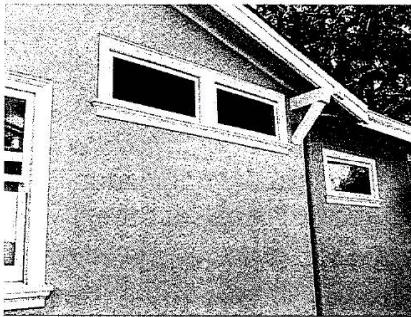
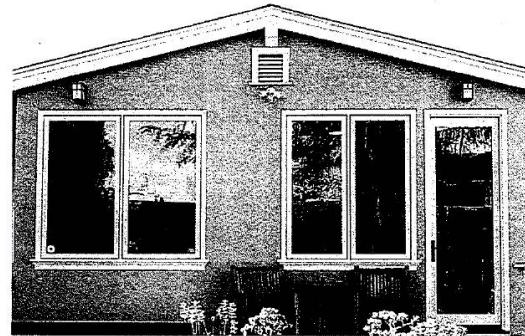


1609 Virginia fenestration

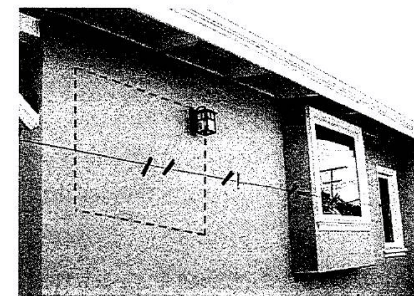
East side



North side



West side



- North Side: Our 2017 remodel moved most of our windows to the north side, to improve privacy while not losing too much light/sun
- East Side: Bedroom and bathroom remodels utilized high-awning windows to give privacy w/ neighbors
- West Side: One window removed (---) to increase privacy between our house and the project property.

Lack of clarity from Planning on the ZAB process

We spoke with the city planner in charge several times prior to the project being deemed complete. In a call on 9/21/21 we discussed our concerns about the upper floor addition of the project. The city planner suggested we focus our letter to and presentation to ZAB as follows:

- Quote his advisory comments from the first letter after submission in which he suggested elimination of the upper floor to minimize shadow/privacy impacts and make the size of the proposed dwelling more reasonable.
- Point out that his suggestion was ignored by the project proponents
- Request that ZAB consider 'major modifications prior to resubmission.'

The city planner also suggested that the ZAB hearing would be an iterative process. Multiple times (to us, in the initial staff report, and in the ZAB hearing) he mentioned that there can be multiple hearings about a project.

Supplementary materials

The original design that the applicants say they 'modified to help the neighbors' did not have City support

2/5/21 Project Incomplete letter from City Planner (Nick Armour):

Advisory comments (2): – 'As has previously been discussed between Project Planner and Applicant (prior to official submittal of the application), staff has concerns with the numerous Use Permits and Variance request to expand the existing residential structure. As currently proposed, staff cannot make the findings to recommend approval of this project. Were it to move forward to the Zoning Adjustments Board under the current design iteration, staff would recommend that the ZAB deny the project for lack of ability to make the findings.'

Full ZAB exchange at end of hearing (1)

(1:56) Debbie: "my question is, as you looked at these possible changes of the first floor or second floor and what the restrictions are on us by the state, we can't deny the unit. Can we reduce the square footage? I'm not saying we want to, but I want to better understand what the parameters are on what we may or may not do."

(1:59) Nick – planner: As one point of clarity, the second unit is not technically being added to the property because it was originally on the property and has been illegally removed. So as a component of the project they have to restore it. There is not anything in the HAA that says that a reduction in square footage would not be permitted if it is a way to mitigate some of the impacts. It's just that you cannot approve it at a lower density or deny the project. It doesn't say that you could not reduce the square footage of the project."

(1:57) Chairman Kahn: Hold that thought Nick. I'm referring, I'm pulling up the memo from Steve. I'll be able to quote it precisely to make sure that we're doing the right thing.

(2:00) C. Olson: I'm not sure if we have the wiggle room on this. I'm assuming that we don't, but staff can tell me if we do.... This is a house where it's just going to be mom, Dad and one son, and yet we approve [five] bedrooms? We don't have any wiggle room?... I just don't want to do a mini dorm here.

Full ZAB exchange at end of hearing (2)

(2:02) C. Kahn: I found the paragraph. The smoking gun. This is from page three of the staff communication to ZAB on 8/26/2021 from Steve Buckley, planning manager. The first paragraph: for purposes of the HAA lower density includes any conditions that have the same effect or impact of the ability for the project to provide housing generally understood to be the total number of dwelling units, but also related to overall square footage, number of bedrooms, etc. So that was a new finding, that was not the old policy of the city. That's why I made a note of it at the time. The prior policy of the city prior to this memo was that it was only number of units protected by the HAA. Steve did his homework and worked with the city attorney to clarify square footage or bedrooms are also covered because they provide housing. ... So, Carrie that answers your question, we can't reduce the number of bedrooms per HAA. So our hands are...I mean it does seem like our hands are tied on these issues.

(2:04) S. O'Keefe: So that was my thinking as well, thank you for clarifying. I don't think we can reduce the square footage. That's what I thought the rules were also.

(2:06) C. Olson: I'm not asking for myself, I'm asking because we have very interested neighbors, and they need to understand why it is that this zoning board is going to end up approving this project. It's not that we couldn't make modifications, I want to stress that, I have a couple ideas. But this is the size of the project we're presented with.



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
JULY 14, 2022

1643 & 1647 California Street

Use Permit #ZP2021-0001 to 1) create a new lower basement level, 2) construct a new second story, and 3) modify the existing duplex layout, resulting in a 3,763 square foot duplex.

I. Background

A. Land Use Designations:

- General Plan: Medium Density Residential
- Zoning: R-2 – Restricted Two-Family Residential District

B. Zoning Permits Required:

- Use Permit, under Berkeley Municipal Code (BMC) Section 23C.04.070.C, to enlarge a lawful non-conforming structure that is non-conforming by reason of violation of the maximum allowable lot coverage;
- Use Permit, under BMC Section 23C.04.070.E, to enlarge a lawful non-conforming structure that is non-conforming by reason of violation of the maximum allowable density;
- Administrative Use Permits, under BMC Section 23C.04.070.B, to horizontally extend two non-conforming yards (front and rear);
- Administrative Use Permit, under BMC section 23D.28.030, to permit a major residential addition;
- Administrative Use Permit, under BMC Section 23D.28.070.C, to allow an addition over 14 feet in height; and
- Administrative Use Permit, under BMC Section 23D.28.050, to construct a fifth bedroom.

C. CEQA Recommendation:

It is staff's recommendation that the project is categorically exempt pursuant to Section 15301 of the CEQA Guidelines ("Existing Facilities"). The determination is made by ZAB.

Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no

ZONING ADJUSTMENTS BOARD
July 14, 2022

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cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

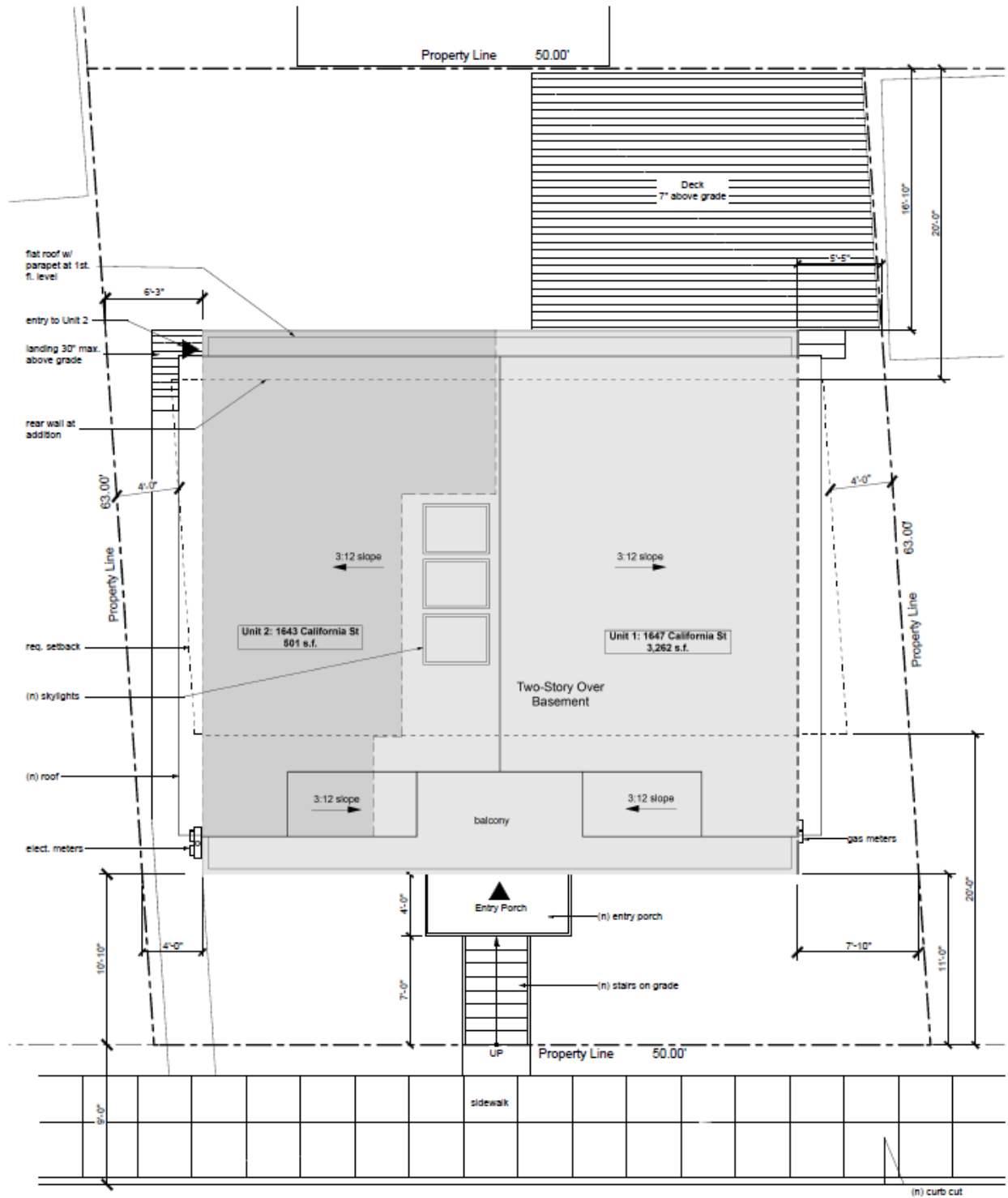
D. Parties Involved:

- Applicant Sundeep Grewel, Berkeley
- Property Owner Ido and Tamar Oppenheimer, Berkeley

Figure 1: Vicinity Map



Figure 2: Site Plan



2 Proposed Site Plan

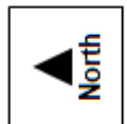


Figure 3: Front Elevation



① Proposed West Elevation - Front
Current Proposal



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Figure 4: Rear Elevation

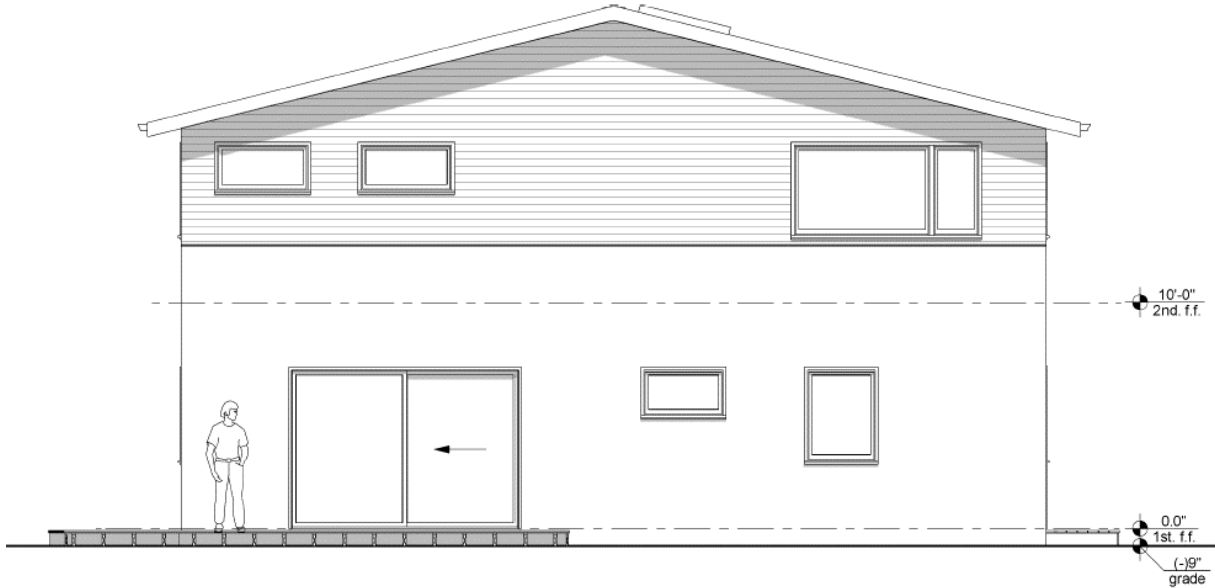


Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Multi-Family	R-2	Low Medium Density Residential
Surrounding Properties	North	Single-Family		
	South	Single-Family		
	East	Single-Family		
	West	Multi-Family		

Table 2: Special Characteristics

Characteristic	Applies to Project?	Explanation
Affordable Child Care Fee for qualifying non-residential projects (Per Resolution 66,618-N.S.)	No	Project is entirely residential, and therefore, this project is not subject to this resolution
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)	No	Project is entirely residential, and therefore, this project is not subject to this resolution
Affordable Housing Mitigations for rental housing projects (Per BMC 22.20.065)	No	The project proposes to maintain the two dwelling units that currently exist at the property.
Creeks	No	The site does not contain a mapped creek or a creek culvert.

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Density Bonus	No	The project is not proposing to add dwelling units through a Density Bonus application
Natural Gas Prohibition (Per BMC 12.80.020)	No	This project is an application for construction to an existing two-unit structure, and is therefore not subject to the Natural Gas Prohibition.
Historic Resources	No	The project site is not designated as a Landmark by the City, nor is the application proposing to demolish the existing structure.
Housing Accountability Act (Gov't Code Section 65589.5(j))	No	The project is not a "housing development project," as no additional units would be created. The project is to increase the size of one of the dwellings, and reduce the size of the other dwelling. Therefore, the HAA findings do not apply to this project.
Housing Crisis Act of 2019 (SB330)	No	The project is all residential, but no new dwellings are proposed, and no dwellings would be demolished.
Oak Trees	No	There are no Coast Live Oak Trees on the property.
Rent Controlled Units	No	The property contains two units that are owner-occupied. The Rent Control Ordinance would apply if either unit were rented.
Residential Preferred Parking (RPP)	No	This property is not located in a Residential Preferred Parking Zone
Seismic Hazards (SHMA)	No	The site is not located within an area susceptible to liquefaction, Fault Rupture, or Landslides as shown on the State Seismic Hazard Zones map.
Soil/Groundwater Contamination	No	The project site is not listed on the Cortese List (an annually updated list of hazardous materials sites). Per §15300.2 of the CEQA Guidelines, a categorical exemption may be used on sites not listed on the Cortese List.
Transit	Yes	The site is located near the corner of California and Virginia Streets, one block east of Sacramento Street. Sacramento is served by AC Transit line 52 and there are bus stops one block away to the west.

