



Office of the City Manager

PUBLIC HEARING

June 9, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Timothy Burroughs, Director, Department of Planning & Development

Subject: ZAB Appeal: 1155-1173 Hearst Avenue

RECOMMENDATION

Conduct a public hearing, and upon conclusion adopt a Resolution affirming the Zoning Adjustments Board decision to approve Use Permit #ZP2016-0028 to develop two parcels, including the substantial rehabilitation of the existing seven dwelling units and construction of six new, for-sale dwelling units, and dismiss the appeal.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

On August 23, 2018, the Zoning Adjustments Board (ZAB) held a public hearing and approved Use Permit #ZP2016-0028 by an 8-0-1-0 vote (Yes: O'Keefe, Kahn, Olson, Hauser, Simon-Weisberg, Kim, Zaneri, Clarke; No: None; Abstain: M. Poblet; Absent: None). On August 30, 2018, staff issued the notice of the ZAB decision. On September 12, 2018, Hussein Saffouri, on behalf of Rain Sussman, owner and resident of 1824 Curtis Street ("Appellant"), filed an appeal with the City Clerk. Twenty-nine additional individuals signed a petition in support of the appeal. The Clerk set the matter for review by the Council on January 29, 2019. On January 29, 2019, the Council held a public hearing and remanded the item back to ZAB to undertake further CEQA analysis, review the project based on CEQA findings, and analyze the detriment to rent-controlled units. On May 9, 2019, the ZAB held a public hearing and took no action on the project, thereby returning the item to Council.

BACKGROUND

The project site consists of two parcels located on the north side of Hearst Avenue on the block bound by San Pablo Avenue to the west and Curtis Street to the east. The western parcel (1155-63 Hearst) is developed with a two-story duplex towards the rear of the lot and two single-story duplexes situated towards the front of the lot, separated by a paved parking area. All six of these units are subject to rent control. The eastern parcel (1173 Hearst) is developed with a two-story single family dwelling with an attached tandem car garage. All seven units are currently occupied by renters.

The project site, which lies within the Strawberry Creek Watershed, is located in a topographic depression roughly bounded to the south by Hearst Avenue, to the north by Delaware Street, to the east by Curtis Avenue and to the west approximately 100-200 feet west of the site. Recurrent ponding and flooding occurs in the topographic depression when there are heavy rains.

On February 2, 2016, Hearst Avenue Cottages, LLC and Rhoades Planning Group (“Applicants”) submitted a Use Permit application for a project that requested to merge the two lots, substantially rehabilitate the existing seven dwelling units, and construct eleven additional units employing State Density Bonus Law, for a total of 18 units. Due to the provision of Density Bonus Law requiring replacement of units under rent control, which, according to the Applicants, rendered the project infeasible, the Applicants chose to revise the project in response to comments received by the ZAB during the project hearing on September 28, 2017.

On March 6, 2018, the Applicants resubmitted the revised project, which did not include a request for a Density Bonus. The revised project includes construction of one duplex on the western parcel in the middle of the lot; construction of two duplexes on the eastern parcel behind the single-family dwelling; uncovered parking for both properties located in the middle of the western lot; and rehabilitation of all seven existing units, plus expansion of the three existing duplexes after all current residents voluntarily vacate, for a total of 13 units.

A public hearing was held and ZAB approved the project at the August 23, 2018 meeting. Staff sent the Notice of ZAB decision out on August 30, 2018. On September 12, 2018, Hussein Saffouri, on behalf of Rain Sussman, owner and resident of 1824 Curtis Street (“Appellants”), filed an appeal with the City Clerk. Twenty-nine additional individuals signed a petition in support of the appeal. The Clerk set the matter for review by the Council on January 29, 2019.

After a public hearing, Council remanded the project to ZAB to undertake further CEQA analysis, review the project based on CEQA findings, and analyze the impact on rent-controlled units.

To further inform the CEQA analysis, the Applicants hired the firm of Alan Kropp & Associates, Inc. to perform a geotechnical investigation of the project site, which they submitted on March 1, 2019. The City hired the firm of Cotton, Shires, and Associates, Inc. to conduct a peer review of the report. In addition, the City hired Rincon Consultants to independently review the project file, technical reports submitted, peer reviews, and public comment to prepare an analysis of the applicability of a Class 32 Urban Infill categorical exemption for this project. The analysis, submitted to the City on April 23, 2019, concludes that no unusual circumstances that would trigger further CEQA review exist at the project site.

On February 26, 2019, the Applicants invited all tenants to a meeting at the Rent Stabilization Board (“RSB”) offices. RSB sent notice of the meeting to all the existing residents of 1155-1173 Hearst Avenue. The meeting was attended by RSB staff, including a staff attorney, Rhoades Planning Group and one resident who had the opportunity to ask questions. At that meeting the Applicants reiterated their commitment to: 1) postpone renovation of any existing unit until the building in which they are located is vacant; 2) retain the existing six rent control units under rent control in perpetuity; and 3) prohibit the conversion of the existing rent controlled units to condominiums in perpetuity.

At the May 9, 2019 ZAB meeting, after the close of the public hearing, the commissioners deliberated. Several Board members commented that project impacts were an issue of detriment pursuant to Use Permit findings and not under CEQA, but ZAB did not vote on this issue. Ultimately, ZAB took no action on the project and wished to convey the following reasons for inaction:

1. There is the potential for tenant displacement during construction; a condition of approval should require a deed restriction to formalize the applicant’s commitment to retain the rent controlled units and prohibit their conversion to condominiums.
2. There is a need for a subsurface hydrology study addressing potential impacts to off-site flooding.
3. It is unclear whether the intent of Council upon remand regarding CEQA had been met.

On October 15, 2019 the Applicants submitted a collated compilation of the hydrology and geotechnical analyses with associated peer reviews that had previously been submitted as part of the project review and included a supplemental geotechnical engineering comments prepared by Alan Kropp, G.E., Principal Engineer of Alan Kropp & Associates, dated August 30, 2019, and a supplemental discussion of hydrologic and hydraulic concerns, prepared by William Vandivere, M.S., P.E., Principal of Clearwater Hydrology, dated October 9, 2019 and updated November 4, 2019. The supplemental documents were prepared to revisit the concerns raised regarding the project’s hydrological impacts. See Issue B below for a full discussion.

ENVIRONMENTAL SUSTAINABILITY

The project approved by ZAB on August 23, 2018 is in compliance with all state and local environmental requirements.

RATIONALE FOR RECOMMENDATION

The project has not been modified since ZAB approved Use Permit ZP2016-0028 on August 23, 2018. No subsequent action on the project has occurred, so the appeal heard by Council on January 29, 2019 remains pending before the Council. Please

refer to the Council report found in Attachment 3 for a summary of those appeal points and staff analysis. The outstanding issues raised by Council and the ZAB during last year’s meetings, with staff response, are outlined below.

Issue A: Tenant Protections

Response A: On August 23, 2018, when ZAB granted project approval, the Board added several conditions to protect existing tenants residing in the seven existing dwelling units, six of which are subject to rent control: 1155-57 Hearst Avenue, 1159 A & B Hearst Avenue, and 1161-63 Hearst Avenue. These conditions were before Council when it first heard the appeal on January 29, 2019. Land Use Planning staff has subsequently reviewed the conditions with RSB staff who ensure tenant protections (BMC 13.76) and Health, Housing and Community Services staff who implement the provisions of the Relocation Ordinance (BMC 13.84).

In addition, throughout the permitting process, at both public hearings and during meetings with tenants, the Applicants have agreed to several tenant protections. The Applicants submitted a memorandum on February 6, 2020 to memorialize their tenant protection commitments and provided a project construction phasing plan to both clarify the order of planned development as well as to show the location of replacement parking during the various phases (see Attachment 1, Exhibit C).

ZAB-approved tenant protection conditions are shown below with modifications recommended by staff shown in underlined (added) and strikethrough (deleted) text. Staff recommends these changes to provide clarity and consistency with the Rent Stabilization and Relocation Ordinances, as well as to reflect the Applicants’ tenant protection commitment. In addition, staff recommends flexibility to the tenant parking condition (COA 32) to allow for payment as compensation if alternative parking is unavailable.

Prior to Issuance of Any Building Permit:

17. Occupancy Restriction. No work related to this Use Permit may commence on any of the existing buildings (1155-57 Hearst, 1159 A & B Hearst, 1161-63 Hearst, and 1173 Hearst), until all residents within the building have vacated the premises. The property owner shall provide proof verification from the Rent Stabilization Board that all tenants with the building have voluntarily vacated. This condition does not apply to routine maintenance and repairs.

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20. Construction Noise Management - Public Notice Required. At least thirty calendar days prior to initiating any construction activities at the site related to this Use Permit, the applicant shall provide notice to existing residents on the project site, including (1) description of construction activities, (2) daily construction schedule (i.e., time of day) and expected duration (number of months), (3) the name and phone number of the Noise Management Individual for the project, and (4) designate a “construction liaison” that would be responsible for responding to any local complaints about construction noise. The liaison would determine the cause of the noise complaints (e.g., starting too early, bad muffler, etc.) and institute reasonable measures to correct the problem. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval. This condition does not apply to routine maintenance and repairs.

The public notice shall also state that the applicant will hold a community meeting every six months from the start of construction to the conclusion of construction for all active building permits related to this Use Permit. And pursuant Condition of Approval number 332; that the existing tenants have the option to temporarily relocate during construction for all active building permits related to this Use Permit and that parking shall be provided on or off site during all construction in compliance with Condition of Approval number 320.

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During Construction:

32. Tenant Parking. During any construction related to this Use Permit, the applicant/property owner shall ensure that parking is provided to existing tenants per their lease agreement either on-site or in an alternative location within the area bounded by San Pablo Avenue to the west, Francisco Street to the north, Chestnut Street to the east, and University Avenue to the south. If parking cannot be found within the boundary then the applicant/property owner shall provide tenants with \$100/month as a parking stipend.¹

33. Temporary Relocation. During any construction related to this Use Permit, a tenant household that has been a tenant as of the date

¹ For reference, the current price for an adult local 31-day AC Transit pass is \$84.60. See: <http://www.actransit.org/actrealtime/fares-tickets-passes/>.

of Use Permit entitlement, existing tenants may choose to temporary relocate during construction activities related to entitlement of this Use Permit, and the applicant/property owner shall initiate relocation commensurate with the provisions set forth accommodate the request and provide the same benefits and protections as in the Relocation Ordinance, BMC Section 13.84. This condition does not apply to routine maintenance and repairs.

34. Neighborhood Construction Meetings. The applicant will hold a community meeting every six months from the start of construction to the conclusion of construction for all active building permits related to this Use Permit.

Additionally, to memorialize the Applicants' commitment to preserve the six existing rent controlled units in perpetuity, staff recommends the following additional conditions of approval:

Prior to Issuance of Any Building Permit:

16. Notice of Limitation. 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" and provide a recorded copy thereof to the Planning Department. This Notice of Limitation shall stipulate that none of the six existing rent controlled units (1155-57 Hearst, 1159 A & B Hearst, 1161-63 Hearst) shall undergo condominium conversion and shall remain subject to rent control in perpetuity. 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.

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At All Times:

58. Rent Control in Perpetuity. The existing six dwelling units shall not undergo condominium conversion and shall remain as rental units subject to rent control under the Rent Stabilization Ordinance.

The Executive Director of the RSB provided a memorandum, dated May 7, 2019, verifying that the RSB does not foresee any risk that the sitting tenants could be displaced by legal action of the applicant, and verified that the above conditions should assist in avoiding unnecessary conflict between the Applicants (or their successor in interest) and the tenants (see Attachment 6).

With the exception of the first paragraph of condition of approval 20 above, regarding construction noise management which would not

typically apply to a project of this small scale, none of the above conditions are standard, and all have been crafted and imposed specifically to ensure protection for the existing tenants on the project site from Use Permit impacts. Staff believes that the proposed tenant protection conditions, reaching above and beyond the standard protections available through both the RSB and the Relocation Ordinance, will prevent displacement and ensure a level of comfort during project construction. In addition, as the Applicants have committed to retaining the existing duplexes as rental units, they would remain subject to rent control and retain a measure of affordability in perpetuity. The commitment will be memorialized in the recordation of a Notice of Limitation that will be required per a condition of project approval (COA #16).

Issue B: Detrimental Hydrological Impacts

Response B: On October 15, 2019, the Applicants submitted a 161-page compilation of the hydrological and geotechnical project impact assessments with associated peer reviews that have been prepared and submitted as part of the project application. The compilation included updated memoranda by Alan Kropp, G.E. Principal Engineer of Alan Kropp & Associates (“Geotechnical Consultant”) dated August 30, 2019 and William Vandivere, M.S., P.E., Principal of Clearwater Hydrology (“Hydrology Consultant”) dated November 4, 2019 (See Attachment 7). The updated memoranda address the following concerns or hydrological theories advanced by Appellants:

1. The unconfined character of the local groundwater system;
2. That borings at the site drilled during the summer are insufficient to determine the likely winter elevations/depths of groundwater at the site;
3. That the foundations of the new structures will act as a dam and cause water to back up on neighboring properties;
4. That the weight of the buildings will compress the underlying soils and displace or “squeeze” water out onto adjacent properties; and
5. That the new development would eliminate site infiltration capacity, thereby increasing runoff off-site.

The five areas of concern are addressed below, some verbatim from the updated memoranda provided by the Applicants consultants. For more detail, refer to the full record of technical reports and peer reviews submitted on October 15, 2019 included in the Administrative Record (Attachment 9).

Issue B1: Unconfined character of the local groundwater system

Response B1: Regional topographic data indicates the site is located within a broad and subdued swale approximately 800 feet wide that is potentially associated with a relic subparallel tributary alignment of Strawberry Creek. The Appellants have suggested in public testimony that due to the presence of un-engineered fill of the creek bed, the soil materials underlying the site comprise a single, unconfined groundwater system, i.e. that groundwater is free to rise or fall without impediment in response to seasonal groundwater recharge from areas to the east of the site. This is not supported by available evidence.

The available evidence from the site boring logs indicates that the on-site groundwater system does not comprise a single unconfined aquifer with an unimpeded water table that can respond linearly to seasonal infiltrated rainfall/recharge (winter) and evapotranspiration (loss of water through atmospheric evaporation and plant transpiration during the dry season). Instead, the logs suggest that the water bearing stratum, consisting of dense sands and gravels, is overlain by a 3- to 5-foot thick layer of lower permeability clays that restrict the free vertical exchange of water, both downward and upward.

The borings reveal that the presence of the thick clay layer severely restricts downward percolation of rainfall that infiltrates the upper three feet of the soil profile. This is known as a perched groundwater condition, which is attributable to an impeding clay layer transmits water vertically much more slowly than the underlying, coarser soil materials. As such, perched groundwater essentially lacks a direct hydraulic connection to the deeper, regional groundwater system. In this case, infiltrated rainfall or local runoff eventually saturates the surface soil layer and induces surface ponding. This can occur independent of the relative position of the underlying regional groundwater table.

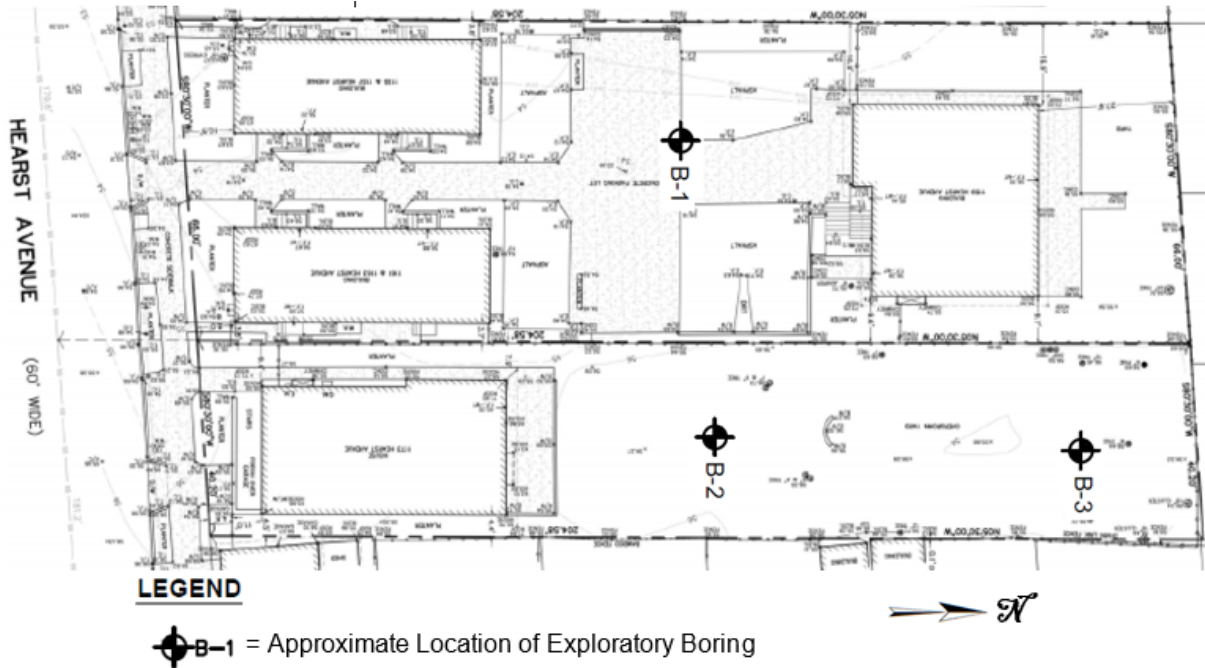
Issue B2: Adequacy of summer borings

Response B2: The Geotechnical Consultant drilled three borings on the subject site in August of 2018. The two borings (B-2 and B-3) made along the eastern portion of the site, reached a depth of 11.5 feet and neither encountered groundwater. The third boring near the western boundary (B-1) was drilled to a depth of 26.5 feet. Groundwater was encountered at a depth of about 15.5 and rose to about 10 feet one hour after drilling. See Figure 1 below.

As previously noted, the borings indicate the presence of the water bearing stratum, consisting of dense sands and gravels, overlain by a 3-

5 foot thick layer of low permeability clays, which hydraulically separates the overlying perched water from the regional groundwater below. During the winter rainy season, infiltrated rainfall or local runoff saturates the surface soil layer and induces surface ponding due to the impermeability of the clay strata, and irrespective of the ground water level below.

Figure 1:
Approximate Exploratory Boring Locations



The Applicant’s consultant team acknowledges that groundwater levels may rise during winter months. The Geotechnical Consultant has, therefore, recommended that a groundwater height of five feet below the ground surface be used in project design, which is the depth that the California Geological Survey has mapped as the historic high groundwater level for the subject site.

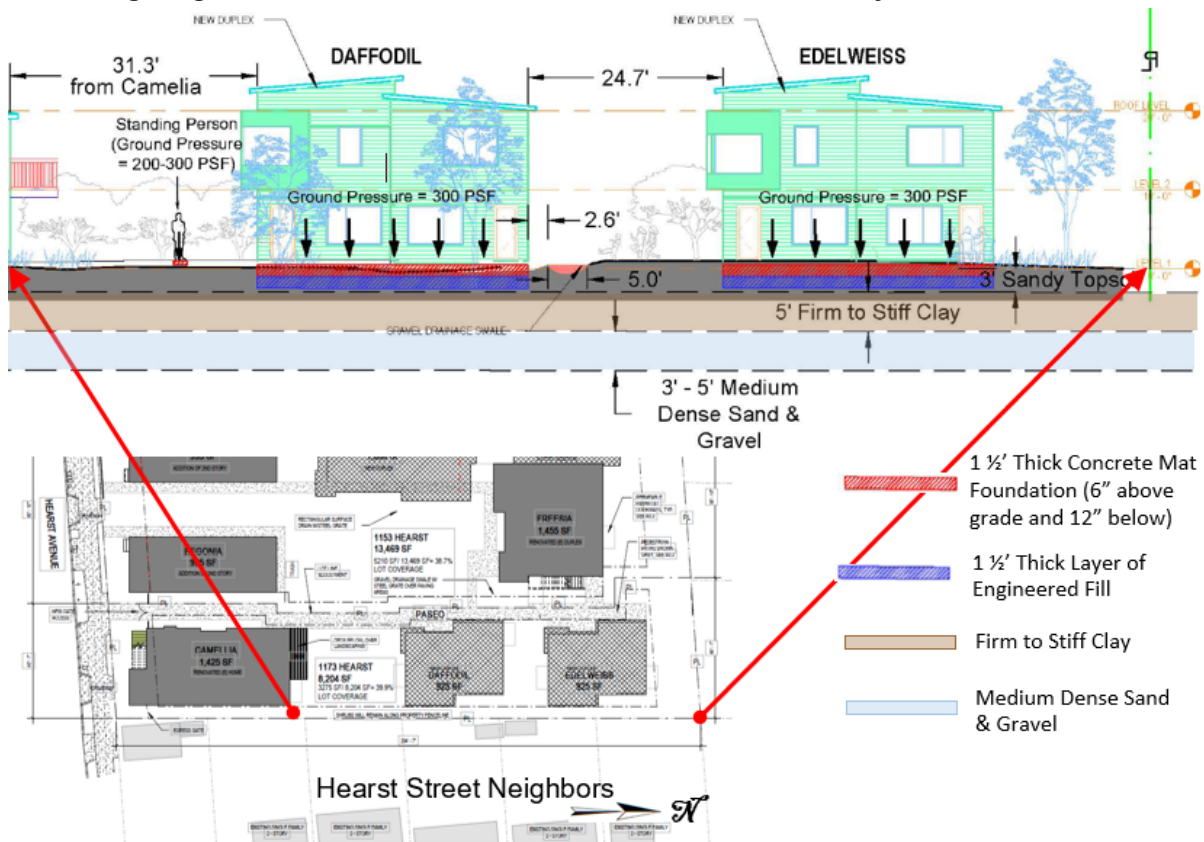
Issue B3: Building foundations would serve as dam to groundwater flow

Response B3: Members of the public have posited that the impact of the proposed development’s placement of very shallow and discontinuous engineered fill and mat foundations would act as a dam to the groundwater flow on the project site, similar to a dam across an above-ground stream or river. This is inaccurate. A surface dam creates an impermeable barrier across the entire width of a stream channel and its floodplain, and must seamlessly tie-into similarly impermeable formations to either side of the

dam structure or embankment. It is also vertically keyed into an impermeable bedrock or other impermeable material (e.g. clay) such that it severely restricts seepage underneath the dam. The project conditions would replicate none of the physical constraints on hydraulic characteristics that are imposed by dam and reservoir construction.

Figure 2 below depicts the actual conditions that would occur along the eastern edge of the site where two new buildings are proposed. As shown, the new building foundations would not span the entire site as a single structure as a dam would. Rather, openings of roughly 15 feet would exist to either side of these buildings. More importantly, the vertical extents of the engineered fill that would be placed beneath the mat foundations and the overlying mat foundations would not extend to more than three feet below the existing ground. This depth matches that of the surface soil layer, which is underlain by 3-5 feet of firm clay. Such clay layers are typically considered non-water bearing soil strata and do not readily transmit water vertically, either from the surface via infiltration or from the subsurface via rising groundwater tables.

Figure 2:
Load Bearing Diagram for Hearst Gardens Soil Profile with Site Plan Key Below



Groundwater that occurs under the site flows in a roughly east-west direction and will preferentially favor the coarser materials that underlie the clay layer. At this depth and at the ground pressures exerted by the buildings, approximately 300 pounds per square foot (psf), no effects from the mat foundations would be transmitted that could alter the hydraulic conductivity of the water bearing layer. Groundwater would continue to flow freely under the shallow foundations within the dense sand and gravel layer beneath the clay. As is also shown in Figure 2, the ground pressure exerted by a standing person of moderate stature (200-300 psf) is not substantially different from the pressure exerted by the mat foundations.

Issue B4: Building weight would displace water onto adjacent properties

Response B4: The new buildings would be founded on structural mat slabs that would be embedded about 12 to 18 inches below the ground surface. Due to weak soils and fill, the soils would be removed to a depth of about 30 inches, the subgrade properly compacted, and then the suitable portions of the soils placed back and compacted as engineered fill. Because the mat slabs would spread out the building loads in a relatively uniform pattern across the entire building area, the pressure on the soil would be very small, on the order of 300 pounds per square foot. To provide an example of how small this load is, a person standing would exert 200 to 300 pounds per square foot of pressure on the ground. (See Figure 2 above.) This means that the pressure is so small it would not have any significant impact on the water in the ground. Furthermore, should any water movement caused by these small pressures occur, the water would more likely flow laterally or below the foundation/engineered fill area. It would be highly unlikely that any regional groundwater would move up to the ground surface.

Issue B5: Project would eliminate site infiltration capacity and increase runoff

Response B5: The Appellants have stated that the change in permeable paving on the project site would result in decreased infiltration, thereby resulting in additional runoff (i.e. flooding) on adjacent properties and the city's drainage system. They have posited that the development would impede the infiltration capacity of the topographic depression existing on the central portion of the site, which acts as a rain garden.² Rain gardens are usually constructed on sites to retain and pond stormwater runoff which can then prolong the opportunity for infiltration into the soil profile

² Terraphase initial Draft Technical Memorandum, dated October 2015.

rather than run-off into a storm drain system. These features only work where surface and near surface soils are relatively permeable and where soil rather than concrete forms the “garden” depression. This is not the case at the project site, where the existing depression largely encompasses a settled concrete parking/driveway area, underlain by a low permeability clay substrate. Thus, while stormwater may pond before it breaks out and flows toward Hearst Avenue, the clayey nature of the subsoil does not provide the infiltration opportunities that a true rain garden would. Evaporation is more likely to dissipate the majority of the ponded stormwater.

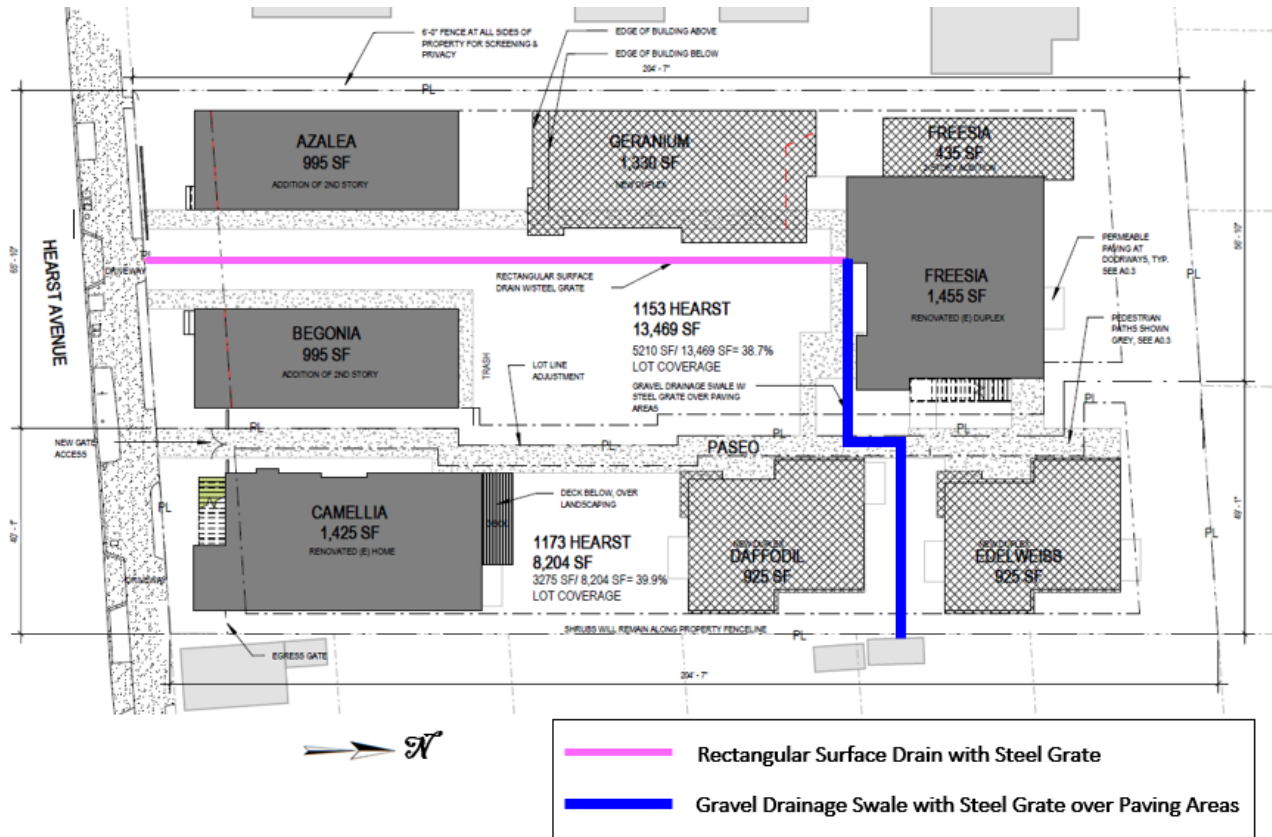
The Hydrology Consultant’s Stormwater and Flooding Assessment and Mitigation Design report (July 2017) detailed the hydrologic and hydraulic analyses that were conducted for the Hearst Avenue corridor, including the relevant block of Curtis Street, and the project site. The hydraulic analysis used the most conservative estimates of peak flows generated over the project site and the west side Curtis Street properties, including modeled overflow from the Curtis Street gutter down the residential driveways and into the low-lying backyards immediately east of the site. The Hydrology Consultant topographical survey determined that the backyard at 1173 Hearst Avenue was 1.0 foot higher than the lowest backyard elevations at the western Curtis Street backyards. However, as runoff moves in the westward direction, runoff from the subject site flows away from the Curtis Street yards which are situated to the east. This existing physical condition creates the likelihood of backyard flooding due wholly to runoff from portions of the Curtis Street buildings, driveways and concrete patios/backyard areas.

Recognizing the existing impediment to more efficient drainage along the Curtis Street backyard areas, the Hydrology Consultant developed a project drainage solution that would provide for construction of a surface drainage channel to capture and drain-off roughly 50% of the ponded water during higher recurrence interval (i.e. more intense) rainstorms. The layout of the new drainage channel is below in Figure 3. While this feature will not completely eliminate the existing backyard nuisance flooding for those properties, it will improve the existing drainage from those lots and reduce the depth of flooding experienced by the west side Curtis Street properties. The project drainage system would provide an improvement over existing conditions.

In addition to the surface swale and outlet drainage channel within the new project driveway—the alignments of which are also shown in the Figure 3—the Hydrology Consultant evaluated the volumetric increase in

site stormwater runoff for the post-project condition. The estimated increase of 5.6 cubic feet, or 119 gallons, could be absorbed by incorporating a rain barrel (cistern) into the project design. The Hydrology Consultant recommended that both of the new buildings along the eastern portion of the site be fitted with 150-200 gallon rain cisterns. The inclusion of rain barrels would control the incremental increase in post-development runoff to the storm drain system during rain events.

**Figure 3:
Drainage Outlet Channel Design**



As noted, the City hired the firm of Cotton, Shires, and Associates (“Geotechnical Peer Reviewer”) to peer review the memoranda submitted by the Applicants’ Geotechnical and Hydrology Consultants and reviewed pertinent technical maps and reports for the project. The Peer Reviewer concurred with the findings and the incorporated recommendations of the Consultants and recommended the following post-ZAB approved condition, which staff has included for project approval that will ensure compliance with technical expert recommendations:

Prior to Issuance of Any Building Permit:

14. Design Level Civil Plans and Plan Review. The Project Civil Engineer should review the completed geotechnical and hydrologic studies and subsequent peer review letters by professionals contracted by the City and incorporate the pertinent design recommendations into the design level grading and drainage plans. As part of the Civil Plans, at a minimum, 150-200 gallon rain barrels and/or cisterns to collect storm water shall be fitted for both new buildings along the eastern portion of the site (Daffodil and Edelweiss). The Project Civil Engineer shall design pervious drainage features considering the benefits of additional run off collection and discharge (e.g. additional subgrade preparation or storage beneath areas to receive pervious pavers, etc.), and with the understanding that pervious pavements/sidewalks may percolate at the flows stated by the manufacturer.

Civil Plans shall include detailed cross sections of all proposed swales and artificial pervious areas including the design thickness of the proposed concrete, subgrade, swale dimensions, and grass seed or planting recommendations as appropriate for the grass-lined swale.

A maintenance and monitoring program shall be included for site drainage improvements that, as applicable, details the regular procedure for discharging rain barrels and/or cisterns, the clearing of constructed concrete swales, and the mowing or landscaping of grass swales and other bio-drainage improvements. We recommend the Project Design Team consider incorporating site topographic surveying into the monitoring program to, at minimum, document the final as-built site drainage conditions.

The final plans should be reviewed, analyzed, and approved from a surface hydrologic perspective by the applicant's registered/licensed Project Hydrologist to ensure the proposed design is adequate to improve site drainage conditions and to ensure the plans incorporate their hydrologic recommendations. Project civil grading and drainage plans and hydrologic evaluations shall also be reviewed by the City's peer reviewer.

The applicant shall deposit \$10,000 with the City, or less with the approval of the Zoning Officer, to pay for the cost of monitoring compliance with these Conditions of Approval and other applicable conditions and regulations. Should compliance-monitoring expenses exceed the initial deposit, the applicant shall deposit

additional funds to cover such additional expenses upon the request of the Zoning Officer; any unused deposit will be refunded to the applicant.

These plans and evaluations should be completed, submitted and then reviewed and approved by appropriate City Staff or their designee prior to building permit approval.

Issue C: Further CEQA Review

Response C: At the January 29, 2019 City Council meeting, after the public hearing of the project appeal, Council remanded the project back to ZAB to allow for further CEQA analysis. This directive prompted the applicant to submit additional technical studies and analyses, made available to both staff and the public, thereby increasing project transparency. It also afforded staff the opportunity to re-evaluate and conduct a more thorough review of CEQA application to the proposed project.

The ZAB approved Use Permit ZP2016-0028 on August 23, 2018 finding the project is categorically exempt from CEQA as an In-Fill Development Project pursuant to Section 15332 of the CEQA Guidelines. Upon further evaluation, staff also recommends a finding that the project falls under a Class 3 “New Construction or Conversion of Small Structures” CEQA exemption in addition to the Class 32 In-Fill exemption. A Class 3 exemption applies to apartments, duplexes, and similar structures designed for not more than six dwelling units in urbanized areas (California Code of Regulations §15303(b)).

Appellants contend that the use of a categorical exemption is improper because the project is subject to the “unusual circumstances” exemption to the Class 3 and Class 32 CEQA exemptions, and argue that the exemption should be applied based on the project’s impact on hydrology and storm drain capacity. The party claiming the exception to the exemption applies bears the burden of proof. (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1105.)

Under Section 15300.2(c) of the CEQA Guidelines, “[a] categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.” The California Supreme Court described the requirements for establishing the applicability of the unusual circumstances exemption in *Berkeley Hillside Preservation, supra*. As the Court explained, “[a] party invoking the exception may establish an unusual circumstance without evidence of an environmental effect, by showing that the project has some feature that distinguishes it

from others in the exempt class, such as its size or location. (60 Cal.4th at p. 1105.) In such a case, to render the exception applicable, the party need only show a reasonable possibility of a significant effect due to that unusual circumstance.” (*Ibid.*) Alternatively, the Court observed that “a party may establish an unusual circumstance with evidence that the project will have a significant environmental impact.” (*Ibid.*)

Issue C1: Existence of Unusual Circumstances/Distinguishing Features

Response C1: Prior to the remand hearing before ZAB, the City hired Rincon Consultants to independently review the project file, technical reports, peer reviews, and public comment to prepare a third-party analysis of the applicability of a categorical exemption for this project. The analysis provides an in-depth evaluation of the qualifying criteria for a categorical exemption. Submitted to the City on April 23, 2019, it concluded that no unusual circumstances that would trigger further CEQA review exist at the project site. Specifically, with respect to hydrologic conditions, the analysis states that occasional flooding is not unique to this project site nor this neighborhood, and the project site is not located in a FEMA flood zone. As the City has gentle slopes to the southwest in the direction of the San Francisco Bay and has shallow geology associated with five distributary streams: Derby, Potter, Strawberry, Schoolhouse, and Codornices;³ several areas throughout the City experience seasonal flooding, including the northwest corner of University and San Pablo Avenues; Derby Street near Martin Luther King Jr. Way; Derby Street between Shattuck and Telegraph Avenues; and the area around Malcolm X Elementary School south of Ashby Avenue and west of the Ashby BART station, among other similar urbanized areas. Ponding and flooding conditions vary throughout the City, but are not uncommon or otherwise unusual on the numerous properties overlaying historic traces of hydrologic features. Staff does not believe the record demonstrates that the project has features that distinguish it from other projects in the exempt class of projects that create a reasonable possibility of a significant effect due to the existence of an unusual circumstance.

Further, the analysis notes that the historic trace of Strawberry Creek in the area is identified as “Not Protected” under BMC Section 17.08, and the project is not otherwise in a flood plain, flood way, or flood restriction

³ 2011 Watershed Management Plan. October 2011. Berkeley, CA.
[https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3 - Sewers - Storm/WatershedMgtPlan_2011October_Version1.0.pdf](https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-_Sewers_-_Storm/WatershedMgtPlan_2011October_Version1.0.pdf) (accessed July 2018).

zone. (Compare Pub. Res. Code, § 21159.21 [defining conditions for certain CEQA exemptions for housing developments].)

Issue C2: Significant Effect on the Environment – Hydrological Impacts

Response C2: Responses to Issues B1-5 above demonstrate that there is substantial evidence in the record that the project would not have a significant hydrological effect on the subject or neighboring properties. To further inform the CEQA analysis, the Applicants submitted an evaluation of the geotechnical characteristics of the site for the proposed project and provided geotechnical engineering recommendations for the proposed work, summarized in a report dated March 1, 2019. The Geotechnical Peer Reviewer peer reviewed the report and concluded that the site is suitable for the construction of the proposed project from a geotechnical standpoint provided that all of the conclusions and recommendations presented in the report are incorporated in the design and construction of the project. Staff does not believe the record demonstrates that the project will have a significant adverse hydrological impact.

To reflect current project status, staff proposes to update the Geotechnical condition as follows:

Prior to Issuance of Any Building Permit:

13. Geotechnical Report. The applicant shall submit to the Building and Safety Division at the geotechnical report, prepared by Alan Kropp & Associates, dated March 1, 2019, updated April 17, 2019, as well as the peer review conducted by Cotton, Shires & Associates, Inc. dated March 14, 2019 and April 29, 2019, that addresses the subsurface water conditions in and in the immediate vicinity of the project site. A civil engineer shall be employed to draft plans in conformance with all recommendations of the Geotechnical and Hydrology reports and associated peer reviews. The engineer shall annotate the recommendations to state where in the building permit plan submittal set each recommendation is addressed.

As noted in the peer review, the Geotechnical Consultant report does not address potential flooding or hydrologic concerns within the scope of their work. The geotechnical report was, however, reviewed by Hydrology Consultant for an engineering hydrologic review. The Hydrology Consultant reviewed the geotechnical investigation to ensure that the soils information contained within did not differ from the conditions assumed by the Hydrology Consultant for the stormwater drainage system designed for the site. As summarized in a letter dated February 22, 2019, the Hydrology Consultant stated that the

groundwater depth measured by the Geotechnical Consultant is greater than their own, rendering the Hydrology Consultant's design assumptions conservative. The results of the investigation confirm that no further revisions to the design as presented in the July 2017 final report are required.

Issue C3: Significant Effect on the Environment – Storm Drain Capacity

Response C3: The City of Berkeley Department of Public Works owns and maintains approximately 100 miles of storm drain conduits throughout the City. The City's drainage facilities—including maintenance holes, curb and gutters, inlets, catch basins, cross-drains, valley gutters, wyes and tees, and outlets connecting the storm drain system to receiving waters—is designed to a specified 10- and 25-year design storm, or anticipated rain event, for conveyance capacity.⁴ Public Works staff has confirmed that the standard to which the system was designed was not intended to prevent overflow to sidewalks during all rain events, but to prevent flooding within parked vehicles and homes and to ensure the flow of water is unblocked and conveyed, ultimately, to the Bay. As previously relayed in the staff report of January 29, 2019, there is no evidence in the public record that the storm drain system is inadequate for the site area. During a field visit after heavy rains, the water flowed freely through the gutters in front of the project site and on both sides of the block. The water flow follows the topography from east to west and enters the catchment basin located just east of San Pablo Avenue. At the catchment basin (i.e. storm drain) the water enters a 2' x 3' storm pipe that runs under San Pablo Avenue to the south and connects to a 5'-2" x 7'-9" sewage pipe that runs under University Avenue to the west. Public Works engineering staff commented that they had no concerns as to whether the storm drain system could accommodate any additional flow from the proposed six-unit infill project. Accordingly, staff does not believe the record demonstrates that the project will have a significant adverse environmental impact due to any impact on City storm drain infrastructure.

Council remand has provided a valued opportunity to receive and conduct further research and analysis and has confirmed staff's determination that the project is categorically exempt from CEQA, that there will be minimal detrimental impacts to neighboring projects, and is conditioned to provide the highest level of tenant protections available.

⁴ Ibid. A design storm is a mathematical representation of a precipitation event that reflects local conditions for the design of storm drain pipe infrastructure.

ALTERNATIVE ACTIONS CONSIDERED

Pursuant to BMC Section 23B.32.060.D, the Council may (1) continue the public hearing, (2) reverse, affirm, or modify the ZAB's decision, or (3) remand the matter to the ZAB.

ACTION DEADLINE:

Pursuant to BMC Section 23B.32.060.G, if the disposition of the appeal has not been determined within 30 days from the date the public hearing was closed by the Council (not including Council recess), then the decision of the Board shall be deemed affirmed and the appeal shall be deemed denied.

CONTACT PERSONS

Timothy Burroughs, Director, Planning & Development Department, (510) 981-7437
Leslie Mendez, Senior Planner, Planning & Development Department, (510) 981-7426

Attachments:

- 1: Resolution
 - Exhibit A: Findings and Conditions
 - Exhibit B: Project Plans dated June 8, 2018
 - Exhibit C: Tenant Protections Commitment
- 2: ZAB Staff Report, dated May 9, 2019
- 3: Council Staff Report, dated January 29, 2019
- 4: Appeal Letter, dated September 12, 2018
- 5: ZAB Staff Report, dated August 23, 2018
- 6: Memorandum from the Rent Stabilization Board, dated May 7, 2019
- 7: Memoranda from Alan Kropp & Associates, dated August 30, 2019 and Clearwater Hydrology, dated November 4, 2019
- 8: Index to Administrative Record
- 9: Administrative Record
- 10: Public Hearing Notice

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

APPROVING USE PERMIT #ZP2016-0028 TO DEVELOP TWO PARCELS, INCLUDING THE SUBSTANTIAL REHABILITATION OF THE EXISTING SEVEN DWELLING UNITS AND CONSTRUCTION OF SIX NEW DWELLING UNITS IN THE RESTRICTED MULTIPLE-FAMILY RESIDENTIAL (R-2A) ZONING DISTRICT

WHEREAS, on February 2, 2016, Mark Rhoades of Rhoades Planning Group filed an application on behalf of Hearst Avenue Cottages, LLC (“applicant”) to substantially rehabilitate seven existing dwelling units, and construct eleven new dwelling units employing State Density Bonus Law on two parcels located at 1155 – 1173 Hearst Avenue (“project”); and

WHEREAS, on May 17, 2017, staff deemed this application complete; and

WHEREAS, on August 10, 2017, staff mailed and posted a Notice of Public Hearing for the project in accordance with BMC Section 23B.32.020; and

WHEREAS, on August 24, 2017, the ZAB continued the item to September 28, 2017 to allow the Applicants time to address tenant protections; and

WHEREAS, on September 28, 2017, the ZAB held a public hearing in accordance with BMC Section 23B.32.030, and continued the project off calendar to allow the Applicants further time to address tenant protections; and

WHEREAS, on March 6, 2018, the Applicants submitted a revised project that reduced the proposed new construction of dwelling units to seven; and

WHEREAS, on July 3, 2018 staff deemed the revised application complete; and

WHEREAS, on August 8, 2018, staff mailed and posted a Notice of Public Hearing for the project in accordance with BMC Section 23B.32.020; and

WHEREAS, on August 23, 2018, the ZAB held a public hearing in accordance with BMC Section 23B.32.030, and approved the project; and

WHEREAS, on August 30, 2018, staff issued the notice of the ZAB decision; and

WHEREAS, on September 12, 2018, Hussein Saffouri, on behalf of Rain Sussman, owner and resident of 1824 Curtis Street (“Appellant”), filed an appeal with the City Clerk; and

WHEREAS, on January 15, 2019, staff mailed and posted a Notice of Public Hearing for the project in accordance with BMC Section 23B.32.020; and

WHEREAS, on January 29, 2019, the Council held a public hearing to consider the ZAB's decision, and, and remanded the item back to ZAB to undertake further CEQA analysis, review the project based on CEQA findings, and analyze the detriment to rent-controlled units; and

WHEREAS, on April 23, 2019 the City received, from an independent consultant, a Class 32 Urban Infill categorical exemption analysis that concludes no unusual circumstances that would trigger further CEQA review exist at the project site; and

WHEREAS, on April 25, 2019, staff mailed and posted a Notice of Public Hearing for the project in accordance with BMC Section 23B.32.020; and

WHEREAS, on May 9, 2019, the ZAB held a public hearing in accordance with BMC Section 23B.32.030, and took no action on the project; and

WHEREAS, on October 10, 2019 the Applicant submitted a compilation of geotechnical and hydrology reports with updated memoranda from the technical consultants that was peer reviewed by a City Consultant; and

WHEREAS, on May 26, 2020, staff mailed and posted a Notice of Public Hearing for the project in accordance with BMC Section 23B.32.020; and

WHEREAS, on June 9, 2020, the Council held a public hearing to consider the ZAB's decision, and, in the opinion of this Council, the facts stated in or ascertainable from the public record, including comments made at the public hearing, warrant approving the project.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council hereby adopts the findings made by the ZAB in Exhibit A, affirms the decision of the ZAB to approve Use Permit #ZP 2016-0028, adopts the conditions in Exhibit A, project plans in Exhibit B, and the Applicant Commitment to tenant protections in Exhibit C, and dismisses the appeals.

Exhibits

A: Findings and Conditions

B: Project Plans, dated June 8, 2018

C: Tenant Protection Commitment, dated February 6, 2020

ATTACHMENT 1 EXHIBIT A

FINDINGS AND CONDITIONS

JUNE 9, 2020

1155-1173 Hearst Street

Use Permit #ZP2016-0028 to develop two parcels, including the substantial rehabilitation of the existing seven dwelling units and construction of six new dwelling units.

PERMITS REQUIRED

- Use Permit for construction of dwelling units, under BMC Section 23D.32.030
- Use Permit for the addition of a sixth or greater bedroom on a parcel, under BMC 23D.32.050.A
- Administrative Use Permit to construct residential additions greater than 14' in average height, under BMC Section 23D.32.070.C
- Administrative Use Permit to allow an extension of a non-conforming wall within a front and side yard, under BMC Section 23C.04.070.B
- Administrative Use Permit to reduce the building separation from 8' on the first floor and 12' on the second floor to 6'-1", under BMC Section 23D.32.070.D.4

I. CEQA FINDING

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 15303 and 15332 of the CEQA Guidelines ("New Construction and Conversion of Small Structures" and "In-Fill Development") because it involves the modification of six existing multifamily dwellings and the rehabilitation of a single-family dwelling plus the development of an additional six multifamily dwellings in an urbanized area, and

- a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
- b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
- c) The project site has no value as habitat for endangered, rare or threatened species.
- d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
- e) The site can be adequately served by all required utilities and public services.

Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as an independent review of the project file, technical reports, peer reviews, and public comment by a third party CEQA consultant found that:

- a) the site is not located in an environmentally sensitive area;
- b) there are no cumulative impacts because;
- c) there is no reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances;
- d) the project is not located near a scenic highway;

- e) the project site is not located on a hazardous waste site listed pursuant to Government Code Section 65962.5; and
- f) the project would not affect any historical resource because there are none located on or near the site.

II. FINDINGS FOR APPROVAL

1. 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, 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:
 - The project will add six new housing units to the City's housing stock and will comply with the City's Inclusionary Ordinance by either providing one below market rate unit for a Low Income Household and payment into the Affordable Housing Trust Fund of the remainder 0.2 unit fee, or payment of the in-lieu fee.
 - The project's proposed massing contributes to the continued evolution of the City's development landscape. The project design was modified in several ways to respect the lower density single-family dwellings fronting Curtis Street. The final development plan will renovate and rehabilitate the existing dwellings to match the style and materials of the new construction for a cohesive and attractive street presence that fits well with the surrounding mix of architectural styles.
 - As the properties to the east of the subject site front Curtis Street and have rear yards abutting the subject site, the building separation between the Curtis Street Neighbors and the new construction ranges from approximately 36 feet to 42 feet. The properties abutting to the north and fronting Delaware Street have more substantial rear yard areas, resulting in a proposed main building separation of approximately 175 feet and more. Buildings to the west are closest due to the abutting side yard orientation to the subject lot. But with building separation ranging from approximately 8.5 feet to 18 feet, the project's proposed massing will be compatible with the four neighboring two-story buildings to the west.
 - Shadow impacts from the project are expected to affect direct sunlight on certain residential windows. However, these areas will still experience indirect lighting during these hours, as well as have direct light from other windows. At no time of year will the proposed project cause adjacent properties to lose access to direct sunlight from all the windows throughout the whole day at any time of the year. Such shading impacts are to be expected in an infill urbanized area and are not deemed detrimental.
 - The project site is located one block east of San Pablo Avenue and one block north of University Avenue, two major transit thoroughfares. The project will add eleven additional residential units located within one quarter mile of the San Pablo/University intersection that is served by the following AC Transit bus lines: 72 Rapid, 49, 51B, 52, FS, G, 72, 72M, 800 and 802. The project helps encourage transit use and reduce greenhouse gas emissions from motor vehicles by constructing additional housing in close proximity to transit, jobs, basic goods and services.
 - The project meets the purposes of the Restricted Multiple-family Residential District as it will provide smaller multiple-family garden-type apartment structures with the

maximum feasible amount of useable open space on the property. The buildings will be constructed with sufficient separation on the subject lot, and with ample distance with abutting single-family neighbors. Light and air, therefore, will not be unreasonably obstructed. Based on the proposed two-story height of the building, the existing structures around the site, and the generally flat topography of the neighborhood, the project will not affect significant views enjoyed by neighboring residents. The project will further not be detrimental to the neighborhood as it would be subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, thereby ensuring the project would 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.

