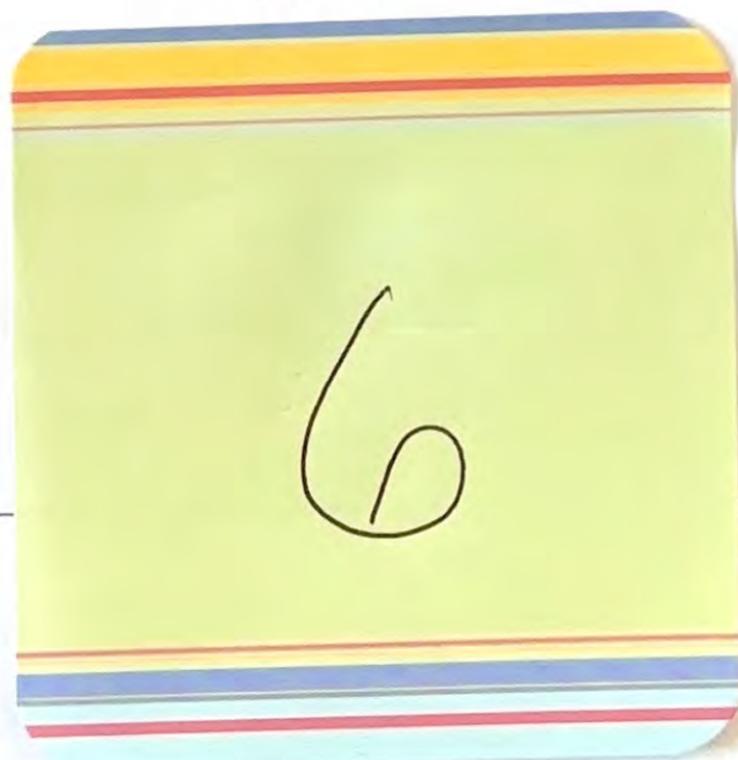
Plaintiffs,

vs.

JOACHIM KAINZ, an individual; LINDSAY
NEWMAN, an individual; all persons unknown,
claiming any legal or equitable right, title, estate,
lien, or interest in the property described in the
complaint adverse to Plaintiffs' title, or any cloud
upon Plaintiffs' title thereto; and DOES 1 through
20, inclusive,

Defendants.

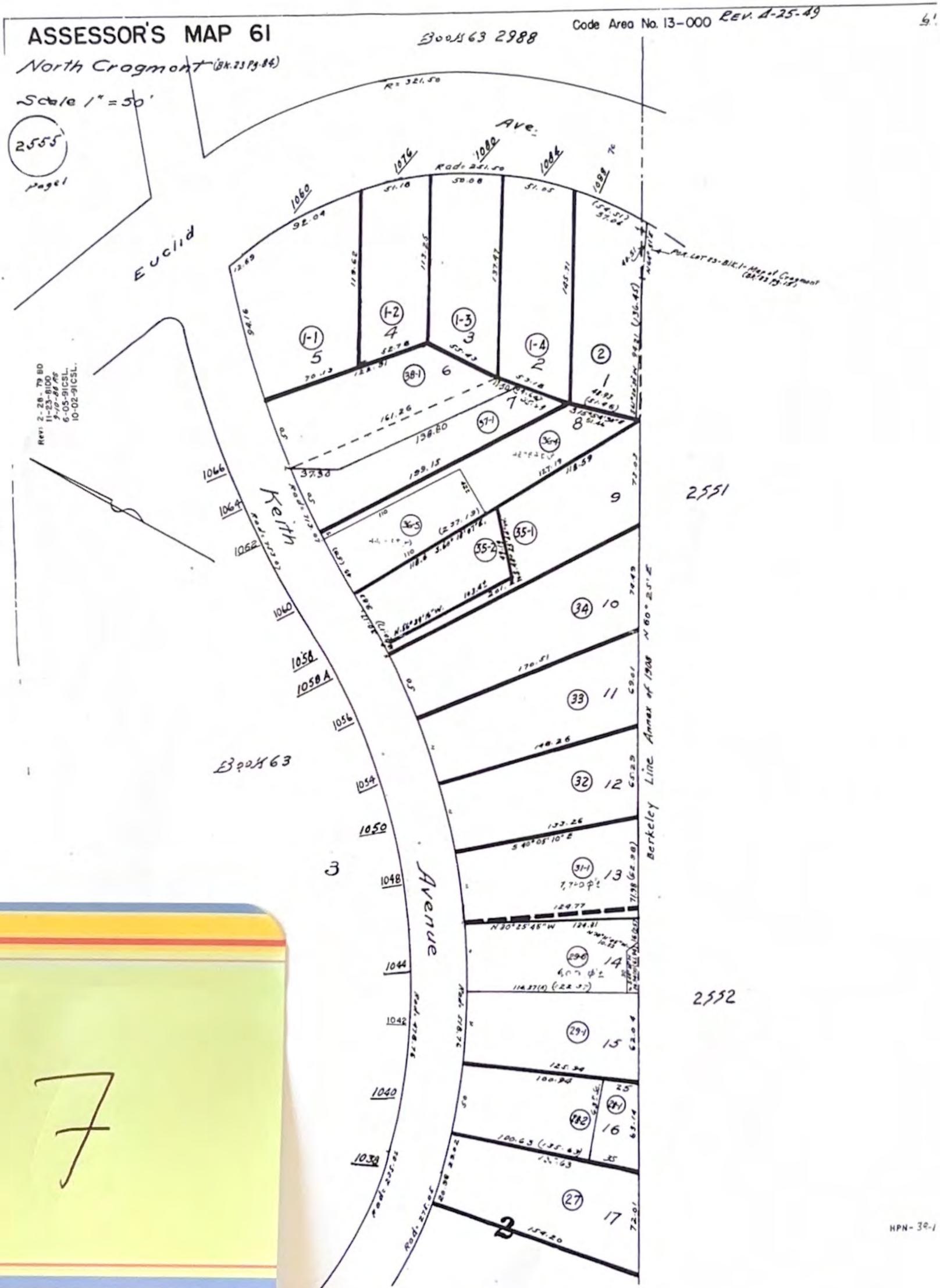
) Case No.: **24CV083292**
)
) **PLAINTIFFS' VERIFIED COMPLAINT**
) **FOR:**
)
) **1) QUIET TITLE;**
) **2) PRIVATE NUISANCE;**
) **3) TRESPASS;**
) **4) CONVERSION;**
) **5) QUIET TITLE (IRREVOCABLE**
) **LICENSE);**
) **6) QUIET TITLE (EQUITABLE**
) **EASEMENT);**
) **7) INJUNCTIVE AND DECLARATORY**
) **RELIEF.**



1

Verified Complaint

FOR Assessment Use Only



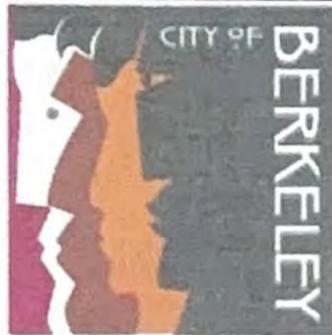
From: Shah, Waqar wshah@berkeleyca.gov
Subject: RE: Zoning Project at 1048 Keith Avenue
Date: Mar 25, 2024 at 9:33:48 AM
To: BG Personal bgangei@comcast.net

The city is currently continuing to review the use permit for the demolition and rebuild of a single family residence.

