

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 # 12-1000060

Property Address: **1911 NINTH STREET**

Permittee Name: **JOHN NEWTON**

Use and/or Construction Permitted:

to demolish an existing two-story, 1,756 sq. ft. single-family home and to construct three, three-story, single-family homes, totaling 6,182 sq. ft. of total floor area on a 6,505 sq. ft. lot.

- Use Permit to demolish a residential unit, under BMC Section 23C.08.020
- Use Permit to construct three, single family homes, under BMC Section 23D.36.030.A

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 26, 2013.

ATTACHMENT 1

FINDINGS AND CONDITIONS

FEBRUARY 28, 2013

1911 Ninth Street

Use Permit #12-10000060 to demolish an existing two-story, 1,756 sq. ft. single-family home and to construct three, three-story, single-family homes, totaling 6,182 sq. ft. of total floor area on a 6,505 sq. ft. 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 153332 of the CEQA Guidelines (“Infill Development”). 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 three single-family homes on a 6,505 sq. ft. lot, 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 shadows created by the proposed project do not result in a significant loss of solar access to the adjacent properties since the project would have negligible new shading impacts on properties to the south, west and east. The minimal new shading to the adjacent property to the north would not be detrimental because new shading would only affect the south façade of the building and only in the mornings of winter months and to a lesser extent in fall and spring months. The scale and design of the project is sensitive to the surrounding properties and is appropriate for development within the R-3 Zoning District creating minimal new shading impacts.
 - B. The project would not obstruct any prominent views and thus, the proposed project would not be unreasonably detrimental to surrounding neighbor’s views.
 - C. The height and size of the proposed project is comparable to other existing buildings in the area and although many nearby homes are smaller than the

proposed ones, many others are of equal size or larger. The proposed project is similar in height, size, and bulk with other buildings in the immediate vicinity and would not create any significant impacts to surrounding neighbor's air or be out of scale with surrounding development in the area.

- D. The proposed project is sensitive of the existing neighborhood context and is designed to reflect the transition from the commercial district to the south to the residential district north of University Avenue.
- E. The proposed project meets all of the requirements for creating three new dwelling units on the site, including residential density requirements, required off-street parking and useable open space.
- F. The demolition is necessary to permit construction of at least the same number of dwelling units as the demolished structure. The existing single-family home is exempt from rent control and the building is vacant and no tenants would be displaced because of this project.

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.

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 applying for a building permit, the applicant shall file an "Address Assignment Request Application" with the Permit Service Center (2120 Milvia Street) for any address change or new address associated with this Use Permit. The new address(es) shall be assigned and entered into the City's database prior to the applicant's submittal of a building permit application.

11. 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.
12. 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 #

13. 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.

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 December 4, 2012.
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.
26. The applicant shall work with the abutting neighbor to the north at 1909 Tenth Street to design a landscaping plan that will help to mitigate privacy impacts to the neighbor's home and rear yard. A summary of the discussions with the neighbor and a landscaping plan including descriptions and locations of any trees, hedges and other vegetative landscaping features shall be submitted to the project planner for review and approval prior to the approval of building permits and said landscaping plan shall be implemented prior to approval of final occupancy.

At All Times:

27. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
28. 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.
29. Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to Design Review and/or Landmarks Preservation Commission approval.

Inclusionary and Density Bonus Conditions:

Affordability Requirements

30. **In-Lieu Fee.** In accordance with BMC Section 23C.12.040.E.1, the applicant shall provide an in-lieu fee equivalent to 0.6 inclusionary units if applicable. The applicant shall have the option of designation of one of the three units as an inclusionary unit instead of paying the in-lieu fee. Payment or designation must be made before the applicant obtains a certificate of occupancy if applicable.

New Meter Condition:

31. Only one electrical meter fixture may be installed per dwelling unit.

Storm Water Conditions:

32. Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to storm water 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.
33. Design, location and maintenance requirements and schedules for any storm water 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 storm water quality ordinances. This review shall be conducted prior to the issuance of a Building Permit.
34. All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.
35. 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.

Residential Development and Construction

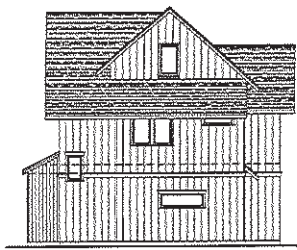
- 36.** The project plans shall include storm water pollution prevention and control measures for the operation and maintenance of the project during and after construction for the review and approval of the City Engineer. The project plan shall identify Best Management Practices (BMPs) appropriate to the uses conducted on-site in order to limit to the maximum extent practicable the entry of the pollutants into storm water runoff.

