

Office of the City Manager

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COUNCIL MEETING OF:

MAR 26 2013

OFFICE OF THE CITY CLERK  
CITY OF BERKELEY

## SUPPLEMENTAL or REVISED AGENDA MATERIAL

**Meeting Date:** March 26, 2013

**Item Number:** 2

**Item Description:** ZAB Appeal: 1488 Keoncrest Drive

**Supplemental/Revision Submitted By:** Eric Angstadt, Director of Planning

**"Good of the City" Analysis:**

*The analysis below must demonstrate how accepting this supplement/revision is for the "good of the City" and outweighs the lack of time for citizen review or evaluation by the Council.*

Please find attached a revised Resolution with Findings and Conditions of Approval corresponding to the revised plans previously provided to the Council.

***Consideration of supplemental or revised agenda material is subject to approval by a two-thirds vote of the City Council. (BMC 2.06.070)***

A minimum of **42 copies** must be submitted to the City Clerk for distribution at the Council meeting. This completed cover page must accompany every copy.

Copies of the supplemental/revised agenda material may be delivered to the City Clerk Department by 12:00 p.m. the day of the meeting. Copies that are ready after 12:00 p.m. must be delivered directly to the City Clerk at Council Chambers prior to the start of the meeting.

Supplements or Revisions submitted pursuant to BMC § 2.06.070 may only be revisions of the original report included in the Agenda Packet.

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RESOLUTION NO. ##,###-N.S.

AFFIRMING THE ZONING ADJUSTMENTS BOARD'S APPROVAL OF ADMINISTRATIVE USE PERMIT 12-20000050 TO CONSTRUCT APPROXIMATELY 110 SQ. FT. TO THE GROUND FLOOR FOR AN EXPANDED SINGLE-CAR GARAGE, A 290 SQ. FT. SECOND STORY LIVING ROOM, INCREASING THE AVERAGE HEIGHT TO 19'6" AND VERTICALLY EXTENDING A NON-CONFORMING FRONT YARD SETBACK IN THE SINGLE FAMILY (R-1) ZONING DISTRICT AND DISMISSING THE APPEAL

WHEREAS, on May 14, 2012, Kennerly Architecture & Planning ("applicants") filed an application for an Administrative Use Permit to construct an addition over 14' in average height and vertically extending a non-conforming front yard setback of 10'10" where 20' is required at 1488 Keoncrest Drive ("project"); and

WHEREAS, on July 6, 2012, staff deemed this application complete; and

WHEREAS, on July 26, 2012, the Zoning Officer approved Administrative Use Permit #12-20000050 and staff mailed and posted a Notice of Administrative Decision in accordance with BMC Section 23B.28.040; and

WHEREAS, on August 13, 2012, Bertrand Racine, Lina Urbain, et. al. filed an appeal of the Zoning Officer's decision with the Planning Department; and

WHEREAS, on October 11, 2012, the ZAB considered the matter in accordance with BMC Section 23B.28.060, and approved the project; and

WHEREAS, on October 17, 2012, staff issued the notice of the ZAB decision; and

WHEREAS, on October 31, Bertrand Racine, Lina Urbain, et. al. filed an appeal of the ZAB decision with the City Clerk; and

WHEREAS, on February 5, 2013 the Council considered the record of the proceedings before the ZAB, and the staff report and correspondence presented to the Council and set the matter for public hearing at a date to be decided by the Council Agenda Committee; and;

WHEREAS, on March 12, 2013 the City Clerk provided notice of a public hearing to be conducted by the Council to consider the appeal; and

WHEREAS, on March 18, 2013, the applicants submitted revised drawings eliminating the third story; and

March 26, 2013

WHEREAS, on March 26, 2013 the Council held a public hearing to consider the administrative record, the supplemental staff report, communications, and public testimony on the appeal and the project.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council hereby approves Administrative Use Permit #12-20000050, adopts the findings and conditions in Exhibit A and the project plans in Exhibit B, and dismisses the appeal.