The city has not approved the demolition of a fence and start of any construction. I have informed the applicant that they have to go through the use permit process and apply for a demolition permit in order to achieve permission for the proposed work.

I apologize for the inconvenience, this project is causing you. I will work with the applicant to understand what is going on and advise them on the proper plan of action.

Best,
Waqar



Waqar Shah (he/him)
Associate Planner
Planning and Development, Land Use Division
1947 Center St., 2nd Floor, Berkeley, CA 94704
Phone: (510) 981.7469
Website: www.berkeleyca.gov
Email: wshah@berkeleyca.gov

The Permit Service Center (PSC), including the zoning counter, is open between 8:30 am – 2:30 pm (final check in at 2:00 pm) Monday through Thursday.

To limit the spread of COVID-19, face masks and social distancing are required when visiting our offices, and some Planning staff continue to work remotely.

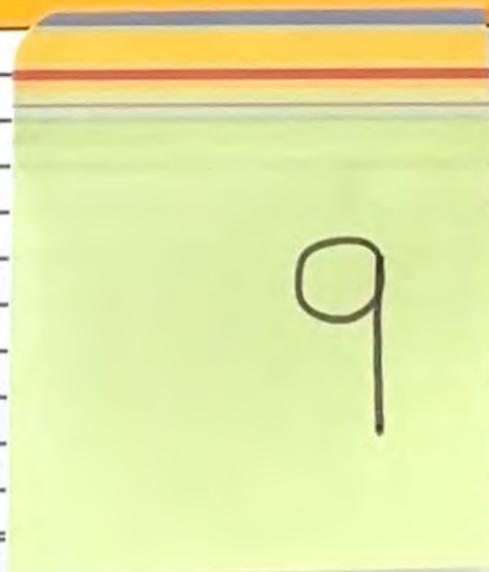


Name: Bahram Gangei
Address: 1050 Keith Ave, Berkeley Ca. 94708
Mobil: 510-612-5821
Email: bgangei@comcast.net

Defendant's **Unilateral Self-Help** assaults without our permission and/or city approved permits

RED-FONTS highlights sentimental and other personal affiliations

Demolished sentimental Private structures (Built with two sons in 2002-3)		Qty	Age (Years)
1	Bird Cage	1	21
2	Multi-function Chicken House with divided sections for different animals	1	21
3	Dog House	1	21
Total			
Stolen Private Properties		Qty.	
1	Cat House	1	19
2	Firewood 2-Chord	2	2
3	Planter Clay Round	1	5
4	Planter Box with irrigation	20-feet	7
5	Retaining wall decorative stones	45	14
6	Memorable Tombstones and plaques	4	5 & 10 Years
7	Irrigation drip system	40-feet	12
8	Wood Fence	110-feet	22
9	Chain link Fence enclosure panels & Door assembly	6	19
Total			
Stolen trees and plants		Qty.	
1	Boxwood	5	7
2	Grapefruit Tree (Grandfater gift to the kids)	1	17+
3	Japaneese Maple (Grandfater gift to the kids)	4	18+
4	Jasmine	1	35+
5	Jewish artichoke	20	35+
6	Lime Tree (Memorial Plant on the Grave)	1	4
7	Flowers aound the graves	6	4
8	Roses	4	8
9	Evergreen shrubs	15	5
10	Bogunvellia	1	3
11	Misc. Ice plants	10	3



Name: Bahram Gangei Defendant's **Unilateral Self-Help** assaults without our permission and/or city approved permits
 Address: 1050 Keith Ave, Berkeley Ca. 94708
 Mobil: 510-612-5821
 Email: bgangei@comcast.net **RED-FONTS** highlights sentimental and other personal affiliations

		Total	
Damaged and Disturbed items without permission			Qty.
1	Large Planters	7	5
2	Hameck	1	4
3	Personal Boxes	4	3
4	Jacuzzi steps	1	4
5	Stone fountain with statue	1	15
6	Garden chime	1	10
7	Figs and Pomegranite trees	3	3
		Total	

6--Months Delibrate Aggressive, Threatening and provocative interactions with assault tools. At times heavily Intoxicated with foaming mouth seems to be under influence of heavy drugs All incidents below have been them acting none-verbal with literal scary zombie conduct Since 4/14/24		Date of occurrence	
1	We met defendants to discuss and mediate the disputed area, They seemed nervous and agitated where Mr. Kains told my wife and I that he was castrated and missing one of his testicals. We had told them the sanctity of the animal graves to be dear to us	2/26/2024	
2	We met for the second time to continue our mediation and the defendants were acting nervous and agitated, after 30-min Mr. Kains started to shout loudly sweating with foaming mouth telling us they were going to act unilaterally etc.,	3/6/2024	
3	My wife felt unsafe at the second meeting on 3/6/24 and told them she feels unsafe with their conduct and we proceeded to leave while Mrs. Newman was trying to calm him down.	3/6/2024	
4	Demolishing the Fence while acting aggressive with electric tools at hand and acting MAD	4/14/2024	
5	Demolish Personal property while acting aggressive with assault tools at hand with evil intentions to hurt us psychologically	4/21/2024	
6	Deliberately Video taping my Younger son in his own house to make him uncomfortable	4/28/2024	
7	Cutting our flowers with weed wacker every other days to be invoke and disturbing peace on weekends most often	Ongoing	
8	We hired Zach Schorr-Law office to mediate for us in the absence of their amicable conduct	Ongoing	
9	At this point the property dispute is secondary for us than our safety and mental health at risk	Ongoing	

7-30-1997

SHIFTING BOUNDARY LINES

The neighborhood in which I live (Arch St. near Eunice St. in Berkeley) is in the middle of a large slow moving landslide. Recent surveys in our area have indicated that structures and other long standing geographical landmarks (i.e.: fences) are slowly moving in a southwesterly direction.