Table 3: Project Chronology

Date	Action
January 8, 2021	Application submitted
September 24, 2021	Application deemed complete
November 23, 2021	Public hearing notices mailed/posted
December 9, 2021	ZAB hearing
December 20, 2021	Notice of Decision issued
January 10, 2022	Appealed to City Council
April 26, 2022	Council meeting, remanded to ZAB
June 30, 2022	ZAB public hearing notices mailed/posted
July 14, 2022	ZAB hearing
July 25, 2022	Remand deadline

Table 4: Development Standards

Standard		Existing	Proposed Total	Permitted/ Required
BMC Sections 23D.28.070-080				
Lot Area (sq. ft.)		3,100	No change	5,000 min
Gross Floor Area (sq. ft.)		1,334	3,763	N/A
Dwelling Units	Total	2	No Change	1 max (1 per 2,500 sq.ft. of lot area)
Building Height	Average (ft.)	13'-6"	23'-10"	28' max
	Stories	1	2	3 max
Building Setbacks (ft.)	Front	10'	No Change	20' min
	Rear	16'-10"	No Change	20' min
	Left Side	3'-11"	4'-0"	4' min
	Right Side	5'6"	5'5"	4' min
Lot Coverage (%)		50%	44%	40% max
Usable Open Space (sq. ft.)		500	1,029	800 min
Parking	Automobile	0	0	2 min

II. Project Background

A. ZAB Action: On December 9, 2021, the Zoning Adjustments Board (ZAB) approved Use Permit ZP2021-0001 by a vote of 9-0-0-0 (Yes: Duffy, Kahn, Kim, Gaffney, O’Keefe, Olson, Sanderson, Thompson, Tregub; No: None; Abstain: None; Absent: None).

On December 20, 2021, staff issued the notice of the ZAB decision, and on January 10, 2022, an appeal of the ZAB decision was filed with the City Clerk by Kay Bristol, the owner of 1651-1653 California Street, and Anna Cederstav and Adam Safir, the owners of 1609 Virginia Street. The Clerk set the matter for review by the Council on April 26, 2022.

In the appeal letter, the appellants stated that they were concerned about the applicability of the Housing Accountability Act (HAA), the lack of modification by ZAB, procedural requirements, and inadequate opportunities for public participation.

B. Council Consideration of the Appeal: On April 26, 2022, the Council held a public hearing to consider the ZAB's decision. During the staff presentation, staff clarified that the HAA should not apply to the project since no new units will be added. The addition may be modified. By a vote of 9-0-0-0 (Ayes: Bartlett, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin), Council remanded the Use Permit to ZAB for reconsideration of the applicability of the Housing Accountability Act, and the Rent Stabilization and Eviction for Good Cause Ordinance.

III. Project Description

A. Neighborhood/Area Description: The project site is located in the North Berkeley neighborhood, on the east side of California Street at the corner of California and Virginia Street. It is one block east of Sacramento Street and four blocks west of Martin Luther King Junior Way. The surrounding area consists of residential uses ranging from one- and two-story single-family dwellings, and two-story multi-family buildings. Bus service is available via transit lines on Sacramento Street.

B. Site Conditions: The subject property is a small, rectangular lot, oriented in the east-west direction, and is approximately 3,100 square feet in total area. It features a one-story main building originally constructed as a duplex. The building faces west, toward California Street. At some point in the past, the kitchen of the left side unit (1643 California) was removed without permits, and a doorway was installed between the two units, effectively converting the house to one unit, without the necessary approval of a Use Permit to remove a dwelling.

The property and structure is currently non-conforming due to several reasons: 1) the property is non-conforming to the lot coverage, currently at 50 percent coverage where 45 percent coverage is the limit for a one-story structure; 2) the property is non-conforming to the allowable residential density, containing two units when only one unit is permitted due to the lot size (prior to the unauthorized removal of 1643 California); and 3) the structure is located within the required front, rear, and left side yards.

C. Proposed Project: The project would make several alterations to the existing property. The existing residential structure would be shifted by 1-inch to the south to create a conforming left (north) side setback of 4 feet. The proposal would restore the

left dwelling unit at 1643 California, but would shrink the size of this unit from 650 square feet to 501 square feet. Additionally, the floor plan of the main level of right unit (1647 California) would be modified to serve as the main living area, with an open floor plan kitchen/dining/living room, plus a full bathroom. The structure would be expanded by creating a new basement level¹, contained below the existing building footprint, solely serving 1647 California. This level would contain a family room/home gym, half bath, one new bedroom with a full bathroom, and closet and storage area. The proposal would add a new second level on top of the existing structure, also solely serving 1647 California, which would contain three new bedrooms and two full bathrooms. The second story would step in at the front to provide a balcony, and would step in from the rear to comply with the required 20-foot rear yard setback. In total, 1647 California would expand by 2,612 square feet, from 650 square feet to 3,262 square feet in total.

Other site work includes the removal of an existing accessory shed, and the construction of an on-grade deck in the southeastern corner of the rear yard.

IV. Community Discussion

A. Neighbor/Community Concerns:

On June 30, 2022, the City mailed public hearing notices to nearby property owners and occupants, and to interested neighborhood organizations and the City posted notices within the neighborhood in three locations.

At the time of writing this report, staff has received several communications regarding the project, both in support and opposition. All communications received have been included as Attachment 4.

Concerns raised include:

- a. Neighbors to the east and south have raised concerns due to the proposed increase in size of the house on a small lot.
- b. Concerns from each adjacent neighbor regarding the impacts to privacy and to shadows from the two-story design and increase in height.
- c. Concern with the project being out of scale with the neighborhood and surrounding properties, especially given the existing non-conformities of the property.

Support of the application includes:

- a. Improved structure and project site;
- b. Restoration of the second dwelling unit.

V. Issues and Analysis

¹ The basement would not count as a story, as no portion of the basement level would be exposed to the existing grade by more than 6 feet, per the definition in BMC Section 23F.04.

- A. SB 330 – Housing Crisis Act of 2019:** The Housing Crisis Act, also known as Senate Bill 330, seeks to boost homebuilding throughout the State with a focus on urbanized zones by expediting the approval process for and suspending or eliminating restrictions on housing development. Housing development is defined as a project that is: all residential; a mixed-use project with at least two-thirds of the square-footage residential; or for transitional or supportive housing. SB 330 does not apply to the proposed project because no new dwellings are proposed. Per Government Code Section 66300 and the attached memorandum from the Rent Stabilization Board (Attachment 5), both dwelling units are “protected units” because both are subject to rent control when rented.
- B. Housing Accountability Act Analysis:** The Housing Accountability Act (HAA), California Government Code Section 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; 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 HAA does not apply to the proposed project because no new dwellings are proposed. The two existing dwellings would remain, and the size of the dwellings would change.
- C. Rent Stabilization and Eviction for Good Cause Ordinance:** Rent Board staff prepared a memorandum (Attachment 5) that analyzes whether the Rent Stabilization and Eviction for Good Cause Ordinance applies to the project. Since there are currently no tenants, there are no tenant protections at issue currently. Future tenants would be protected by the ordinance. Both units are subject to rent control when rented.
- D. Findings for Addition to a Structure on Parcel with Non-Conforming Lot Coverage:** Pursuant to BMC Section 23C.04.070.C, additions and/or enlargements of lawful non-conforming structures that are non-conforming by reason of lot coverage are permitted with a Use Permit if the addition/enlargement does not increase coverage or exceed the height limit. As previously mentioned, the property is non-conforming to the maximum allowable lot coverage, with 50 percent coverage, where 45 percent is the District maximum on this R-2 property. The proposed addition would remove an existing shed in the rear yard, which would reduce the lot coverage to 44 percent, while creating a two-story house, which decreases the allowable lot coverage to 40 percent. While the proposed structure would still be non-conforming to the allowable lot coverage, the project would reduce the non-conformity from 5 percent over the allowable limit to 4 percent over the allowable limit. The proposed addition is located

over existing covered area, and therefore, does not increase the non-conforming lot coverage. Additionally, while the addition consists of a second story addition, reaching a total of 23 feet, 10 inches, which complies with the maximum average height limit of 28 feet.