**Exhibits**

A: Findings and Conditions

B: Project Plans received March 18, 2013

# ATTACHMENT 1

## FINDINGS AND CONDITIONS

MARCH 26, 2013

### 1488 Keoncrest Drive

#### Administrative Use Permit #12-20000050

To enlarge an existing one-story, 1,200 sq. ft. single family residence (excluding the ground floor garage) by constructing an approximately 110 sq. ft. addition to the ground floor for an expanded single-car garage, adding a new approximately 290 sq. ft. second story living room, resulting in a new 1,402 sq. ft. residence (excluding ground floor garage, crawl space, and 88 sq. ft. subsumed), increasing the average height of the existing single-family residence from 14'6" to 19'6", and to vertically extend a non-conforming front yard setback of 10'10" where 20' is required.

#### 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"). As provided under CEQA Guidelines Section 15303(e), the addition will not involve significant amounts of hazardous substances, is located in an urbanized area, in a residential building, does not exceed 10,000 square feet in floor area and is on a site zoned for residential uses. The project does not qualify as an exception to this Section for the following reasons:
  - There would be no cumulative impact of successive projects of the same type, in the same place over time that could create a significant environmental impact because the project is located in a fully developed residential area where new development is limited.
  - There are no unusual circumstances that could lead to a significant impact because the project involves the construction of an addition and does not involve other changes to the property.
  - The project will not cause a substantial adverse change in the significance of the historical resource.
  - The project is not located near a scenic highway or listed hazardous waste site.

## **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.16.30 (Uses Permitted) and 090 (Findings), the proposed 400 sq. ft. addition may exceed 14' in average height and does 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 1488 Keoncrest Drive is 14'6" and the proposed average height is 19'6". Because of new building mass, there may be new shadows experienced at the property to the north at 1545 Keoncrest, however, the property is situated approximately 30' away and the shadowing may occur for a few hours in the winter months during the afternoon. For this reason, 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 rear and side setbacks, it is expected to provide adequate spatial separations between the developments on abutting properties, thereby allowing for adequate air circulation;
    3. Views – The proposed addition is not expected to significantly block the adjacent neighbor's views of any significant features. The proposed addition will not exceed the full height limit allowed in the R-2A District and will not exceed the maximum number of stories allowed; and
    4. Privacy – The proposed addition includes several new second story windows, however, because of the approximately 30' distance between the subject property and the property to the north at 1545 Keoncrest and the approximately 12' distance to the property to the south at 1482 Keoncrest, the proposed addition is not expected to create significant privacy impacts to the immediate neighbors. In addition, at the location of the proposed addition, trees currently exist between the properties, providing adequate screening.
  - As required under Section 23C.04.070.B.1 (Expansions of Non-conforming Buildings and Structures), the vertical extension of the non-conforming east facing façade, which as an existing 10'10" front yard setback (where 20' is required), does not further encroach into the required setbacks or exceed the height limit in the R-1 District.
  - As required by Section 23D.28.070 (Development Standards) this project is permissible because the subject property satisfies the development standards for lot coverage, maximum residential density, and maximum building height.

## **STANDARD CONDITIONS**

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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.

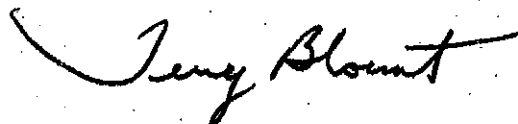
20. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way.
21. The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties 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.

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

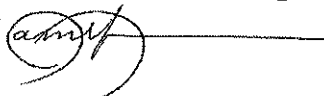
23. All construction at the subject property shall substantially conform to the approved Use Permit drawings or to modifications approved by the Zoning Officer.
24. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated "received" **MARCH 18, 2013**.

**At All Times (Operation):**

25. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
26. 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.
27. Noise and exterior lighting shall be controlled so as to prevent verified complaints from the surrounding neighborhood.



Terry Blount, Principal Planner for  
Debra Sanderson, Zoning Officer



Prepared by: Pamela Johnson