This poses a challenging situation for neighbors whose houses have moved considerable from the location on which they were originally constructed. Several houses have moved 10 feet or more and large portions of these houses are no longer on their own lot according to recent surveys. At this time several sets of neighbors including myself, are experiencing major conflict regarding this matter and it is proving to be a very challenging legal issue. What are we going to do when a survey and a long established boundary between properties no longer agree? We are not just talking about a few isolated incidents of movement. We are talking about a whole hillside that is moving up to an inch a year. We are talking about houses that are several feet into the public right of way. And vice-versa.

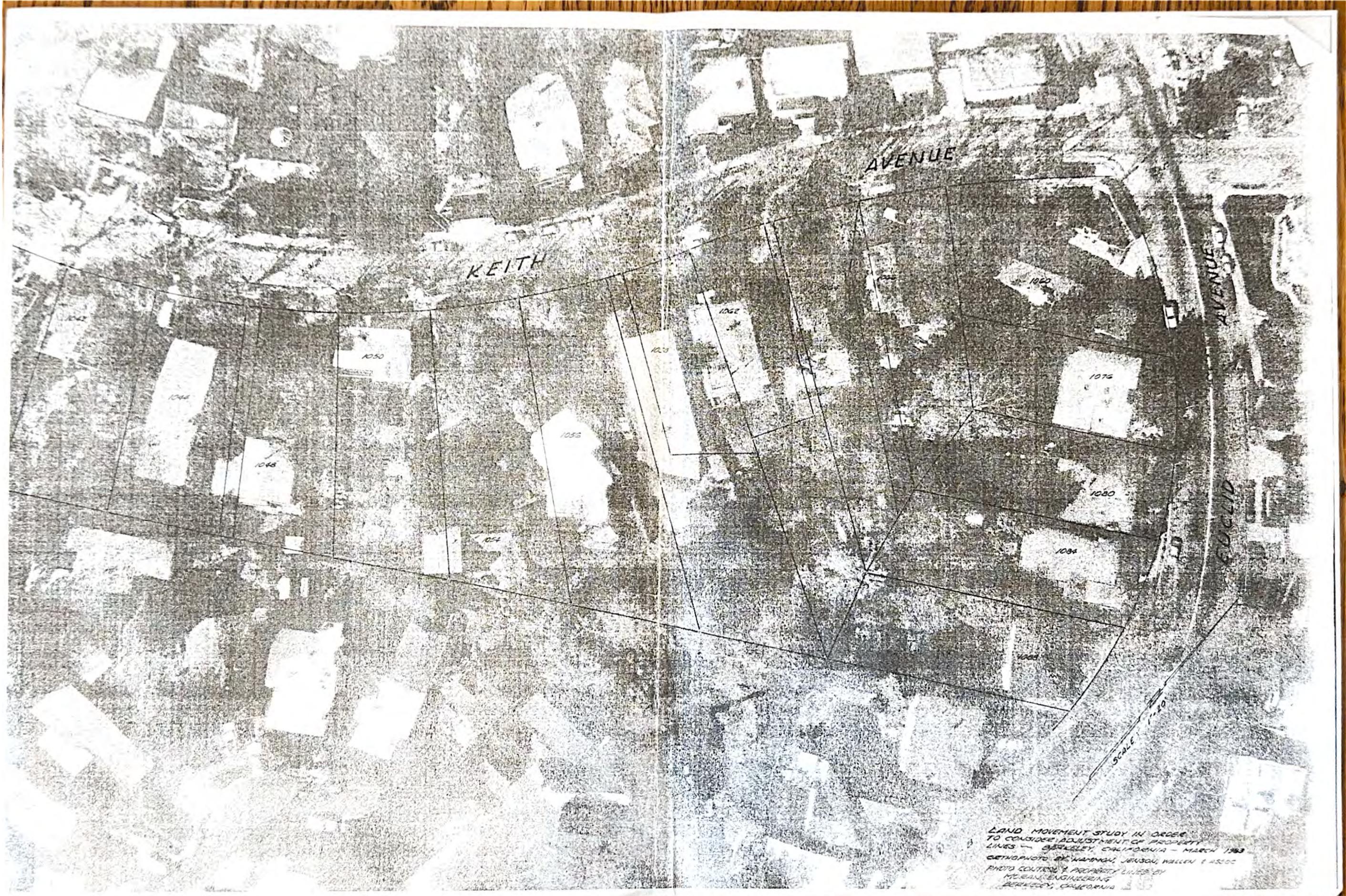
The situation creates a major problem for property owners and civic entities alike. The city of Berkeley now requires a land survey for all major residential additions. Homeowners may become aware that their structures and or setbacks no longer comply with building codes or sit within their surveyed property lines. In this situation will homeowners be allowed to do improvements on their structures?

As a public entity the City of Berkeley has both the responsibility and difficult challenge of coming up with an equitable solution or guidelines to resolve this complex issue which challenges traditional notions of land ownership. The research has shown these slides will continue to move resulting in ever changing boundary lines. It seems prudent to open up the discussion and bring this to a larger forum rather than put out individual fires as they erupt between neighbors.