2. Pursuant to BMC 23C.04.070.C, the proposed vertical extensions of the non-conforming front and side yard setbacks of Azalea and Begonia are permissible as they will not further reduce existing non-conforming yards.
 3. Pursuant to BMC Section 23D.32.050, the project, when completed, would change the existing configuration of the duplexes to four two-bedroom dwelling units and two four-bedroom dwelling units. Both the two-unit layout and the four-unit layout are designed to be occupied by single households within a development of six other newly constructed two-bedroom units. The renovated dwellings are designed to provide for a range of family composition and is not expected to lead to formation of a mini-dorm.
 4. Pursuant to BMC 23D.070.D.4 the project the reduction in the building to building separation between Freesia and Geranium from the District minimum of 8' on the first floor and 12' on the second floor down to 6'-1" is permissible as the minimum distance is only at one horizontal plane between the buildings; otherwise the separation ranges from 8 feet to 13 feet. The current building layout and juxtaposition provides adequate air and light between the buildings. With the proposed added condition that the north facing window of the northeast bedroom in Geranium be a minimum of 68 inches from finished floor level, privacy between residents of the two opposing units will be ensured.
-

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.

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.

- The roof deck on **Geranium** shall be moved to the east side of the roof and the roof access shall not include any windows and shall be reduced in massing (i.e. sloped) to limit impacts to the western neighbors.
- All west facing windows on **Freesia** and **Geranium** shall, subject to review and approval by the Zoning Officer, be redesigned to ensure privacy for the residents of the building to the west. This may include, but is not limited to, frosted glass and/or clerestory design.
- A maximum of three full bathrooms are permitted in the two **Freesia** dwelling units.

12. Address Assignment. The applicant shall file an "Address Assignment Request Application" with the Permit Service Center (2120 Milvia Street) for any address change or new address associated with this Use Permit. The new address(es) shall be assigned and entered into the City's database prior to the applicant's submittal of a building permit application for that unit.

Prior to Issuance of Any Building Permit:

13. Geotechnical Report. The applicant shall submit to the Building and Safety Division the geotechnical report, prepared by Alan Kropp & Associates, dated March 1, 2019, updated April 17, 2019, as well as the peer review conducted by Cotton, Shires & Associates, Inc. dated March 14, 2019, supplemented April 29, 2019 and December 2, 2019. A civil engineer shall be employed to draft plans in conformance with all recommendations of the Geotechnical and Hydrology reports and associated peer reviews. The engineer shall annotate the recommendations to state where in the building permit plan submittal set each recommendation is addressed.

14. Design Level Civil Plans and Plan Review. The Project Civil Engineer should review the completed geotechnical and hydrologic studies and subsequent peer review letters by professionals contracted by the City and incorporate the pertinent design recommendations into the design level grading and drainage plans. As part of the Civil Plans, at a minimum, 150-200 gallon rain barrels and/or cisterns to collect storm water shall be fitted for both new buildings along the eastern portion of the site (Daffodil and Edelweiss). The Project Civil Engineer shall design pervious drainage features considering the benefits of additional run off collection and discharge (e.g. additional subgrade preparation or storage beneath areas to receive pervious pavers, etc.), and with the understanding that pervious pavements/sidewalks may percolate at the flows stated by the manufacturer. Civil Plans shall include detailed cross sections of all proposed swales and artificial pervious areas including the design thickness of the proposed concrete, subgrade, swale dimensions, and grass seed or planting recommendations as appropriate for the grass-lined swale.

A maintenance and monitoring program shall be included for site drainage improvements that, as applicable, details the regular procedure for discharging rain barrels and/or cisterns, the clearing of constructed concrete swales, and the mowing or landscaping of grass swales and other bio-drainage improvements. We recommend the Project Design Team consider incorporating site topographic surveying into the monitoring program to, at minimum, document the final as-built site drainage conditions.

The final plans should be reviewed, analyzed, and approved from a surface hydrologic perspective by the applicant's registered/licensed Project Hydrologist to ensure the proposed design is adequate to improve site drainage conditions and to ensure the plans incorporate

their hydrologic recommendations. Project civil grading and drainage plans and hydrologic evaluations shall also be reviewed by the City's peer reviewer.

The applicant shall deposit \$10,000 with the City, or less with the approval of the Zoning Officer, to pay for the cost of monitoring compliance with these Conditions of Approval and other applicable conditions and regulations. Should compliance-monitoring expenses exceed the initial deposit, the applicant shall deposit additional funds to cover such additional expenses upon the request of the Zoning Officer; any unused deposit will be refunded to the applicant.

These plans and evaluations should be completed, submitted and then reviewed and approved by appropriate City Staff or their designee prior to building permit approval.

15. Demolition Schematic. The applicant shall include a sheet within the plan set for each existing building (Azalea, Begonia, Camellia, and Freesia) that clearly shows the surface area of each exterior wall and the roof that is to be removed and that is to remain. A percentage calculation for the sum of the exterior walls to be removed and for the roof shall be included. A building permit will not be issued unless it is confirmed that the project would not result in a demolition as defined in BMC 23F.04.010.
16. Notice of Limitation. 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" and provide a recorded copy thereof to the project planner. This Notice of Limitation shall stipulate that none of the six existing rent controlled units (1155-57 Hearst, 1159 A & B Hearst, 1161-63 Hearst) shall undergo condominium conversion and shall remain subject to rent control in perpetuity unless. 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.
17. Occupancy Restriction. No work related to this Use Permit may commence on any of the existing buildings (1155-57 Hearst, 1159 A & B Hearst, 1161-63 Hearst, and 1173 Hearst), until all residents within the building have vacated the premises. The property owner shall provide verification from the Rent Stabilization Board that all tenants with the building have voluntarily vacated. This condition does not apply to routine maintenance and repairs.
18. Parcel Merger. The applicant shall secure approval of any parcel merger and/or lot line adjustment associated with this Use Permit.
19. Percent for Art: Consistent with BMC §23C.23, prior to issuance of a building permit for foundation or construction work the applicant shall either pay the required in-lieu fee or provide the equivalent amount in a financial guarantee to be released after installation of the On-Site Publicly Accessible Art.
20. Construction Noise Management - Public Notice Required. At least thirty calendar days prior to initiating any construction activities at the site related to this Use Permit, the applicant shall provide notice to existing residents on the project site, including (1) description of construction activities, (2) daily construction schedule (i.e., time of day) and expected duration (number of months), (3) the name and phone number of the Noise Management Individual for the project, and (4) designate a "construction liaison" that would be responsible for responding to any local complaints about construction noise. The liaison would determine

the cause of the noise complaints (e.g., starting too early, bad muffler, etc.) and institute reasonable measures to correct the problem. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval. This conditions does not apply to routine maintenance and repairs.

The public notice shall also state that the applicant will hold a community meeting every six months from the start of construction to the conclusion of construction for all active building permits related to this Use Permit. And pursuant Condition of Approval number 33; that the existing tenants have the option to temporarily relocate during construction for all active building permits related to this Use Permit and that parking shall be provided on or off site during all construction in compliance with Condition of Approval number 32.

21. Construction Noise Reduction Program. The applicant shall develop a site specific noise reduction program prepared by a qualified acoustical consultant to reduce construction noise impacts to the maximum extent feasible, subject to review and approval of the Zoning Officer. The noise reduction program shall include the time limits for construction listed above, as measures needed to ensure that construction complies with BMC Section 13.40.070. The noise reduction program should include, but shall not be limited to, the following available controls to reduce construction noise levels as low as practical:
- Construction equipment should be well maintained and used judiciously to be as quiet as practical.
 - Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.
 - Utilize “quiet” models of air compressors and other stationary noise sources where technology exists. Select hydraulically or electrically powered equipment and avoid pneumatically powered equipment where feasible.
 - Locate stationary noise-generating equipment as far as possible from sensitive receptors when adjoining construction sites. Construct temporary noise barriers or partial enclosures to acoustically shield such equipment where feasible.
 - Prohibit unnecessary idling of internal combustion engines.
 - If impact pile driving is required, pre-drill foundation pile holes to minimize the number of impacts required to seat the pile.
 - Construct solid plywood fences around construction sites adjacent to operational business, residences or other noise-sensitive land uses where the noise control plan analysis determines that a barrier would be effective at reducing noise.
 - Erect temporary noise control blanket barriers, if necessary, along building facades facing construction sites. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling. Noise control blanket barriers can be rented and quickly erected.
 - Route construction related traffic along major roadways and away from sensitive receptors where feasible.

22. 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.
23. Drainage Plan. Subject to review and approval by the City's Building & safety Division and/or Department of Public Works, plans submitted for building permit shall include the drainage design as presented in Stormwater and Flooding Assessment and Mitigation Design for the Hearst Avenue Project, prepared by Clearwater Hydrology, dated January 7, 2016 as revised July 12, 2017, and all recommendations of the peer review prepared by Balance Hydrologics.
24. Electric Vehicle (EV) Charging. At least 10% of the project parking spaces for residential parking shall be pre-wired to allow for future Level 2 (240 Volt/40 amp) plug-in electric vehicle (EV) charging system installation, as specified by the Office of Energy and Sustainable Development. Any Level 2 EV charging systems installed at parking spaces will be counted toward the applicable pre-wiring requirement. Pre-wiring for EV charging and EV charging station installations shall be noted on site plans.
25. 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).
26. 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.
27. 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.
28. Public Works ADA. Plans submitted for building permit shall include replacement of sidewalk, curb, gutter, and other streetscape improvements, as necessary to comply with current City of Berkeley standards for accessibility.
29. First Source Agreement. The applicant and/or end user(s) shall enter into a First Source Agreement with the City of Berkeley. First Source promotes the hiring of local residents on local projects. The agreement requires contractors/employers to engage in good faith efforts to hire locally, including utilizing graduates of local job training programs. Please call (510) 981-4970 for further information, or visit the City's Employment Programs office at 2180 Milvia, 1st Floor.
30. Toxics. The applicant shall contact the Toxics Management Division (TMD) at 2120 Milvia, 3rd Floor or (510) 981-7470 to determine which of the following documents are required and timing for their submittal:

A. Environmental Site Assessments:

- 1) Phase I & Phase II Environmental Site Assessments (latest ASTM 1527-13). A recent Phase I ESA (less than 6 months old*) shall be submitted to TMD for developments for:
 - All new commercial, industrial and mixed use developments and all large improvement projects.
 - All new residential buildings with 5 or more dwelling units located in the Environmental Management Area (or EMA).
 - EMA is available online at:
 - http://www.cityofberkeley.info/uploadedFiles/IT/Level_3_-_General/ema.pdf
- 2) Phase II ESA is required to evaluate Recognized Environmental Conditions (REC) identified in the Phase I or other RECs identified by TMD staff. The TMD may require a third party toxicologist to review human or ecological health risks that may be identified. The applicant may apply to the appropriate state, regional or county cleanup agency to evaluate the risks.
- 3) If the Phase I is over 6 months old, it will require a new site reconnaissance and interviews. If the facility was subject to regulation under Title 15 of the Berkeley Municipal Code since the last Phase I was conducted, a new records review must be performed.

B. Soil and Groundwater Management Plan:

- 1) A Soil and Groundwater Management Plan (SGMP) shall be submitted to TMD for all non-residential projects, and residential or mixed-use projects with five or more dwelling units, that: (1) are in the Environmental Management Area (EMA) and (2) propose any excavations deeper than 5 feet below grade. The SGMP shall be site specific and identify procedures for soil and groundwater management including identification of pollutants and disposal methods. The SGMP will identify permits required and comply with all applicable local, state and regional requirements.
- 2) The SGMP shall require notification to TMD of any hazardous materials found in soils and groundwater during development. The SGMP will provide guidance on managing odors during excavation. The SGMP will provide the name and phone number of the individual responsible for implementing the SGMP and post the name and phone number for the person responding to community questions and complaints.
- 3) TMD may impose additional conditions as deemed necessary. All requirements of the approved SGMP shall be deemed conditions of approval of this Use Permit.

C. Building Materials Survey:

- 1) Prior to approving any permit for partial or complete demolition and renovation activities involving the removal of 20 square or lineal feet of interior or exterior walls, a building materials survey shall be conducted by a qualified professional. The survey shall include, but not be limited to, identification of any lead-based paint, asbestos, polychlorinated biphenyl (PBC) containing equipment, hydraulic fluids in elevators or lifts, refrigeration systems, treated wood and mercury containing devices (including fluorescent light bulbs and mercury switches). The Survey shall include plans on hazardous waste or hazardous materials removal, reuse or disposal procedures to be implemented that fully comply state hazardous waste generator requirements (22 California Code of Regulations 66260 et seq). The Survey becomes a condition of any building or demolition permit for the project. Documentation evidencing disposal of hazardous waste in compliance with the survey shall be submitted to TMD within 30 days of the completion of the demolition. If asbestos is identified, Bay Area Air Quality

Management District Regulation 11-2-401.3 a notification must be made and the J number must be made available to the City of Berkeley Permit Service Center.

D. Hazardous Materials Business Plan:

- 1) A Hazardous Materials Business Plan (HMBP) in compliance with BMC Section 15.12.040 shall be submitted electronically at <http://cers.calepa.ca.gov/> within 30 days if on-site hazardous materials exceed BMC 15.20.040. HMBP requirement can be found at <http://ci.berkeley.ca.us/hmr/>

Prior to Construction:

31. Construction Meeting. The applicant shall request of the Zoning Officer an on-site meeting with City staff and key parties involved in the early phases of construction (e.g., applicant, general contractor, foundation subcontractors) to review these conditions and the construction schedule. The general contractor or applicant shall ensure that all subcontractors involved in subsequent phases of construction aware of the conditions of approval.

During Construction:

32. Tenant Parking. During any construction related to this Use Permit, the applicant/property owner shall ensure that parking is provided to existing tenants per their lease agreement either on-site or in an alternative location within the area bounded by San Pablo Avenue to the west, Francisco Street to the north, Chestnut Street to the east, and University Avenue to the south. If parking cannot be found within the boundary then the applicant/property owner shall provide tenants with \$100/month as a parking stipend. This condition does not apply to routine maintenance and repairs.
33. Temporary Relocation. During any construction related to this Use Permit, a tenant household that has been a tenant as of the date of Use Permit entitlement, may choose to temporarily relocate during construction activities related to entitlement of this Use Permit, and the applicant/property owner shall initiate relocation commensurate with the provisions set forth in the Relocation Ordinance, BMC Section 13.84. This condition does not apply to routine maintenance and repairs.
34. Neighborhood Construction Meetings. The applicant will hold a community meeting every six months from the start of construction to the conclusion of construction for all active building permits related to this Use Permit.
35. Existing Perimeter Vegetation. The applicant shall retain all perimeter vegetation on the property during all phases of construction.
36. Halt Work/Unanticipated Discovery of Tribal Cultural Resources. In the event that cultural resources of Native American origin are identified during construction, all work within 50 feet of the discovery shall be redirected. The project applicant and project construction contractor shall notify the City Planning Department within 24 hours. The City will again contact any tribes who have requested consultation under AB 52, as well as contact a qualified archaeologist, to evaluate the resources and situation and provide recommendations. If it is determined that the resource is a tribal cultural resource and thus significant under CEQA, a mitigation plan shall be prepared and implemented in accordance with State guidelines and in consultation with Native American groups. If the resource cannot be avoided, additional

measures to avoid or reduce impacts to the resource and to address tribal concerns may be required.

- 37. Archaeological Resources (Ongoing throughout demolition, grading, and/or construction).** Pursuant to CEQA Guidelines section 15064.5(f), “provisions for historical or unique archaeological resources accidentally discovered during construction” should be instituted. Therefore:
- A. In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist, historian or paleontologist to assess the significance of the find.
 - B. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified professional would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Berkeley. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by the qualified professional according to current professional standards.
 - C. In considering any suggested measure proposed by the qualified professional, the project applicant shall determine whether avoidance is necessary or feasible in light of factors such as the uniqueness of the find, project design, costs, and other considerations.
 - D. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while mitigation measures for cultural resources is carried out.
 - E. If significant materials are recovered, the qualified professional shall prepare a report on the findings for submittal to the Northwest Information Center.
- 38. Human Remains (Ongoing throughout demolition, grading, and/or construction).** In the event that human skeletal remains are uncovered at the project site during ground-disturbing activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to Section 15064.5 (e)(1) of the CEQA Guidelines. If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.
- 39. Paleontological Resources (Ongoing throughout demolition, grading, and/or construction).** In the event of an unanticipated discovery of a paleontological resource during construction, excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified paleontologist (per Society of Vertebrate Paleontology standards [SVP 1995,1996]). The qualified paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find. The paleontologist

shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the project on the qualities that make the resource important, and such plan shall be implemented. The plan shall be submitted to the City for review and approval.

40. 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 12:00 PM on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.
41. 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.

42. 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 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 private or public projects that create and/or replace 10,000 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).
- H. All on-site storm drain inlets must be labeled "No Dumping – Drains to Bay" or equivalent using methods approved by the City.
- I. 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.
- J. 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.
- K. Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry to the storm drain system. If any cleaning agent or degreaser is used, wash water shall

not discharge to the storm drains; wash waters should be collected and discharged to the sanitary sewer. Discharges to the sanitary sewer are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.

- L. 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.

- 43. 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.
- 44. 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.
- 45. 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.
- 46. 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.

47. 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.
48. 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.
49. 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.
50. Public Works. The applicant shall inform the contractor of the potential for high groundwater and that a temporary de-watering method during construction may become necessary. Temporary construction dewatering methods may include sumps and pumps placed in a low spot within the excavations. Several sumps and pumps may be required depending on the magnitude of water encountered. The design and implementation of temporary construction de-watering is considered the responsibility of the contractor. Caution should be exercised to prevent softening of the subgrade soils exposed within the excavations. Equipment operated upon saturated subgrade soils tends to cause rutting and weakening, which will require over-excavation of the weakened subgrade. Standing water within the excavation can also cause weakening of the subgrade soils. A temporary mud slab or gravel pad may be needed at the base of the garage and/or parking lifts excavations to provide a clean, dry working area.

Prior to Final Inspection or Issuance of Occupancy Permit:

51. Access Agreement. Subject to review and approval by the Zoning Officer, an access agreement shall be recorded with the title of the properties with the County and a copy shall be provided to the planner that provides for the following:
 - Parking access for dwelling units in Edelweiss and Daffodil on 1155-63 Hearst (current APN 057-2086-014-00); and
 - Cross access for all units for all common Useable Open Space Areas on both parcels (current APNs 057-2086-014-00 and 057-2086-0130-00).
52. Regulatory Agreement for Ownership Units. Prior to the issuance of a certificate of occupancy, the applicant shall enter into an inclusionary housing agreement providing for compliance with the requirements of Berkeley Municipal Code (BMC) Chapter 23C.12. The inclusionary housing agreement shall include, but not be limited to, the following conditions:
 - A. Sales prices of inclusionary units. If inclusionary housing units (i.e. condominiums) are provided on site, the sales price shall not exceed three (3) times eighty percent (80%) of the Area Median Income (hereinafter referred to as "AMI") as of the date of the sale the unit. Allowable sale prices shall be determined in accordance with BMC 23C.12.090.

B. In-Lieu Fee. Instead of providing the 1.2 inclusionary (i.e. 2 ownership) units on site, the applicant may pay an in-lieu fee for any or all portion of the 1.2 required inclusionary units in accordance with BMC Section 23C.12.035 and 23C.12.040.E.1.

53. Determination of Area Median Income (AMI).

The “AMI” (Area Median Income) shall be based on the income standards for the Oakland Primary Metropolitan Statistical Area reported by the United States Department of Housing and Urban Development (HUD). In the event HUD discontinues establishing such income standards, AMI shall be based on income standards determined by the California State Department of Housing and Community Development (HCD). If such income standards are no longer in existence, the City will designate another appropriate source or method for determining the median household income.

The applicable AMI for the purpose of determining the allowable rent or sale price for each unit (but not for the purpose of determining eligibility for occupancy of a BMR unit) shall be determined in accordance with the following table:

Unit Size	AMI Standard
Studio unit	AMI for a one person household
One-bedroom unit	AMI for a two person household
Two-bedroom unit	AMI for a three person household
Three-bedroom unit	AMI for a four person household

54. Nothing in these conditions shall be interpreted to prohibit, or to require modification of the Use Permit or Regulatory Agreement to allow, the provision of additional BMR units, or additional affordability, than are required in the foregoing provisions.

55. 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.

56. 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 June 8, 2018, except as modified by conditions of approval, including:

- The north facing window of the northeast bedroom in **Geranium** be a minimum of 68 inches from finished floor level to ensure privacy between residents of the two opposing units.
- The roof deck on **Geranium** shall be moved to the east side of the roof and the roof access shall not include any windows and shall be reduced in massing (i.e. sloped) to limit impacts to the western neighbors.
- All west facing windows on **Freesia** and **Geranium** shall, subject to review and approval by the Zoning Officer, be redesigned to ensure privacy for the residents of the building to the west. This may include, but is not limited to, frosted glass and/or clerestory design.
- A maximum of three full bathrooms are permitted in the two **Freesia** dwelling units.

57. 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:

58. Rent Control in Perpetuity. The existing six dwelling units shall not undergo condominium conversion and shall remain as rental units subject to rent control under the Rent Stabilization Ordinance.
 59. 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.
 60. 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.
 61. Electrical Meter. Only one electrical meter fixture may be installed per dwelling unit.
 62. Parking to be Leased or Sold Separately. The seven existing units are guaranteed one parking space per unit as part of the lease or future sale. For the eleven newly constructed units, parking spaces shall be leased or sold separately.
 63. Bike Parking. Secure and on-site bike parking for a minimum of 19 bicycles shall be provided for the life of the building.
 64. Geranium and Freesia Windows. The north facing window of the northeast bedroom in Geranium shall be a minimum of 68 inches from finished floor level to ensure privacy between residents of the two opposing units. The west facing windows of both Geranium and Freesia shall retain the location and treatment as approved by the Zoning Officer pursuant to Condition of Approval number 54 to ensure privacy for the residents of the dwellings to the west.
-



PROJECT:

**HEARST GARDENS
BERKELEY, CA 94702**

DESCRIPTION:

DEVELOPMENT OF TWO EXISTING LOTS AT HEARST STREET BETWEEN SAN PABLO & CURTIS STREET. THE EXISTING LOTS ARE OVER 21,000 SF, AND CURRENTLY HAVE 7 RESIDENCES ON SITE. ALL OF THESE ARE TO BE MAINTAINED AND RENOVATED. THERE WILL BE 6 HOMES ADDED TO THE SITE. UNITS ARE ARRANGED AROUND A CENTRAL PASEO THAT PROVIDES ACCESS TO ALL UNITS AND AMPLE OPEN SPACE.

SITE ADDRESS:

1155, 1157, 1159, 1161, 1163 & 1173 HEARST AVE.
BERKELEY, CA 94704

ASSESSOR'S PARCEL #:

LOT @ 1173: 057 208601300
LOT @ 1157: 057 208601400



ZONING INFORMATION:

GENERAL PLAN:	MDR
ZONING DISTRICT:	R-2A
FLOOD ZONE:	NO
FIRE ZONE:	1
ENV. MGMT. AREA:	NO
LANDMARK STRUCT. MERIT:	NO
LOT AREA 1173:	8,204 SF
LOT AREA: 1157	13,469 SF
TOTAL:	21,673 SF

APPLICANT:

RHOADES PLANNING GROUP
46 SHATTUCK SQUARE, SUITE 11
BERKELEY, CA 94704
info@rhodesplanninggroup.com

ARCHITECT:

DEVI DUTTA-CHOUDHURY, AIA
DEVI DUTTA ARCHITECTURE INC.
928 CARLETON STREET
BERKELEY, CA 94710
[510] 705-1937
hello@devidutta.com

OWNER:

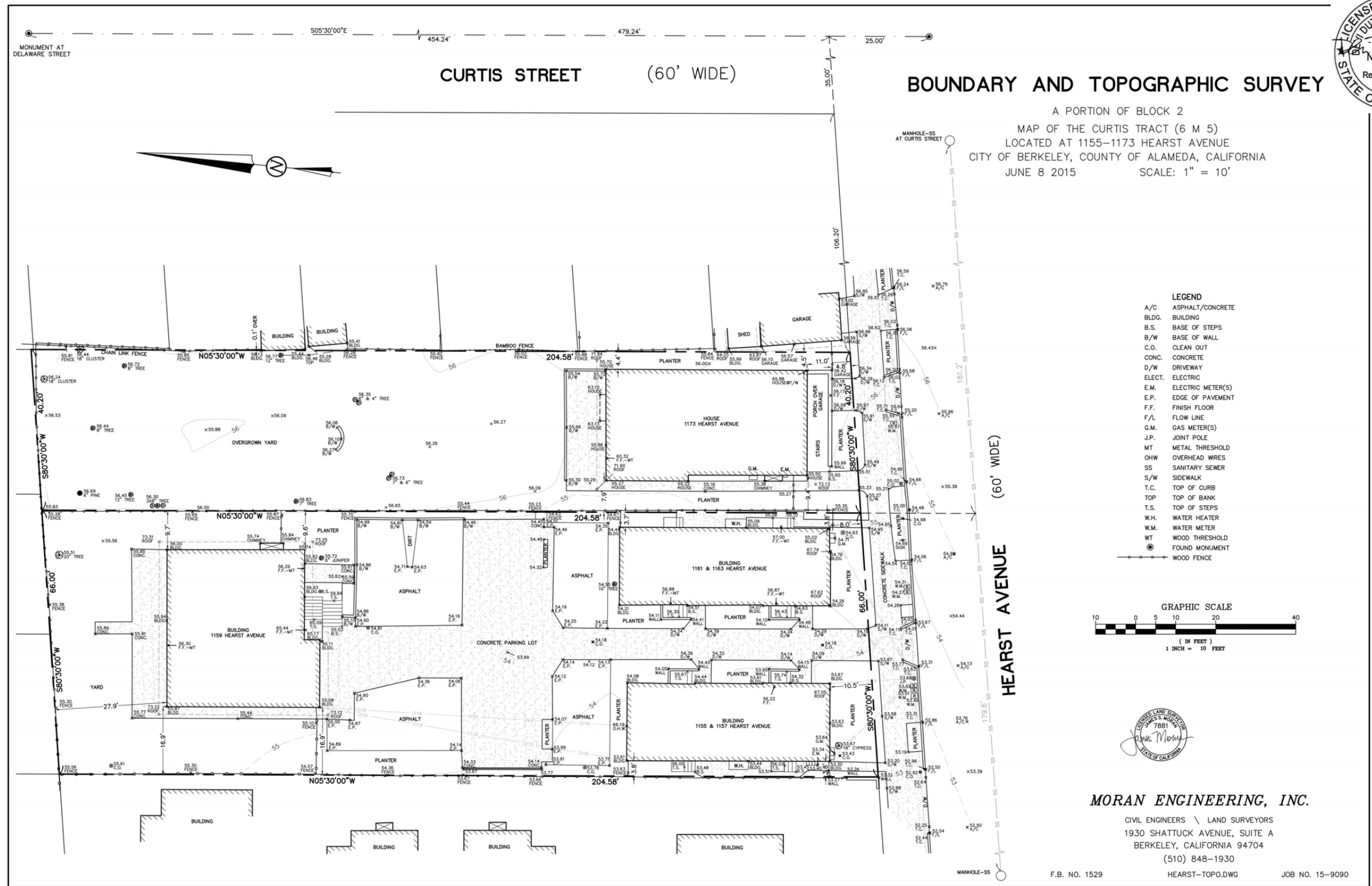
HEARST AVE COTTAGES, LLC
46 SHATTUCK SQUARE, SUITE 11
BERKELEY, CA 94704

SHEET INDEX

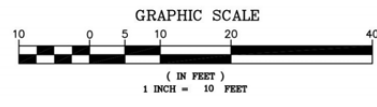
A0.0	COVER SHEET
A0.00	SURVEY
A0.2	PROJECT INFORMATION
A0.3	SITEPLAN, SETBACKS & OPEN SPACE
A0.7	VICINITY MAP
A1.0	EXISTING SITE PLAN
A1.1	EXISTING PLANS & ELEVATIONS
A1.2	EXISTING PLANS & ELEVATIONS
A1.3	EXISTING PLANS & ELEVATIONS
A1.4	LOT COVERAGE & HYDROLOGY
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A1.6	SECOND FLOOR
A1.8	ROOF PLAN
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A2.1	NORTH SITE ELEVATION
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A3.1	SITE SECTIONS LOOKING EAST
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A5.0	RENDERING - HEARST LOOKING WEST
A9.1	BUILDING CODE SUMMARY



- LEGEND**
- A/C ASPHALT/CONCRETE
 - BLDG. BUILDING
 - B.S. BASE OF STEPS
 - B/W BASE OF WALL
 - C.O. CLEAN OUT
 - CONC. CONCRETE
 - D/W DRIVEWAY
 - ELECT. ELECTRIC
 - E.M. ELECTRIC METER(S)
 - E.P. EDGE OF PAVEMENT
 - F.F. FINISH FLOOR
 - F/L FLOW LINE
 - G.M. GAS METER(S)
 - J.P. JOINT POLE
 - MT METAL THRESHOLD
 - OHW OVERHEAD WIRES
 - SS SANITARY SEWER
 - S/W SIDEWALK
 - T.C. TOP OF CURB
 - TOP TOP OF BANK
 - T.S. TOP OF STEPS
 - W.H. WATER HEATER
 - W.M. WATER METER
 - WT WOOD THRESHOLD
 - FOUND MONUMENT
 - WOOD FENCE



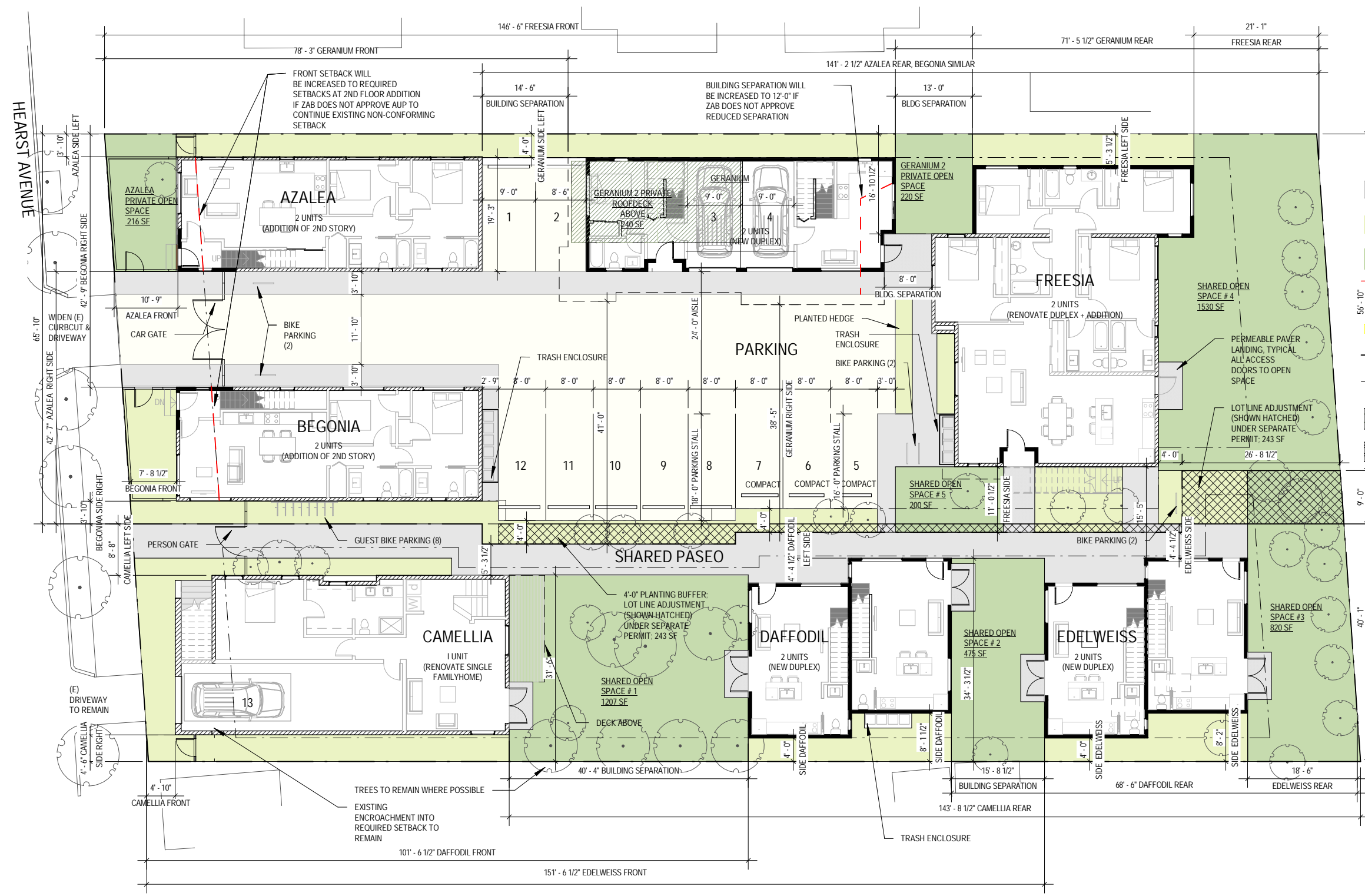
MORAN ENGINEERING, INC.
 CIVIL ENGINEERS \ LAND SURVEYORS
 1930 SHATTUCK AVENUE, SUITE A
 BERKELEY, CALIFORNIA 94704
 (510) 848-1930

F.B. NO. 1529 HEARST-TOPO.DWG JOB NO. 15-9090



HEIGHT & STORIES	ZONING:	EXISTING:	PROPOSED:
STORIES:	2 ALLOWED	2	2
HEIGHT:	28' AVG	23' MAX	28' MAX
SETBACKS (MIN. DIMENSIONS SHOWN - SEE SETBACK DIAGRAM, A0.3)			
FRONT	15'	4'-10" - 10'-5.5"	4' - 9" - 7'-10" ADDITION CONTINUE EXIST. SETBACK
SIDE	4' @ 1ST STORY 4' @ 2ND STORY	3'-10" @ WEST 4'- 6" @ EAST	3'-10" - 5'-3.5"
BACK	15'	28'-8" - 143'-8"	16'-3" - 21'-1"
BUILDING SEPARATION	8' @ 1ST STORY 12' @ 2ND STORY	13'- 3"	A - B: 19' - 4" B - C: 12' - 5" C - D: 40' - 4" D - E: 15' - 8 1/2" E - F: 15' - 5" F - G: 8' - 0" AUP REQ. A - G: 14' - 6"
LOT AREA			
	@ 1173 @ 1157	8,204 SF 13,469 SF	8,204 SF 13,469 SF
LOT COVERAGE			
	2 - STORY: 40%	@ 1173: 17.5% @1157: 26%	@ 1173: 3,275 SF: 39.9% @ 1157: 5,170 SF: 38.9%
PARKING: CARS			
RESIDENTIAL	1/UNIT 13 REQUIRED	7 (1 COVERED @ CAMELLIA; 6 @ SURFACE LOT)	13 10 UNCOVERED @ SURFACE LOT 2 COVERED @ GERANIUM 1 COVERED @ CAMELLIA
PARKING: BIKE			
RESIDENTIAL	NONE REQUIRED	0	13

DENSITY:	ZONING:	EXISTING:	PROPOSED:
* NOTE: SEE SHEET A0.8 FOR UNIT MIX AND SIZES			
ALLOWED 1173 HEARST: 1157 HEARST:	1 / 1650 SF LOT AREA 8,204/1650 = 5 UNITS 13,469/1650 = 8 UNITS	1 UNIT 6 UNITS	4 NEW UNITS = 5 TOTAL 2 NEW UNITS = 8 TOTAL
OPEN SPACE (SEE OPEN SPACE DIAGRAM, A0.3)			
	300 SF / UNIT X 13 = 3900 SF @ 1173: 5 X 300 = 1500 SF @ 1157: 8 X 300 = 2400 SF	@ 1173: 5,599 SF @ 1157: 2,560 SF	SEE A0.3
BUILDING OCCUPANCY PER CBC.			
R-3 (SINGLE FAMILY RESIDENTIAL DUPLEXES)			
PROPOSED CONSTRUCTION TYPE			
TYPE VB CONSTRUCTION THROUGHOUT - WOOD FRAMING, NON-RATED PER CALIFORNIA RESIDENTIAL CODE			
EXCAVATION			
APPROXIMATELY 55 CUBIC YARDS, FOR NEW FOUNDATIONS ONLY.			

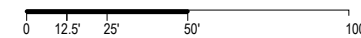
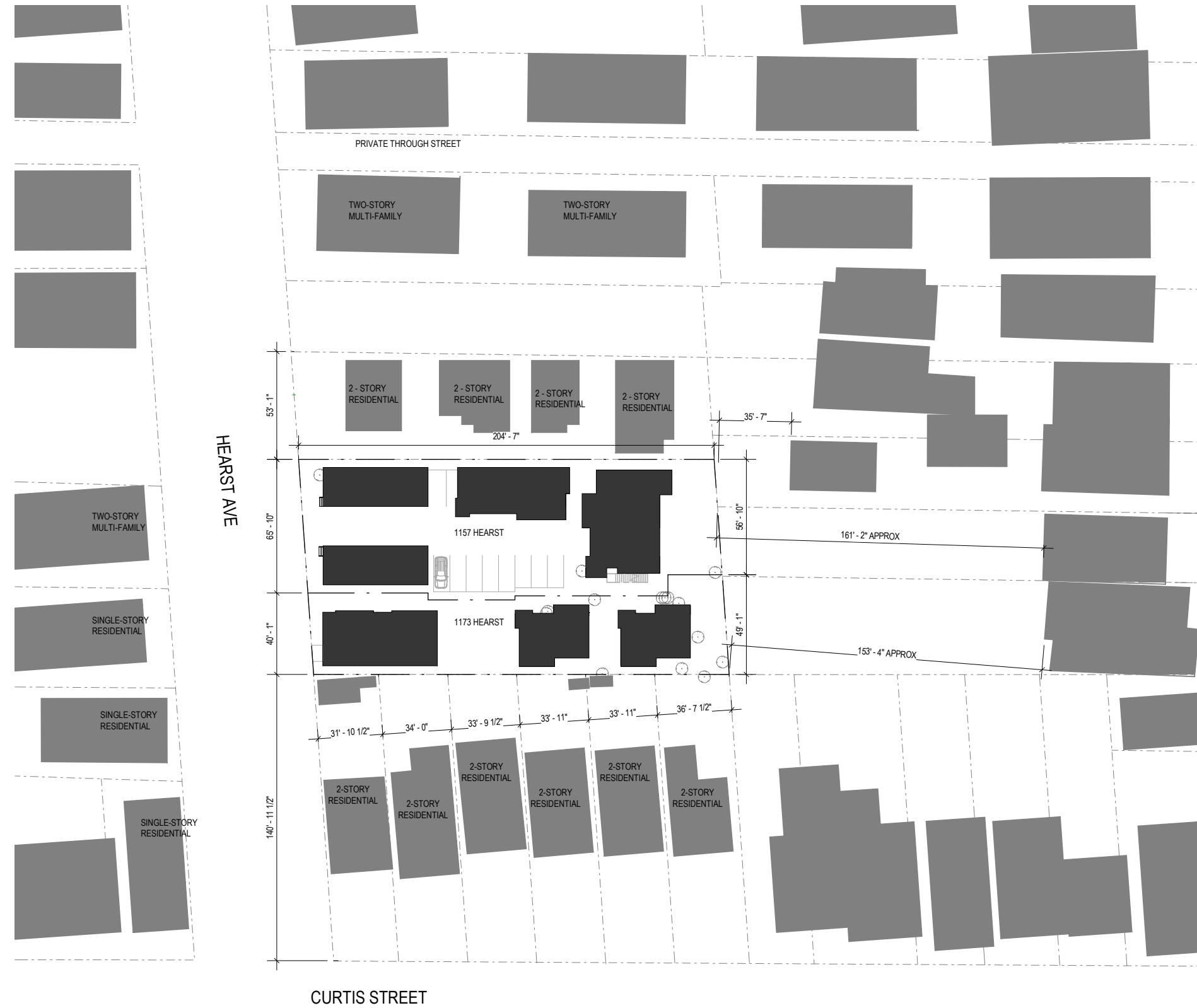


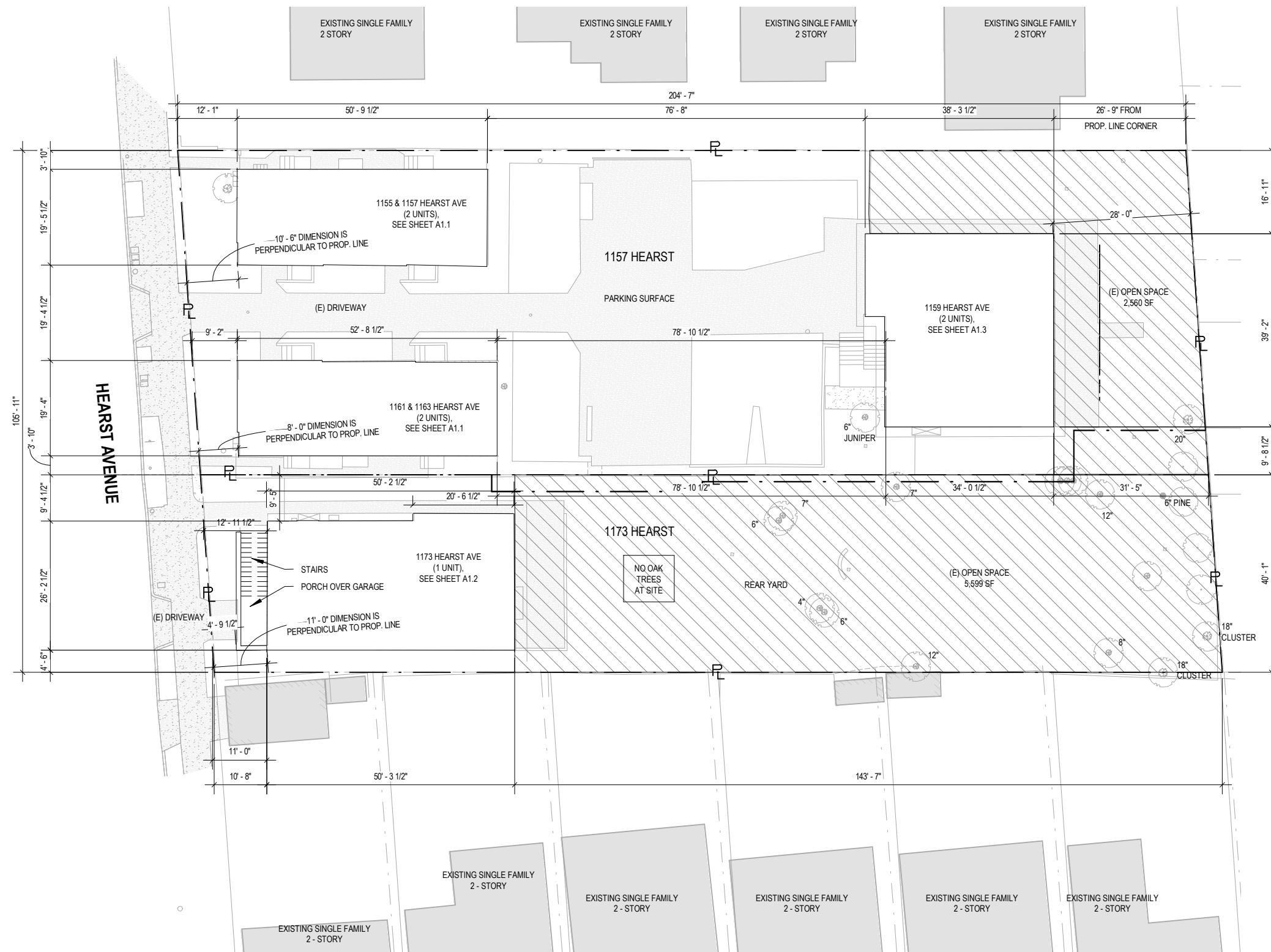
- LEGEND**
- PEDESTRIAN WALKWAY, PERMEABLE
 - PLANTING (NOT COUNTING TOWARDS OPEN SPACE)
 - OPEN SPACE
 - NON-CONFORMING SETBACKS & BUILDING SEPARATION
 - DRIVEWAY AND PARKING
 - PROPERTY LINE
 - REQUIRED SETBACK
 - OPEN SPACE ABOVE
 - LOT AREA CHANGE

PROVIDED OPEN SPACE

- 1157 HEARST**
- AZALEA 1: 216 SF PRIVATE OPEN SPACE
84 SF COMMON OPEN SPACE PROVIDED AT OPEN SPACE #4 & #5
 - AZALEA 2: 300 SF COMMON AT #4 & #5
 - BEGONIA 1: 300 SF COMMON AT #4 & #5
 - BEGONIA 2: 300 SF COMMON AT #4 & #5
 - FRESIA 1: 300 SF COMMON AT #4 & #5
 - FRESIA 2: 300 SF COMMON AT #4 & #5
 - GERANIUM 1: 240 SF PRIVATE
60 SF COMMON OPEN SPACE PROVIDED AT OPEN SPACE #4 & #5
 - GERANIUM 2: 220 SF PRIVATE
80 SF COMMON OPEN SPACE PROVIDED AT OPEN SPACE #4 & #5
- 1173 HEARST**
- CAMELLIA: 300 SF COMMON AT OPEN SPACE #1, #2 & #3
 - DAFFODIL 1: 300 SF COMMON AT #1, #2 & #3
 - DAFFODIL 2: 300 SF COMMON AT #1, #2 & #3
 - EDELWEISS 1: 300 SF COMMON AT #1, #2 & #3
 - EDELWEISS 2: 300 SF COMMON AT #1, #2 & #3

TOTAL PRIVATE O.S.	1157	1173
TOTAL COMMON O.S.	679	0
TOTAL OPEN SPACE PROVIDED	1730	2502
TOTAL OPEN SPACE REQUIRED	2409 SF	2502 SF
TOTAL OPEN SPACE PROVIDED	2409 SF	2502 SF
TOTAL OPEN SPACE REQUIRED	2400 SF	1500 SF





BACKYARD OF 1159 HEARST AVE.



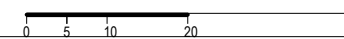
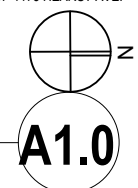
BACKYARD OF 1173 HEARST AVE.

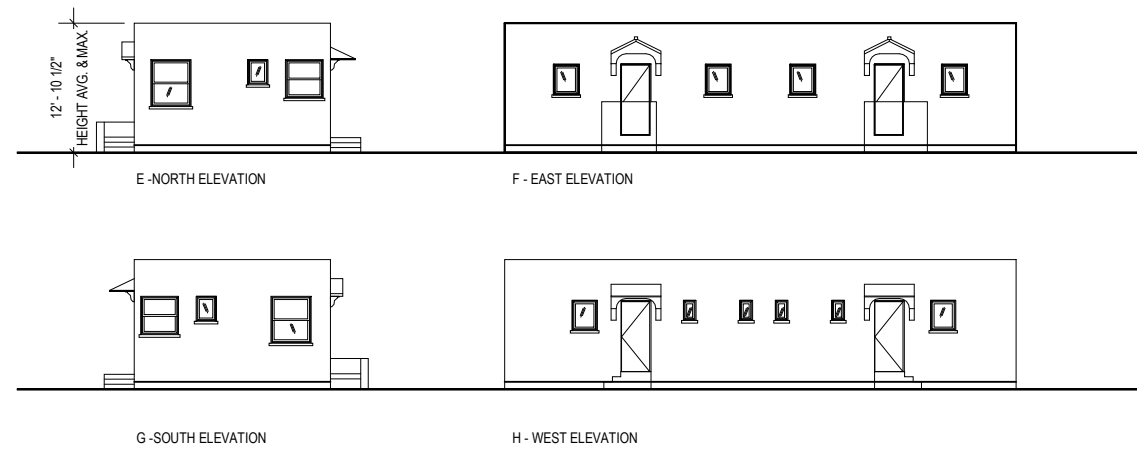
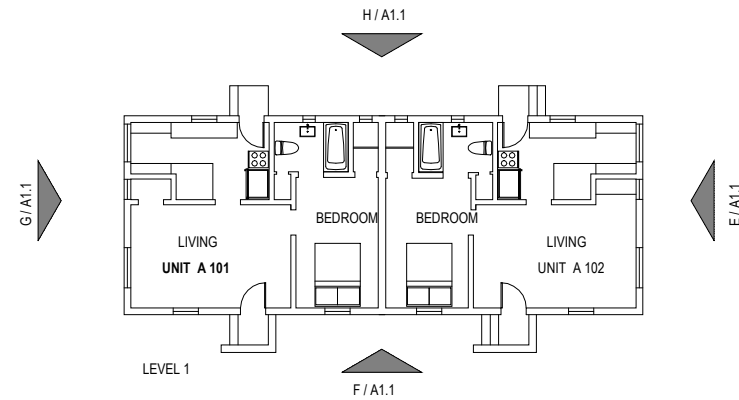


BACKYARD OF 1173 HEARST AVE.

