

ZONING ADJUSTMENTS BOARD – STAFF REPORT

FOR BOARD ACTION

MAY 8, 2025

160 Fairlawn Drive

Appeal of Zoning Officer decision to approve Administrative Use Permit #ZP2024-0041 to construct an addition over 20 feet in maximum height within a non-conforming front setback.

I. Background

A. Land Use Designations:

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

B. Zoning Permits Required:

- Administrative Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.202.050(D)(2) to construct an addition over 14 feet in average building height;
- Administrative Use Permit, pursuant to BMC Section 23.210.020(C) to construct a residential addition over 20 feet in maximum building height in the Hillside Overlay; and
- Administrative Use Permit, pursuant to BMC 23.324.050(D)(2) to alter a portion of a building and extend a building wall projecting into a minimum required setback.

C. CEQA Recommendation:

It is staff's recommendation to the Zoning Adjustments Board that the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code Section 21000, et seq. and California Code of Regulations, Section 15000, et seq.) pursuant to CEQA Guidelines Section 15301 ("Existing Facilities").

D. Project Recommendation:

Approve ZP2024-0041 and Dismiss the Appeal. The project is, on balance, consistent with the Zoning Ordinance and General Plan.

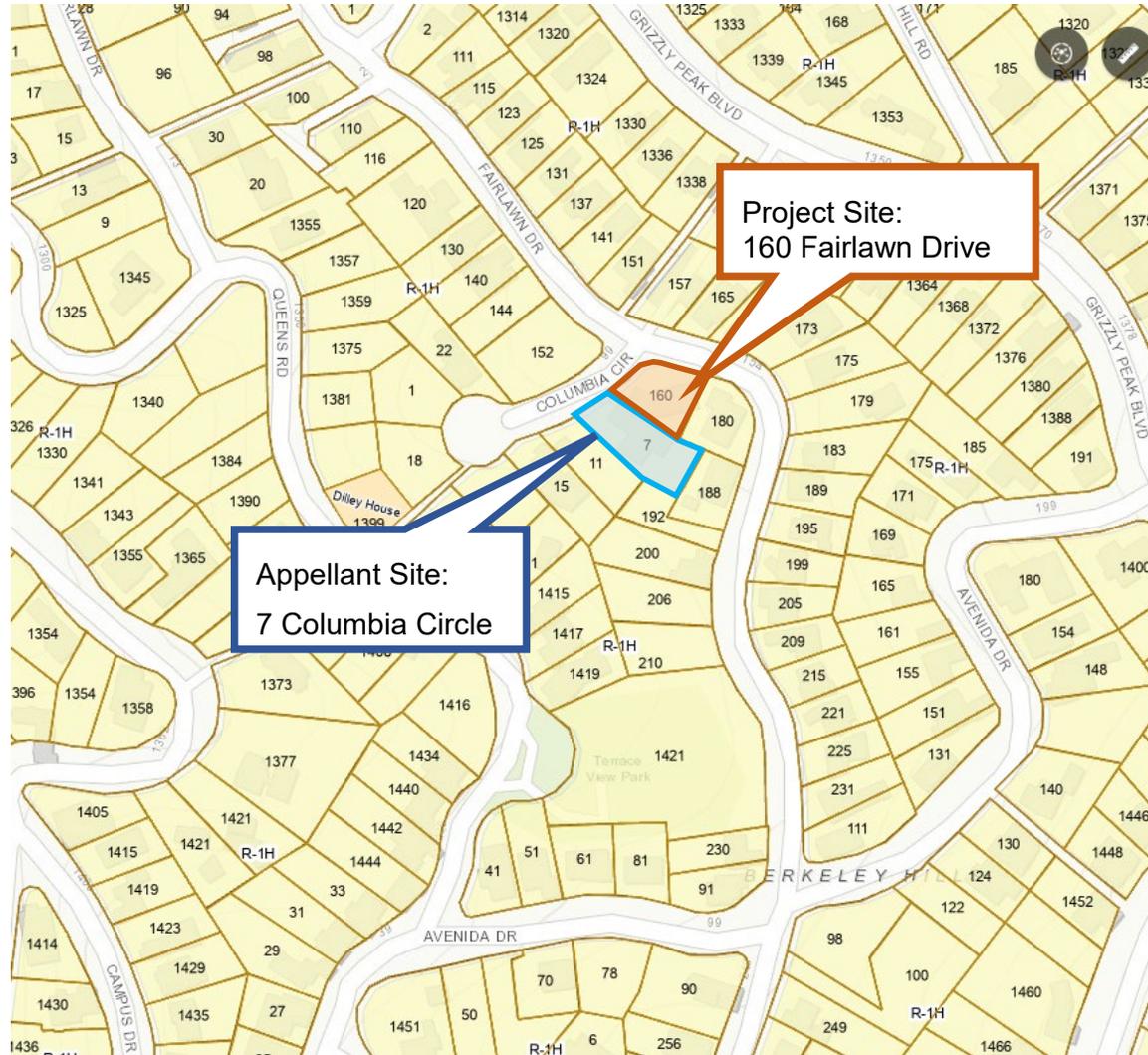
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E. Parties Involved:

- Applicant/Owner: Eric Tubman, 160 Fairlawn Drive, Berkeley, CA
- Appellant: Adam Ratoosh, 7 Columbia Circle, Berkeley, CA

Figure 1: Vicinity and Zoning Districts Map



R-1H Single Family Residential District, Hillside Overlay



Figure 2: Site Plan (Not to Scale)

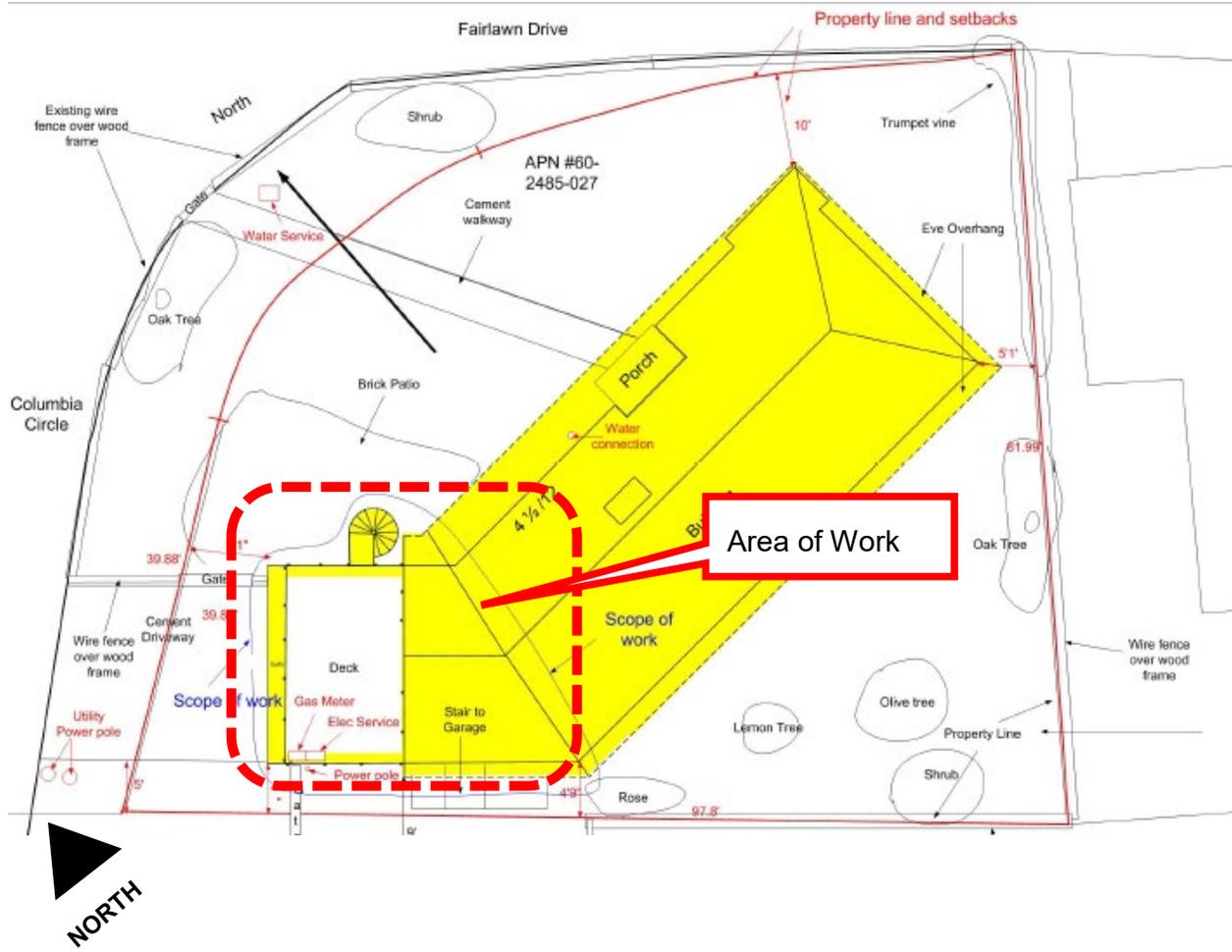


Figure 3: Existing Street View – North elevation (Not to Scale)

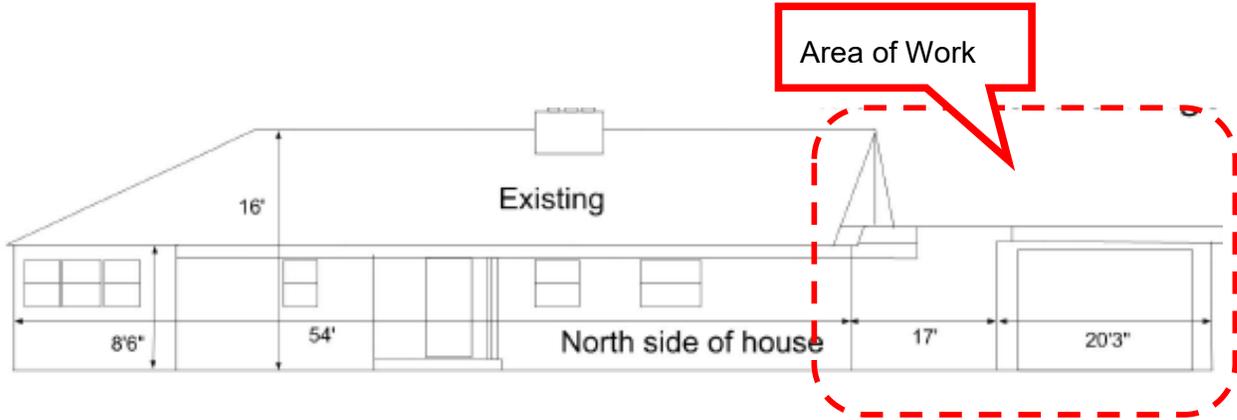


Figure 4: Proposed Street View – North Elevation Enlarged (Not to Scale)

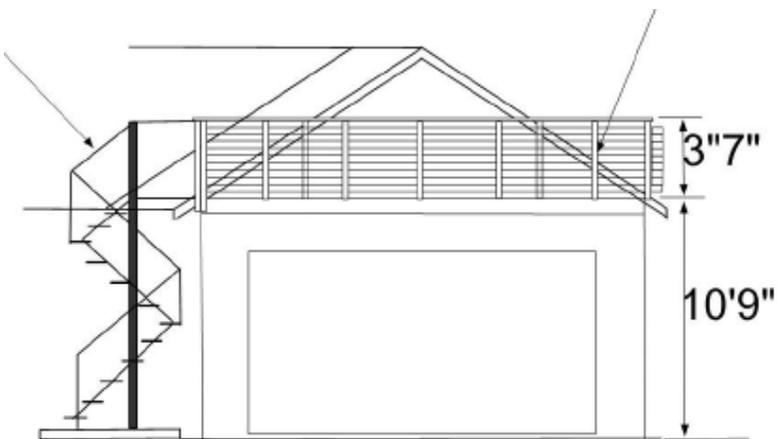


Figure 5: Existing West Elevation (Not to Scale)

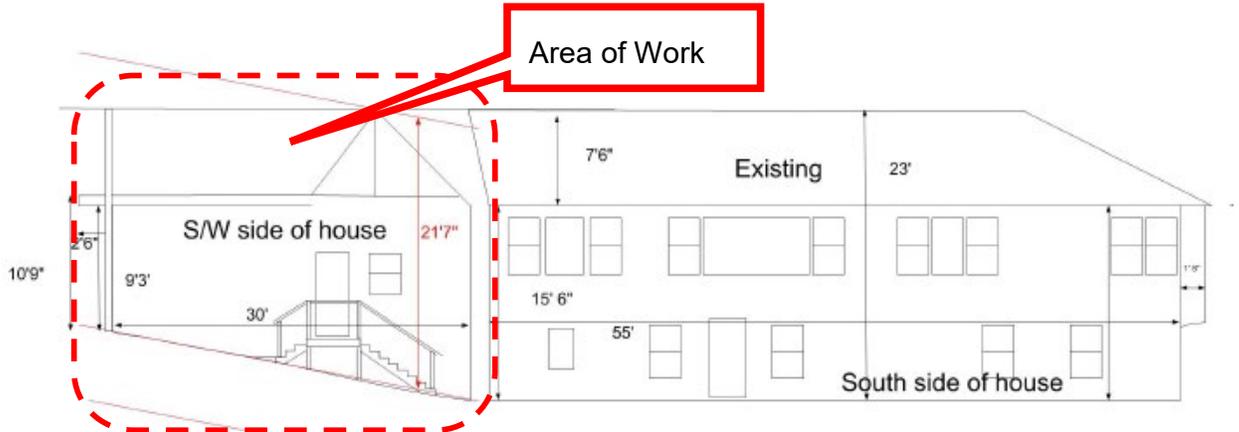


Figure 5: Proposed West Elevation Enlarged (Not to Scale)

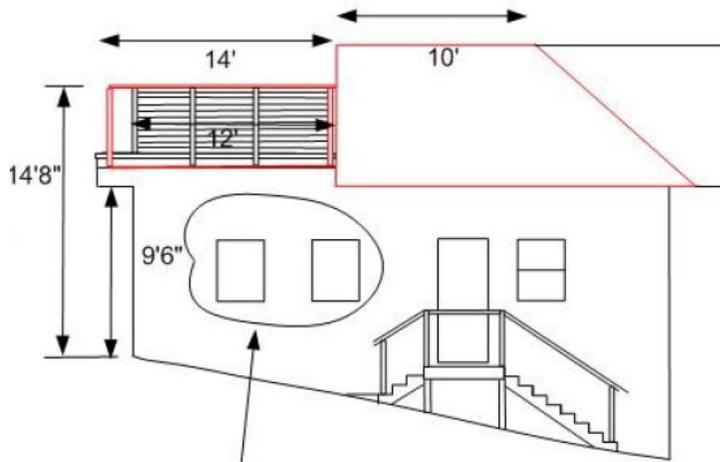


Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Single-Family Dwelling	R-1H	LDR, Low Density Residential
Surrounding Properties	North			
	South			
	East			
	West			

Table 2: Special Characteristics

Characteristic	Applicability	Explanation
Affordable Child Care Fee for qualifying non-residential projects (Per Resolution 66,618-N.S.)	No	This fee applies to net newly constructed nonresidential gross floor area over 7,500 square feet. The project does not include any nonresidential area; therefore the fee does not apply.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)	No	This fee applies to net newly constructed nonresidential gross floor area over 7,500 square feet. The project does not include any nonresidential area; therefore the fee does not apply.
Coast Live Oak Trees (BMC Chapter 6.52)	No	There are no Coast Live Oak (<i>Quercus agrifolia</i>) trees on the project site.
Creeks	No	No creek or culvert, as defined by BMC Chapter 17.08, exists on or within 30 feet of the project site.
Historic Resources	No	The project site is not designated as a Landmark by the City, nor is the application proposing to demolish the existing structure.
Housing Accountability Act (HAA) (Gov't Code Section 65589.5(j))	No	The project is an addition to a single-family dwelling and does not include any new dwelling units, therefore, it is not a "housing development project" and the Housing Accountability Act does not apply. ^a
Rent Controlled Units	No	There are no rent controlled units on the project site.
Residential Preferred Parking (RPP)	No	The site is not located in an RPP zone.
Seismic Hazards (SHMA)		The project site is located within an area susceptible to landslide as shown on the

Characteristic	Applicability	Explanation
	Yes	State Seismic Hazard Zones map. ^b As a single family, wood framed dwelling not exceeding two stories, that is not part of a development of four or more dwellings the project is exempt from special geotechnical investigation per California Public Resources Code Section 2621.6.
Soil/Groundwater Contamination	No	The project site not located within the City's Environmental Management Area and is not on the Cortese List. ^c Standard Conditions of Approval related to hazardous materials would apply.
Transit	Yes	The project site is within .25 miles of Alameda-Contra Costa Transit route 65 on Grizzly Peak Blvd.
<p>Notes:</p> <p>^a 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>^b California Department of Conservation. DOC Maps: Geologic Hazards. Available: https://maps.conservation.ca.gov/geologic Hazards/</p> <p>^c 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
April 8, 2024	Administrative Use Permit Application submitted
April 22, 2024	Application deemed incomplete
June 24, 2024	Application resubmitted
July 22, 2024	Application deemed incomplete
September 19, 2024	Application resubmitted
October 7, 2024	Application deemed complete
November 4, 2024	Application processing ^a
November 18, 2024	Resubmittal: Plans, Story Poles
March 11, 2025	Notice of Administrative Decision issued
March 20, 2025	Appeal letter received
April 24, 2025	Public hearing notices mailed/posted
May 8, 2025	ZAB hearing
Notes: a. Application processing reflects the project compliance review, including CEQA if applicable, after the application is deemed complete. Submittals are reviewed within 30 days of receipt, pursuant to the Permit Streamlining Act.	

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

Standards		Existing	Proposed	Permitted/Required
Lot Area (sq. ft.)		6,141	No change	5,000 min.
Gross Floor Area (sq. ft.)		2,056	No change	n/a
Number of Dwelling Units		1	No change	1 max.
Number of Bedrooms		3	No change	4
Building Height	Average	13'	16'-9"	28' max. (35' with AUP)
	Maximum	23'-0"	No change	35' max
	Stories	2	No change	n/a
Building Setbacks (Irregular, corner lot. Setbacks determined by Zoning Officer)	Front (Columbia Circle)	9' at roof/deck addition	No change	20' min.
	Rear	5'	No change	20' min.
	Right Side	4'-7"	No change	4' min.
	Left-Street Side (Fairlawn Drive)	10'	No change	4' min.
Lot Coverage (%)		37	No change	40 max.
Usable Open Space (sq. ft.)		500+	No change	400 min.
Parking	Automobile	1	No change	n/a
Abbreviations: sq. ft. = square feet; max. = maximum; min. = minimum; n/a = not applicable; % = percent; avg. = average, ft = feet ('), in. = inches (")				

II. Project Setting

A. Neighborhood/Area Description:

The project is located in the North Berkeley hills in the Single Family Residential District, Hillside Overlay (R-1H) where the hillside area slopes down towards the southwest. The neighborhood consists of single family residences along narrow, windy streets where there are irregular lot patterns and no clearly defined sidewalks. The houses are one to three stories that vary in height due to the sloped topography of the hillside and there is a driveway and garage adjacent to the street.

B. Site Conditions:

The project is a two-story, single-family dwelling on a corner lot that slopes down towards the southwest (rear of the lot). The front elevation of the main house faces the street intersection of Fairlawn and Columbia Circle. The garage is accessed from Columbia Circle, which is a cul-de-sac.