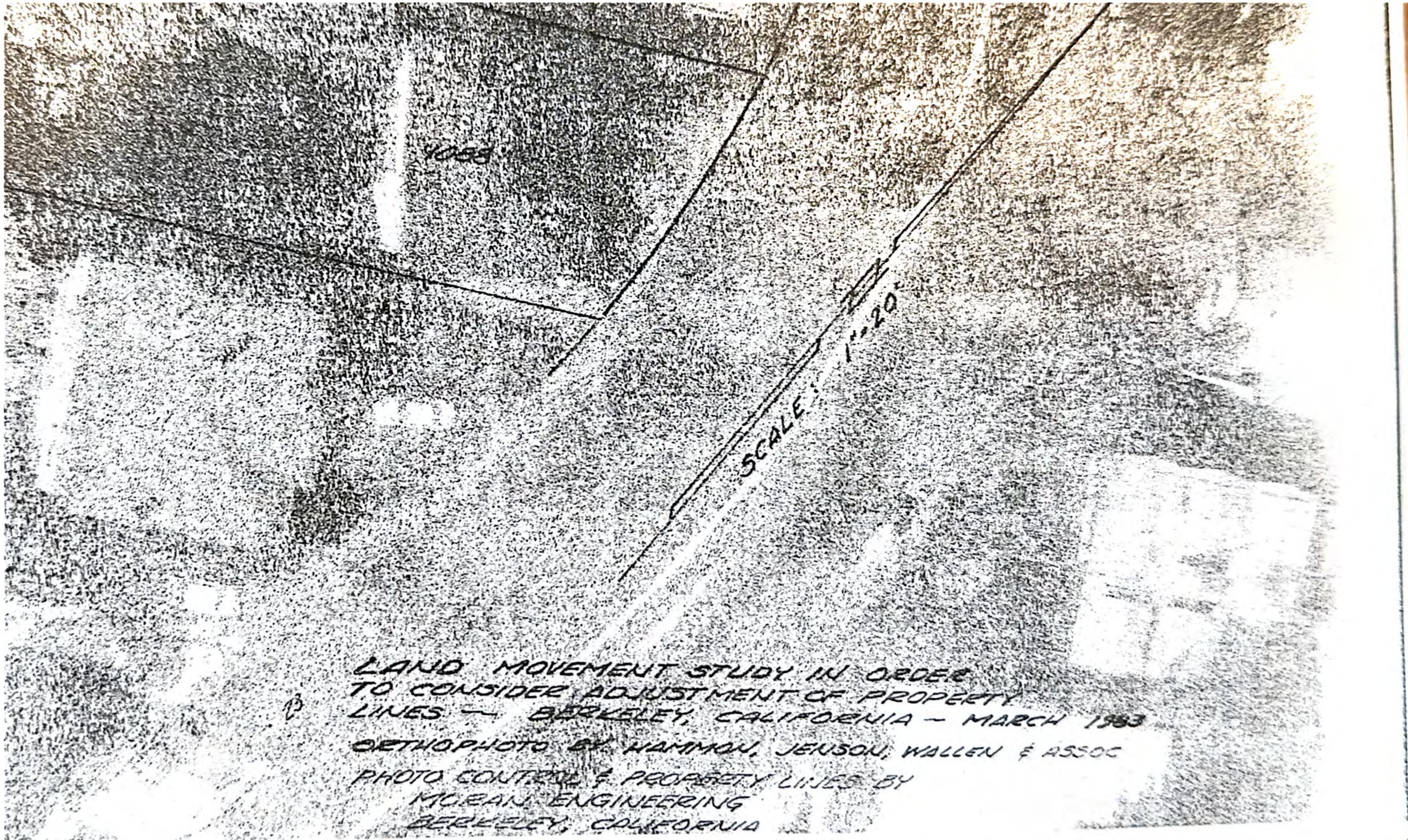
I am writing this in hopes that further discussion of this difficult issue will spark interest in the larger hillside community and the City of Berkeley that will help move us forward in coming up with an equitable solution for everyone. We have started a web site www.propertylines.org at which can sign up for the Email list and stay informed of Berkeley hills land movement issues.

I look forward to hearing from you,

Richard Schwarzmann
1170 Arch St
Berkeley CA 94708
510-501-8667
Email: rschwarzmann@yahoo.com



LAND MOVEMENT STUDY IN ORDER
TO CONSIDER ADJUSTMENT OF PROPERTY
LINES - BERKELEY, CALIFORNIA - MARCH 1983
AERIAL PHOTO BY WARRICK, JENSON, WALKER & ASSOC
PHOTO COURTESY OF PROPERTY LINES BY
MCLEAN ENGINEERING
BERKELEY, CALIFORNIA



LAND MOVEMENT STUDY IN ORDER
 TO CONSIDER ADJUSTMENT OF PROPERTY
 LINES — BERKELEY, CALIFORNIA — MARCH 1983
 ORTHOPHOTO BY HAMMON, JENSON, WALKEN & ASSOC
 PHOTO CONTROL & PROPERTY LINES BY
 MURPHY ENGINEERING
 BERKELEY, CALIFORNIA

REPORT ON PROPOSED DRAINAGE SYSTEMS FOR CONTROL OF EARTH MOVEMENT IN THE BERKELEY HILL AREA

The following report has been prepared from the detailed technical report which resulted from geological studies, soil analyses, and test borings which have been conducted during the past two years. It is intended to summarize briefly the situation with reference to earth movement in the specific areas studied and the measures which might be taken to control each movement.

While the report from which this summary has been prepared is more comprehensive than any attempted in the past, it must be emphasized that it is necessarily preliminary in nature. It is designed to provide a general picture of the nature and scope of the problem, to serve as a background and guide for future and more specific studies and to give to the residents of the particular areas concerned a basis upon which they might decide upon a course of remedial action.

Although additional test borings and design review must be made before final proposals can be made and specific areas defined, it is felt that if any changes in the proposed corrective measures are required, they will be of a minor nature.

The detailed engineering studies from which this report has been prepared are on file in the office of the City Engineer and are available for review by interested parties.

A. HISTORY AND BACKGROUND

In order that we may have an overall picture of the earth movement situation in the Berkeley Hills, the following brief historical background of local drainage systems is pertinent:

1. In 1904 a tunnel was driven at Euclid Avenue and Cedar Street to drain this area. Thus far, it appears that this tunnel has eliminated local earth movement.
2. In 1915 two trenches were constructed on Cragmont Avenue at Halkin Lane. These trenches connected to a tunnel on the west side of Euclid Avenue. This installation appears to have reduced the earth movement in this area.
3. In 1930 a tunnel with two wings was driven into the bank on the east side of Cragmont Avenue between Bret Harte Way and Regal Road. This project was shortened due to excessive earth movement and lack of funds. Earth movement was reduced somewhat by the insertion of a perforated pipe in the tunnel which was covered with rock and connected to a street catch basin on Cragmont Avenue.
4. In 1933 the City dug a well and installed a pump in the low area near High Court. Lack of labor forces prevented the well from extending to a depth greater than 22.5 feet.
5. In 1942 a trench was dug to bed rock across the moving earth on Keith Avenue and Eleanor Walk. The trench was filled with rock and drained by pipes into the adjacent creek. This installation has apparently halted the earth movement in this area.

6. In 1944 approximately 200 feet of rock drain was installed on Corona Court by property owners. The drain was not installed deep enough to intercept the subsurface water. This installation has not stopped the movement of earth in this location.

7. In 1952 the property owners on Vassar Street north of Spruce Street installed a drainage system to prevent damage to their homes from earth movement. To date no local earth movement has been reported.

B. REVIEW OF PRESENT SITUATION

Generally speaking, local drainage systems have been helpful in controlling earth movement within their respective areas. They have not, however, succeeded in restricting the overall earth movement of the entire Berkeley hill area. For example, there has been increased earth movement near the intersections of Spruce Street and Los Angeles Ave; Keith Ave. and Euclid Avenue; Arch Street and Corona Court; and on Cragmont Avenue at several locations.