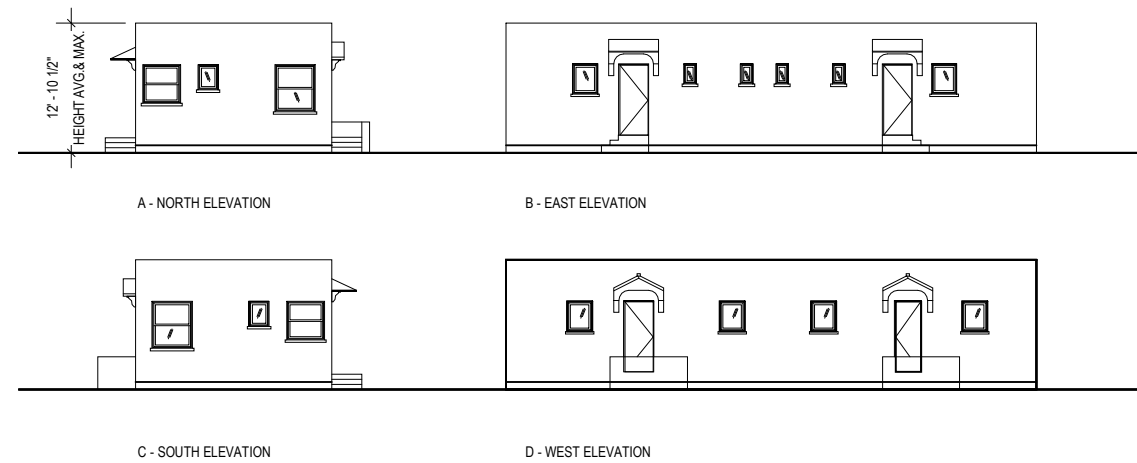
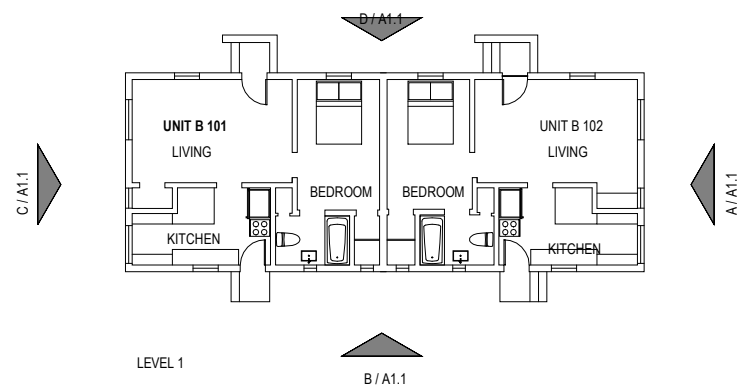


BACKYARD OF 1173 HEARST AVE.

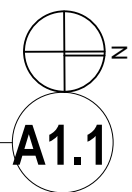
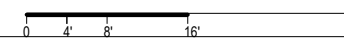


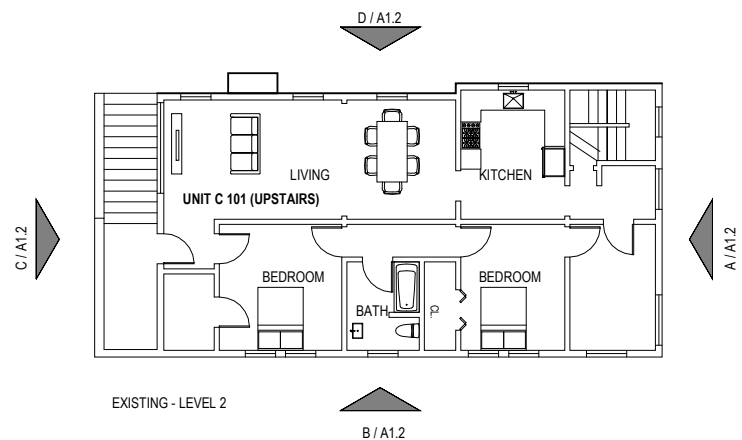


2 AZALEA 1155 & 1157 HEARST
1/16" = 1'-0"

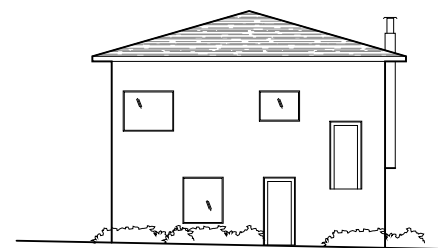


1 BEGONIA 1161 & 1163 HEARST
1/16" = 1'-0"

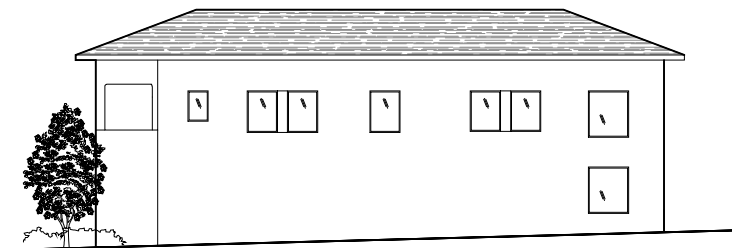




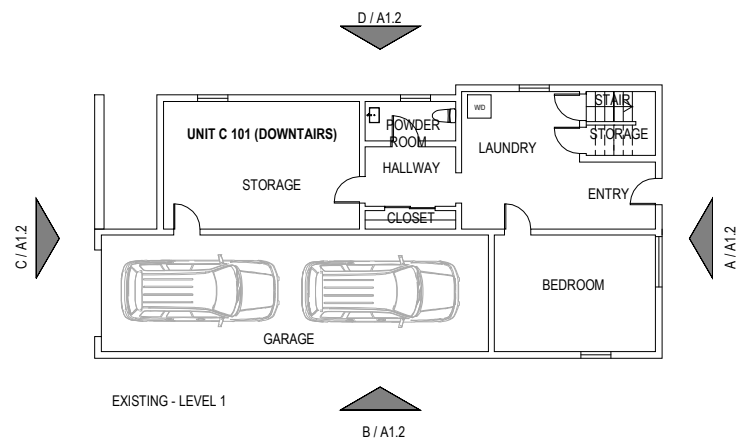
EXISTING - LEVEL 2



A - EXISTING NORTH ELEVATION



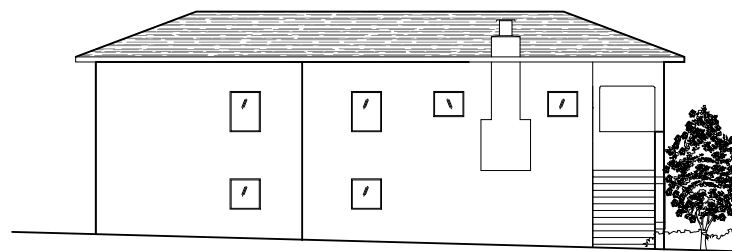
B - EXISTING EAST ELEVATION



EXISTING - LEVEL 1

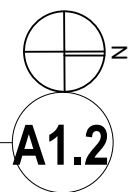
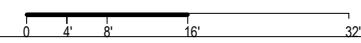


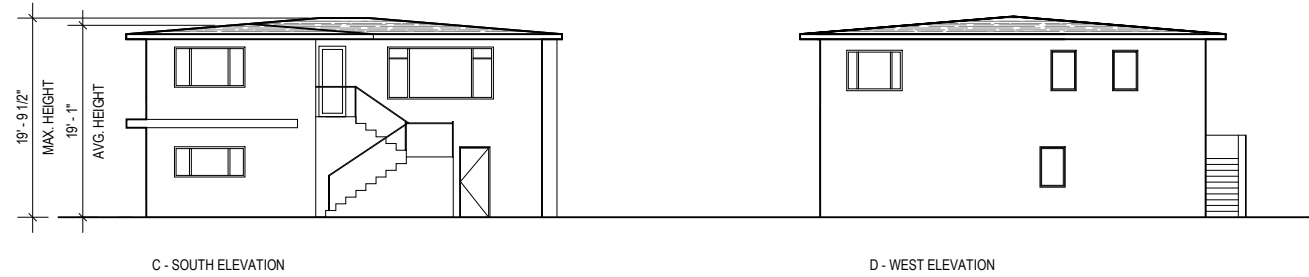
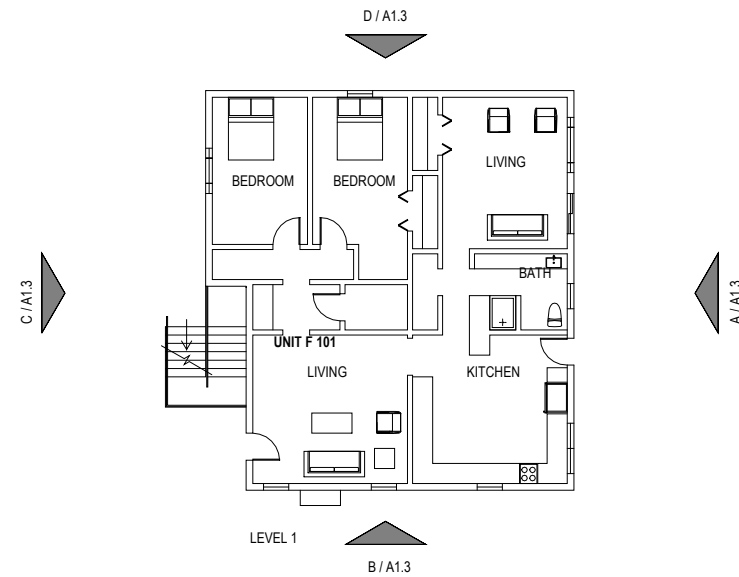
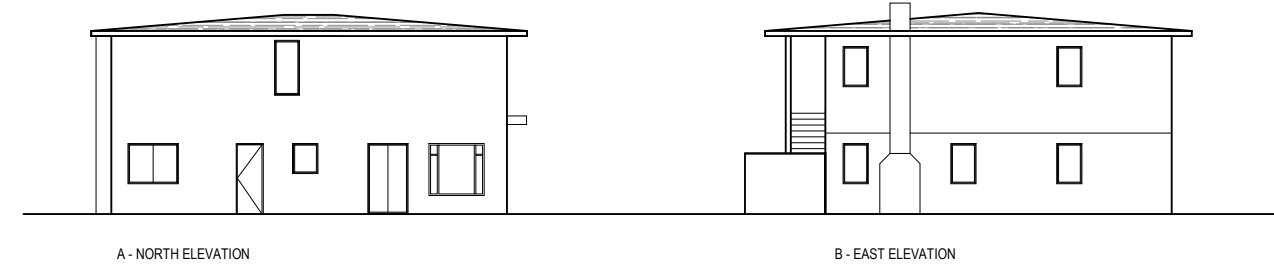
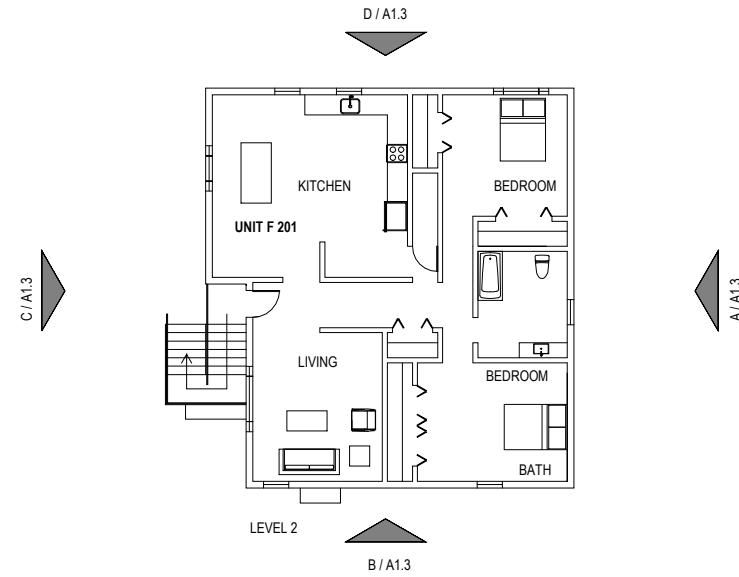
C - EXISTING SOUTH ELEVATION



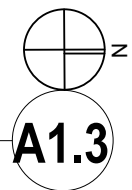
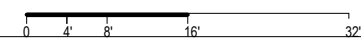
D - EXISTING WEST ELEVATION

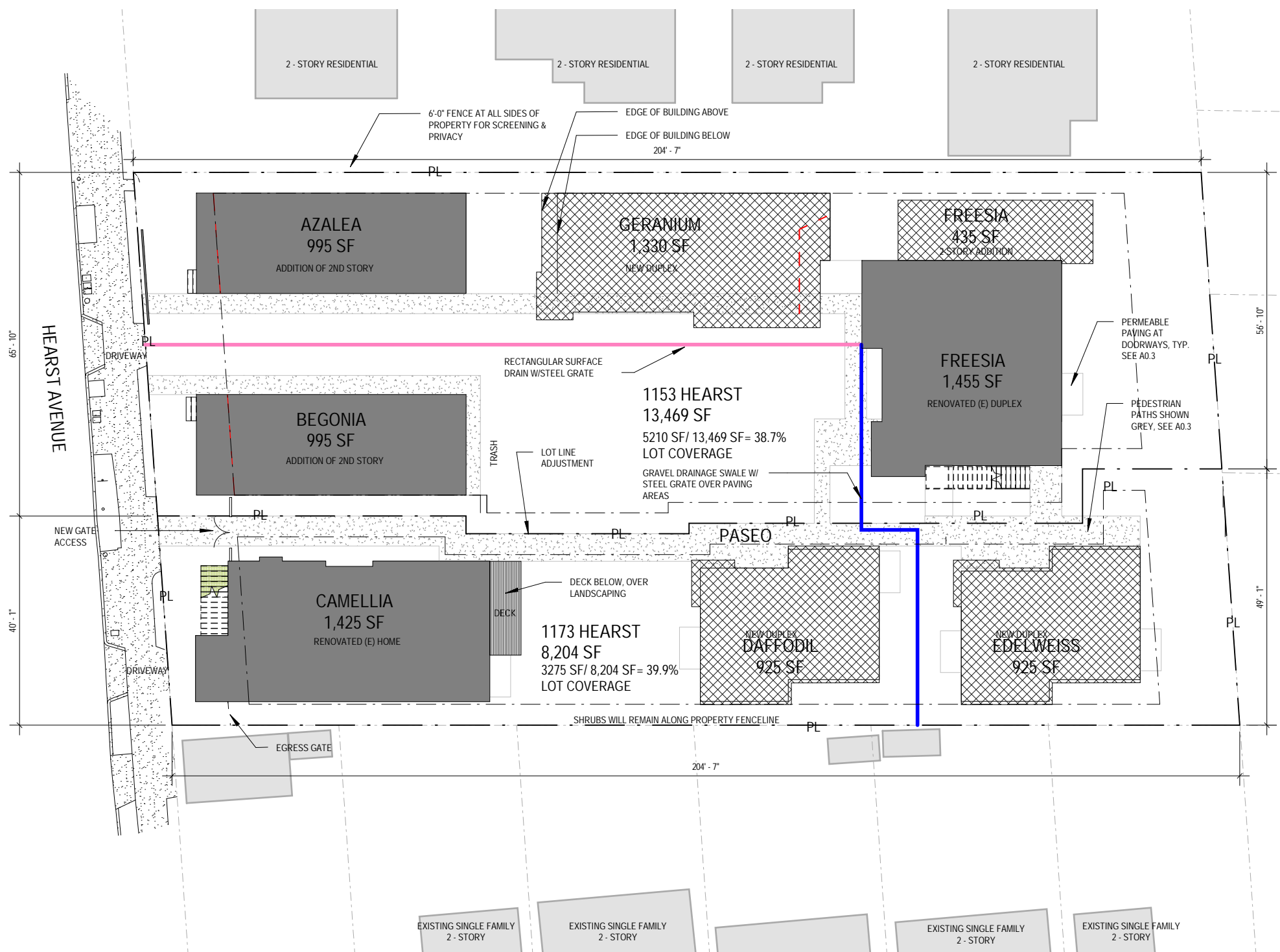
1 EXISTING PLANS & ELEVATIONS - CAMELIA / 1173
HEARST
1/16" = 1'-0"





1 EXISTING PLANS & ELEVATIONS - FREESIA / 1179
HEARST
1/16" = 1'-0"

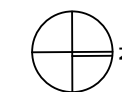
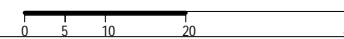


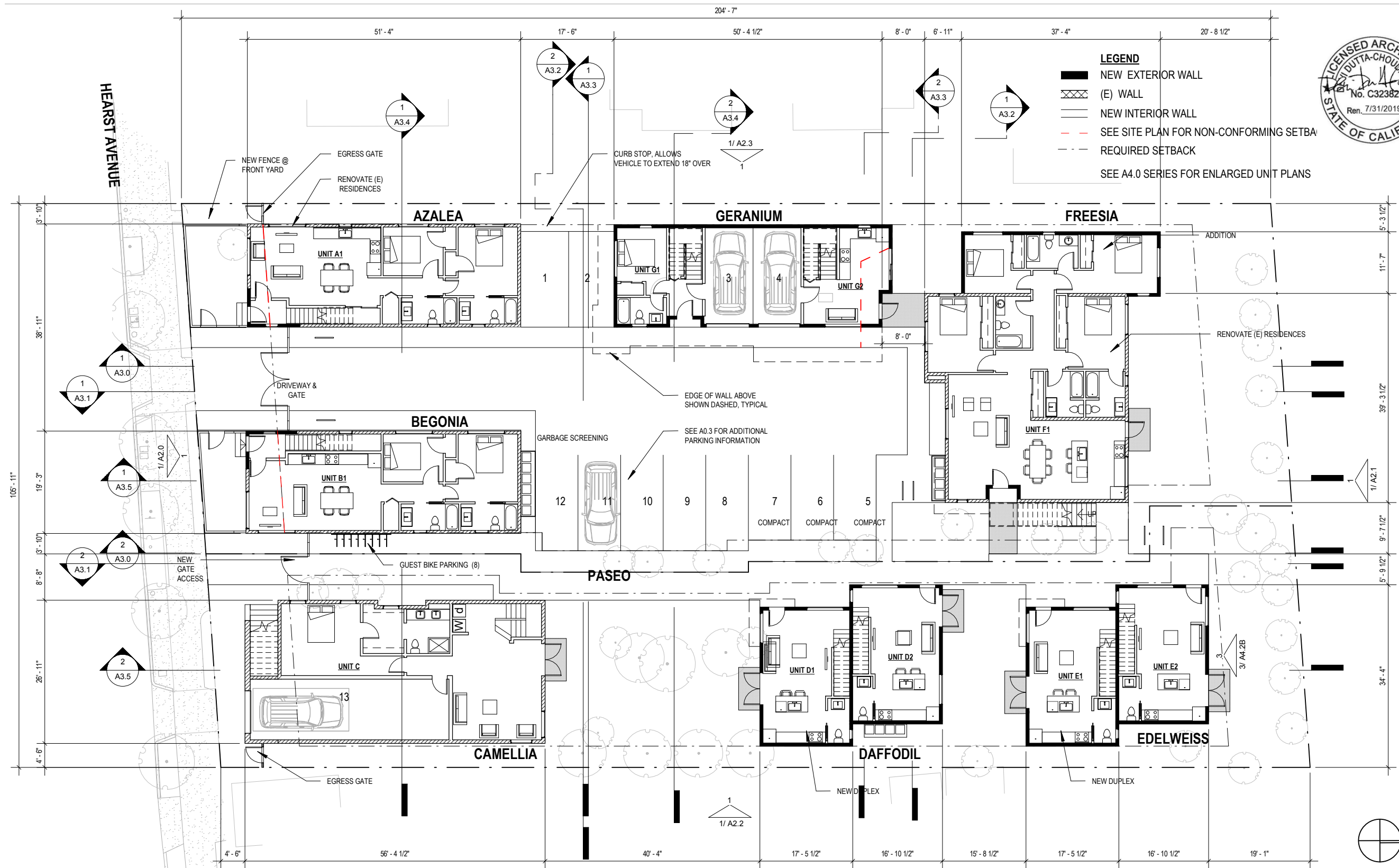


- LEGEND**
- NEW BUILDING AREA
 - RENOVATED (E) BUILDING
 - PEDESTRIAN PATHS
 - NON-CONFORMING SETBACKS & BUILDING SEPARATION
 - PROPERTY LINE
 - REQUIRED SETBACK

HYDROLOGY NOTES

Unless modified by the City's Building & Safety Division and/or Department of Public Works, the drainage system shall be designed and installed as presented in the Stormwater and Flooding Assessment and Mitigation Design prepared by Clearwater Hydrology, dated January 7, 2016 and as well as all recommendations of the peer review prepared by Balance Hydrologics on March 16, 2017.



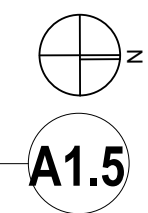


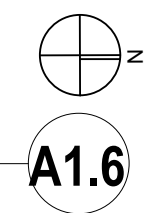
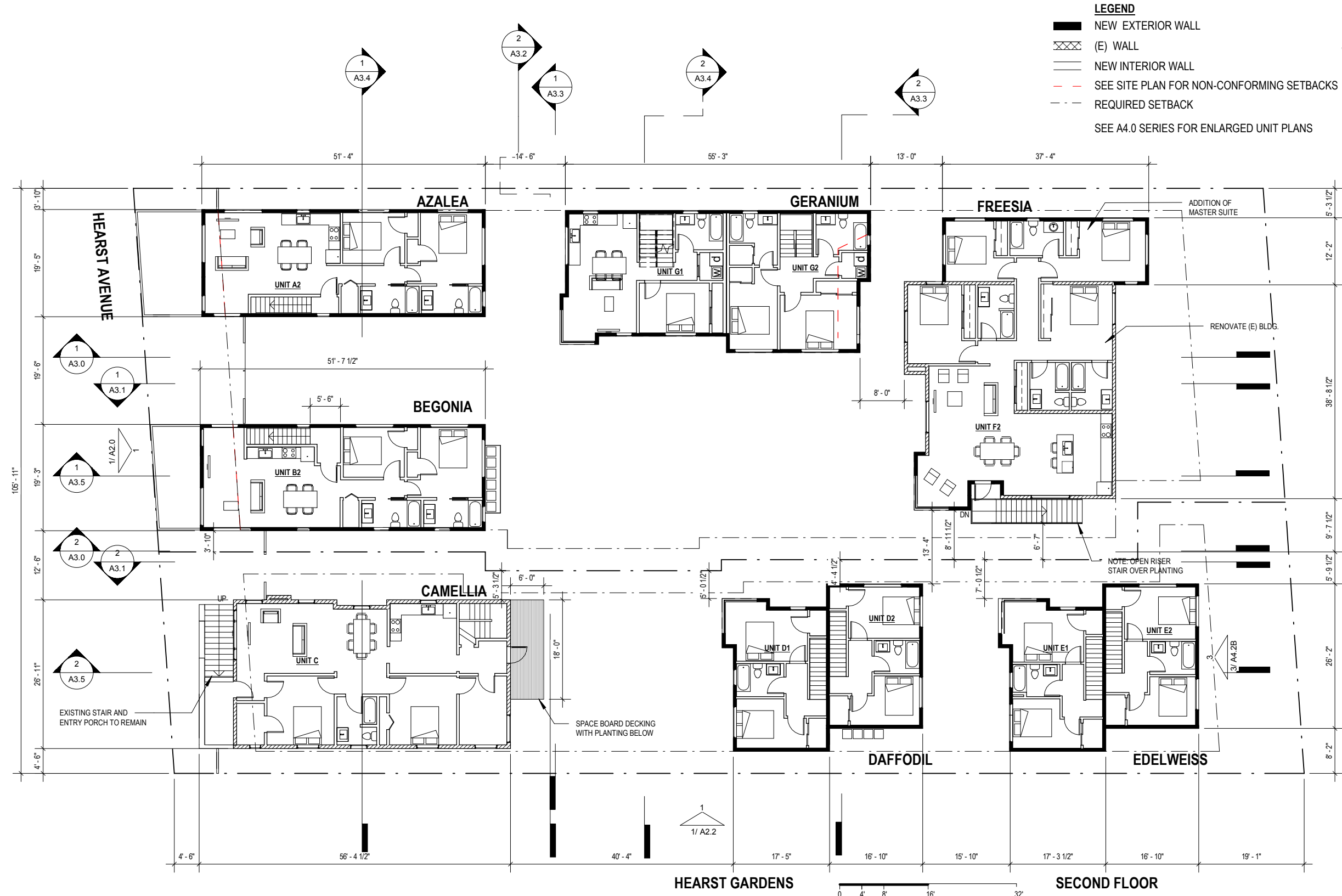
LEGEND
■ NEW EXTERIOR WALL
▨ (E) WALL
— NEW INTERIOR WALL
- - - SEE SITE PLAN FOR NON-CONFORMING SETBA
- - - REQUIRED SETBACK
SEE A4.0 SERIES FOR ENLARGED UNIT PLANS

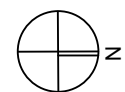
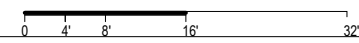
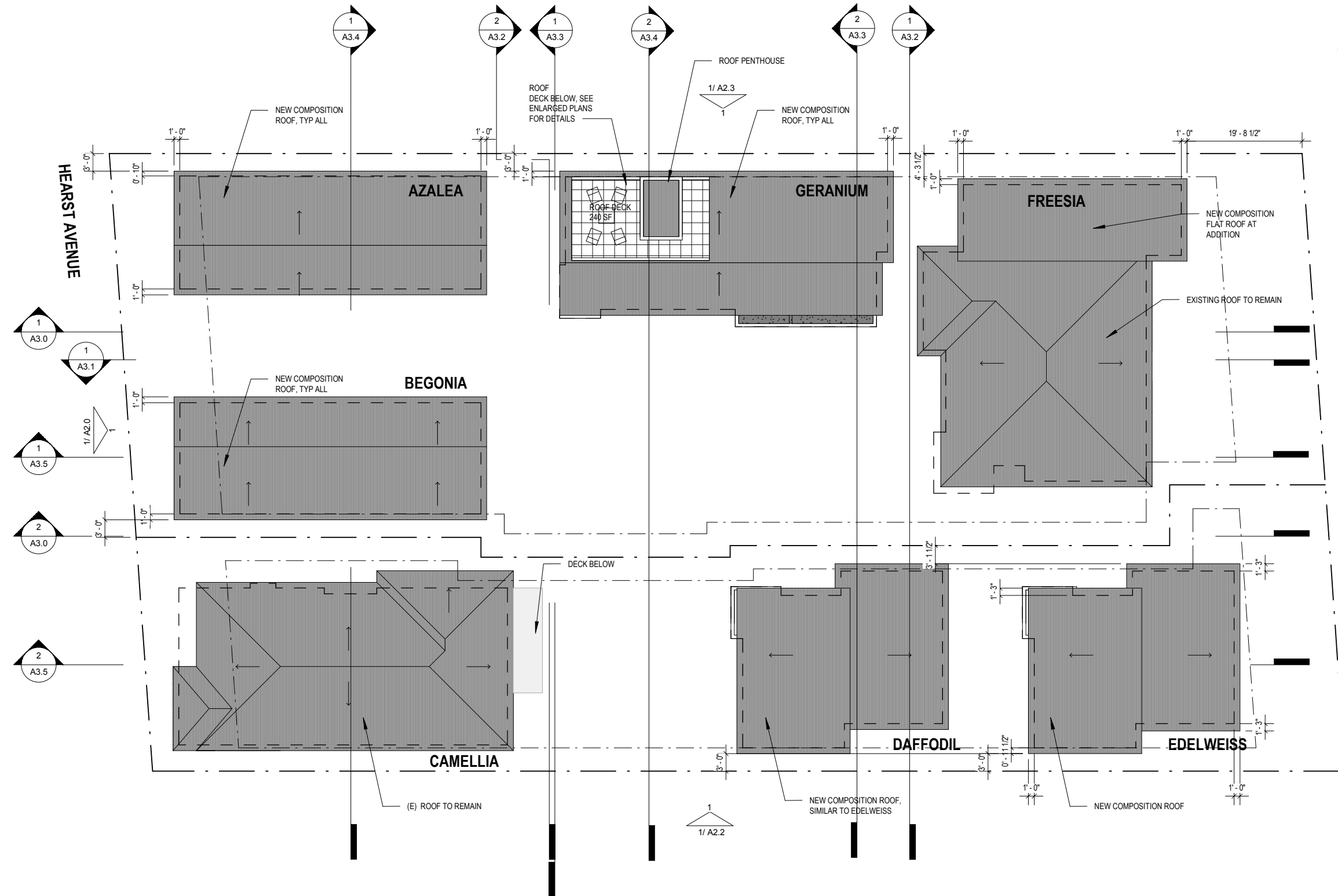
HEARST GARDENS
DEVI DUTTA ARCHITECTURE

GROUND FLOOR
SCALE: 1/16" = 1'-0"

ZAB 6.8.2018



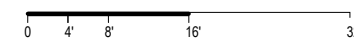
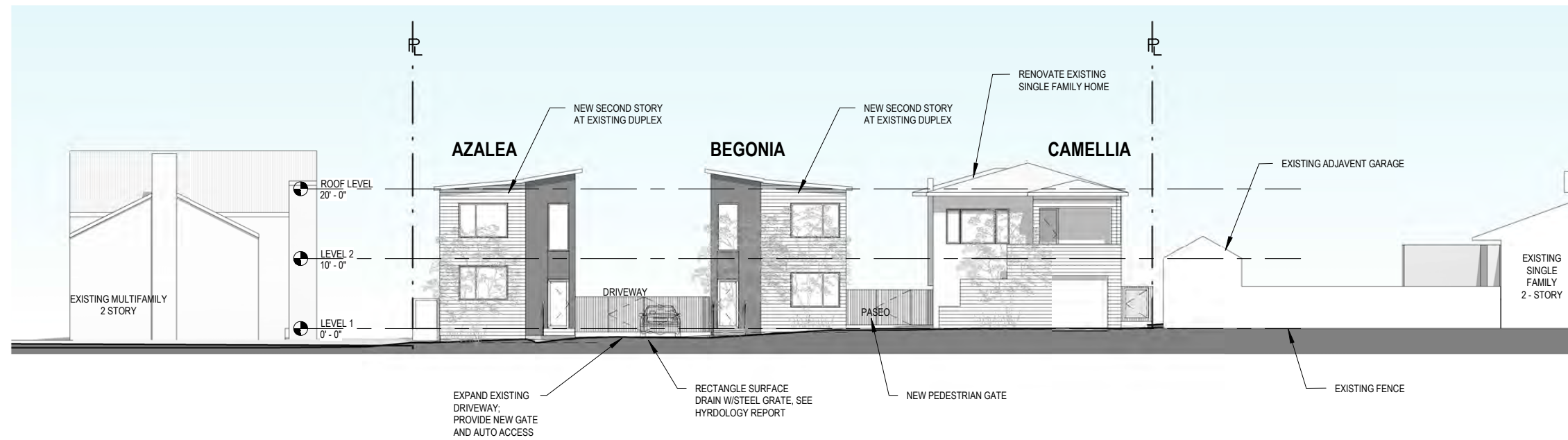






- MATERIAL LEGEND**
- PAINTED WOOD SIDING
 - WOOD PATTERNED FIBER CEMENT
 - CEMENT PLASTER
 - CEMENT PLASTER

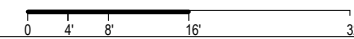
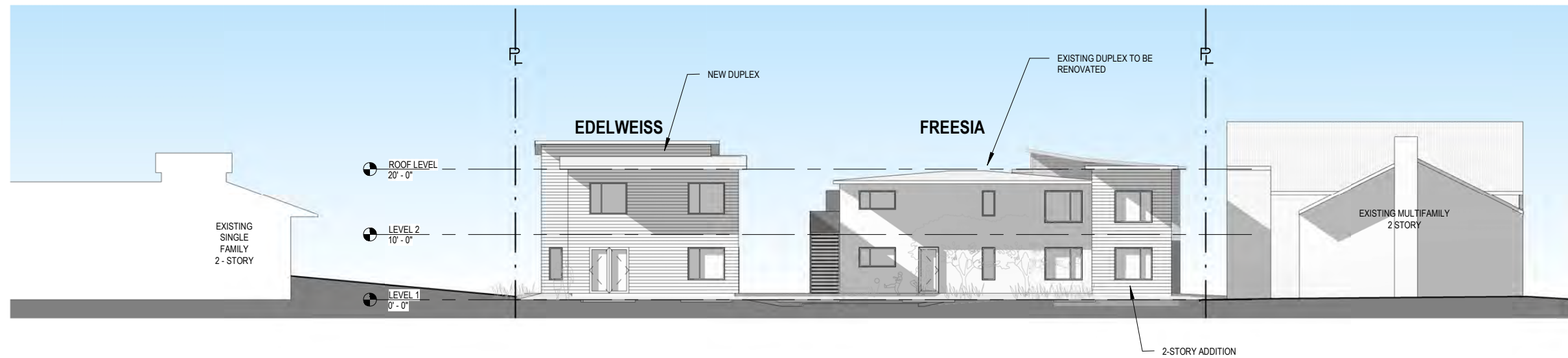
SEE A4.0 SERIES FOR ENLARGED ELEVATIONS





- MATERIAL LEGEND**
- PAINTED WOOD SIDING
 - WOOD PATTERNED FIBER CEMENT
 - CEMENT PLASTER
 - CEMENT PLASTER

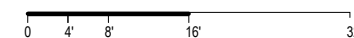
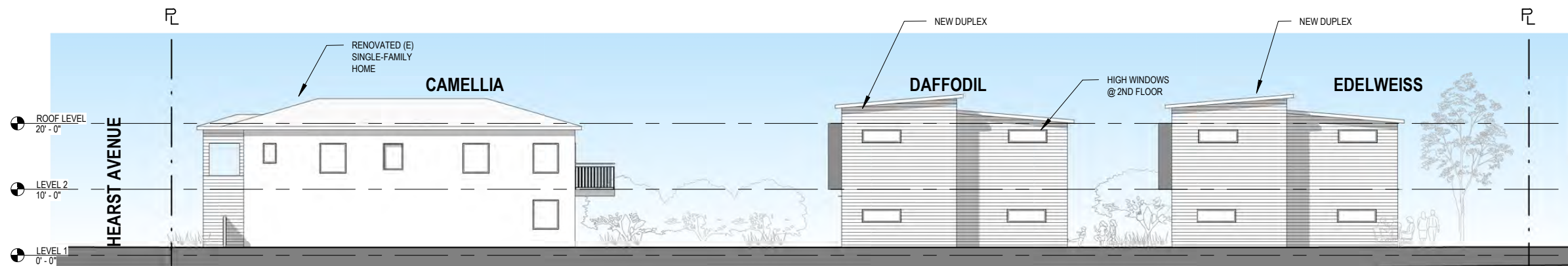
SEE A4.0 SERIES FOR ENLARGED ELEVATIONS





- MATERIAL LEGEND**
- PAINTED WOOD SIDING
 - WOOD PATTERNED FIBER CEMENT
 - CEMENT PLASTER
 - CEMENT PLASTER

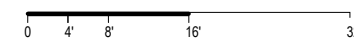
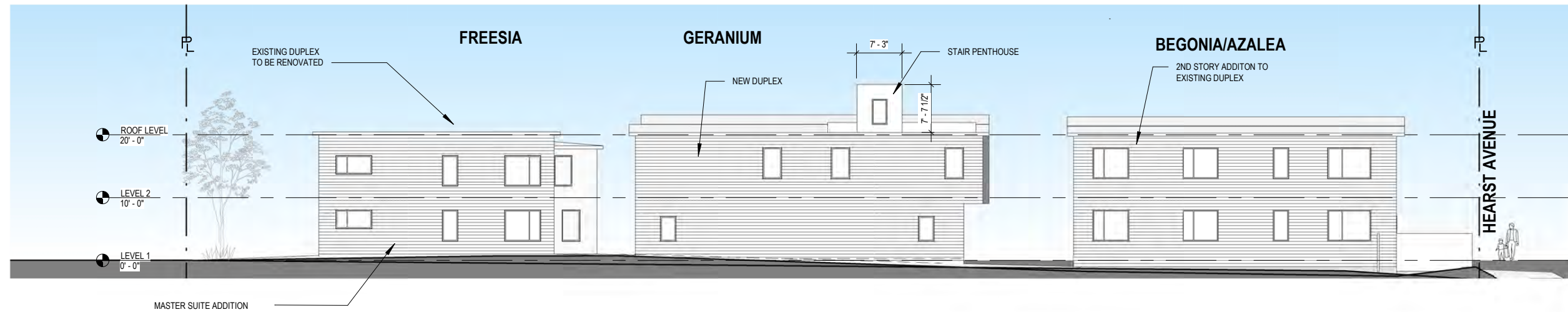
SEE A4.0 SERIES FOR ENLARGED ELEVATIONS

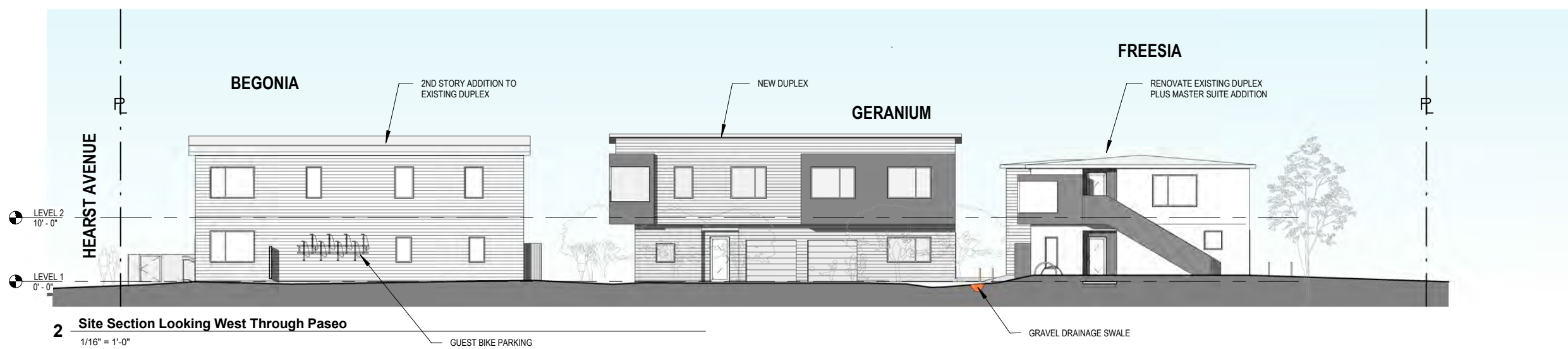
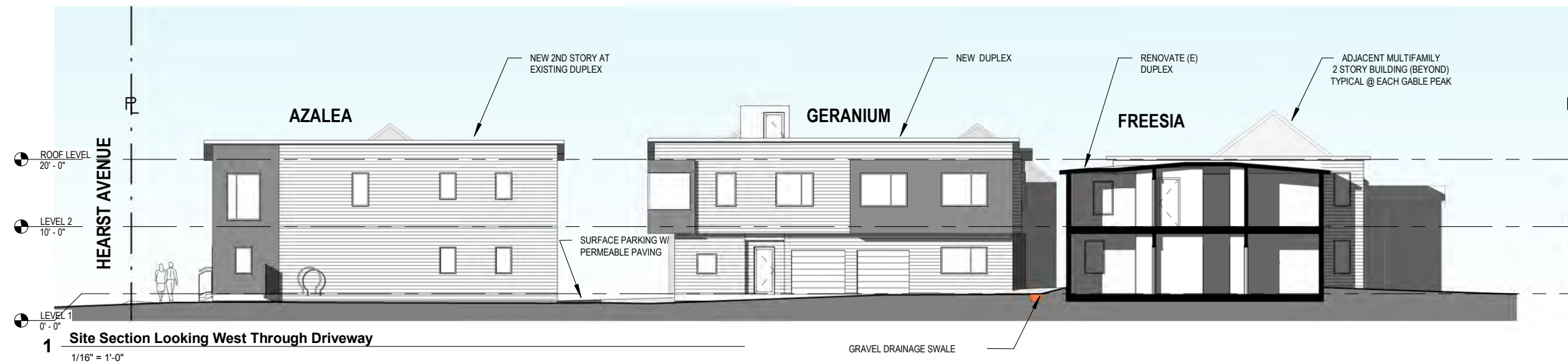




- MATERIAL LEGEND**
- PAINTED WOOD SIDING
 - WOOD PATTERNED FIBER CEMENT
 - CEMENT PLASTER
 - CEMENT PLASTER

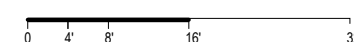
SEE A4.0 SERIES FOR ENLARGED ELEVATIONS





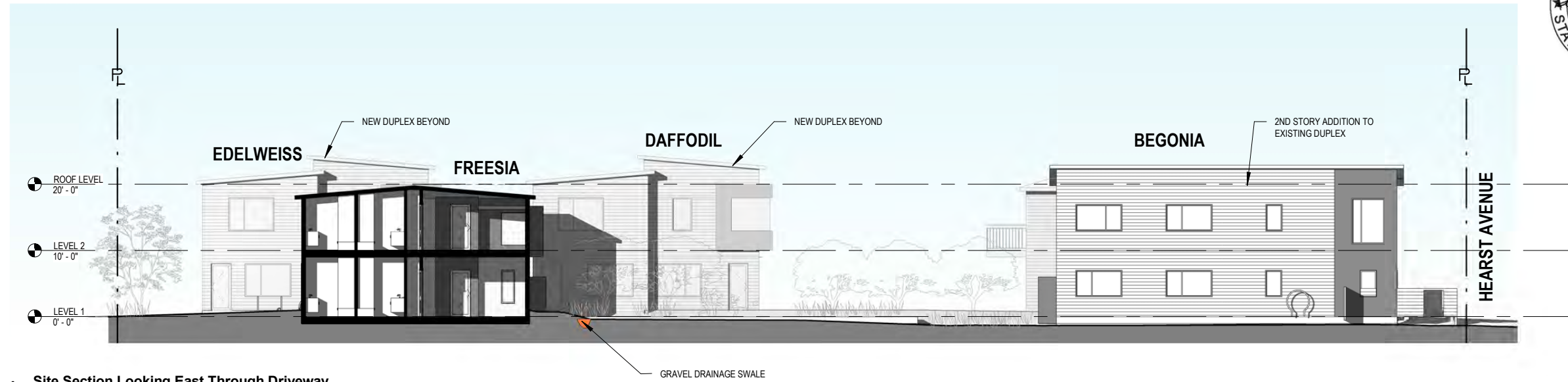
HEARST GARDENS

DEVI DUTTA ARCHITECTURE

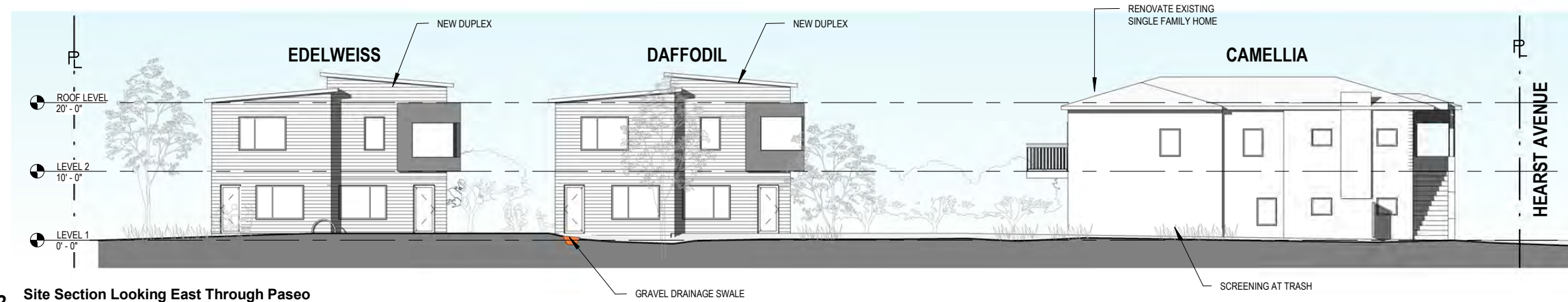


SITE SECTIONS LOOKING WEST

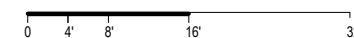
SCALE: 1/16" = 1'-0"

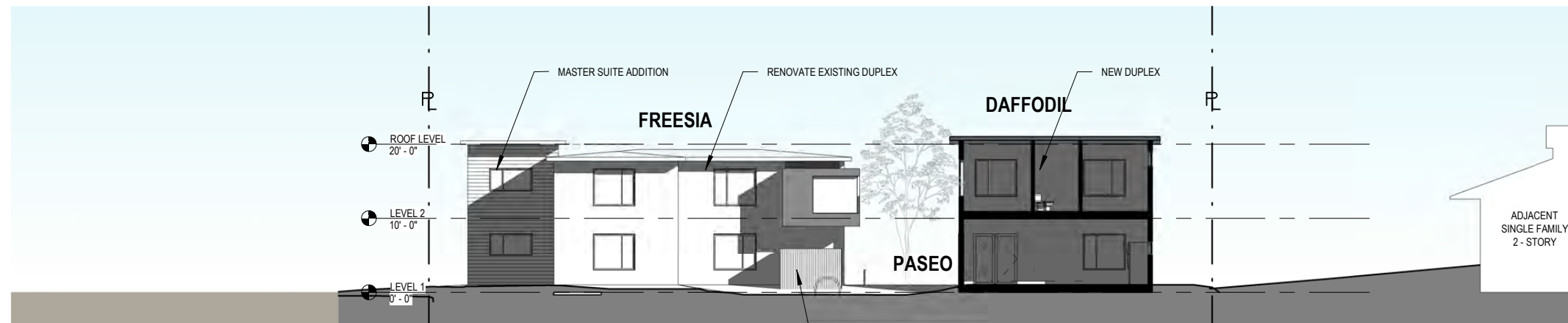


1 Site Section Looking East Through Driveway
1/16" = 1'-0"



2 Site Section Looking East Through Paseo
1/16" = 1'-0"

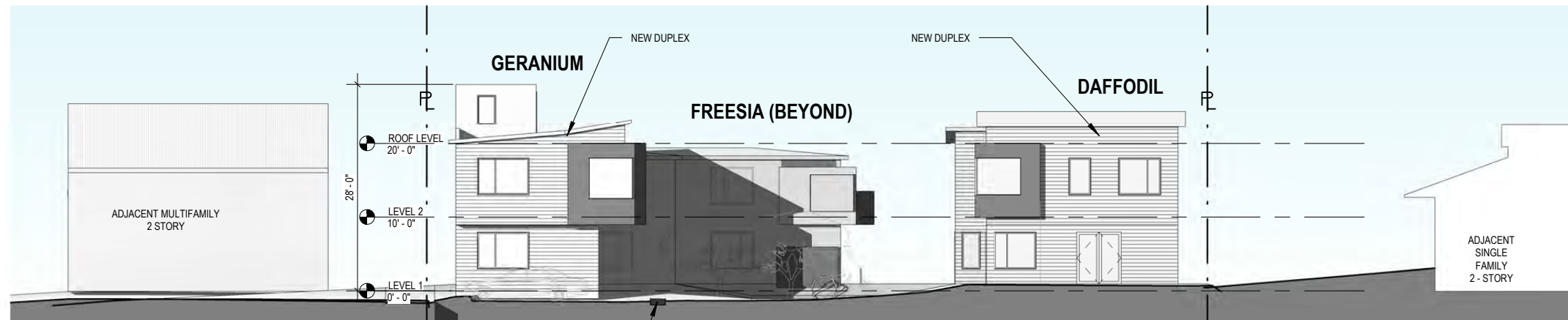




1 Site Section Looking North @ Freesia Building

1/16" = 1'-0"

TRASH ENCLOSURE

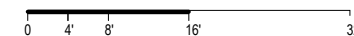


2 Site Section Looking North

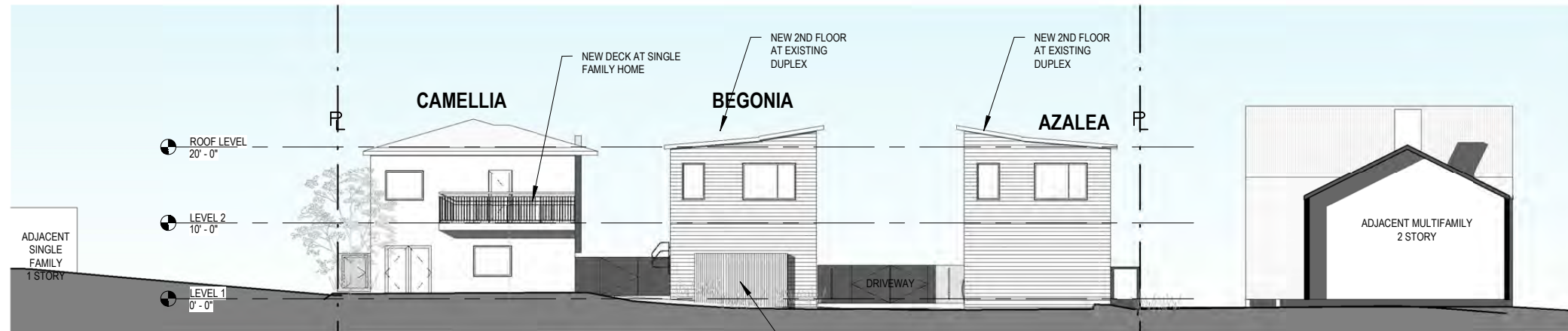
1/16" = 1'-0"