The appellant's lot, 7 Columbia Circle, is located on a down slope to the southwest of the subject property. The appellant's residence is approximately 9 feet from the subject property's garage wall.

The owner states the main dwelling's gable roof originally extended over the garage, but the previous owners modified the garage roof decades ago and it is presently a flat roof. There are no City records documenting the gable roof over the garage, or its removal. The current flat roof is in disrepair.

C. Photos:

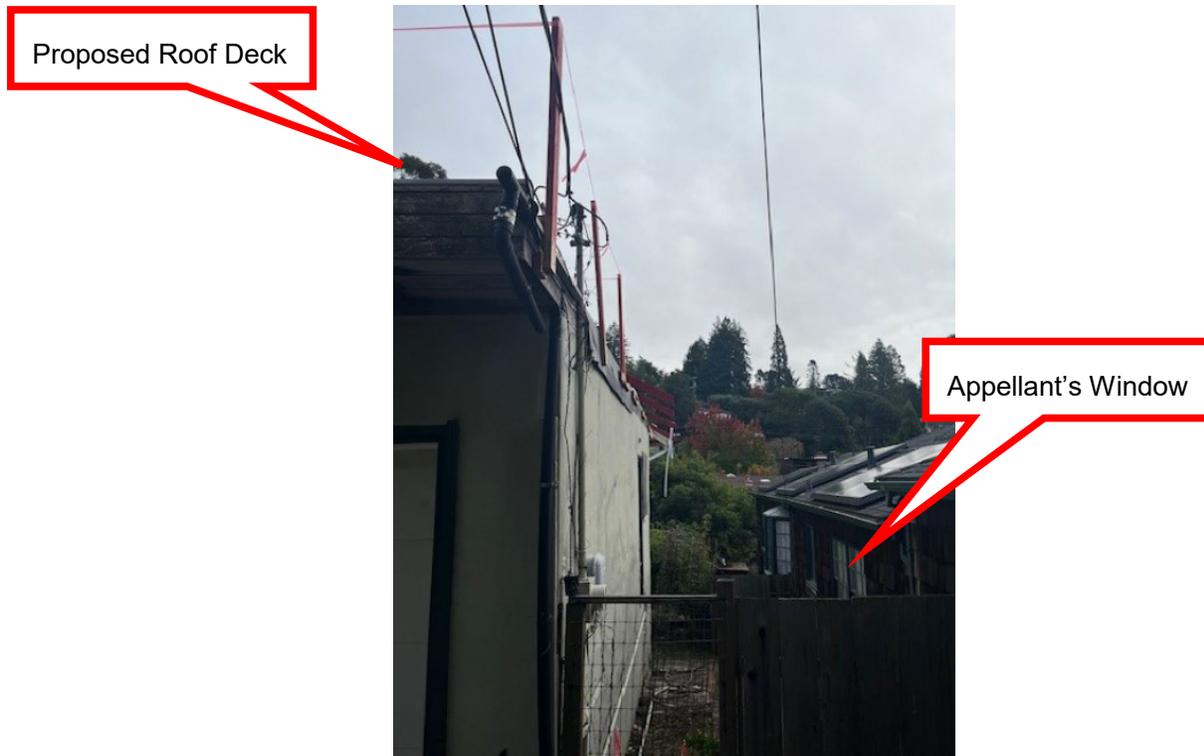
Street view of deck from Columbia Circle with story poles, looking southeast



View of 7 Columbia Circle garage and story poles in background, looking south



View of 160 Fairlawn (left) and 7 Columbia Circle (right), looking east



III. Approved Project Description

A. Proposed Project Details:

The project under Administrative Use Permit #ZP2024-0041 that was approved by the Zoning Officer consists of extending the existing gable roof to the northwest, over a portion of the garage, and repairing and rebuilding the northwest portion of the garage roof with a roof deck and a spiral staircase for access.

IV. Community Discussion

A. Neighbor/Community Concerns:

Prior to submitting this application, the applicant installed a pre-application poster on site in April 2024. The applicant also collected signatures from owners and occupants of all abutting properties prior to the application submittal. On March 11, 2025, the City mailed the Notice of Administrative Decision to property owners and occupants abutting and confronting the project site, and to interested neighborhood organizations. The City also posted notices within the neighborhood at nearby five locations. On March 12, 2025, staff received an email from the owner of 7 Columbia Circle indicating an interest in appealing the project. The appeal letter was received in the mail on March 20, 2025.

B. Zoning Officer's Findings and Decision to Approve:

The Zoning Officer determined that the proposed project would not be detrimental to those living in the neighborhood because it would meet the R-1H district standards for maximum residential density, height, open space, side setback, and lot coverage. The increased height is consistent with the purpose of the Hillside Overlay zone because the addition is small in scale and the location of the proposed addition would not be detrimental to sunlight, air, or views. The alterations within the non-conforming front yard are permissible because the alterations will not further reduce the existing non-conforming yard.

C. Public Notice:

On April 24, 2025, the City sent out 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 five locations within the immediate vicinity of the subject site. Aside from what was submitted by the appellant (See Attachment 5), at the time of this writing, staff has not received correspondence from the public regarding the project.

V. Appeal Issues and Analysis

1. **Appeal Issue:** The roof deck will create a direct view into the front bedroom.



Staff Analysis: The roof deck is set back 4 feet, 7 inches from the side property line, over 9-feet away from the appellant's property. The roof deck occupies the front half of the garage and it is located within a non-conforming front setback at 9 feet from the front property line, where the district standard for front setbacks is 20 feet. By maintaining the non-conforming 9-foot front setback, the roof deck is offset from the appellant's bedroom window. The roof deck is positioned at a higher elevation relative to the neighboring bedroom window. This vertical offset inherently reduces direct lines of sight into the window from typical standing positions on the deck. The standard compliant railings further obstructs direct views, ensuring that occupants on the deck cannot easily see into the neighboring window without deliberate effort.

As shown in the appellant's photo, the visibility of the roof deck from the bedroom window is limited to a specific viewing angle - standing at the window, looking upward and orienting one's gaze to the left. Conversely, for an individual on the roof deck to see into the bedroom, they would need to deliberately position themselves at a particular spot on the deck and orient their gaze downward at a precise angle. Given the deck's elevation and the presence of standard-compliant railings, direct lines of sight are obstructed for both the occupants of the bedroom and users of the roof deck, any potential views into the neighboring window would require actions that are atypical of standard deck usage. Given these factors along with compliance with the side setback and height limitations of the R-1H zoning district, the proposed project does not result in any adverse privacy impacts.

2. **Appeal Issue:** The roof deck introduces a new space for people to occupy that would potentially raise noise levels in the area.

Staff Analysis: The addition of the roof deck will introduce occupancy to an area of the property that was previously inaccessible to everyday use. The presence of people in this new space may result in an increase in noise levels compared to prior conditions. However, individuals are entitled to reasonably enjoy their

property, including activities that generate some residential noise. Should noise levels exceed the thresholds in the ordinance, then incidences can be reported to the Environmental Health Department, regulated by BMC Section 13.40. While the BMC regulates noise levels, individuals are entitled to the use and enjoyment of outdoor space on their property provided such use is consistent with exterior noise limits and does not constitute a nuisance. Ordinary use of the deck including associated noise is permissible.

The following information is provided for reference. Exterior noise limits are established to mitigate the detrimental impacts of specific sound levels and vibrations. Shown below, Figure 6 outlines the exterior noise level limits.

Figure 6: BMC Table 13.40-1 Exterior Noise Limits

(Levels not to be exceeded more than 30 minutes any hour)

Zoning District	Time Period	Noise Level (dBA)
R-1, R-2, R-1A, R-2A, and ESR	7:00 a.m. – 10:00 p.m.	55
	10:00 p.m. – 7:00 a.m.	45

3. **Appeal Issue:** Roof decks are not common features in the Berkeley Hills.

Staff Analysis: There are properties in the Berkeley Hillside Overlay with an approved roof deck. Elevated outdoor spaces such as roof decks, decks, and balconies are common features on hillside properties because they provide a functional and aesthetic extension of the home. They maximize usable space by providing a functional outdoor area on sloped lots where a flat yard is limited or nonexistent, and are ideal for capturing views. Staff has identified at least three recently approved and constructed 'roof deck' projects in the Hillside Overlay District. There are numerous other decks and balconies in the hillside that have also received approval for construction.

4. **Appeal Issue:** The appellant suggests continuing the pitched roof design and removing the roof deck.

Staff Analysis: The proposed project reflects the design direction chosen by the owner to construct a partial pitched roof in combination with a roof deck. The proposed roof design complies with applicable codes and regulations. The applicant is requesting approval for the project as presented.

VI. Recommendation

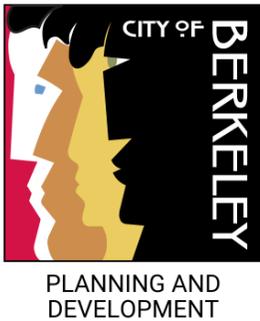
Because of the project's consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board:

1. **FIND** that the project is categorically exempt from the provisions of the CEQA pursuant to Section 15301 of the CEQA Guidelines ("Existing Facilities"); and
2. **APPROVE** Administrative Use Permit #ZP2024-0041 pursuant to Section 23.406.040(D) and subject to the attached Findings and Conditions (see Attachment 1) and **DISMISS THE APPEAL**.

Attachments:

1. Findings
2. Conditions
3. Project Plans, received November 18, 2024
4. Notice of Administrative Decision, posted March 11, 2025
5. Appeal Letter
6. Notice of Public Hearing

Staff Planner: Vicky Schlepp, vschlepp@berkeleyca.gov, (510) 981-7422



ZONING ADJUSTMENTS BOARD – FINDINGS

May 8, 2025

160 Fairlawn Drive

Appeal of Zoning Officer decision to approve Administrative Use Permit #ZP2024-0041 to construct an addition over 20 feet in maximum height within a non-conforming front setback.

ZONING PERMITS REQUIRED

- Administrative Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.202.050(D)(2) to construct an addition over 14 feet in average building height;
- Administrative Use Permit, pursuant to BMC Section 23.210.020(C) to construct a residential addition over 20 feet in maximum building height in the Hillside Overlay; and
- Administrative Use Permit, pursuant to BMC 23.324.050(D)(2) to alter a portion of a building and extend a building wall projecting into a minimum required setback.

I. CEQA FINDINGS

- A. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code Section 21000, et seq. and California Code of Regulations, Section 15000, et seq.) pursuant to Section 15301 of the CEQA Guidelines (“Existing Facilities”).
- B. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project will not affect any historical resource.

II. FINDINGS FOR APPROVAL

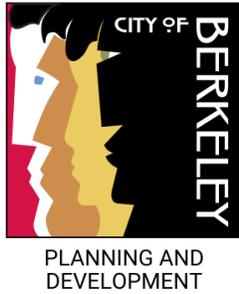
- A. As required by BMC Section 23.406.040(E), Findings for Approval, the project, under the circumstances of this particular case existing at the time at which the application is granted, will not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental

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

1. The project is compatible with the existing pattern of low-density development by expanding the building while retaining the single-family use and continuing to provide a significant amount of usable open space on the parcel. The proposed project does not involve any changes to the dwelling or the footprint of the building.
2. The new roof deck is not expected to be detrimental to the privacy of neighbors because it complies with the side setback and height limitations of the R-1H zoning. Balconies and decks over 14 feet in height are a common feature on dwellings in the hillside area and is in keeping with the residential character of the R-1 District and Hillside Overlay.
3. The roof addition is not expected to create significant changes to the existing sunlight conditions on the neighboring building. Therefore, shading impacts will not be detrimental.
4. The addition is found to be consistent with the existing development and building-to-building separation pattern in this R-1H neighborhood. Therefore, impacts to air circulation will not be detrimental.
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.

III. OTHER FINDINGS FOR APPROVAL

- A. Pursuant to BMC Section 23.210.020(C)(2), the Zoning Officer finds that the increased average and maximum main building height is consistent with the purpose of the Hillside Overlay zone. The quality and character of the hillside area and its immediate environs will be maintained.
- B. Pursuant to BMC Section 23.324.050(D)(2), the Zoning Officer finds the addition to the building projecting into the non-conforming front setback is permissible because the residential use of the property is conforming, it will not further reduce the existing non-conforming setback.



USE PERMIT ZP2024-0041

CONDITIONS OF APPROVAL

May 8, 2025

160 Fairlawn Drive

Appeal of Zoning Officer decision to approve Administrative Use Permit #ZP2024-0041 to construct an addition over 20 feet in maximum height within a non-conforming front setback.

I. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

Pursuant to Berkeley Municipal Code (BMC) Title 23 Zoning Ordinance and Title 13 Public Peace, Morals, and Welfare, the following conditions, as well as all other applicable provisions of the Zoning Ordinance, apply to this Permit:

- 1. Conditions Shall be Printed on Plans.** The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions.' *Additional sheets* may also be used if the *second* sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings.
- 2. Compliance Required (BMC Section 23.102.050).** All land uses and structures in Berkeley must comply with the Zoning Ordinance and all applicable City ordinances and regulations. Compliance with the Zoning Ordinance does not relieve an applicant from requirements to comply with other federal, state, and City regulations that also apply to the property.
- 3. Approval Limited to Proposed Project and Replacement of Existing Uses (BMC Sections 23.404.060(B)(1) and (2)):**
 - A.** This Permit authorizes only the proposed project described in the application. In no way does an approval authorize other uses, structures or activities not included in the project description.
 - B.** When the City approves a new use that replaces an existing use, any prior approval of the existing use becomes null and void when permits for the new use are exercised (e.g., building permit or business license issued). To re-establish the previously existing use, an applicant must obtain all permits required by the Zoning Ordinance for the use.
- 4. Conformance to Approved Plans (BMC Section 23.404.060(B)(4)).**

All work performed under an approved permit shall comply with the approved plans and any conditions of approval.
- 5. Exercise and Expiration of Permits (BMC Section 23.404.060(C)):**

- A. A permit authorizing a land use is exercised when both a valid City business license is issued (if required) and the land use is established on the property.
 - B. A permit authorizing construction is exercised when both a valid City building permit (if required) is issued and construction has lawfully begun.
 - C. The Zoning Officer may declare a permit lapsed if it is not exercised within one year of its issuance, except if the applicant has applied for a building permit or has made a substantial good faith effort to obtain a building permit and begin construction. The Zoning Officer may declare a permit lapsed only after 14 days written notice to the applicant. A determination that a permit has lapsed may be appealed to the ZAB in accordance with BMC Chapter 23.410, Appeals and Certification.
 - D. A permit declared lapsed shall be void and of no further force and effect. To establish the use or structure authorized by the lapsed permit, an applicant must apply for and receive City approval of a new permit.
- 6. Permit Remains Effective for Vacant Property (BMC Section 23.404.060(D)).** Once a Permit for a use is exercised and the use is established, the permit authorizing the use remains effective even if the property becomes vacant. The same use as allowed by the original permit may be re-established without obtaining a new permit, except as set forth in Standard Condition #5 above.
- 7. Permit Modifications (BMC Section 23.404.070).** No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Board. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project.
- 8. Permit Revocation (BMC Section 23.404.080).** The City may revoke or modify a discretionary permit for completed projects due to: 1) violations of permit requirements; 2) Changes to the approved project; and/or 3) Vacancy for one year or more. However, no lawful residential use can lapse, regardless of the length of time of the vacancy. Proceedings to revoke or modify a permit may be initiated by the Zoning Officer, Zoning Adjustments Board (ZAB), or City Council referral.

9. 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.

II. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD

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

Prior to Submittal of Any Building Permit:

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 #

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

11. 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.

12. 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 \(arcgis.com\)](https://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

13. 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.

14. Recycling and Organics Collection. Applicant shall provide recycling and organics collection areas for occupants, clearly marked on plans, which comply with the Alameda County Organics Reduction and Recycling Ordinance (2021-02). Contact the Zero Waste Division at RecyclingProgram@berkeleyca.gov.

15. 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:

16. 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:

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.)

22. 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.

23. Stormwater Requirements. The applicant shall demonstrate compliance with the requirements of the City's National Pollution Discharge Elimination System (NPDES) permit as described in BMC Section 17.20. The following conditions apply:

- A.** The project plans shall identify and show site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants to the City's storm drainage system, regardless of season or weather conditions.
- B.** Trash enclosures and/or recycling area(s) shall be covered; no other area shall drain onto this area. Drains in any wash or process area shall not discharge to the storm drain system; these drains should connect to the sanitary sewer. Applicant shall contact the City of Berkeley and EBMUD for specific connection and discharge requirements. Discharges to the sanitary sewer are subject to the review, approval and conditions of the City of Berkeley and EBMUD.
- C.** Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to stormwater pollution. Where feasible, landscaping should be designed and operated to treat runoff. When and where possible, xeriscape and drought tolerant plants shall be incorporated into new development plans.
- D.** Design, location and maintenance requirements and schedules for any stormwater quality treatment structural controls shall be submitted to the Department of Public Works for review with respect to reasonable adequacy of the controls. The review does not relieve the property owner of the responsibility for complying with BMC Chapter 17.20 and future revisions to the City's overall stormwater quality ordinances. This review shall be conducted prior to the issuance of a Building Permit.

- E. All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.
 - F. All on-site storm drain inlets/catch basins must be cleaned at least once a year immediately prior to the rainy season. The property owner shall be responsible for all costs associated with proper operation and maintenance of all storm drainage facilities (pipelines, inlets, catch basins, outlets, etc.) associated with the project, unless the City accepts such facilities by Council action. Additional cleaning may be required by City of Berkeley Public Works Engineering Dept.
 - G. All on-site storm drain inlets must be labeled “No Dumping – Drains to Bay” or equivalent using methods approved by the City.
 - H. Most washing and/or steam cleaning must be done at an appropriately equipped facility that drains to the sanitary sewer. Any outdoor washing or pressure washing must be managed in such a way that there is no discharge or soaps or other pollutants to the storm drain. Sanitary connections are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
 - I. All loading areas must be designated to minimize “run-on” or runoff from the area. Accumulated waste water that may contribute to the pollution of stormwater must be drained to the sanitary sewer or intercepted and pretreated prior to discharge to the storm drain system. The property owner shall ensure that BMPs are implemented to prevent potential stormwater pollution. These BMPs shall include, but are not limited to, a regular program of sweeping, litter control and spill cleanup.
 - J. Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry to the storm drain system. If any cleaning agent or degreaser is used, wash water shall not discharge to the storm drains; wash waters should be collected and discharged to the sanitary sewer. Discharges to the sanitary sewer are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
 - K. The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations, or a project stop work order.
- 24. 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.
- 25. 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.
- 26. 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.