The project plan shall also include erosion control measures to prevent soil, dirt and debris from entering the storm drain system, in accordance with the practices outlined in the ABAG Erosion and Sediment Control Handbook, California Storm Water Best Management Practice Handbooks, and the Regional Water Quality Control Board's Erosion and Sediment Control Field Manual.

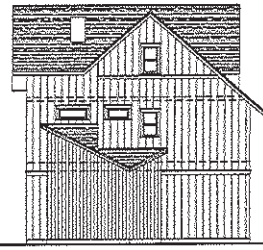
The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all storm water quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations, or a project stop work order.

- 37.** 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. The applicant shall contact the local permitting authority and sanitary district with jurisdiction for specific connection and discharger requirements.
- 38.** The design, location, maintenance requirements and maintenance schedule for any storm water quality treatment structural controls shall be submitted to the City Engineer for review and approval prior to the issuance of a building permit.
- 39.** A property owners association shall be created and shall be responsible for maintaining all private streets and private utilities and other privately owned common areas and facilities on the site including landscaping. These maintenance responsibilities shall include implementing and maintaining storm water BMPs associated with improvements and landscaping.

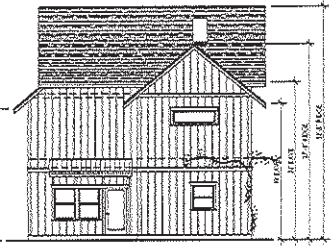
CC&Rs creating the association shall be reviewed and approved by the City Attorney prior to the recordation of the Final Map and recorded prior to the sale of the first residential unit. The CC&Rs shall describe how the storm water BMPs associated with privately owned improvements and landscaping shall be maintained by the association.



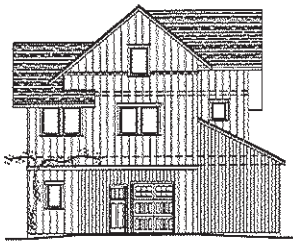
16 LEFT ELEVATION
ADD 1/8"=1'-0" MIDDLE HOUSE



15 REAR ELEVATION
ADD 1/8"=1'-0" MIDDLE HOUSE

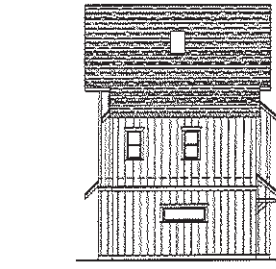


14 FRONT ELEVATION
ADD 1/8"=1'-0" MIDDLE HOUSE



13 RIGHT ELEVATION
ADD 1/8"=1'-0" MIDDLE HOUSE

MIDDLE HOUSE TYPICAL MATERIALS:
 ROOF: ASPHALT COMPOSITION SHINGLES, TYP. STANDING SEAM COPPER AT ENTRYWAYS AND WHERE SHOWN
 EXTERIOR WALLS: BOARD AND BATTEN, TYP.
 WINDOWS: DUAL PANE VINYL, SGL LITES, PAINTED WOOD CASING/SILL, TYP.
 DOORS: DUAL PANE WOOD DOORS AT FRENCH, ENTRY AND GARAGE DOORS AS SHOWN



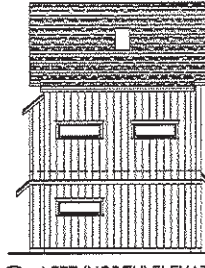
4 RIGHT (SOUTH) ELEVATION
ADD 1/8"=1'-0" FRONT HOUSE



7 REAR (WEST) ELEVATION
ADD 1/8"=1'-0" FRONT HOUSE



6 FRONT (WEST) ELEVATION
ADD 1/8"=1'-0" FRONT HOUSE



5 LEFT (NORTH) ELEVATION
ADD 1/8"=1'-0" FRONT HOUSE

MIDDLE HOUSE TYPICAL MATERIALS:
 ROOF: ASPHALT COMPOSITION SHINGLES, TYP. STANDING SEAM COPPER AT ENTRYWAYS AND WHERE SHOWN
 EXTERIOR WALLS: BOARD AND BATTEN, TYP.
 WINDOWS: DUAL PANE VINYL, SGL LITES, PAINTED WOOD CASING/SILL, TYP.
 DOORS: DUAL PANE WOOD DOORS AT FRENCH, ENTRY AND GARAGE DOORS AS SHOWN

