

ATTACHMENT 1

FINDINGS AND CONDITIONS

JUNE 13, 2013

1936 Delaware Street

Use Permit #13-10000001 to demolish an existing one-story, 1,355 square-foot, single-family home and to construct a two-story, 2,397 square-foot, single-family home on a 5,372 square-foot lot.

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 Section 15303 (“New Construction or Conversion of Small Structures”) and Section 15332 (“Infill Development”) of the CEQA Guidelines. 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.

GENERAL NON-DETRIMENT FINDING

2. Pursuant to Berkeley Municipal Code Section 23B.32.040, the Zoning Adjustments Board finds that the proposed demolition of a single-family home and the construction of a new single-family home, under the circumstances of the particular case existing at the time at which the application is granted, 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, for the following reasons:
 - A. The project is consistent with all applicable development standards for new buildings in the R-2A district. It will be a new single-family home in a residential neighborhood consisting of single-family homes, duplexes, and apartment buildings. The height of the building would be lower than the other two-story structures in the area and the apartments across the street. The building is wider than some of the other single-family homes, but the architectural articulation and the covered porch at the front façade reduce the massing of the building and give it interest. The single-family homes in the area consist primarily of two-story structures with horizontal wooden siding and either hipped or gabled roofs. Across the street are six mid-century apartment buildings, ranging from two to four stories in height. The proposed building would follow in the modern vocabulary of the existing apartment buildings, including architectural features such as wall returns and a flat roof. While there is no design review process or criteria for residential

development within residential districts, the Board finds that the proposed project is sensitive to the existing neighborhood context.

- B. The homes on either side of the subject property, as well as the neighborhood to the east of the property, consist of Victorian and Edwardian homes, built between 1890 and 1915. The home immediately to the west of the subject property, 1930 Delaware, is listed on the State Historic Resources Inventory (SHRI) list. This neighborhood, however, does not have any buildings which have been designated historic by the City and the neighborhood has not been designated a historic district. The buildings across the street and continuing west down Delaware Street consist of two-, three- and four-story apartment buildings built between 1959 and 1963. The Board finds that the subject area has two architectural styles and that this structure follows the modern architectural style of the apartments.
- C. The Board finds that no significant shadow impacts are expected to occur as a result of this project. The shadow studies show that buildings located to the west (1930 Delaware) and east (1938 Delaware) will be affected by new shadows four times a year. However, only two of these windows open into habitable areas, and these windows will only be affected in the late afternoon of the winter months.
- D. The project proposes to repair or replace the existing fences that currently provide privacy to the first floors of the adjacent homes. On the second floor, the east and west elevations each have three windows. The large window on the south-west corner allows light into the two-story living room and cannot be used for viewing. The other western windows will look onto the tankhouse and garage of 1930 Delaware, neither of which is occupied. On the east side, the windows are located 14 feet from the neighboring house at 1938 Delaware. Although the windows may be at the same height, the distance between the buildings is consistent with the distance between other single-family homes in the neighborhood and will not significantly impact the privacy of the neighbors.
- E. Granting this Use Permit will not be detrimental as the proposed project meets all of the requirements for creating a new single-family dwelling on the site, including height, setbacks, required off-street parking, lot coverage, and useable open space.

OTHER REQUIRED FINDINGS

- 3. Pursuant to Berkeley Municipal Code Section 23C.08.010.B, the Zoning Adjustments Board finds that the elimination of the dwelling unit would not be materially detrimental to the housing needs and the public interest of the affected neighborhood and the City because it will be replaced with another dwelling unit.
- 4. Pursuant to Berkeley Municipal Code Section 23C.08.020.A.2, the Zoning Adjustments Board finds that the demolition is necessary to permit construction of a new single-family home on the site.

STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

1. Conditions Shall be Printed on Plans

The conditions of this Permit shall be printed on the first sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions'. The second sheet may also be used if the first 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; 8-1/2" by 11" sheets are not acceptable.

2. Applicant Responsible for Compliance with Conditions

The applicant shall ensure compliance with all of the following conditions, including submittal to the project planner of required approval signatures at the times specified. Failure to comply with any condition may result in construction being stopped, issuance of a citation, and/or modification or revocation of the Use Permit.

3. Uses Approved Deemed to Exclude Other Uses (Section 23B.56.010)

- A. This Permit authorizes only those uses and activities actually proposed in the application and excludes other uses and activities.
- B. Except as expressly specified herein, this Permit terminates all other uses at the location subject to it.

4. Modification of Permits (Section 23B.56.020)

No change in the use or structure for which this Permit is approved is permitted unless the Permit is modified by the Zoning Adjustments Board, in conformance with Section 23B.56.020.A.