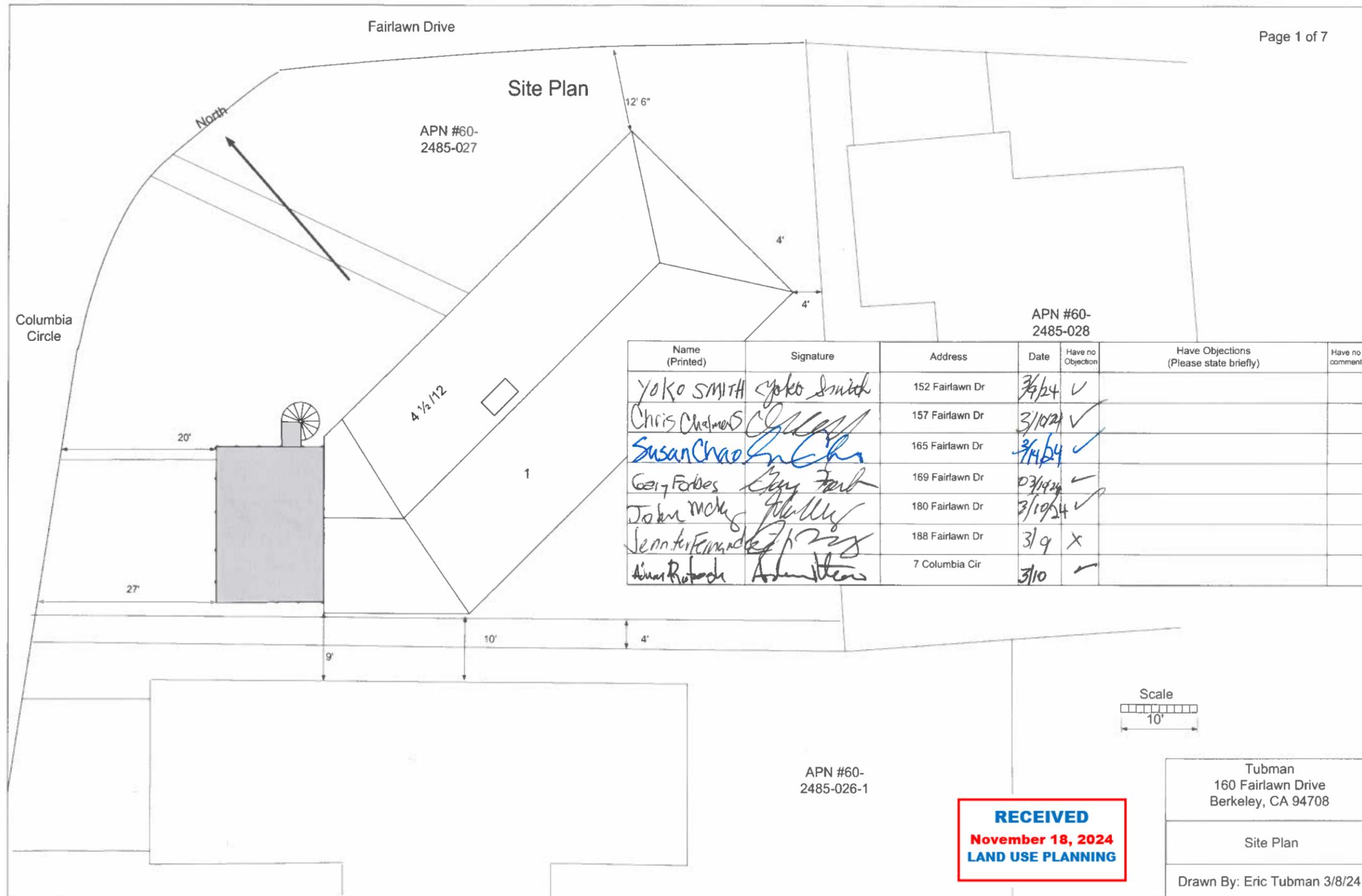
- 27. Public Works.** The project sponsor shall maintain sandbags or other devices around the site perimeter during the rainy season to prevent on-site soils from being washed off-site and into the storm drain system. The project sponsor shall comply with all City ordinances regarding construction and grading.
- 28. 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.
- 29. 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.
- 30. 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:

- 31. 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.
- 32.** All landscape, site and architectural improvements shall be completed per the attached approved drawings dated November 18, 2024.

At All Times:

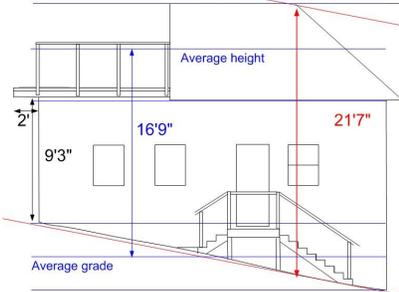
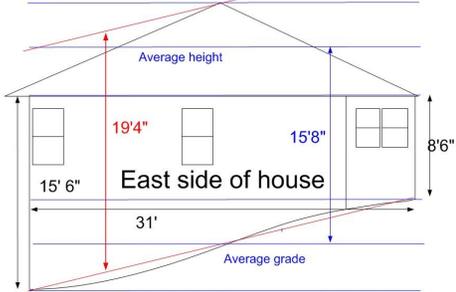
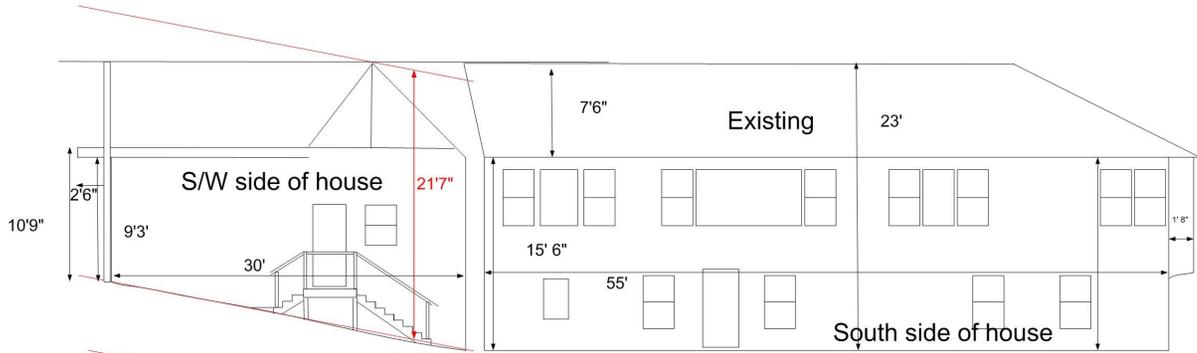
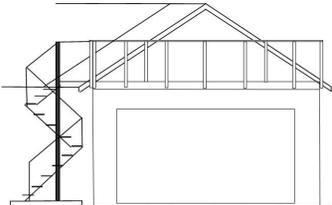
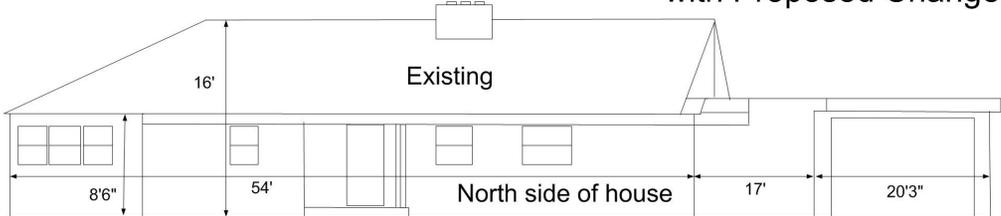
- 33. Compliance with Approved Plan.** The project shall conform to the plans and statements in the Use Permit.
- 34. Exterior Lighting.** All exterior lighting shall be energy efficient where feasible; and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
- 35. Rooftop Projections.** No additional rooftop or elevator equipment shall be added to exceed the approved maximum roof height without submission of an application for a Use Permit Modification, subject to Board review and approval.
- 36. 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.
- 37. 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.



Current Elevations and
 with Proposed Change

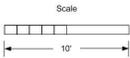
N/W Proposed view
 of garage area

Page 2 of 9



S/W Proposed view
 of garage area

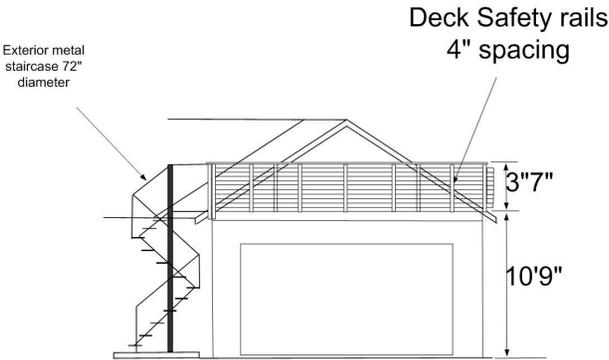
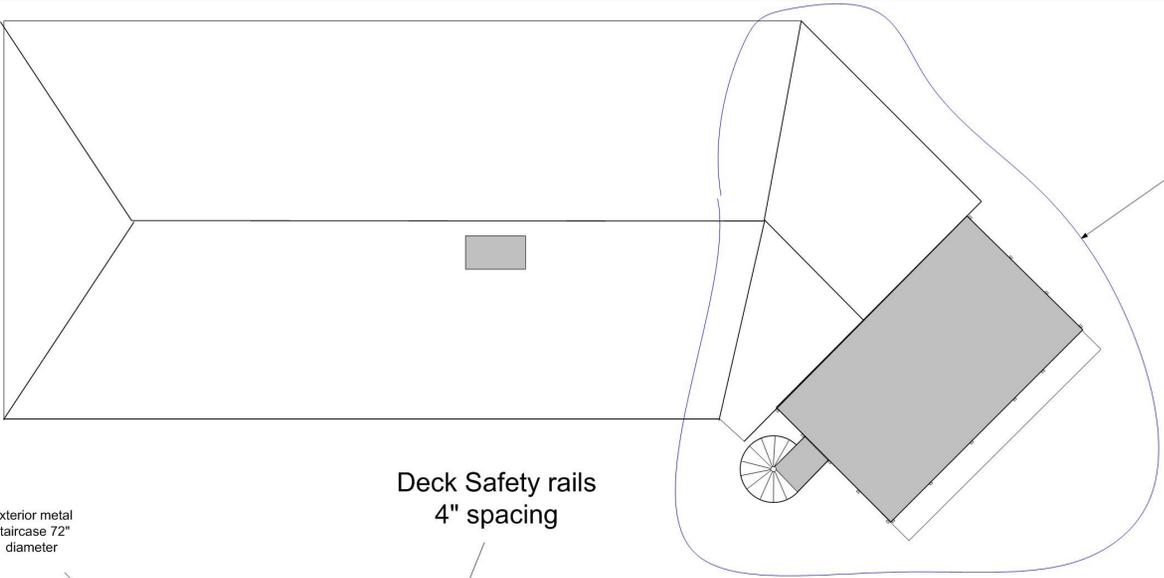
Scale
 $\frac{1}{4}'' = 1'$



All exterior walls are stucco finish.
 Wood door and wood framed
 window enclosures.
 Asphalt shingle roof

Tubman 160 Fairlawn Drive Berkeley, CA 94708
Existing Elevations with proposed change
Drawn By: Eric Tubman 6/12/24

Scope of work
Roof extension/
repair and top of
deck



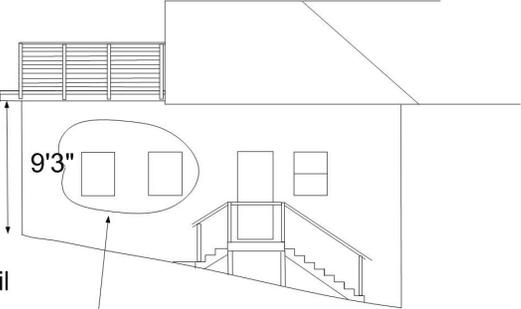
Deck Safety rails
4" spacing

Exterior metal
staircase 72"
diameter

3'7"

10'9"

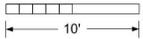
Deck and Stair detail



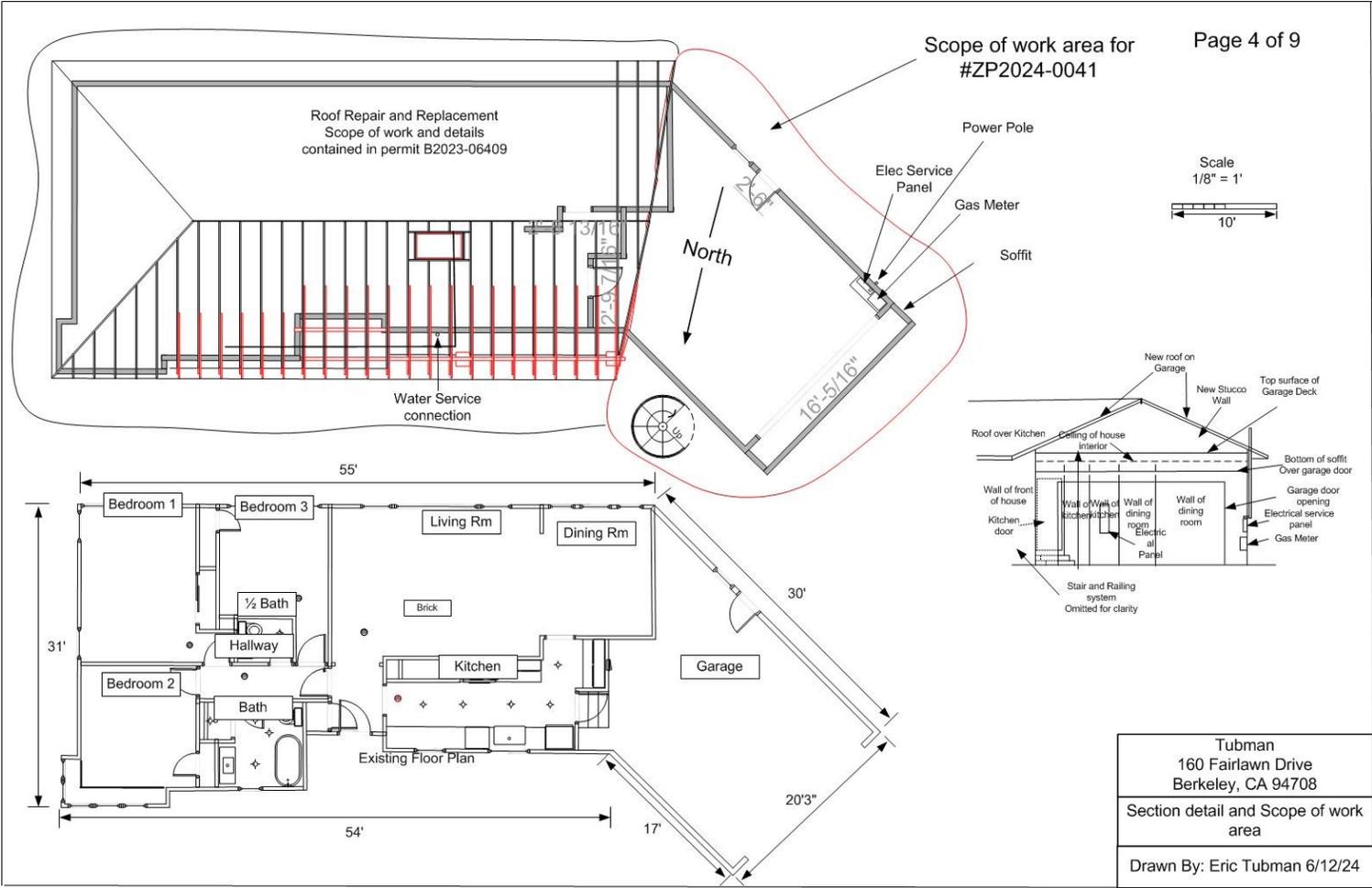
9'3"

Proposed
windows in
garage

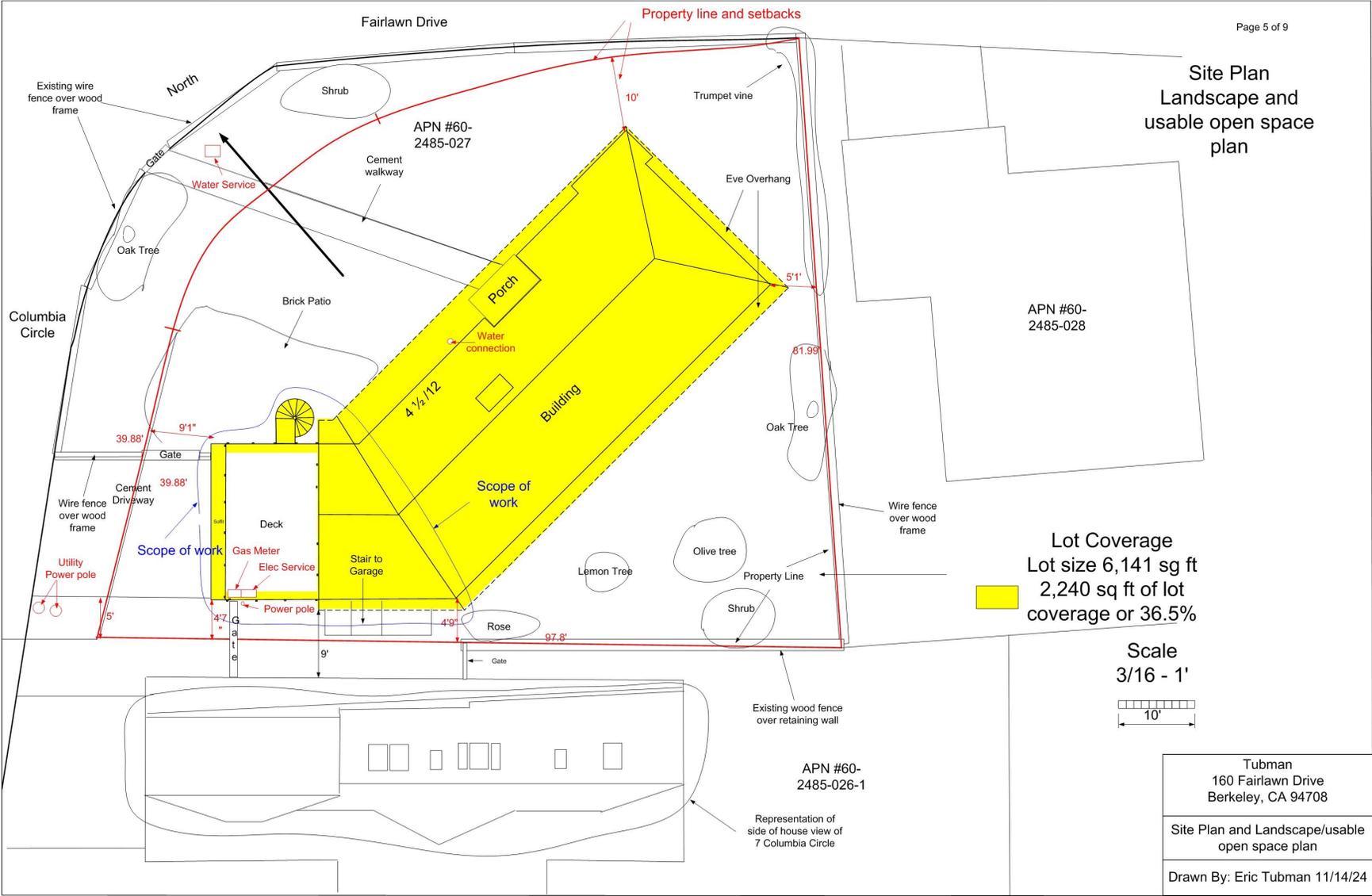
Scale
1/4" = 1'