John Newton
 Design & Development
 837 Coventry Road
 Kensington, CA 94707
 (510) 526-7370

NEW RESIDENCES

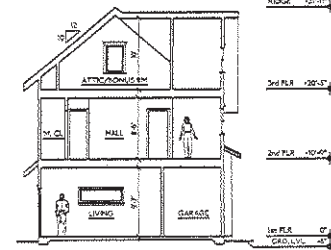
PROJECT ADDRESS:
 1911 9th Avenue
 Berkeley, CA 94710
 APN: 57-2089-19

OWNER:
 Tom Anthony
 5666 Telegraph Avenue
 Oakland, CA 94609
 (510) 761-3760

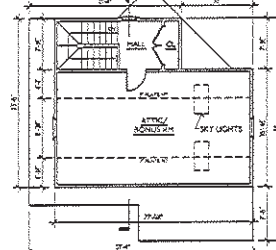
PLANS APPROVED by
ZONING ADJUSTMENTS BOARD

Terry Blount

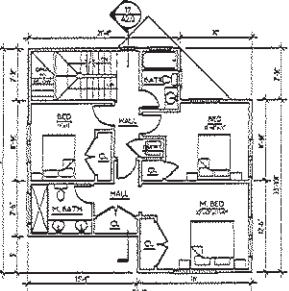
February 28, 2013



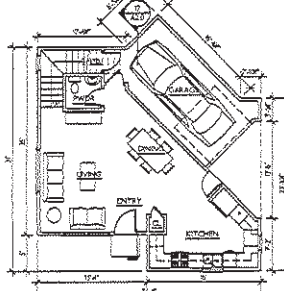
3 SECTION
ADD 1/8"=1'-0" MIDDLE HOUSE



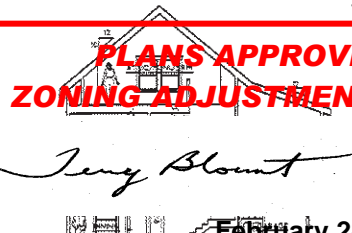
11 3rd FLOOR PLAN
ADD 1/8"=1'-0" MIDDLE HOUSE



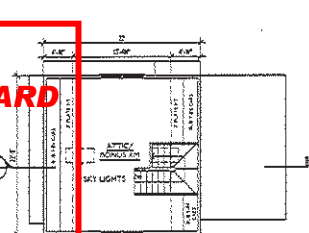
10 2nd FLOOR PLAN
ADD 1/8"=1'-0" MIDDLE HOUSE



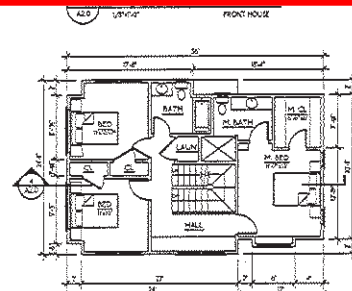
9 1st FLOOR PLAN
ADD 1/8"=1'-0" MIDDLE HOUSE



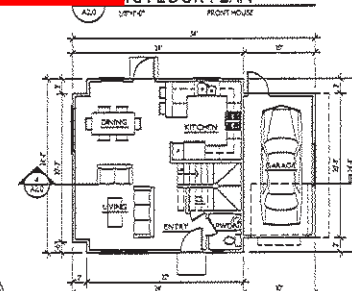
8 SECTION
ADD 1/8"=1'-0" FRONT HOUSE



12 3rd FLOOR PLAN
ADD 1/8"=1'-0" FRONT HOUSE



2 2nd FLOOR PLAN
ADD 1/8"=1'-0" FRONT HOUSE



1 1st FLOOR PLAN
ADD 1/8"=1'-0" FRONT HOUSE

REVISION

No.	Description	Date

PROJECT No.:
 DRAWN BY: JMN
 CHECKED BY: JMN
 DATE: 11-24-12

A2.0

PLANS APPROVED by
ZONING ADJUSTMENTS BOARD

Tony Blount

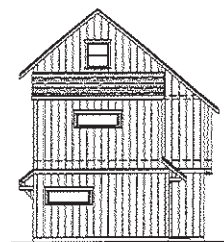
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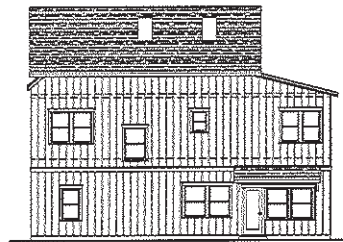
NEW
 RESIDENCES

