

# ATTACHMENT 1

## FINDINGS AND CONDITIONS

JANUARY 28, 2010

### 2707 Rose Street

Use Permit #09-10000038

#### CEQA FINDINGS

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1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq.) pursuant to Section 15332 of the CEQA Guidelines (“In-fill Housing”) as follows:
  - A. The project is consistent with the applicable General Plan designation and applicable General Plan policies (see “General Plan” discussion in this report), as well as with the applicable zoning designation and regulations.
  - B. The project occurs within the Berkeley city limits on a project site of no more than five acres, and is surrounded by urban uses.
  - C. The site has no value as habitat for endangered, rare or threatened species.
  - D. The project would not result in any significant effects relating to traffic, noise, air quality or water quality.
  - E. The site is already served by required utilities and public services, which will also adequately serve the project.
2. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq.) pursuant to Section 15303 of the CEQA Guidelines (“New Construction or Conversion of Small Structures”) because this project would involve the construction of one single-family residence.
3. Furthermore, the project does not trigger any of the exceptions in CEQA Guidelines Section 15300.2. In particular, the project will not have any significant effects due to unusual circumstances, or any cumulatively significant impacts (such as traffic), and it will not adversely impact any designated historical resources. Therefore, because the project meets the requirements of CEQA Guidelines Sections 15332 and 15300.2, it is exempt from further review under CEQA.

#### GENERAL NON-DETRIMENT FINDING

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4. Pursuant to Berkeley Municipal Code Section 23B.32.040, the Zoning Adjustments Board finds that the proposed demolition of the existing two-story, 2,477 square foot, single-family residence to construct a two-story, 6,478 square foot, single-family residence, with a 3,394 square foot garage on a 29,714 square foot parcel, under the circumstances of the particular case existing at the time at which the application is granted, will not be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City, for the following reasons:

- A. That the proposed project conforms to the applicable General Plan Policies by replacing the existing dwelling with a new dwelling;
- B. That the proposed project conforms to the applicable Purposes of the R-1 District by proposing a dwelling that:
  - 1. Will preserve the building pattern in the area of large lots with ample setbacks (Purpose A).
  - 2. Provides usable open space that is in excess of the R-1 District minimum (Purpose B); and
  - 3. Would provide setbacks that are well above the minimum, thereby minimizing the potential bulk and unreasonable obstructions of light and air (Purpose C).
- C. That the proposed project conforms to the applicable Development Standards of the R-1 District by conforming to the maximum height limit, maximum lot coverage and the minimum setback from the interior parcel lines and Shasta Road, usable open space and the parking requirements for new dwellings.

### **OTHER REQUIRED FINDINGS**

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- 5. Pursuant to Berkeley Municipal Code Section 23E.96.070.C, the Zoning Adjustments Board finds the exception for average height (31'-6" proposed, 28' maximum) and the reduction to the required yard adjacent to Rose Street (16' proposed, 20' minimum) is warranted because of steep topography.

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## STANDARD CONDITIONS

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### 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'. The 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 exclude 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 for which this Permit is approved is permitted unless the Permit is modified by the Zoning Adjustments Board, in conformance with Section 23B.56.020.A.

Changes in the plans for the construction of a building or structure, may be modified prior to the completion of construction, in accordance with Section 23B.56.030.D. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project. The Zoning Officer may also approve a maximum two-foot variation to Board approved plans, provided, that such variation does not increase a structure's height, reduce the minimum distance to any property line, and/or does not conflict with any special objective sought by the Board. 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 expressly specified herein, the site plan, floor plans, building elevations and any additional information or representations submitted by the applicant during the Staff review and public hearing process leading to the approval of this Permit, whether oral or written, which indicated the proposed structure or manner of operation are deemed conditions of approval.

**6. Subject to all City and Other Regulations (Section 23B.56.040)**

The approved use and/or construction are subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies.

**7. Exercised Permit for Use Survives Vacancy of Property (Section 23B.56.080)**

Once a Permit for a use is exercised and the use is established, that use is legally recognized, even if the property becomes vacant, except as set forth in Standard Condition #8 below.