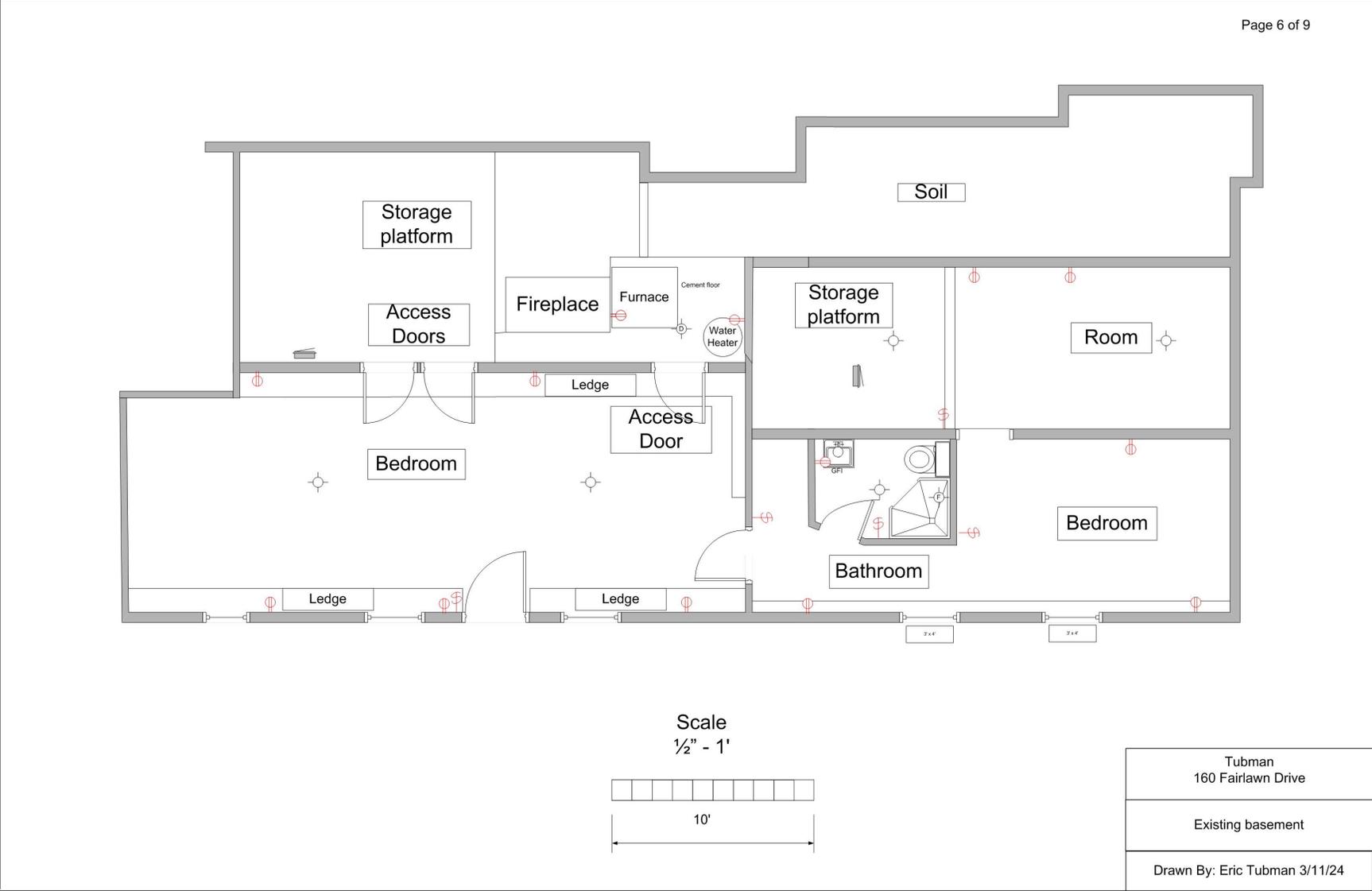


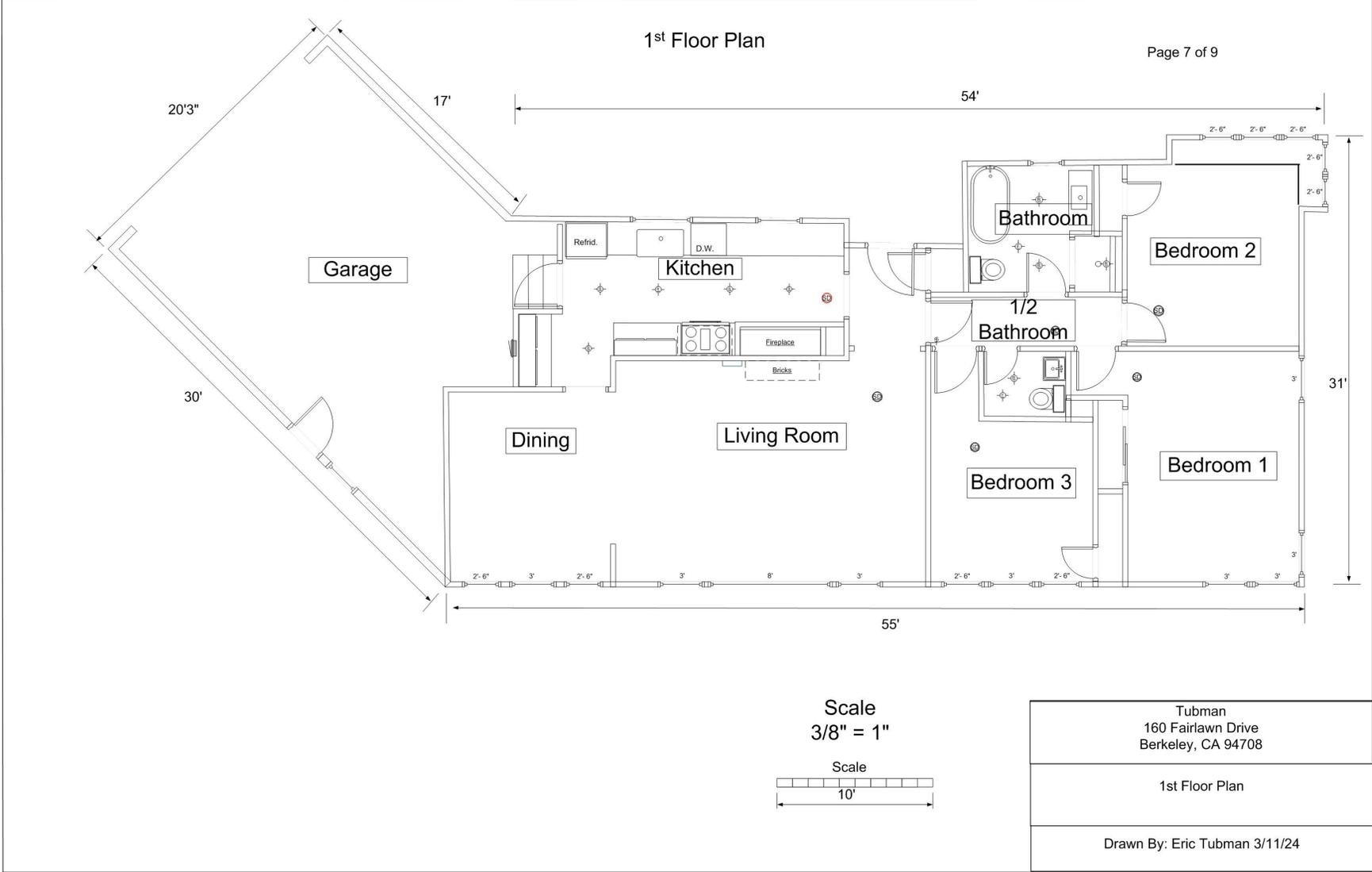
Tubman 160 Fairlawn Drive Berkeley, CA 94708
Roof and garage deck
Drawn By: Eric Tubman 11/14/24



Tubman
 160 Fairlawn Drive
 Berkeley, CA 94708
 Section detail and Scope of work area
 Drawn By: Eric Tubman 6/12/24

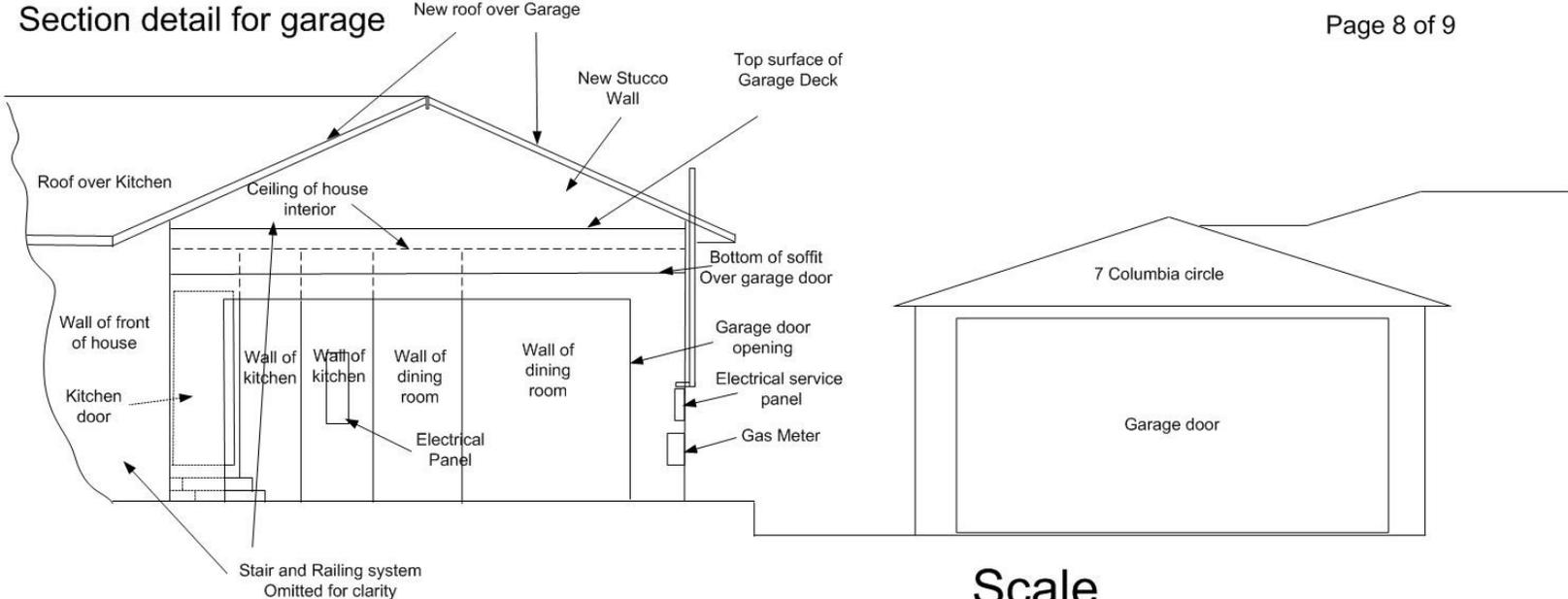






Section detail for garage

Page 8 of 9



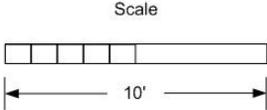
Framing details and structural design will be generated by Consulting Structural Engineer.

Seismic upgrades will accommodate deck support and incorporate Simpson "Strong-Wall" Garage Portal System

Roof height and dimensions will match existing structures height and roof pitch and soffit details on permit # B2023-06409

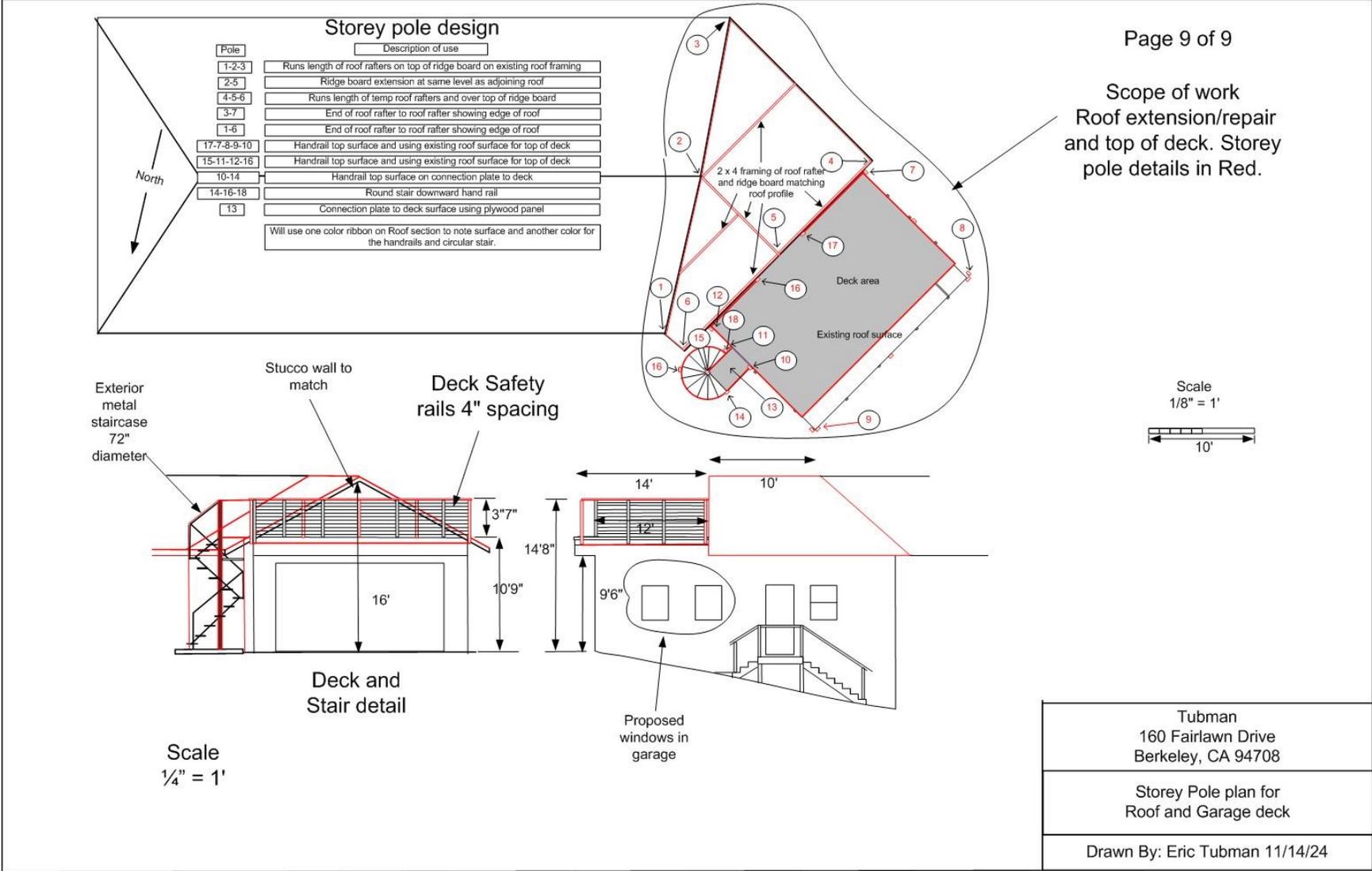
Scale

$\frac{1}{4}'' = 1'$



Tubman 160 Fairlawn Drive Berkeley, CA 94708
Section detail for garage
Drawn By: Eric Tubman 6/12/24

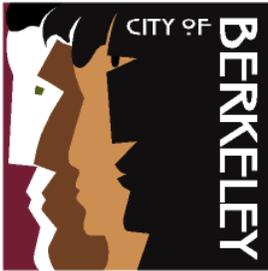
Scope of work
Roof extension/repair
and top of deck. Storey
pole details in Red.



Tubman
160 Fairlawn Drive
Berkeley, CA 94708

Storey Pole plan for
Roof and Garage deck

Drawn By: Eric Tubman 11/14/24



N O T I C E O F
A D M I N I S T R A T I V E
D E C I S I O N

160 Fairlawn Drive

Administrative Use Permit ZP2024-0041 to construct an addition over 20 feet in maximum height within a non-conforming front setback by reconfiguring the flat roof over an attached garage so the portion of the roof attached to the single-family dwelling will match the ridge line of the existing pitched roof and the portion overlooking the street will be a roof deck.

ZONING OFFICER DECISION: The Zoning Officer of the City of Berkeley has APPROVED the following permits pursuant to Berkeley Municipal Code (BMC) Section 23.406.030(F), and based on the attached findings and conditions (attachment 1) and plans (attachment 2):

- Administrative Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.202.050(D)(2) to construct an addition over 14 feet in average building height;
- Administrative Use Permit, pursuant to BMC Section 23.210.020(C) to construct a residential addition over 20 feet in maximum building height in the Hillside Overlay; and
- Administrative Use Permit, pursuant to BMC 23.324.050(D)(2) to alter a portion of a building and extend a building wall projecting into a minimum required setback.

DATE NOTICE IS ISSUED: March 11, 2025

APPEAL PERIOD: March 12, 2025 to April 1, 2025

ATTACHMENTS:

1. Findings and Conditions
2. Project Plans, dated received November 18, 2024

FOR FURTHER INFORMATION:

All application materials for this project are available online at:

<https://aca.cityofberkeley.info/CitizenAccess/Welcome.aspx>. Questions about the project should be directed to the project planner, Vicky Schlepp at (510) 981-7422 or vschlepp@berkeleyca.gov.

PUBLIC NOTICE, PURSUANT TO BMC SECTION [23.404.040\(A\)](#):

This Notice of Administrative Decision was:

1. Forwarded to the Zoning Adjustments Board and sent to the Main Library;
2. Posted at three visible locations in the vicinity of the subject property and at a bulletin board at the Zoning counter.
3. Mailed to neighborhood and community organizations for which the project falls within their expressed area of interest, as set forth in BMC Section [23.404.040\(E\)](#);
4. Mailed to owners and residents of properties abutting and confronting the subject property.

The validity of the proceedings, however, shall not be affected by the failure of any such property owner, occupant

or neighborhood or community organization to receive such mailed notice.

TO APPEAL THIS DECISION, PURSUANT TO BMC CHAPTER [23.410](#):

To appeal this decision, you must:

1. Submit a letter clearly and concisely setting forth the grounds for the appeal, along with the required fee (see below) to the Zoning Officer, at the Permit Service Center, 1947 Center Street, 3rd Floor, Berkeley.
2. The appeal and required fee (see below) must be received **prior to 2:00 p.m. on the last day of the appeal period shown above (if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day).**
3. Submit the required fee to the Permit Service Center (see above; checks and money orders must be payable to 'City of Berkeley'):
 - A. The basic fee for appeals of a Zoning Officer decision to the Zoning Adjustments Board is \$500. This fee may be reduced to \$200 if the appeal is signed by persons who lease or own at least 35 percent of the parcels or dwelling units within 300 feet of the project site, or at least 20 such persons (not including dependent children), whichever is less.
 - B. The fee for appeals of affordable housing projects (defined as projects which provide 50 percent or more affordable units for households earning 80 percent or less of Area Median Income) is \$500, which may not be reduced.
 - C. The fee for all appeals by Applicants is \$3,680.

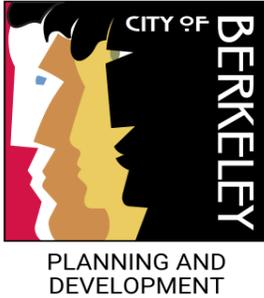
If an appeal is filed, the Zoning Officer shall set the matter for consideration by the Zoning Adjustments Board. An appeal stays the issuance and exercise of the AUP until a decision is rendered or the appeal is withdrawn. If no appeal is received, the permit will be issued on the first business day following expiration of the appeal period, and the project may proceed at that time.

NOTICE CONCERNING YOUR LEGAL RIGHTS:

If you object to this decision, the following requirements and restrictions apply:

1. If you challenge this decision in court, you may be limited to raising only those issues you or someone else raised in an appeal of the decision.
2. You must appeal to the Zoning Adjustments Board within twenty (20) days after the Notice of Decision of the action of the Zoning Officer 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 decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, your appeal of this decision must include the following information:
 - A. That this belief is a basis of your appeal.
 - B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
 - C. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City and in court.



ATTACHMENT 1

FINDINGS
MARCH 11, 2025

160 Fairlawn Drive

Administrative Use Permit ZP2024-0041 to construct an addition over 20 feet in maximum height within a non-conforming front setback by reconfiguring the flat roof over an attached garage so the portion of the roof attached to the single-family dwelling will match the ridge line of the existing pitched roof and the portion overlooking the street will be a roof deck.

