

ORDINANCE NO. 6,954-N.S.

AMENDING BERKELEY MUNICIPAL CODE (BMC) SECTION 23B.44.010 AND ADDING  
BMC SECTION 23C.04.100

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code 23B.44.010 is amended to read as follows:

**Section 23B.44.010 Variances**

The Board may grant Variances to vary or modify the strict application of any of the regulations or provisions of this Ordinance with reference to the use of property, the height of buildings, the yard setbacks of buildings, the percentage of lot coverage, the lot area requirements, or the parking space requirements of this Ordinance; provided, however, that a use permit, rather than a variance, may be approved to vary or modify the strict application of any of the regulations or provisions of this Ordinance with reference to the yard setbacks of buildings, the percentage of lot coverage, or the parking space requirements when development is proposed on property which is located within thirty feet of an open creek and where varying from or modifying existing regulations is necessary to enable the property owner to comply with BMC Chapter 17.08, Preservation and Restoration of Natural Watercourses.

Section 2. That Berkeley Municipal Code 23C.04.100 is added to read as follows:

**23C.04.100 Rebuilding after Involuntary Destruction of Structure or Portion Thereof**

- A. Notwithstanding Sections 23C.04.030, 23C.04.050, and 23C.04.090, any structure that is devoted exclusively to residential use and contains up to four residential units and any structure which is accessory thereto, or any portion thereof, may be replaced or reconstructed, subject to the issuance of a Zoning Certificate, if the City finds that all of the following conditions exist:
1. The structure, or any portion thereof, has been destroyed by any involuntary cause including fire, earthquake or flood.
  2. The replacement structure or portion thereof is substantially similar in use, dimensions, floor area, square footage, envelope, lot coverage, footprint, and number of units to the destroyed structure or portion thereof that it is designed to replace.
  3. The replacement or repair complies with all currently applicable building codes and any other regulations, adopted to protect against serious safety problems at the site such as engineering conditions, soil stability and the like, for example an ordinance or emergency regulation adopted by the Council or the Director of Emergency Services after a declared disaster.

4. Where a structure to be replaced or rebuilt does not conform to subsection (2) above and is to be expanded or changed, such structure shall be subject to all otherwise applicable regulations governing such expansion or change.
- B. The Planning Director shall establish a process that allows an owner of a qualifying residential structure to apply for an advance determination that the proposed repair or replacement of a structure is substantially similar as required by paragraph A(2) including the information required to document existing conditions. The Planning Director shall also develop a description for owners of qualifying residential structures of such building information required by the City to document existing characteristics of the building in case of future damage or destruction.

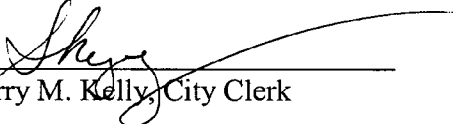
Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

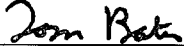
At a regular meeting of the Council of the City of Berkeley held on November 14, 2006, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Councilmembers Anderson, Maio, Moore, Spring, Worthington and Mayor Bates.  
Noes: Councilmember Olds.  
Abstain: Councilmembers Capitelli and Wozniak.  
Absent: None.

At a regular meeting of the Council of the City of Berkeley held on November 28, 2006, this Ordinance was adopted by the following vote:

Ayes: Councilmembers Anderson, Maio, Moore, Olds, Spring, Worthington, Wozniak and Mayor Bates.  
Noes: Councilmember Capitelli.  
Absent: None.

ATTEST:   
Sherry M. Kelly, City Clerk

  
Tom Bates, Mayor

In effect: December 28, 2006