



Planning and Development Department
Land Use Planning

U S E P E R M I T

CITY OF BERKELEY ZONING ORDINANCE
Berkeley Municipal Code Title 23

USE PERMIT # 10-20000126

Property Address: **457 KENTUCKY AVENUE**

Permittee Name: **RICHARD RUGGIERI / EDITH LAVIN**

Use and/or Construction Permitted:

a fence and a hedge to exceed the six-foot height limit along the rear property line.

- Administrative Use Permit, per Section 23D.08.060.A.2, to allow a fence to exceed the six-foot height limit (the fence would be no more than 8 feet tall above the rear yard); and
- Administrative Use Permit, per Section 23D.08.060.A.2, to allow a hedge to exceed the six-foot height limit (the hedge would no more than 13 feet, 9 inches tall above the rear yard).

FINDINGS, CONDITIONS AND APPROVED PLANS ATTACHED

The Use Permit herein described has been duly granted by the Zoning Adjustments Board and is in effect on March 21, 2013.

ATTACHMENT 1

FINDINGS AND CONDITIONS

FEBRUARY 28, 2013

457 KENTUCKY AVENUE

Administrative Use Permit #10-20000126

PROJECT DESCRIPTION

1. The project would allow a fence and a hedge to exceed the six-foot height limit along the entire rear property line. The fence would extend six feet above the retaining wall. The hedge would extend no more than 11 feet above the retaining wall.

CEQA FINDINGS

2. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq.) pursuant to Section 15303(e) – new construction, accessory structure.

FINDINGS FOR APPROVAL

3. As required by Section 23B.28.050.A of the Zoning Ordinance, this 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, or 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:
 - The hedge does not pose an unreasonable shading impact to the uphill neighbor because the shading that is created by this hedge mostly falls on the rear yard during the afternoon;
 - Based on photos submitted from 2004 when the hedge was at the reference height, the hedge does not block significant views from the primary living areas of the uphill neighbor;
 - The hedge and fence will help maintain privacy between neighbors as well as screen the subject property's rear yard area from the up-hill neighbors;
 - Based on photos and elevation drawings submitted to the City for a prior use permit for this site, the height has existed since at least 2004. The location of, and the height of the hedge is well established landscaping that will remain. Project approval will, therefore, only allow the previously-existing condition to continue; and
 - The project is conditioned to keep the hedge maintained to a maximum height of no more than the reference height of 124 feet. (see condition #12 for details).

STANDARD CONDITIONS

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; 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 issued is permitted unless the Permit is modified by the Zoning Officer, except that the Zoning Officer may approve changes that do not expand, intensify, or substantially change the use or building.

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

Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

6. Subject to All Applicable Laws and Regulations (Section 23B.56.040)

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments.