ZONING PERMITS REQUIRED

- Administrative Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.202.050(D)(2) to construct an addition over 14 feet in average building height;
- Administrative Use Permit, pursuant to BMC Section 23.210.020(C) to construct a residential addition over 20 feet in maximum building height in the Hillside Overlay; and
- Administrative Use Permit, pursuant to BMC 23.324.050(D)(2) to alter a portion of a building and extend a building wall projecting into a minimum required setback.

CEQA FINDINGS

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to CEQA Guidelines Section 15301 "Existing Facilities."
2. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project will not affect any historical resource.

FINDINGS FOR APPROVAL

3. As required by BMC Section 23.406.030(F), the project, under the circumstances of this particular case existing at the time at which the application is granted, will not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:

- A. The proposed project maintains conformance to the Single-Family Residential District and Hillside Overlay District (R-1H) district and parking standards (BMC Sections 23.202.050, 23.210.020, 23.322) as described in Table 1:

Table 1: Development Standards

R-1H and Parking Standards BMC Section 23.202.050 and 23.210.020 and 23.322		Existing	Proposed	Permitted/Required
Lot Area (sq. ft.)		6,141	No change	5,000 min.
Gross Floor Area (sq. ft.)		2,056	No change	n/a
Number of Dwelling Units		1	No change	1 max.
Number of Bedrooms		3	No change	4
Building Height	Average	13'	16'-9"	28' (35' with AUP) max
	Maximum	23'-0"	No change	35' max
	Stories	2	No change	n/a
Building Setbacks (corner lot. Setbacks determined by Zoning Officer)	Front (Columbia Circle)	9' at roof/deck addition	No change	20' min.
	Rear	5'	No change	20' min.
	Right Side	4'-7"	No change	4' min.
	Left-Street Side (Fairlawn Drive)	10'	No change	4' min.
Lot Coverage (%)		37	No change	40 max.
Usable Open Space (sq. ft.)		500+	No change	400 min.
Parking	Automobile	1	No change	n/a ¹
Abbreviations: sq. ft. = square feet; max. = maximum; min. = minimum; n/a = not applicable; % = percent; avg. = average, ft = feet ('), in. = inches (")				
¹ AB-2097 , effective January 1, 2023, prohibits local jurisdictions from requiring minimum parking for most non-residential uses.				

- B. The subject property is a two-story, single-family dwelling with an attached garage on a corner lot that slopes down to the south. The front façade of the dwelling faces the street where Fairlawn and Columbia Circle intersect. The driveway to the attached garage is along Columbia Circle, which is a cul-de-sac. The owner states the original ridge line over the main dwelling extended over the garage, but the previous owners modified the roof over the garage and it is presently a flat roof. There are no City records documenting the previous roof or the removal of it. The roof is in disrepair. The project proposes to extend the existing gable roof to the northwest, over a portion of the garage. The project will also repair and rebuild the northwest portion of the garage roof with a roof deck and add a staircase for access. The project is compatible with the existing pattern of low-density development by expanding the building while retaining the single-family use and

continuing to provide a significant amount of usable open space on the parcel. The proposed project does not involve any changes to the dwelling or the footprint of the building.

- C. Privacy: The new roof deck is not expected to be detrimental to the privacy of neighbors because it faces the street, approximately 8 feet from the nearest neighboring house. In addition, the roof deck overlooks the subject property's own front yard on the north side, and overlooks the neighbor's garage roof on the west side, which is at a lower elevation and there are no windows aligning with the deck. Balconies and decks over 14 feet in height are a common feature on dwellings in the hillside area and is in keeping with the residential character of the R-1 District and Hillside Overlay.
 - D. Shadows: The ridge line of the new roof will be 10-feet in length and approximately 6 feet above the existing flat roof. The sloped roof planes extend approximately 10 feet from the peak to the outer wall. Given the small scale of the new roof, the angle of the roof pitch, the building location and solar orientation, there will be minimal new shadows onto the adjacent building to the southwest at 7 Columbia Circle. The roof addition is not expected to create significant changes to the existing sunlight conditions on the neighboring building. The roof deck will be the same height as the existing flat roof (10'-9") and the railings will add 3'-7" to the height, bringing it slightly over 14 feet in height. The new shadows cast by the railings will be minimal because the railings will be spaced 4-inches apart which still allows sunlight and airflow, and the deck will remain uncovered. Therefore, shading impacts will not be detrimental.
 - E. Air: The addition is found to be consistent with the existing development and building-to-building separation pattern in this R-1H neighborhood because the project will maintain the existing building-to-building separation and the roof will not align with the neighboring building because of the down-sloping topography of the hillside area. Therefore, impacts to air circulation will not be detrimental.
 - F. 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.
5. Pursuant to BMC Section 23.210.020(C)(2), the Zoning Officer finds that the increased average and maximum main building height is consistent with the purpose of the Hillside Overlay zone because the addition is small in scale and matches the existing roof of the dwelling and the deck over 14-feet in height is a common feature in the hillside area. The quality and character of the hillside area and its immediate environs will be maintained. In addition, there will not be significant impacts to views enjoyed by neighboring properties because this hillside area downslopes towards the west which maintains any views of the bay for the closest neighboring property which is at a lower elevation. The neighbors to the north and east are located across the street and at a slightly higher elevation. In addition,

there is mature vegetation in the surrounding area which obstructs views and provides privacy.

6. Pursuant to BMC Section 23.324.050(D)(2), the Zoning Officer finds the addition to the building projecting into the non-conforming front setback is permissible because the residential use of the property is conforming, it will not further reduce the existing non-conforming setback because the addition will be built over the existing building footprint and the addition will not exceed the height limit of the zoning district.



Prepared by: Vicky Schlepp
For Sharon Gong, Zoning Officer

Exhibit A

Conditions of Approval

March 11, 2025

I. General Administrative Conditions		<u>Regulation Source</u>	<u>Timing/ Implementation</u>	<u>Enforcement/Monitoring</u>
1.	Project Approval. This Administrative Use Permit #ZP2024-0041 approval is for 160 Fairlawn Drive , as substantially shown and described on the project plans dated November 18, 2024, except as required to be modified by conditions herein and plans as presented to the Zoning Officer on March 10, 2025 (“Approval Date.”). For any condition herein that requires preparation of a Final Plan where the project applicant has submitted a conceptual plan, the project applicant shall submit final plan(s) in substantial conformance with the conceptual plan, but incorporate the modifications required by the conditions herein for approval by the City.	City of Berkeley	On-Going	Land Use Planning
2.	Approval Limited to Proposed Project and Replacement of Existing Uses. 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. When the City approves a new use that replaces an existing use, any prior approval of the existing use becomes null and void when permits for the new use are exercised (e.g., building permit or business license issued). To reestablish the previously existing use, an applicant must obtain all permits required by the Zoning Ordinance for the use. (BMC Sections 23.404.060.B.1 and 2)	City of Berkeley BMC Sections 23.404.060	On-Going	Land Use Planning
3.	Compliance Required. 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.	City of Berkeley	On-Going	Land Use Planning

I. General Administrative Conditions		<u>Regulation Source</u>	<u>Timing/ Implementation</u>	<u>Enforcement/<u>Monitoring</u></u>
4.	Conformance to Approved Plans. All work performed under an approved permit shall be in compliance with the approved plans and any Conditions of Approval.	City of Berkeley BMC Section 23.404.060. B.4	On-Going	Land Use Planning
5.	Permit Modifications. No change in the use or structure for which this Use 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.	City of Berkeley BMC Section 23.404.070	On-Going	Land Use Planning
6.	Permit Revocation. 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.	City of Berkeley BMC Section 23.404.080	On-Going	Land Use Planning
7.	Permit Remains Effective for Vacant Property. 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.	City of Berkeley BMC Section 23.404.060.D	On-Going	Land Use Planning

I. General Administrative Conditions		<u>Regulation Source</u>	<u>Timing/ Implementation</u>	<u>Enforcement/<u>Monitoring</u></u>
8.	<p>Exercise and Expiration of Permits 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.</p> <p>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.</p> <p>B. A permit authorizing construction is exercised when both a valid City building permit (if required) is issued and construction has lawfully begun.</p> <p>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).</p> <p>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.</p>	<p>City of Berkeley BMC Section 23.404.060 (C) "Time Limits"</p>	On-Going	Land Use Planning
9.	<p>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</p>	City of Berkeley	On-Going	Land Use Planning

I. General Administrative Conditions		<u>Regulation Source</u>	<u>Timing/Implementation</u>	<u>Enforcement/Monitoring</u>
	permittee has asserted the Claims, although the permittee shall still have a duty to indemnify, protect and hold harmless the City.			
11.	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.	City of Berkeley	On-Going	Building & Safety/ Land Use Planning

II. Conditions Imposed by the Zoning Officer		<u>Regulation Source</u>	<u>Timing/Implementation</u>	<u>Enforcement/Monitoring</u>
1.	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.	City of Berkeley	On-Going	Land Use Planning
2.	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.	City of Berkeley	On-Going	Land Use Planning

III. At Building Permit Submittal		<u>Regulation Source</u>	<u>Timing/Implementation</u>	<u>Enforcement/Monitoring</u>
1.	Conditions of Approval on Building Permit Plan Submittal Administrative Use Permit. The Conditions of Approval for this Administrative Use Permit shall be printed on the <i>second</i> sheet of each plan set submitted for a building permit pursuant to this Administrative Use Permit, under the title 'Administrative Use Permit Conditions.'	City of Berkeley	At the Time of Building Permit Submittal	Building & Safety/Land Use Planning

2.	<p>Project Liaison. The applicant shall <u>include in all building permit plans and post onsite</u> 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.</p> <p>Please designate the name of this individual below:</p> <p><input type="checkbox"/> Project Liaison _____ Name Phone #</p>	City of Berkeley	At the Time of Building Permit Submittal	Building & Safety/Land Use Planning
3.	<p>Construction and Demolition Diversion. The applicant shall submit a Construction Waste Management Plan that meets the requirements of BMC Chapter 19.37 including 100% diversion of asphalt, concrete, excavated soil and land-clearing debris and a minimum of 65% diversion of other nonhazardous construction and demolition waste.</p>	City of Berkeley BMC Chapter 19.37	At Building Permit Submittal	Building & Safety Division
4.	<p>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.</p>	City of Berkeley	At Building Permit Submittal	Public Works
5.	<p>Drainage Patterns. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way. The applicant shall submit drainage plans for approval by the Building & Safety Division and Public Works Department, if required.</p>	City of Berkeley	At Building Permit Submittal	Public Works
<p>IV. During Construction A. Building & Safety Division</p>		<u>Regulation Source</u>	<u>Timing/ Implementation</u>	<u>Enforcement/Monitoring</u>
1	<p>Construction Hours. Construction activity shall be limited to between the hours of 7:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and 4:00 PM on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.</p>	City of Berkeley	During Construction	Building & Safety
2.	<p>Construction Hours- Exceptions. It is recognized that certain construction activities, such as the placement of concrete, must be performed in a continuous manner and may require an extension of these work hours. Prior to initiating any activity that might require a longer period, the developer must notify the Zoning Officer and request an exception for a finite</p>	City of Berkeley	During Construction	Building & Safety

	period of time. If the Zoning Officer approves the request, then two weeks prior to the expanded schedule, the developer shall notify businesses and residents within 500 feet of the project site describing the expanded construction hours. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval. The project shall not be allowed more than 15 extended working days.			
3.	Construction / No Parking Permits. Contact the Permit Service Center (PSC) at 1947 Center Street, Third Floor or (510) 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. <u>A current copy of this Plan shall be available at all times at the construction site for review by City Staff.</u>	City of Berkeley	During Construction	Building & Safety

IV. During Construction		<u>Regulation Source</u>	<u>Timing/ Implementation</u>	<u>Enforcement/Monitoring</u>
B. Land Use Planning				
1.	<u>Paleontological Resources (Ongoing throughout demolition, grading, and/or construction).</u> 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.	City of Berkeley	During Construction	Land Use Planning

2.	<p><u>Halt Work/Unanticipated Discovery of Tribal Cultural Resources. In the event that cultural resources of Native American origin are identified during construction,</u> 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.</p>	City of Berkeley	During Construction	Land Use Planning
3.	<p><u>Archaeological Resources (Ongoing throughout demolition, grading, and/or construction).</u> Pursuant to CEQA Guidelines section 15064.5(f), “provisions for historical or unique archaeological resources accidentally discovered during construction” should be instituted. Therefore:</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p>	City of Berkeley	During Construction	Land Use Planning

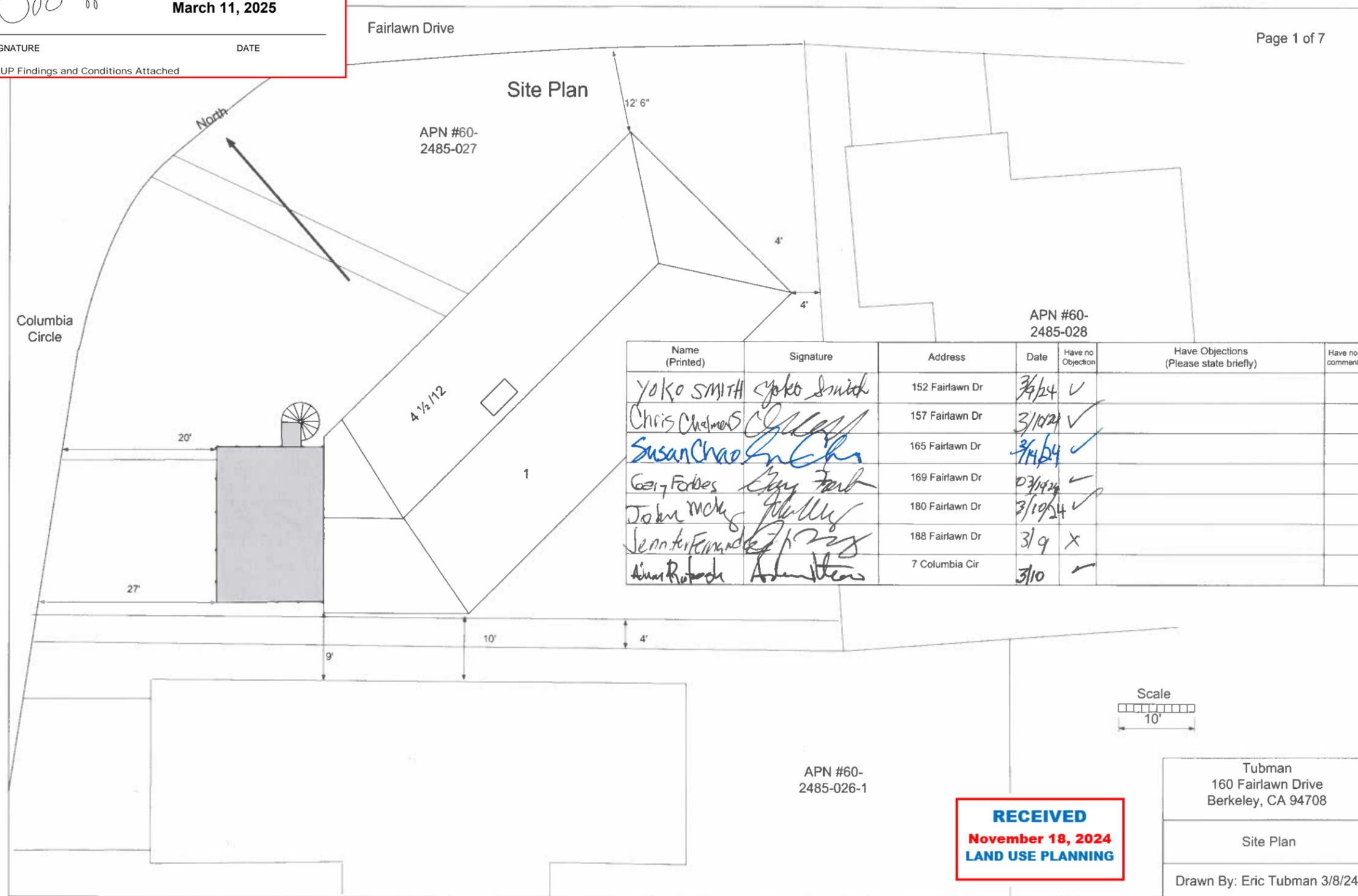
	<p>E. If significant materials are recovered, the qualified professional shall prepare a report on the findings for submittal to the Northwest Information Center.</p>			
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<p align="center">IV. During Construction C. During Construction: Public Works</p>		<p align="center"><u>Regulation Source</u></p>	<p align="center"><u>Timing/ Implementation</u></p>	<p align="center"><u>Enforcement/Monitoring</u></p>
<p align="center">1.</p>	<p>Site Debris. 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.</p>	<p align="center">City of Berkeley</p>	<p align="center">During Construction</p>	<p align="center">Public Works</p>
<p align="center">2.</p>	<p>Excavation. The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.</p>	<p align="center">City of Berkeley</p>	<p align="center">During Construction</p>	<p align="center">Public Works</p>
<p align="center">3.</p>	<p>Site Watering & Street Sweeping. All active construction areas shall be watered at least twice daily, and all piles of debris, soil, sand or other loose materials shall be watered or covered. Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.</p>	<p align="center">City of Berkeley</p>	<p align="center">During Construction</p>	<p align="center">Public Works</p>
<p align="center">4.</p>	<p>Street & Sidewalk Damages. 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.</p>	<p align="center">City of Berkeley</p>	<p align="center">During Construction</p>	<p align="center">Public Works</p>
<p align="center">5.</p>	<p>Underground Utilities. 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</p>	<p align="center">City of Berkeley</p>	<p align="center">During Construction</p>	<p align="center">Public Works</p>
<p align="center">6.</p>	<p>Hauling of Debris. Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.</p>	<p align="center">City of Berkeley</p>	<p align="center">During Construction</p>	<p align="center">Public Works</p>

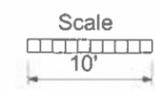
7.	On-Site Drainage. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way.	City of Berkeley	During Construction	Public Works
8.	Construction During the Rainy Season. Any construction during the rainy season (October 15-April 15) wet season shall require submittal of a soils report with appropriate measures to minimize erosion and landslides, and the developer shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.	City of Berkeley	During Construction	Public Works

PLANS APPROVED by

 March 11, 2025
 SIGNATURE DATE
 *AUP Findings and Conditions Attached



Name (Printed)	Signature	Address	Date	Have no Objection	Have Objections (Please state briefly)	Have no comment
Yoko Smith		152 Fairlawn Dr	3/4/24	✓		
Chris Chalmer		157 Fairlawn Dr	3/10/24	✓		
Susan Chao		165 Fairlawn Dr	3/11/24	✓		
Geary Forbes		169 Fairlawn Dr	03/14/24	✓		
John McKee		180 Fairlawn Dr	3/19/24	✓		
Jennifer Fernandez		188 Fairlawn Dr	3/9	X		
Aimee Roberts		7 Columbia Cir	3/10	✓		



APN #60-2485-026-1

RECEIVED
 November 18, 2024
 LAND USE PLANNING

Tubman
 160 Fairlawn Drive
 Berkeley, CA 94708
 Site Plan
 Drawn By: Eric Tubman 3/8/24