RECTANGULAR SURFACE
DRAINAGE W/STEEL GRATE

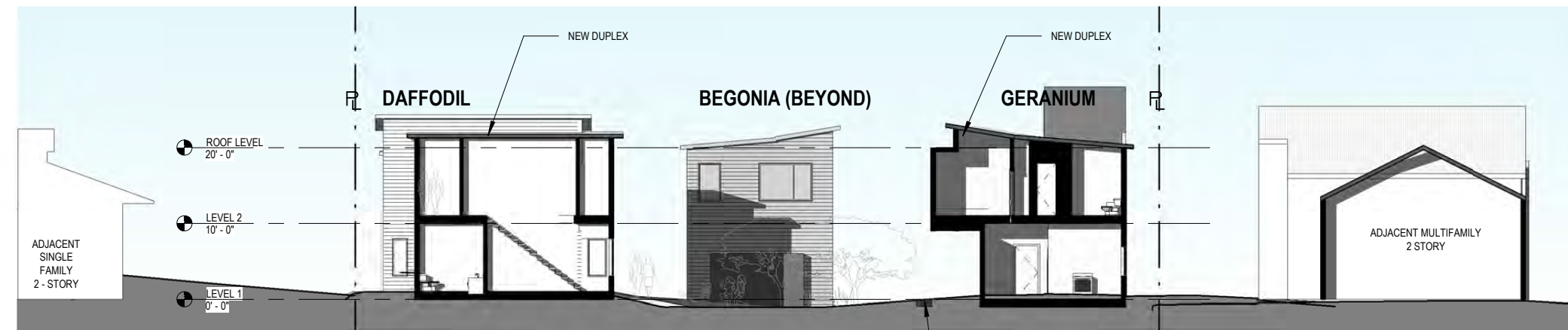
HEARST GARDENS
DEVI DUTTA ARCHITECTURE



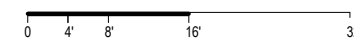
SITE SECTIONS LOOKING NORTH
SCALE: 1/16" = 1'-0"

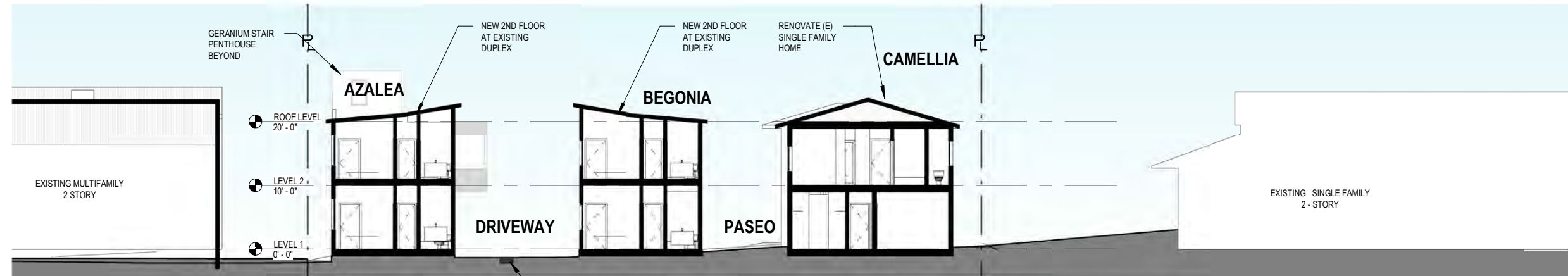


1 Site Section Looking South
1/16" = 1'-0"



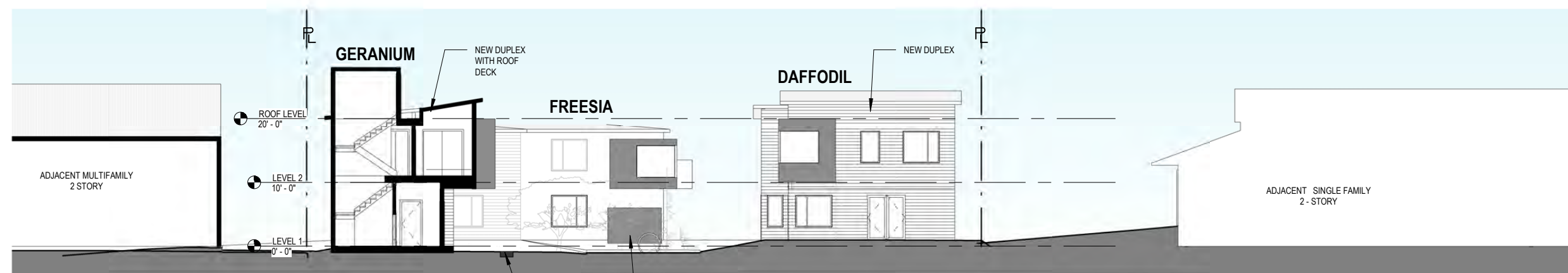
2 Site Section Looking South @ Parking Lot
1/16" = 1'-0"





1 Building Section Looking North Through Stair
 1/16" = 1'-0"

RECTANGULAR SURFACE DRAINAGE W/STEEL GRATE



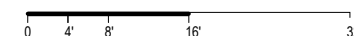
2 Building Section Through Covered Parking Looking North
 1/16" = 1'-0"

RECTANGULAR SURFACE DRAINAGE W/STEEL GRATE

SHARED SCREENED TRASH/RCY ENCLOSURE

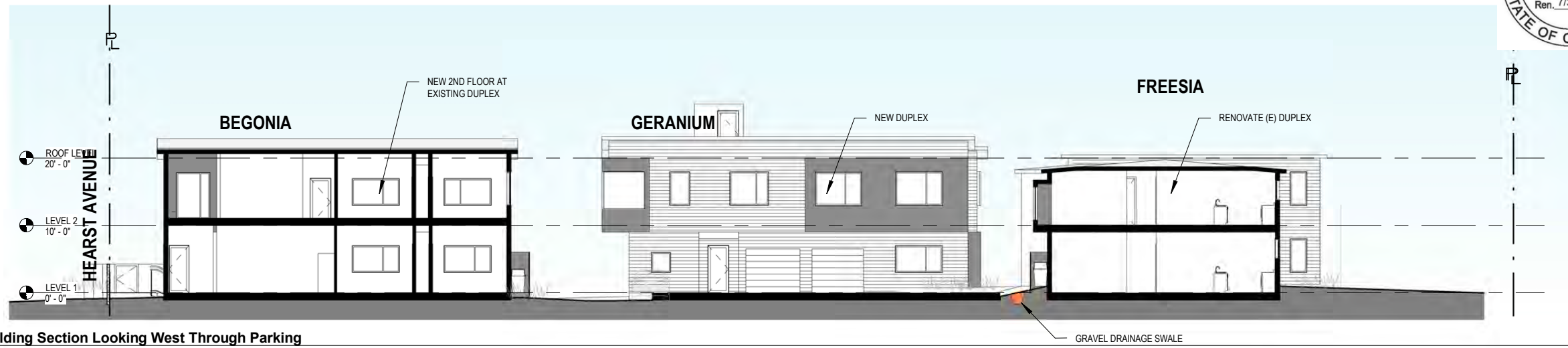
HEARST GARDENS

DEVI DUTTA ARCHITECTURE

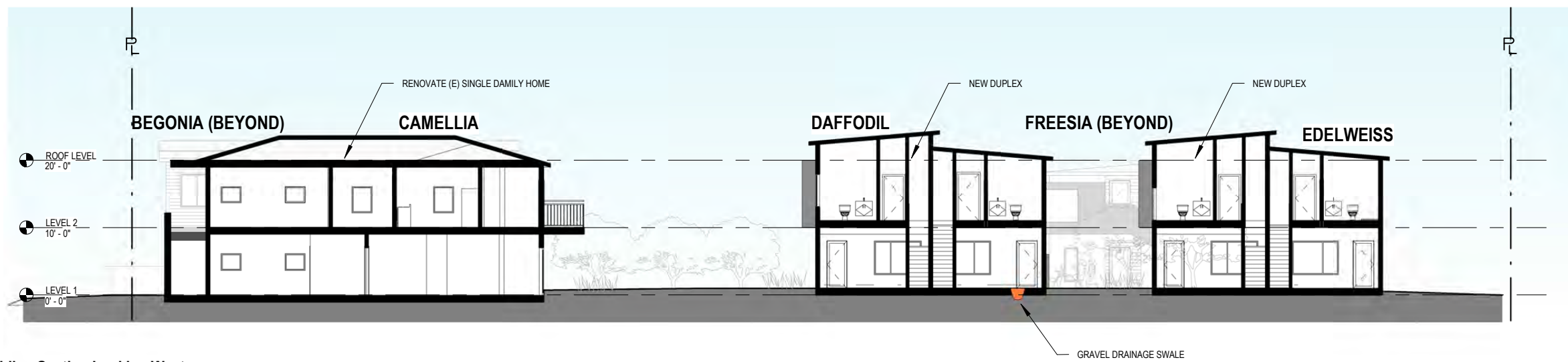


BUILDING SITE SECTIONS

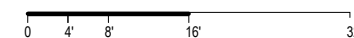
SCALE: 1/16" = 1'-0"



1 Building Section Looking West Through Parking
1/16" = 1'-0"



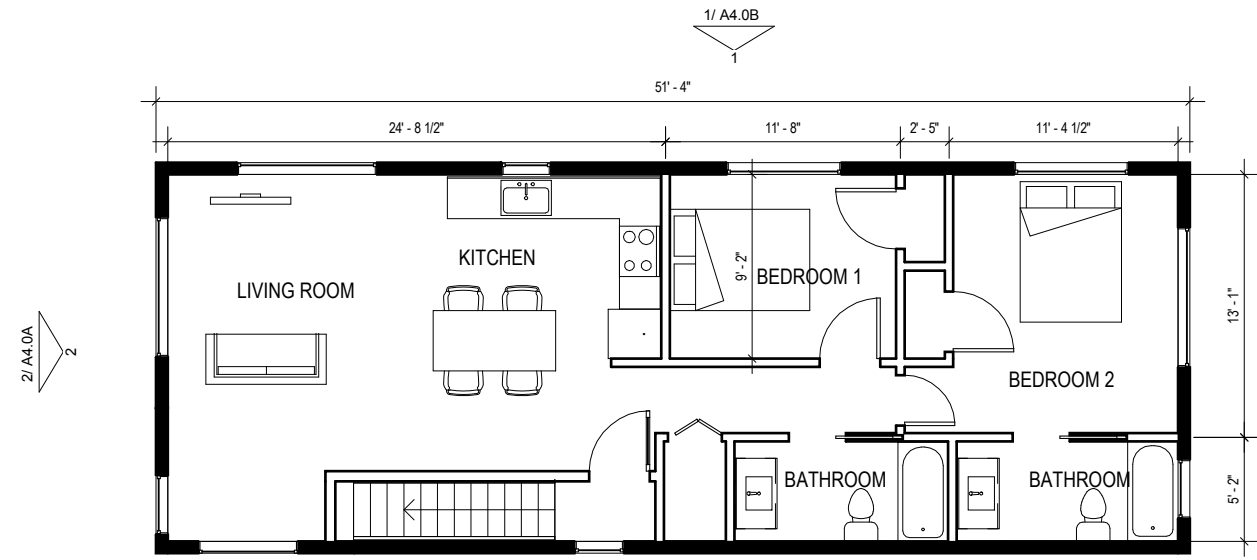
2 Building Section Looking West
1/16" = 1'-0"



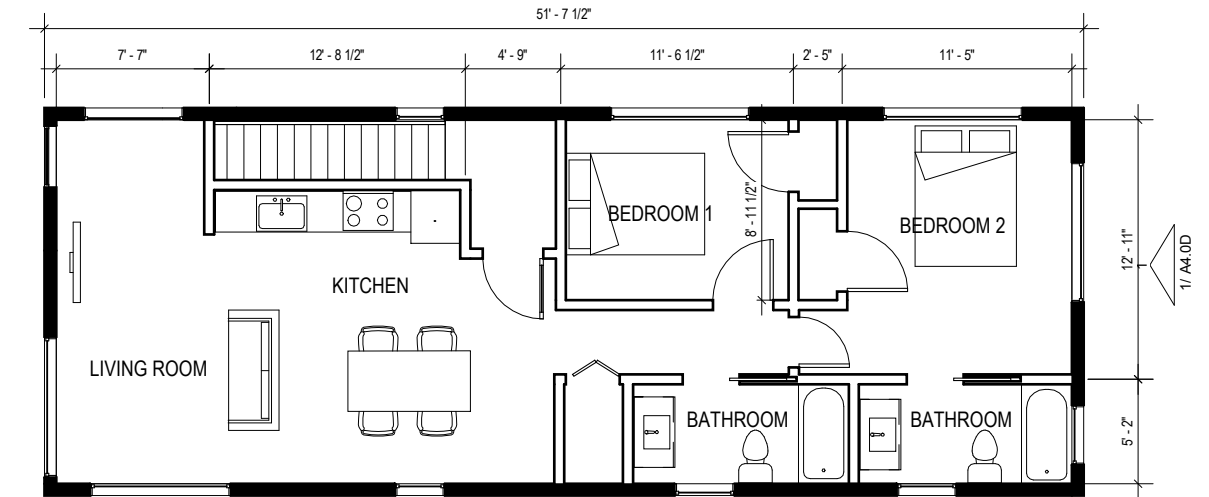
- LEGEND**
- ▬ NEW EXTERIOR WALL
 - ▨ (E) WALL
 - ▬ NEW INTERIOR WALL
 - - - SEE SITE PLAN FOR NON-CONFORMING SETBACK
 - - - REQUIRED SETBACK



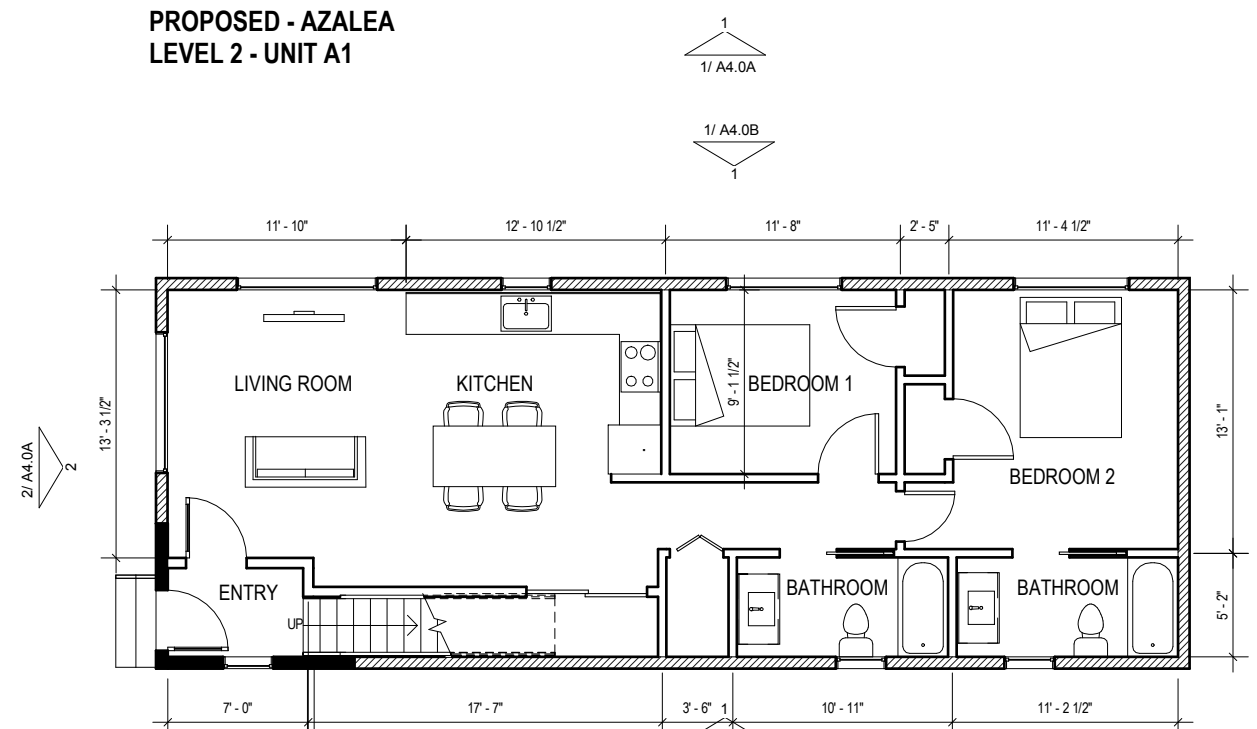
2/ A4.0D A4.0 SERIES FOR ENLARGED UNIT PLANS



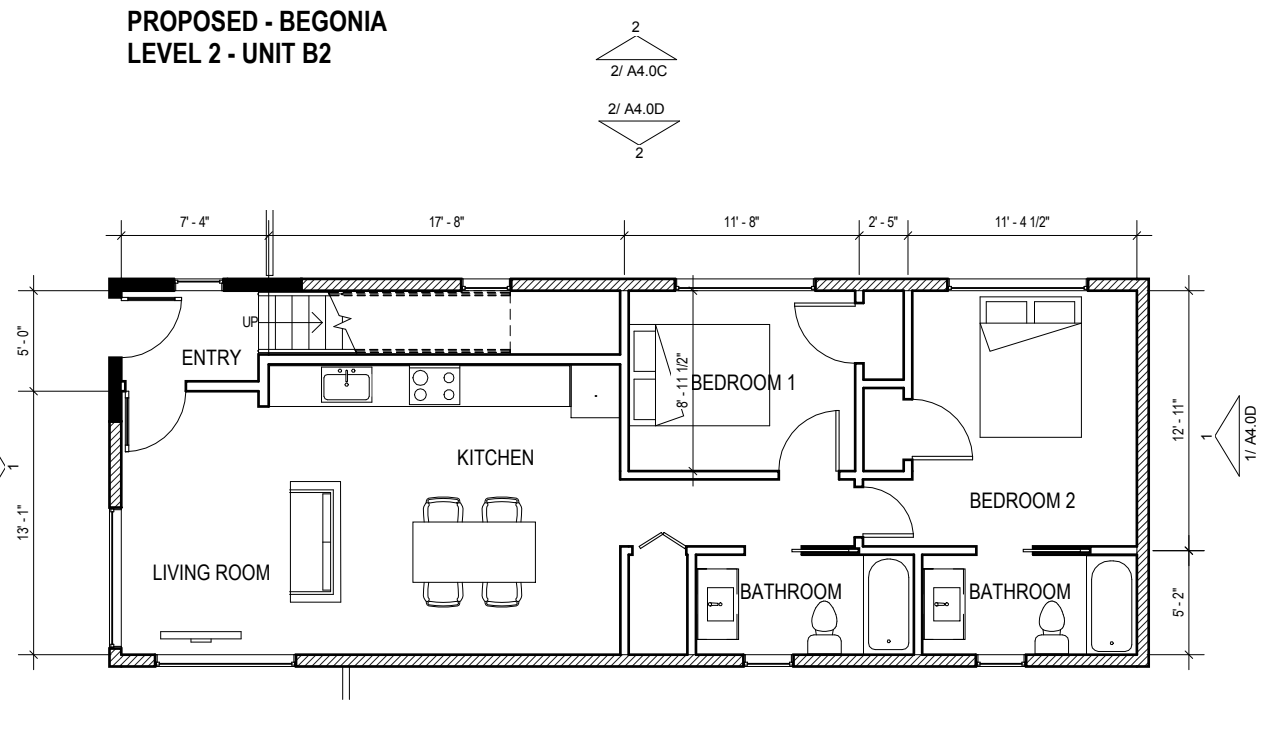
**PROPOSED - AZALEA
 LEVEL 2 - UNIT A1**



**PROPOSED - BEGONIA
 LEVEL 2 - UNIT B2**



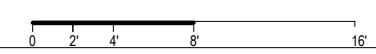
**PROPOSED - AZALEA
 LEVEL 1 - UNIT A1**



**PROPOSED - BEGONIA
 LEVEL 1 - UNIT B1**

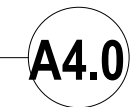
HEARST GARDENS





DEVI DUTTA ARCHITECTURE

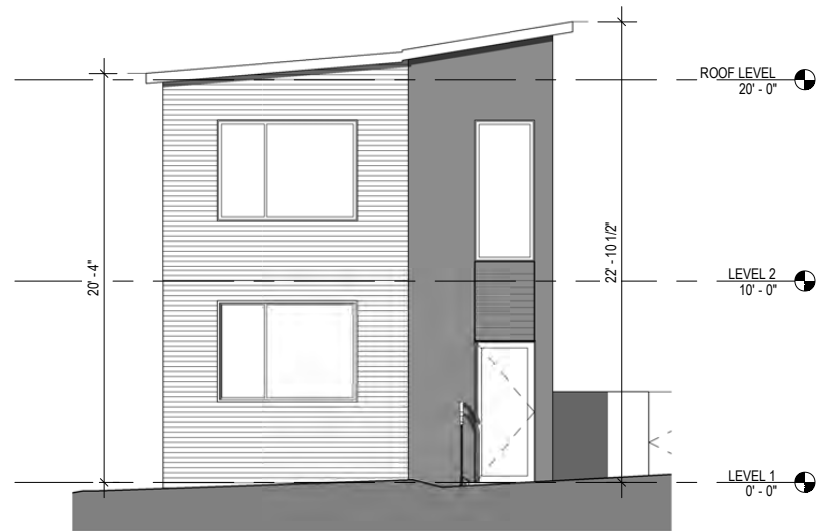


AZALEA & BEGONIA PLANS

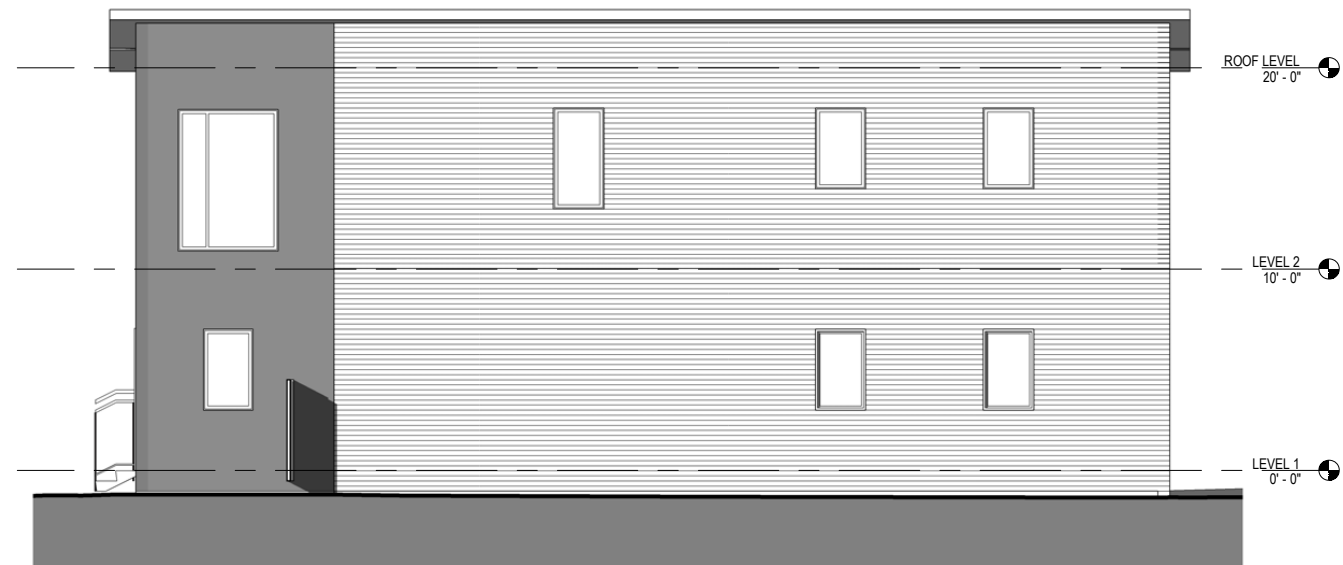
SCALE: As indicated



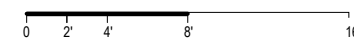
- MATERIAL LEGEND**
-  PAINTED WOOD SIDING
 -  WOOD PATTERNED FIBER CEMENT
 -  CEMENT PLASTER
 -  CEMENT PLASTER







2 AZALEA SOUTH ELEVATION
1/8" = 1'-0"

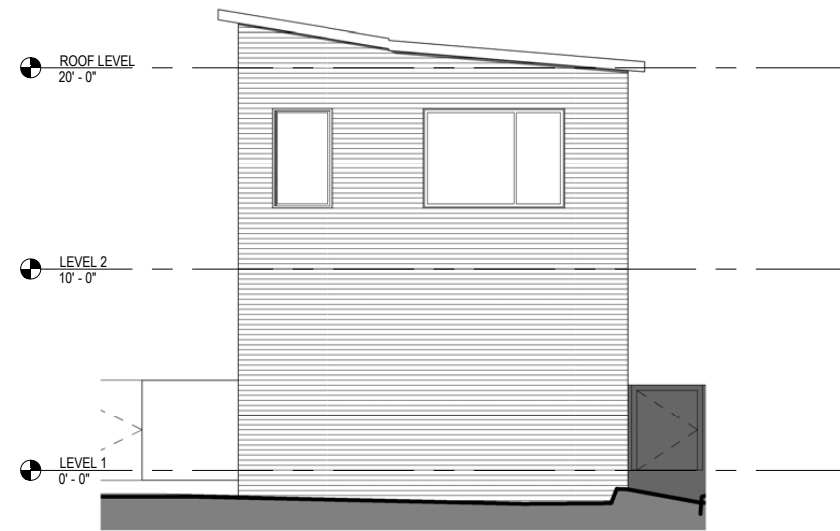


1 AZALEA EAST ELEVATION
1/8" = 1'-0"



MATERIAL LEGEND

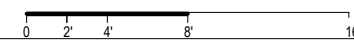
-  PAINTED WOOD SIDING
-  WOOD PATTERNED FIBER CEMENT
-  CEMENT PLASTER
-  CEMENT PLASTER







2 AZALEA NORTH ELEVATION
1/8" = 1'-0"

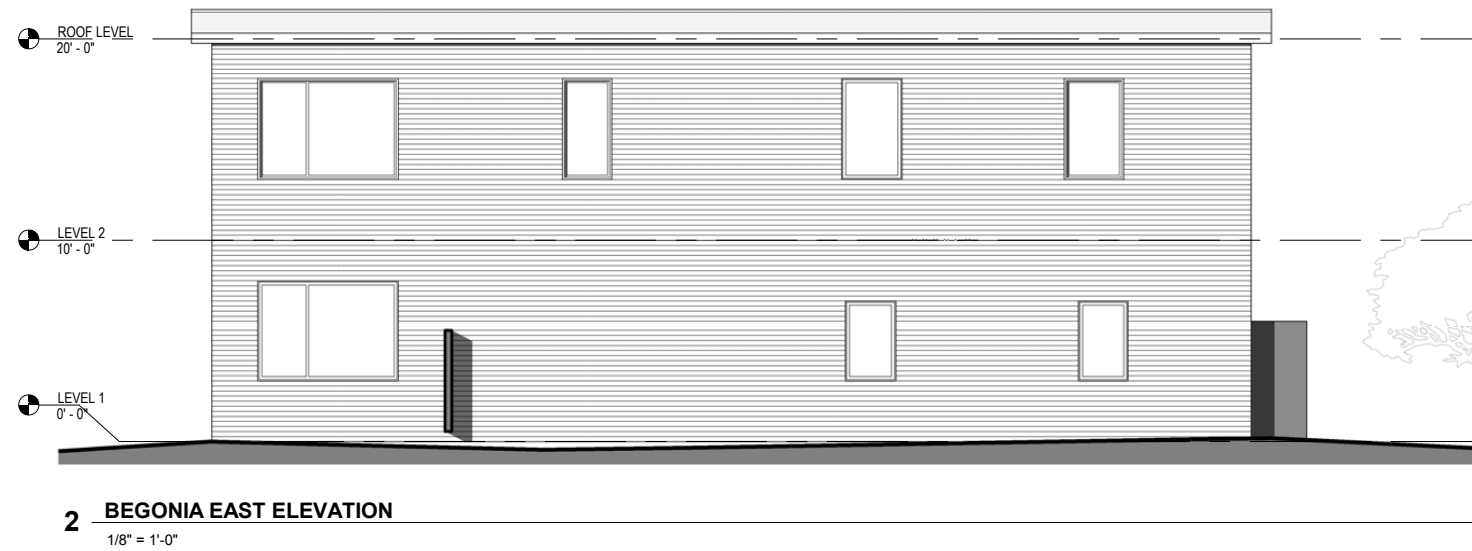


1 AZALEA WEST ELEVATION
1/8" = 1'-0"







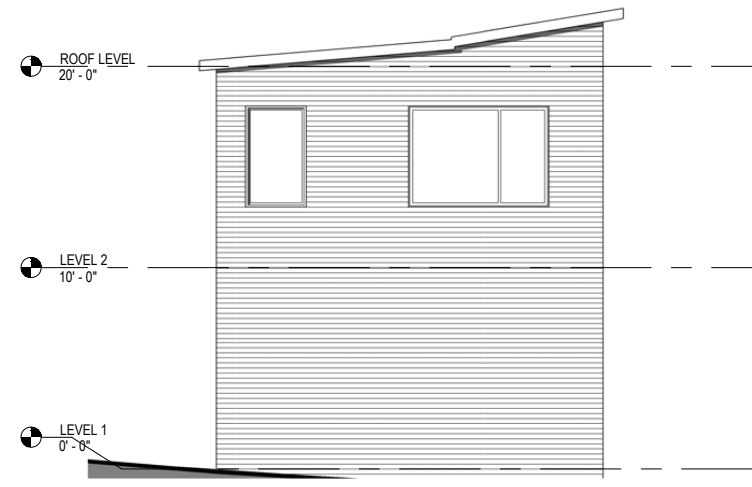


- MATERIAL LEGEND**
-  PAINTED WOOD SIDING
 -  WOOD PATTERNED FIBER CEMENT
 -  CEMENT PLASTER
 -  CEMENT PLASTER

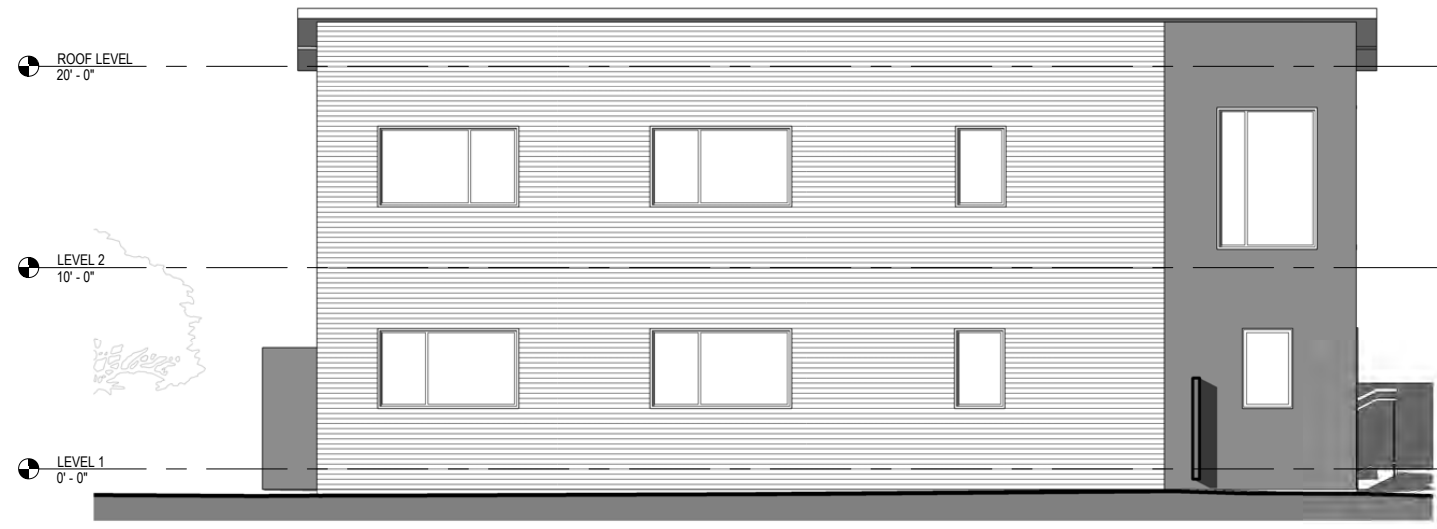




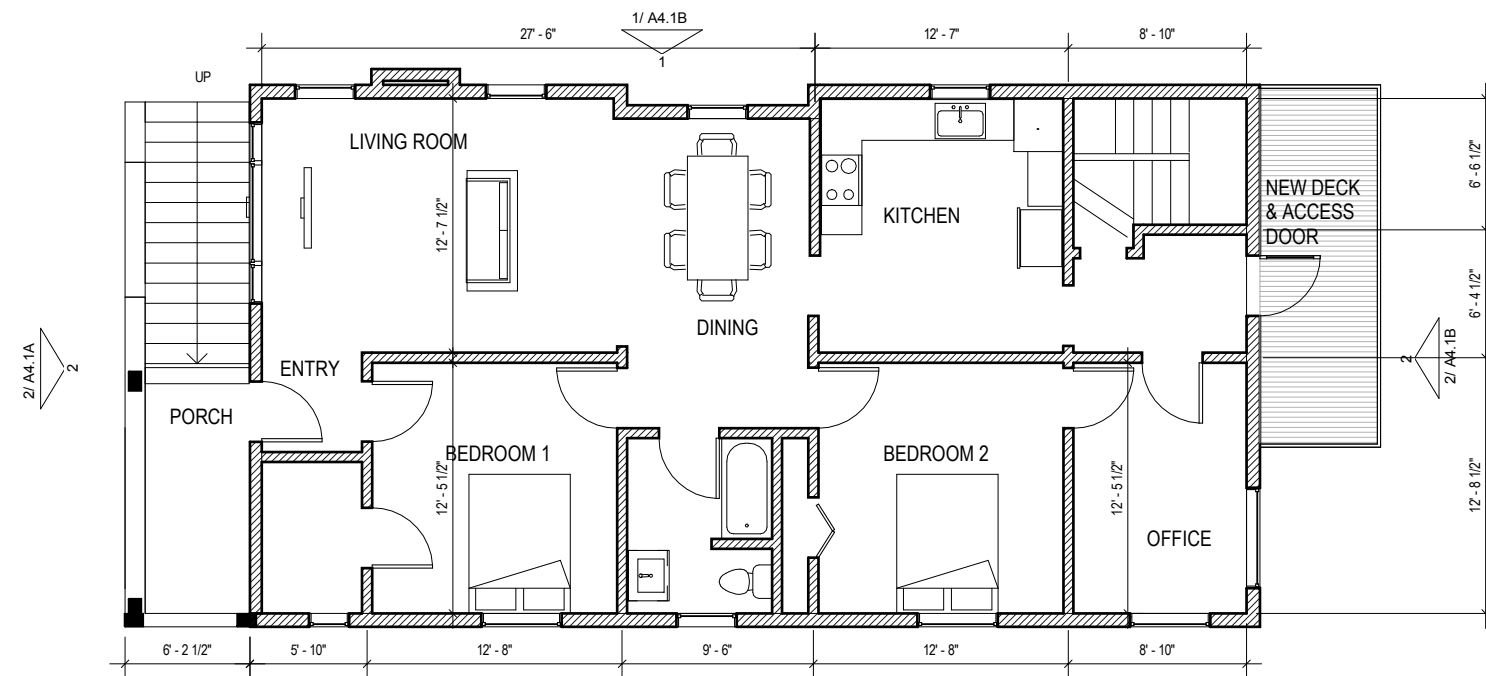
- MATERIAL LEGEND**
-  PAINTED WOOD SIDING
 -  WOOD PATTERNED FIBER CEMENT
 -  CEMENT PLASTER
 -  CEMENT PLASTER



1 BEGONIA NORTH ELEVATION
1/8" = 1'-0"

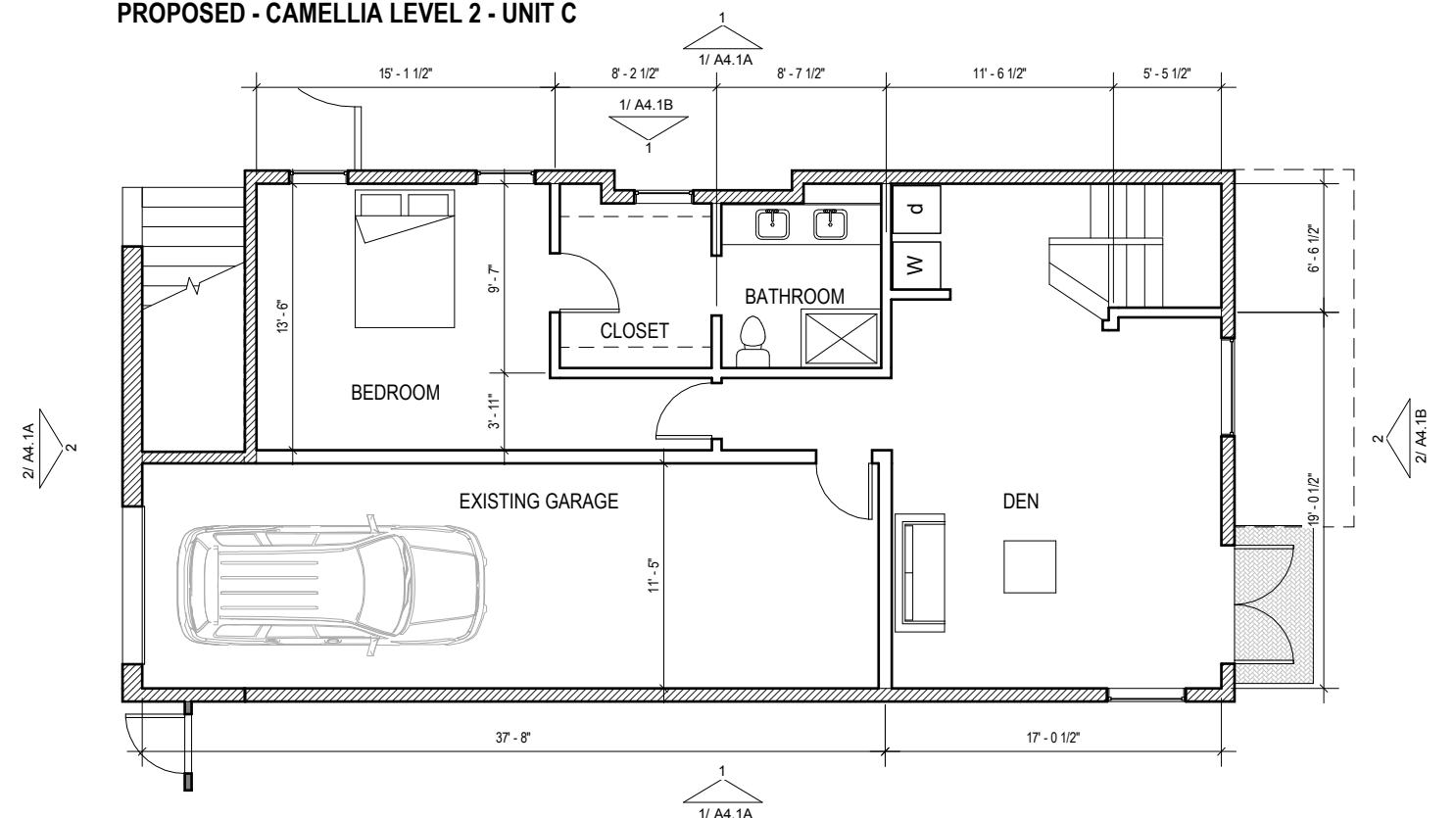


2 BEGONIA WEST ELEVATION
1/8" = 1'-0"







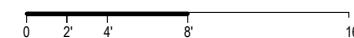
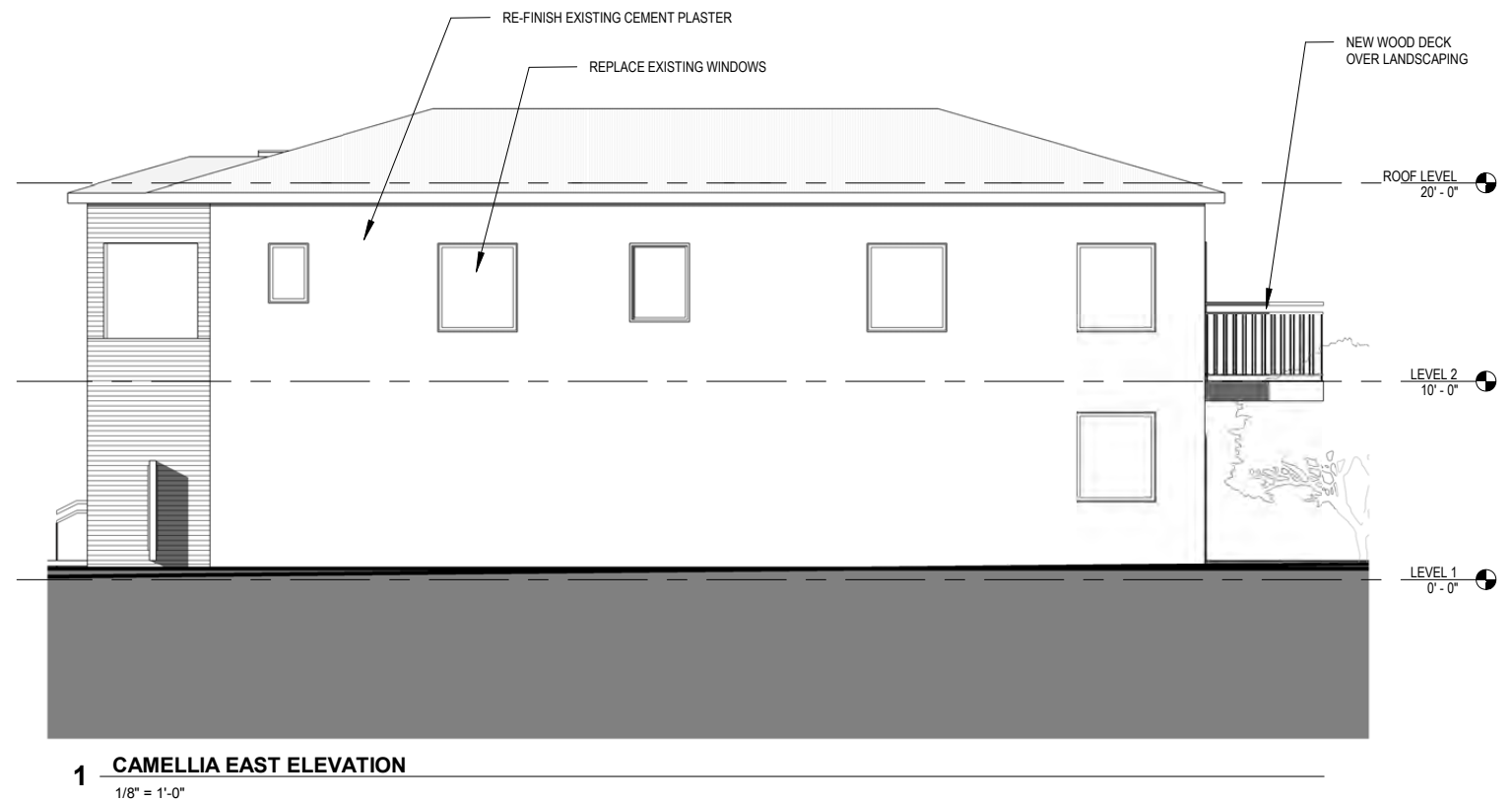
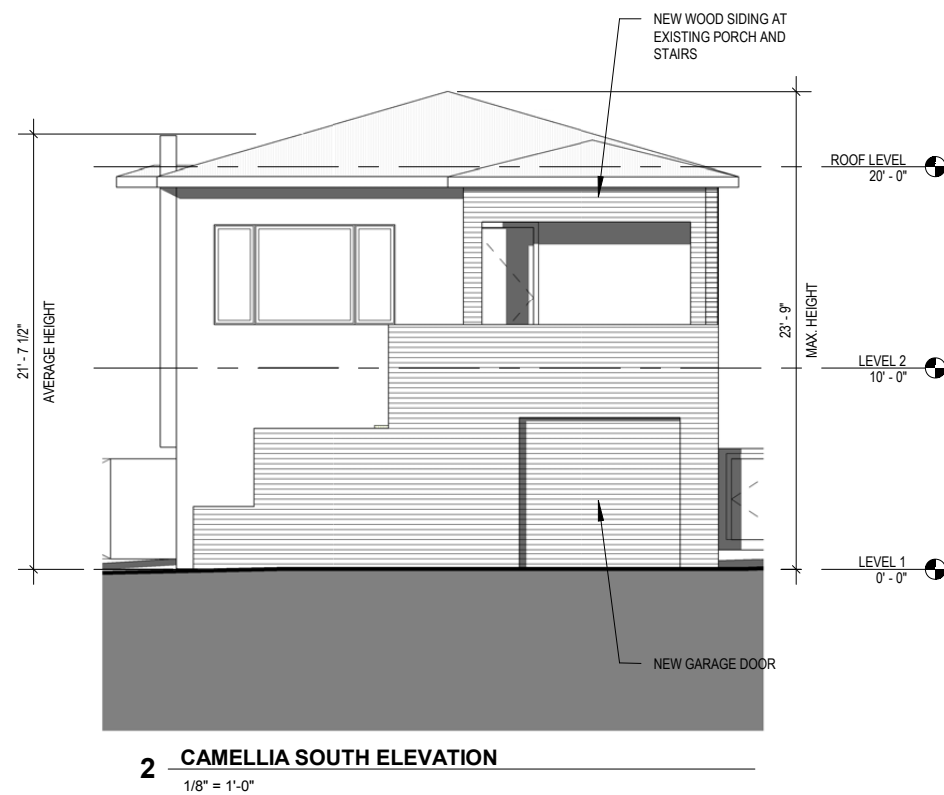
PROPOSED - CAMELLIA LEVEL 2 - UNIT C





- LEGEND**
- NEW EXTERIOR WALL
 - ▨ (E) WALL
 - NEW INTERIOR WALL
 - - - SEE SITE PLAN FOR NON-CONFORMING SETBACK
 - - - REQUIRED SETBACK
 - SEE A4.0 SERIES FOR ENLARGED UNIT PLANS



PROPOSED - CAMELLIA BASEMENT PLAN

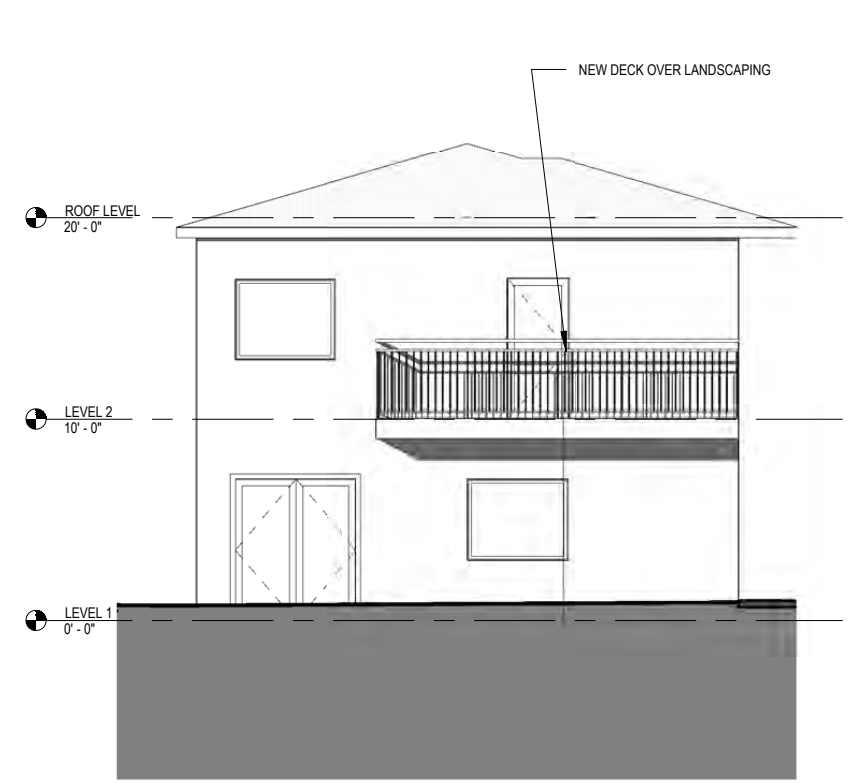
- MATERIAL LEGEND**
-  PAINTED WOOD SIDING
 -  WOOD PATTERNED FIBER CEMENT
 -  CEMENT PLASTER
 -  CEMENT PLASTER



