

Planning and Development Department
Land Use Planning Division

A D M I N I S T R A T I V E U S E P E R M I T

CITY OF BERKELEY ZONING ORDINANCE
Berkeley Municipal Code, Title 23

AUP MODIFICATION #13-70000003

Property Address: **1805 MONTEREY AVENUE**

Permittee Name: **DANIEL SMITH**

Use and/or Construction Permitted: to enlarge an existing one-story 1,632 sq. ft. (not including basement) single family residence by constructing 319 sq. ft. to the first floor and 532 sq. ft. for a new second story, resulting in a new 2,483 sq. ft. residence (not including basement), increasing the average height of the residence from 20'6" to 24', and to horizontally extend a non-conforming side yard setback pursuant to:

- Section 23D.16.070.C to construct a residential addition exceeding 14' in height;
- Section 23D.16.030 to allow a major residential addition exceeding 600 sq. ft.; and
- Section 23C.04.070.B to horizontally extend a non-conforming side yard setback of 3'6" where 4' is required.

FINDINGS, CONDITIONS AND APPROVED PLANS ATTACHED

Following the expiration of the mandatory appeal period set forth in Section 23B.28.040 of the Berkeley Municipal Code, with no timely appeal being filed, the Administrative Use Permit described herein has been duly granted by the Zoning Officer on May 30, 2013.

Attest: Terry Blount
Terry Blount, AICP, Principal Planner
For Debbie Sanderson, Zoning Officer

May 30, 2013
Effective Date

ATTACHMENT 1

FINDINGS AND CONDITIONS

MAY 9, 2013

1805 Monterey Avenue

Modification to Administrative Use Permit #13-70000003

To Modify Administrative Use Permit #11-20000165 to enlarge an existing one-story 1,632 sq. ft. (not including basement) single family residence by constructing 319 sq. ft. to the first floor and 532 sq. ft. for a new second story, resulting in a new 2,483 sq. ft. residence (not including basement), increasing the average height of the residence from 20'6" to 24', and to horizontally extend a non-conforming side yard 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 Section 15301 of the CEQA Guidelines ("Existing Facilities"). 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

2. As required by Section 23B.28.050.A of the Zoning Ordinance, 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:
 - As required by Section 23C.04.070.B.1 (Expansions of Non-conforming Buildings and Structures), the approximately 5'3" horizontal extension of the non-conforming east side yard, which has an existing and proposed side yard setback of 3'6" where 4' is required does not further encroach into the required setback or exceed the height limit in the R-1 District.
 - As required by Section 23D.16.030 (Uses Permitted) and 090 (Findings), the proposed 851 sq. ft. major residential addition may exceed 14' in average height and the horizontal extension of the non-conforming east side yard do not create significant

impacts to sunlight, air or views, and is found to be non-detrimental and permissible for the following reasons:

- 1) Sunlight – The existing average height at 1805 Monterey Avenue is 20'6" and the proposed average height is 24'. The property to the west at 1801 Monterey is situated on a corner lot where sunlight and ambient light exist throughout the day. Because of the new building mass there may be new shadows experienced at the properties to the west at 1801 Monterey and to the east at 1809 Monterey. The existing house at 1805 Monterey sits to the east of the lot due to the driveway located to the west of the site. In addition a California Live Oak tree exists on the property to the west at 1801 Monterey. The western property at 1801 Monterey is situated approximately 12' away from the addition and shadowing may occur at an existing rear accessory structure and a portion of the roof and wall of the main dwelling for a few hours in the early morning during the winter months. During the morning hours in the summer months, new shadows may occur at the roof and lower level rear window of the main structure at 1801 Monterey. At the property to the east at 1809 Monterey, situated approximately 8' from the subject property, shadowing may occur in the afternoon during winter and summer months at the rear window and at the top of a bay window. For these reasons this loss is found to be non-detrimental because the loss of sunlight will occur only for a small portion of the day;
 - 2) Air –Because the proposal exceeds the district standards for minimum front, rear, and west side setbacks, it is expected to provide adequate spatial separations between the two developments on abutting properties, thereby allowing for adequate air circulation. The existing 3'6" east non-conforming side setback does not further encroach into the required setback; therefore, the proposed addition is not expected to impact air circulation to the neighboring property;
 - 3) Views – A mature California Live Oak tree exists on the property to the west at 1801 Monterey. Due to the existing vegetation along the property boundary between 1801 and 1805 Monterey, existing views of the Berkeley Hills at this location are minimal and construction at 1805 Monterey would not create an unreasonable view impact to the adjacent property at 1801 Monterey. The proposed addition will not exceed the full height limit allowed in the R-1 District and will not exceed the maximum number of stories allowed; and
 - 4) Privacy – The proposed addition is for a new second story bedroom, study, and bath and to expand the first floor master bedroom and office. The addition is not expected to create privacy impacts to the immediate neighbors given that:
 - The proposed second story bathroom and stairway feature obscure glass;
 - The proposed deck at the south elevation (front) measures approximately 17' in height from grade to the top of the guardrail, over 100' to the abutting property to the south at 1804 Monterey;
 - Large trees currently exist at the subject property and neighboring properties providing adequate screening; and
 - The building separations and proximities to adjacent neighbors are greater than the district standards for main buildings, and are therefore found to be adequate.
- The applicant submitted an arborist report dated November 4, 2011 from Pete Churgel, Certified Arborist with the International Society of Arboriculture. The report

states that the root system of the existing coastal live oak tree is already protected by the existing concrete driveway, and therefore the tree should not be adversely affected by the proposed project. Mr. Churgel recommended mitigations to ensure the safety of the oak tree, which have been incorporated into the conditions of approval (see below). Staff requested that Daniel Gallagher, the City's Arborist review the plans received February 9, 2012 and review the November 4, 2011 report and the subsequent August 22, 2012 report from Mr. Churgel for comment and to suggest additional mitigation if needed. Mr. Gallagher reviewed the reports and had no additional comments. The recommended measures are included as a condition of approval for this permit (see Condition #23 below).

- As required by Section 23D.16.070 (Development Standards), this project is permissible because the subject property satisfies the development standards for lot coverage, maximum residential density, maximum building height, rear, front, and west side setback requirements.
- The proposed addition is found to be appropriate and consistent with the context and character of the surrounding neighborhood because the building's height and yard setbacks are similar to those on neighboring lots. The style of the proposed building is current and relevant and is compatible with the variety of early and mid-century buildings in the area.

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.

ADDITIONAL CONDITIONS IMPOSED BY THE ZONING OFFICER

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

Prior to Submittal of Any Building Permit:

- 10.** 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 written reports of such complaints and actions to the project planner on a weekly basis. **Individual Responsible for Noise Management:**

Name: _____ Phone: _____

- 11.** 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.

Prior to Issuance of Any Building Permit:

12. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.

During Construction:

13. 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.
14. 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.
15. 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.
16. 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 in thickness and secured to the ground.
17. 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.
18. Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.
19. Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.

20. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way.
21. 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.
22. Any construction during the 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.
23. The mitigations recommended by Pete Churgel, Certified Arborist, in the August 22, 2012 evaluation of the California Live Oak Tree located on the property at 1801 Monterey, shall be implemented including:
 - A. Pruning clearance to accommodate construction shall be 3' maximum horizontal and vertical clearance.
 - B. Any new paving within a minimum of 5' of the tree shall drain away from the trunk.
 - C. During the construction of the stairs to the basement, the tree roots shall not be cut over 2" in diameter. A certified arborist shall evaluate the situation, on site, at the time of excavation to determine the size of the roots in this area.
 - D. The tree trunk protection shall be vertical 2X4's strapped side by side, flat around the tree to 5' height on the exposed side.
 - E. No equipment storage or disposing of liquid construction waste shall occur within the Critical Root Zone (CRZ). Any spills that occur, including contaminated soil, shall be cleaned up immediately.
 - F. A certified arborist shall be on site at excavation of the basement and garage and slab removal within the CRZ, during pruning and during driveway paving removal. All trimming work shall be performed by a Certified Arborist.
 - G. Trenching for new water drainage pipes from the new garage are to be routed to the east outside of the 26' radius of the CRZ.