- E. Findings for Addition to a Structure on Parcel with Non-Conforming Density:** Pursuant to BMC Section 23C.04.070.E, additions and/or enlargements of lawful non-conforming structures that are non-conforming by reason of residential density are permitted with a Use Permit if the addition/enlargement does not increase the density or exceed the height limit. The project proposes to maintain the density at two units, therefore, it does not increase the density. As described in Section V.C, above, the addition would comply with the allowable average height limit in the district.
- F. Findings for Addition to Vertically Extend and Alter a Structure with Non-Conforming Yards:** Pursuant to BMC Section 23C.04.070.C, additions and/or enlargements which vertically extend or alter a portion of a building which encroaches into a non-conforming yard may be of lawful non-conforming structures that are non-conforming by reason of residential density are permitted with an Administrative Use Permit if the existing use of the property is conforming and if the addition/enlargement would not 1) reduce any yard below the minimum setback requirements, or further reduce existing non-conforming yards; or 2) exceed the maximum or calculated height limits. As previously explained, the existing residential structure is non-conforming to the front, rear, and left (north) side setbacks. The proposed addition/enlargement of the house would correct the non-conforming left side setback, but is proposed to vertically extend the non-conforming front and rear setbacks. The front setback would be vertically extended both up (with the second story) and down (with the basement), while the rear setback would be vertically extended down with the expansion of the basement. The second story at the rear would comply with the required 20-foot rear yard setback. As the enlargement of the building would comply with the permitted residential use on the property, and the vertical expansions within the non-conforming setbacks would not further reduce the non-conformity, these expansions are permissible.
- G. Addition of a Fifth Bedroom to an R-2 Parcel:** Pursuant to BMC Section 23D.28.050, an Administrative Use Permit is required to approve the addition of a fifth bedroom to a parcel in the R-2 Zoning District. This project proposes to increase the total number of bedrooms on the property from four to five bedrooms. The addition of this fifth bedroom would not add more units to the site, but would provide more room in one of the dwellings.
- H. Restricted Two-Family Residential District (R-2) Findings:** This project proposes to construct a major residential addition over 14-feet in height. As required by BMC Section 23D.28.090.A and BMC 23B.32.040.A, the Zoning Adjustments Board must make a finding of general non-detriment for any Administrative Use Permit in the R-2 Zoning District. This project would add approximately 2,429 square feet to the existing 1,334 square foot duplex. 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 because of the following reasons:

- i. The project would add a second level to the home, of which there are several examples in the neighborhood.
- ii. The second story addition would step in and comply with the required front and rear yard setbacks.
- iii. A basement is proposed to be added. While adding additional square footage to the building, the basement would not create any new impacts to the surrounding neighbors due to its placement partially below grade, maintaining the existing first floor level.
- iv. The neighborhood is a mix of residential uses, including apartments and single-family and multi-family homes. Existing structures in the immediate neighborhood vary in height from one to two stories.
- v. In addition, the project approval is 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 will not be detrimental.

I. General Non-Detriment for Use Permits and Administrative Use Permits: Pursuant to BMC Section 23.28.090.B, the Board may issue a Use Permit if it meets the findings for non-detriment. An analysis of sunlight/shadows, air, and views follows:

Sunlight/Shadow: Shadow studies submitted by the applicant document the addition's projected shadow angles and lengths at three times throughout the day during the summer and winter solstice. The studies show that the addition would create an incremental increase in shadows on two neighboring dwellings, 1609 Virginia Street and 1639 California Street, as follows:

- Two hours after sunrise on the winter solstice, shadows on the south side of the dwelling at 1639 California Street would increase and cover the left third of a living room window;
- At noon on the winter solstice shadows on the south side of the dwelling at 1639 California Street would increase and cover a dining room window, and reach the sill of a living room window;
- Two hours before sunset on the winter solstice shadows on the south side of the dwelling at 1639 California Street would increase and cover a dining room window and a kitchen window. Shadows would also reach a garage and a accessory building at 1609 Virginia Street, and a garage at 1639 California Street.
- Two hours before sunset on the summer solstice, shadows on the west side of the dwelling at 1609 Virginia Street would increase and cover a kitchen window, and shadows on the north side of the dwelling at 1609 Virginia Street would increase and cover a bedroom window, a kitchen window, and a kitchen door. Shadows would also reach a garage at 1609 Virginia Street.

Because the impacts to neighboring properties would occur on limited areas, and would only partially shade neighboring buildings for a limited time during the year, and only for a few hours of the day, the residential addition would not result in a significant loss of direct sunlight on abutting residences, and these shading impacts are not deemed detrimental.

Air: As discussed above, the addition would not increase the footprint of the dwelling, and would not further reduce setbacks. The addition is found to be consistent with the existing development and building-to-building separation pattern – or air – in this R-2 neighborhood because the alteration would not further reduce the front and rear setbacks, and would not exceed height or story limits. Therefore, there would be minimal, if any, air impacts.

Views: The addition would not result in obstruction of significant views in the neighborhood as defined in BMC Section 23.502 (Glossary). The neighborhood is generally flat and developed with one- and two-story residences that filter or obscure most views that may be available of the Berkeley hills or the Golden Gate Bridge from off-site view angles.

J. 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 H-33 – Regional Housing Needs: Encourage housing production adequate to meet City needs and the City's share of regional housing needs.
3. 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.
4. Policy UD-17 – Design Elements: In relating a new design to the surrounding area, the factors to consider should include height, massing, materials, color, and detailing or ornament.
5. 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.
6. 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.

ZONING ADJUSTMENTS BOARD
July 14, 2022

1643/47 CALIFORNIA STREET
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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:

- A. APPROVE ZP2021-0001 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 August 26, 2021
3. Notice of Public Hearing
4. Correspondence Received, separated into pre-ZAB meeting and post-ZAB meeting
5. Rent Stabilization Board Memo, dated June 6, 2022
6. December 9, 2021 ZAB Staff Report, and Findings and Conditions
7. Appeal Letter, dated January 10, 2022
8. April 26, 2021 Council Report, and Resolution

Staff Planner: Allison Riemer, ariemer@cityofberkeley.info, (510) 981-7433

ATTACHMENT 1

FINDINGS AND CONDITIONS

JULY 14, 2022

1643 & 1647 California Street

Use Permit #ZP2021-0001 to 1) create a new lower basement level, 2) construct a new, second story and 3) modify the existing duplex layout, resulting in a 3,763 square foot duplex.