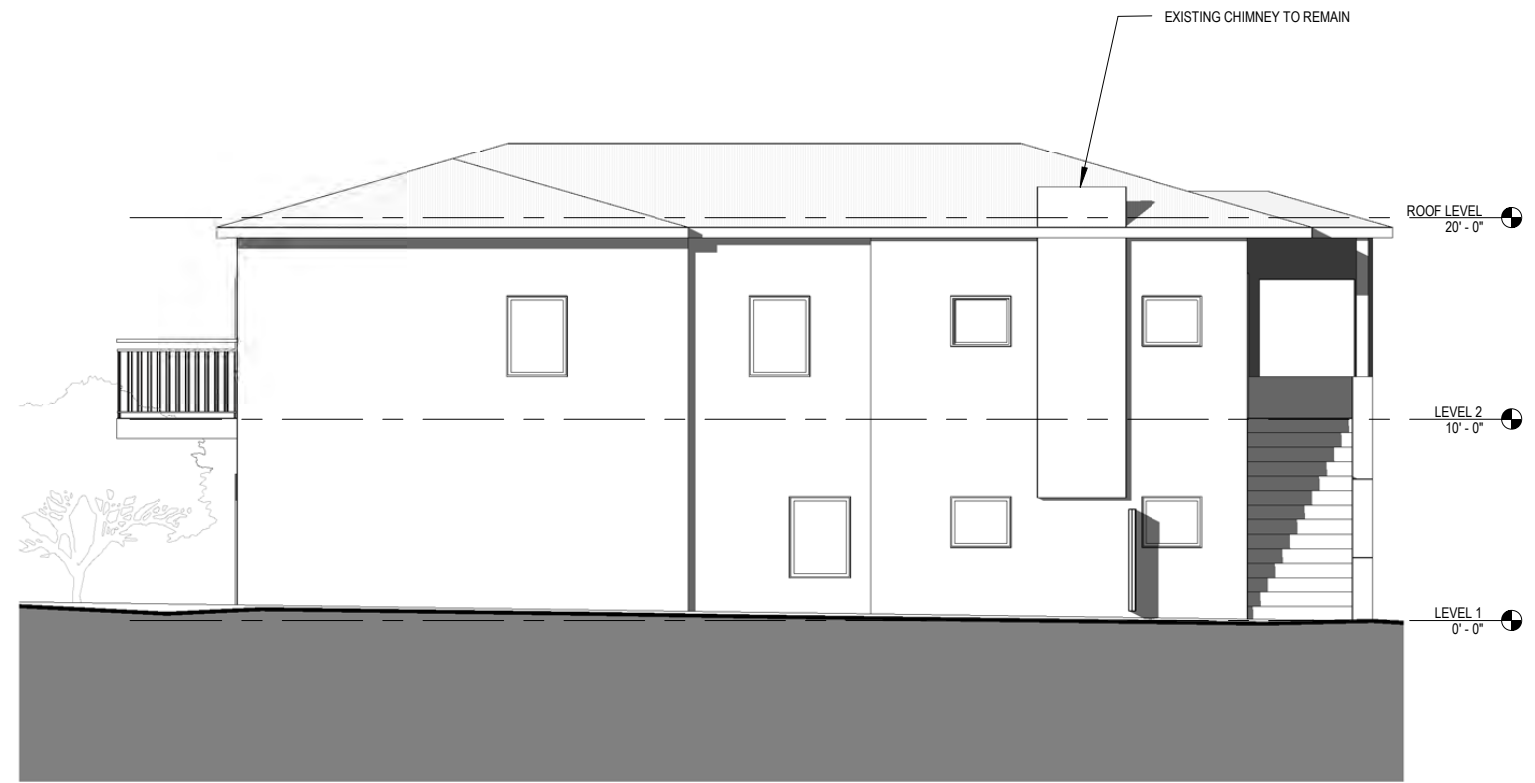
- MATERIAL LEGEND**
-  PAINTED WOOD SIDING
 -  WOOD PATTERNED FIBER CEMENT
 -  CEMENT PLASTER
 -  CEMENT PLASTER



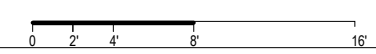
SEE A4.0 SERIES FOR ENLARGED ELEVATIONS

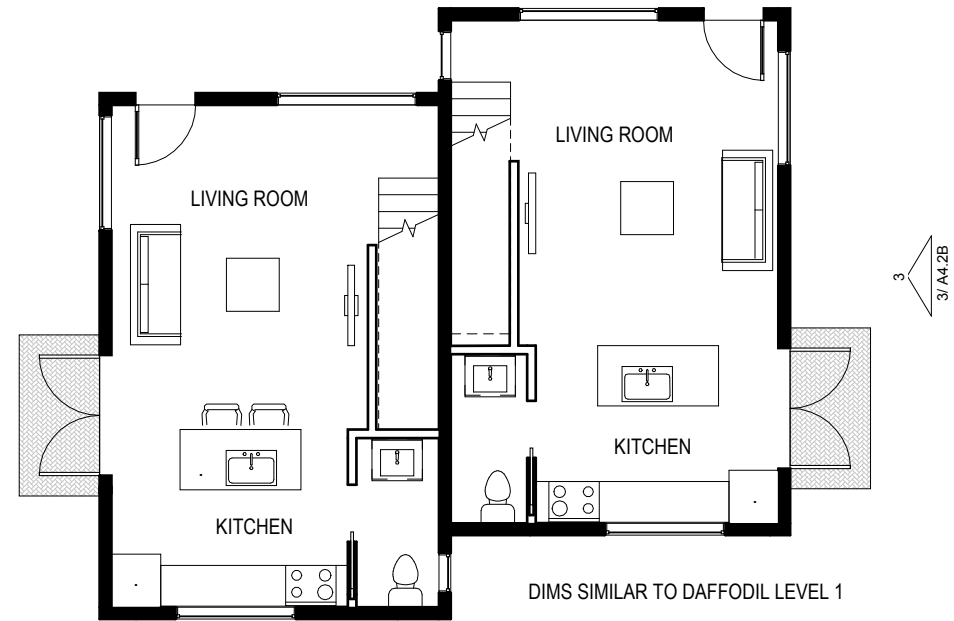


2 CAMELLIA NORTH ELEVATION
1/8" = 1'-0"

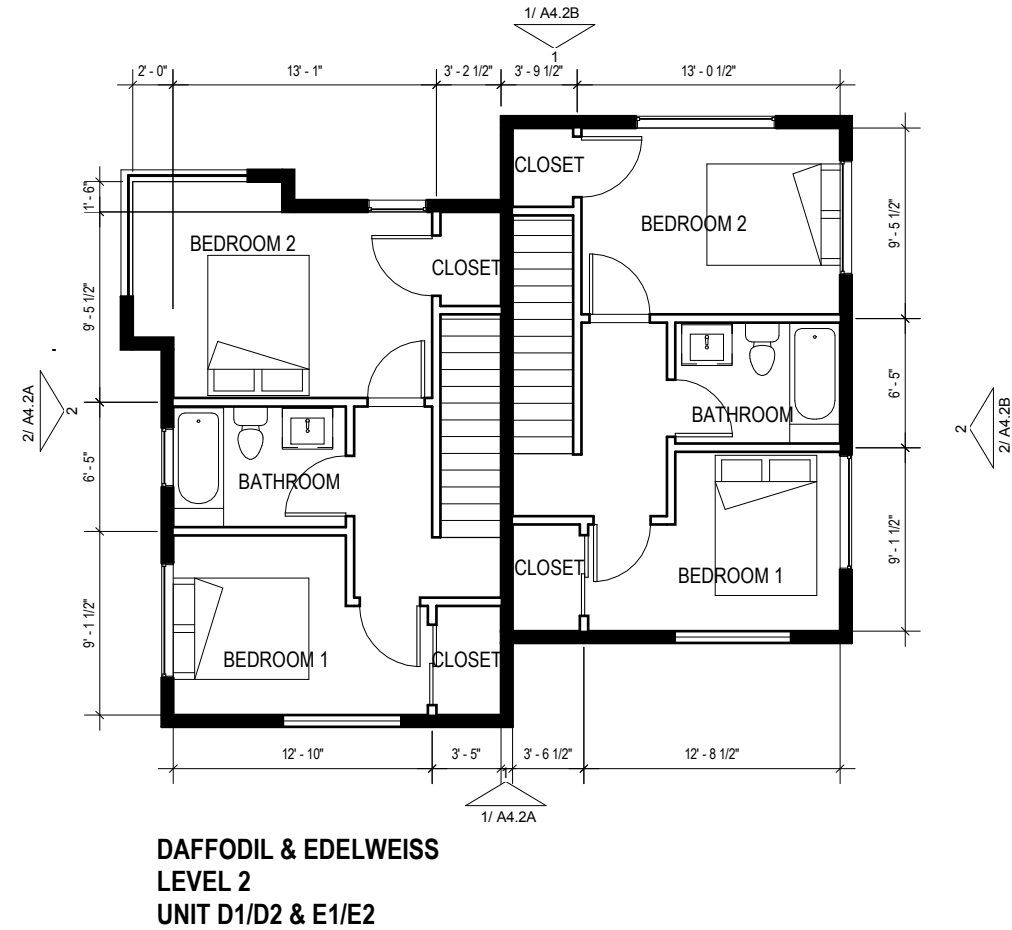
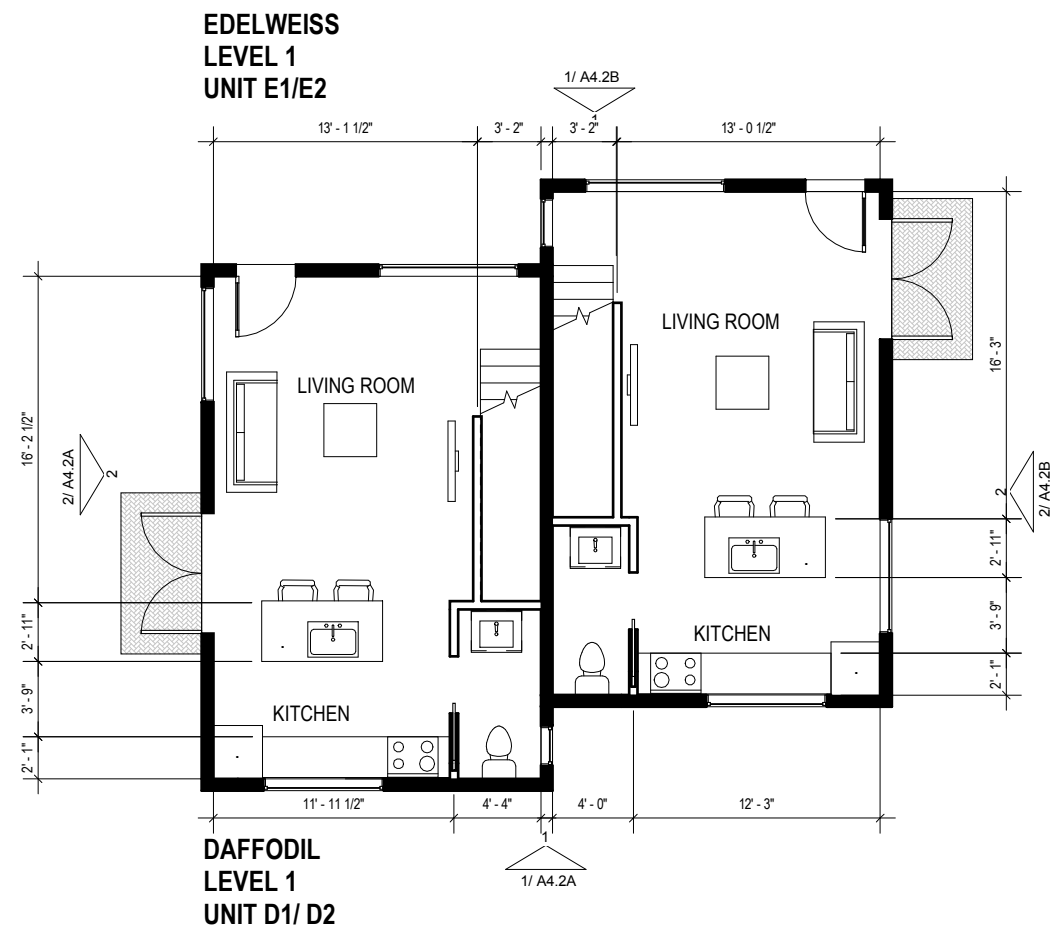


1 CAMELLIA WEST ELEVATION
1/8" = 1'-0"









- LEGEND**
- NEW EXTERIOR WALL
 - ▨ (E) WALL
 - NEW INTERIOR WALL
 - - - SEE SITE PLAN FOR NON-CONFORMING SETBACKS
 - - - REQUIRED SETBACK





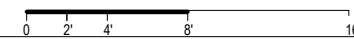
- MATERIAL LEGEND**
-  PAINTED WOOD SIDING
 -  WOOD PATTERNED FIBER CEMENT
 -  CEMENT PLASTER
 -  CEMENT PLASTER



2 DAFFODIL & EDELWEISS SOUTH ELEVATION
1/8" = 1'-0"



1 DAFFODIL & EDELWEISS EAST ELEVATION
1/8" = 1'-0"





3 EDELWEISS NORTH ELEVATION
 1/8" = 1'-0"

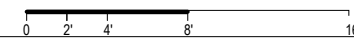


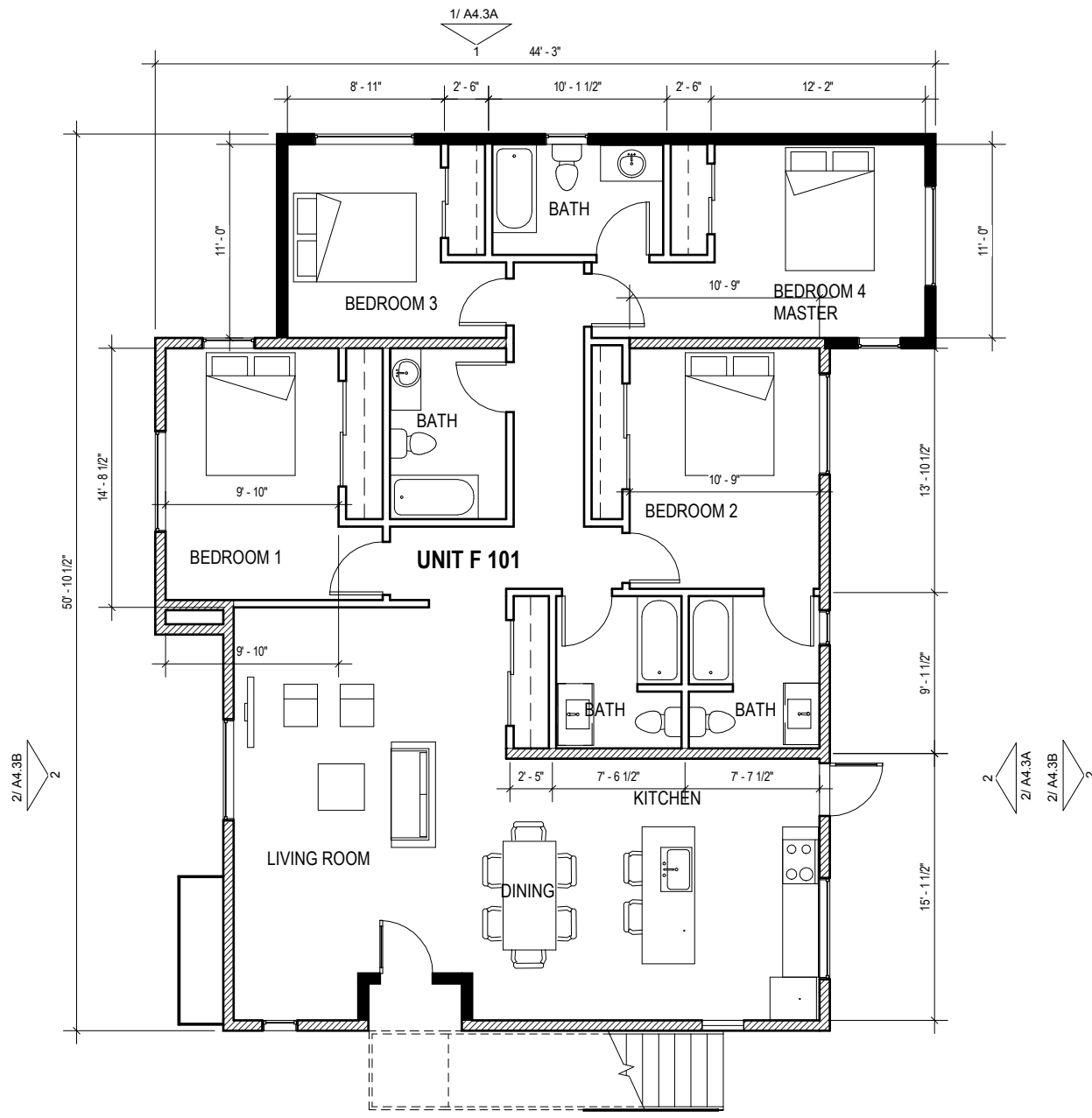
2 DAFFODIL NORTH ELEVATION
 1/8" = 1'-0"

- MATERIAL LEGEND**
- PAINTED WOOD SIDING
 - WOOD PATTERNED FIBER CEMENT
 - CEMENT PLASTER
 - CEMENT PLASTER

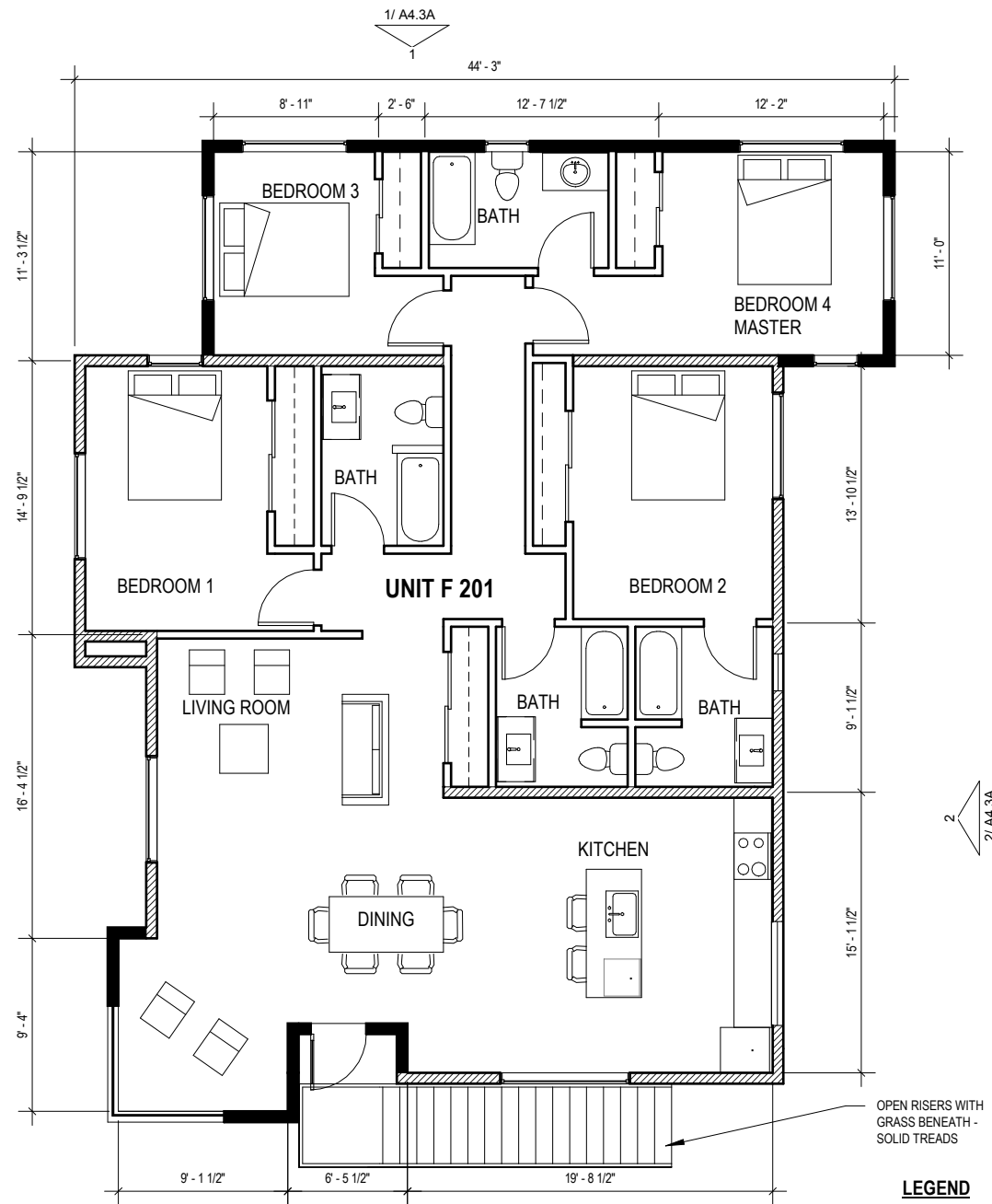


1 DAFFODIL & EDELWEISS WEST ELEVATION
 1/8" = 1'-0"





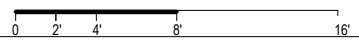
**FRESIA
 LEVEL 1 - UNIT F1**







**FRESIA
 LEVEL 2 - UNIT F2**

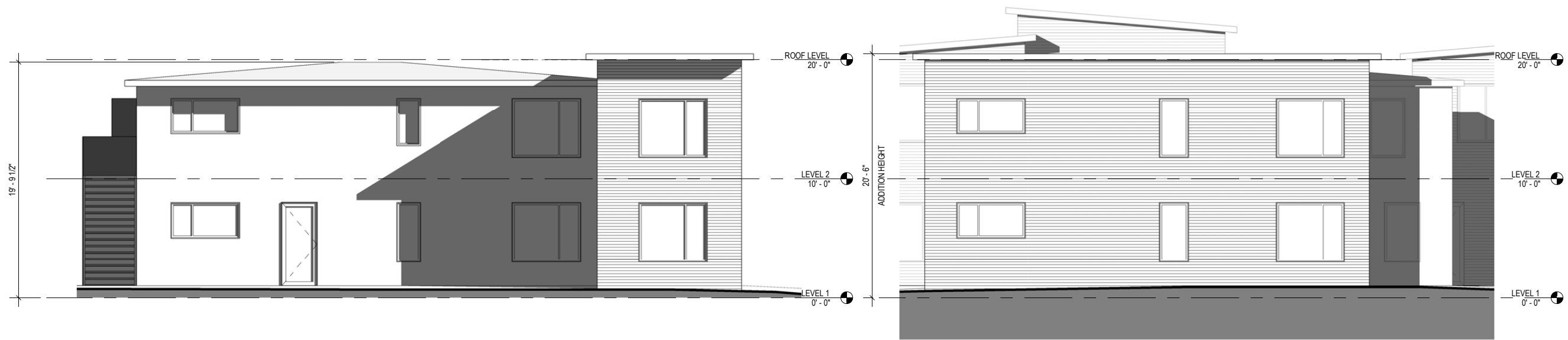


- LEGEND**
- NEW EXTERIOR WALL
 - ▨ (E) WALL
 - NEW INTERIOR WALL
 - - - SEE SITE PLAN FOR NON-CONFORMING SETBACKS
 - - - REQUIRED SETBACK
- OPEN RISERS WITH GRASS BENEATH - SOLID TREADS



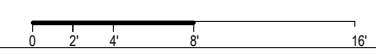


- MATERIAL LEGEND**
-  PAINTED WOOD SIDING
 -  WOOD PATTERNED FIBER CEMENT
 -  CEMENT PLASTER
 -  CEMENT PLASTER







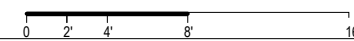
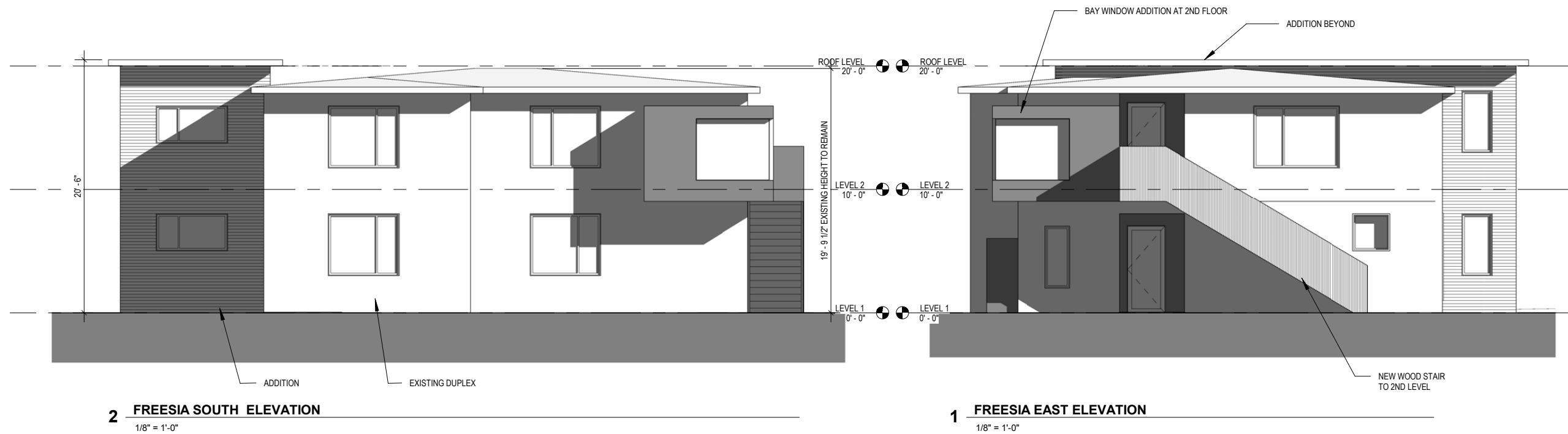
2 FREESIA NORTH ELEVATION
1/8" = 1'-0"

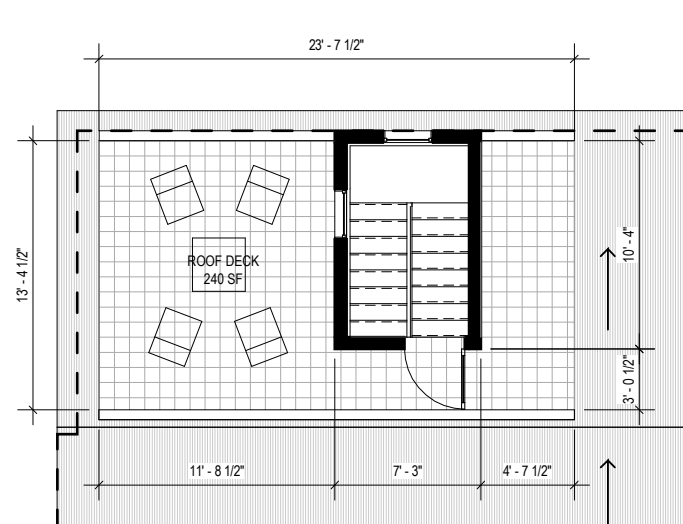
1 FREESIA WEST ELEVATION
1/8" = 1'-0"



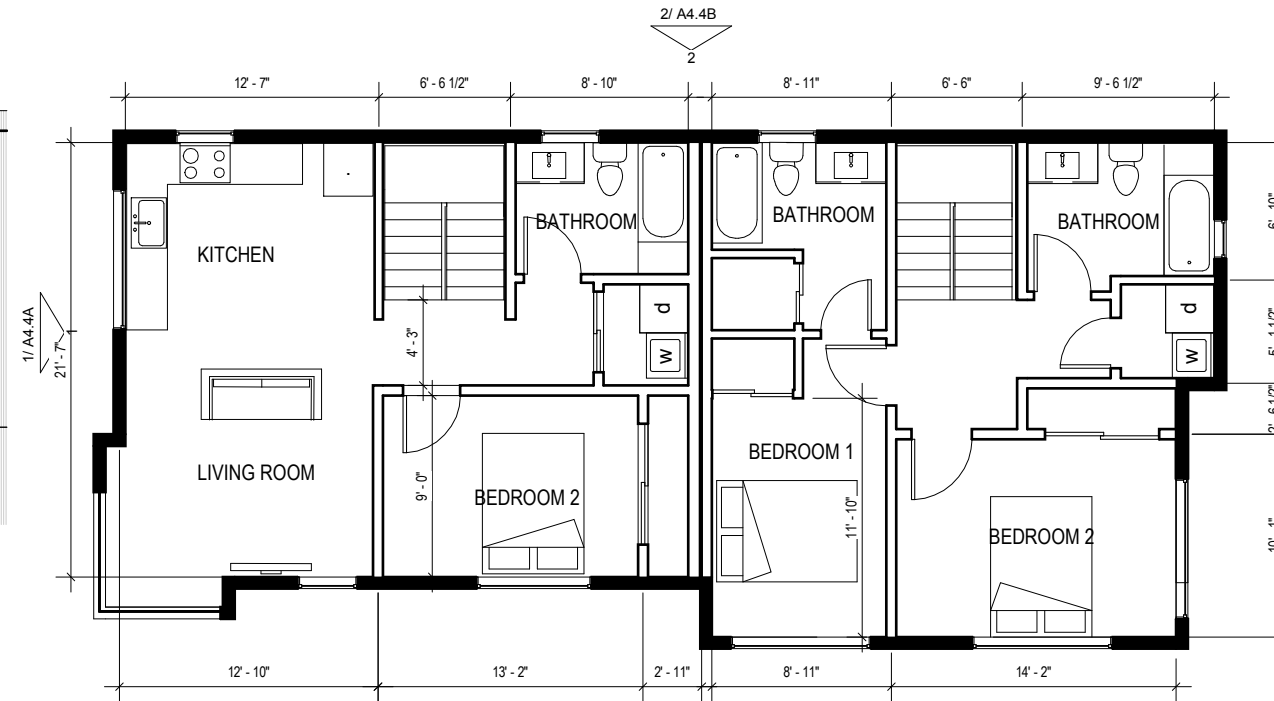


- MATERIAL LEGEND**
-  PAINTED WOOD SIDING
 -  WOOD PATTERNED FIBER CEMENT
 -  CEMENT PLASTER
 -  CEMENT PLASTER

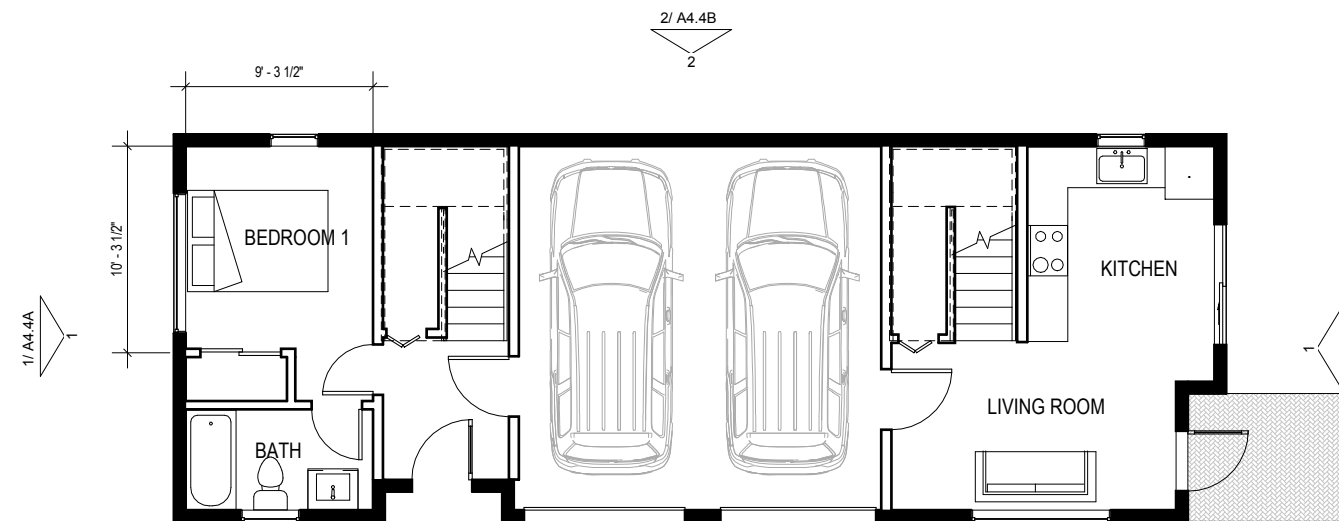




3 ROOF DECK - PARTIAL PLAN
 1/8" = 1'-0"







2 GERANIUM LEVEL 2
 1/8" = 1'-0"

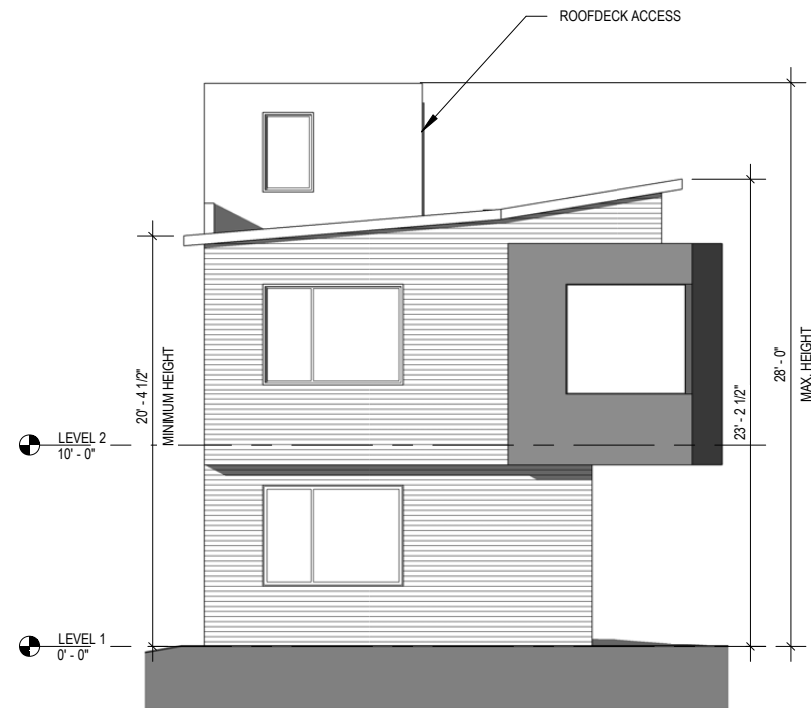


1 GERANIUM LEVEL 1
 1/8" = 1'-0"

- LEGEND**
- NEW EXTERIOR WALL
 - (E) WALL
 - NEW INTERIOR WALL
 - SEE SITE PLAN FOR NON-CONFORMING SETBACKS
 - REQUIRED SETBACK



- MATERIAL LEGEND**
-  PAINTED WOOD SIDING
 -  WOOD PATTERNED FIBER CEMENT
 -  CEMENT PLASTER
 -  CEMENT PLASTER







1 GERANIUM SOUTH ELEVATION
1/8" = 1'-0"



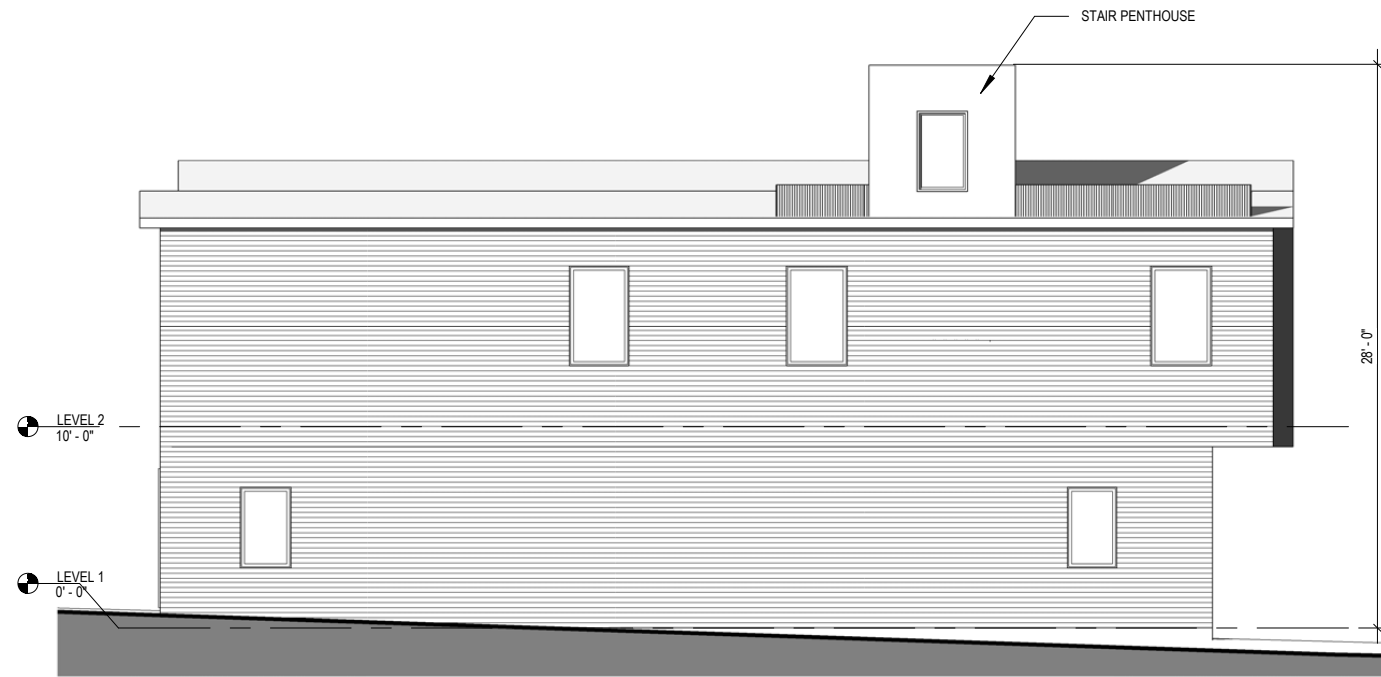
2 GERANIUM EAST ELEVATION
1/8" = 1'-0"



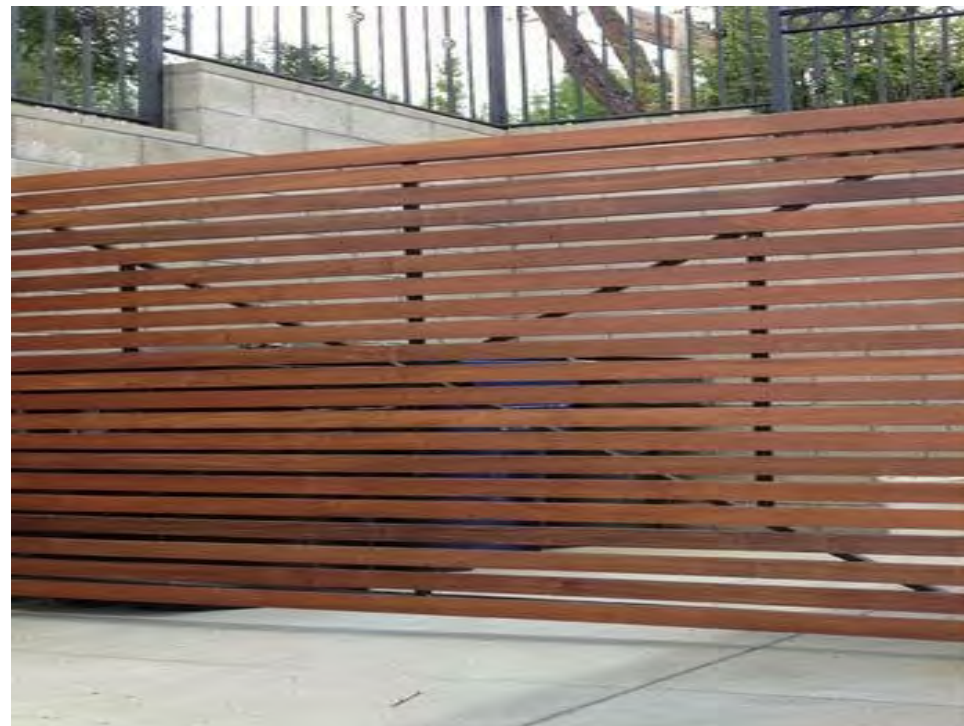
- MATERIAL LEGEND**
-  PAINTED WOOD SIDING
 -  WOOD PATTERNED FIBER CEMENT
 -  CEMENT PLASTER
 -  CEMENT PLASTER



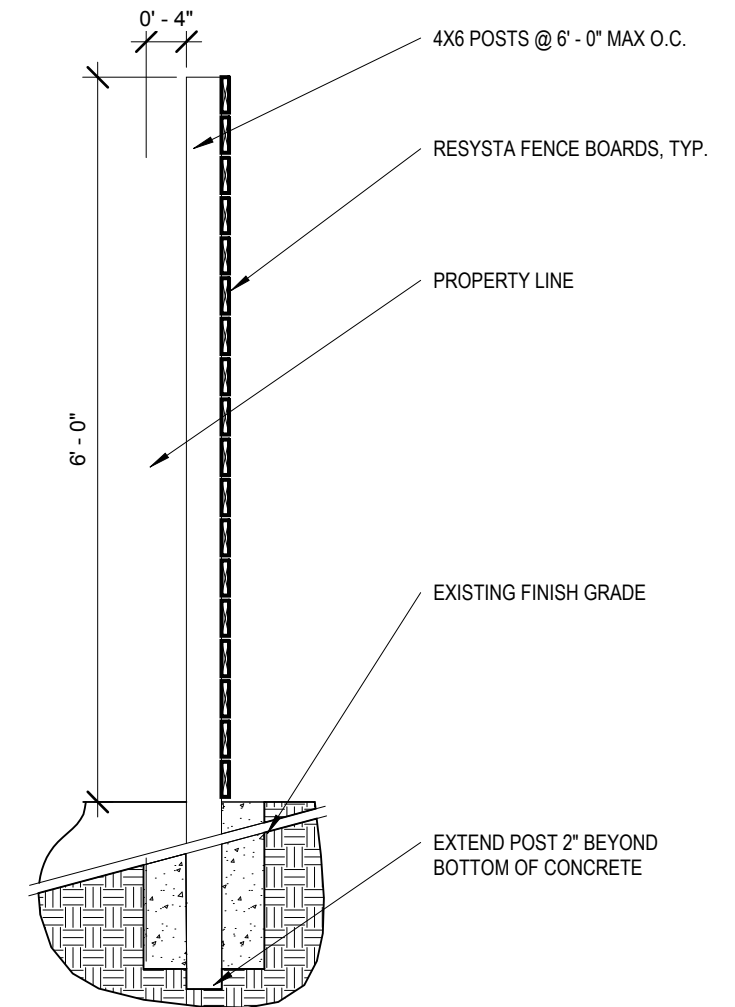
1 GERANIUM NORTH ELEVATION
1/8" = 1'-0"



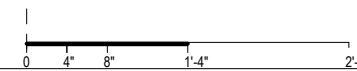
2 GERANIUM WEST ELEVATION
1/8" = 1'-0"

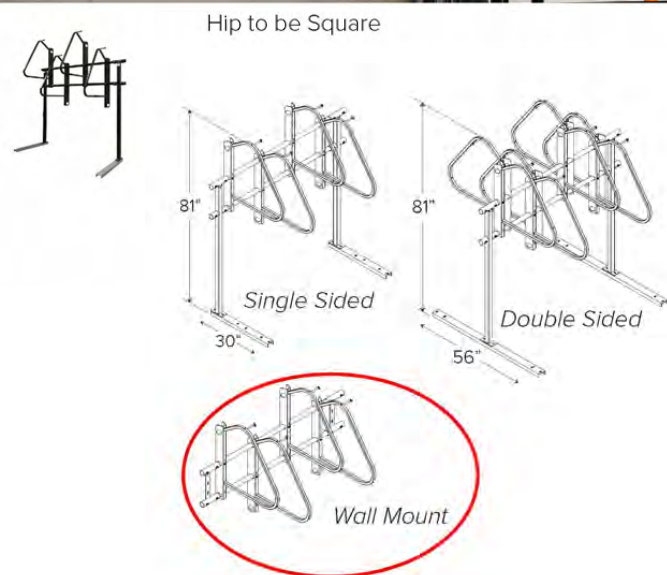


CEDAR FENCE ALONG PROPERTY LINE

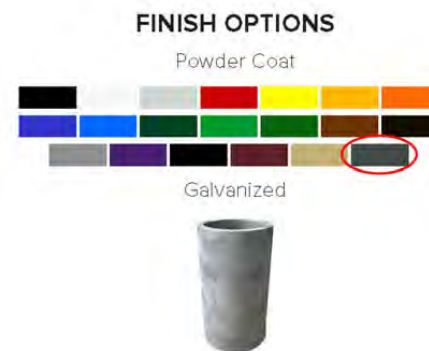


1 CEDAR FENCE DETAIL
3/4" = 1'-0"





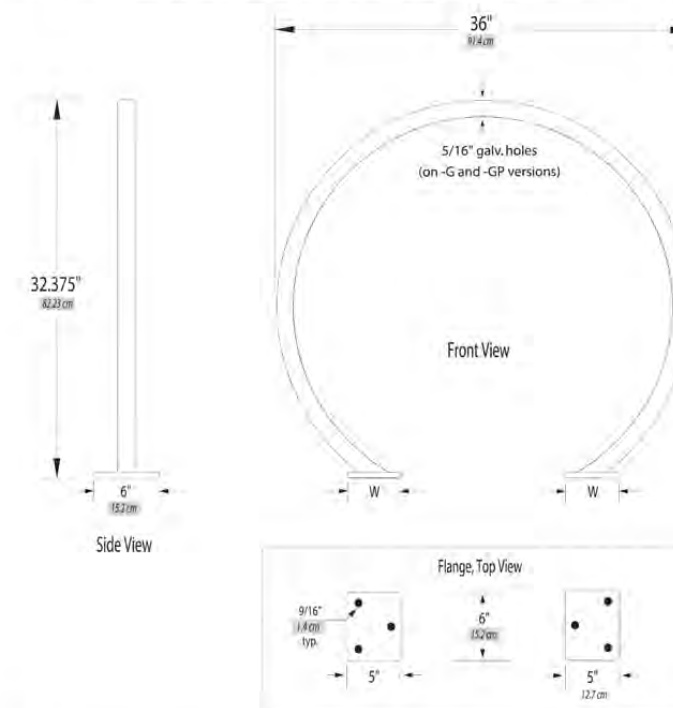
WALL MOUNT, SQUARE PROFILE BIKE STORAGE. LOCATED ON EAST WALL OF BEGONIA BUILDING.



DARK GREY POWDERCOAT FINISH AT BIKE STORAGE

BIKEPARKING.COM™
Tel: 415.333.6428 Tel: 888.764.2453 Fax: 415.333.2032 E: info@bikeparking.com
Palmer Group, LLC - 1728 Ocean Avenue #132 San Francisco CA 94112 USA

Welle™ Circular Rack
Square Tube Surface Flange



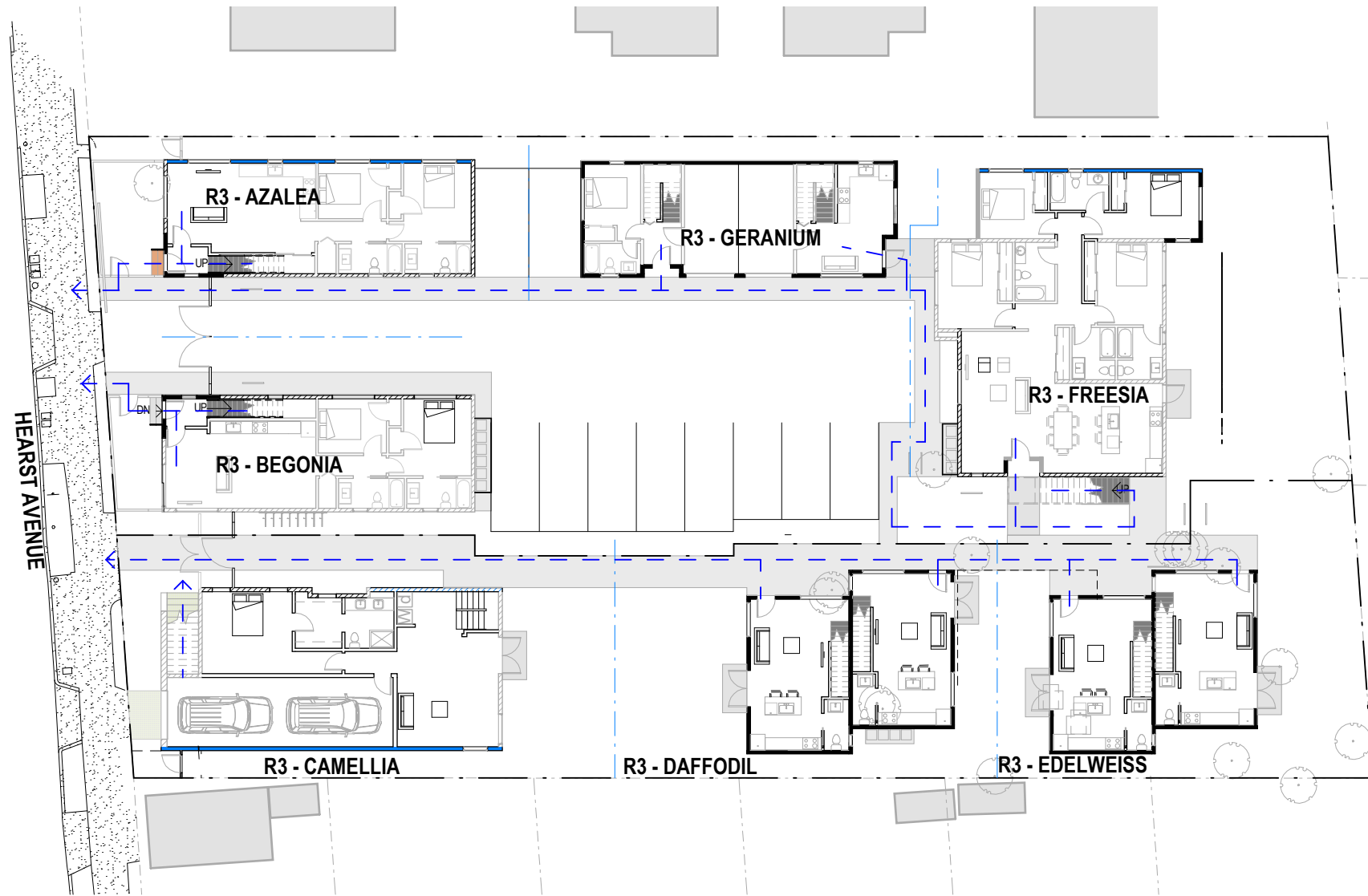
Welle™ Circular Rack Square Tube Surface Flange						
Tubing	Model	Weight	Finish Options	Hoop	Surface Mount Flanges (Same material as Hoop)	Anchors (Not Provided)
Square Tube	WCRO2-SQ-SF	38 lbs 17.7 kg	-G Hot Dipped Galvanized	-G, -P, -GP 2" x 2" x 0.188" Square Tube (Regular Steel) 51.8mm x 51.8mm x 4.8mm	(2) 5" x 6" x 3/8" Plates, 127mm x 152mm x 10mm	(2) 1/2" x 2.75" 13mm x 7cm Rawl Spike
			-P Powder Coated (color)	-SS 2" x 2" x 0.188" Square Tube (304 SS Alloy) 51.8mm x 51.8mm x 4.8mm	each with (3) 9/16" Holes 14mm	(4) 1/2" x 3.75" 13mm x 9.5cm Wedge Anchor Bolt
			-GP Hot Dipped Galvanized with Powder Coat (color) Top-Coat			
			-SS Stainless #4 Brush Finish			

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2012.04.11

GROUND ANCHORED, SQUARE PROFILE BIKE STORAGE CIRCULAR RACK. 2 BIKES PER RACK. LOCATED ALONG THE PASEO, AND FLANKING THE DRIVEWAY BETWEEN AZALEA AND BEGONIA.