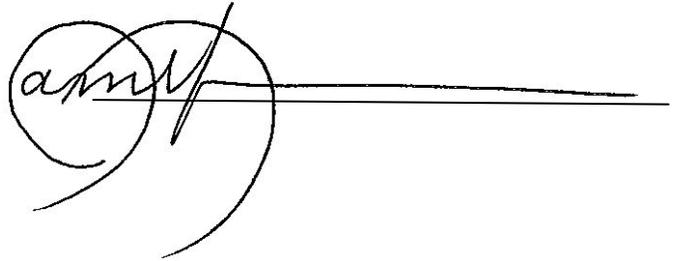
The applicant shall use the services of Brende & Lamb for any tree trimming and/or root cutting that may occur on the California Live Oak Tree located on the property at 1801 Monterey.

Prior to Issuance of Occupancy Permit or Final Inspection:

24. All construction at the subject property shall substantially conform to the approved Use Permit drawings or to modifications approved by the Zoning Officer.
25. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated **APRIL 4, 2013**.

At All Times (Operation):

26. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
27. This permit is subject to review, imposition of additional conditions, or revocation if factual complaint is received by the Zoning Officer that the maintenance or operation of this establishment is violating any of these or other required conditions or is detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the neighborhood or is detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.
28. Noise and exterior lighting shall be controlled so as to prevent verified complaints from the surrounding neighborhood.

A handwritten signature in black ink, appearing to read 'amj', is written over a horizontal line. The signature is enclosed within a circular scribble.

Prepared by: Pamela Johnson, Assistant Planner for
Debra Sanderson, Zoning Officer

David Smith & Associates
 Architects
 1875 California Street
 Berkeley, CA 94704
 Tel: (415) 841-4300 Fax: (415) 841-4306
 dsai@earthlink.net