It has been pointed out that the apparent ineffectiveness of local drainage systems is due primarily to the location and type of systems used below ground. These systems are probably intercepting ground water in the upper strata only. Lower ground water, in most cases, is probably flowing beneath these local systems.

In 1952 the City of Berkeley engaged a consulting geologist to report on the geologic formations and earthquake faults in the hill area. The report included some statements concerning causes of earth movement which are quoted as follows:

1. "Slides result primarily from one or a combination of the following conditions: increasing ground slopes above the natural angle of repose, overloading the ground, reduction of the stability by saturation and by slippage along a plane or zone of weakness".
2. "The natural slope of the ground is increased by excavations for roads and structures both by the cut which undermines the toe, and by the fill where placed on an already steep hill slope."
3. "Overloading may occur by the placement of fill, by building structures on the ground or by a saturation of the ground with water".
4. "Instability of the ground is increased when earth fill is placed without proper compaction or when the ground absorbs water and approaches a plastic state".
5. "Slippage is most likely to occur along a fault contact, a formational contact, or a contact where the foundation has not been properly prepared by stripping and drainage before new fill is placed upon it."

In the conclusion of the report prepared by the consulting geologist there appeared the following statements which are particularly significant:

"It is to be noted that of all the causes of slides, free water is the greatest contributing factor, and in an area already developed it is the most easily controlled".

"The interception, drainage, and diversion to storm sewers of the water entering the slides is the solution to reducing further movement in these areas to a minimum."

Many property owners in the Berkeley hill area have gone to great expense to protect their property from movement damage. In addition to building repairs and retaining walls, subsoil drains adjacent to the building foundation have been installed.

The interception of underground water in order to stabilize soil formations and control earth movement seems to be a sound basic concept.

In order to determine the subsurface conditions where earth movements are evident an exploratory boring survey was conducted in 1952. The purpose of this survey was to obtain data on the location of underground water at various depths below the surface and to examine the soils for moisture content and physical characteristics with the objective of locating the stratas under shear due to earth movement.

The scope of the work at the time permitted boring samples to be taken only from the most active sections of earth movement. These sections are as follows and will be referred to as the Spruce-Cragmont area for the purposes of this report.

- A-1 Keeler Avenue between Poppy Lane and Sterling Avenue and easterly to Miller Avenue.
- A-B-C Cragmont Ave., south of Regal Road, including the low area west between Cragmont and Keith Avenues; Keith Avenue east of Euclid Avenue; Cragmont Avenue, west of Regal Road
- D-E Euclid Avenue at, and south of Keith Avenue, including High Court and the low area between Euclid Avenue and High Court
- F-G Arch Street, Oak Street, Glen Avenue; Arch Street and Corona Court
- H - Spruce Street between Los Angeles and Eunice
- I - Cragmont Avenue west of Covert Path
- J - San Luis Road and Southampton Avenue

The following data concerning proposed methods for controlling earth movement will cover the active sections A-1 through H, of the Spruce Cragmont area.

Extensive and precise surveys checked over a long period of time would be required to clearly define the entire slide limits and the varying amount and rates of movement. The benefits of drainage systems to property owners in or adjacent to the earth movement areas may sometimes appear indefinite or intangible, but if the property is subject to earth movement the owners may be faced with extensive repair costs or loss in the market value of the property.

An interesting phase of these borderline sections is the rapidity in which damage decreases west of Spruce Street. This decrease occurs at the approximate bisection of the slide by the Hayward Fault. It may be that a great part of the underground water is being drained by this fault, thus reducing the underground waters in the sections west of this fault.

The absence of usable existing gravity drains in portions of this earth movement area is one of the major items affecting the cost of installing underground drainage systems. Most of the existing gravity drains are either too shallow or so situated as to provide little aid to the proposed underground drainage systems.

1. Section A-1 Keeler Avenue Between Poppy Lane and Sterling Avenue and Easterly to Miller Avenue

This most easterly area of the main Spruce-Cragmont movement is covered with a very dense growth of brush which made a detailed inspection of the area impossible at some locations. It was possible, however, to inspect the general characteristics of the area from its perimeter.

The area is in the form of an oval shaped ravine with the axis extending from Cragmont Avenue to Miller Avenue. The north and east edges of the movement are sharply defined by perpendicular bluffs ranging to thirty feet in height which were formed during past earth movement. A high mound is located in the center of the area and was probably formed by erosion of the loose materials around the edges of the area and the benching of materials which is typical of earth slides with a rotating slip plane. This mound divides the area into two ravines, the deepest being located on the north edge and continuing easterly in a semicircle following the top shear edge of the movement. Most of the surface run-off water enters this ravine which was also the site of a large pond located about seventy-five feet east of the Keeler Avenue right of way.

The ravine following the south edge of the movement also picks up surface run-off water from the surrounding high points.

The Proposed Main Underground Drainage System would be located in the deep north ravine and the south ravine and then combined to drain into the existing storm drain on Cragmont Avenue.

The north ravine would be bisected by a deep underground interceptor built by the well and tunnel method. The interceptor as planned would be 100 feet long and approximately 50 feet deep. This deep interceptor would be drained by a hydrauger bored drain and then would enter a shallow gravity drain leading to the existing storm drain on Cragmont Avenue.

C. SPRUCE-CRAGMONT AREA

The Spruce-Cragmont movement area in the Berkeley hills covers a large area and has adverse topographical features which complicate the planning of underground drainage systems. The locations in which drainage systems should be installed are obstructed in most cases by extensive home development.

The underground drainage systems proposed in Sections A-1 through H for the Spruce-Cragmont area are the most readily apparent methods by which drainage in these sections may be facilitated. The proposed systems are subject to change as final design may require revisions to overcome unforeseen construction difficulties.

The depths of some of the drainage systems may at first appear to be excessive. Boring logs indicate that these depths are the minimum which should be considered if effective control of earth movement is to be obtained. The logs of depths of underground water were recorded in a dry season and some deeper penetration of water may be expected in the winter wet season and must be anticipated in planning drainage systems. It should also be noted that in some sections slide action is occurring at a greater depth than the bottom of the recorded water zone. Therefore, these proposed drains are relatively shallow in respect to total depth of movement. Borings indicate that the deeper earth movement of some sections is of a secondary nature occurring in the dry underlying strata. This movement is caused by the great weight and movement of the top saturated mass and not due to direct water penetration into these strata. It appears that there is very little to be gained by the installation of interceptor drains deeper than the lowest depth of expected water penetration.