	OCCUPANCY	SPRINKLERED?	CONST. TYPE	HEIGHT & NUMBER OF STORIES
AZALEA	R-3	SPRINKLERED	V-B	2-STORIES
BEGONIA	R-3	SPRINKLERED	V-B	2-STORIES
CAMELLIA	R-3	SPRINKLERED	V-B	2-STORIES
DAFFODILE	R-3	SPRINKLERED	V-B	2-STORIES
EDELWEISS	R-3	SPRINKLERED	V-B	2-STORIES
FREESIA	R-3	SPRINKLERED	V-B	2-STORIES
GERANIUM	R-3	SPRINKLERED	V-B	2-STORIES + STAIR PENTHOUSE

ALL HOMES SUBJECT TO 2016 CALIFORNIA BUILDING CODE
ALL HOMES TO BE EQUIPPED WITH RESIDENTIAL SPRINKLER SYSTEM

— EXIT PATH
- - - ASSUMED PROPERTY LINE

1 GROUND PLAN BUILDING CODE & EXITING
3/64" = 1'-0"

Memorandum

To: Leslie Mendez, City of Berkeley Planning & Development Department
From: Mark Rhoades, Rhoades Planning Group
Date: February 6, 2020
Re: 1155-1173 Hearst Avenue/ZP2016-0028


Dear Ms. Mendez,

This memo serves to memorialize the owners' commitment to:

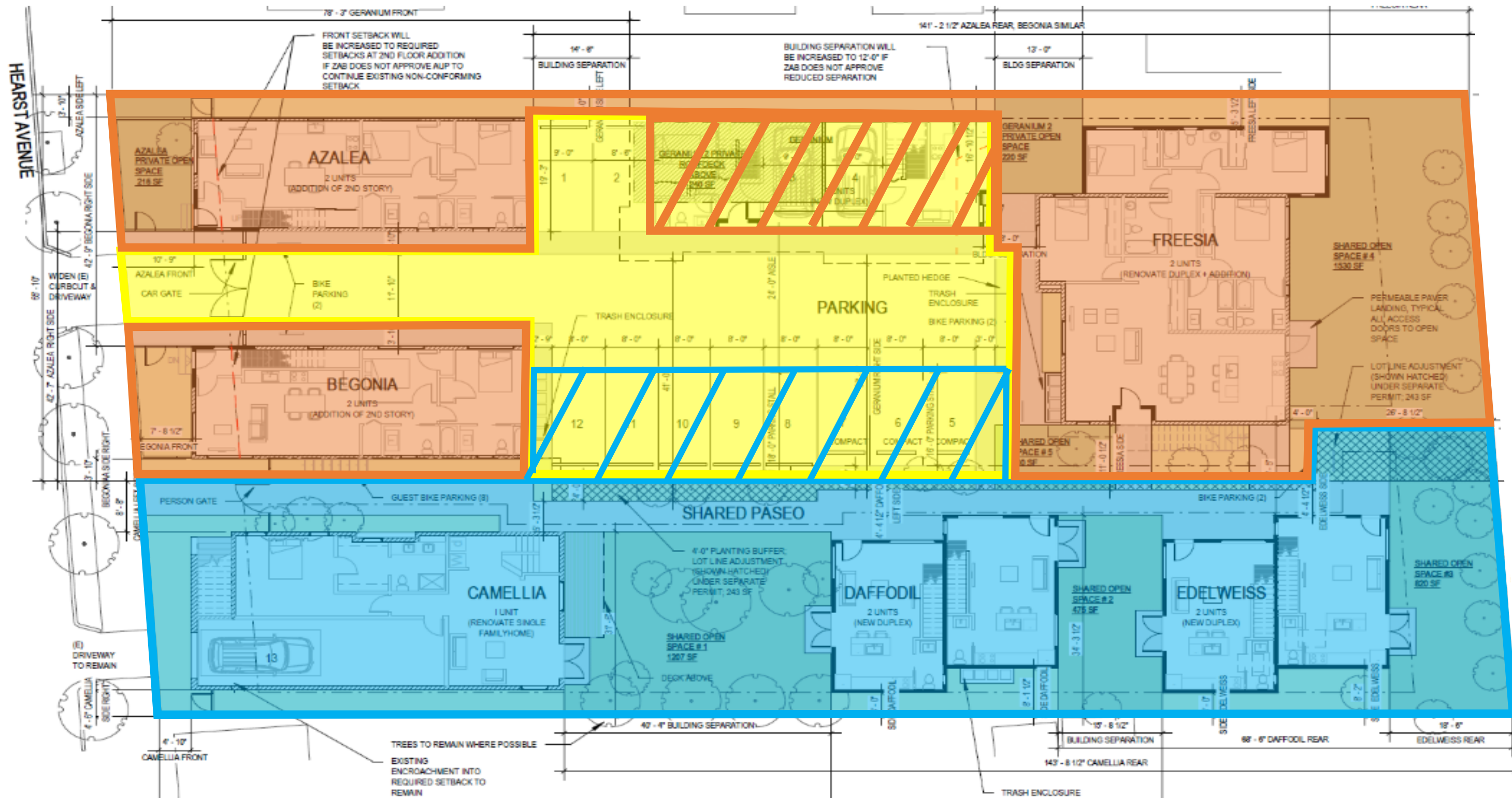
- Preserve the six-existing rent-controlled units in the project in perpetuity.
- The six-existing rent-controlled units will not be converted to condominiums, and no work proposed in this Use Permit, other than routine maintenance, will be performed on any building that is occupied by a resident.
- The owners are prepared to have staff recommend the above commitments as Conditions of Approval.
- These commitments were also discussed at the meeting that was held on February 26, 2019 at the Berkeley Rent Board offices with Rent Board staff, Rhoades Planning Group, and the existing residents of 1155-1173 Hearst Avenue. The meeting was noticed by Rent Board staff well in advance of the meeting date, both by USPS and email. One resident attended the meeting and had the opportunity to have her questions answered by Rent Board staff, including a staff attorney.

Please also find attached proposed construction phasing plan which will benefit the current residents by maintaining some of the parking onsite during construction.

Sincerely,



Mark Rhoades, AICP
510-545-4341



Hearst Gardens- Project Phasing and Implementation



Phase I
4 new units, renovate ex. SFR, install drainage facility, maintain up to 8 resident parking spaces during construction along west property line



Phase II
Fully improve parking area, landscape, and walkway treatments, paint existing apartments



Phase I
Construction staging, 8' screen fence for dust and view control



Phase III – At voluntary vacancy of at least one of the existing duplexes
2 new units (pay AHMF for full project – triggered by 5th unit), duplex additions



Z O N I N G
A D J U S T M E N T S
B O A R D
S T A F F R E P O R T

FOR BOARD ACTION
APRIL 25, 2019

1155-1173 Hearst Avenue

Use Permit #ZP2016-0028 to develop two parcels, including the substantial rehabilitation of the existing seven dwelling units and construction of six new dwelling units.

I. Background

A. Land Use Designations:

- General Plan: HDR – High Density Residential
- Zoning: R-2A – Restricted Multiple-Family Residential

B. Zoning Permits Required:

- Use Permit for construction of dwelling units, under BMC Section 23D.32.030
- Use Permit for the addition of a sixth or greater bedroom in existing dwellings on a parcel, under BMC 23D.32.050.A
- Administrative Use Permit to construct residential additions greater than 14' in average height, BMC Section 23D.32.070.C
- Administrative Use Permit to allow an extension of a non-conforming front and side yard, BMC Section 23C.04.070.B
- Administrative Use Permit to reduce the building separation from 8' on the first floor and 12' on the second floor to 6'-1", BMC Section 23D.32.070.D.4

C. CEQA Determination: Categorically exempt pursuant to Section 15332 of the CEQA Guidelines ("In-Fill Development Projects").

D. Parties Involved:

- Applicant/
Property Owner Hearst Avenue Cottages, LLC c/o Rhoades Planning Group,
46 Shattuck Square, Suite 11, Berkeley, CA 94704

Table 1: Project Chronology

Date	Action
February 2, 2016	Application submitted
May 17, 2017	Application deemed complete
August 10, 2017	ZAB public hearing notices mailed/posted
August 24, 2017	ZAB hearing continued item to September 28, 2017
September 28, 2017	ZAB hearing, item continued off calendar
March 6, 2018	Revised Application submitted
July 3, 2018	Revised Application deemed complete
August 8, 2018	ZAB public hearing notices mailed/posted
August 23, 2018	ZAB hearing
August 30, 2018	Notice of Decision issued
September 12, 2018	Appeal filed
January 29, 2019	Council Hearing remand to ZAB
April 25, 2019	ZAB public hearing notices mailed/posted
May 9, 2019	ZAB hearing

II. Project Background

On August 23, 2019, the ZAB approved Use Permit #ZP2016-0028 to rehabilitate the seven existing dwelling units (three duplexes and one single-family dwelling) and add three two-story duplexes as a common interest development (i.e. condominiums) for a total of seven buildings and 13 dwelling units. The ZAB added the following conditions revising the plan set:

- The north facing window of the northeast bedroom in **Geranium** be a minimum of 68 inches from finished floor level to ensure privacy between residents of the two opposing units.
- The roof deck on **Geranium** shall be moved to the east side of the roof and the roof access shall not include any windows and shall be reduced in massing (i.e. sloped) to limit impacts to the western neighbors.
- All west facing windows on **Freesia** and **Geranium** shall, subject to review and approval by the Zoning Officer, be redesigned to ensure privacy for the residents of the building to the west. This may include, but is not limited to, frosted glass and/or clerestory design.
- A maximum of three full bathrooms are permitted in the two **Freesia** dwelling units.

In addition, the ZAB revised and added to the conditions of approval for tenant protections.

Staff sent the Notice of ZAB decision out on August 30, 2018. On September 12, 2018, Hussein Saffouri, on behalf of Rain Sussman, owner and resident of 1824 Curtis Street ("Appellant"), filed an appeal with the City Clerk. Twenty-nine additional individuals signed

a petition in support of the appeal. The Clerk set the matter for review by the Council on January 29, 2019.

After a public hearing, Council remanded the project back to ZAB to undertake further CEQA analysis, review the project based on CEQA findings, and analyze the detriment to rent-controlled units.

III. Current Status

A. Further CEQA Analysis – Geotechnical Investigation: To further inform the CEQA analysis, the applicant hired the firm of Alan Kropp & Associates, Inc. (AKA) to perform an investigation to evaluate the geotechnical characteristics of the site for the proposed project and to provide geotechnical engineering recommendations for the proposed work. Staff hired the firm of Cotton, Shires & Associates, Inc. (CSA) to peer review the geotechnical report. See Attachment 8 for all results of the geotechnical report and peer review. The investigation concludes that the site is suitable for the construction of the proposed project from a geotechnical standpoint provided that all of the conclusions and recommendations presented in the report are incorporated in the design and construction of the project. As noted in the peer review, the AKA report does not address potential flooding or hydrologic concerns within the scope of their work. The geotechnical report was, however, reviewed by Clearwater Hydrology (CH) for an engineering hydrologic review. CH reviewed the geotechnical investigation with the aim to note any soils information that may differ from the conditions assumed for the project site by CH relative to its stormwater drainage design for the site. As summarized in its letter dated February 22, 2019 (see Attachment 8), the groundwater depth measured by AKA is greater than that assumed by CH, rendering CH's design assumptions conservative. The results of the investigation, therefore, confirm that no further revisions to the design as presented in the July 2017 final report are required.

The CSA peer review also concluded that the geotechnical report was in general conformance with the prevailing standard of practice and recommended conditions be added to Use Permit entitlement. To reflect current project status, staff recommends the existing condition of approval regarding the geotechnical investigation be updated as follows with track changes reflecting the current project status:

Prior to Issuance of Any Building Permit:

13. Geotechnical Report. The applicant shall submit to the Building and Safety Division at the geotechnical report, prepared by Alan Kropp & Associates, dated March 1, 2019, updated April 17, 2019, as well as the peer review conducted by Cotton, Shires & Associates, Inc. dated March 14, 2019 and April 29, 2019, that addresses the subsurface water conditions in and in the immediate vicinity of the project site. A civil engineer shall be employed to draft plans in conformance with all recommendations of the Geotechnical and Hydrology reports and associated peer reviews. The engineer shall annotate the recommendations to state where in the building permit plan submittal set each recommendation is addressed.

- B. Further CEQA Analysis – Categorical Exemption:** The City hired Rincon Consultants to independently review the project file, technical reports submitted, peer reviews, and public comment to prepare an analysis of the applicability of a Class 32 Urban Infill categorical exemption for this project (see Attachment 9). The analysis concludes that no unusual circumstances that would trigger further CEQA review exist at the project site. Specifically, with respect to hydrologic conditions, the Categorical Exemption analysis concludes that the limited seasonal flooding in the vicinity of the site is common in low lying areas in Berkeley. Further, the analysis notes that the historic trace of Strawberry Creek in the area is identified as “Not Protected” under BMC Section 17.08, and the project is not otherwise in flood plain, flood way, or flood restriction zone. (Compare Pub. Res. Code, § 21159.21 [defining conditions for certain CEQA exemptions for housing developments].) Staff, therefore, recommends no changes to the CEQA analysis and the use of a Categorical Exemption.
- C. Rent Control Detriment Analysis:** ZAB granted project approval with several conditions to protect existing tenants residing in the seven existing dwelling units, six of which are subject to rent control: 1155-57 Hearst Avenue, 1159 A & B Hearst Avenue, and 1161-63 Hearst Avenue. Staff reviewed the conditions with Rent Stabilization Board staff who ensure tenant protections (BMC 13.76) and Housing and Community Services staff who implement the provisions of the Relocation Ordinance (BMC 13.84). Follows are the ZAB approved tenant protection conditions, with track changes recommended by staff to provide clarity and consistency with the Rent Stabilization and Relocation Ordinances. In addition, staff recommends flexibility to the tenant parking condition (COA 30) to allow for payment as compensation if alternative parking is unavailable.

Prior to Issuance of Any Building Permit:

- 15.** No work related to this Use Permit may commence on any of the existing duplexes (1155-57 Hearst, 1159 A & B Hearst, 1161-63 Hearst), until and unless both units are vacant pursuant to the Tenant Relocation condition below. This does not apply to routine maintenance and repairs.
- 16.** Tenant Relocation. At least 30 days prior to construction of ~~Prior to building permit issuance~~ for any interior improvements, renovations or addition to the existing dwelling units (1155-57 Hearst, 1159 A & B Hearst, 1161-63 Hearst, and 1173 Hearst) related to this Use Permit, the property owner shall provide all tenants of 1155-57 Hearst, 1159 A & B Hearst, 1161-63 Hearst, and 1173 Hearst a written notice of temporary relocation as outlined in BMC Chapter 13.84.040.B. This notice shall summarize the repairs to be undertaken and the estimated duration of relocation and shall be accompanied by a copy of the Relocation Ordinance and the City’s request for relocation payment form. Alternatively, the property owner shall provide proof verification from the Rent Stabilization Board that all tenants have voluntarily vacated or proof that the owner and tenants have come to a written agreement on a plan for relocation. Verification of voluntary vacation of the units must include acknowledgment that the tenants were aware of their rights under the Relocation Ordinance.
- 19.** Construction Noise Management - Public Notice Required. At least thirty calendar days prior to initiating any construction activities at the site, the

applicant shall provide notice to existing residents on the project site, including (1) description of construction activities, (2) daily construction schedule (i.e., time of day) and expected duration (number of months), (3) the name and phone number of the Noise Management Individual for the project, and (4) designate a “construction liaison” that would be responsible for responding to any local complaints about construction noise. The liaison would determine the cause of the noise complaints (e.g., starting too early, bad muffler, etc.) and institute reasonable measures to correct the problem. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval.

The public notice shall also state that the applicant will hold a community meeting every six months from the start of construction to the conclusion of construction for all active building permits related to this Use Permit pursuant Condition of Approval number 32; that the existing tenants have the option to temporarily relocate during construction for all active building permits related to this Use Permit pursuant to Condition of Approval number 31; and that parking shall be provided on or off site during all construction in compliance with Condition of Approval number 30.

During Construction:

- 31.** Tenant Parking. During any construction related to this Use Permit, the applicant/property owner shall ensure that parking is provided to existing tenants per their lease agreement either on-site or in an alternative location within the area bounded by San Pablo Avenue to the west, Francisco Street to the north, Chestnut Street to the east, and University Avenue to the south. If parking cannot be found within the boundary then the applicant/property owner shall provide tenants with \$100/month as a parking stipend.¹
- 32.** Temporary Relocation. During any construction related to this Use Permit, a tenant household that has been a tenant as of the date of Use Permit entitlement, existing tenants may choose to temporary relocate during construction activities related to entitlement of this Use Permit, and the applicant/property owner shall initiate relocation under the provisions of accommodate the request and provide the same benefits and protections as in the Relocation Ordinance, BMC Section 13.84.
- 33.** Neighborhood Construction Meetings. The applicant will hold a community meeting every six months from the start of construction to the conclusion of construction for all active building permits related to this Use Permit.

Additionally, the Applicant submitted a revised applicant statement that memorializes their intent to preserve the six existing rent controlled units in perpetuity. The commitment is institutionalized by the following condition of approval:

¹ For reference, the current price for an adult local 31-day AC Transit pass is \$84.60 source: <http://www.actransit.org/actrealtime/fares-tickets-passes/>.

At All Times:

- 57.** Rent Control in Perpetuity. The existing six dwelling units shall not undergo condominium conversion and shall remain as rental units subject to rent control under the Rent Stabilization Ordinance.

The Applicant commitment to retaining the units as rent control and not renovating the existing units until the building is vacant was relayed at a meeting that was held on February 26, 2019 at the Rent Stabilization Board (RSB) offices. RSB sent notice of the meeting to all the existing residents of 1155-1173 Hearst Avenue. The meeting was attended by RSB staff, including a staff attorney, Rhoades Planning Group and one resident who had the opportunity to ask questions.

Staff believes that the tenant protection conditions as proposed will provide the highest level of tenant protections that go over and beyond the usual protections available through both the RSB and Relocation Ordinance. In addition, as the applicant has committed to retaining the existing duplexes as rental units, they would remain subject to rent control in perpetuity.

VI. Recommendation

Because of the project's consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board:

APPROVE Use Permit ZP2016-0028 pursuant to Section 23B.32.030 and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

1. Findings and Conditions, dated May 9, 2019
2. Project Plans, dated June 8, 2018
3. Notice of Public Hearing
4. Revised Applicant Statement, dated April 3, 2019
5. ZAB Staff Report, dated August 23, 2018 (complete ZAB packet available online: https://www.cityofberkeley.info/Planning_and_Development/Zoning_Adjustment_Board/1155-1173_Hearst.aspx)
6. Appeal Letter, dated September 12, 2018
7. City Council Staff Report, dated January 29, 2019 (complete Council packet available online: <file:///C:/Users/lmendez/Downloads/2019-01-29%20Item%2014%20ZAB%20Appeal%20%201155-1173%20Hearst%20Ave.pdf>)
8. Geotechnical Investigation and Associated documents:
 - i. Geotechnical Investigation, prepared by Alan Kropp & Associates Inc., dated March 1, 2019
 - ii. Engineering Hydrologic Review of Geotechnical Investigation, prepared by Clearwater Hydrology, dated February 22, 2019
 - iii. Geotechnical Peer Review, prepared by Cotton, Shires and Associates, Inc., dated March 14, 2019
 - iv. Response to Geotechnical Peer Review Comments, prepared by Alan Kropp & Associates, Inc., dated April 17, 2019
 - v. Supplemental Geotechnical Peer Review, prepared by Cotton, Shires and Associates, Inc., dated April 29, 2109
9. Categorical Exemption Report, prepared by City of Berkeley with the assistance of Rincon Consultants, Inc., dated April 2019
10. Correspondence Received after January 29th Council meeting

Staff Planner: Leslie Mendez, Senior Planner, LMendez@cityofberkeley.info, (510) 981-7426



Office of the City Manager

14

PUBLIC HEARING

January 29, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Timothy Burroughs, Director, Department of Planning & Development

Subject: ZAB Appeal: 1155-1173 Hearst Street

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt a Resolution to affirm the Zoning Adjustments Board decision to approve Use Permit #ZP2016-0028 to develop two parcels, including the substantial rehabilitation of the existing seven dwelling units and construction of six new, for-sale dwelling units; and dismiss the appeal.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

On August 23, 2018, the Zoning Adjustments Board (ZAB) held a public hearing and approved Use Permit #ZP2016-0028 by an 8-0-1-0 vote (Yes: O'Keefe, Kahn, Olson, Hauser, Simon-Weisberg, Kim, Zaneri, Clarke; No: None; Abstain: M. Poblet; Absent: None). On August 30, 2018, staff issued the notice of the ZAB decision. On September 12, 2018, Hussein Saffouri, on behalf of Rain Sussman, owner and resident of 1824 Curtis Street ("Appellant"), filed an appeal with the City Clerk. Twenty-nine additional individuals signed a petition in support of the appeal. The Clerk set the matter for review by the Council on January 29, 2019.

BACKGROUND

The project site consists of two separate parcels located on the north side of Hearst Avenue on the block bound by San Pablo Avenue to the west and Curtis Street to the east. The parcel to the west (1155-63 Hearst) is developed with a two-story duplex towards the rear of the lot and two single-story duplexes situated towards the front of the lot, separated by a paved parking area. All six of these units are subject to rent control. The parcel to the east (1173 Hearst) is developed with a two-story single family dwelling with an attached tandem car garage. All seven units are currently occupied by renters.

The project site, which lies within the Strawberry Creek Watershed, is located in a topographic depression roughly bounded to the south by Hearst Avenue, to the north by Delaware Street, to the east by Curtis Avenue and to the west approximately 100-200

feet west of the site. Recurrent ponding and flooding occurs in the topographic depression during the rains.

On February 2, 2016, Mark Rhoades (“Applicant”) submitted a Use Permit application for a project that requested to merge the two lots, substantially rehabilitate the existing dwelling units, and construct eleven additional units employing State Density Bonus Law, for a total of 18 units. Due to the provision of Density Bonus Law requiring replacement of units under rent control, which, according to the Applicant, rendered the project infeasible, the Applicant chose to revise the project in response to comments received by the ZAB during the project hearing on September 28, 2017.

On March 6, 2018, the Applicant resubmitted the revised project, which did not include a request for Density Bonus. The revised project contains the following main components:

- Construction of one duplex on the western parcel in the middle of the lot;
- Construction of two duplexes on the eastern parcel behind the single-family dwelling;
- Uncovered parking for both properties located in the middle of the western lot; and
- Rehabilitation of all seven existing units, plus expansion of the three duplexes after all current residents voluntary vacate.

The applicant has committed to, and the project is conditioned (condition of approval #15) that prior to building permit issuance for any interior improvements, renovations, or addition to the existing dwelling units, the property owner shall provide proof that all tenants have voluntarily vacated or proof that the owner and tenants have come to a written agreement on a plan for relocation. To provide clarity, staff recommends the condition be modified as follows:

Tenant Relocation. Prior to building permit issuance for any interior improvements, renovations or addition to any the existing dwelling units building (1955-57 Hearst, 1959 A & B Hearst, 1961-63 Hearst, and 1973 Hearst), the property owner shall provide proof that all tenants within the building have voluntarily vacated or proof that the owner and tenants have come to a written agreement on a plan for relocation. This shall not apply to issuance of building permits for general renovation or repair within these units.

Due to the voluntary participation by existing tenants, the timeframe of work on these buildings cannot be anticipated.

The ZAB approved the project at the August 23, 2018 meeting.

ENVIRONMENTAL SUSTAINABILITY

The project approved by ZAB is in compliance with all state and local environmental requirements.

RATIONALE FOR RECOMMENDATION

The issues raised in the Appellant's letter, and staff's responses, are as follows. For the sake of brevity, the appeal issues are not re-stated in their entirety; refer to the attached appeal letter for full text.

Issue A: "ZAB erred in finding the project exempt from CEQA." [p. 1 of attached appeal letter]

Issue A1: "The project does not qualify for a categorical exemption because there is substantial evidence that it will not be adequately served by the existing utility infrastructure." [p. 1-2]

Response A1: The ZAB approved the project with the CEQA determination that the project is categorically exempt pursuant to Section 15332 of the CEQA Guidelines, "Class 32 In-Fill Development Projects. Class 32 consists of projects characterized as in-fill development meeting the following conditions: (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations; (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses; (c) The project site has no value, as habitat for endangered, rare or threatened species; (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and (e) The site can be adequately served by all required utilities and public services.

The Appellant has claimed that the project fails to qualify for this CEQA exemption as it does not meet condition (e) above. The Appellant's reasoning behind the assertion is that the site is located over a non-engineered buried branch of Strawberry Creek, that the site is prone to flooding, that the storm drain system is unable to address the runoff, and that the proposed impervious surfaces and foundations would exacerbate existing flooding conditions.

Due to the hydrology conditions on the project site, the Applicant proactively submitted a stormwater and flooding assessment (Assessment) and mitigation design for the proposed project prepared by Clearwater Hydrology. The objective of the Assessment was twofold: 1) to develop a storm drainage system design for the proposed project that would have the ability to provide proper drainage without on-site flooding during the 10-year design rainstorm; and 2) to improve, even marginally, the flooding conditions that occur along the neighboring Curtis Street properties for rainstorms exceeding roughly the five-year recurrence interval. The City hired Balance Hydrologics to peer review the Assessment, provide comment, and review comments provided on

the Assessment by Terraphase, a consultant hired by the Appellant. Balance Hydrologics concurred with the findings of the Assessment that the selected drainage design—which includes a drainage channel inset within the main driveway to the northern edge of the parking lot and a grassed swale extending eastward from the parking lot to the eastern project boundary—would meet the Assessment objectives. Balance Hydrologics recommended that additional information be provided prior to Building Permit submittal to ensure the projects meets the requirements of the California Water Boards Municipal Regional Permit (MRP). The requested information includes changes to time of concentration, revised modeling of overflow from Curtis Street, and inclusion of information on changes in peak flow, and C.3 compliance. Project approval is conditioned with this recommendation. Although drainage conditions on the private property are not part of the public drainage infrastructure, the project would not exacerbate existing conditions on the project site or the neighboring site, and is actually expected to improve drainage conditions in the area.

The public service to which the appeal point refers is the City's storm drain system (curbs, gutters, catchment basins, street crossing swales, etc.) on the public right-of-way. There is no evidence in the record that the storm drain system is inadequate for the site area; that water flow ponds on the street or sidewalk. To the contrary, during a field visit in the rain on November 29, 2018, after heavy rains during the previous night, the water flowed freely through the gutters in front of the project site and on both sides of the block (see Figure 1 below). The water flow follows the topography from east to west and enters the catchment basin located just east of San Pablo Avenue. At the catchment basin (i.e. storm drain) the water enters a 2' x 3' sewer pipe that runs under San Pablo Avenue to the south and connects to a 5'-2" x 7'-9" sewage pipe that runs under University Avenue to the west. Public Works engineering staff stated that they had no concerns as to whether the storm drain system could accommodate any additional flow from the proposed six-unit infill project. The Appellant's claim that the existing utility infrastructure cannot adequately service the development project is, therefore, unfounded; the project qualifies for a Class 32 In-Fill exemption.

Figure 1: Water Flow at Project Site Frontage (1173 Hearst looking southwest)



Issue A1a: “CEQA Guidelines are clear that the proposed categorical exemption is not applicable in cases when a proposed project is located in a sensitive site” [p. 1]

Response A1a: The Appellant is referencing, and proceeds to quote the Location exception to a CEQA categorical exemption (14 CCR § 15300.2(a)). The location-based exception applies only to Class 3, 4, 5, 6, and 11 categorical exceptions, and any references to sensitive location throughout this appeal point does not apply to Class 32 In-Fill Development Projects. The exception does not apply to this project and the appeal point is without merit.

Issue A1b: “The buried creek alignment is also associated with the potential presence of cultural and/or historic resources. Testimony was given that a portion of the property on which the project is proposed was the site of the original Chez Panisse garden” [p. 2]

Response A1b: Even if there was an original Chez Panisse garden and it was located at this site, the City of Berkeley has never determined it to be a significant or historical resource. The former presence of a garden would not constitute a sensitive location for environmental purposes. This appeal point is without merit.

No known cultural resources have been identified on the site, however, project approval is subject to the City’s standard conditions regarding

tribal cultural resources, archaeological resources, human remains, and paleontological resources (COAs 34 – 37).

Issue A1c: “[T]he area proposed for development forms a “lake” seasonally, indicat[ing] that the area may qualify as a potential jurisdictional wetland subject to additional review and permitting requirements.” [p. 2]

Response A1c: The area of proposed development is not listed in the National Wetlands Inventory (www.fws.gov/wetlands/) and there is no evidence in the record that the back yard area of these lots has the required soil, plant life, and fish and/or wildlife communities (i.e. aquatic resources) required to meet the definition of wetland.

Issue A2: “Even if the project qualifies for a categorical exemption, it is subject to the unusual circumstances exception because there is substantial evidence of an unusual circumstance and of a fair argument that there may be a significant effect on the environment” [p. 2-3]

Response A2: A project is ineligible for a categorical exemption if it falls under one of six exceptions listed in §15300.2 of the CEQA Guidelines. The Appellant asserts the project falls under §15300.2(c)’s Significant Effect exception: “A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.”

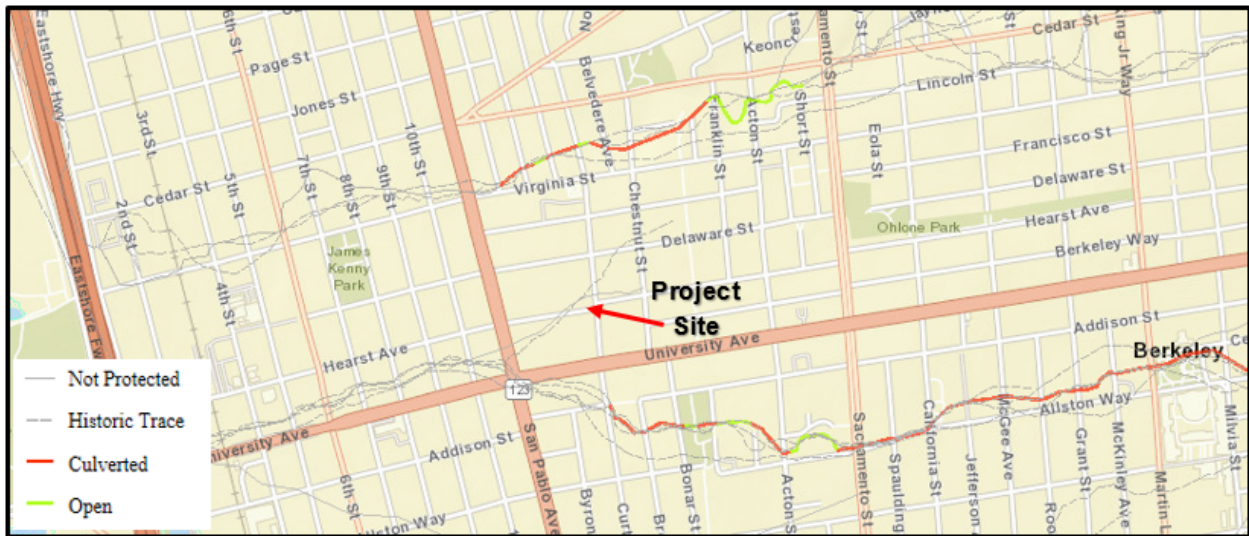
In *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal. 4th 1086, the California Supreme Court held that for the exception to apply, “[i]t is not alone enough that there is a reasonable possibility that the activity will have a significant effect.” Rather, the effect must be “due to unusual circumstances.” *Id.* at 1097-98.

The Appellant claims the fact that the site sits on an underground branch of the historic Strawberry Creek, which is filled with non-engineered soils and has been subject to significant historical flooding, constitutes an “Unusual Circumstance.” As evidenced in the record—a hydrology Assessment prepared by a licensed engineer, Peer Reviewed by a licensed engineer, with recommendations incorporated as project conditions of approval—there is substantial evidence in the record that the project would *not* have a significant environmental impact, thereby negating any fair argument that it could. As such, the exception does not apply as the Appellant fails the “significant effect” prong of the test.

The Appellant also fails the “unusual circumstances” prong of the test. In *Berkeley Hillside Preservation v. City of Berkeley*, the Court determined that without evidence of an environmental effect, a party

invoking the exception may establish an unusual circumstance “[b]y showing that the project has some feature that distinguishes it from others in the exempt class, such as its size or location.” *Id.* at 1105. Though the project area is above a former creek and though there is evidence of flooding in the backyards of the neighborhood, this is not unique to this project, or in fact to this neighborhood. In questioning different members of Public Works field staff, several areas of the City were listed as experiencing seasonal flooding including the northwest corner of University and San Pablo Avenues; Derby Street near Martin Luther King Jr. Way; Derby Street between Shattuck and Telegraph Avenues; and the area around Malcolm X Elementary School south of Ashby Avenue and west of the Ashby BART station, among others. It is not a coincidence that all these areas are over either historic traces of streams or underground creek beds, labeled “Not Protected” on the City’s GIS maps (<http://cobmapv2/planning/>). As can be seen in Figure 2 below, which represents a small portion of the City, underground and historic traces of streams striate the city running from east to west. Ponding and flooding conditions vary, but are not uncommon or otherwise unusual on the numerous properties overlaying these hydrologic features.

Figure 2: GIS Creek Layer on Area Including Project Site

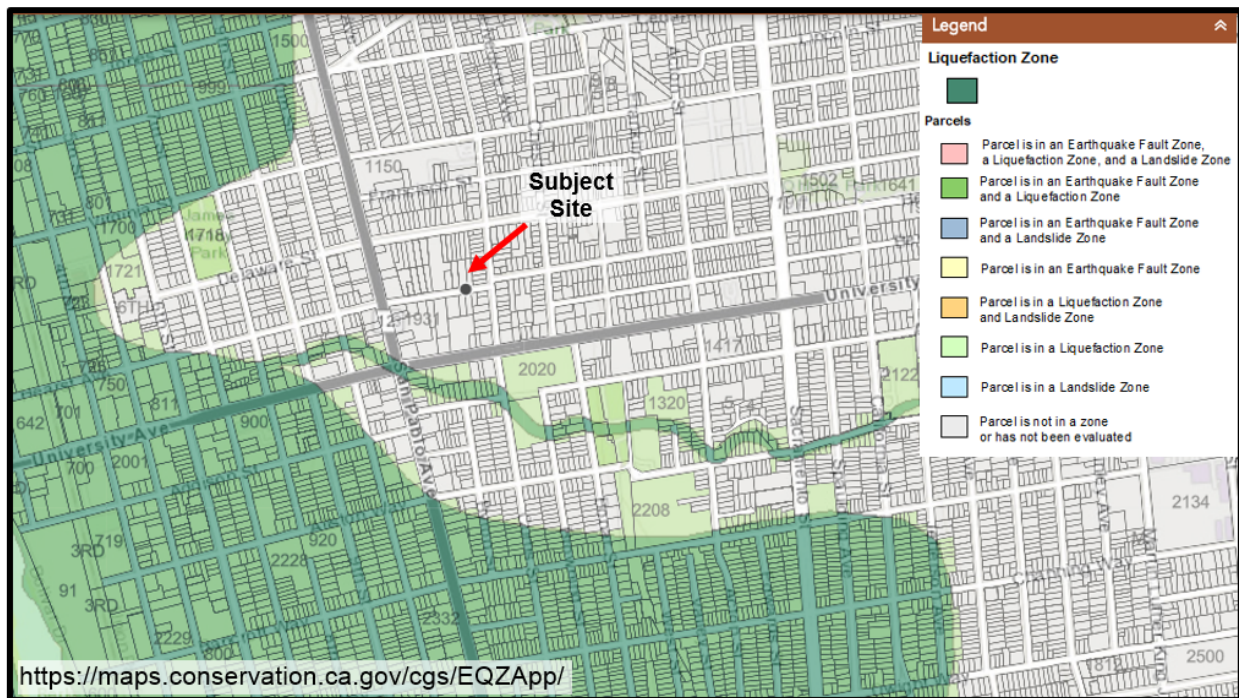


Additionally, in response to the Appellant’s point, the Public Works Engineer has stated in the record that although the Urban Creek Council—a Bay Area non-profit organization working to preserve, protect, and restore urban streams and their riparian habitats (urbancreeks.org)—may have classified this area as “filled wetlands” and as “seismically unstable and subject to liquefaction,” that is not the

viewpoint of Public Works staff or the U.S. Geological Survey (USGS), who have not designated this area as a site with high potential for liquefaction. See figure 3 below.

Available information belies the Appellant’s claim that an unusual circumstance exists as the project does not have some feature, such as size or location, which distinguishes it from others in the exempt class. Accordingly, the project is exempt from CEQA under the Class 32 In-Fill categorical exemption.

Figure 3: Earthquake Zones of Required Investigation (USGS)



Issue A2a: “City of Berkeley Zoning Department Staff recognized and agreed that the “Level of water in the area” constitutes an unusual circumstance.” [p. 3]

Response A2a: The project planner did state towards the beginning of the ZAB hearing on this project that the level of water in the area was an unusual circumstance. The comment was based on a layman’s definition of what is typical and not upon the investigation of what legally constitutes an unusual circumstance as discussed in Issue A above. A statement by staff does not constitute the required substantial evidence to designate an unusual circumstance. In addition, the ZAB secretary clarified later in

the hearing that staff reviewed this application and determined it meets the infill exemption.

Issue B: “If the project is exempt from CEQA[,] appropriate conditions must be imposed under BMC §23B.32.040 to ensure the project is not detrimental to the health, safety, comfort or general welfare of the neighborhood or injurious to the adjacent properties, the surrounding area or neighborhood.” [p. 3-5]

Response B: Staff concurs that appropriate conditions must be imposed on any project to ensure non-detriment. Staff believes, as did ZAB upon granting of the Use Permit, that the appropriate conditions of approval (COA) were so imposed and, thereby, made the non-detriment finding pursuant to BMC §23B.32.040.A. As the Appellant’s issue is specifically related to hydrology impacts, staff is limiting the discussion of detriment to hydrology as well.

In addition to the standard Toxics condition of approval regarding a Soil and Groundwater Management Plan (COA 28B), Stormwater Requirements (COA 40), and Public Works conditions regarding sub- and surface waters (COAs 42-45, 48), the project is conditioned to incorporate the Drainage Plan as presented in the Applicant’s revised Hydrology Assessment of July 12, 2017 and to submit additional design documentation as requested by the Peer Review (COA 21).

Specifically, in order to provide proper drainage without on-site flooding during the 10-year design rainstorm and to improve the flooding conditions that occur along the neighboring Curtis Street properties for rainstorms exceeding roughly the two-year recurrence interval, the project will incorporate a drainage design that includes the following components:

- A 2.5-foot wide, 0.4-foot deep rectangular channel with a slope of 0.8% inset within the Project main driveway, extending north to the northern edge of the new parking lot; and
- A trapezoidal grassed swale with side slopes 3:1, channel slope of 1.0% and a minimum depth of 0.3 feet extending eastward from the parking lot to the eastern Project boundary.

Although a geotechnical report would have been required regardless by the Building and Safety Division prior to issuance of the building permit, ZAB added a condition of approval to emphasize the requirement (COA 13): “*The applicant shall submit to the Building and Safety Division a geotechnical report that addresses the subsurface water conditions in*

and in the immediate vicinity of the project site. A civil engineer shall be employed to draft plans in conformance with all recommendations of the Geotechnical and Hydrology reports.” For clarity, the reports referenced are those submitted by the Applicant that are prepared by a licensed engineer, and the peer review by a licensed engineer commissioned by the City.

Contrary to the Appellant’s statements that ZAB intended certain conditions be met prior to issuance of the Use Permit, the vote conducted by ZAB at the end of the hearing approved the Use Permit. Conditions added to the project by ZAB during the motion to approve a project are subsequent to issuance of the Use Permit. If ZAB had intended otherwise it would have continued the project.

Despite the evidence in the record that the project will not have a detrimental impact to the surrounding neighborhood, the project conditions of approval, both standard and additional, will further ensure the health, safety, comfort and general welfare of the neighborhood and that the project will not be injurious to the adjacent properties, the surrounding area or neighborhood.

ALTERNATIVE ACTIONS CONSIDERED

Pursuant to BMC Section 23B.32.060.D, the Council may (1) continue the public hearing, (2) reverse, affirm, or modify the ZAB’s decision, or (3) remand the matter to the ZAB.

ACTION DEADLINE:

Pursuant to BMC Section 23B.32.060.G, if the disposition of the appeal has not been determined within 30 days from the date the public hearing was closed by the Council (not including Council recess), then the decision of the Board shall be deemed affirmed and the appeal shall be deemed denied.

CONTACT PERSONS

Timothy Burroughs, Director, Planning & Development Department, (510) 981-7437
Leslie Mendez, Senior Planner, Planning & Development Department, (510) 981-7426

Attachments:

- 1: Resolution
 - Exhibit A: Findings and Conditions
 - Exhibit B: Project Plans dated June 8, 2018
- 2: Appeal Letter, dated September 12, 2018
- 3: ZAB Staff Report, dated August 23, 2018
- 4: Index to Administrative Record

ZAB Appeal: 1155-73 Hearst Street

PUBLIC HEARING
January 29, 2019

5: Administrative Record
6: Public Hearing Notice

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September 10, 2018

Berkeley City Council
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2018 SEP 12 PM 1:26
CITY OF BERKELEY

**Re: Appeal of Decision of Zoning Adjustments Board Dated August 23, 2018
Concerning Use Permit #ZP2016-0028;
Property Address: 1155-1173 Hearst Avenue**

Dear Members of the Berkeley City Council:

I am submitting this appeal of the decision of the Berkeley Zoning Adjustments Board (“ZAB”) concerning Use Permit #ZP2016-0028 pertaining to the property at 1155-1173 Hearst Avenue in Berkeley, on behalf of Rain Sussman who owns the home located at 1842 Curtis Street in Berkeley which is directly next door to the development project. As you can see from the signatures on this letter, most of the neighbors support this appeal. Many other neighbors will be submitting letters opposing the development project because the ZAB decision does not protect the neighborhood, its residents, and their property from the negative impact of this development project.

A. ZAB erred in finding the project exempt from CEQA

1. The project does not qualify for a categorical exemption because there is substantial evidence that it will not be adequately served by the existing utility infrastructure

CEQA Guidelines are clear that the proposed categorical exemption is not applicable in cases when a proposed project is located in a sensitive site or is subject to unusual circumstances: “...a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant”. (14 CCR § 15300.2.)

This proposed development site is located over a non-engineered buried branch of Strawberry Creek. There is a high likelihood that the fill placed in the channel was or still is unconsolidated. There is also significant evidence from the testimony of neighbors at the ZAB hearings held regarding the project, as well as video footage of flooding submitted to ZAB, that the site is prone to flooding and that the storm drain system is

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unable to address the runoff. The buried creek alignment is also associated with the potential presence of cultural and/or historic resources. Testimony was given that a portion of the property on which the project is proposed was the site of the original Chez Panisse garden.

As a result, the project does not satisfy requirement (e) of 14 CCR § 15332 for a CEQA categorical exemption as an urban infill project because there is substantial evidence that the Project is located in a sensitive location and approval of the project without further study could result in significant drainage and flooding impacts and will not be adequately served by existing utility infrastructure.

In this case, the historical flooding at the site and in the surrounding neighborhood reflects that the existing storm drain system would not adequately cope with the added runoff anticipated as a result of the additional hardscape included in the Project. Existing hydrology studies substantiate this concern.

Those studies establish that the project would increase in impervious cover and result in a significant loss of existing permeable areas, and associated detention/sub-surface storage (current plan includes loss of large vegetated open space area and creation of significant additional roof area, driveways, parking areas, walkways). The site runoff co-efficient would increase. Proposed impervious surfaces and foundations would exacerbate existing flooding conditions.

Previous mapping and records the City maintains demonstrate that a historic tributary/northern fork of Strawberry Creek underlies the proposed development site. The creek was subject to uncontrolled fill when the area was originally developed. However, there are no records of engineered fill, culvert, or storm drain installation. The current existing curb and gutter street drainage system serving this area is subject to frequent flooding. Surface flooding occurs during even modest storm conditions as the subsurface is saturated.

Furthermore, the testimony of neighbors, as well as of the developer-applicant himself, at the ZAB hearings that the area proposed for development forms a "lake" seasonally, indicates that the area may qualify as a potential jurisdictional wetland subject to additional review and permitting requirements.

In sum, there is significant evidence that the project will not be adequately served by the existing storm drain infrastructure. As a result, it does not qualify for the in-fill development categorical exemption of 14 CCR § 15332.

2. *Even if the project qualifies for a categorical exemption, it is subject to the unusual circumstances exception because there is substantial evidence of an unusual circumstance and of a fair argument that there may be a significant effect on the environment*

Even if the project were exempt under 14 CCR § 15332, it falls under the unusual circumstances exception under 14 CCR § 15300.2(c). The unusual circumstances exception to the categorical exemption applies if 1) there is substantial evidence of an unusual circumstance; and 2) there is substantial evidence in the record of a fair argument that there may be a significant effect on the environment. (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1105; see also *World Bus. Acad. v. California State Lands Comm'n*, (2015) 24 Cal.App.5th 476, 499.) In this case there is ample evidence of both an unusual circumstance and of a fair argument that there may be a significant effect on the environment.

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Moreover, because there is substantial evidence of an unusual circumstance, and there is substantial evidence supporting the conclusion that there may be an impact on the environment, the City must apply the exception to the categorical exemption even if there may be evidence in the record that the project will not have a significant environmental effect. “Under [the “fair argument”] standard, “ ‘an agency is merely supposed to look to see if the record shows substantial evidence of a fair argument that there may be a significant effect. ... In other words, the agency is not to weigh the evidence to come to its own conclusion about whether there will be a significant effect.’ ” (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th. at p. 1104.) An agency must find a “fair argument” if there is any substantial evidence to support that conclusion, even if there is competing substantial evidence in the record that the project will not have a significant environmental effect. (*Id.* at p. 1111.)” (*World Bus. Acad. v. California State Lands Comm'n*, (2018) 24 Cal.App.5th 476, 499.)

The Project is proposed on a site that sits on an undergrounded branch of historic Strawberry Creek, and has been subject to significant historical flooding. Existing studies and direct observations by existing residents in the area reflect that as a result of this location, the project would be subject to flooding, soil instability and subsidence risks. The Urban Creeks Council previously determined that this particular northern branch of Strawberry Creek was filled with non-engineered soil and debris prior to development in the area. They classified the area as “filled wetlands” and as “seismically unstable and subject to liquefaction”. Site-specific soils and groundwater data have not been collected and a comprehensive geotechnical investigation is warranted. This evidence suggests that the proposed project and the increased impervious surfaces would increase the runoff coefficient and have potentially adverse impacts on sub-surface drainage which would exacerbate existing flooding conditions.

This evidence, which was submitted to ZAB in connection with the two hearings it held relating to this project, constitutes substantial evidence of an unusual circumstance at the site due to the known and unknown sub-surface and associated hydrologic conditions. In fact, at the second hearing, City of Berkeley Zoning Department Staff recognized and agreed that the “level of water in the area” constitutes an unusual circumstance. The evidence, moreover, is more than adequate to reflect a fair argument that, as a result of the unusual hydrologic circumstances of the site, the anticipated impacts of the increased impervious surfaces and the unknown sub-surface conditions associated with the buried creek, there may be a significant effect on the environment.

Because there is substantial evidence that the site is subject to unusual circumstances, and may have a significant effect on the environment, the City must find that it does not qualify for the categorical exemption as a result of the applicable unusual circumstances exception. ZAB erred in not doing so.

B. If the project is exempt from CEQA appropriate conditions must be imposed under BMC § 23B.32.040 to ensure the project is not detrimental to the health, safety, comfort or general welfare of the neighborhood or injurious to the adjacent properties, the surrounding area or neighborhood

Even if the Project were exempt from CEQA’s environmental impact reporting requirements, the City has the authority and the obligation under the Berkeley Municipal Code (the BMC) to require additional testing and engineering consistent with the recommendations of that testing, as a result of the evidence reflecting that the project will have an adverse effect on the neighborhood and surrounding properties, and more generally on health and safety.

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BMC § 23B.32.040 provides that a use permit may be approved as submitted or modified only if the proposed project will not be detrimental to the health, safety, comfort or general welfare of the neighborhood or injurious to the adjacent properties, the surrounding area or neighborhood. In this case there is substantial evidence that the project will have a detrimental impact on safety and will be injurious to the neighboring properties due to flooding. As a result, unless these impacts are mitigated, the project does not satisfy the zoning requirements of the BMC. The City must therefore impose requirements to address these concerns. This includes the following studies, and engineering consistent with recommendations drawn from those studies.

A focused geotechnical and groundwater investigation is necessary to address the following:

- A detailed geotechnical and groundwater evaluation is necessary to determine subsurface drainage conditions so that existing groundwater release preferential pathways are not impacted during construction of the project. A geotechnical and groundwater evaluation would allow for a proper evaluation of the surface and subsurface conditions of the site to determine impacts of the proposed development on the surrounding properties and to establish additional engineering controls necessary to avoid future risks. Additional information on site soil properties and depth to groundwater is also needed to support design of proposed site facilities as previously noted.
- Characterize on-site soil conditions to support site-specific geotechnical structural design and storm-water management/low impact development (LID) measures.
- Identify the precise location of the filled former creek channel alignment in order to design the project accordingly in order to avoid placing structures directly over the historic creek or to design engineering controls to mitigate future risks of building over the former creek channel.
- Characterize local groundwater/subsurface conditions and associated wet weather flow paths.
- Develop geotechnical site-specific design recommendations to support structural stability of the proposed development and proper foundation design.