Sheet & Register

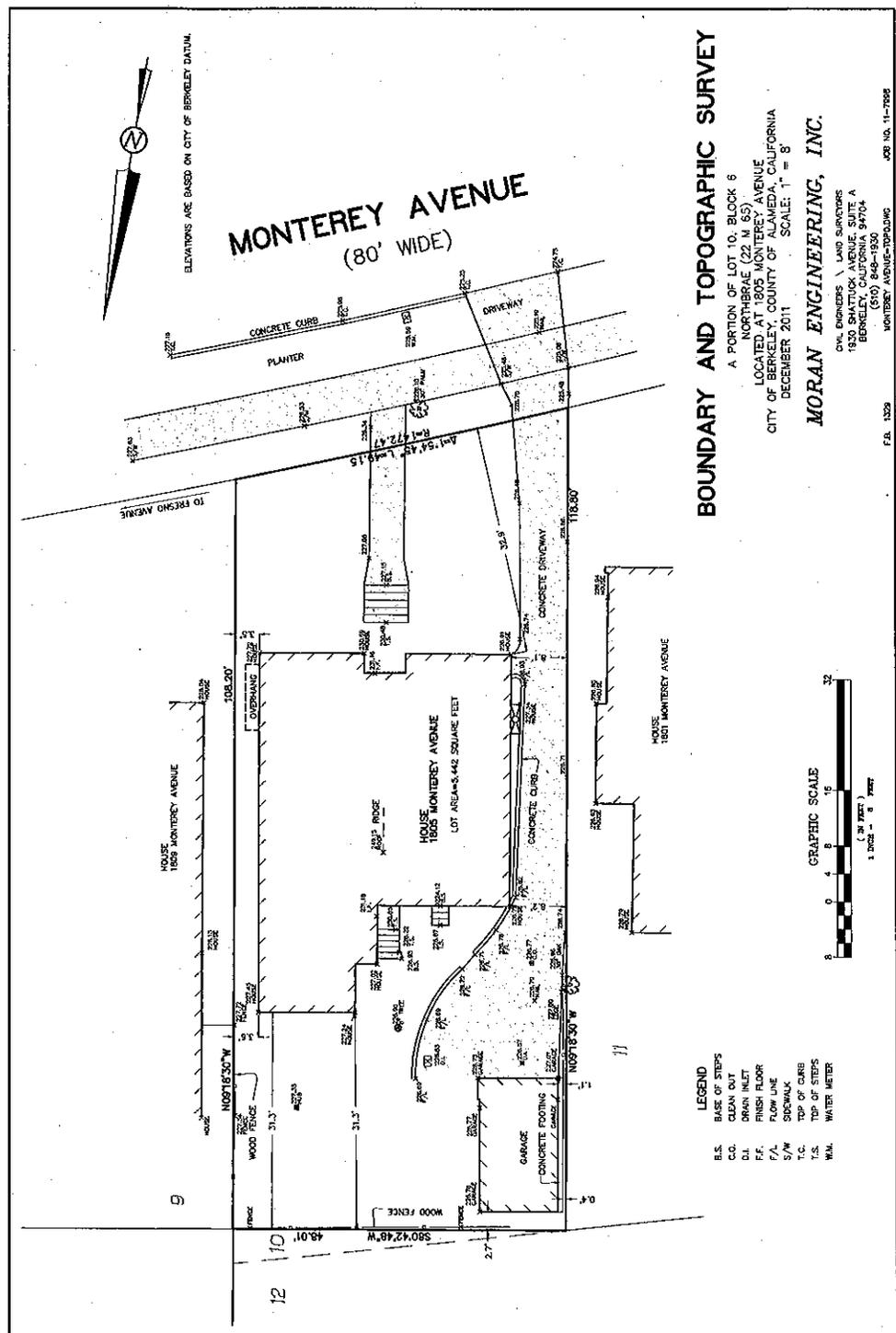
Checkmark

Date: 12/18/11
 Planning Application: 02.06.12
 Revision 1: 02.06.12
 Revision 2: 02.29.13

Hertz-Picciotto
 Residence Remodel
 1805 Monterey Ave.
 Berkeley, CA 94702

Sheet number: SURVEY - FOR REFERENCE ONLY
 Date: LD - Check Date: 02/06/12
 Project: 1002

A0.2



APPROVED PLAN 5/1/13 DATE
 PLANNING
 P.D.R. Conditions Attached
 O.A.U.P. Conditions Attached
 O.U.P. Conditions Attached

