



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: ZP2016-0097

Property Address: **'8' MAYBECK TWIN DRIVE – Vacant Lot**

Permittee Name: **GORING and STRAJA ARCHITECTS**

Use and/or Construction Permitted:
to construct a new, three-story, 2,557-square-foot single-family dwelling on a vacant lot.

- Use Permit to construct a new single-family dwelling, under BMC Section 23D.16.030
- Administrative Use Permit, to reduce the front setback to 2'-11", where 20' is required, in the Hillside Overlay District, under BMC Section 23E.96.070.C; and
- Administrative Use Permit to construct an unenclosed hot tub, under BMC Section 23D.08.060.C.

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 8, 2017

ATTACHMENT 1

FINDINGS AND CONDITIONS

FEBRUARY 9, 2017

8 Maybeck Twin Drive

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PERMITS REQUIRED

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I. 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 15303 (New Construction or Conversion of Small Structures) and 15332 (In-Fill Development Projects) of the CEQA Guidelines.
2. 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 would not affect any historical resource.

II. FINDINGS FOR APPROVAL

1. As required by Section 23B.32.040.A of the Zoning Ordinance, the project, under the circumstances of this particular case existing at the time at which the application is granted, would 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:
 - By developing a vacant lot with a new single-family dwelling, the project will add one new dwelling unit to the city's housing stock, furthering the General Plan Housing Element (2015) objectives and policies to expand the city's existing housing supply.
 - The proposed single-family dwelling will blend well with the scale and character of the neighborhood, as it is designed to fit well into the hillside, utilizes materials that are common to nearby dwellings, and meets all of the R-1(H) district and Hillside Overlay standards for density, height, lot coverage, setbacks, usable open space, and parking, aside from the request to reduce the front setback. (Findings for the front setback reduction are discussed below).
 - The proposed garage accessed by a one-way, circular driveway has been reviewed and approved by the Transportation Division, with the condition that the flow of traffic through

the driveway and garage shall enter from the 15-foot easement (east) and exit to Maybeck Twin Drive (west). A condition of approval is included with the permit to require that the flow of traffic through the driveway shall be from east to west. The proposed parking meets all other district requirements for off-street parking, and does not present other detrimental issues.

- The proposed single-family dwelling will have little impact on sunlight access to and shadows cast on adjacent dwellings, as shadows cast by the proposed dwelling largely do not reach adjacent dwellings. The new dwelling may introduce new shadows on the northwest corner of the adjacent house at 4 Maybeck Twin Drive, but only during the few hours before sunset hours in the summer.
 - Privacy impacts resulting from the proposed single-family dwelling will be minor and reasonable for a low density residential neighborhood, as the most prominent outdoor decks and largest windows on the dwelling are mostly screened from adjacent houses by tall, existing trees.
 - Story poles erected on the site confirmed that the proposed three-story dwelling sits below the adjacent dwellings directly to the north and northeast, and will not affect their views of the bay (to the west). Otherwise, the proposed dwelling will not substantially impact views of the bay from adjacent dwellings.
2. Pursuant to Berkeley Municipal Code (BMC) Section 23E.96.070.C, the Hillside Overlay district allows a reduction of yards if it is consistent with the purposes of the overlay district, which allow modifications to standard yards due to irregular lot shape or topographical constraints. The applicant is requesting a reduction of the front yard setback to 2'-11" where the standard is a minimum of 20' feet for the R-1(H) district. Because the lot is pie-shaped, opening to its greatest width toward the street and at the bottom of a steep slope, a garage located at the foot of the slope and close to the street, rather than further up the slope, would be less costly to build, while providing easy vehicle access from the street, therefore making it a more feasible solution to providing off-street parking compliant with R-1 district requirements. Thus, the location of the house and attached garage in the front setback is an appropriate proposal for the site, given these topographical and lot shape constraints.
3. Pursuant to BMC Section 23D.08.060.C, an unenclosed hot tub may be approved if it meets the general findings of non-detriment, and the equipment is not audible by the adjacent properties. Standard conditions of approval for hot tubs are included with the permit to ensure compliance with noise, sanitary, and safety code. The hot tub does not present any other detrimental issues.
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III. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

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. In the case of modifications to Use Permits for construction of, or additions or changes to, single-family homes which required Board review, the Zoning Officer shall follow Board policy adopted March 13, 1997, as follows:

- A. Upon applications for modifications to a home where a Use Permit has been granted, Staff shall review the Use Permit to determine if any explicit conditions were placed on the Use Permit that would be affected by the proposed modification.
- B. If, prior to acting on a Building Permit, Staff becomes aware of controversy over an earlier application, Staff may choose to conduct a more detailed review of the record to determine if conditions were implied by the Board or offered by the applicant (but not included in the Use Permit conditions) that would be affected by the proposed modification (this does not imply that Staff will review the whole Use Permit record for all applications).
- C. If there are explicit conditions (#A) or implied conditions (#B) affected by the proposed modification, the project shall be brought back to the Board as a Use Permit Modification.
- D. If there are no explicit conditions that would be affected by the proposed modification, and if Staff is not otherwise aware of implied conditions, and the project would otherwise meet the requirements of the Zoning Ordinance, Staff will approve the Building Permit without Board or public review.