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. Indemnification Agreement

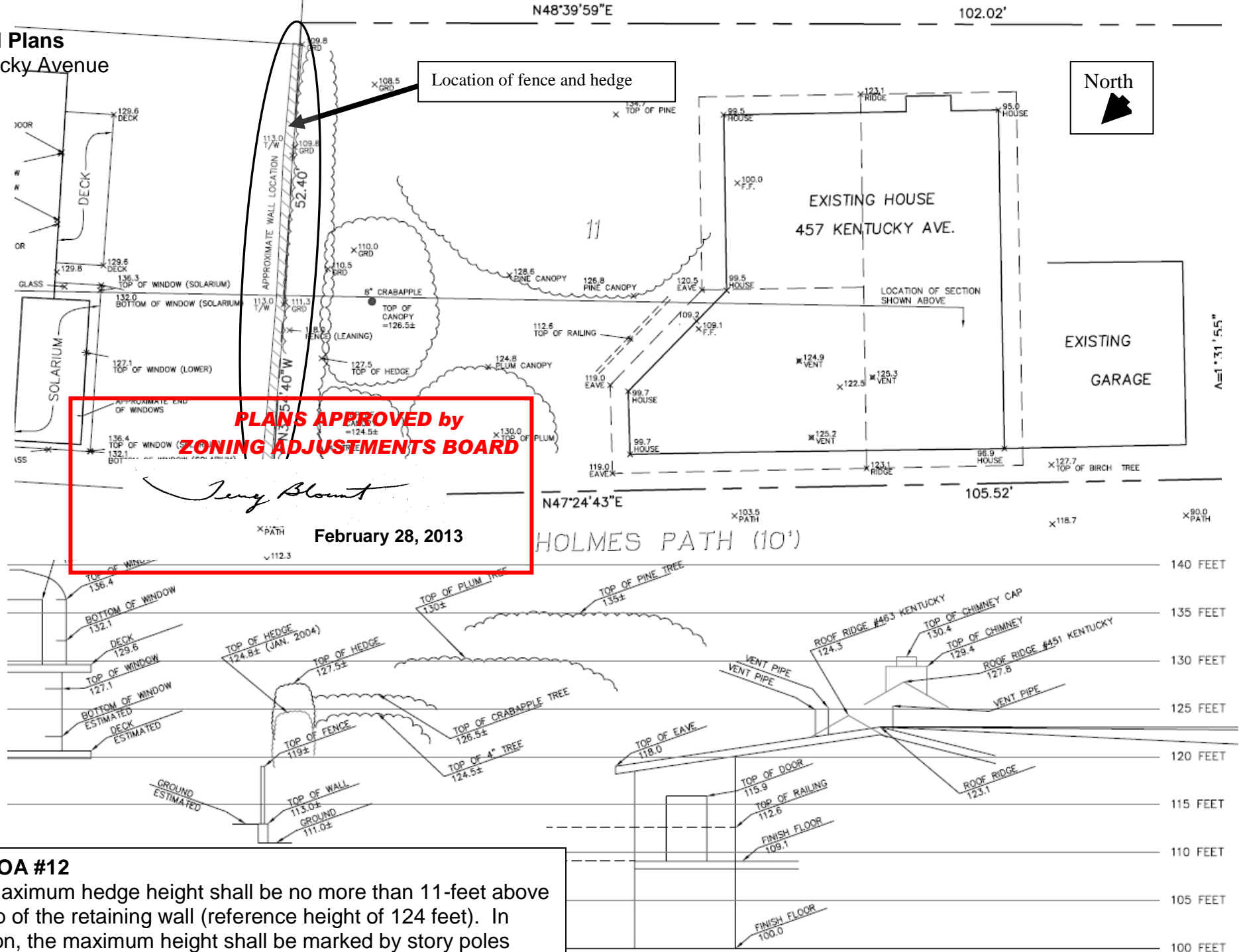
The applicant shall hold the City of Berkeley and its officers harmless in the event of any legal action related to the granting of this Permit, shall cooperate with the City in defense of such action, and shall indemnify the City for any award of damages or attorneys fees that may result.

SPECIAL CONDITIONS IMPOSED BY THE ZONING OFFICER

Pursuant to BMC 23B.28.050.D, the Zoning Officer attaches the following additional conditions to this Permit:

- 10.** All landscape, site and architectural improvements shall be completed per the attached approved drawings dated **FEBRUARY 28, 2013**.
- 11.** All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
- 12.** The maximum hedge height shall be no more than 11-feet above the top of the retaining wall (reference height of 124 feet). In addition, the maximum height shall be marked by story poles within the hedge at each end to note the approved height.

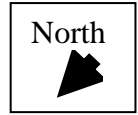
Approved Plans
457 Kentucky Avenue



N48°39'59"E

102.02'

Location of fence and hedge



PLANS APPROVED by ZONING ADJUSTMENTS BOARD

Jerry Blount
February 28, 2013

N47°24'43"E

HOLMES PATH (10')

- 140 FEET
- 135 FEET
- 130 FEET
- 125 FEET
- 120 FEET
- 115 FEET
- 110 FEET
- 105 FEET
- 100 FEET