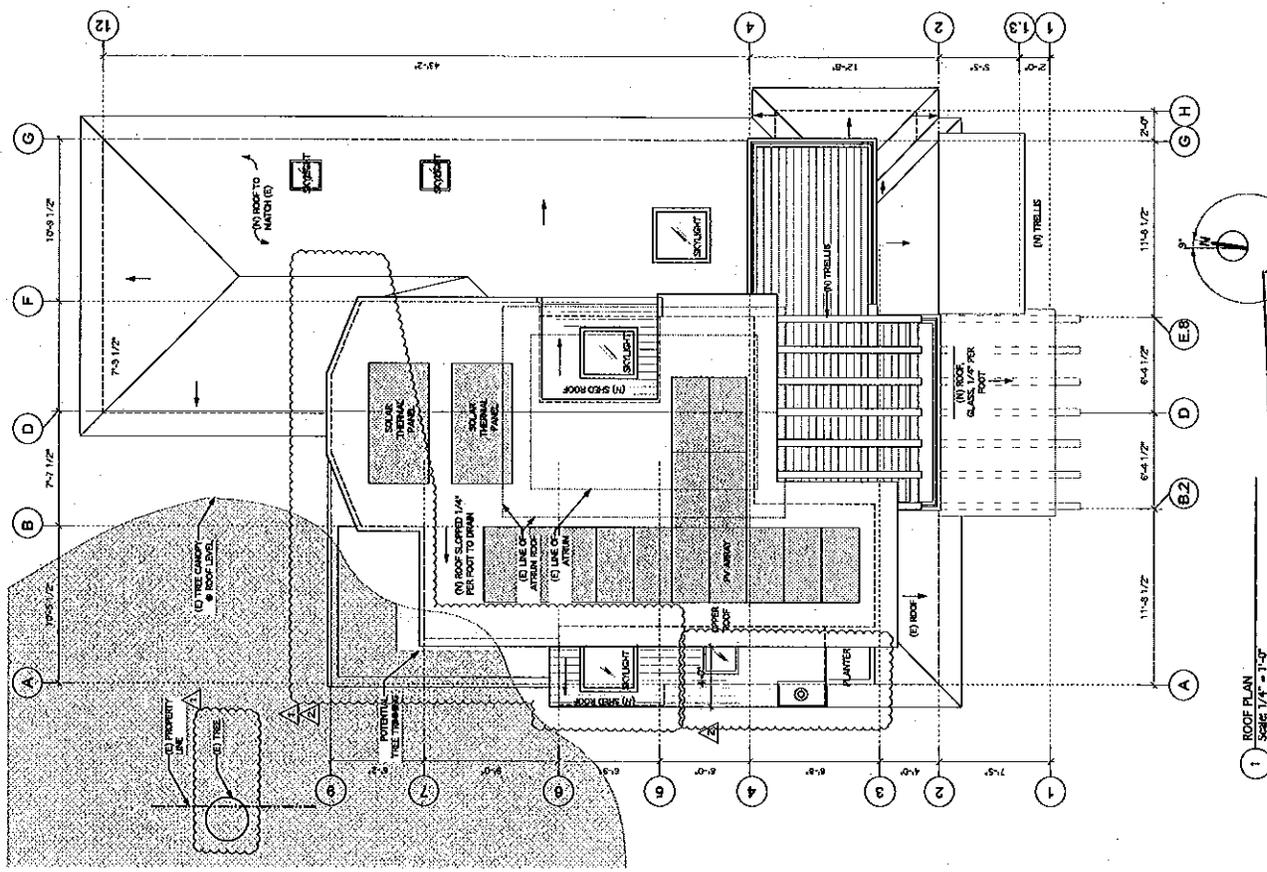
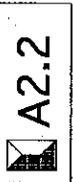
SURVEY - FOR REFERENCE ONLY

Date	Description
12.18.11	PLANNING APPLICATION
02.08.12	REVISION 1
02.28.13	REVISION 2

