



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 #2014-0008

Property Address: **1178 MILLER AVENUE**

Permittee Name: **ELAINE SCHWIMMER**

Use and/or Construction Permitted: This permit will (1) legalize previous construction that enclosed open space beneath an elevated parking deck in a required front yard setback and created a 2-story storage structure of approx. 365 sq. ft.; and (2) authorize construction of a new roof cover over the parking deck – all resulting in a new average building height of 23 ft. – 9 in.

- Section 23D.08.010.B to permit accessory structures that exceed standard development limits;
- Section 23E.96.070.B to exceed height limits in the Hillside Overlay District.

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 October 2, 2014.

Attest: Carol Johnson
Carol Johnson, Land Use Planning Mgr.

October 2, 2014
Effective Date

ATTACHMENT 1

FINDINGS AND CONDITIONS

SEPTEMBER 11, 2014

1178 Miller Avenue

Administrative Use Permit #AUP2014-0008

To permit will (1) legalize previous construction that enclosed the area beneath an elevated parking deck within a required front yard setback and created a two-story 365 sq. ft. storage structure; and (2) authorize construction of a new roof to cover the subject parking deck for a new, total average height of 23 ft. – 9 in.

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”).

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:
 - The retro-active request to enclose the cavernous open space beneath the existing parking deck is found to be reasonable because it utilizes otherwise un-usable land area.
 - The storage enclosure beneath the parking deck is not visible from the street and has no impact at the public interface. Due to the sloping topographic conditions and mature vegetation surrounding the site, the enclosure creates no significant visual or massing impacts for the adjacent properties.
 - The new 9-ft. tall roof cover will be visible from the public right-of-way with a setback of approximately 6 ft. from the front property line. At the street level, the 9-ft. height will be in scale with the fences and other accessory structures located in the front yard setbacks along this portion of Miller Avenue. From other vantage points, the roof cover will be partially screened by existing trees and other forms of mature vegetation.
 - When studied as a whole, the two-story structure with the new roof cover and an overall average height of 23 ft. – 9 in. is found to be sited in a manner that minimizes visual impacts and is compatible with the scale of development in the area.

3. In accordance with Section 23D.08.010.B (*Accessory Buildings & Structures May Exceed Limits with Use Permit*) the proposed accessory structure expansion is found to be permissible and non-detrimental for the following reasons:
- *Light* - According to Shadow Studies submitted July 10, 2014 the proposed roof cover will not create significantly impact any abutting residences. With respect to the residence at 1176 Miller, additional shadowing may occur during summer mornings but likely will be imperceptible given the existing shadowing from trees within the projected shadow fan; because this possible change will be limited to these hours at only this time of year, this impact is found to be reasonable and non-detrimental.
 - *Air* - The structure is located at the front of a lot which slopes steeply downward from the street. The mass of the building, including the new storage area, will be concealed below the street level, screened by the existing mature vegetation at the site –particularly on either side - and not readily visible from a rear vantage point due to the location of the main building. The structure is approximately 18 ft. from the 1176 and more than 30 ft. from the residence at 1180 Miller. Due to these conditions the project will not have a detrimental impact the existing spatial and building-to-building separations in this area.
 - *Privacy* - The views from on the windows on the west and south elevations of the structure are obscured by the existing vegetation and a perimeter fence so they have not imposed privacy impacts for the residence at 1180 Miller
 - *Views* – The new storage area is located below the street elevation and outside of the view corridors of any adjacent residences. The proposed new roof cover is be constructed below the floor level of the more elevated main buildings at 1165, 1169, 1175 Miller and will not impact view corridors for this residences.
4. As permitted in the Hillside Overlay District under Sections 23E.96.020 (*Purposes*) Paragraph D, 23E.96.070 (*Development Standards*) Paragraph B.3, and 23E.96.090.B (*Findings*), the proposed expansion of this accessory structure to include two stories where only one is otherwise allowed is consistent with the Purpose of this District to grant flexible in the development standards where steep topography is a consideration. In this case, the site topography necessitated the creation of an elevated parking deck as well as the resulting open space beneath that yields little vegetation because it receives no sunlight. The topography also limits further expansion of the existing 880-sq. ft., single-family residence, so converting the otherwise un-usable open land area beneath the parking deck into storage space represents a reasonable and appropriate use of the space in a manner that has resulted in no significant impacts to the neighboring properties.
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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. All owners of record of the subject property shall sign and record with the Alameda County Clerk-Recorder a "Notice of Limitation on Use of Property" (available from Land Use Planning Division) and provide a recorded copy thereof to the project planner. This Notice of Limitation shall stipulate that no part of this accessory structure shall be used or converted to use as habitable space or a dwelling unit unless and until permission is requested of the City of Berkeley and authorized a Use Permit, Administrative Use Permit, or Zoning Certificate, whichever is applicable. This limitation shall include the explicit acknowledgment that no sink, shower, tub, or kitchen facilities may be installed in this habitable accessory building. This limitation may not be revised or removed from this property without the prior written permission of the Zoning Officer of the City of Berkeley.
13. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.

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.

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 February 3, 2014.