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 attorney's fees that may result.

IV. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD

Pursuant to BMC 23B.32.040.D, the Zoning Adjustments Board attaches the following additional conditions to this Permit:

Prior to Submittal of Any Building Permit:

- 10. Project Liaison.** The applicant shall provide the project planner with the name and telephone number of the individual empowered to manage complaints generated from the project. The individual's name, telephone number, and responsibility for the project shall be posted at the project site for the duration of the project in a location easily visible to the public. The individual shall record all complaints received and actions taken in response, and submit written reports of such complaints and actions to the project planner on a weekly basis.

Project Liaison _____
Name _____ Phone # _____

11. Address Assignment. The applicant shall file an "Address Assignment Request Application" with the Permit Service Center (1947 Center Street, 3rd floor) for any address change or new address associated with this Use Permit. The new address shall be assigned and entered into the City's database prior to the applicant's submittal of a building permit application.
12. Driveway Traffic Flow: The flow of traffic through the one-way driveway and garage shall be from the east, entering from the 15-foot access easement, and to the west, exiting to Maybeck Twin Drive.
13. Interior Noise Levels. Prior to issuance of a building permit, the applicant shall submit a report to the Building and Safety Division and the Zoning Officer by a qualified acoustic engineer certifying that the interior residential portions of the project will achieve interior noise levels of no more than 45 Ldn (Average Day-Night Levels). If the adopted Building Code imposes a more restrictive standard for interior noise levels, the report shall certify compliance with this standard.
14. Recycling and Organics Collection. Applicant shall provide recycling and organics collection areas for occupants, clearly marked on site plans, which comply with the Alameda County Mandatory Recycling Ordinance (ACWMA Ordinance 2012-01).
15. Water Efficient Landscaping. Applicant shall provide an updated Bay-Friendly Basics Landscape Checklist that includes detailed notes of any measures that will not be fully met at the project. Landscape improvements shall be consistent with the current versions of the State's Water Efficient Landscape Ordinance (WELO) and the East Bay Municipal Utility District's Section 31: Water Efficiency Requirements.
16. Construction and Demolition. Applicant shall submit a Waste Diversion Form and Waste Diversion Plan that meet the diversion requirements of BMC Chapters 19.24 and 19.37.
17. Geotechnical Plan Review. The applicant's geotechnical consultant shall review and approve all geotechnical aspects of the project building and grading plans (i.e., site preparation and grading, site drainage improvements and design parameters for foundations, retaining walls, and driveway) to ensure that their recommendations have been properly incorporated. In addition the consultant shall review project drainage and grading plans and verify that proposed site drainage discharge is acceptable from a geotechnical perspective. The results of the plan review shall be summarized by the geotechnical consultant in a letter and submitted to the City Engineer for review and approval prior to issuance of building permits.
18. Transportation Construction Plan. The applicant and all persons associated with the project are hereby notified that a Transportation Construction Plan (TCP) is required for all phases of construction, particularly for the following activities:
 - 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 relevant

- Significant truck activity.

The applicant shall secure the City Traffic Engineer's approval of a TCP. Please contact the Office of Transportation at 981-7010, or 1947 Center Street, 3rd floor, and ask to speak to a traffic engineer. In addition to other requirements of the Traffic Engineer, this plan shall include the locations of material and equipment storage, trailers, worker parking, a schedule of site operations that may block traffic, and provisions for traffic control. The TCP shall be consistent with any other requirements of the construction phase.

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). Please note that the Zoning Officer and/or Traffic Engineer may limit off-site parking of construction-related vehicles if necessary to protect the health, safety or convenience of the surrounding neighborhood. A current copy of this Plan shall be available at all times at the construction site for review by City Staff.

During Construction:

19. Construction Hours. Construction activity shall be limited to between the hours of 8:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and Noon on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.