During past years a great deal of work and money has been expended in the installation of wells, tunnels and drains in the Spruce-Cragmont area with relatively negligible results. Lack of complete planning due to limited funds was probably the cause of incomplete corrective measures. Underestimating the scope of work now necessary to obtain effective control of earth movement caused by ground water will conceivably result in the same failure.

Exploratory holes were drilled in the most active northern section where underground drainage systems would be constructed to stabilize the entire movement because the general course of underground waters appears to be southwesterly toward Codornices Creek. The southerly section adjacent to Codornices Creek comprises the toe where pressures and movement are spread over a greater area. The potential damage in this section, while not as easily foreseen, is still very real.

Portions of these lower sections which appear to be relatively stable may influence the distribution of costs for the proposed project. Close inspection of the lower sections discloses a slow erratic movement. In certain locations the movement is more apparent than in others. The exact extent of the earth movement has not been accurately determined. It is apparent from the general topography and surface indications that larger movements in these lower sections have taken place in the past and may occur again at any time when conditions of underground water and earth stresses are favorable unless stabilization is secured by interception of underground water in the upper sections.

It is proposed also to intercept surface water at the north ravine interceptor site and in the south ravine, by use of catch basins with horizontally bored well points bored into the upper portions of the movement. These well points would eliminate the necessity of extending the deep interceptor completely across the area of movement; shallow gravity drains would be used to carry the run-off from the surface water catch basins and the bored well points.

The details of this proposed drainage system are subject to change pending necessary soil borings.

It is possible that the installation of this system may eliminate the need for some of the systems in the lower sections of the earth movement.

The cost of the proposed system is estimated at \$37,000.00.

2. Section A-B-C Cragmont Avenue south of Regal Road, including the low area west between Cragmont and Keith Avenues; Keith Avenue east of Euclid Avenue; Cragmont Avenue west of Regal Road

In 1928 probable observations were made when reference points were set on Euclid Avenue. Records dated October 1930, indicate that a tabulation of earth movement was noted in this section.

The present trend of movement in general is to the southwest toward Euclid Avenue. The rate of movement seems to be fairly uniform across the width of the section on Cragmont Avenue. In portions of the section other than Cragmont Avenue the rate appears to be erratic. The most noticeable sectors of movement appear on Cragmont Avenue at the edges of the section and on the south edge of the slide area on Keith Avenue. The movement is most noticeable in the street and sidewalk area where cracks appear and extensive displacement occurs.

Borings and visual observations lead to the conclusion that this slow creeping movement existed prior to the development of the area and is related to the earth faults of the region.

The low area between Cragmont and Keith Avenues is apparently a creek area which was formed by previous slides which destroyed the old creek ravines and formed new channels. This is the extension of the creek which crossed Euclid Avenue at Keith Avenue.

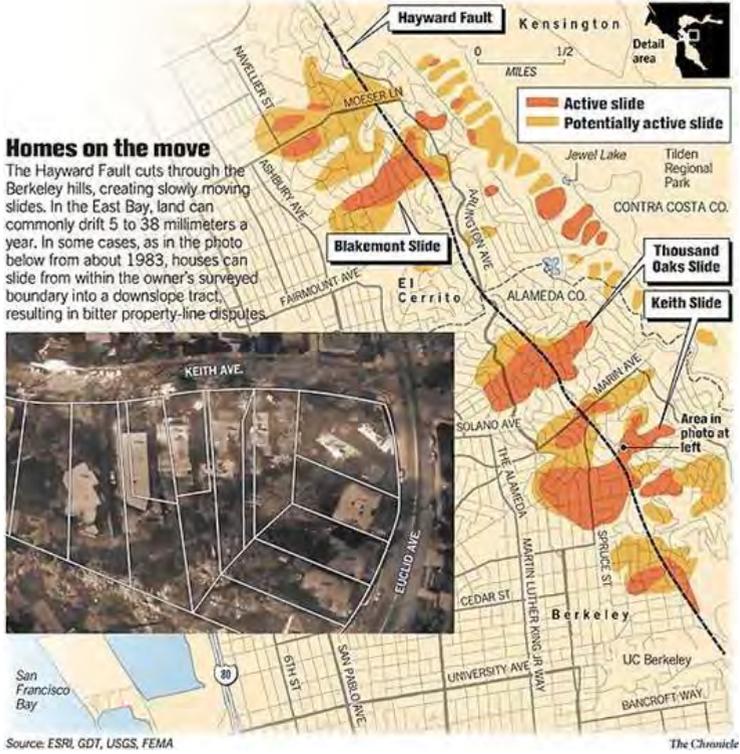
During the development of this area these water courses have become filled without the installation of proper drains and culverts. This is a major factor influencing earth movement in this area.

The Cragmont Avenue section west of Regal Road is an off-shoot of the main Spruce-Cragmont slide area and has a record of movement since 1931. The definite limits of the movement are not clearly discernable except at its east edge on Cragmont Avenue west of Regal Road. Here the movement appears to be more of a settlement than a horizontal movement.

This movement appears to be a secondary action caused by movement in the adjacent areas to the south and east which removes support from the toe of this section.