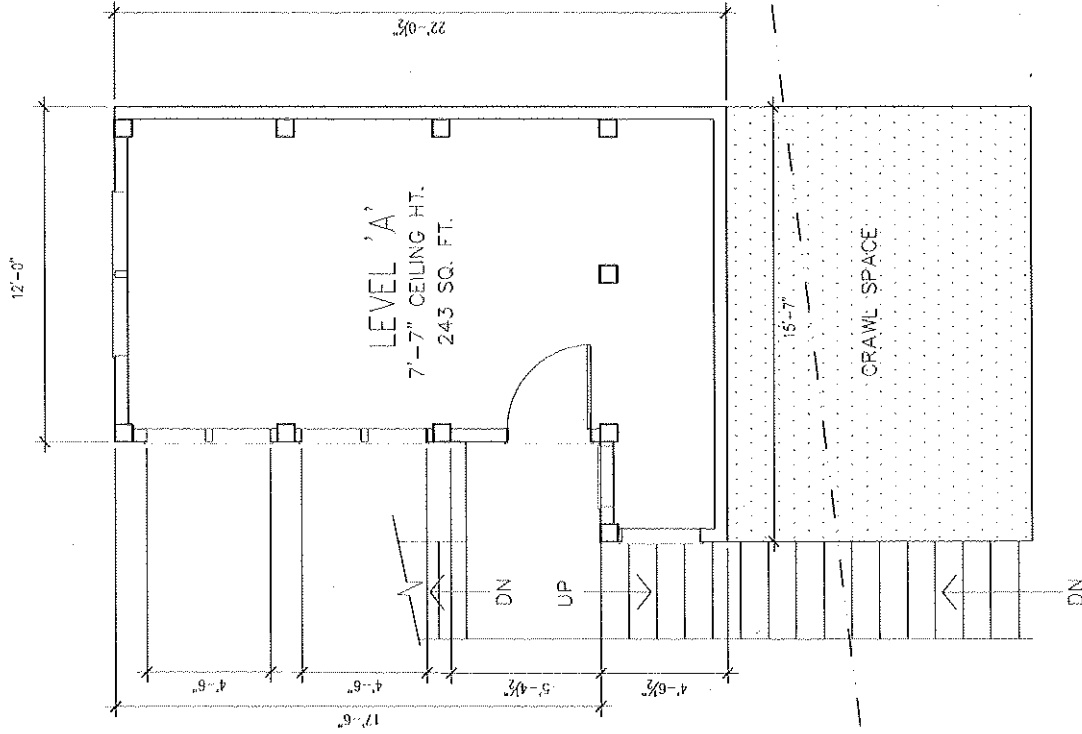
At All Times (Operation):

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.

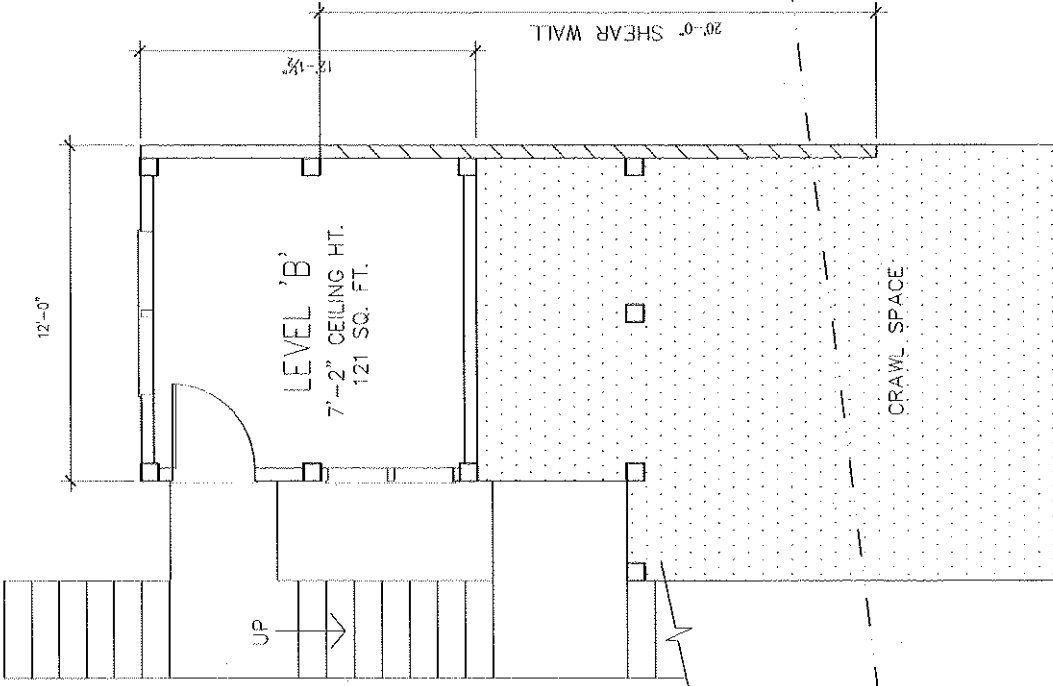


Prepared by: Fatema Crane, Associate Planner
For Carol Johnson, Land Use Planning Manager

NO.	DATE	DESCRIPTION



1 LEVEL A PLAN — BELOW CARPORT
A-3 SCALE: 1/4" = 1'-0"



2 LEVEL B PLAN — 2 LEVELS BELOW CARPORT
A-3 SCALE: 1/4" = 1'-0"

APPROVED PLAN

PLANNING	DATE
<input type="checkbox"/> D.R. Conditions Attached	
<input type="checkbox"/> A.U.P. Conditions Attached	3/5
<input type="checkbox"/> U.P. Conditions Attached	