PERMITS REQUIRED

- Use Permit, under Berkeley Municipal Code (BMC) Section 23C.04.070.C, to enlarge a lawful non-conforming structure that is non-conforming by reason of violation of the maximum allowable lot coverage;
- Use Permit, under BMC Section 23C.04.070.E, to enlarge a lawful non-conforming structure that is non-conforming by reason of violation of the maximum allowable density;
- Administrative Use Permits, under BMC Section 23C.04.070.B, to horizontally extend two non-conforming yards (front and rear);
- Administrative Use Permit, under BMC section 23D.28.030, to permit a major residential addition;
- Administrative Use Permit, under BMC Section 23D.28.070.C, to allow an addition over 14 feet in height; and
- Administrative Use Permit, under BMC Section 23D.28.050, to construct a fifth bedroom

I. CEQA FINDINGS

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15301 of the CEQA Guidelines (“Existing Facilities”).
2. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

II. FINDINGS FOR APPROVAL

1. As required by Section 23B.32.040.A of the BMC, 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:
 - A. The project will add a second level to the home, of which there are several examples in the neighborhood.
 - B. The second story addition will step in and comply with the required front and rear yard setbacks.

- C. A basement is proposed to be added. While adding additional square footage to the building, the basement will not create any new impacts to the surrounding neighbors due to its placement partially below grade, maintaining the existing first floor level.
- D. The neighborhood is a mix of residential uses, including apartments and single-family and multi-family homes. Existing structures in the immediate neighborhood vary in height from one to two stories; and
- E. The project approval is 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 will not be detrimental.

III. OTHER FINDINGS FOR APPROVAL

2. Pursuant to BMC Section 23C.04.070.C, additions and/or enlargements of lawful non-conforming structures that are non-conforming by reason of lot coverage are permitted with a Use Permit if the addition/enlargement does not increase coverage or exceed the height limit. The property is non-conforming to the maximum allowable lot coverage, with 50 percent coverage, where 45 percent is the District maximum on this R-2 property. The proposed addition will remove an existing shed in the rear yard, which will reduce the lot coverage to 44 percent, while creating a two-story house, which decreases the allowable lot coverage to 40 percent. While the proposed structure will still be non-conforming to the allowable lot coverage, the project will reduce the non-conformity from 5 percent over the allowable limit to 4 percent over the allowable limit. The proposed addition is located over existing covered area, and therefore, does not increase the non-conforming lot coverage. Additionally, while the addition consists of a second story addition, reaching a total of 23 feet, 10 inches, which complies with the maximum average height limit of 28 feet.
3. Pursuant to BMC Section 23C.04.070.E, additions and/or enlargements of lawful non-conforming structures that are non-conforming by reason of residential density are permitted with a Use Permit if the addition/enlargement does not increase the density or exceed the height limit. The project proposes to maintain the density at two units, therefore, it does not increase the density. As described in Section V.C of the Staff Report, the addition will comply with the allowable average height limit in the district
4. Pursuant to BMC Section 23C.04.070.C, additions and/or enlargements which vertically extend or alter a portion of a building which encroaches into a non-conforming yard may be of lawful non-conforming structures that are non-conforming by reason of residential density are permitted with an Administrative Use Permit if the existing use of the property is conforming and if the addition/enlargement will not 1) reduce any yard below the minimum setback requirements, or further reduce existing non-conforming yards; or 2) exceed the maximum or calculated height limits. As described in the Staff Report, the existing residential structure is non-conforming to the front, rear, and left (north) side setbacks. The proposed addition/enlargement of the house will correct the non-conforming left side setback, but is proposed to vertically extend the non-conforming front and rear setbacks. The front setback will be vertically extended both up (with the second story) and down (with the basement), while the rear setback will be vertically extended down with the expansion of the basement. The second story at the rear will comply with the required 20-foot rear yard setback. As the enlargement of the building will comply with the permitted residential use on the property, and the vertical expansions within the non-conforming setbacks will not further reduce the non-conformity, these expansions are permissible.
5. Pursuant to BMC Section 23D.28.050, an Administrative Use Permit is required to approve the addition of a fifth bedroom to a parcel in the R-2 Zoning District. This project proposes to increase

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the total number of bedrooms on the property from four to five bedrooms. The addition of this fifth bedroom will not add density to the site, or intensify the use of the residential property.

IV. 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 Board, except that the Zoning Officer may approve changes that do not expand, intensify, or substantially change the use or building.

Changes in the plans for the construction of a building or structure, may be modified prior to the completion of construction, in accordance with Section 23B.56.030.D. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project.

5. Plans and Representations Become Conditions (Section 23B.56.030)

Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

6. Subject to All Applicable Laws and Regulations (Section 23B.56.040)

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments.

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

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

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

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

9. Indemnification Agreement

The applicant shall hold harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments or other losses (including without limitation, attorney's fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval associated with the project. The indemnity includes without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn, set aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the project and granting any permit issued in accordance with the project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs shall include, without limitation, any attorney's fees, expert witness and consultant fees, court costs, and other litigation fees. City shall have the right to select counsel to represent the City at Applicant's expense in the defense of any action specified in this condition of approval. City shall take reasonable steps to promptly notify the Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.

V. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD

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

Prior to Submittal of Any Building Permit:

- 10. Project Liaison.** The applicant shall include in all building permit plans and post onsite the name and telephone number of an individual empowered to manage construction-related complaints generated from the project. The individual's name, telephone number, and responsibility for the project shall be posted at the project site for the duration of the project in a location easily visible to the public. The individual shall record all complaints received and actions taken in response, and submit written reports of such complaints and actions to the project planner on a weekly basis. **Please designate the name of this individual below:**

Project Liaison _____
Name Phone #

Prior to Issuance of Any Building & Safety Permit (Demolition or Construction)

11. Construction and Demolition Diversion. Applicant shall submit a [Construction Waste Management Plan](#) that meets the requirements of BMC Chapter 19.37 including 100% diversion of asphalt, concrete, excavated soil and land-clearing debris and a minimum of 65% diversion of other nonhazardous construction and demolition waste.
12. Toxics. The applicant shall contact the Toxics Management Division (TMD) at 1947 Center Street 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 2 years 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 2 years 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/>

During Construction:

13. Construction Hours. Construction activity shall be limited to between the hours of 8:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and Noon on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.
14. 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:
 - A. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
 - B. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
 - C. 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.
 - D. All vehicle speeds on unpaved roads shall be limited to 15 mph.
 - E. 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.
 - F. 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.
 - G. 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.
 - H. 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.
15. Air Quality - Diesel Particulate Matter Controls during Construction. All off-road construction equipment used for projects with construction lasting more than 2 months shall comply with **one** of the following measures:
 - A. The project applicant shall prepare a health risk assessment that demonstrates the project's on-site emissions of diesel particulate matter during construction will not exceed health risk

screening criteria after a screening-level health risk assessment is conducted in accordance with current guidance from BAAQMD and OEHHA. The health risk assessment shall be submitted to the Land Use Planning Division for review and approval prior to the issuance of building permits; or

- B. All construction equipment shall be equipped with Tier 2 or higher engines and the most effective Verified Diesel Emission Control Strategies (VDECS) available for the engine type (Tier 4 engines automatically meet this requirement) as certified by the California Air Resources Board (CARB). The equipment shall be properly maintained and tuned in accordance with manufacturer specifications.

In addition, a Construction Emissions Minimization Plan (Emissions Plan) shall be prepared that includes the following:

- An equipment inventory summarizing the type of off-road equipment required for each phase of construction, including the equipment manufacturer, equipment identification number, engine model year, engine certification (tier rating), horsepower, and engine serial number. For all VDECS, the equipment inventory shall also include the technology type, serial number, make, model, manufacturer, CARB verification number level, and installation date.
- A Certification Statement that the Contractor agrees to comply fully with the Emissions Plan and acknowledges that a significant violation of the Emissions Plan shall constitute a material breach of contract. The Emissions Plan shall be submitted to the Public Works Department for review and approval prior to the issuance of building permits.

