



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 #2013-0102**

Property Address: **1186 MILLER AVENUE**

Permittee Name: **JOHN NEWTON**

Use and/or Construction Permitted: To enlarge an existing 1,545 square-foot single-family dwelling with a new 1,837 square-foot addition on the second and third floors, and an expansion of a deck into the front yard setback, resulting in a 3,382 square-foot, 33'6 1/8"-foot-tall (maximum height) residence pursuant to:

- Section 23D.16.030 to permit a major residential addition over 600 square feet in area;
- Section 23D.16.070 to create an addition over 14 feet in average height;
- Section 23E.96.070 to create an addition over 20 feet in maximum height; and
- Section 23C.04.070.B to extend a non-conforming front yard setback.

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 June 26, 2014.

Attest: Sally Zarnowitz  
Sally Zarnowitz, Senior Planner  
For Eric Angstadt, Zoning Officer

June 26, 2014  
Effective Date

# ATTACHMENT 1

## FINDINGS AND CONDITIONS

JUNE 5, 2014

### 1186 Miller Avenue

#### Administrative Use Permit #AUP2013-0102

To enlarge an existing 1,545 square-foot single-family dwelling with a new 1,837 square-foot addition on the second and third floors, and an expansion of a deck into the front yard setback, resulting in a 3,382 square-foot, 33'6"-foot-tall (maximum height) residence.

#### 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 Sections 15301 and 15332 of the CEQA Guidelines ("Existing Facilities" and "In-Fill Development Projects"). 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 under Section 23D.16.030 (Uses Permitted), 23D.16.070.C (Development Standards), 23D.16.090 (R-1 District Findings), and 23E.96.090 (H District Findings), the proposed major residential addition may exceed 14 feet in average height and 20 feet in maximum height because the addition and the building's height are found to be non-detrimental. The height and size of the proposed addition does not create significant impacts to sunlight, air or views as listed below:

1. Light. The proposed addition would enlarge the existing second story and add a habitable third story behind the existing garage. The addition will not be taller than the existing garage, but the height of the garage will extend the entire length of the building, rather than dropping down and following the property's grade. The current building currently casts shadows on the building to the west,

1182 Miller, in the mornings and at noon. It also casts shadow to a lesser extent in the evenings on the building to the east, 1190 Miller. The addition will add a partial shadow on winter mornings to a garage window on the third floor of 1182 Miller, and will not cast additional shadows during any time of year on the windows of 1190 Miller. This loss is found to be non-detrimental because it will not unreasonably reduce the amount of direct sunlight to the adjacent dwellings.

2. Views. The addition will not adversely affect any significant views. The height of the addition as viewed from the street would be the same height as the existing garage, so the view over the house will not change for neighbors across the street. The area is heavily vegetated, and there are only filtered views of the San Francisco Bay from this property and the immediately adjacent neighbors. The view of the Bay that does exist is visible looking toward the rear of the properties (southwest) and across to the west. The addition will be built on top of the existing building and will not encroach into the adjacent (eastern) neighbor's view of the bay.
  3. Air and Privacy. The proposed addition will be outside the required setbacks, and is located within the general footprint of the existing building. The west property line is heavily vegetated, which provides privacy for the neighbor at 1182 Miller. The decks on the second and third floor will face the property to the east (1190 Miller), but the distance between the two buildings is significant enough (24 feet at a minimum) that privacy impacts will be limited.
  4. Neighborhood Compatibility. The addition will be compatible with the architectural character and scale of the neighborhood because it will utilize similar materials and roof forms as the neighboring buildings, will not exceed the maximum height for the R-1H District, and is located at the rear of the building where it will not create any substantial change to the streetscape of the neighborhood.
  5. As required under Section 23E.96.070.B (H District Overlay), the height of the proposed addition is in keeping with the purposes of the Hillside Overlay. The encroachment of a deck in the front yard setback is justified because of the steep topography of the lot. The addition will be below the maximum height in the R-1H District and maintains the character of the Hillside area in that it gives reasonable protection to the existing views of the neighbors.
- As required under Section 23E.96.070.C (Development Standards) and 23E.96.090 (H District Findings), the reduction of the front yard setback is justified because of the steep topography of the lot and is compatible with the building pattern in the neighborhood.