PLANS APPROVED by

Eric Tubman
 March 11, 2025

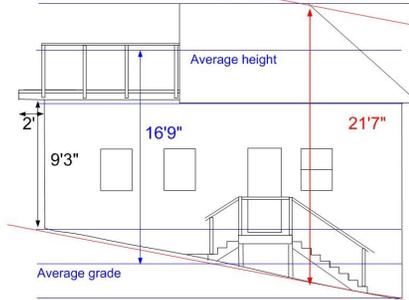
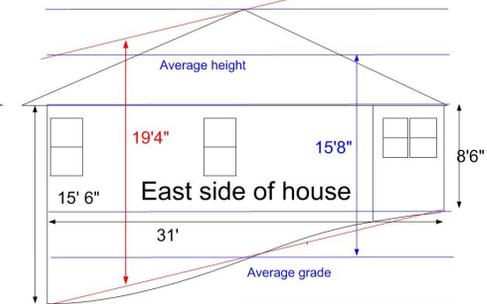
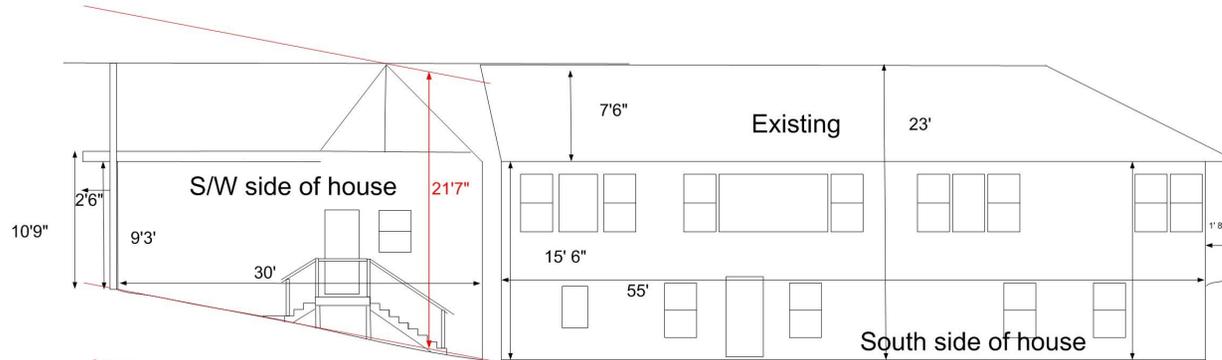
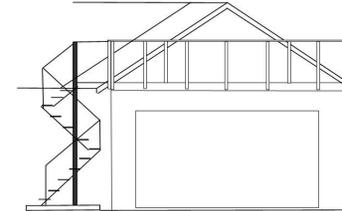
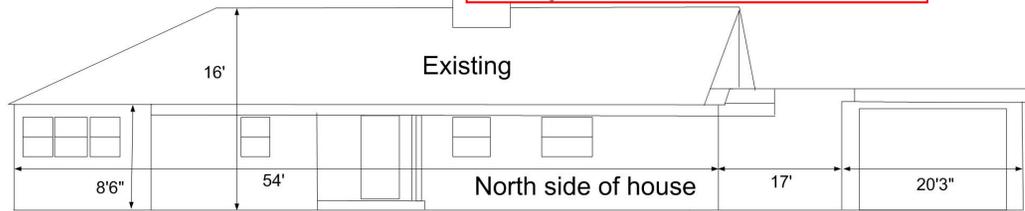
SIGNATURE _____ DATE _____

*AUP Findings and Conditions Attached

Plans and
 Change

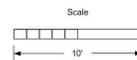
N/W Proposed view
 of garage area

Page 2 of 9



S/W Proposed view
 of garage area

Scale
 $\frac{1}{4}'' = 1'$



All exterior walls are stucco finish.
 Wood door and wood framed
 window enclosures.
 Asphalt shingle roof

Tubman 160 Fairlawn Drive Berkeley, CA 94708
Existing Elevations with proposed change
Drawn By: Eric Tubman 6/12/24

PLANS APPROVED by

March 11, 2025

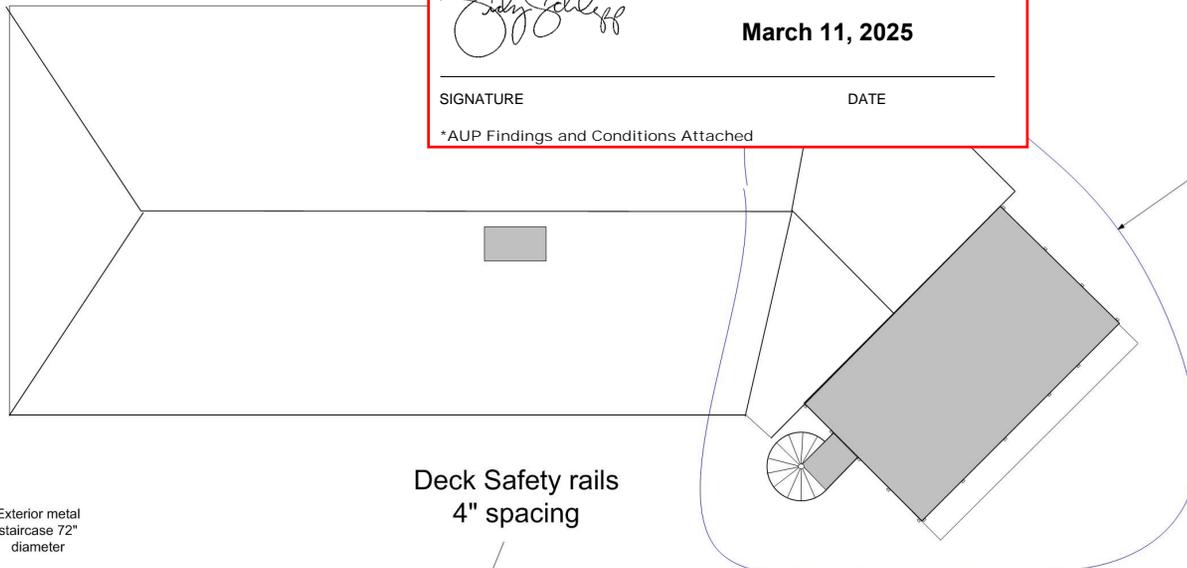
SIGNATURE

DATE

*AUP Findings and Conditions Attached

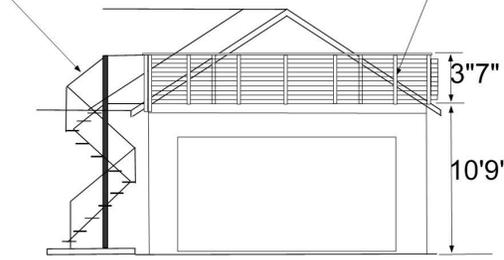
Page 3 of 9

Scope of work
Roof extension/
repair and top of
deck

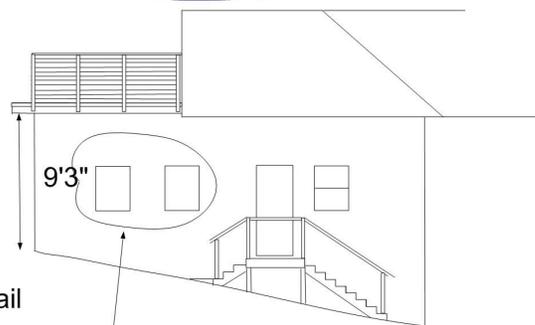


Exterior metal
staircase 72"
diameter

Deck Safety rails
4" spacing

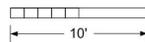


Deck and Stair detail



Proposed
windows in
garage

Scale
1/4" = 1'



Tubman
160 Fairlawn Drive
Berkeley, CA 94708

Roof and garage deck

Drawn By: Eric Tubman 11/14/24

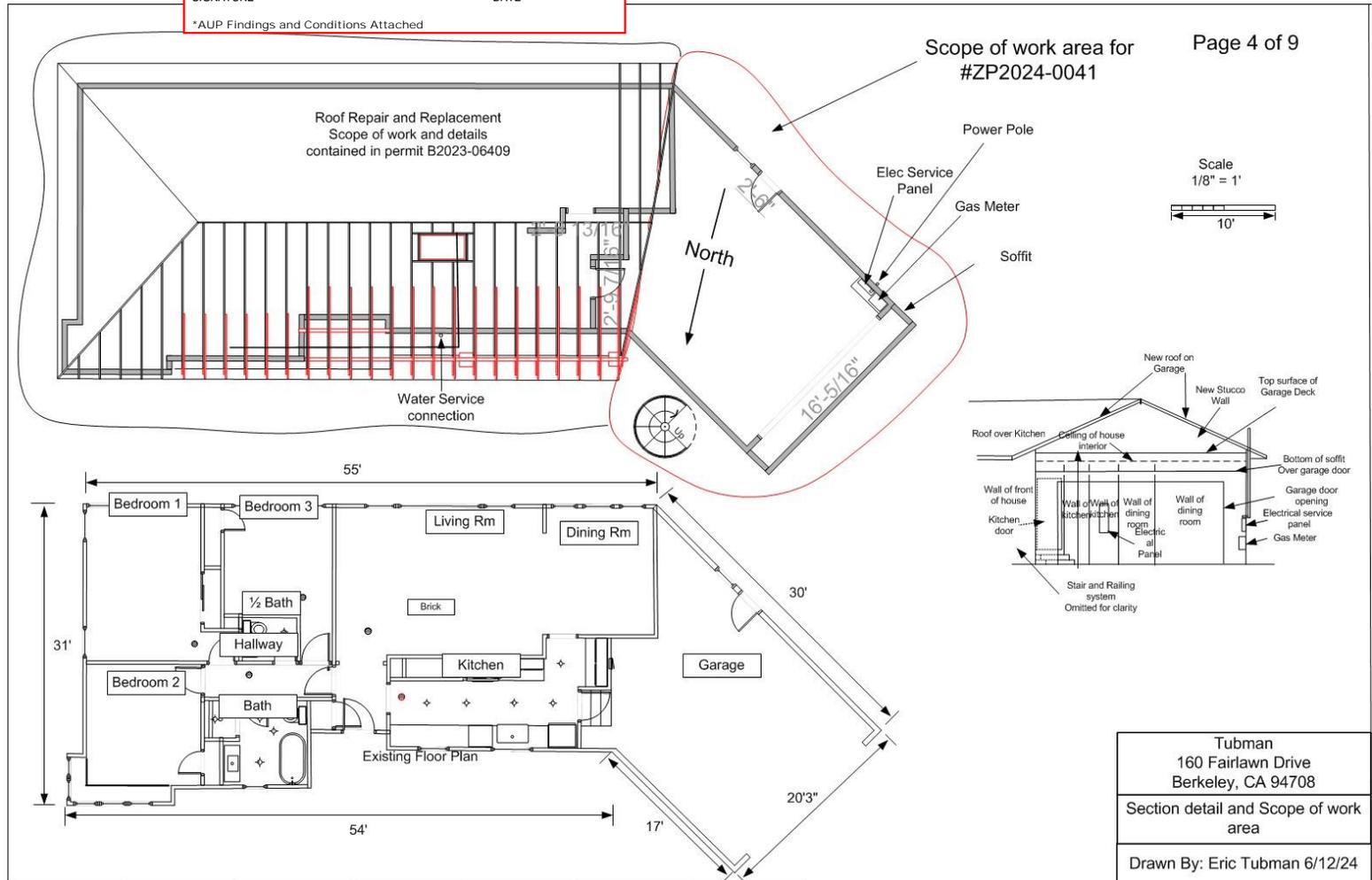
PLANS APPROVED by

Eric Tubman

March 11, 2025

SIGNATURE DATE

*AUP Findings and Conditions Attached



Page 4 of 9

Scope of work area for #ZP2024-0041

Roof Repair and Replacement
 Scope of work and details contained in permit B2023-06409

Scale
 1/8" = 1'
 10'

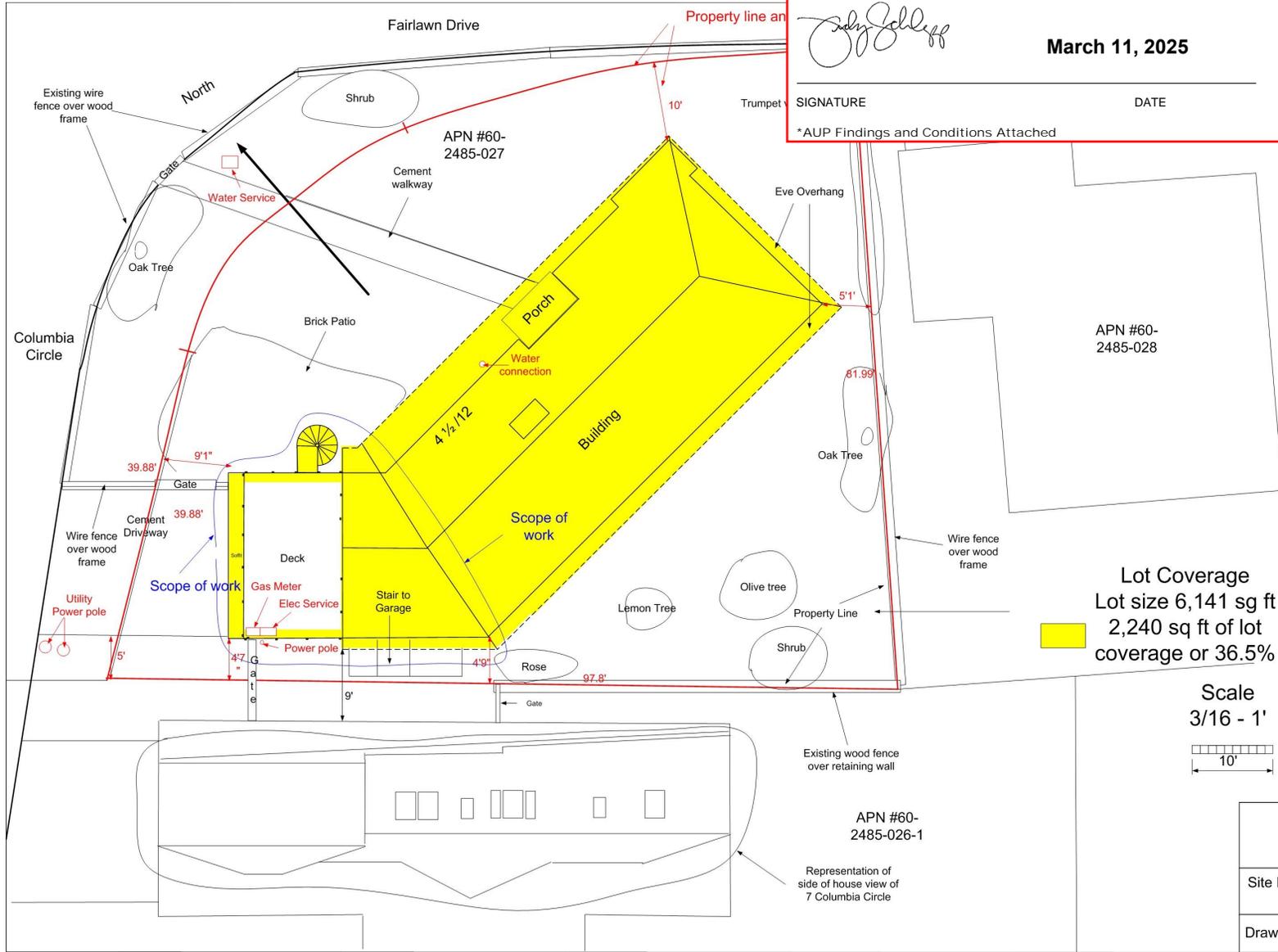
Tubman 160 Fairlawn Drive Berkeley, CA 94708
Section detail and Scope of work area
Drawn By: Eric Tubman 6/12/24

PLANS APPROVED by

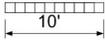
March 11, 2025
 SIGNATURE DATE
 *AUP Findings and Conditions Attached

Page 5 of 9

Site Plan and Landscape/usable open space plan



Lot Coverage
 Lot size 6,141 sq ft
 2,240 sq ft of lot
 coverage or 36.5%

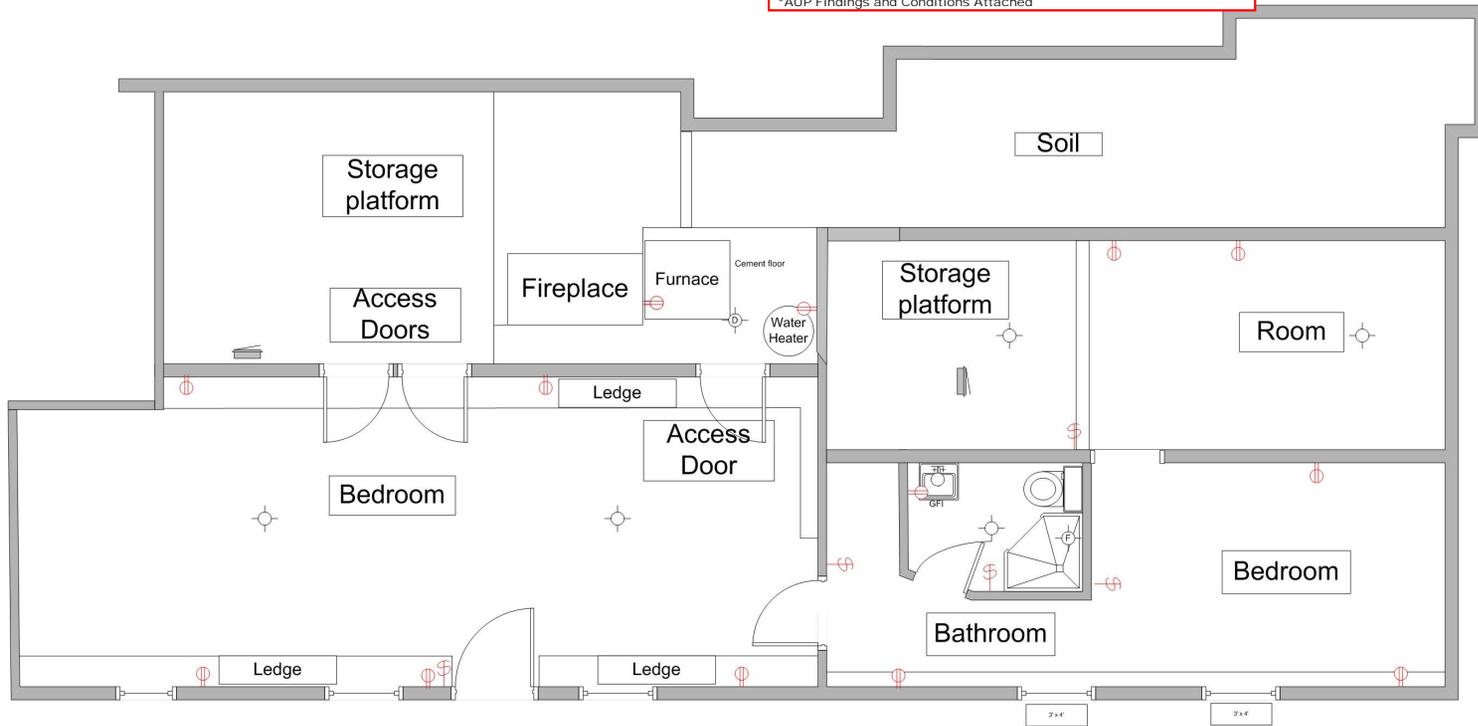
Scale
 3/16 - 1'


Tubman
 160 Fairlawn Drive
 Berkeley, CA 94708
 Site Plan and Landscape/usable
 open space plan
 Drawn By: Eric Tubman 11/14/24