**Hertz-Picciotto
Residence Remodel**
1803 McKinstry Ave
Berkeley, CA 94702

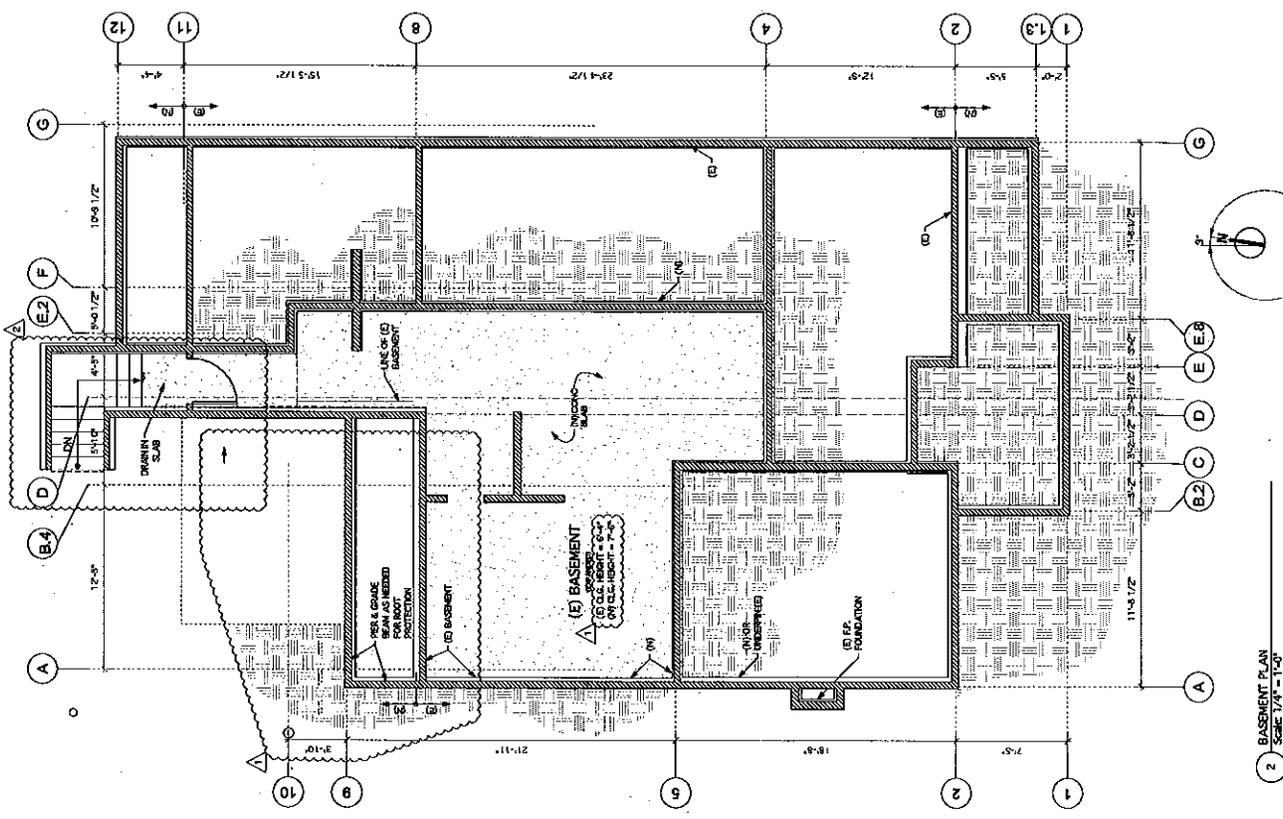
Sheet contents:
ROOF PLAN & BASEMENT
PLAN

Drawn By: LD
Checked: DS
Scale: As Shown
Project No: 1002

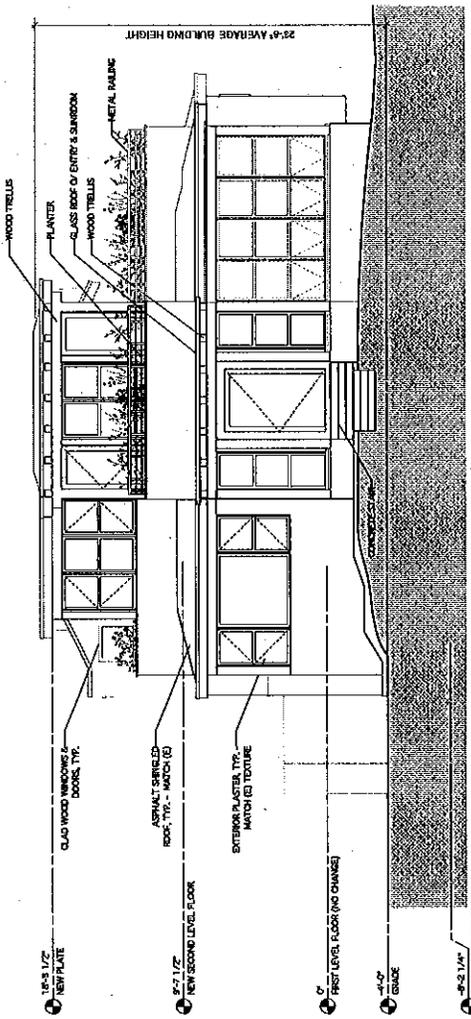


APPROVED PLAN
DATE 5-1-13
PLANNING
 D.P. Conditions Attached
 A.U.P. Conditions Attached
 U.P. Conditions Attached