ZAB acknowledged these concerns during the hearing on the use permit application for this project, and acknowledged that the developer should conduct appropriate geotechnical studies and engineering consistent with the recommendations of such studies as a condition of, and thus prior to the issuance of, a use permit. This condition would exceed the typical requirement for such studies and engineering for the issuance of a building permit. However, condition number 13 of the ZAB Decision only requires the geotechnical study and engineering prior to issuance of a building permit, as would be typical, and in conflict with the ZAB decision expressed at the hearing. Additionally, the Decision contains a further condition inconsistent with the intent to require a comprehensive geotechnical study and further engineering. Condition 21 provides that the developer's drainage plan shall be as presented in the current design the developer has submitted, unless modified by the City's Building and Safety Decision. However, agreed by ZAB at the hearing, the study and engineering are to precede issuance of a use permit for the project. Thus, the drainage plan may have to be modified in accordance with the study and engineering prior to issuance of the use permit – and therefore prior to submission to the Building and Safety Division.

September 10, 2018

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Conditions numbers 13 and 20 are inconsistent with the actual conditions required by ZAB and voted on at the hearing. Moreover, those two conditions are internally inconsistent. Finally, as drafted, the Decision would not protect the neighborhood and neighboring properties from detrimental health and safety impacts because it does not require an adequate level of geotechnical review and scrutiny.

As a result, appellant appeals to the City Council to properly apply CEQA to this project and subject the project to appropriate environmental impact reporting requirements. In the alternative, and at a minimum the City Council should require further testing, and engineering consistent with the recommendations of the testing reports, as a condition of approval pursuant to its authority under the BMC.

Very truly yours,



Hussein Saffouri

Very truly yours,




Rain Sussman

Signatures in Support on Following Page.

September 10, 2018
Page 6

Signatures in Support:

No. 1

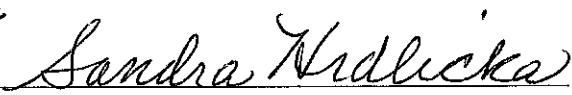
Signed: 

Name: Pite Pan

Address: 1155 Hearst Ave

Date: 09/10/2018

No. 2


Signed: 

Name: Sandra Hrdlicka

Address: 1827 Curtis St.

Date: 9/10/18

No. 3

Signed: 

Name: Teal Major

Address: 1814 Curtis St

Date: 9/10/18

No. 4

Signed: 

Name: Wayne Cory

Address: 1159B Hearst Ave

Date: 9-10-18

September 10, 2018
Page 7

No. 5

Signed: 

Name: Joseph Chen

Address: 1159 Hearst Ave B

Date: 9/10/18

No. 6


Signed: 

Name: Demo Giannopoulos

Address: 1151 Hearst Ave

Date: 9-10-18

No. 7

Signed: 

Name: Yashu Jiang

Address: 1163 Hearst Ave

Date: 9/10/18

No. 8

Signed: 

Name: PAUL STRAIN

Address: 1146 DELAWARE ST

Date: 9/10/18

September 10, 2018
Page 8

No. 9

Signed: Tracey Emerson
Name: Tracey Emerson
Address: 1157 Hearst Ave.
Date: 9/10/18

No. 10

Signed: Barbara Getz
Name: Barbara Getz
Address: 1146 Delaware St
Date: 09/10/18

No. 11

Signed: Bill Oies
Name: Bill Oies
Address: 1143 HEARST ave
Date: 9/10/18

No. 12

Signed: Jonathan Redden
Name: Jonathan Redden
Address: 1139 Hearst Ave apt A
Date: 9/10/18

September 10, 2018

Page ~~11~~ 9

No. 13

Signed: Blaze Woodley

Name: Blaze Woodley

Address: 1812 CURTIS STREET

Date: 9-10-18

No. 14

Signed: Madison Williams

Name: Madison Williams

Address: 1814 Curtis St

Date: 9/10/18

No. 15

Signed: Rolf Williams

Name: Rolf Williams

Address: 1814 Curtis St

Date: 9/10/18

No. 16

Signed: Alma Parris

Name: Alma Parris

Address: 1812 Curtis St.

Date: 9/10/18

September 10, 2018

Page 10

No. 17

Signed: Stacey Shulman

Name: Stacey Shulman

Address: 1818 Curtis St.

Date: 9/10/18

No. 18

Signed: Alan Specter

Name: Alan Specter

Address: 1818 Curtis St.

Date: 9/10/18

No. 19

Signed: Damien Curry

Name: Damien Curry

Address: 1815 Curtis St

Date: 9/10/18

No. 20

Signed: Amy Billstrom

Name: Amy Billstrom

Address: 1815 Curtis St.

Date: 9/10/18

September 10, 2018

Page No 11

No. 21

Signed: A. Stukin

Name: ANIA STUKIN

Address: 1145 HEARST

Date: 9/10/2018

No. 22

Signed: MA

Name: MALGORZATA KACPRZAK

Address: 1147 HEARST AV.

Date: 9/10/2018

No. 23

Signed: Masanori Oba

Name: MASANORI OBA

Address: 1159 HEARST AV APT A, Berkeley

Date: 09/10/2018.

No. 24

Signed: Pam Ormsby

Name: Pam Ormsby

Address: 1148 Delaware St.

Date: 9/10/18

September 10, 2018

Page 12

No. 25

Signed: Vijay

Name: VIJAY VENUGOPAL

Address: 1826 CURTIS ST, BERKELEY, CA 94702

Date: 9/11/18

No. 26

Signed: Joseph Michael

Name: Joseph Michael

Address: 1819 1/2 Curtis St, Berkeley, Ca. 94702

Date: 9/11/18

No. 27

Signed: Sylvie Woog

Name: Sylvie Woog

Address: 1210 Hearst Ave.

Date: Sept. 11, 2018

No. 28

Signed: Claude Sprague

Name: Claude Sprague

Address: 1210 Hearst Ave

Date: Sept 11 2018

September 10, 2018

Page 13

No. 29

Signed: Dale Ananici

Name: Dale Ananici

Address: 1819 Curt's St Berkeley 94702

Date: 9/11/18

No.

Signed: _____

Name: _____

Address: _____

Date: _____

No.

Signed: _____

Name: _____

Address: _____

Date: _____

No.

Signed: _____

Name: _____

Address: _____

Date: _____



Z O N I N G A D J U S T M E N T S B O A R D S T A F F R E P O R T

FOR BOARD ACTION
AUGUST 23, 2018

1155-1173 Hearst Avenue

Use Permit #ZP2016-0028 to develop two parcels, including the substantial rehabilitation of the existing seven dwelling units and construction of six new dwelling units.

I. Background

A. Land Use Designations:

- General Plan: HDR – High Density Residential
- Zoning: R-2A – Restricted Multiple-Family Residential

B. Zoning Permits Required:

- Use Permit for construction of dwelling units, under BMC Section 23D.32.030
- Use Permit for the addition of a sixth or greater bedroom in existing dwellings on a parcel, under BMC 23D.32.050.A
- Administrative Use Permit to construct residential additions greater than 14' in average height, BMC Section 23D.32.070.C
- Administrative Use Permit to allow an extension of a non-conforming front and side yard, BMC Section 23C.04.070.B
- Administrative Use Permit to reduce the building separation from 8' on the first floor and 12' on the second floor to 6'-1", BMC Section 23D.32.070.D.4

C. CEQA Determination: Categorically exempt pursuant to Section 15332 of the CEQA Guidelines ("In-Fill Development Projects").

D. Parties Involved:

- Applicant / Property Owner Hearst Avenue Cottages, LLC c/o Rhoades Planning Group, 46 Shattuck Square, Suite 11, Berkeley, CA 94704

Figure 1: Vicinity and Zoning Map

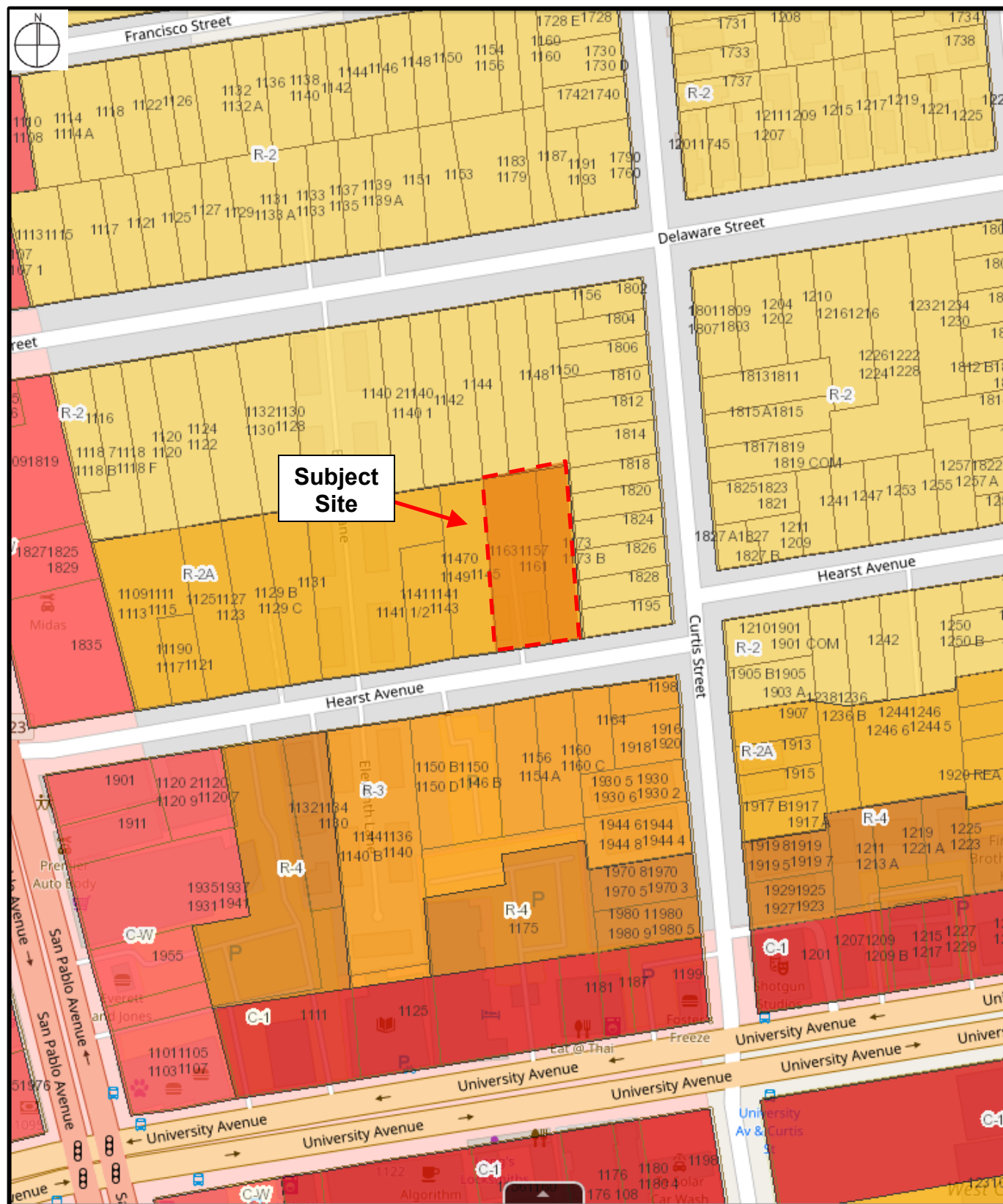


Figure 2: Proposed Site Plan

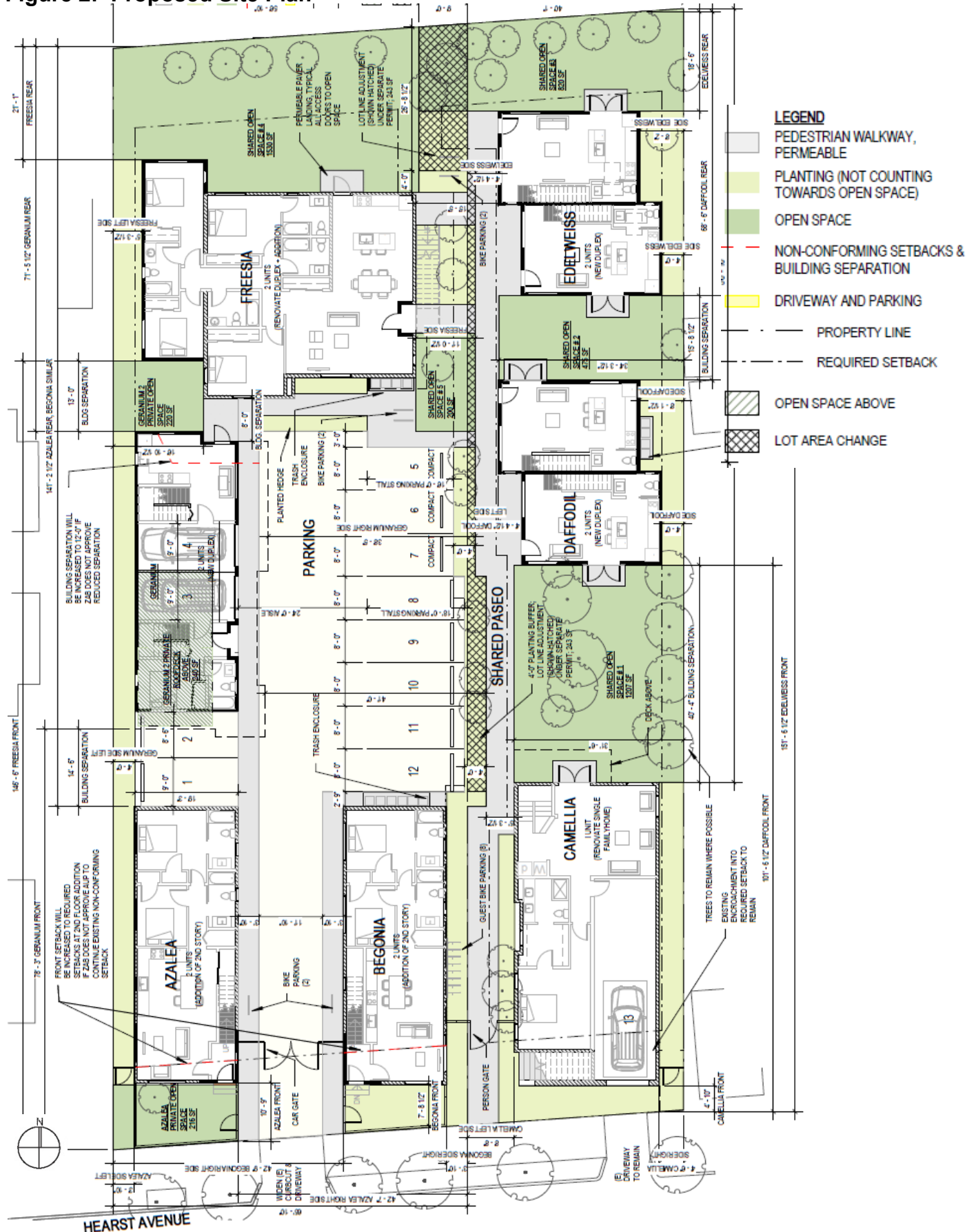


Table 1: Land Use Information

Location		Existing Use	Zoning Districts	General Plan Designations
Subject Property		three duplexes, one single family dwelling	R-2A	High Density Residential
Surrounding Properties	North	single family dwellings	R-2	Medium Density Residential
	South	multi-family dwellings	R-3	High Density Residential
	East	single family dwellings	R-2	Medium Density Residential
	West	multi-family dwelling	R-2A	High Density Residential

Table 2: Special Characteristics

Characteristic	Applies to Project?	Explanation
Affordable Child Care and Affordable Housing Fee for non-residential projects (Per Resolution 66,617-N.S. and 66,618-N.S.)	No	Proposed project includes 1,500 square feet of commercial space, which is less than the 7,500 square feet requirement.
Affordable Housing Mitigations for rental housing projects (Per BMC Section 22.20.065)	No	The project is not subject to the affordable housing provisions of BMC 22.20.065.
Inclusionary Housing Requirements (BMC Chapter 23C.12)	Yes	The project is subject to the inclusionary housing provisions of BMC Chapter 23C.12.
Housing Accountability Act [Gov't Code Section 65589.5.(j)]	No	Project is a "Housing development project" consisting of dwelling units only. However, there are elements which do not meet the regulatory standards of the BMC. See Section V.G.
Creeks	No	The property does not fall within a creek buffer zone. See Hydrology in Key Issues below.
Density Bonus	No	No density bonus is being proposed.
Historic Resources	No	There are no historic resources on the site.
Oak Trees	No	There are no Coast Live Oaks on or adjacent to the property.
Rent Controlled Units	Yes	The six dwelling on the western parcel are under rent control. See discussion in Key Issues below.
Seismic Hazards (SHMA)	No	Project site is not in a landslide, liquefaction or earthquake fault rupture zone.
Soil/Groundwater Contamination	No	Project site is not in an Environmental Management Area. There is no record of soil/ground water contamination on the site.

Table 3: Project Chronology

Date	Action
February 2, 2016	Application submitted
May 17, 2017	Application deemed complete
August 10, 2017	ZAB Public hearing notices mailed/posted
August 24, 2017	ZAB hearing continued item to September 28, 2017
September 28, 2017	ZAB hearing, item continued off calendar
March 6, 2018	Revised Application submitted
July 3, 2018	Revised Application deemed complete
August 8, 2018	ZAB Public hearing notices mailed/posted
August 23, 2018	ZAB hearing

Table 4: Lot Development Standards 1155-1163 Hearst (APN 057 208601400)

R-2A Standard BMC Sections 23D.32.070-080	Existing	Proposed	Permitted/ Required
Lot Area (sq. ft.)	13,469	13,469	5,000 min.
Gross Floor Area (sq. ft.)	5,300	9,665	---
Dwelling Units	6	8	8 max.
Lot Coverage (%)	32.8	38.7	40 max. for 2-story main bldg.
Usable Open Space (sq. ft.)	2,560	2,409	300 per d.u. 2,400 min.
Automobile Parking	6	12	8 (@ 1 per d.u.)

Table 5: Lot Development Standards 1173 Hearst (APN 057 208601300)

R-2A Standard BMC Sections 23D.32.070-080	Existing	Proposed	Permitted/ Required
Lot Area (sq. ft.)	8,204	8,204	5,000 min.
Gross Floor Area (sq. ft.)	3,323	6,042	---
Dwelling Units	1	5	5 max.
Lot Coverage (%)	17.5	39.9	40 max. for 2-story main bldg.
Usable Open Space (sq. ft.)	5,599	2,502	300 per d.u. 2,400 min.
Automobile Parking	1	1	5 (@ 1 per d.u.)

Table 6: Building Development Standards

AZALEA 1555-57 HEARST AVE.	Existing	Proposed	Permitted/Required
Building Height (#) Stories	1	2	3 max.
Average (ft.)	12'-11"	21'-6"	28 max. (35 w/AUP)
Maximum (ft.)	12'-11"	22'-10.5"	n/a
Font Yard Setback (ft.)	10'-6"	no change	15 min.
Left (ft.)	3'-10"	no change	4 min. @ 1 st & 2 nd story
Right (ft.)	42'-7"	no change	
Rear yard setback (ft.)	141'-2.5"	no change	15 min.
BEGONIA 1161-63 HEARST AVE.	Existing	Proposed	Permitted/Required
Building Height (#) Stories	1	2	3 max.
Average (ft.)	12'-11"	21'-9"	28 max. (35 w/AUP)
Maximum (ft.)	12'-11"	23'-4.5"	n/a
Font Yard Setback (ft.)	7'-8.5"	no change	15 min.
Left (ft.)	42'-9"	no change	4 min. @ 1 st & 2 nd story
Right (ft.)	3'-10"	no change	
Rear yard setback (ft.)	145'-2"	141'-8"	15 min.
CAMELLIA 1173 HEARST AVE.	Existing	Proposed	Permitted/Required
Building Height (#) Stories	2	no change	33 max.
Average (ft.)	21'	21'-3.5"	28 max. (35 w/AUP)
Maximum (ft.)	23'-6"	no change	n/a
Font Yard Setback (ft.)	11' to House 4'-10" to Stair	no change	15 min.
Left (ft.)	8'-8"	5'-3.5"	4 min. @ 1 st & 2 nd story
Right (ft.)	4'-6"	no change	
Rear yard setback (ft.)	143'-8"	no change	15 min.
DAFFODIL	Existing	Proposed	Permitted/Required
Building Height (#) Stories	N/A	2	3 max.
Average (ft.)	N/A	21'-5"	28 max. (35 w/AUP)
Maximum (ft.)	N/A	23'-4.5"	n/a
Font Yard Setback (ft.)	N/A	101'-6.5"	15 min.
Left (ft.)	N/A	4'-4.5"	4 min. @ 1 st & 2 nd story
Right (ft.)	N/A	4'	
Rear yard setback (ft.)	N/A	68'-6"	15 min.

EDELWEISS	Existing	Proposed	Permitted/Required
Building Height (#) Stories	N/A	2	3 max.
Average (ft.)	N/A	24'-6"	28 max. (35 w/AUP)
Maximum (ft.)	N/A	24'-6"	n/a
Font Yard Setback (ft.)	N/A	151'-6.5"	15 min.
Left (ft.)	N/A	4'-4.5"	4 min. @ 1 st & 2 nd story
Right (ft.)	N/A	4'	
Rear yard setback (ft.)	N/A	16'-8"	15 min.
FREESIA 1159 A & B HEARST AVE.	Existing	Proposed	Permitted/Required
Building Height (#) Stories	2	2	3 max.
Average (ft.)	19'-1"	20'	28 max. (35 w/AUP)
Maximum (ft.)	19'-9"	20'-6"	n/a
Font Yard Setback (ft.)	136'-11"	no change	15 min.
Left (ft.)	16'-11"	5'-3.5"	4 min. @ 1 st & 2 nd story
Right (ft.)	10'-6"	11'-0.5"	
Rear yard setback (ft.)	27'-10"	21'-1"	15 min.
GERANIUM	Existing	Proposed	Permitted/Required
Building Height (#) Stories	N/A	2 + roof patio	3 max.
Average (ft.)	N/A	23'-6"	28 max. (35 w/AUP)
Maximum (ft.)	N/A	28'	n/a
Font Yard Setback (ft.)	N/A	78'-3"	15 min.
Left (ft.)	N/A	4'	4 min. @ 1 st & 2 nd story
Right (ft.)	N/A	38'-5"	
Rear yard setback (ft.)	N/A	71'-5.5"	15 min.

II. Project Setting

A. Neighborhood/Area Description: The property is located in a West Berkeley neighborhood; University Avenue is located one block to the south and San Pablo Avenue (State Highway 123) is located one block to the west. The neighborhood consists predominantly of modest one- to two-story single and multi-family dwellings, with a few three- and four-story structures located towards the west/San Pablo Avenue. As can be seen from the Vicinity Map in Figure 1 above, the neighborhood is comprised by a mix of zoning districts ranging in residential density from R-2, R-2A, R-3 and R-4, with the neighboring commercial C-1 and C-W Districts to the south and west. The neighborhood is in close proximity to several bus transit lines, commercial businesses, and the West Berkeley library.

B. Site Conditions: The site consists of two separate parcels located on the north side of Hearst Avenue on the block bound by San Pablo Avenue to the west and Curtis Street to the east. The parcel to the west (1155-63 Hearst, APN 057 208601400) is a 66' x 204.58' slight parallelogram shaped lot with one two-story duplex towards the

rear of the lot and two single-story duplexes situated towards the front of the lot, separated by a paved parking area. The parcel to the east (1173 Hearst, APN 057 208601300) is narrower ($\approx 40'$ x $204'$) and is developed with a two story single family dwelling with an attached tandem car garage. The single family dwelling is currently vacant; the six units in the duplexes are occupied by renters.

III. Project Description

The project proposes to rehabilitate the seven existing dwelling units (three duplexes and one single-family dwelling) and add three two-story duplexes as a common interest development (i.e. condominiums) for a total of seven buildings and 13 dwellings as configured in Table 7 below.

Table 7: Existing and Proposed Buildings and Dwellings

Building	Unit #	Unit Type		Unit Gross Floor Area	
		Existing	Proposed	Existing	Proposed
Azalea	A1	1 Bed, 1 Bath	2 Bed, 2 Bath	499	995
Azalea	A2	1 Bed, 1 Bath	2 Bed, 2 Bath	496	995
Begonia	B1	1 Bed, 1 Bath	2 Bed, 2 Bath	499	995
Begonia	B2	1 Bed, 1 Bath	2 Bed, 2 Bath	496	995
Camelia	C	2 Bed, 1.5 Bath	3 Bed, 2 Bath	2,293*	2,293*
Daffodil	D1	n/a	2 Bed, 1.5 Bath	n/a	940
Daffodil	D2	n/a	2 Bed, 1.5 Bath	n/a	883
Edelweiss	E1	n/a	2 Bed, 1.5 Bath	n/a	940
Edelweiss	E2	n/a	2 Bed, 1.5 Bath	n/a	883
Freesia	F1	2 Bed, 1 Bath	4 Bed, 4 Bath	1,372	1,837
Freesia	F2	2 Bed, 1 Bath	4 Bed, 4 Bath	1,372	1,877
Geranium	G1	n/a	2 Bed, 2 Bath	n/a	1,001*
Geranium	G2	n/a	2 Bed, 2 Bath	n/a	966*

*Does not include garage area

The applicant revised the project in response to comments received by the ZAB in September 2017. The main project revisions are summarized below:

- The overall project unit count was reduced from 18 units to 13; there is no Density Bonus request.
- The two parcels would not be merged. 1157 Hearst and 1173 Hearst would remain as separate parcels. However, to accommodate the required four-foot side yard landscape screening for uncovered parking, the project proposed a lot line adjustment that would provide for this while retaining the net square footage of each lot. An access agreement for parking will be provided for the units in Daffodil and Edelweiss.

- All three story elements have been removed; all buildings are proposed with two stories and a maximum height of 28 feet (Geranium).
- All current residents can remain in their homes for as long as they wish, with rehabilitation and/or sale of condominium units occurring only when current residents voluntarily vacate, subject to BMC Section 13.76 and the Berkeley Rent Stabilization Board regulations.
- Azalea and Begonia, the two existing duplexes on the 1157 Hearst parcel, would be renovated into two-flat duplexes with front entries (after existing residents voluntarily vacate).
- Camelia, the single family home on the 1173 parcel, would be renovated (instead of demolished) within the existing footprint, with the addition of a back deck.
- Daffodil and Edelweiss, the two new duplexes at the rear yard of the 1173 parcel, have been located further back in the yard and have been slightly reduced in size. The rooflines have been adjusted to provide a more residential-scale feature.
- Freesia, the existing duplex at the rear of the 1157 Hearst parcel, would be renovated within its existing footprint and would also have an addition of two bedrooms to create large, family-friendly units with a large back yard (after existing residents voluntarily vacate).
- Geranium, a new duplex, was moved from the east side along the paseo, to the west side, to create a larger central space.
- Parking is now located internal to the development and is accessed from the paseo. A total of 13 spaces would be provided, one per unit.
- All units now feature a complementary color and materials palette of deep blues, browns and whites in siding and cement plaster. Bay windows are design features in almost every unit.
- A total of 4,911 square feet of Useable Open Space would be provided and a minimum of 13 secure bicycle parking spaces.

IV. Community Discussion

A. Neighbor/Community Concerns: Prior to submitting this application to the City, the applicant erected a yellow pre-application poster at the site. The project team has held numerous meetings with neighbors, including a large community meeting. A series of meetings has been held with individual neighbors to the north and the east of the project site to address issues of massing, parking, and hydrology. The proposed site plan responds to those meetings and issues.

The large community meeting was held on November 30, 2015. Prior to the meeting, notices were sent to all property owners and occupants within 300 feet of the site based on a list of addresses provided by the City of Berkeley. The meeting was held in the driveway at the project site. About 25 area residents stopped by the site during the meeting time. To each of these neighbors, the project applicant and the architect presented the project. Draft floor plans and renderings were posted for attendees to view and the project team answered questions and discussed the proposal with the attendees. The sign in sheet and flier that was mailed are included in this application. A couple of neighbors expressed enthusiasm about the redevelopment of this

historically troublesome property. Other neighbors expressed concerns about massing and parking. A second community meeting was held on August 3, 2017 at 1173 Hearst Avenue to provide a project status and process update to the neighbors. Subsequent to the feedback received at the September 28, 2017 Zoning Adjustments Board Meeting, a third neighborhood meeting was held on November 15, 2017 at the Berkeley Public Library West Branch to present the revised 13 unit project. About 14 people attended the meeting and the proposed revisions, such as reduction in unit count and building heights, were well received by the neighbors. Some neighbors still have concerns primarily regarding hydrology and existing tenants. All correspondence received since the September 28 ZAB meeting can be found in Attachment 7.

On August 8, 2017, the City mailed public hearing notices to property owners and occupants, and to interested neighborhood organizations, and the City posted notices within the neighborhood in three locations.

B. Committee Review: This project is not subject to committee review.

V. Issues and Analysis

A. Housing Accountability Act Analysis: The Housing Accountability Act §65589.5(j) requires that when a proposed housing development complies with the applicable, objective general plan and zoning standards, but a local agency proposes to deny the project or approve it only if the density is reduced, the agency must base its decision on written findings supported by substantial evidence that:

1. The development would have a specific adverse impact on public health or safety unless disapproved, or approved at a lower density;¹ and
2. There is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval, or approval at a lower density.

The following elements of the project do not comply with the objective general plan and zoning standards:

- Vertical extension of existing non-conforming front and side yard setbacks (for Azalea and Begonia);
- Reduction of the building to building separation (between Geranium and Freesia);
- Construct an addition greater than 14 feet in average height (for Azalea, Begonia, and Geranium); and
- Add a fifth or greater bedroom to existing dwellings on a parcel (in Azalea, Begonia and Geranium).

Therefore, §65589.5(j) does not apply to this project as proposed.

B. District Purposes: The proposed project would meet the purposes of the Restricted Multiple-family Residential District as it would provide smaller multiple-family garden-type apartment structures with the maximum feasible amount of useable open space

¹ As used in the Act, a "specific, adverse impact" means a "significant, quantifiable, direct and unavoidable impact, based on objective, identified written public health or safety standards, polices, or conditions as they existed on the date the application was complete.

on the property. The buildings would be constructed with sufficient separation on the subject lot, and with ample distance with abutting single-family neighbors. Light and air, therefore, would not be unreasonably obstructed, as described in greater detail below.

- C. Tenant Protections:** As of the writing of this staff report, the single-family dwelling is vacant and all six rent controlled units have existing tenants that have been there since the before the date of application. The applicant has met with the tenants on several occasions and informed them that the development plan is to construct the new buildings first and leave the existing units as they are until such time that the owners decide to renovate and add on to the existing buildings. The applicant has stated that the existing rental units would remain as rent controlled rental units after renovation and as would be required for units constructed prior to 1985. The applicant has committed to providing notice in advance of the City's noticing requirements both before construction commences on the new buildings as well as before tenants might be relocated for construction on their units (see Condition of Approval 15, below), and has confirmed that all tenants would be relocated voluntarily or temporarily as provided for in Condition of Approval 12 below, as recommended by the Rent Control Board (see RSB Memorandum in Attachment 5).

- 12. Tenant Relocation.** *Prior to building permit issuance for any interior improvements, renovations or addition to the three existing duplexes (1955-57 Hearst, 1959 A & B Hearst, 1961-63 Hearst) the property owner shall provide proof that all tenants have voluntarily vacated or proof that the owner and tenants have come to a written agreement on a plan for relocation.*
- 15. Construction Noise Management - Public Notice Required.** *At least thirty calendar days prior to initiating any construction activities at the site, the applicant shall provide notice to existing residents on the project site, including (1) description of construction activities, (2) daily construction schedule (i.e., time of day) and expected duration (number of months), (3) the name and phone number of the Noise Management Individual for the project, and (4) designate a "construction liaison" that would be responsible for responding to any local complaints about construction noise. The liaison would determine the cause of the noise complaints (e.g., starting too early, bad muffler, etc.) and institute reasonable measures to correct the problem. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval.*

The applicant has mentioned that the owner may wish to convert the existing units to condominiums but has stated that similar to rehabilitation, condominium conversion of existing units would only occur when current residents voluntarily vacate. Staff is not proposing a condition of approval related to condominium conversion, as if it were to occur during occupancy, tenants are protected under BMC 21.28, which states that tenants have the right to continue to occupy the unit as their principal residence both during and after the completion of the conversion process. Neither the current owner nor the new owner, if the unit is sold, can evict the tenant as long as the unit remains the tenant's principal place of residence and remain a tenant in good standing. In addition, the units will stay under rent control.

D. Creek/Hydrology: As discussed in the ZAB staff report of September 2017, although the creek ordinance does not apply to this application, there is recurrent flooding in the area. The applicant submitted a stormwater and flooding assessment and mitigation design for the proposed project prepared by Clearwater Hydrology. The storm drainage system design proposed and analyzed would still be applicable to the reduced intensity and density of the current project. Balance Hydrologics peer reviewed the hydrology analysis for the City and concurred with the findings in the report. The hydrology report summarized that, the capacity of the system would likely be greater than that of a 25-yr. storm and that the proposed design would also reduce the severity of flooding on the neighboring properties to the east along Curtis Street. Staff has conditioned the project to include all recommendations of the hydrology analysis and the subsequent peer review including the drainage design as presented in the report, allowing modifications if required by the City's Building & Safety Division and Department of Public Works. A copy of the hydrology report and peer review can be found on the project webpage:

https://www.cityofberkeley.info/Planning_and_Development/Zoning_Adjustment_Board/1155-1173_Hearst.aspx

A neighbor submitted a separate hydrology study from Terraphase Engineering and discussed its conclusions with the City's Associate Civil Engineer, Vincent Chen, who reviews developments requiring creek permits. Mr. Chen did not concur with several of Terraphase Engineering conclusions, but did express his belief that a soils report (i.e. geotechnical report) be prepared for the project (see correspondence in Attachment 6). This project, however, is not required to provide a geotechnical report as it is not located in the Earthquake Fault Rupture (Alquist-Priolo) Zone or within a Landslide or Liquefaction Zone as identified by the Seismic Hazards Mapping Act. If a geotechnical report is to be required prior to issuance of a building permit, it would be upon assessment of the Building Official, where the classification, strength or compressibility of the soil is in doubt or where a load-bearing value superior to that specified in this CBC is claimed (CBC 1803.5.2).

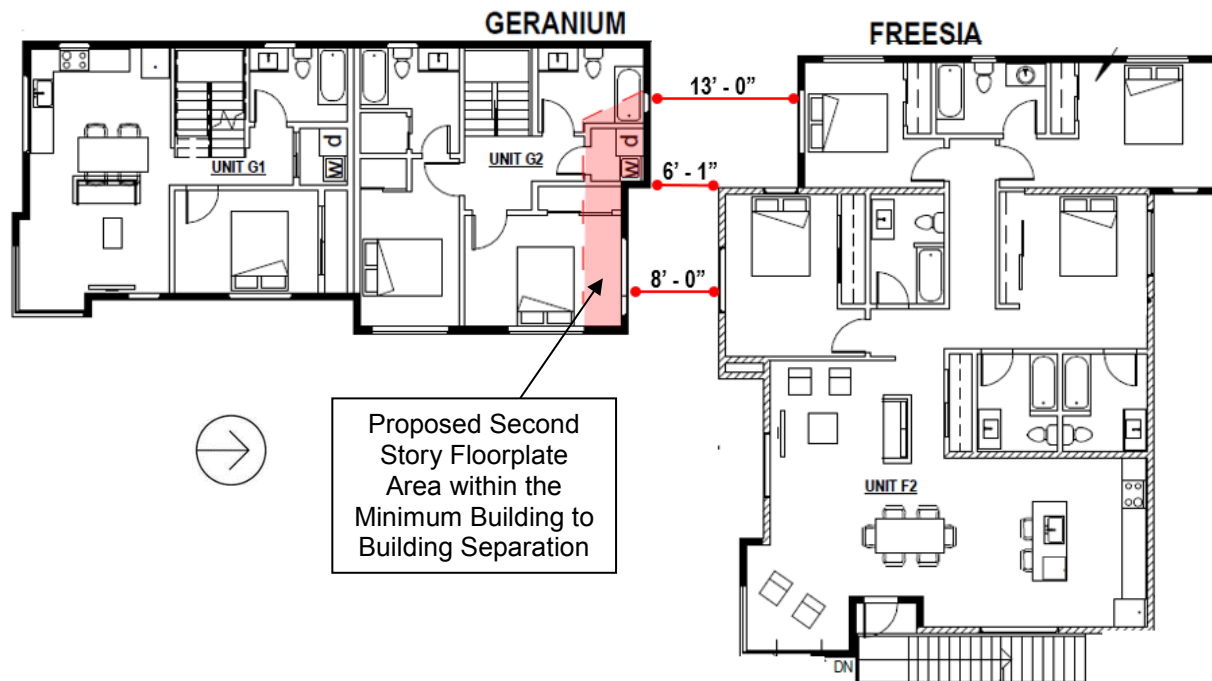
E. Sunlight/Shadows: The project would result in three new two-story buildings and second stories on three existing one-story buildings. As such, it would create greater shadowing impacts compared to existing conditions. The applicant has submitted the required shadow studies to assess the anticipated impacts of the project.

The shadow studies illustrate that the four dwellings on the abutting property to the west (1145-1151 Hearst Avenue), would be the most impacted by new shadows in the morning hours throughout the year. The six abutting properties fronting Curtis Street (1195 Hearst Avenue and 1818-1828 Curtis Street), would be subject to new shadows during the evening hours throughout the year. However, due to the orientation of the Curtis Street neighbors, the majority of new shading will fall on the rear yard areas of these abutting properties. Only during the spring and fall would the shadows reach the windows on the rear facades of these homes, and only during the evening hours.

Although shadow impacts from the project are expected to affect direct sunlight on certain residential windows, these areas would still experience indirect lighting during these hours, as well as have direct light from other windows. At no time of year would

the proposed project cause adjacent properties to lose access to direct sunlight from all windows at any time of the year. Such shading impacts are to be expected from infill development within an urbanized area.

- F. Views:** Based on the proposed two-story heights of the buildings, the existing structures around the site, mature vegetation, and the generally flat topography of the neighborhood, the project would not affect significant views enjoyed by neighboring residents.
- G. Vertical Extension of Non-Conforming Setbacks:** The existing duplexes Azalea (1155-57 Hearst) and Begonia (1161-63 Hearst) are both 995-square-foot, one-story duplexes constructed with non-conforming front yard setbacks (10'-9" and 7'-8.5" respectively, where 15' minimum is the District standard) and non-conforming side yard setbacks (3'-10" left side for Azalea, and 3'-10" right side for Begonia, where a minimum of 4' is the District standard). The project involves renovation and construction of a second story addition that would vertically extend the existing non-conforming setbacks and create two two-story flats. Pursuant to BMC 23C.04.070.C, the proposed vertical extensions of the non-conforming setbacks are permissible as they would not further reduce existing non-conforming yards.
- H. Addition of Bedrooms to a Parcel:** The western parcel (1155-1163 Hearst) is developed with three duplexes that have a total of eight bedrooms (four one-bedroom units and two two-bedroom units). The project proposes renovations and additions to the three buildings that would result in the addition of eight more bedrooms to the existing dwelling units on the property. Pursuant to BMC Section 23D.32.050, the addition of any bedroom beyond the fifth bedroom to a parcel within in existing dwelling units requires Use Permit approval. The Bedroom Ordinance, as it is referred to, allows the City to assess the potential detriment to the surrounding neighborhood in increasing the potential of unrelated adults residing on a parcel. The project, when completed, would change the existing configuration of the duplexes to four two-bedroom dwelling units and two four-bedroom dwelling units. Both the two-unit layout and the four-unit layout are designed to be occupied by single households within a development of six other newly constructed two-bedroom units. The renovated dwellings are designed to provide for a range of family composition and is not expected to lead to formation of a mini-dorm.
- I. Reduction in Building to Building Separation:** Pursuant to BMC 23D.070.D.4 the project is requesting Administrative Use Permit approval to reduce the building to building separation between Freesia and Geranium from the District minimum of 8' on the first floor and 12' on the second floor down to 6'-1". As can be seen in Figure 3 below, although the building to building separation is 6' – 1", this minimum distance is only at one horizontal plane between the buildings; otherwise the separation ranges from 8 feet to 13 feet. Staff believes that as proposed, the building separation provides adequate air and light between the buildings. With the proposed added condition that the north facing window of the northeast bedroom in Geranium be a minimum of 68 inches from finished floor level, privacy between residents of the two opposing units would be ensured.

Figure 3: Second Floor Building to Building Separation: Geranium and Freesia

J. General Non-Detriment: The project would further not be detrimental to the neighborhood as it would be subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, thereby ensuring the project would 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.

K. General Plan Consistency: The 2002 General Plan contains several policies applicable to the project, including the following:

1. Policy LU-3–Infill Development: Encourage infill development that is architecturally and environmentally sensitive, embodies principles of sustainable planning and construction, and is compatible with neighboring land uses and architectural design and scale.
2. Policy LU-7–Neighborhood Quality of Life, Action A: Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area.
3. Policy UD-16–Context: The design and scale of new or remodeled buildings should respect the built environment in the area, particularly where the character of the built environment is largely defined by an aggregation of historically and architecturally significant buildings.

4. Policy UD-24–Area Character: Regulate new construction and alterations to ensure that they are truly compatible with and, where feasible, reinforce the desirable design characteristics of the particular area they are in.

Staff Analysis: The project's proposed massing contributes to the continued evolution of the City's development landscape. The project design was modified in several ways (see Project Description above) to respect the lower density single-family dwellings fronting Curtis Street. The final development plan would renovate and rehabilitate the existing dwellings to match the style and materials of the new construction for a cohesive street presence that fits well with the surrounding mix of architectural styles

5. Policy UD-32–Shadows: New buildings should be designed to minimize impacts on solar access and minimize detrimental shadows.

Staff Analysis: Shadow impacts from the project are expected to affect direct sunlight on certain residential windows. However, these areas would still experience indirect lighting during these hours, as well as have direct light from other windows. At no time of year would the proposed project cause adjacent properties to lose access to direct sunlight from all the windows throughout the whole day at any time of the year. Such shading impacts are to be expected in an infill urbanized area.

6. Policy LU-23–Transit-Oriented Development: Encourage and maintain zoning that allows greater commercial and residential density and reduced residential parking requirements in areas with above-average transit service such as Downtown Berkeley.

7. Policy H-12 Transit-Oriented New Construction: Encourage construction of new medium and high-density housing on major transit corridors and in proximity to transit stations consistent with zoning, applicable area plans, design review guidelines, and the Climate Action Plan.

8. Policy T-16 Access by Proximity, Action B: Encourage higher density housing and commercial infill development that is consistent with General Plan and zoning standards in areas adjacent to existing public transportation services.

Staff Analysis: The project site is located one block east of San Pablo Avenue and one block north of University Avenue, two major transit thoroughfares. The project would add six residential units located within one quarter mile of the San Pablo/University intersection that is served by the following AC Transit bus lines: 72 Rapid, 49, 51B, 52, FS, G, 72, 72M, 800 and 802.

9. Policy H-33–Regional Housing Needs: Encourage adequate housing production to meet City needs and the City's share of regional housing needs.

Staff Analysis: The project will add six new housing units to the City's housing stock and will comply with the City's Inclusionary Ordinance by either providing one below market rate unit for a Low Income Household and payment into the

Affordable Housing Trust Fund of the remainder 0.2 unit fee, or payment of the in-lieu fee.

10. Policy H-8–Maintain Housing: Maintain and preserve the existing supply of housing in the City.

Staff Analysis: Upon vacancy of the existing buildings, the project will rehabilitate and upgrade the existing seven dwelling units.

11. Policy EM-5–“Green” Buildings: Promote and encourage compliance with “green” building standards. (Also see Policies EM-8, EM-26, EM-35, EM-36, and UD-6.)

12. Policy UD-33–Sustainable Design: Promote environmentally sensitive and sustainable design in new buildings.

Staff Analysis: The project proposes a score of 133 on the GreenPoint Rated Checklist, New Home Multifamily Checklist with a Gold certification level.

VI. Recommendation

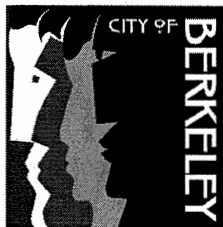
Because of the project’s consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board:

APPROVE Use Permit ZP2016-0028 pursuant to Section 23B.32.030 and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

1. Findings and Conditions
2. Project Plans, dated June 8, 2018
3. Shadow Studies, dated April 18, 2018
4. Notice of Public Hearing
5. Memorandum from the Rent Stabilization Board, dated July 3, 2018
6. Stormwater and Flooding Assessment Correspondence (Hydrology Assessments and Peer Review available online:
https://www.cityofberkeley.info/Planning_and_Development/Zoning_Adjustment_Board/1155-1173_Hearst.aspx)
7. Correspondence Received after September 28, 2017 ZAB meeting

Staff Planner: Leslie Mendez, LMendez@cityofberkeley.info, (510) 981-7426



Rent Stabilization Board

May 7, 2019

To: Members of the Zoning Adjustments Board

From: Jay Kelekian, Executive Director, Berkeley Rent Stabilization Board

Subject: 1155-1173 Hearst Ave – Use Permit ##ZP2016-0028

On July 3, 2018, we wrote to you to provide information on the rental history and status of the properties at 1157 and 1173 Hearst Avenue. In that letter (see attached) we explained that the project would not impact the existing tenant protections that apply to these properties, and we proposed conditions of approval that could help mitigate the effect of the project upon the sitting tenants.

On February 26, 2019, we hosted a meeting at the Rent Board to counsel the sitting tenants about their rights under local law. At that meeting the applicant stated his intention not to convert any of the existing units to condominiums, and also said he would not seek to renovate the interior of any sitting tenant's unit until that unit was vacant. He reiterated this point in an email to the ZAB dated May 6, 2019 as follows: "there will be no work performed on occupied units that will require tenants to move out. The only work contemplated for any of the occupied duplexes are cosmetic exterior treatments, such as painting."

Although we do not foresee any risk that the sitting tenants could be displaced by legal action of the applicant, we are concerned that the parties' respective understandings of tenant's rights and obligations may be at odds with one another. For that reason we have written this letter to help clarify the rights that are most directly implicated by this project.

Tenant Relocation

Although the Relocation Ordinance (B.M.C. 13.84) does not apply to projects that seek to upgrade rental housing rather than to make necessary repairs to correct code violations, it is common for the ZAB to apply conditions of approval requiring that an applicant provide relocation benefits commensurate with those set forth under the Relocation Ordinance. One of the reasons for this practice is the fact that a landlord does not have the right to evict a tenant or *even enter a rental unit* to perform work that is not necessary or agreed upon. Simply put, if the applicant wants to do work on the interiors of the existing units, he will need to reach an agreement with each tenant to gain access to each occupied unit.

At our February 26, 2019 meeting we made this point clearly to the applicant, and he stated that he had no intention of performing any work in the interior of any occupied unit. Given the repeated statements of the applicant, it seems appropriate to include conditions of approval consistent with those statements,

such as Conditions 15 and 16. It is wise to include these conditions because they do not abridge the right of the applicant to enter the unit and perform routine maintenance and repairs, and they make clear that approval of the project does not somehow impair the rights of the tenants under state law to refuse the landlord access to their rental units to perform work that is neither necessary nor agreed upon. In the absence of such conditions, the legal right of the tenants to refuse the landlord may result in unnecessary conflict between the applicant (or his successor in interest) and the tenants.

Good Cause is Required for Eviction

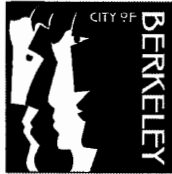
The tenants are protected by the eviction protections set forth in the Rent Stabilization Ordinance (B.M.C. 13.76) namely the requirement that the applicant or any successor in interest must allege and prove one of the enumerated Good Causes for Eviction. The landlord's desire to perform renovations is not good cause for eviction, even if the landlord has obtained a Use Permit for such renovation work. This is another reason why it is expedient for the ZAB to impose conditions (such as Condition 15 and 16) that clarify the circumstances under which the applicant may become entitled to perform the work upon occupied rental units.

Conclusion

This project does not put any tenants in direct legal jeopardy, but conditions acknowledging and accounting for the tenants' legal rights are appropriate to ensure that the applicant and any successor in interest fully understands the scope of those rights, and the legal alternatives at their disposal should they seek to perform interior renovations that require access to the occupied rental units.

Name and Telephone Number of Contact Person:

Jay Kelekian, Executive Director (510) 981-4949

**Rent Stabilization Board**

July 3, 2018

To: Leslie Mendez, Senior Planner, Planning & Development Department

From: Jay Kelekian, Executive Director

By: Lief Bursell, Associate Management Analyst

Subject: **1155-73 Hearst Avenue**

The following information on the rental history and status under the Rent Stabilization Ordinance of the properties at 1157 and 1173 Hearst Avenue. We have also included a recommendation on proposed conditions of approval related to the work proposed to the existing, tenant occupied buildings.

Property History

1157 Hearst Avenue is listed as owned by Hearst Avenue Cottage LLC with a purchase date of January 22, 2015. Alameda County records indicate the property has a county use designation of "Residential Property 5+ Units". City of Berkeley records show that the property at 1157 Hearst Avenue originally contained two duplex structures built in 1926. A 3rd structure containing a single residential unit was constructed in 1957. In 1985 a zoning application was submitted requesting the City acknowledge the 3rd structure as a duplex in order to add a 2nd meter for the lower unit addressed 1159 Hearst Ave #B. Since address 1159 Hearst Ave. #B is currently active, it appears the City allowed the owner to legalize this unit.