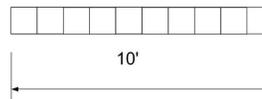
PLANS APPROVED by

March 11, 2025
SIGNATURE DATE
*AUP Findings and Conditions Attached

Page 6 of 9



Scale
1/2" - 1'

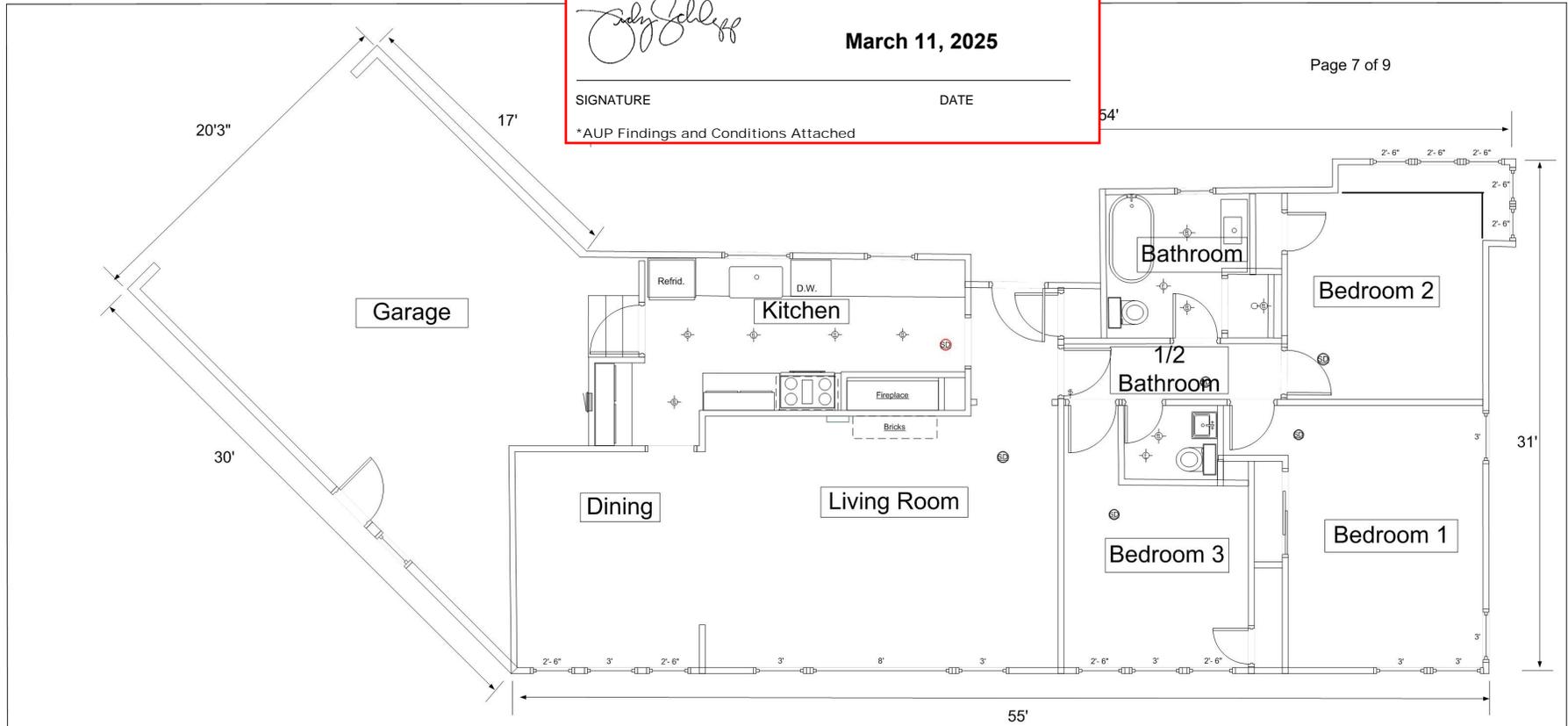


Tubman 160 Fairlawn Drive
Existing basement
Drawn By: Eric Tubman 3/11/24

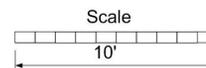
PLANS APPROVED by

March 11, 2025
SIGNATURE DATE
*AUP Findings and Conditions Attached

Page 7 of 9



Scale
3/8" = 1"



Tubman 160 Fairlawn Drive Berkeley, CA 94708
1st Floor Plan
Drawn By: Eric Tubman 3/11/24

PLANS APPROVED by

Eric Tubman

March 11, 2025

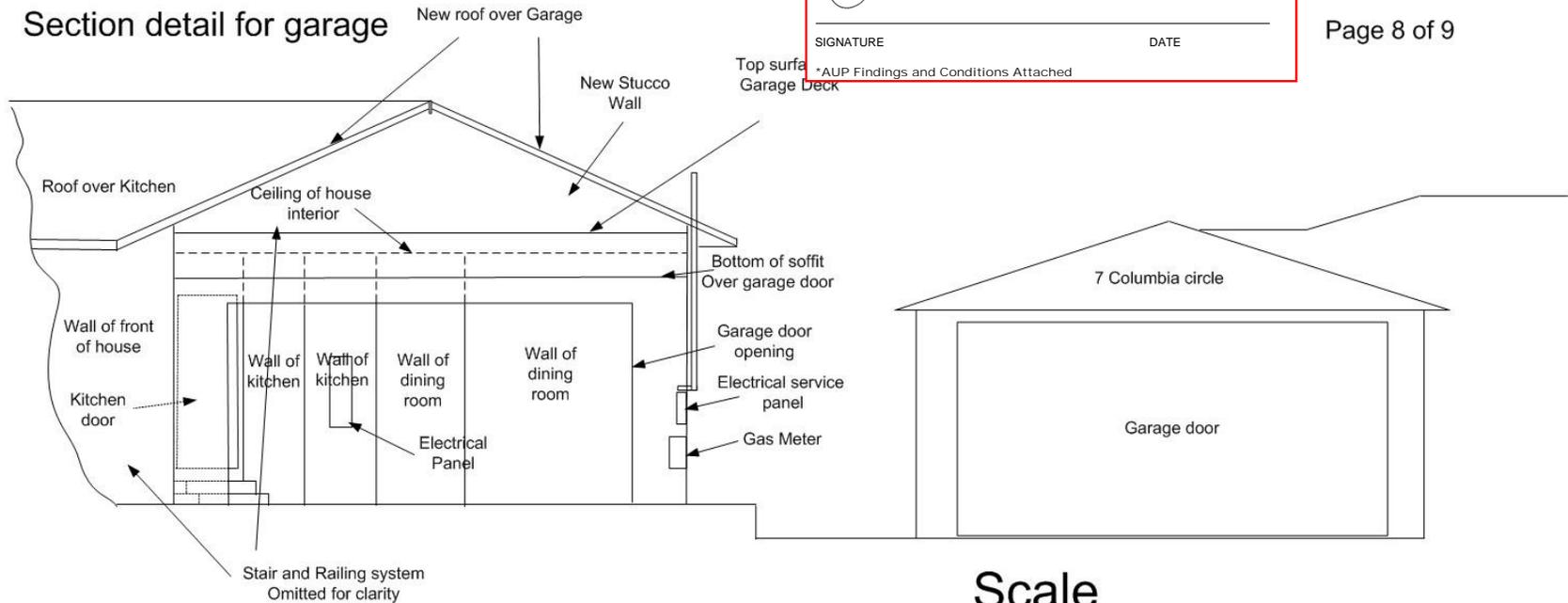
SIGNATURE

DATE

*AUP Findings and Conditions Attached

Page 8 of 9

Section detail for garage



Framing details and structural design will be generated by Consulting Structural Engineer.

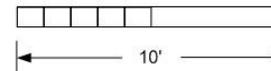
Seismic upgrades will accommodate deck support and incorporate Simpson "Strong-Wall" Garage Portal System

Roof height and dimensions will match existing structures height and roof pitch and soffit details on permit # B2023-06409

Scale

1/4" = 1'

Scale



Tubman
 160 Fairlawn Drive
 Berkeley, CA 94708

Section detail for garage

Drawn By: Eric Tubman 6/12/24

PLANS APPROVED by

 March 11, 2025
 SIGNATURE DATE
 *AUP Findings and Conditions Attached

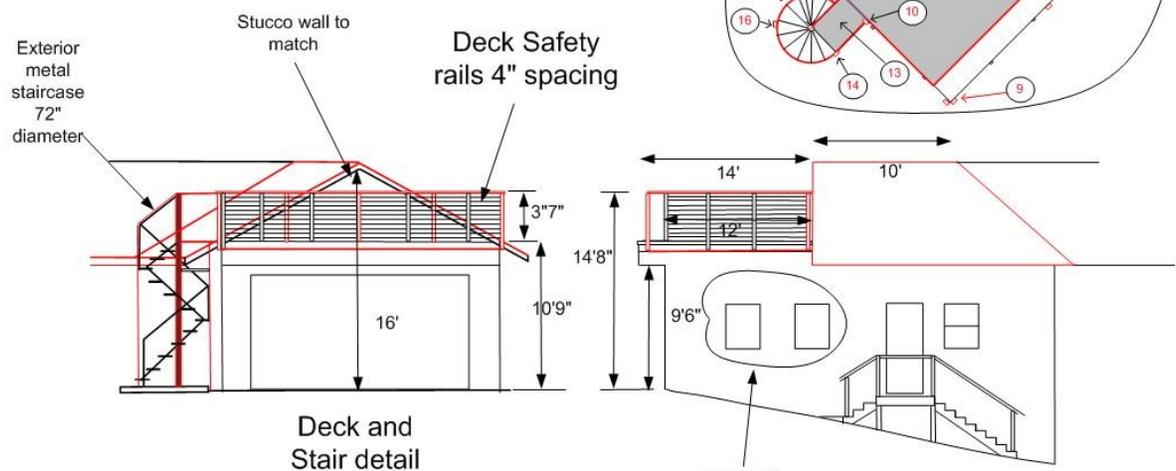
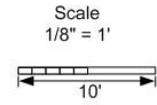
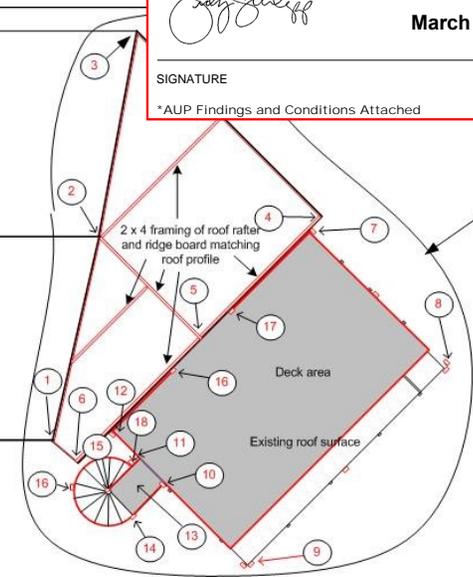
Page 9 of 9

Scope of work
 Roof extension/repair
 and top of deck. Storey
 pole details in Red.

Storey pole design

Pole	Description of use
1-2-3	Runs length of roof rafters on top of ridge board on existing roof framing
2-5	Ridge board extension at same level as adjoining roof
4-5-6	Runs length of temp roof rafters and over top of ridge board
3-7	End of roof rafter to roof rafter showing edge of roof
1-6	End of roof rafter to roof rafter showing edge of roof
17-7-8-9-10	Handrail top surface and using existing roof surface for top of deck
15-11-12-16	Handrail top surface and using existing roof surface for top of deck
10-14	Handrail top surface on connection plate to deck
14-16-18	Round stair downward hand rail
13	Connection plate to deck surface using plywood panel

Will use one color ribbon on Roof section to note surface and another color for the handrails and circular stair.



Scale
 1/4" = 1'

Tubman 160 Fairlawn Drive Berkeley, CA 94708
Storey Pole plan for Roof and Garage deck
Drawn By: Eric Tubman 11/14/24

March 12, 2025

Zoning Officer
Permit Service Center
1947 Center Street, 3rd Floor
Berkeley California 94704



RE: 160 Fairlawn Drive. Owner: Tubman. ZP2024-0041 Roof deck. Appeal decision.

Hello:

I am appealing the decision for Tubman to build a roof deck at 160 Fairlawn as it will create a direct view into my front bedroom. Pictures included.

Additional notes:

Tubman Approached me on March 7, 2024 and asked me to sign off on the project. After explaining to him my reasons for not approving, he became agitated and threatened me with physical violence. Including (verbatim): "Fuck you. I should break your legs. I'm coming over tomorrow and you will sign."

I did not sleep at all that night. In the morning I decided I had no choice but to sign. It goes without saying that my signature was provided under extreme duress. I have included the notes made of this event from March 8, 2024 and Tubman's response on the flipside.

Furthermore, while the project was available on the Berkeley website permit portal it disappeared months ago and to this moment is still not listed. I'd assumed the project went away. I was surprised to find the notice posted outside my house this morning. (Picture attached of Berkeley permit portal missing project at 160 Fairlawn).

Thank you,

Adam Ratoosh

 3/12/2025

7 Columbia Circle
Berkeley California, 94708
510-410-3085

March 7, 2024, Thursday at about 2:30 PM.

I was recycling into my driveway cans.

Eric Tubman, 160 Fairlawn, 510-697-7016, exited his vehicle and approached me.

He discussed his need for me to sign off on a permit to build a deck above his garage, adjacent to my house.

I explained that I did not approve of the project and would not sign.

He launched into an aggressive outburst. This included:

- Threatening me with physical violence. I backed away because I felt he was going to swing at me.
- At one point he yelled at me, above his already raised voice: "Fuck you. I should break your legs. I'm coming over tomorrow and you will sign."

Adam Ratoosh

Adam Ratoosh March 8, 2024

7 Columbia Circle
Berkeley California, 94708
510-410-3085
adamratoosh@gmail.com

Teresa Gonzales-Montano



3-8-2024

Text to Eric Friday March 8, 2024 12:13 PM

Eric:

Yesterday, you threatened me with violence if I did not sign your deck permit.

I will sign your permit after you get all the other neighbors to sign.
I will sign last.

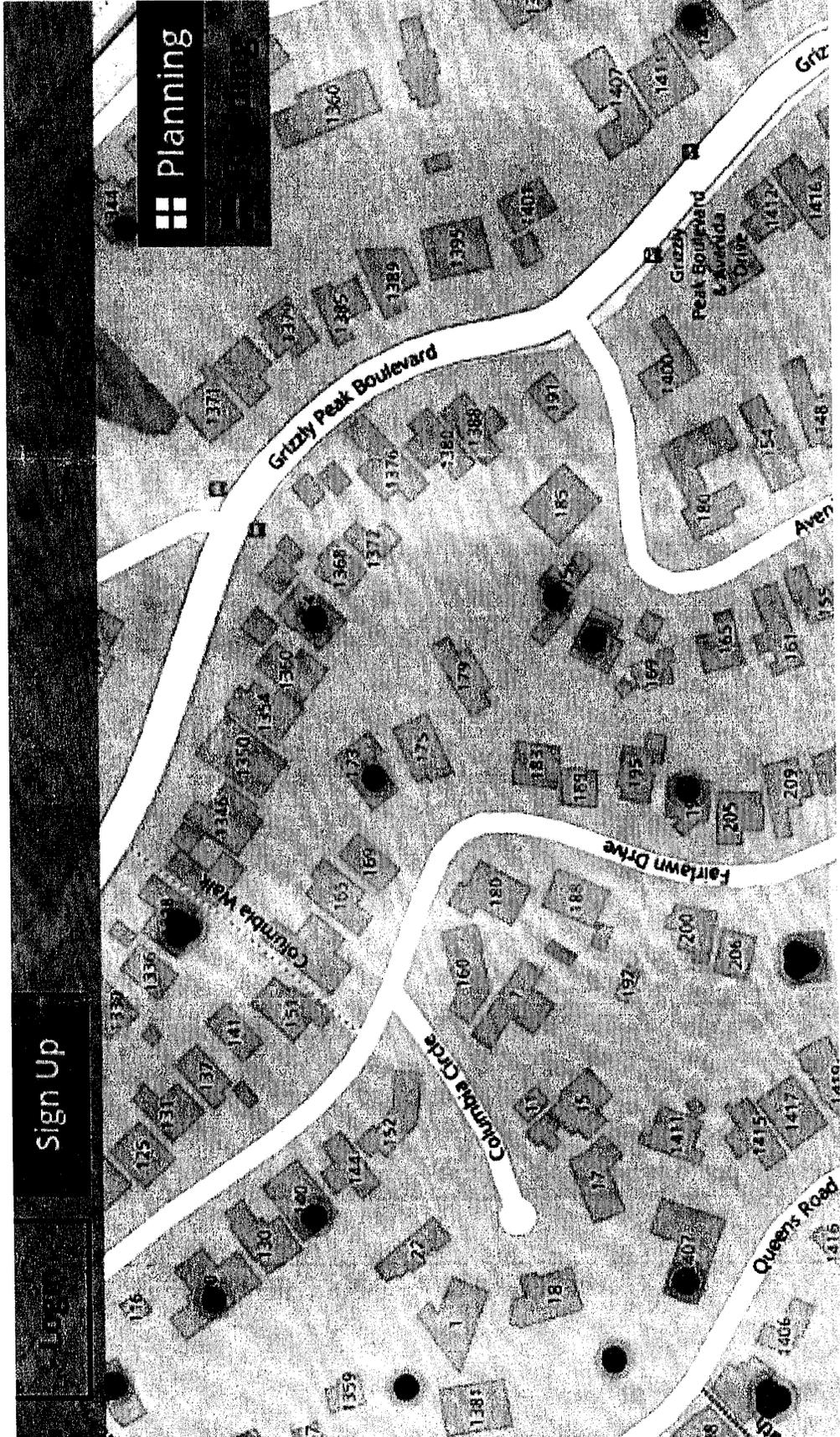
Do not come to my house or approach me.

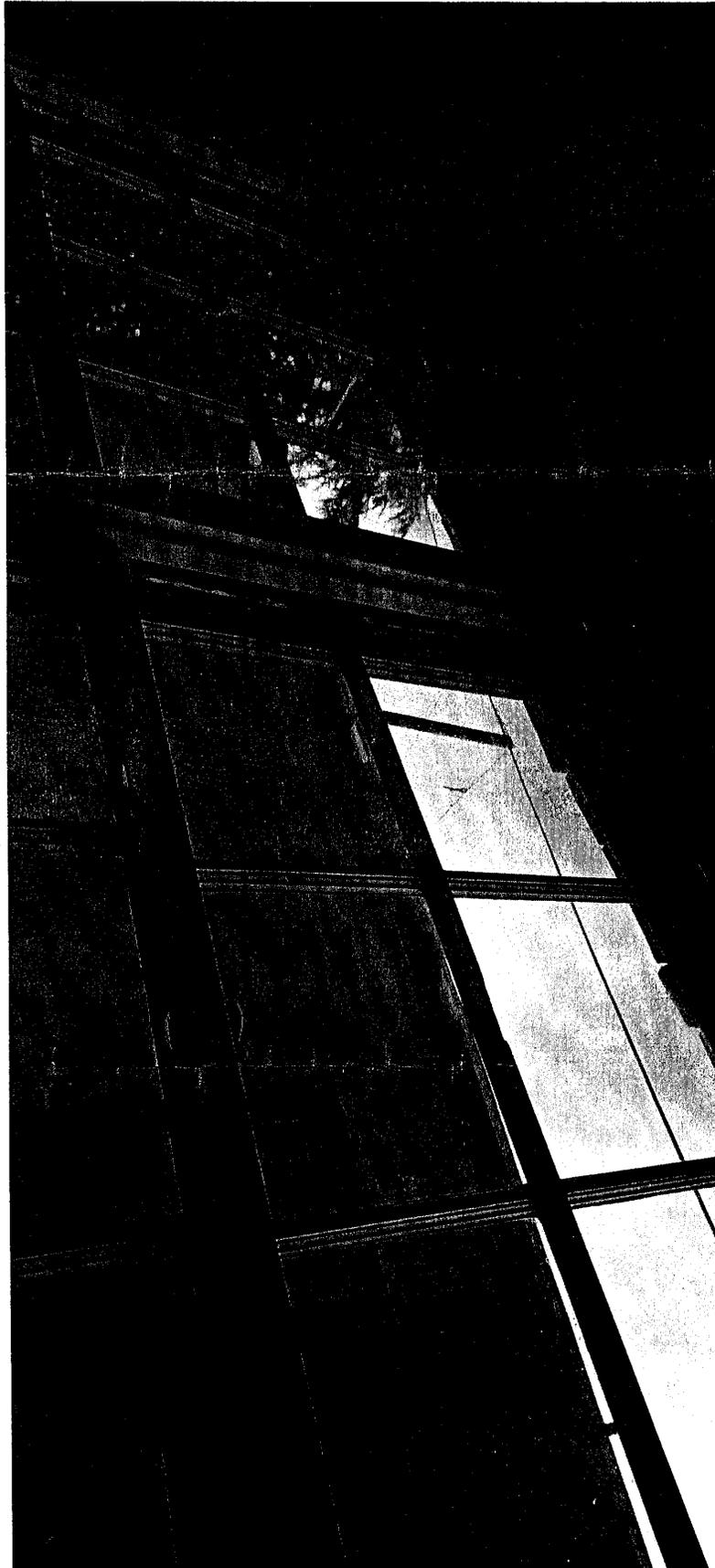
When you are ready for me to sign, you can text me to coordinate a time.