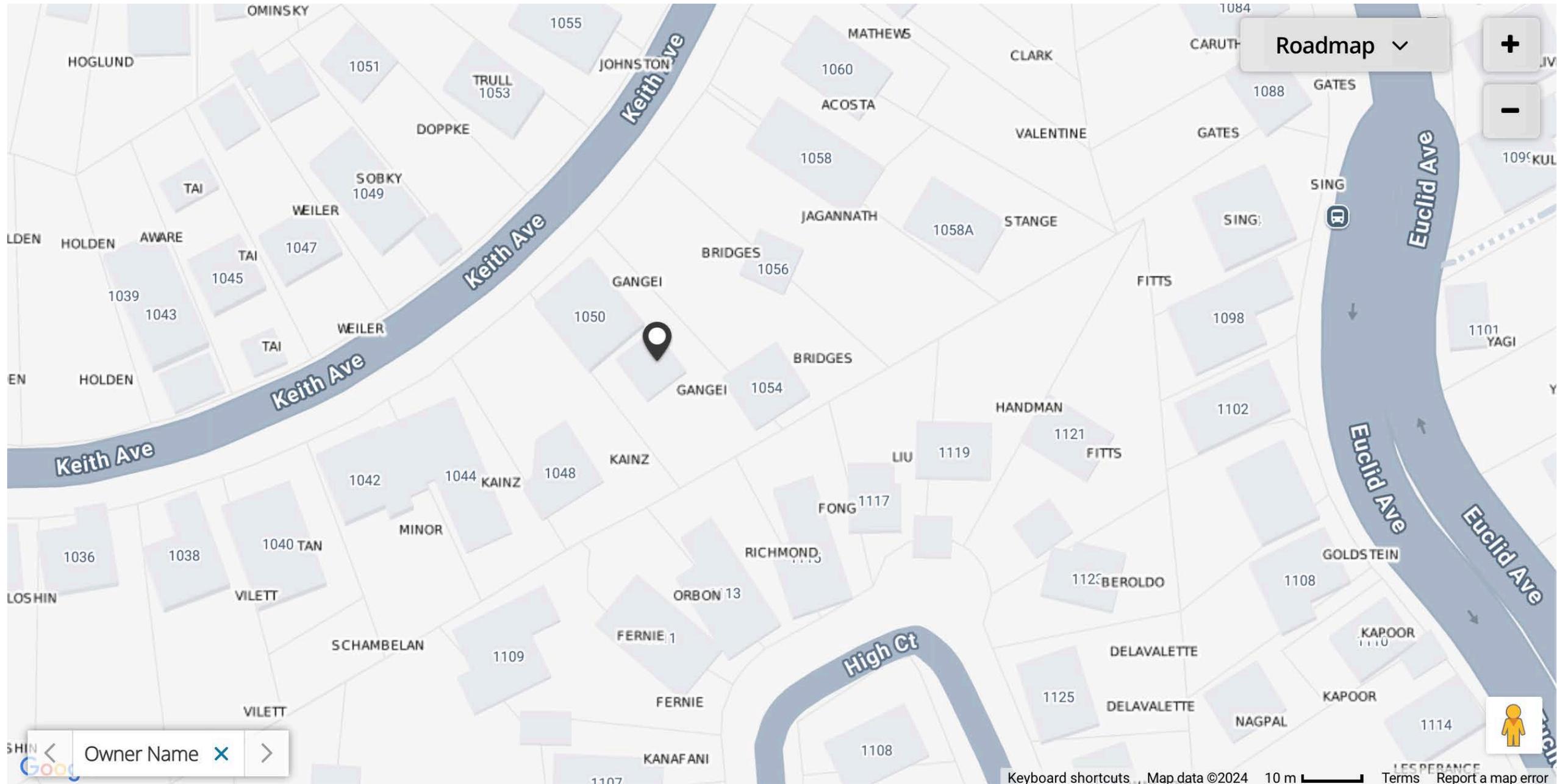
Homes on the move

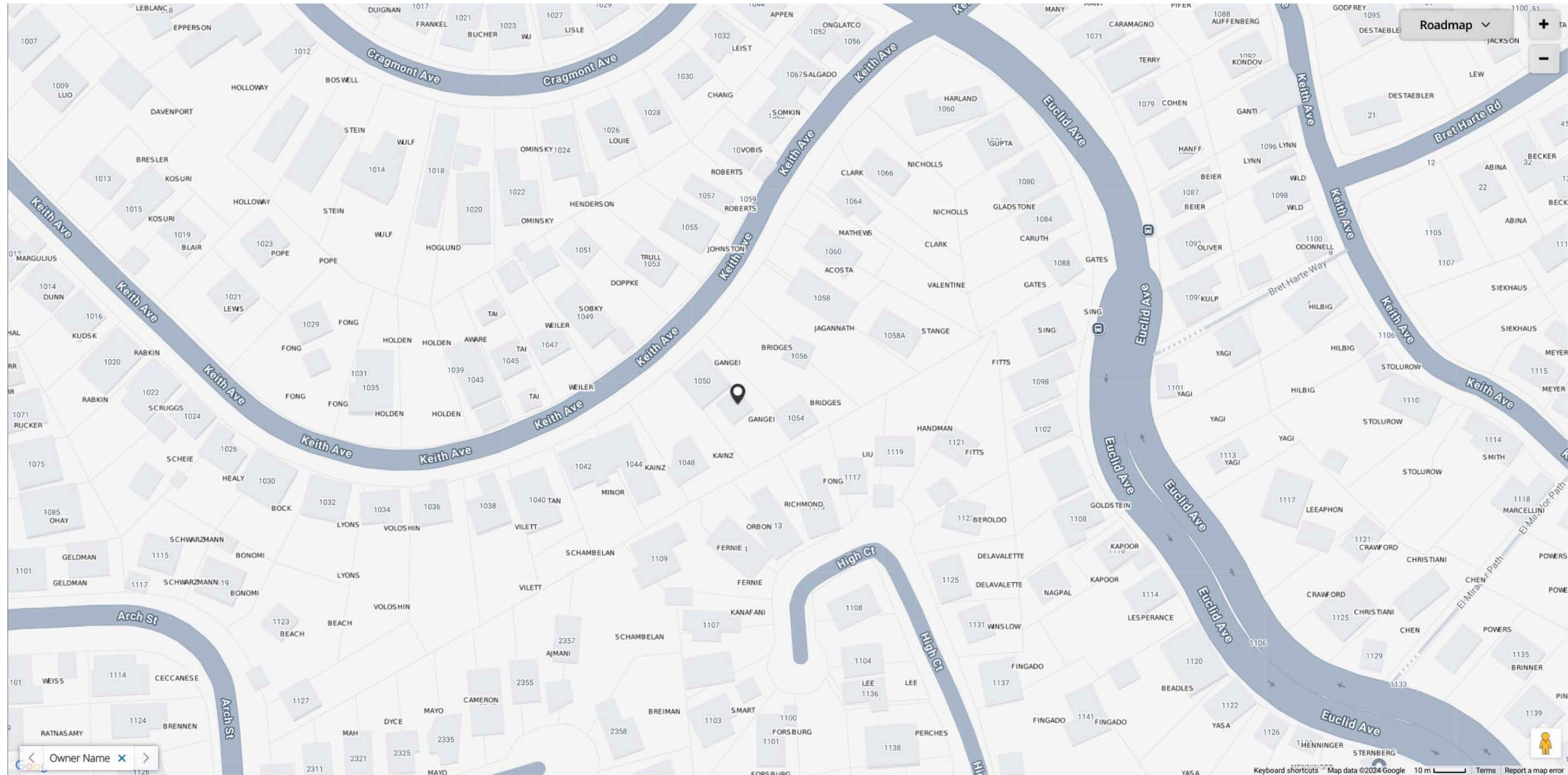
The Hayward Fault cuts through the Berkeley hills, creating slowly moving slides. In the East Bay, land can commonly drift 5 to 38 millimeters a year. In some cases, as in the photo below from about 1983, houses can slide from within the owner's surveyed boundary into a downslope tract, resulting in bitter property-line disputes.