1173 Hearst Avenue is also listed as owned by Hearst Avenue Cottage LLC with a purchase date of January 22, 2015. Alameda County records indicate the property has a county use designation of "Single Family Residential Home". City of Berkeley records show that the existing building at 1173 Hearst Avenue was constructed in 1927 for use as a single family home.

Rental History

Rent Stabilization Board records also reflect that 1157 Hearst Avenue and 1173 Hearst Avenue are separate properties:

1173 Hearst Avenue contains one dwelling that is exempt from rent regulation per the Costa Hawkins Rental Housing Act. Previously this property contained a second unit with the address 1173 Hearst Ave. #Lower that was rented and under rent control from 1980 through 1996. The unit was claimed as "not available for rent" from 2000 until 2015 when the current owner claimed this unit had been removed because it was unpermitted. Rent Board staff inspected the property and verified the 2nd kitchen had been removed from the lower level, and that the

property was being rented as a single dwelling. On July 2, 2015 1173 Hearst Avenue #Lower was inactivated.

The property at 1157 Hearst Avenue contains six (6) dwelling units. The following table includes the address, occupancy status, date tenancy began, and rent ceiling for each unit:

Address	Occupancy Status	Tenancy Began	2018 Rent Ceiling	No. Bedrooms
1155 Hearst Ave.	Rented	8/10/2011	\$1,170.91	1
1157 Hearst Ave.	Rented	7/1/2009	\$1,135.22	1
1159 Hearst Ave. #A	Rented	5/31/1980	\$1,259.56	1
1159 Hearst Ave. #B	Rented	6/14/1997	\$1,136.65	3
1161 Hearst Ave.	Rented	10/15/2015	\$624.85	1
1163 Hearst Ave.	Rented	12/12/2011	\$1,226.66	1

Ellis Act

No buildings at either 1157 or 1173 Hearst Avenue have been removed from the rental market under the Ellis Act at any time during the preceding five (5) years.

Harassment or Illegal Eviction

The Rent Board has no record of any verified cases of harassment or threatened or actual illegal eviction occurring at either 1157 or 1173 Hearst Avenue.

Rent Control Status

Rent Board records indicate that all six units at 1157 Hearst Avenue are “controlled rental units” with a history of being rented and fully subject to the Rent Stabilization Ordinance. The property at 1173 Hearst Avenue has a history of being a rent controlled duplex, but is now exempt from rent regulation per Costa Hawkins as long as the property only contains a single dwelling unit.

Project Analysis

The project proposes to build 6 new condominium units by creating 3 new duplex structures, and substantially improve the 7 existing units through renovation and the addition of new floor area. Two of the duplex structures are proposed on the 1173 Hearst parcel, and the 3rd duplex structure is proposed for the 1157 Hearst Avenue parcel. Since there are no proposed changes to the existing units, there is no impact to their existing tenant protections or rent control status. The 6 proposed units would qualify for the “new construction” exemption from rent control if the project is approved, but they would be subject to the eviction protections.

While there are no changes proposed that will impact the existing tenant protections that apply to these properties, the renovation of the existing buildings will cause the existing units to become temporary uninhabitable. The applicant has indicated that the owners intend to construct the new units first, and then to renovate the existing buildings at a later date when the units are vacant. We recommend the Zoning Adjustments Board (ZAB) include conditions of approval to ensure the work does not take place until the units are voluntarily vacated by the existing tenants and have drafted language for two conditions for the ZAB’s consideration (see the recommendation section).

The applicant also mentioned that the owner may wish to convert the existing units to condominiums at some point in the future. This is a separate application process under Berkeley's Condominium Conversion Ordinance, which provides ample protection to the existing tenants by providing them with the right to stay in the unit, stabilized rent, and the exclusive right to purchase their unit as a condominium.

Recommendation

Since the application proposes both interior and exterior alteration to the existing, tenant occupied units, we recommend the Zoning Adjustments Board attach the following conditions of approval to the project:

1. Prior to building permit approval for any interior improvements, renovations or additions to the existing buildings at 1157 and 1173 Hearst Avenue, the property owner shall provide proof that all tenants have voluntarily vacated or proof that the owner and tenants have come to a written agreement on a plan for temporary relocation.
2. The property owner shall provide a minimum of 2 weeks written notice to existing tenants prior to performing any exterior work to any of the existing, tenant occupied buildings.

Conditions of approval are typically included to reduce the impact of construction to neighboring properties, but in this case there will also be significant impacts to the existing tenants who live on site. Individual tenants may also have specific concerns related to how the development will impact the accessibility and livability of their units during construction. If the standard conditions of approval do not address these concerns, we recommend that the ZAB consider including additional conditions that specifically mitigate the projects impact to the existing tenant households.

Please feel free to contact Mr. Bursell with any further questions regarding this matter.

ALAN KROPP, CE, GE
JAMES R. LOTT, CE, GE
JEROEN VAN DEN BERG, CE
THOMAS M. BRENCIC, CE



ALAN KROPP
& ASSOCIATES, INC.

GEOTECHNICAL
CONSULTANTS

August 30, 2019
2744-2A, L-31854

Mr. Nathan George
NDG Real Estate
c/o Hearst Avenue Cottages LLC
46 Shattuck Square, Suite 11
Berkeley, CA 94704

RE: Supplemental Geotechnical Engineering Comments
Hearst Gardens
1155-1173 Hearst Avenue
Berkeley, California

Dear Mr. George:

My firm has been providing geotechnical engineering consultants to you regarding your proposed residential project to be located at 1157 and 1173 Avenue in Berkeley, California. We previously prepared a geotechnical investigation report dated March 1, 2019, and also submitted a response to peer review comments letter dated April 17, 2019. Some concerns have been expressed by the community regarding surface and subsurface water issues related to your project, and many of these concerns were presented in draft technical memos by Terraphase Engineering dated October 15, 2015, and February 16, 2016. Reference has also been made to an earlier subsurface drainage study by Kamman Hydrology & Engineering dated June 26, 2002. The purpose of this letter is to provide a response to the geotechnical engineering aspects of the issues raised.

KEY CONCERNS

It is my understanding that there is a concern that ponding which occurs in the backyards of homes on Curtis Street that back up to the site of your proposed development may worsen after the new construction. Specifically, it seems that there are three primary concerns have been raised which may relate to the geotechnical aspects of the project. These are:

1. The foundations for the new buildings will act as “dams” and cause water to back up.
2. The weight of the buildings will compress the underlying saturated soils, and “squeeze water up out of the ground like compressing a sponge.”
3. The level of groundwater encountered in our investigation borings at the site drilled during the summer are not representative of the groundwater depths during the winter.

We will provide comments on each of these issues in the paragraphs below.

FOUNDATIONS CREATING A DAM

A dam impounds a reservoir because the dam is nearly impermeable, and it is built between impermeable abutments at each end. Thus, water cannot flow around or below the impermeable barriers that are created and the water backs up. However, in the case of your two new building foundation near the Curtis Street properties (Daffodil and Edelweiss), there is about 15 feet between the buildings, about 15 feet behind the Edelweiss building, and about 40 feet in front of the Daffodil building. In addition, the foundations for these buildings will only be embedded 12 to 18 inches below the ground. Therefore, there is plenty of area for subsurface water flow that flows against the foundations to flow around the buildings or below the foundations.

SQUEEZING WATER OUT OF THE GROUND

The new building foundations will be founded on structural mat slabs that will be embedded about 12 to 18 inches below the ground surface. Due to weak soils and fill, the soils will be removed to a depth of about 30 inches, the subgrade properly compacted, and then the suitable portions of the soils placed back and compacted as engineered fill. Because the mat slabs will spread out the building loads in a relatively uniform pattern across the entire building area, the pressure on the soil will be very small, on the order of 300 pounds per square foot. To provide an example of how small this load is, a person standing will exert 200 to 300 pounds per square foot of pressure on the ground. This means that the pressure is so small it will not have any significant impact on the water in the ground. Furthermore, should any water movement caused by these small pressures occur, the water could simply move laterally or below the foundation/engineered fill area, and it would be highly unlikely any water would move up to the ground surface.

SUMMER VERSUS WINTER GROUNDWATER LEVELS

Our borings at the site were drilled on August 4, 2018. The two borings in the area of the Daffodil and Edelweiss buildings were each extended to a depth of 11.5 feet and neither encountered groundwater at the time of drilling nor in the 30 minutes between the completion of drilling and the hole being grouted. Our third boring near the western boundary was drilled to a depth of 26.5 feet. In this boring, groundwater was encountered at a depth of about 15.5 feet at the time of drilling and the water level rose to about 10 feet just before the hole was grouted about one hour after drilling. Based on this information, I conclude the summer water level depth is probably about 10 feet. I agree that the groundwater level may rise during the winter months, as I have seen water levels at 5 to 10 feet on various other projects in this area. Therefore, our report recommended a design groundwater level of 5 feet for the project. I should note that ponding on the surface of the ground is a function of surface water flow, and does not indicate the groundwater has built up to the ground surface.

CLOSURE

This letter has been prepared in accordance with generally accepted geotechnical engineering practices. No other warranty, either expressed or implied, is made. If you have any questions concerning this letter, please call me.

Very truly yours,

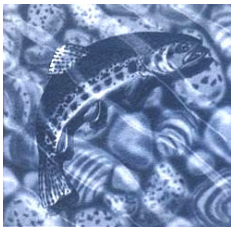
Alan Kropp
Alan Kropp, G.E.
Principal Engineer



AK/jc

Copies: Addressee (PDF) – Nathan George - nathan@ndgre.com
Mark Rhoades - mark@rhoadesplanninggroup.com
Mia Perkins - mia@rhoadesplanninggroup.com

2744-2A Hearst Gardens Supplemental Comments



CLEARWATER HYDROLOGY

Consultants in Hydrology
and Water Resources

Watershed Management

Stream and Wetland
Restoration

Wetland Delineation
and Permit Acquisition

Stormwater Drainage
and Flooding

2974 Adeline St.
Berkeley, CA 94703
Tel: 510 8411836
Fax: 510 8411610

Nov. 4, 2019

Mark Rhoades
Hearst Avenue Cottages LLC
Oakland, CA

RE: Supplemental Discussion of Hydrologic and Hydraulic Concerns Raised by
Terraphase Engineering- Proposed Hearst Gardens Residential Project, 1161-1173
Hearst. Ave., Berkeley,
CA

Dear Mark,

In 2016-2017, Clearwater Hydrology evaluated the hydrology of the project site and adjoining areas that contribute surface runoff to the Hearst Avenue corridor west of Sacramento Street in Berkeley. We also modeled the hydraulic behavior of storm flows as they accumulate along Hearst Avenue and Curtis Street to the east of the site and are conveyed west toward storm drain system inlets at San Pablo Avenue. Our final results were detailed in our design report, entitled: “Stormwater and Flooding Assessment and Mitigation Design for the Hearst Avenue Project, 1161-1173 Hearst Ave., Berkeley, CA, July 12, 2017”. An earlier version of our report, submitted in January of 2016, was reviewed by Lucas Paz, PhD, of Terraphase Engineering. The Draft Technical Memorandum from Terraphase presenting preliminary review comments was submitted to Rain and Guy Sussman of 1824 Curtis Street on Feb. 19, 2016.

Subsequent to our final report, Dr. Paz has appeared at one or more City hearings and expressed his technical opinions and concerns regarding the proposed project. The purpose of the present discussion is to address the main concerns he raised at the hearing(s), as well as to reiterate CH’s well-documented findings regarding the behavior of on-site and off-site stormwater flows during significant rainstorms

PRINCIPAL ISSUES RAISED BY TERRAPHASE (DR. PAZ)

Alan Kropp, G.E. of Alan Kropp & Associates, Inc. has prepared responses that address some of Dr. Paz’s contentions on geotechnical grounds. Based on review of the Terraphase Draft Technical Memorandums (Oct 7, 2015, Feb. 2016) and the video and oral testimony of Dr. Paz’s testimony at the City Zoning Adjustment Board (ZAB) hearing on May 13, 2019, the primary hydrologic issues raised focus on the following contentions:

1. The foundations of the proposed new structures slated for the currently pervious eastern portion of the project site will create subsurface conditions that will “dam” groundwater flow and induce more frequent ponding/flooding along the adjoining backyards of Curtis Street residences. This supposition was originally put forth by Greg Kamman of Kamman Hydrology and Engineering in a consulting proposal submitted to Marc Mathieu and Elaine Eastman in 2002. It was noted as his “biggest concern” about the proposed project in its 2002 derivation.
2. The on-site groundwater conditions are dictated by the presence of a historical tributary of Strawberry Creek, which was buried by fill for development in the early part of the 20th century, and whose subsurface sediments form an unconfined groundwater body in direct hydraulic connection with the surface soils at the site and two or more properties to the east along Curtis Street (between Delaware Street and Hearst Avenue). Furthermore, the summer borings drilled and logged by Kropp & Associates in Aug. 2018 were insufficient to determine the likely winter elevations/depths of groundwater at the site.
3. The topographic depression that covers the central portion of the current site functions as a “rain garden” wherein accumulated storm runoff ponds and infiltrates into the subsurface; whereas the post-project condition would replace this rain garden with impervious surface, thus eliminating site infiltration capacity.
4. The development of the site as proposed would worsen the existing nuisance flooding conditions for the properties along the west side of Curtis Street (east of the project site) due to the introduction of new impervious surfaces and additional stormwater runoff.

CH RESPONSES TO TERRAPHASE CONTENTIONS:

Issue 1: “Damming” of Groundwater Flow

The analogy made equating the placement of a dam across an above-ground stream or river with the placement of very shallow and discontinuous engineered fill and mat foundations on the project site is misleading and wholly inaccurate. A surface dam creates an impermeable barrier across the entire width of a stream channel and its floodplain, and must seamlessly tie-into similarly impermeable formations to either side of the dam structure or embankment. It is also vertically keyed into an impermeable bedrock or other impermeable material (e.g. clay) such that it severely restricts seepage underneath the dam. The project conditions would replicate none of the physical constraints on hydraulic characteristics that are imposed by dam and reservoir construction.

Figure 1 below depicts the actual conditions that would occur along the eastern edge of the site where two new buildings are proposed. The soil profile layers delineated in the Figure were derived from three soil borings drilled by Kropp & Associates in the summer of 2018.

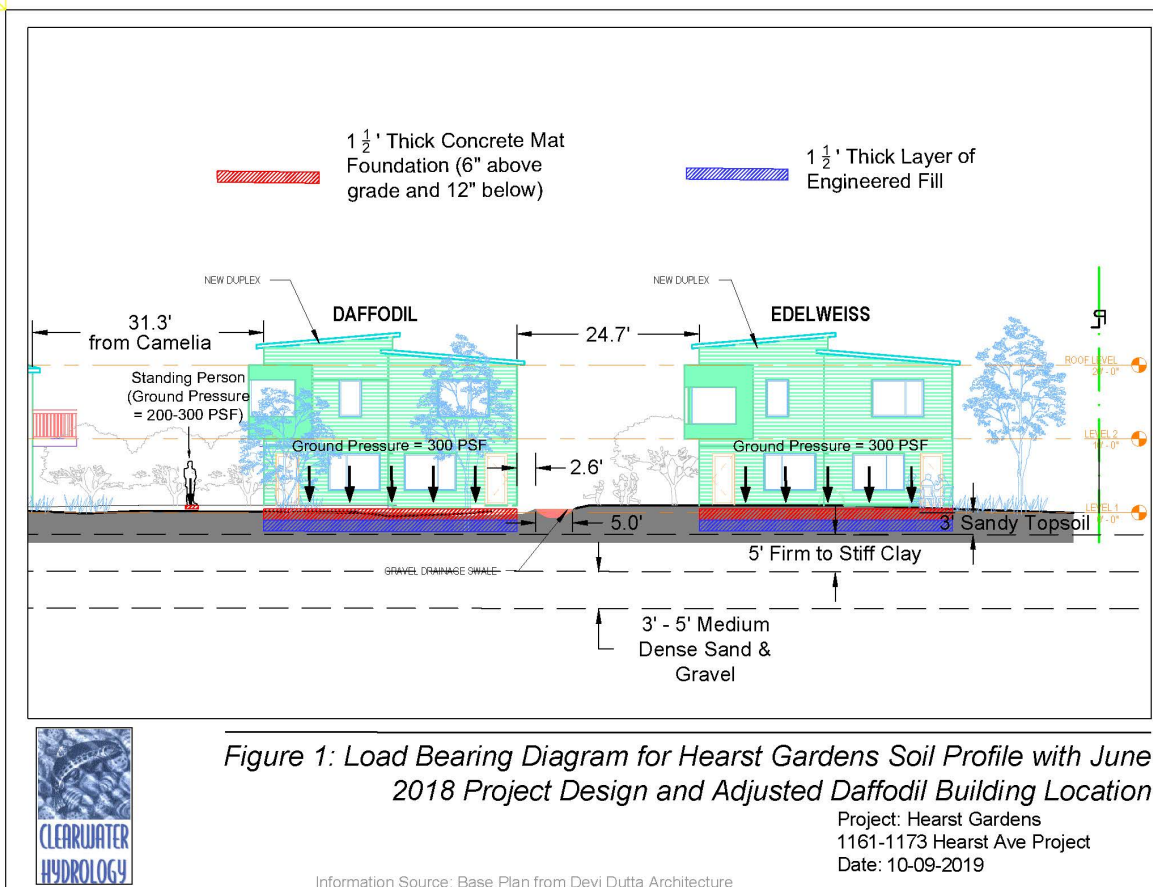


Figure 1 is scaled, and reference to the scale bar shows that the new building foundations do not span the entire site as a single structure, as a dam would. Rather, openings of roughly 15 ft. will exist to either side of these buildings. More importantly, the vertical extents of the engineered fill that would be placed beneath the mat foundations and the overlying mat foundations would not extend to more than 3 ft. below the existing ground. As shown, this depth matches that of the surface soil layer, which is underlain by 3-5 feet of firm clay. Such clay layers are typically considered non-water bearing soil strata and do not readily transmit water vertically, either from the surface via infiltration or from the subsurface via rising groundwater tables.

Groundwater that occurs under the site flows in a roughly east-west direction and will preferentially favor the coarser materials that underlie the clay layer. At this depth and at the ground pressures exerted by the buildings (300 pounds per square foot, psf), no effects from the

mat foundations would be transmitted that could alter the hydraulic conductivity of the water bearing layer. Groundwater would continue to flow freely under the shallow foundations within the dense sand and gravel layer beneath the clay. As is also shown in Figure 1, the ground pressure exerted by a standing person of moderate stature (200-300 psf) is not substantially different from the pressure exerted by the mat foundations.

Issue 2: Unconfined Character of the Local Groundwater System

The Terraphase Memorandum and Dr. Paz's testimony, as well as Kamman's proposal rationale, infer that the soil materials underlying the site comprise a single, unconfined groundwater system, i.e. that groundwater is free to rise or fall without impediment in response to seasonal groundwater recharge from areas to the east of the site. Based on the results of the Kropp & Assoc. geotechnical investigation, this is not technically accurate. The local groundwater system is at least partially confined, as discussed below.

First, it is important to note that the majority of historical, pre-urbanized groundwater recharge to this now-filled tributary channel has been captured and diverted to streets by impervious surfaces and subsurface drains (e.g. French drains) installed for residential development. So a small fraction of the pre-urbanized recharge zone actually contributes infiltrated rainfall to the shallow water bearing layer that the Kropp & Assoc. borings suggest lies roughly 8-13 ft. below the ground surface (bgs). As discussed below, those borings were drilled in August and only one of the three showed any evidence of groundwater interception, and that was at a depth of 10 ft. bgs. A. Kropp has stated that based on those borehole results and his familiarity with groundwater conditions in this area of Berkeley, the expected winter groundwater depths would be about 5 ft. bgs.

The historical map of Strawberry Creek and its tributaries (Sowers 1993-2000) published by the Oakland Museum of CA shows the pre-development trace of the former project area tributary as originating on the properties along the east side of Curtis Street (see below). There is evidence, therefore, that all or portions of multiple properties along the north side of Hearst Avenue and both sides of Curtis Street (e.g. 1819, 1820, 1821, 1824, 1825 and 1827 Curtis Street), between Hearst Avenue and Delaware Street), were also founded on fills placed within that former tributary.



Source: Sowers (1993-2000)

Second, the available evidence from the aforementioned site boring logs indicates that the on-site groundwater system does not comprise a single unconfined aquifer with an unimpeded water table that can respond linearly to seasonal infiltrated rainfall/recharge (winter) and evapotranspiration (loss of water through atmospheric evaporation and plant transpiration during the dry season). Instead, the logs suggest that the water bearing stratum, consisting of dense sands and gravels, is overlain by lower permeability clays that restrict the free vertical exchange of water, both downward and upward.

The site boring log location map and borehole logs are attached. Two of the borings, B-2 and B-3, are located along the eastern portion of the property, while the third (B-1) was drilled in the uneven and cracked concrete driveway that forms a topographic depression in the middle of the currently developed site where surface runoff ponds before moving south out the driveway toward the Hearst Avenue gutter. An actual groundwater table was intercepted in Boring B-1 at about 10 ft. below the ground surface (i.e. bgs), within the dense, but coarser sand and gravel deposits. Sands and gravels are the normal constituents of water bearing deposits that yield water to wells. Borings B-2 and B-3 weren't as deep as B-1, but no groundwater was detected in those borings at depths of 11.5 feet bgs. If a continuous water table did exist through the site, similar observation of groundwater in the borings would have been expected. More likely, the presence of the 3-5 ft. thick clay layer at roughly 3-8 ft. bgs severely restricts percolation of rainfall that infiltrates the upper 3 ft. of the soil profile. This condition is known as a perched groundwater condition, because the extent of this "aquifer" is localized, discontinuous and the impeding clay layer transmits water vertically much more slowly than coarser soil materials.

As such, perched groundwater essentially lacks a direct hydraulic connection to the deeper, regional groundwater system. In this case, infiltrated rainfall or local runoff eventually saturates the surface soil layer and induces surface ponding. This can occur independent of the relative position of the underlying regional groundwater table. Typically, monitoring wells in perched aquifers will exhibit groundwater levels at higher elevations than wells established in the deeper regional aquifer.

Issue 3: Elimination of the Existing “Rain Garden”

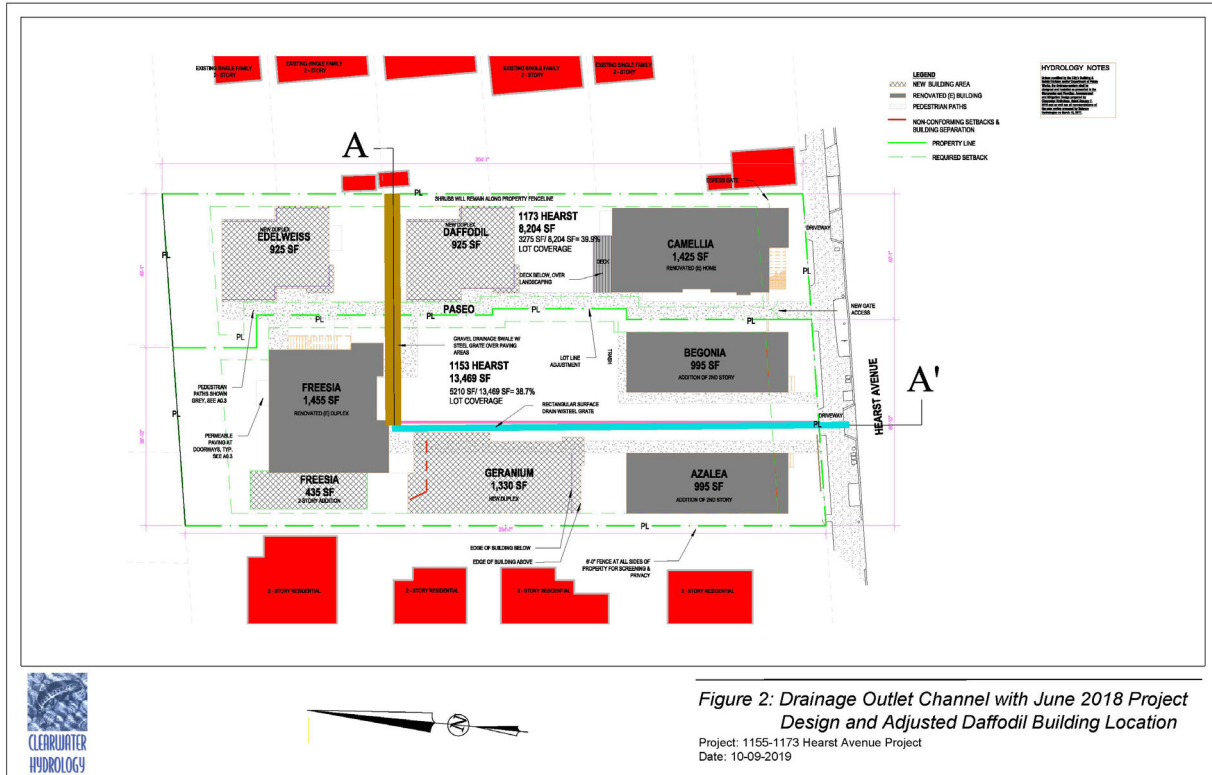
In its initial Draft Technical Memorandum (Oct. 2015), Terraphase proposes a baseline analytical scenario that the topographic depression existing on the central portion of the site acts as a rain garden. Rain gardens are usually constructed on sites to retain and pond stormwater runoff which can then prolong the opportunity for infiltration into the soil profile, rather than run-off into a storm drain system. These features only work where surface and near surface soils are relatively permeable and soil rather than concrete forms the “garden” depression. This is not the case at the project site, where the existing depression largely encompasses a settled concrete parking/driveway area, underlain by a low permeability clay substrate. Thus, while stormwater may pond, before it breaks out and flows toward Hearst Avenue, the clayey nature of the subsoil does not provide the infiltration opportunities that a true rain garden would. Evaporation is more likely to dissipate the majority of the ponded stormwater.

Issue 4: The Proposed Stormwater Design Fails to Improve Nuisance Flooding Conditions

The CH Stormwater and Flooding Assessment and Mitigation Design report (July 2017) detailed the hydrologic and hydraulic analyses that were conducted for the Hearst Avenue corridor, including the relevant block of Curtis Street, and the project site. The hydraulic analysis used the most conservative estimates of peak flows generated over the project site and the west side Curtis Street properties, including modeled overflow from the Curtis Street gutter down the residential driveways and into the low lying backyards immediately east of the site. CH conducted a supplemental total station survey of Curtis Street between Delaware St. and Hearst Avenue. Based on the integrated and expanded site topography, we determined that the lowest backyard elevations at the western Curtis Street property lines were 1.0 ft. lower than the elevations along the eastern 1161-1173 site property line. In other words, the backyard at 1173 Hearst Ave. was 1.0 ft. higher than the Curtis Street backyards. This existing physical condition creates the likelihood of backyard flooding due wholly to runoff from portions of the Curtis Street buildings, driveways and concrete patios/backyard areas.

The CH design recognized this existing impediment to more efficient drainage along the Curtis Street backyard areas and developed a solution that would provide for construction of a surface drainage channel to capture and drain-off roughly 50% of the ponded water during higher

recurrence interval (i.e. more intense) rainstorms. The layout of the new drainage channel is below in Figure 2. While this feature will not completely eliminate the existing backyard nuisance flooding for those properties, it will improve the existing drainage from those lots and reduce the depth of flooding experienced by the west side Curtis Street properties.



In addition to the surface swale and outlet drainage channel within the new project driveway- the alignments of which are also shown in the Figure 2, CH evaluated the volumetric increase in site stormwater runoff for the post-project condition. The estimated increase of 5.6 cubic feet, or 119 gallons could be mitigated by incorporating a rain barrel (cistern) into the project design. To add a safety factor, we recommend that both of the new buildings along the eastern portion of the site be fitted with 150-200 gal. rain cisterns.

I believe that the above responses address the concerns identified by Terraphase and Dr. Paz in its memoranda and testimony regarding the project. I can also be available to offer testimony at the next City hearing on the project should you deem it helpful.

Yours truly,

A handwritten signature in black ink, appearing to read "William Vandivere", followed by a horizontal line extending to the right.

William Vandivere, M.S., P.E.
Principal








APPENDIX A
LOG OF BORINGS

SOIL CLASSIFICATION CHART							
PRIMARY DIVISIONS				SECONDARY DIVISIONS			
				CRITERIA *		GROUP SYMBOL	GROUP NAME
COARSE-GRAINED SOILS MORE THAN 50% RETAINED ON NO.200 SIEVE	GRAVELS MORE THAN 50% OF COARSE FRACTION RETAINED ON NO.4 SIEVE	CLEAN GRAVELS LESS THAN 5% FINES	$C_u \geq 4$ AND $1 \leq C_c \leq 3^A$		GW	Well-graded gravel	
			$C_u < 4$ AND/OR $1 > C_c > 3$		GP	Poorly-graded gravel	
		GRAVELS WITH FINES - MORE THAN 12% FINES	FINES CLASSIFY AS ML OR MH		GM	Silty gravel	
			FINES CLASSIFY AS CL OR CH		GC	Clayey gravel	
	SANDS 50% OR MORE OF COARSE FRACTION PASSES NO. 4 SIEVE	CLEAN SANDS LESS THAN 5% FINES	$C_u \geq 6$ AND $1 \leq C_c \leq 3$		SW	Well-graded sand	
			$C_u < 6$ AND/OR $1 > C_c > 3$		SP	Poorly-graded sand	
		SANDS WITH FINES - MORE THAN 12% FINES	FINES CLASSIFY AS ML OR MH		SM	Silty sand	
			FINES CLASSIFY AS CL OR CH		SC	Clayey sand	
FINE-GRAINED SOILS 50% OR MORE PASSES THE NO.200 SIEVE	SILTS AND CLAYS LIQUID LIMIT LESS THAN 50%	INORGANIC	PI > 7 AND PLOTS ON OR ABOVE "A" LINE		CL	Lean clay	
			PI < 4 OR PLOTS BELOW "A" LINE		ML	Silt	
		ORGANIC	$\frac{\text{LIQUID LIMIT} - \text{OVEN DRIED}}{\text{LIQUID LIMIT} - \text{NOT DRIED}} < 0.75$		OL	Organic Clay & Organic Silt	
			PI PLOTS ON OR ABOVE "A" LINE		CH	Fat clay	
	SILTS AND CLAYS LIQUID LIMIT 50% OR MORE	INORGANIC	PI PLOTS BELOW "A" LINE		MH	Elastic silt	
			$\frac{\text{LIQUID LIMIT} - \text{OVEN DRIED}}{\text{LIQUID LIMIT} - \text{NOT DRIED}} < 0.75$		OH	Organic Clay & Organic Silt	
		ORGANIC	PI PLOTS ON OR ABOVE "A" LINE		PT	Peat	
			PI PLOTS BELOW "A" LINE				
HIGHLY ORGANIC SOILS							

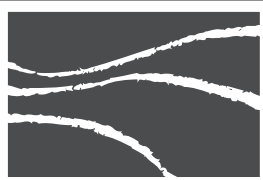
REFERENCE: Unified Soil Classification System (ASTM D2487-11) * Criteria may be done on visual basis, not necessarily based on lab testing

$A - C_u = D_{60}/D_{100}$ & $C_c = (D_{30})^2 / (D_{10} \times D_{60})$

GRAIN SIZES													
U. S. STANDARD SERIES SIEVE				CLEAR SQUARE SIEVE OPENINGS									
200		40		10		4		3/4"		3"		12"	
SILTS AND CLAYS		SAND				GRAVEL				COBBLES		BOULDERS	
		FINE	MEDIUM	COARSE		FINE	COARSE						

ABBREVIATIONS	SYMBOLS
<p>INDEX TESTS</p> <p>LL - Liquid Limit (%) (ASTM D4318-17)</p> <p>PI - Plasticity Index (%) (ASTM D4318-17)</p> <p>-200 - Passing No. 200 Sieve (%) (ASTM D1140-17)</p> <p>STRENGTH TESTS</p> <p>PP - Field Pocket Penetrometer test of unconfined compressive strength (tsf)</p> <p>TV - Field Torvane test of shear strength (psf)</p> <p>UC - Laboratory unconfined compressive strength (psf) (ASTM D2166/2166M-16)</p> <p>TXUU - Laboratory unconsolidated, undrained triaxial test of undrained shear strength (psf) (ASTM D2850-15)</p> <p>MISCELLANEOUS</p> <p>ATOD - At time of drilling</p> <p>psf/tsf - pounds per square foot / tons per square foot</p> <p>psi - pounds per square inch (indicates relative force required to advance Shelby tube sampler)</p>	 Standard Penetration Test Split Spoon (2-inch O.D.)  Modified California Sampler (3-inch O.D.)  Thin-walled Sampler Tube (either Pitcher or Shelby) (3-inch O.D.)  Rock Core  Bag Sample  Groundwater Level during drilling  Groundwater Level after drilling

KEY TO EXPLORATORY BORING LOGS		
HEARST GARDENS Berkeley, California		
PROJECT NO.	DATE	FIGURE A-1
2744-2	August 2018	



ALAN KROPP & ASSOCIATES

Geotechnical Consultants

DRILL RIG: Hydraulic Portable	SURFACE ELEVATION: 54' +/- MSL	LOGGED BY: MJV
DEPTH TO GROUNDWATER: 10.0 feet (see notes)	BORING DIAMETER: 3.5 inches	DATE DRILLED: 8/4/18

DESCRIPTION AND REMARKS	COLOR	CONSISTENCY	SOIL TYPE	DEPTH (ft)	SAMPLER TYPE	SAMPLER BLOW COUNTS	MOISTURE CONTENT (%)	DRY DENSITY (pcf)	OTHER TESTS
3" AC / 6" AB - clayey			AC/AB						
SAND, Silty - with gravel, damp	Medium Brown	Medium Dense	SC	1 2 3 4					
[Fill]									
CLAY, Lean - with sand and gravel, moist to wet	Dark Brown	Soft	CL	5 6 7 8 9	X	[4]	23	99	-200 = 60.9 LL = 26 PI = 10
GRAVEL, Silty - moist	Brown	Medium Dense	GM	10 11	X				▼
SAND, Silty - moist	Gray Mottled with Orange	Medium Dense	SM	12 13		[27]			
GRAVEL, Silty - with sand, moist to wet	Gray	Medium Dense	GM	14 15 16 17 18 19	X	[41]			▼

(Continued on Next Page)

AKA BORING LOG 2744-2 HEARST GARDENS BORING LOGS.GPJ AKA_TEMPLATE.GDT 8/15/18



ALAN KROPP & ASSOCIATES
Geotechnical Consultants

EXPLORATORY BORING LOG
HEARST GARDENS
Berkeley, California

PROJECT NO. 2744-2	DATE August 2018	SHEET 1 of 2	BORING NO. 1
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DESCRIPTION AND REMARKS	COLOR	CONSISTENCY	SOIL TYPE	DEPTH (ft)	SAMPLER TYPE	SAMPLER BLOW COUNTS	MOISTURE CONTENT (%)	DRY DENSITY (pcf)	OTHER TESTS
<i>(Continued from Previous Page)</i>									
GRAVEL, Silty - with sand, moist to wet	Gray	Medium Dense	GM	21	X	[32]			LL = 37 PI = 21 -200 = 73.1
CLAY, Lean - with gravel, moist	Brown	Very Stiff	CL	22					
				23	20				
				24					
				25					
GRAVEL, Clayey - wet	Brown	Medium Dense	GC	25					
SAND, Clayey - wet	Brown	Medium Dense	SM	26		17			

Bottom of boring at 26.5 feet.

NOTES:

1. Groundwater was encountered at approximately 15.5 feet at the time of drilling and the boring was backfilled immediately after drilling. (See report for discussion.)
2. Stratification lines represent the approximate boundaries between material types and the transitions may be gradual.
3. Penetration resistance values (blow counts) marked with an asterisk (*) are not standard penetration resistance values.
4. Elevations were estimated from plans drawn by Moran Engineering Inc. dated June 2015.

AKA BORING LOG 2744-2 HEARST GARDENS BORING LOGS.GPJ AKA_TEMPLATE.GDT 8/15/18



**ALAN KROPP
& ASSOCIATES**
*Geotechnical
Consultants*

EXPLORATORY BORING LOG
HEARST GARDENS
Berkeley, California

PROJECT NO.	DATE	SHEET	BORING NO.
2744-2	August 2018	2 of 2	1

DRILL RIG: Hydraulic Portable	SURFACE ELEVATION: 56' +/- MSL	LOGGED BY: MJV
DEPTH TO GROUNDWATER: (see notes)	BORING DIAMETER: 3.5 inches	DATE DRILLED: 8/4/18

DESCRIPTION AND REMARKS	COLOR	CONSISTENCY	SOIL TYPE	DEPTH (ft)	SAMPLER TYPE	SAMPLER BLOW COUNTS	MOISTURE CONTENT (%)	DRY DENSITY (pcf)	OTHER TESTS
SAND, Clayey - damp	Medium Brown	Medium Dense	SC	1					
[Topsoil]				2					
CLAY, Lean - with sand and gravel, moist	Dark Brown	Stiff	CL	3					
				4					
				5					
				6		[23]	13	87	LL = 34 PI = 18 -200 = 70
				7					
SAND, Clayey, Lean - moist	Light Brown	Medium Dense	SC	8					
				9					
GRAVEL, Clayey, Lean - with some sand, moist to wet	Medium Brown	Medium Dense	GC	10					
				11		[37]			

Bottom of boring at 11.5 feet.

NOTES:

1. No groundwater was encountered at the time of drilling and the boring was backfilled immediately after drilling. (See report for discussion.)
2. Stratification lines represent the approximate boundaries between material types and the transitions may be gradual.
3. Penetration resistance values (blow counts) marked with an asterisk (*) are not standard penetration resistance values.
4. Elevations were estimated from plans drawn by Moran Engineering Inc. dated June 2015.

AKA BORING LOG 2744-2 HEARST GARDENS BORING LOGS.GPJ AKA_TEMPLATE.GDT 8/15/18



ALAN KROPP & ASSOCIATES
Geotechnical Consultants

EXPLORATORY BORING LOG
HEARST GARDENS
Berkeley, California

PROJECT NO.	DATE	SHEET	BORING NO.
2744-2	August 2018	1 of 1	2

DRILL RIG: Hydraulic Portable	SURFACE ELEVATION: 56' +/- MSL	LOGGED BY: MJV
DEPTH TO GROUNDWATER: (see notes)	BORING DIAMETER: 3.5 inches	DATE DRILLED: 8/4/18

DESCRIPTION AND REMARKS	COLOR	CONSISTENCY	SOIL TYPE	DEPTH (ft)	SAMPLER TYPE	SAMPLER BLOW COUNTS	MOISTURE CONTENT (%)	DRY DENSITY (pcf)	OTHER TESTS
SAND, Silty, Clayey - with some gravel, moist	Brown	Medium Dense	SC	1					
[Topsoil]				2					
CLAY, Lean, Sandy - moist	Black	Firm	CL	3					
				4					
				5					
				6		[11]	22	95	LL = 34 PI = 19 -200 = 68.5
				7					
				8					
				9					
GRAVEL, Clayey, Lean - angular, moist	Medium to Dark Brown	Medium Dense	GC	10					
				11		[36]			

Bottom of boring at 11.5 feet.

NOTES:

1. No groundwater was encountered at the time of drilling and the boring was backfilled immediately after drilling. (See report for discussion.)
2. Stratification lines represent the approximate boundaries between material types and the transitions may be gradual.
3. Penetration resistance values (blow counts) marked with an asterisk (*) are not standard penetration resistance values.
4. Elevations were estimated from plans drawn by Moran Engineering Inc. dated June 2015.

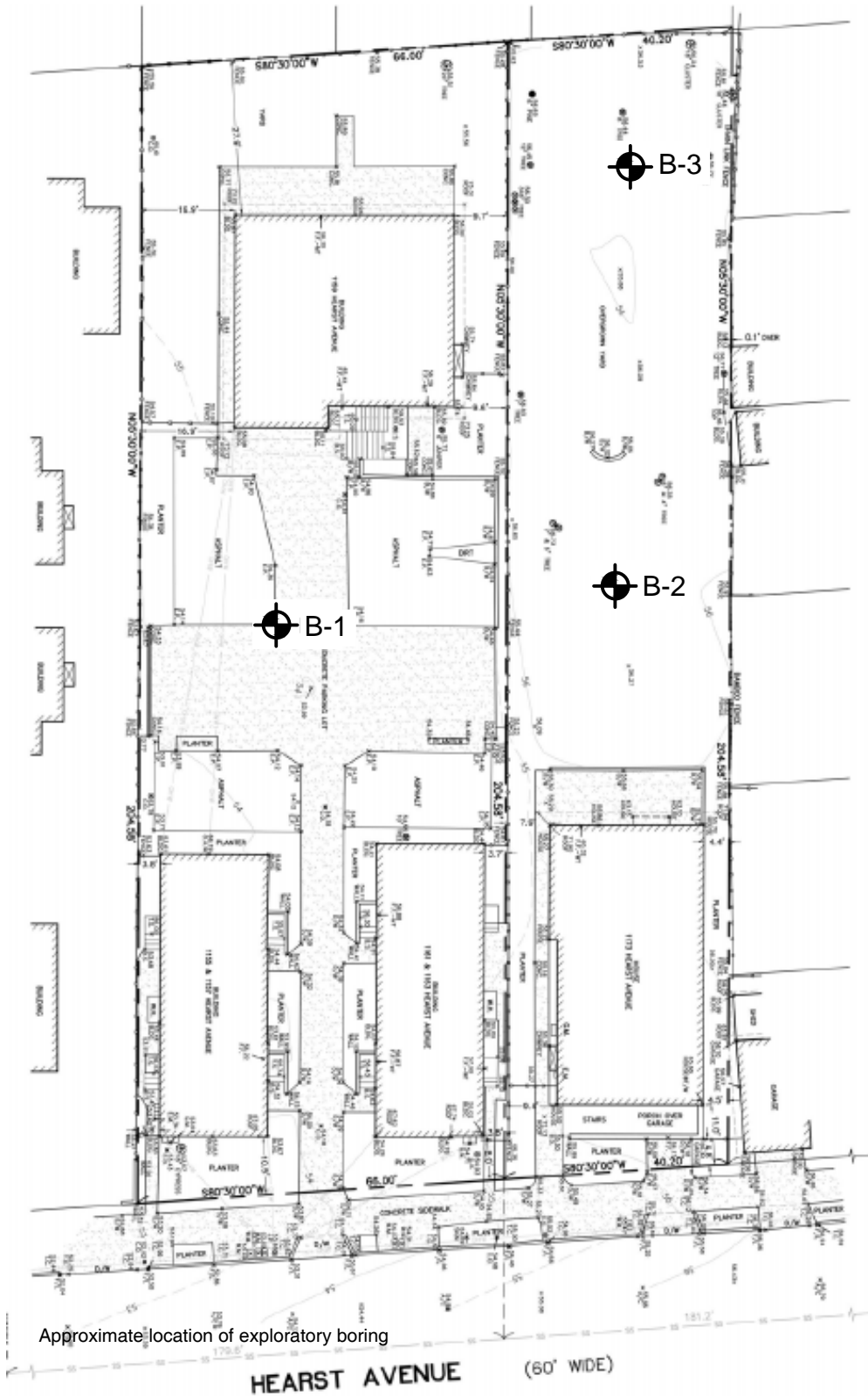
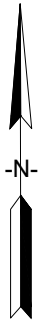
AKA BORING LOG 2744-2 HEARST GARDENS BORING LOGS.GPJ AKA_TEMPLATE.GDT 8/15/18



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EXPLORATORY BORING LOG
HEARST GARDENS
Berkeley, California

PROJECT NO.	DATE	SHEET	BORING NO.
2744-2	August 2018	1 of 1	3



LEGEND



Approximate location of exploratory boring



Source: "Boundary and Topographic Survey, Located at 1155-1173 Hearst Avenue."; by Moran Engineering, Inc.; dated June 8, 2015



**ALAN KROPP
& ASSOCIATES**
*Geotechnical
Consultants*

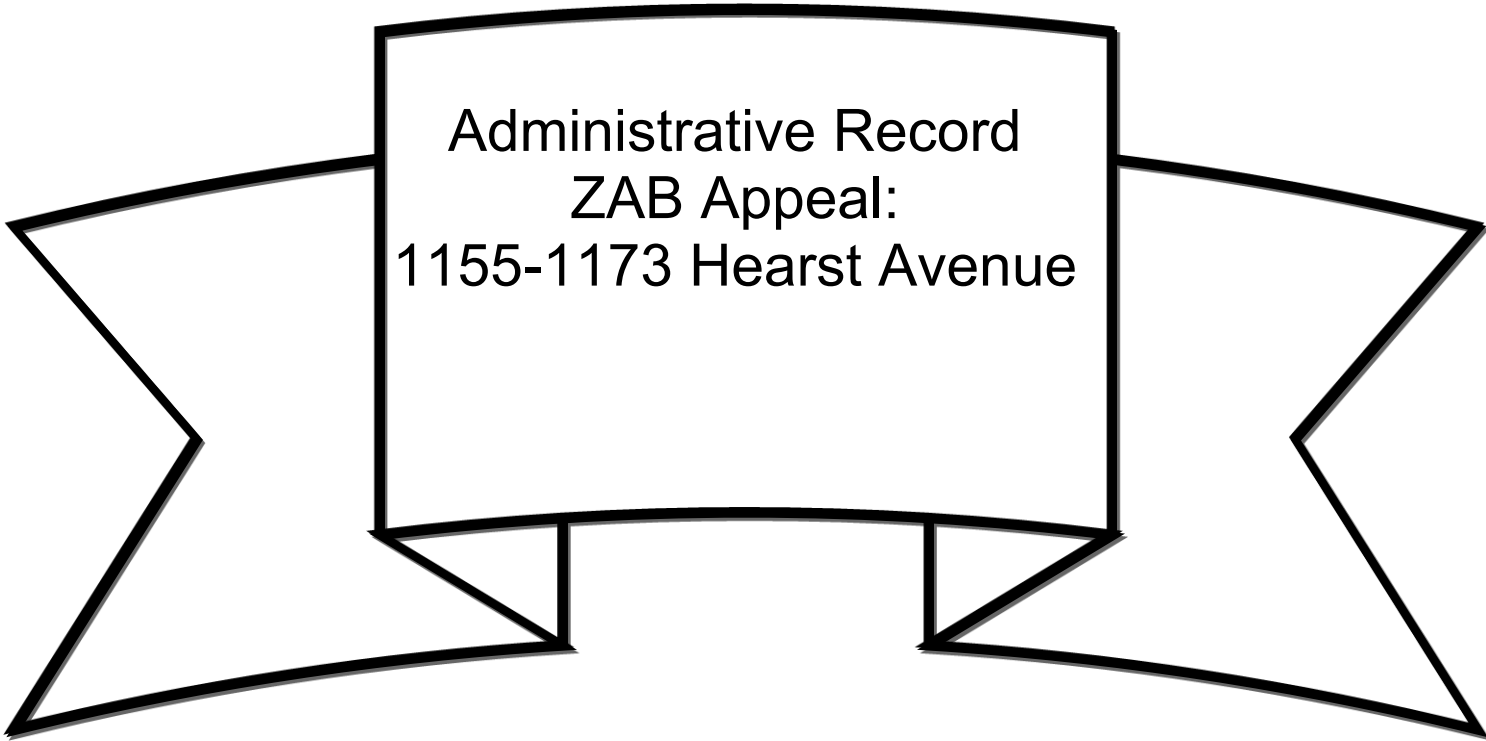
SITE PLAN

HEARST GARDENS
Berkeley, California

PROJECT NO.
2744-2

DATE
August 2018

FIGURE **4**



Administrative Record
ZAB Appeal:
1155-1173 Hearst Avenue

This attachment is on file and available for review at the City Clerk Department, or can be accessed from the City Council Website. Copies of the attachment are available upon request.

City Clerk Department
2180 Milvia Street
Berkeley, CA 94704
(510) 981-6900

or from:

The City of Berkeley, City Council's Web site
<http://www.cityofberkeley.info/citycouncil/>

**NOTICE OF PUBLIC HEARING – BERKELEY CITY COUNCIL
BERKELEY UNIFIED SCHOOL DISTRICT BOARD ROOM,
1231 ADDISON STREET
PUBLIC PARTICIPATION BY REMOTE VIDEO ONLY**

ZAB APPEAL: USE PERMIT #ZP 2016-0028, 1155-73 HEARST STREET

Notice is hereby given by the City Council of the City of Berkeley that on **TUESDAY JUNE 9, 2020 at 6:00 P.M.** a public hearing will be conducted to consider an appeal of a decision by the Zoning Adjustments Board to approve Use Permit #2016-0028, to develop two parcels, including the substantial rehabilitation of the existing seven dwelling units and construction of six new, for-sale dwelling units.

A copy of the agenda material for this hearing will be available on the City's website at www.CityofBerkeley.info as of **JUNE 2, 2020**. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology.**

For further information, please contact Leslie Mendez, Project Planner at (510) 981-7426. Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or clerk@cityofberkeley.info for further information.

Mark Numainville, City Clerk

Mailed: May 26, 2020

NOTICE CONCERNING YOUR LEGAL RIGHTS: *If you object to a decision by the City Council to approve or deny (Code Civ. Proc. §1094.6(b)) or approve (Gov. Code 65009(c)(5)) an appeal, the following requirements and restrictions apply: 1) Pursuant to Code of Civil Procedure Section 1094.6, no lawsuit challenging a City decision to deny or approve a Zoning Adjustments Board decision may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a Zoning Adjustments Board decision, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.*

If you challenge the above in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the

ATTACHMENT 10

City of Berkeley at, or prior to, the public hearing. Background information concerning this proposal will be available by request from the City Clerk Department and posted on the City of Berkeley webpage at least 10 days prior to the public hearing.