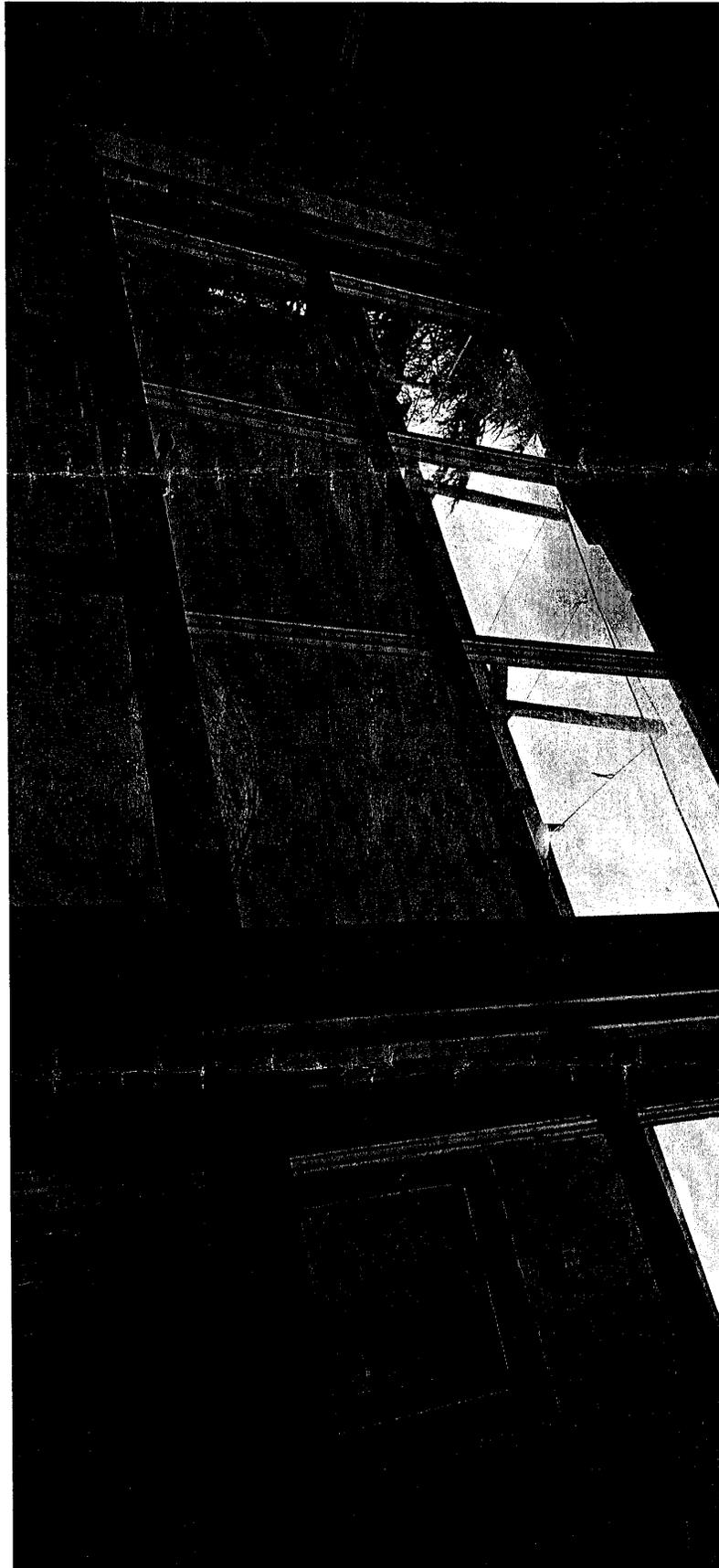
Adam.

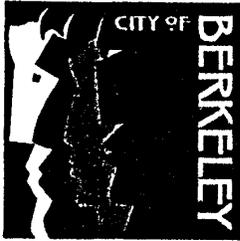
Text From Eric a few minutes later:

I do apologize for my behavior yesterday and understand your concerns. I said something that I would never do. I'll contact you later when I gather the other signatures.









NOTICE OF ADMINISTRATIVE DECISION

160 Fairlawn Drive

Administrative Use Permit ZP2024-0041 to construct an addition over 20 feet in maximum height within a non-conforming front setback by reconfiguring the flat roof over an attached garage so the portion of the roof attached to the single-family dwelling will match the ridge line of the existing pitched roof and the portion overlooking the street will be a roof deck.

ZONING OFFICER DECISION: The Zoning Officer of the City of Berkeley has APPROVED the following permits pursuant to Berkeley Municipal Code (BMC) Section 23.406.030(F), and based on the attached findings and conditions (attachment 1) and plans (attachment 2):

- Administrative Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.202.050(D)(2) to construct an addition over 14 feet in average building height;
- Administrative Use Permit, pursuant to BMC Section 23.210.020(C) to construct a residential addition over 20 feet in maximum building height in the Hillside Overlay; and
- Administrative Use Permit, pursuant to BMC 23.324.050(D)(2) to alter a portion of a building and extend a building wall projecting into a minimum required setback.

DATE NOTICE IS ISSUED: March 11, 2025

APPEAL PERIOD: March 12, 2025 to April 1, 2025

ATTACHMENTS:

1. Findings and Conditions
2. Project Plans, dated received November 18, 2024

FOR FURTHER INFORMATION:

All application materials for this project are available online at:

<https://aca.cityofberkeley.info/CitizenAccess/Welcome.aspx>. Questions about the project should be directed to the project planner, Vicky Schlepp at (510) 981-7422 or vschlepp@berkeleyca.gov.

PUBLIC NOTICE, PURSUANT TO BMC SECTION 23.404.040(A):

This Notice of Administrative Decision was:

1. Forwarded to the Zoning Adjustments Board and sent to the Main Library;
2. Posted at three visible locations in the vicinity of the subject property and at a bulletin board at the Zoning counter.
3. Mailed to neighborhood and community organizations for which the project falls within their expressed area of interest, as set forth in BMC Section 23.404.040(E);
4. Mailed to owners and residents of properties abutting and confronting the subject property.

The validity of the proceedings, however, shall not be affected by the failure of any such property owner, occupant

Schlepp, Victoria

Subject: FW: 160 Fairlawn Drive. ZP2024-0041 Roof deck.
Attachments: Screenshot from 2025-03-12 10-34-53.png; 20250312_091954.jpg

From: Adam Ratoosh <adamratoosh@gmail.com>
Sent: Thursday, March 13, 2025 11:04 AM
To: Schlepp, Victoria <VSchlepp@berkeleyca.gov>
Subject: Re: 160 Fairlawn Drive. ZP2024-0041 Roof deck.

March 13, 2025

Victoria Schlepp
Permit Service Center
1947 Center Street, 3rd Floor
Berkeley California 94704

RE: 160 Fairlawn Drive. Owner: Tubman. ZP2024-0041 Roof deck. Appeal decision.

Hi Victoria,

Thank you. I sent my \$500 check, appeal, and supporting photos yesterday registered USPS to:
Zoning Officer
Permit Service Center
1947 Center Street, 3rd Floor
Berkeley California 94704

Your email raises three points:

- 1) Instructions for online materials.
- 2) What are my concerns for the project?
- 3) Modifications that would make it acceptable?

All three answered below, but first:

My family moved into 7 Columbia Circle in the early 1970's. The Tubman's had already moved into 160 Fairlawn next door. 160 had a normal pitched roof. There has never been a roof deck.

Eric Tubman told me of his plans in early 2024 (over a year ago). I told him then that a roof deck next to my front bedroom was unacceptable.

Eric approached me again on March 7, 2024 and asked me to sign off on the project. After explaining to him my reasons again for not approving, he became agitated and threatened me with physical violence. Including : "Fuck you. I should break your legs. I'm coming over tomorrow and you will sign."

I did not sleep at all that night. In the morning I concluded that under threat of personal injury I had no choice but to sign. It goes without saying that my signature was provided under extreme duress.

Here are the three points you raised:

- 1) Instructions for online materials.

Your instructions worked. Thank you.
Unfortunately, for the entire year I had been using:

<https://berkeley.buildingeye.com/building>

Early on, I was able to track the permit. After a while it disappeared from the map. I assumed that the permit request had been declined. I've included a screen shot from yesterday. No blue circle on 160 Fairlawn.

2) What are my concerns for the project?

Privacy: The line of sight from the proposed deck into my front bedroom is unacceptable.

Noise: It potentially will raise the noise profile of my front bedroom by putting people in a location previously not possible.

Paragraph 5 of the permit uses words like "common feature" to push the narrative that roof decks are normal. This is not factual. For all intents and purposes there are no roof decks in the Berkeley Hills.

3) Modifications that would make it acceptable?

The permit is already approved to restore half of the previously demolished pitched roof. Instead of a roof deck, continue the approved pitched roof to meet a hipped end at the front of the garage door.

This restores the garage pitched roof to its original appearance prior to Phil Tubman (Eric's late dad) demolishing it. This is common. In fact, that's how my garage is.

Victoria, if it is not too much to ask, please add this email to my appeal that I sent in.

Thank you,
Adam Ratoosh
7 Columbia Circle
Berkeley California, 94708
510-410-3085

On Wed, Mar 12, 2025 at 12:42 PM Schlepp, Victoria <VSchlepp@berkeleyca.gov> wrote:

Hello Adam Ratoosh,

I searched for the project online and all the documents are there. Here are the instructions:

Application materials can be viewed at this website by going to the *Zoning* tab, entering the permit number ZP2024-0041 or 160 Fairlawn Drive, and clicking on *Attachments* under the *Record Info* drop down menu:
<https://aca.cityofberkeley.info/Community/>

Yes, \$500 is the appeal fee when you are not the applicant. Here are the instructions on the notice:

TO APPEAL THIS DECISION, PURSUANT TO BMC CHAPTER 23.410:

To appeal this decision, you must:

1. Submit a letter clearly and concisely setting forth the grounds for the appeal, along with the required fee (see

below) to the Zoning Officer, at the Permit Service Center, 1947 Center Street, 3rd Floor, Berkeley.

2. The appeal and required fee (see below) must be received **prior to 2:00 p.m. on the last day of the appeal period shown above (if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day).**

3. Submit the required fee to the Permit Service Center (see above; checks and money orders must be payable to 'City of Berkeley'):

A. The basic fee for appeals of a Zoning Officer decision to the Zoning Adjustments Board is \$500. This fee may be reduced to \$200 if the appeal is signed by persons who lease or own at least 35 percent of the parcels or dwelling units within 300 feet of the project site, or at least 20 such persons (not including dependent children), whichever is less.

B. The fee for appeals of affordable housing projects (defined as projects which provide 50 percent or more affordable units for households earning 80 percent or less of Area Median Income) is \$500, which may not be reduced.

C. The fee for all appeals by Applicants is \$3,680.

If an appeal is filed, the Zoning Officer shall set the matter for consideration by the Zoning Adjustments Board. An

appeal stays the issuance and exercise of the AUP until a decision is rendered or the appeal is withdrawn. If no appeal is received, the permit will be issued on the first business day following expiration of the appeal period, and

the project may proceed at that time.

NOTICE CONCERNING YOUR LEGAL

What are your concerns with the project? Are there any modifications that would make it acceptable?

Thank you,



Vicky Schlepp

Assistant Planner

(510) 981-7422

Planning and Development, Land Use Division

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

Website: www.cityofberkeley.info

Email: vschlepp@berkeleyca.gov

NEW HOURS: 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 recommended 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: Adam Ratoosh <adamratoosh@gmail.com>
Sent: Wednesday, March 12, 2025 10:14 AM
To: Schlepp, Victoria <VSchlepp@berkeleyca.gov>
Subject: 160 Fairlawn Drive. ZP2024-0041 Roof deck.

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.

RE: 160 Fairlawn Drive. ZP2024-0041 Roof deck.

Hello Vicky Schlepp:

Two questions:

1) The 160 Fairlawn Drive notice just posted outside my house lists that the online permit website contains all material for this application. At one point the materials were there and then they disappeared as of months ago. As of this moment the website says nothing about this project.

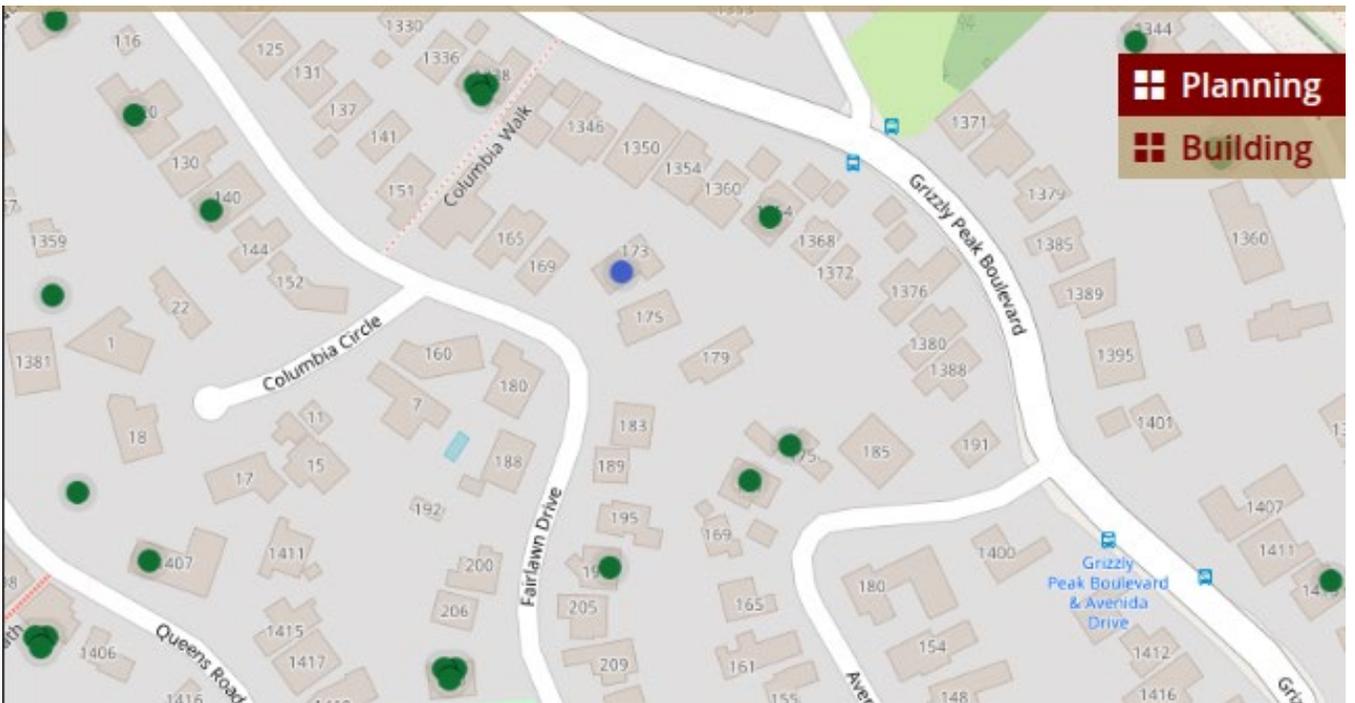
<https://aca.cityofberkeley.info/CitizenAccess/Welcome.aspx>

<https://aca.cityofberkeley.info/CitizenAccess/Cap/CapHome.aspx?module=Building&TabName=Building&TabList=Home%7C0%7CBuilding%7C1%7CHousing%7C2%7CPlanning%7C3%7CFire%7C4%7CLicenses%7C5%7CPublicWorks%7C6%7CCurrentTabIndex%7C1>

2) I'm appealing the decision and it appears the fee is \$500. However, part C then describes \$3680. Is the \$500 the correct one?

Thank you,
Adam Ratoosh
7 Columbia Circle
Berkeley, 94708
510-410-3085

EMAIL ATTACHMENTS





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

160 Fairlawn Drive

Appeal of Zoning Officer decision to approve Administrative Use Permit #ZP2024-0041 to construct an addition over 20 feet in maximum height within a non-conforming 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, May 8, 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 District, Hillside Overlay (R-1H)

B. Zoning Permits Required:

- Administrative Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.202.050(D)(2) to construct an addition over 14 feet in average building height;
- Administrative Use Permit, pursuant to BMC Section 23.210.020(C) to construct a residential addition over 20 feet in maximum building height in the Hillside Overlay; and
- Administrative Use Permit, pursuant to BMC 23.324.050(D)(2) to alter a portion of a building and extend a building wall projecting into a minimum required setback.

C. CEQA Recommendation: Categorically exempt pursuant to Section 15301 of the CEQA Guidelines (“Existing Facilities”).

D. Project Recommendation: Approve Administrative Use Permit #ZP2024-0041 pursuant to BMC Section 23.406.040(D) and Dismiss the Appeal.

E. Parties Involved:

- Applicant Eric Tubman, 160 Fairlawn Drive, Berkeley, CA
- Property Owner Adam Ratoosh, 7 Columbia Circle, Berkeley, CA

Further Information:

All application materials are available online at:
<https://aca.cityofberkeley.info/CitizenAccess/Welcome.aspx>.

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

Questions about the project should be directed to the project planner, Vicky Schlepp, at (510) 981-7422 or vschlepp@berkeleyca.gov.

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

Communication Disclaimer:

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

Written Comments, Communications, and Reports:

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

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

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

- **Correspondence received by 5:00 PM, two days before** this public hearing, will be conveyed to the Board in a Supplemental Communications and Reports #1, which is released around noon one day before the public hearing.
- **Correspondence received by 12:00 PM, the day of** this public hearing, will be conveyed to the Board in a Supplemental Communications and Reports #2, which is released around noon the day of the public hearing.
- **Correspondence received after 12:00 PM, the day of** this public hearing will be saved in the project administrative record.



Accessibility Information / ADA Disclaimer:

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

SB 343 Disclaimer:

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

Notice Concerning Your Legal Rights:

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

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