## **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.
13. Prior to building permit issuance, the construction plans shall be reviewed by the Project Geotechnical Engineer to verify that a sufficient number of new foundations are included in the proposed design to provide adequate support for the new additions, considering the potential for downslope movement of surficial soils over bedrock. If appropriate, the Project Geotechnical Engineer should delineate supplemental areas of the existing house foundation that warrant consideration of underpinning. The Project Geotechnical Engineer should confirm satisfactory foundation support of the new additions under static and seismic conditions. Appropriate documentation to address the above shall be included in the building permit submittal documents and shall be reviewed and approved by the City of Berkeley prior to issuance of building permits.

**During Construction:**

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

21. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way.
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.
23. 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.
24. The height and location of the proposed structure, property lines and spot elevations shall be verified by a licensed surveyor or engineer on site after foundation forms are placed, but before pouring concrete or placing construction material in its permanent position. This verification shall be to the satisfaction of the Zoning Officer.

**Prior to Issuance of Occupancy Permit or Final Inspection:**

25. All construction at the subject property shall substantially conform to the approved Use Permit drawings or to modifications approved by the Zoning Officer.
26. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated **NOVEMBER 6, 2013**.

**At All Times (Operation):**

27. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
28. 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.
29. Noise and exterior lighting shall be controlled so as to prevent verified complaints from the surrounding neighborhood.



Prepared by: Elizabeth Greene  
For Eric Angstadt, Planning Director

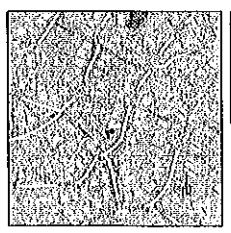
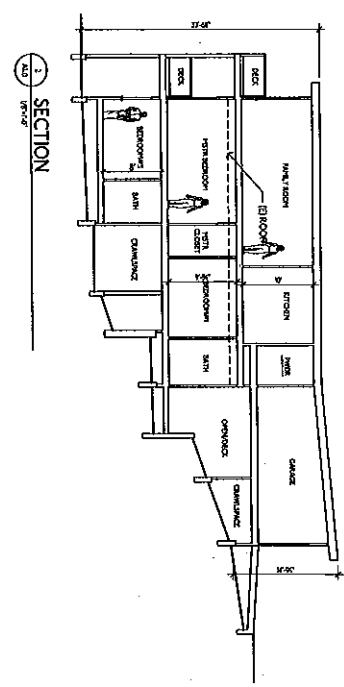
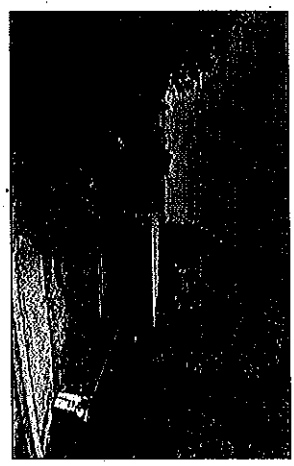
RECEIVED

NOV 06 2013

LAND USE PLANNING

# RESIDENCE REMODEL & ADDITION

1186 Miller Avenue, Berkeley, CA 94708



VICINITY MAP

### SYMBOL LEGEND

- ROOF
- WALL
- FLOOR
- CEILING
- DOOR
- WINDOW
- NOTE

### PROJECT INFORMATION

OWNER:  
Rosa Fedoruk  
902 Redwing Canyon Rd  
Berkeley, CA 94708  
(925) 786-4029

PROJECT ADDRESS:  
1186 Miller Avenue  
Berkeley, CA 94708  
APN: 63-2083-16

### DESCRIPTION OF WORK

ADD 1300 SF THIRD FLOOR AS WELL AS FIRST FLOOR IMPROVEMENTS. REMOVE EXISTING THIRD FLOOR AND SECOND FLOOR PORCHES. ADD 1300 SF NEW PORCH ON THE SECOND FLOOR. EXISTING PORCH TO REMAIN. EXISTING DRIVEWAY TO REMAIN. EXISTING DRIVEWAY TO REMAIN. EXISTING DRIVEWAY TO REMAIN.