16. Construction and Demolition Diversion. Divert debris according to your plan and collect required documentation. Get construction debris receipts from sorting facilities in order to verify diversion requirements. Upload recycling and disposal receipts if using [Green Halo](#) and submit online for City review and approval prior to final inspection. Alternatively, complete the second page of the original [Construction Waste Management Plan](#) and present it, along with your construction debris receipts, to the Building Inspector by the final inspection to demonstrate diversion rate compliance. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement.
17. Low-Carbon Concrete. The project shall maintain compliance with the Berkeley Green Code (BMC Chapter 19.37) including use of concrete mix design with a cement reduction of at least 25%. Documentation on concrete mix design shall be available at all times at the construction site for review by City Staff.
18. Transportation Construction Plan. The applicant and all persons associated with the project are hereby notified that a Transportation Construction Plan (TCP) is required for all phases of construction, particularly for the following activities:
- Alterations, closures, or blockages to sidewalks, pedestrian paths or vehicle travel lanes (including bicycle lanes);
 - Storage of building materials, dumpsters, debris anywhere in the public ROW;
 - Provision of exclusive contractor parking on-street; or
 - 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, 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 1947 Center 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.

19. Avoid Disturbance of Nesting Birds. Initial site disturbance activities, including vegetation and concrete removal, shall be prohibited during the general avian nesting season (February 1 to August 30), if feasible. If nesting season avoidance is not feasible, the applicant shall retain a qualified biologist to conduct a preconstruction nesting bird survey to determine the presence/absence, location, and activity status of any active nests on or adjacent to the project site. The extent of the survey buffer area surrounding the site shall be established by the qualified biologist to ensure that direct and indirect effects to nesting birds are avoided. To avoid the destruction of active nests and to protect the reproductive success of birds protected by the MBTA and CFGC, nesting bird surveys shall be performed not more than 14 days prior to scheduled vegetation and concrete removal. In the event that active nests are discovered, a suitable buffer (typically a minimum buffer of 50 feet for passerines and a minimum buffer of 250 feet for raptors) shall be established around such active nests and no construction shall be allowed inside the buffer areas until a qualified biologist has determined that the nest is no longer active (e.g., the nestlings have fledged and are no longer reliant on the nest). No ground-disturbing activities shall occur within this buffer until the qualified biologist has confirmed that breeding/nesting is completed and the young have fledged the nest. Nesting bird surveys are not required for construction activities occurring between August 31 and January 31.

20. 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.
- 21. 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.
- 22. 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.
- 23. Stormwater Requirements.** The applicant shall demonstrate compliance with the requirements of the City's National Pollution Discharge Elimination System (NPDES) permit as described in BMC Section 17.20. The following conditions apply:
- A. The project plans shall identify and show site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants to the City's storm drainage system, regardless of season or weather conditions.
- B. Trash enclosures and/or recycling area(s) shall be covered; no other area shall drain onto this area. Drains in any wash or process area shall not discharge to the storm drain system; these drains should connect to the sanitary sewer. Applicant shall contact the City of Berkeley and EBMUD for specific connection and discharge requirements. Discharges to the sanitary sewer are subject to the review, approval and conditions of the City of Berkeley and EBMUD.
- C. Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to stormwater pollution. Where feasible, landscaping should be designed and operated to treat runoff.

- When and where possible, xeriscape and drought tolerant plants shall be incorporated into new development plans.
- D. Design, location and maintenance requirements and schedules for any stormwater quality treatment structural controls shall be submitted to the Department of Public Works for review with respect to reasonable adequacy of the controls. The review does not relieve the property owner of the responsibility for complying with BMC Chapter 17.20 and future revisions to the City's overall stormwater quality ordinances. This review shall be conducted prior to the issuance of a Building Permit.
 - E. All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.
 - F. All on-site storm drain inlets/catch basins must be cleaned at least once a year immediately prior to the rainy season. The property owner shall be responsible for all costs associated with proper operation and maintenance of all storm drainage facilities (pipelines, inlets, catch basins, outlets, etc.) associated with the project, unless the City accepts such facilities by Council action. Additional cleaning may be required by City of Berkeley Public Works Engineering Dept.
 - G. All on-site storm drain inlets must be labeled "No Dumping – Drains to Bay" or equivalent using methods approved by the City.
 - H. Most washing and/or steam cleaning must be done at an appropriately equipped facility that drains to the sanitary sewer. Any outdoor washing or pressure washing must be managed in such a way that there is no discharge or soaps or other pollutants to the storm drain. Sanitary connections are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
 - I. 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.
 - J. The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations, or a project stop work order.
- 24.** 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.
- 25.** 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.
- 26.** 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.

1643/47 CALIFORNIA STREET- USE PERMIT #ZP2021-0001
July 14, 2022

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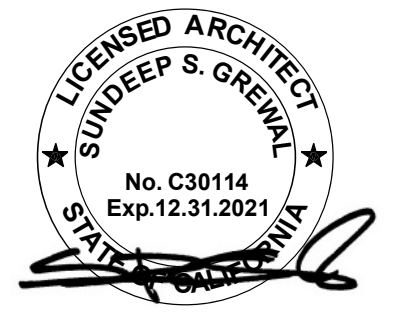
27. Public Works. Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season the applicant shall obtain approval of an erosion prevention plan by the Building and Safety Division and the Public Works Department. The applicant shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.
28. 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.
29. Public Works. If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.

Prior to Final Inspection or Issuance of Occupancy Permit:

30. Compliance with Conditions. The project shall conform to the plans and statements in the Use Permit. The developer is responsible for providing sufficient evidence to demonstrate compliance with the requirements throughout the implementation of this Use Permit.
31. Compliance with Approved Plan. The project shall conform to the plans and statements in the Use Permit. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated August 26, 2021, except as modified by conditions of approval.

At All Times:

32. 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.
33. Electrical Meter. Only one electrical meter fixture may be installed per dwelling unit.
34. This permit is subject to review, imposition of additional conditions, or revocation if factual complaint is received by the Zoning Officer that the maintenance or operation of this establishment is violating any of these or other required conditions or is detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the neighborhood or is detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.
35. All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.



OPPENHEIMER RESIDENCE
 1643 & 1647 California St.
 Berkeley, CA 94703
 APN: 58-2156-18