**8. Exercise and Lapse of Permits (Section 23B.56.100)**

- A. A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.
- B. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
- C. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has (1) applied for a building permit or (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

**9. 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

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

### **Prior to Issuance of Any Building Permit**

**10. Construction Noise:** The applicant shall provide the project planner with the name and telephone number of the individual empowered to manage construction noise from the project. The individual's name, telephone number, and responsibility for noise management shall be posted at the project site for the duration of construction in a location easily visible to the public. The individual shall record all noise complaints received and actions taken in response, and submit this record to the project planner upon request.

Noise Management Individual \_\_\_\_\_  
Name Phone #

**11. Construction Traffic Management Plan:** The applicant shall secure the City Traffic Engineer's approval of a construction traffic management plan. Please contact the Office of Transportation at 981-7010, or 1947 Center Street, 3<sup>rd</sup> 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 City 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.

City Monitor: Traffic Engineer \_\_\_\_\_  
Signature Date

**12. Green Building:** The applicant shall complete and submit an updated *Draft GreenPoint Checklist* to the project planner with comments on any revisions to the project that affect the project's green building score.

**14. Construction Erosion Control and Drainage:** The project shall comply with all Phase II NPDES Storm Water regulations for Small Construction activities. In particular, the project grading plan shall include Drainage and Erosion Control Plans to minimize the impacts from erosion and sedimentation during grading. This plan shall conform to all standards adopted by the City of Berkeley and Alameda County. This plan shall include at least the following procedures: (1) restricting grading to the dry season; (2) protecting all finished graded slopes from erosion using such techniques as erosion control matting and hydroseeding; (3) protecting downstream storm drainage inlets from sedimentation; (4) using silt fencing and hay bales to retain sediment on the project site; and (5) any other suitable measures outlined in the Association of Bay Area Governments' (ABAG) Manual of Standards for Erosion and Sediment Control Measures or the San Francisco Bay Regional Water Quality Control Board's Erosion and Sediment Control Field Manual.

15. **Construction Erosion Control and Drainage:** 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.
16. **Coast Live Oaks.** The Arborist Survey Report, prepared by Grant Hamilton and dated September 9, 2009, shall be incorporated into the building permit plans.

**During Construction:**

17. **Coast Live Oaks.** Construction shall adhere to the requirements of the Arborist Report, and any subsequent recommendations required to ensure the continued health of the Coast Live oak trees.
18. **Construction Hours and Noise:** 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 any Federal Holiday. Equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment re-design, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds, wherever feasible and necessary).
19. **Construction Noise:** Impact tools (e.g., jack hammers, pavement breakers and noise drills) used for project construction shall be hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to 10dB. External jackets on the tools themselves shall be used where feasible and this could achieve a reduction of 4 dB. Quieter procedures shall be used such as drilling rather than impact equipment whenever feasible.
20. **Construction Noise:** To ensure compliance with BMC Section 13.40.070.B.7 (a-b) Prohibited acts, the operation of any tools or equipment used in construction, drilling, repair, alteration, or demolition work is subject to the following standards measured at the property line of the subject site:
  - A. Maximum sound levels for nonscheduled, intermittent, short-term operation (less than ten days) of mobile equipment shall not exceed 85 dBA Monday - Friday from 7:00 a.m. to 7:00 p.m. or 70 dBA weekends and legal holidays 9:00 a.m. to 8:00 p.m.
  - B. Maximum sound levels for repetitively scheduled and relatively long term operation (period of ten days or more) of stationary equipment shall not exceed 70 dBA Monday -Friday from 7:00 a.m. to 7:00 p.m. or 60 dBA weekends and legal holidays 9:00 a.m. to 8:00 p.m.
21. **Construction Noise:** No construction activity that may cause vibrations or excessive noise involving the use of heavy machinery shall be allowed.

22. **Construction Noise:** To ensure compliance with the City of Berkeley's Noise Ordinance, the Zoning Officer is authorized to place additional limitations on the hours of operation and/or halt construction until corrective measures are taken.
23. 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.
24. Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season (between October 15 and April 15), the applicant shall obtain approval of an erosion prevention plan by the Building and Safety Division and the Public Works Department.
25. 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.
26. 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.
27. 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.
28. Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.
29. Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.
30. 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:**

31. The project shall conform to the plans and statements in the Use Permit.
32. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated **January 20, 2010**.
33. **Green Building:** The applicant shall update, sign, and submit an *As-Built GreenPoint Checklist* reflecting final as-built conditions, including the total green building score, to the project planner.

**At All Times:**

34. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
35. 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.
36. 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.