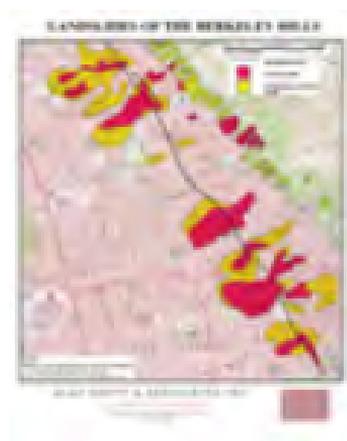
Source: ESRI, GDT, USGS, FEMA

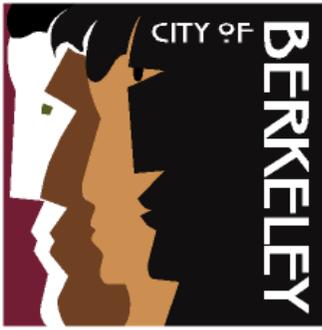
The Chronicle





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025-01-09
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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

1048 Keith Avenue

Use Permit #ZP2024-0014 to demolish a 2,760-square-foot single-family dwelling, and construct a two-story (25 feet tall), 3,600-square-foot single-family dwelling within the rear setback and parking pad in the front setback.

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, January 9, 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.

A. Land Use Designations:

- General Plan: Low Density Residential (LDR)
- Zoning: Single-Family Residential – Hillside Overlay (R-1H) District

1048 KEITH AVENUE
Page 2 of 4

NOTICE OF PUBLIC HEARING
Posted DECEMBER 18, 2024

B. Zoning Permits Required:

- Use Permit, pursuant Berkeley Municipal Code (BMC) Section 23.326.030(B)(1) to demolish a dwelling unit
- Use Permit, pursuant to BMC Section 23.202.020(B) to construct a single-family dwelling unit
- Administrative Use Permit, pursuant to BMC Section 23.210.020(C)(4), to reduce the building setbacks in the Hillside Overlay Zone
- Administrative Use Permit, pursuant to BMC Section 23.322.080(E)(2)(b), to allow unenclosed off-street parking within the front setback
- Administrative Use Permit, pursuant to BMC Section 23.304.070(C)(1) to construct an unenclosed structure (trellis) within the front setback

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

D. Parties Involved:

- Applicant/Property Owner: Lindsay Newman, 1048 Keith Avenue, Berkeley, CA, 94708

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, Waqar Shah, at (510) 981-7469 or WSHAH@berkeleyca.gov.

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

Communication Disclaimer:

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

Written Comments, Communications, and Reports:

Written comments must be directed to the ZAB Secretary at the Land Use Planning Division (Attn: ZAB Secretary), or via e-mail to: zab@berkeleyca.gov. All materials will be made available via the Zoning Adjustments Board Agenda page online at this address: <https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board>

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

Correspondence received by 5:00 PM, eight days before this public hearing, will be provided with the agenda materials provided to the Board. Note that if you submit a hard copy document of more than 10 pages, or in color, or with photos, you must provide 15 copies. Correspondence received after this deadline will be conveyed to the Board in the following manner:

- **Correspondence received by 5:00 PM two days before** this public hearing, will be conveyed to the Board in a Supplemental Communications and Reports, which is released around noon one day before the public hearing; or
- **Correspondence received after 5:00 PM two days before** this public hearing will be saved in the project administrative record.



Accessibility Information / ADA Disclaimer:

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date.

SB 343 Disclaimer:

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

Notice Concerning Your Legal Rights:

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

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

1048 KEITH AVENUE
Page 4 of 4

NOTICE OF PUBLIC HEARING
Posted DECEMBER 18, 2024

right to claim that your property has been taken, both before the City Council and in court.

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL**

ZAB APPEAL: 1048 KEITH AVENUE, USE PERMIT ZP2024-0014

The public may participate in this hearing by remote video or in-person.

Notice is hereby given by the City Council of the City of Berkeley that on **TUESDAY, MAY 06, 2025 at 6:00 P.M.** a public hearing will be conducted to consider an appeal against a decision by the Zoning Adjustment Board to **APPROVE Zoning Permit #ZP2024-0014 to demolish a 2,760 square-foot single-family dwelling, and construct a two-story (25 feet tall), 3,600 square-foot single-family dwelling. The project includes a reduction of the rear building setback from 20 feet to 15 feet, two unenclosed off-street parking spaces within the front setback, the construction of a trellis within the front setback, and the installation of a fence and retaining wall along the lot line.**

The hearing will be held on, May 6, 2025 at 6:00 p.m. in the School District Board Room, located at 1231 Addison Street, Berkeley CA 94702.

For further information, please contact Robert Rivera, Senior Planner at (510) 981-7480

A copy of the agenda material for this hearing will be available on the City's website at <https://berkeleyca.gov/> as of April 24, 2025. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology, as well as any health and safety requirements for in-person attendance.**

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, or e-mailed to council@berkeleyca.gov in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council 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 the City Council, 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 City Clerk. 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 City Clerk at (510) 981-6900 or clerk@berkeleyca.gov for further information.

Mark Numainville, City Clerk

Mailed by: April 22, 2025

Noticed Pursuant To: Berkeley Municipal Code Section 23.404.040(B), Public Hearing Notice

Attachment 4

NOTICE CONCERNING YOUR LEGAL RIGHTS: *If you object to a decision by the City Council to approve or deny (Code Civ. Proc. § 1094.6(b)) or approve (Gov. Code 65009(c)(5)) an appeal, the following requirements and restrictions apply: 1) Pursuant to Code of Civil Procedure Section 1094.6, no lawsuit challenging a City decision to deny or approve a Zoning Adjustments Board decision may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a Zoning Adjustments Board decision, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.*

If you challenge the above in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Berkeley at, or prior to, the public hearing. Background information concerning this proposal will be available at the City Clerk Department and posted on the City of Berkeley webpage at least 10 days prior to the public hearing.



Administrative Record

This attachment is on file and available for review at the City Clerk Department, or can be accessed from the City Council Website. Copies of the attachment are available upon request.

City Clerk Department
2180 Milvia Street
Berkeley, CA 94704
(510) 981-6900

or from:

The City of Berkeley's Website
<http://www.berkeleyca.gov>