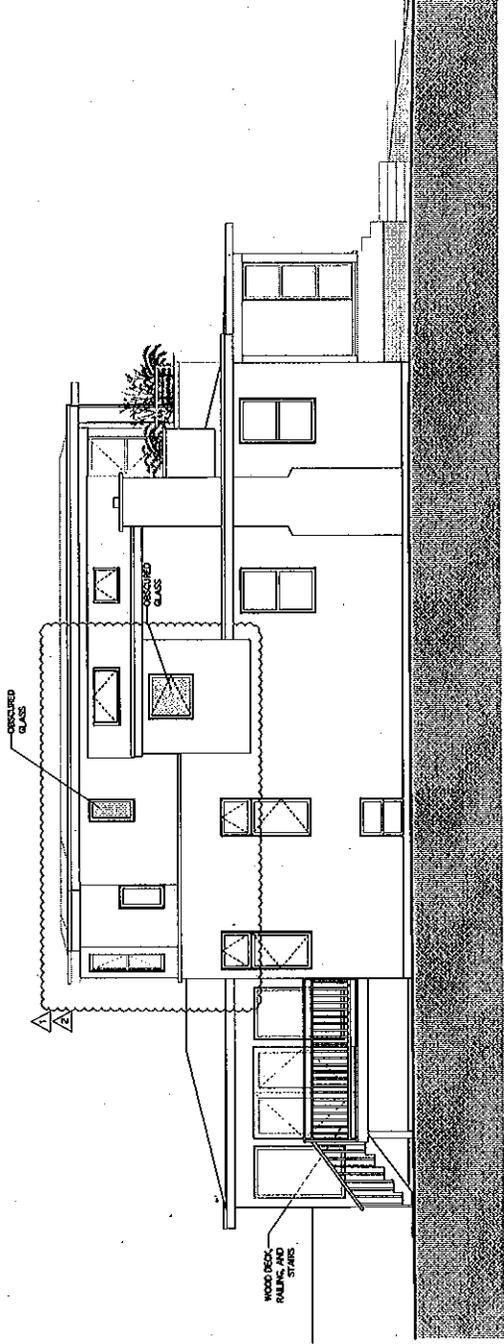
1 ROOF PLAN
SCALE 1/4" = 1'-0"



2 BASEMENT PLAN
SCALE 1/4" = 1'-0"



2 SOUTH ELEVATION
 Scale: 1/4" = 1'-0"



1 WEST ELEVATION
 Scale: 1/4" = 1'-0"

APPROVED PLAN 5-1-13 DATE
 PLANNING
 D.R. Conditions Attached
 A.U.P. Conditions Attached
 U.P. Conditions Attached

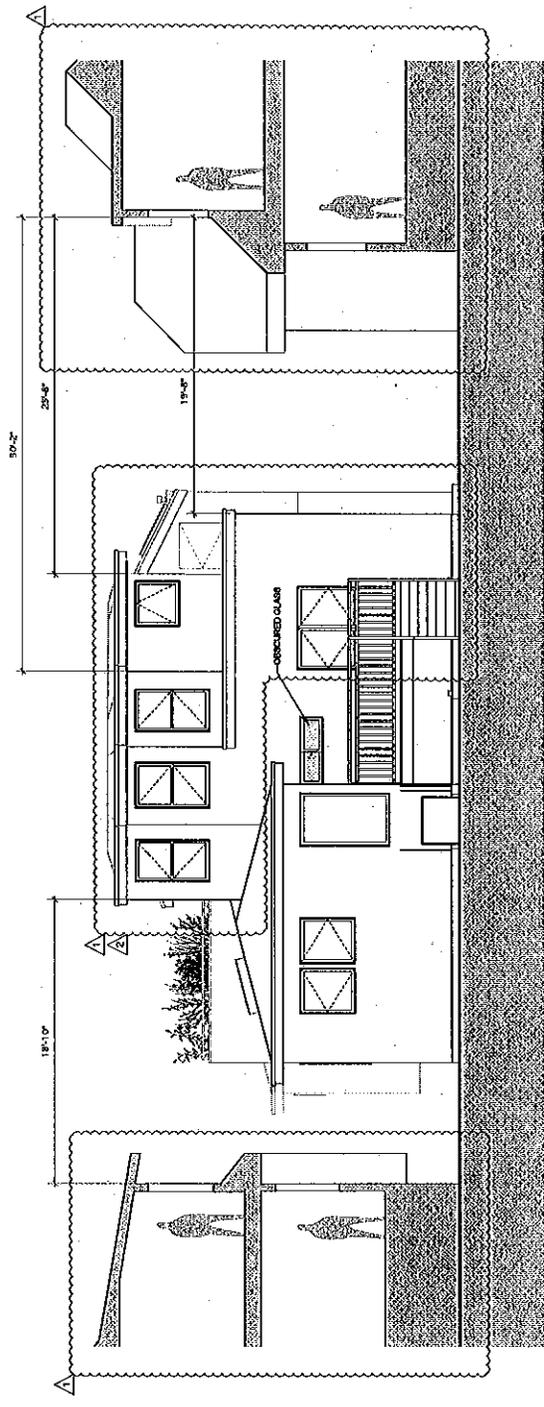
Daniel Smith & Associates
 Architects
 1871 Via...
 714 (916) 254-5551 Fax (916) 254-5491
 www.dsaarchitects.com