PROJECT ADDRESS:
 1911 9th Avenue
 Berkeley, CA 94710
 APN: 57-2089-19

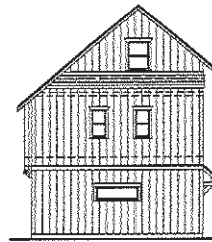
OWNER:
 Tom Anthony
 5666 Telegraph Avenue
 Oakland, CA 94609
 (510) 761-3700



3 LEFT (NORTH) ELEVATION
 1/8"=1'-0" REAR HOUSE



7 REAR (EAST) ELEVATION
 1/8"=1'-0" REAR HOUSE

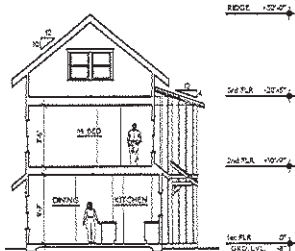


6 RIGHT (SOUTH) ELEVATION
 1/8"=1'-0" REAR HOUSE

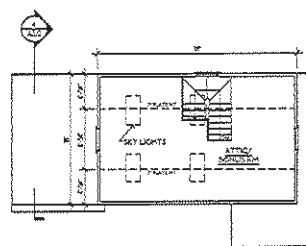


5 FRONT (WEST) ELEVATION
 1/8"=1'-0" REAR HOUSE

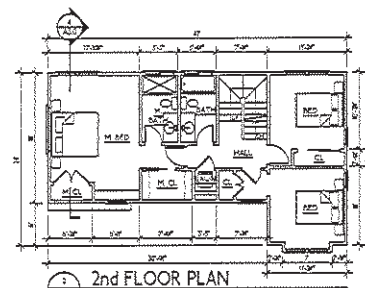
MIDDLE HOUSE TYPICAL MATERIALS:
 ROOF: ASPHALT COMPOSITION SHINGLES, TYP. STANDING SEAM COPPER AT ENTRYWAYS AND WHERE SHOWN
 EXTERIOR WALLS: BOARD AND BATTEN, TYP.
 WINDOWS: DUAL PANE VENTL. SOL. LITES, PAINTED WOOD CASING/SILL, TYP.
 DOORS: DUAL PANE WOOD DOORS AT FRENCH, ENTRY AND GARAGE DOORS AS SHOWN



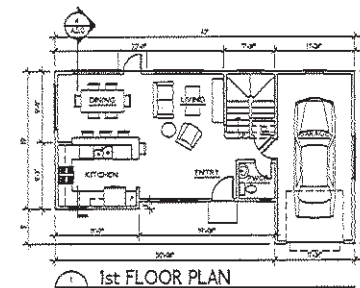
4 SECTION
 1/8"=1'-0" REAR HOUSE



2 3rd FLOOR PLAN
 1/8"=1'-0" REAR HOUSE



2 2nd FLOOR PLAN
 1/8"=1'-0" REAR HOUSE



1 1st FLOOR PLAN
 1/8"=1'-0" REAR HOUSE

REVISION

No.	Description	Date

PROJECT No.:
 DRAWN BY: JMN
 CHECKED BY: JMN
 DATE: 11/14/12

A2.1

PLANS APPROVED by
ZONING ADJUSTMENTS BOARD

Jerry Blount

February 28, 2013

John Newton
 Design & Development
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 Kensington, CA 94707
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NEW RESIDENCES

PROJECT ADDRESS:
 1911 9th Avenue
 Berkeley, CA 94710
 APN: 57-2089-19

OWNER:
 Tom Anthony
 5666 Telegraph Avenue
 Oakland, CA 94609
 (510) 701-3700



STREET STRIP ELEVATION

REVISION

No.	Description	Date

PROJECT No.:
DRAWN BY: JMN
CHECKED BY: JMN
DATE: 11/14/12

A3.0

**PLANS APPROVED by
ZONING ADJUSTMENTS BOARD**

Tony Blount

February 28, 2013