### CODE COMPLIANCE

THE APPLICANT WARRANTS THAT THE INFORMATION AND DATA SUBMITTED IN THIS APPLICATION IS TRUE AND CORRECT TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEF. THE APPLICANT WARRANTS THAT THE INFORMATION AND DATA SUBMITTED IN THIS APPLICATION IS TRUE AND CORRECT TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEF. THE APPLICANT WARRANTS THAT THE INFORMATION AND DATA SUBMITTED IN THIS APPLICATION IS TRUE AND CORRECT TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEF.

### SHEET INDEX

ADD SHEET ANNOTATIONS  
ADD FLOOR PLANS/ANNOTATIONS

**PLANS APPROVED by**

*Elizabeth R. Greene*

June 4, 2014

SIGNATURE DATE

**\*AUP Findings and Conditions Attached**

| WORKSHEET NO. | SIGNATURE | DATE | REVISION | DATE | REVISION |
|---------------|-----------|------|----------|------|----------|
|               |           |      |          |      |          |
|               |           |      |          |      |          |
|               |           |      |          |      |          |
|               |           |      |          |      |          |
|               |           |      |          |      |          |
|               |           |      |          |      |          |
|               |           |      |          |      |          |
|               |           |      |          |      |          |
|               |           |      |          |      |          |
|               |           |      |          |      |          |
|               |           |      |          |      |          |
|               |           |      |          |      |          |
|               |           |      |          |      |          |
|               |           |      |          |      |          |
|               |           |      |          |      |          |