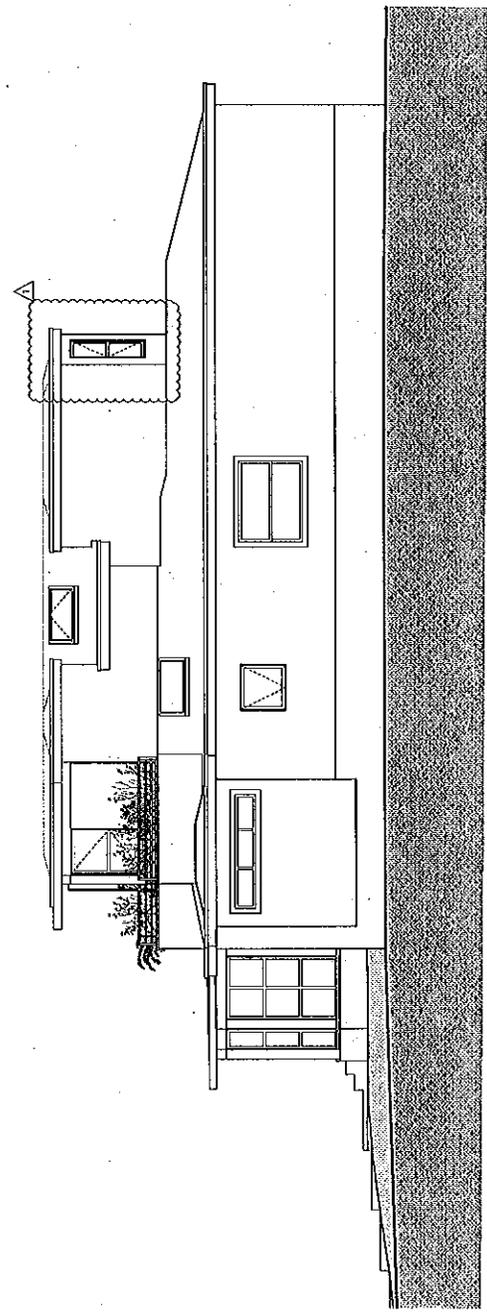
DATE: 12.18.11
 PLANNING APPLICATION
 REVISION 1 02.08.12
 REVISION 2 02.09.13

Hertz-Picciotto
 Residence Remodel
 1805 Monterey Ave
 Berkeley, CA 94702

A3.2



2 NORTH ELEVATION
 Scale: 1/8" = 1'-0"



1 EAST ELEVATION
 Scale: 1/8" = 1'-0"

APPROVED PLAN
 DATE 5-1-13
 PLANNING
 D.R. Conditions Attached
 A.U.P. Conditions Attached
 U.P. Conditions Attached