20. Stormwater Requirements. The applicant shall demonstrate compliance with the requirements of the City's National Pollution Discharge Elimination System (NPDES) permit as described in BMC Section 17.20. The following conditions apply:

- A. The project plans shall identify and show site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants to the City's storm drainage system, regardless of season or weather conditions.
- B. 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. Applicant shall contact the City of Berkeley and EBMUD for specific connection and discharge requirements. Discharges to the sanitary sewer are subject to the review, approval and conditions of the City of Berkeley and EBMUD.
- C. Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to stormwater 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.
- D. Design, location and maintenance requirements and schedules for any stormwater 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 stormwater quality ordinances. This review shall be conducted prior to the issuance of a Building Permit.
- E. All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.

- F. 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.
- G. All on-site storm drain inlets must be labeled “No Dumping – Drains to Bay” or equivalent using methods approved by the City.
- H. Most washing and/or steam cleaning must be done at an appropriately equipped facility that drains to the sanitary sewer. Any outdoor washing or pressure washing must be managed in such a way that there is no discharge or soaps or other pollutants to the storm drain. Sanitary connections are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
- I. All loading areas must be designated to minimize “run-on” or runoff from the area. Accumulated waste water that may contribute to the pollution of stormwater must be drained to the sanitary sewer or intercepted and pretreated prior to discharge to the storm drain system. The property owner shall ensure that BMPs are implemented to prevent potential stormwater pollution. These BMPs shall include, but are not limited to, a regular program of sweeping, litter control and spill cleanup.
- J. The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all stormwater 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.

21. Public Works – Create >500 SF Impervious. All private or public projects that create and/or replace 500 square feet or more of impervious surface must comply with Provision C.3 of the Alameda County NPDES permit and must incorporate stormwater controls to enhance water quality. Permit submittals shall include a Stormwater Requirement Checklist and detailed information showing how the proposed project will meet Provision C.3 stormwater requirements, including a) Site design measures to reduce impervious surfaces, promote infiltration, and reduce water quality impacts; b) Source Control Measures to keep pollutants out of stormwater runoff; c) Stormwater treatment measures that are hydraulically sized to remove pollutants from stormwater; d) an O & M (Operations and Maintenance) agreement for all stormwater treatment devices and installations; and e) Engineering calculations for all stormwater devices (both mechanical and biological).

22. Public Works - Implement BAAQMD-Recommended Measures during Construction. For all proposed projects, BAAQMD recommends implementing all the Basic Construction Mitigation Measures, listed below to meet the best management practices threshold for fugitive dust:

- All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
- All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- All vehicle speeds on unpaved roads shall be limited to 15 mph.

- All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
- All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.
- Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

23. Public Works. 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.

24. Public Works. 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.

25. Public Works. The project sponsor shall maintain sandbags or other devices around the site perimeter during the rainy season to prevent on-site soils from being washed off-site and into the storm drain system. The project sponsor shall comply with all City ordinances regarding construction and grading.

26. Public Works. Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season 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.

27. Public Works. The removal or obstruction of any fire hydrant shall require the submission of a plan to the City's Public Works Department for the relocation of the fire hydrant during construction.

28. Public Works. 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.

Prior to Final Inspection or Issuance of Occupancy Permit:

29. Geotechnical Construction Inspections. The geotechnical consultant shall inspect, test (as needed), and approve all geotechnical aspects of the project construction. The inspections shall include, but not necessarily be limited to: site preparation and grading, site surface and subsurface drainage improvements, and excavations for foundations and retaining walls prior to the placement of steel and concrete. The results of these inspections and the as-built

conditions of the project shall be described by the geotechnical consultant in a letter and submitted to the City Engineer for review prior to final (granting of occupancy) project approval.

30. Compliance with Conditions. The project shall conform to the plans and statements in the Use Permit. The developer is responsible for providing sufficient evidence to demonstrate compliance with the requirements throughout the implementation of this Use Permit.
31. Compliance with Approved Plan. The project shall conform to the plans and statements in the Use Permit. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated **October 21, 2016**, except as modified by conditions of approval.
32. Construction and Demolition Diversion. A Waste Diversion Report, with receipts or weigh slips documenting debris disposal or recycling during all phases of the project, must be completed and submitted for approval to the City's Building and Safety Division. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement. A copy of the Waste Diversion Plan shall be available at all times at the construction site for review by City Staff.

At All Times:

33. Exterior Lighting. All exterior lighting shall be energy efficient where feasible; and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
 34. Drainage Patterns. 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.
 35. Electrical Meter. Only one electrical meter fixture may be installed per dwelling unit.
 36. Hot Tub: The pump shall be mounted, enclosed and maintained to prevent noise from disturbing the occupants of neighboring properties.
 37. The hot tub shall be drained into the sanitary sewer connection of the subject property, and not into any storm drain.
 38. The hot tub shall be equipped with safety features in accordance with the California Building Code.
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