Changes in the plans for the construction of a building or structure may be modified prior to the completion of construction, in accordance with Section 23B.56.020.D. 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. The Zoning Officer may also approve a maximum two-foot variation to Board approved plans, provided that such variation does not increase a structure's height, reduce the minimum distance to any property line, and/or conflict with any special objective sought by the Board. In the case of modifications to Use Permits for construction of, or additions or changes to, single-family homes which required Board review, the Zoning Officer shall follow Board policy adopted March 13, 1997, as follows:

- A. Upon applications for modifications to a home where a Use Permit has been granted, Staff shall review the Use Permit to determine if any explicit conditions were placed on the Use Permit that would be affected by the proposed modification.

- B. If, prior to acting on a Building Permit, Staff becomes aware of controversy over an earlier application, Staff may choose to conduct a more detailed review of the record to determine if conditions were implied by the Board or offered by the applicant (but not included in the Use Permit conditions) that would be affected by the proposed modification (this does not imply that Staff will review the whole Use Permit record for all applications).
- C. If there are explicit conditions (#A) or implied conditions (#B) affected by the proposed modification, the project shall be brought back to the Board as a Use Permit Modification.
- D. If there are no explicit conditions that would be affected by the proposed modification, and if Staff is not otherwise aware of implied conditions, and the project would otherwise meet the requirements of the Zoning Ordinance, Staff will approve the Building Permit without Board or public review.

5. Plans and Representations Become Conditions (Section 23B.56.030)

Except as expressly specified herein, the site plan, floor plans, building elevations and any additional information or representations submitted by the applicant during the Staff review and public hearing process leading to the approval of this Permit, whether oral or written, which indicated the proposed structure or manner of operation are deemed conditions of approval.

6. Subject to all City and Other Regulations (Section 23B.56.040)

The approved use and/or construction are subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies.

7. Exercised Permit for Use Survives Vacancy of Property (Section 23B.56.080)

Once a Permit for a use is exercised and the use is established, that use is legally recognized, even if the property becomes vacant, except as set forth in Standard Condition #8 below.

8. Exercise and Lapse of Permits (Section 23B.56.100)

- A. A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.
- B. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
- C. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or

alteration of structures or buildings may not be declared lapsed if the permittee has (1) applied for a building permit or (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

9. The applicant shall hold the City of Berkeley and its officers harmless in the event of any legal action related to the granting of this Permit, shall cooperate with the City in defense of such action, and shall indemnify the City for any award of damages or attorneys fees that may result.

ADDITIONAL CONDITIONS OF APPROVAL

Pursuant to BMC Section 23B.32.040.D, the Zoning Adjustments Board attaches the following conditions to this Permit:

Prior to Issuance of Any Building Permit

10. Prior to issuance of a building permit, the applicant shall complete and submit an updated *Draft GreenPoint Checklist* to the project planner with comments on any revisions to the project that affect the project's green building score.

11. Prior to issuance of a building permit, the applicant shall provide the project planner with the name and telephone number of the individual empowered to manage construction noise from the project. The individual's name, telephone number, and responsibility for noise management shall be posted at the project site for the duration of construction in a location easily visible to the public. The individual shall record all noise complaints received and actions taken in response, and submit this record to the project planner upon request.

Noise Management Individual _____
Name Phone #

12. The applicant and all persons associated with the project are hereby notified that a Transportation Management Permit (TMP) would be required under any of the following circumstances:

- Alterations, closures, or blockages to sidewalks or pedestrian paths
- Alterations, closures, or blockages to vehicle travel lanes (including bicycle lanes)
- Storage of building materials, dumpsters, debris anywhere in the public ROW
- Provision of exclusive contractor parking on-street
- Significant truck activity.

Contact the Permit Service Center (PSC) at 2120 Milvia Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dashboard permits). Public Works Traffic Engineering (981-6400) reviews all submitted TMP requests.

The TMP may include designation of a specific truck haul route. Meter heads (if in the construction area) shall be removed only by City staff. Contact the site inspector 72 hours in advance of required removal so arrangements can be made.

13. Prior to issuance of a building permit, the applicant shall submit a report to the Building and Safety Division and the Zoning Officer by a qualified acoustic engineer certifying that the interior residential portions of the project will achieve interior noise levels of no more than 45 Ldn (Average Day-Night Levels). If the adopted Building Code imposes a more restrictive standard for interior noise levels, the report shall certify compliance with this standard.

During Construction:

14. Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season (between October 15 and April 15), 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.
15. Construction activity shall be limited to between the hours of 8:00 a.m. and 6:00 p.m. on Monday through Friday, and between 9:00 a.m. and noon on Saturday. No construction-related activity shall occur on Sunday or on any Federal Holiday.
16. 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.
17. 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.
18. 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.
19. 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.
20. Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.
21. Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.

22. 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.

Prior to Final Inspection or Issuance of Occupancy Permit:

23. The project shall conform to the plans and statements in the Use Permit.
24. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated March 26, 2013.
25. Prior to issuance of an occupancy permit or final inspection approval, the applicant shall update, sign, and submit an *As-Built GreenPoint Checklist* reflecting final as-built conditions, including the total green building score, to the project planner.

At All Times:

26. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
27. 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.