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Project No: 20-13-420

Drawn By: SSG

Checked By: SSG

Scale: N/A

Revisions:
 Use Permit Set: 12-10-2020

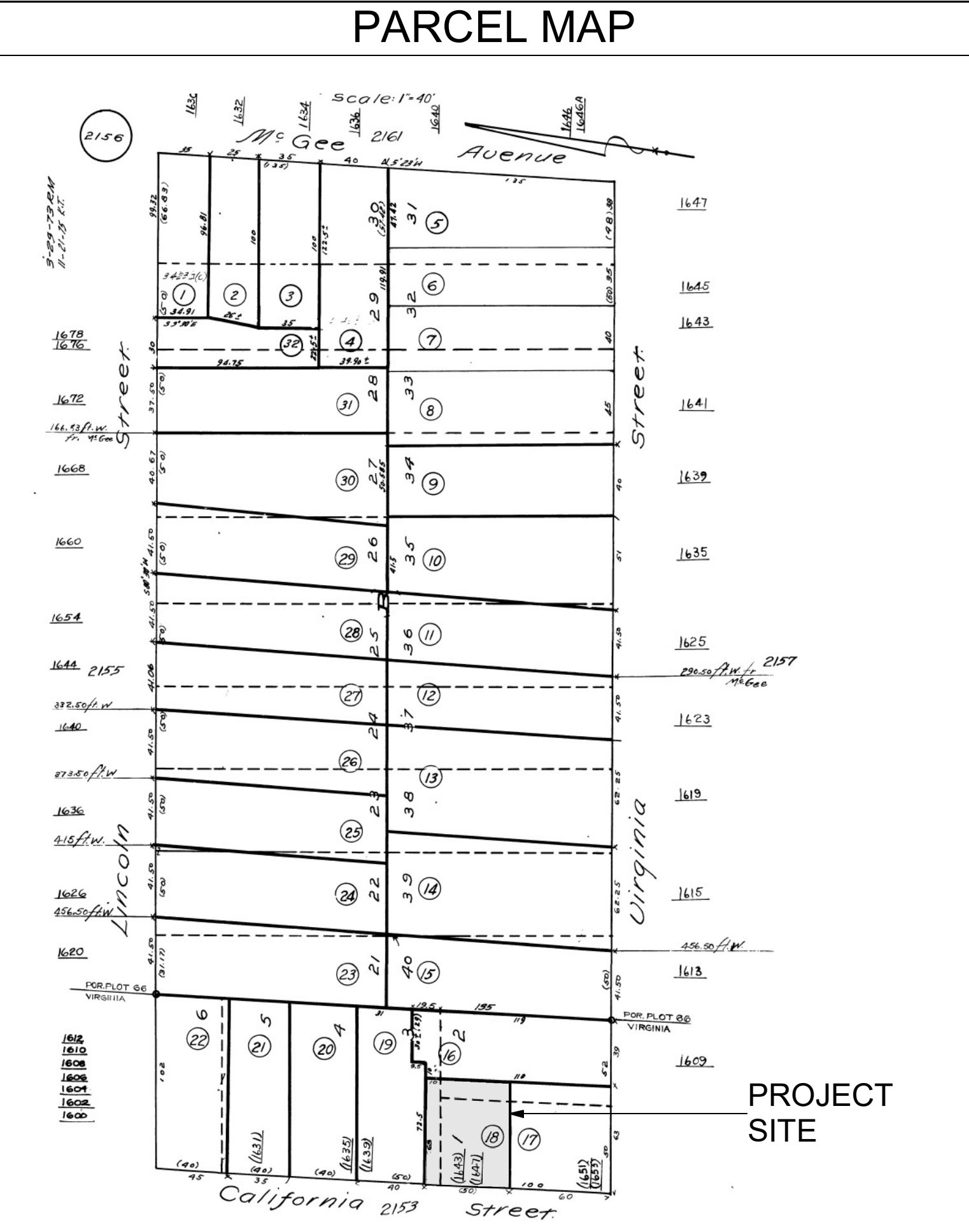
Redesign: 5-25-2021

Planning Review: 6-29-2021

Planning Review: 7-15-2021

Planning Review: 8-26-2021

Sheet **A0.0**



OPPENHEIMER RESIDENCE

1643 & 1647 California St. CA 94703

SCOPE OF WORK

The proposed project includes an addition to and remodel of an existing, one-story, two-family residence (duplex). Components of the project include:

Reconfigure existing duplex to create one larger unit and one smaller apartment. All work shall be within the building footprint. The building shall remain as a duplex. The preliminary program includes the following:

Basement/First floor:

- Excavate down to create new bedroom, full bath, home gym and family room and mech. room/storage

Second floor:

- Reconfigure layout as needed to create a larger unit with one smaller apartment
- Rebuild/reconfigure existing porch and entry stairs as required
- Create new stairs to basement floor and second floor addition

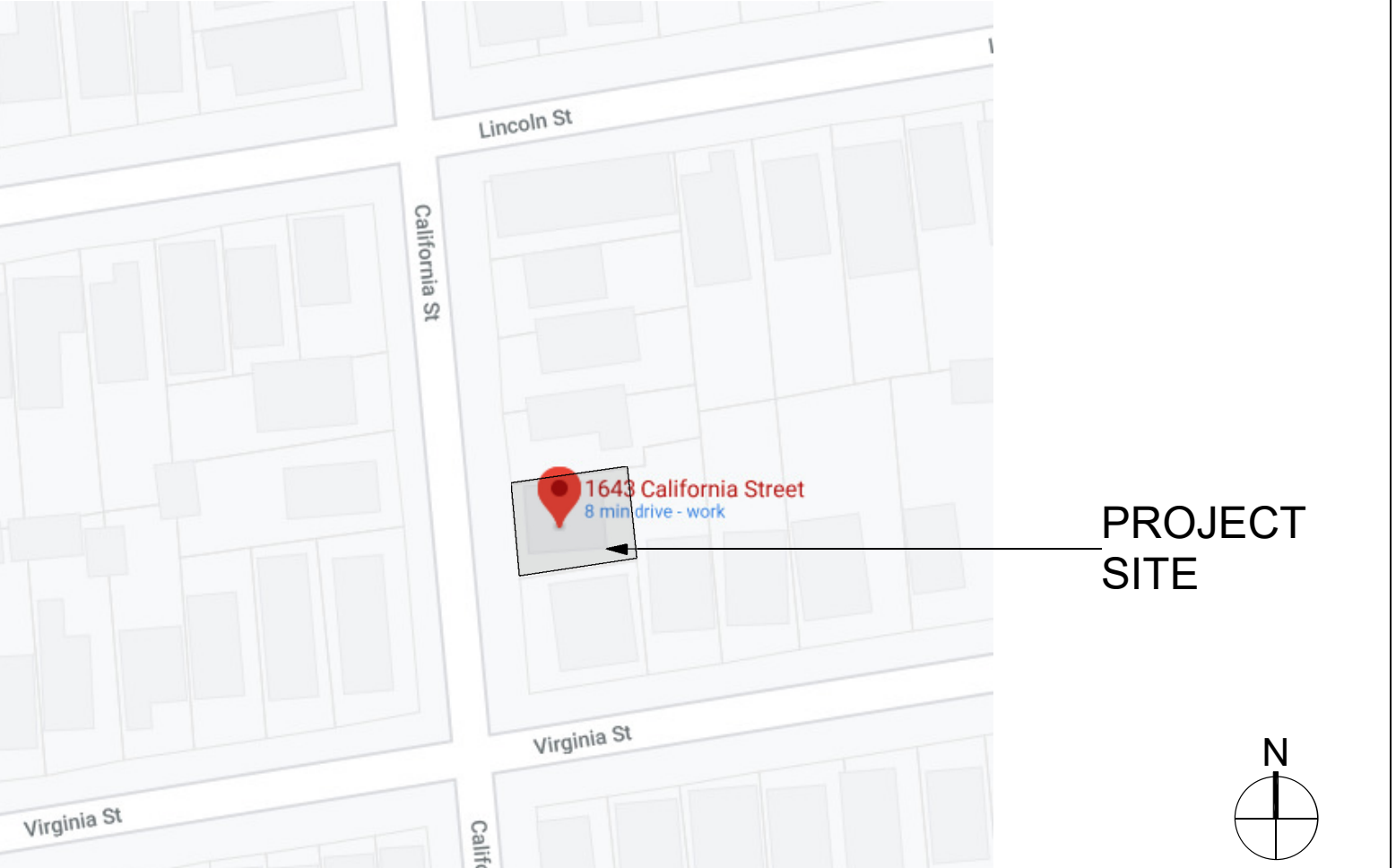
Third floor:

- Create new bedrooms, bathrooms and laundry room
- Create new balcony at front

Miscellaneous:

- Update all mechanical, electrical and plumbing systems as required for new work
- Reconfigure and rebuild front stairs per new design

VICINITY MAP



PROJECT DIRECTORY

Owner:
 Ido and Tamar Oppenheimer
 1643 & 1647 California St.
 Berkeley, CA 94703
 Tel: 510 486-8387

Project Address:
 1643 & 1647 California St.
 Berkeley, CA 94703
 APN: 58-2156-18

Architect:
 Sundeep Grewal
 Studio G+S, Architects
 2223 5th St.
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 Tel: 510-548-7448
 sunny@sgsarch.com