# A1.0

PROJECT NO. 1  
DRAWN BY: JMM  
CHECKED BY: JMM  
DATE: 10/2/12

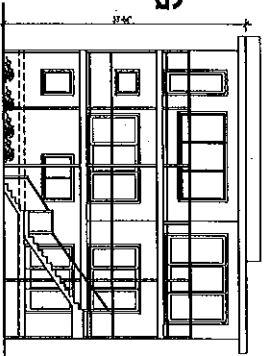




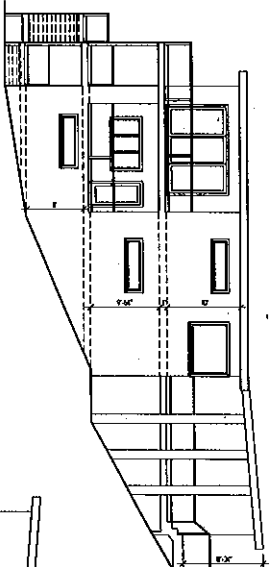
RECEIVED

NOV 06 2013

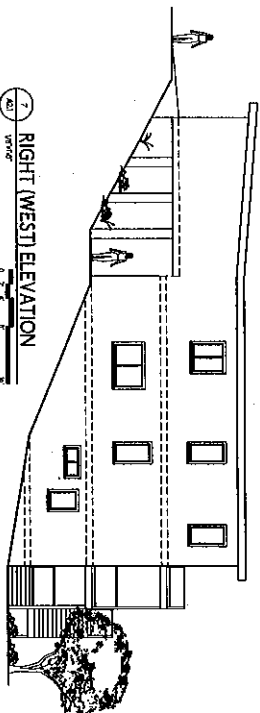
LAND USE PLANNING



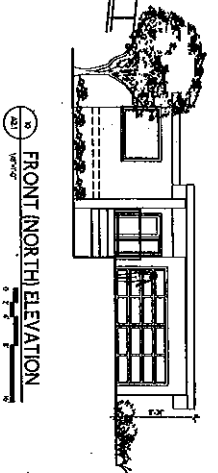
2 SOUTH (REAR) ELEVATION



3 LEFT (EAST) ELEVATION



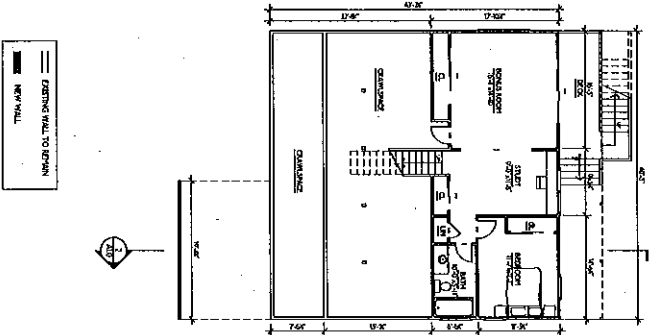
7 RIGHT (WEST) ELEVATION



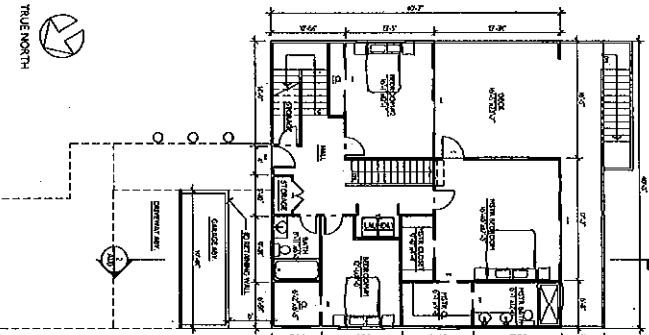
2 FRONT (NORTH) ELEVATION

TYPICAL MATERIALS:  
ROOF: SHINGLE  
Siding: STUCCO  
WINDOWS: DUAL-PANE VINYL  
DOORS: WOOD/GLAS ENTRY DOORS  
DUAL-PANE VINYL FINISH DOORS  
PAINTING: EXTERIOR: ORANGE  
INTERIOR: WHITE

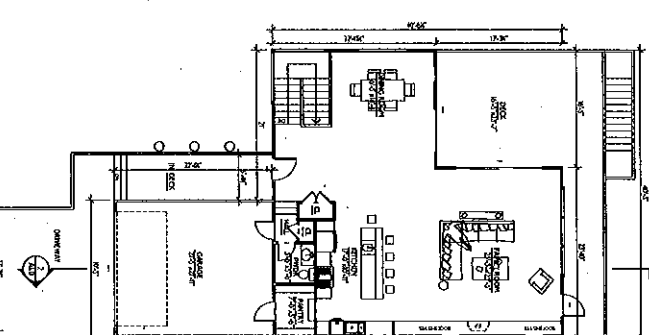
PLANS APPROVED by  
*Elizabeth R. Quinn*  
SIGNATURE DATE  
June 4, 2014  
DATE  
\*AUP Findings and Conditions Attached



3 PROPOSED FIRST FLOOR PLAN



2 PROPOSED SECOND FLOOR PLAN



1 PROPOSED THIRD FLOOR PLAN

EXISTING WALL TO REMAIN  
NEW WALL



|              |       |
|--------------|-------|
| PROJECT No.: | JAN   |
| DRAWING No.: | JAN   |
| CHECKED BY:  | JAN   |
| DATE:        | 08/13 |

|          |             |       |
|----------|-------------|-------|
| REVISION |             |       |
| No.      | Description | Date  |
| 1        |             | 08/13 |

OWNER:  
942 Redwood Rd  
Berkeley, CA 94708  
(925) 738-4023

OWNER:  
1188 Miller Ave  
Berkeley, CA 94708  
(415) 863-1119

PROJECT ADDRESS:  
1188 Miller Ave  
Berkeley, CA 94708  
(415) 863-1119

John Newton  
Design & Development  
5666 Telegraph Ave. Ste. 4  
Oakland, CA 94609  
(510) 526-7370

**A2.1**