PROJECT DATA

Occupancy: R-3 Duplex
 Proposed Construction: Type V-B
 Fire Sprinkler System: No

Zoning/General Plan Regulation
 Zoning District: R-2 (Restricted Two-Family Residential)
 General Plan Area: LMDR
 Downtown Arts District Overlay: No
 Commercial District With Use Quotas: No

Seismic Safety
 Earthquake Fault Rupture(Alquist-Priolo) Zone: No
 Landslide (Seismic Hazards Mapping Act): No
 Liquefaction (Seismic Hazards Mapping Act): No
 Un-reinforced Masonry Building Inventory: No

Historic Preservation
 Landmarks or Structure of Merit: No

Environmental Safety
 Creek Buffer: None
 Fire Zone: 1
 Flood Zone(100-year or 1%): No

Wildlife Urban Interface
 No

SHEET INDEX

- Architectural:**
- A0.0 Scope Of Work, Vicinity Map, Parcel Map, Project Data Sheet Index, Abbreviations, Applicable Codes Project Directory, Photos
 - A0.1 Existing Site Plan, Proposed Site Plans
 - A0.2 Site Survey
 - A1.1 Existing Floor Plan
Existing Exterior Elevations
 - A2.1 Proposed Floor Plan
 - A2.2 Proposed Floor Plans
 - A3.1 Front Elevation Comparison, Exterior Renderings
 - A3.2 Proposed Exterior Elevations
 - A3.3 Building Section, Renderings
 - A4.1 Shadow Study
 - A4.2 Shadow Study
 - A4.3 Shadow Study
 - A5.1 Demolition Diagram

APPLICABLE CODES

2019 California Building Code (CBC) Volume 1
 2019 California Building Code (CBC) Volume 2
 2019 California Residential Code (CRC)
 2019 California Energy Code (CBEES)
 2019 California Green Building Standards Code (CALGreen)
 2019 California Electrical Code (CEC)
 2019 California Plumbing Code (CPC)
 2019 California Mechanical Code (CMC)

This project shall conform to all the above codes and any local and state laws and regulations adopted by the City of Berkeley, CA.

ABBREVIATIONS

&	and	fdn.	foundation	pr.	pair
@	at	fin.	finish	p.s.	plumbing stack
perpen.	perpendicular	fl.	floor	pl.	point
#	pound or number	flash.	flashing	p.t.	pressure treated
(e)	existing	fluor.	fluorescent	pld.	painted
(n)	new	f.o.c.	face of concrete	r.	riser
(r)	renovated	f.o.f.	face of finish	r.a.	return air
a.f.f.	above finished floor	f.o.s.	face of studs	ref.	reference
acous.	acoustical	ft.	foot or feet	refr.	refrigerator
adj.	adjacent/ adjustable	ftg.	footing	rgtr.	register
alum.	aluminum	furn.	furnace	reinf.	reinforced
approx.	approximate	g.a.	gauge	req.	required
arch.	architectural	gal.	gallon	rm.	room
asph.	asphalt	galv.	galvanized sheet metal	r.o.	rough opening
bd.	board	g.s.m.	glass	nwd.	redwood
bdg.	building	gl.	ground	r.w.l.	rain water leader
bldg.	block	gr.	grade	s.	south
blk.	blocking	gyp. bd.	gypsum board	s.c.	solid core
bm.	beam	h.b.	hose bibb	sched.	schedule
bot.	bottom	hdwd.	hardwood	sect.	section
b.p.	building paper	h.f.	hem fir	sh.	shelf
b/w	between	horiz.	horizontal	shr.	shower
cab.	cabinet	hgt.	height	sim.	similar
cem.	cement	i.d.	inside diameter (dia.)	s.mech.	see mechanical drawings
cer.	ceramic	insul.	insulation	s.o.	sash opening
cl.	center line	int.	interior	spec.	specification
clg.	ceiling	jt.	joint	sq.	square
clkg.	caulking	kit.	kitchen	s.s.d.	see structural drawings
c.o.	cleanout	lav.	lavatory	sst.	stainless steel
clo.	closet	loc.	location	std.	standard
clr.	clear	lt.	light	stl.	steel
col.	column	max.	maximum	stor.	storage
comp.	composition	m.c.	medicine cabinet	struct.	structure
conc.	concrete	mech.	mechanical	sym.	symmetrical
constr.	construction	memb.	membrane	t.	tread or tempered
cont.	continuous	mfr.	manufacturer	t.b.	towel bar
det.	detail	min.	minimum	tel.	telephone
d.f.	douglas fir	mir.	mirror	t. & g.	tongue & groove
dia.	diameter	misc.	miscellaneous	thk.	thick
dim.	dimension	mtd.	mounted	t.b.r.	to be removed
dir.	direction	ntl.	metal	t.o.	top of
disp.	disposal	n.	north	t.p.d.	toilet paper dispenser
d.w.	dishwasher	nat.	natural	t.v.	television
dr.	door	nece.	necessary	typ.	typical
drw.	drawer	neo.	neoprene	unf.	unfinished
drg.	drawing	n.i.c.	not in contract	u.o.n.	unless otherwise noted
drgs.	drawings	no.	number	vert.	vertical
e.	east	nom.	nominal	v.g.	vertical grain
ea.	each	n.t.s.	not to scale	v.i.f.	verify in field
el.	elevation	o.a.	overall	w.h.	water heater
elec.	electrical	o.c.	on center	w.	west
encd.	enclosure	o.d.	outside diameter (dim.)	w/	with
eq.	equal	opng.	opening	wd.	wood
eqpt.	equipment	opp.	opposite	w/o	without
ext.	exterior	pl.	property line	w.o.	where occurs
f.	frosted	p.lam.	plastic laminate	wp.	waterproof
f.d.c.	fire dept. connection	plywd.	plywood	wt.	weight

SITE PHOTOS



Aerial of existing duplex

PROJECT SITE



Front and right Side of existing duplex



Front and left Side of existing duplex

Tabulations			
	Required/Allowed	Existing	Proposed
Set Backs:			
Front	20'-0"	10'-10"	10'-10" no change
Rear	20'-0"	16'-10"	16'-10" no change
Left side:	4'-0"	3'-11"	4'-0" no change
Right side:	4'-0"	5'-6"	5'-5" no change
Habitable Floor Area:			
Unit 1:			
Basement floor:		0 s.f.	1,342 s.f.
First floor:		667 s.f.	901 s.f.
Second floor:		0 s.f.	1,019 s.f.
Total Area Unit 1:		667 s.f.	3,262 s.f. (2,595 s.f. new)
Unit 2:			
Basement floor:		0 s.f.	0 s.f.
First floor:		667 s.f.	501 s.f.
Second floor:		0 s.f.	0 s.f.
Total Area Unit 2:		667 s.f.	501 s.f.
Total Area:		1,334 s.f.	3,763 s.f. (2,229 s.f. new)
Bedroom Count:		3 total	5 total
Non-Habitable Area:			
Accessory Structure:		167 s.f.	0 s.f.
Building Height:			
Main Building:	28'-0" 35'-0" w/ AUP	13'-6" 13'-6"	23'-10"
Parking:	2	0	0
Lot Size:	4,500 s.f.	3,142 s.f.	3,142 s.f.
Total Foot Print:			
House:		1,342 s.f.	1,342 s.f.
Covered Porch:		60 s.f.	0 s.f.
Accessory Structure:		167 s.f.	0 s.f.
Total:	1,085 for 3 stories	1,569 s.f.	1,382 s.f.
Lot Coverage:	45% (1 story) 40% (2 story) 35% (3 story)	49.94%	43.98% (5.96% reduction)
Usable Open Space:	400 s.f./unit	500 s.f.	1,029 s.f.



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Sheet Contents:
 Existing Site Plan
 Proposed Site Plan

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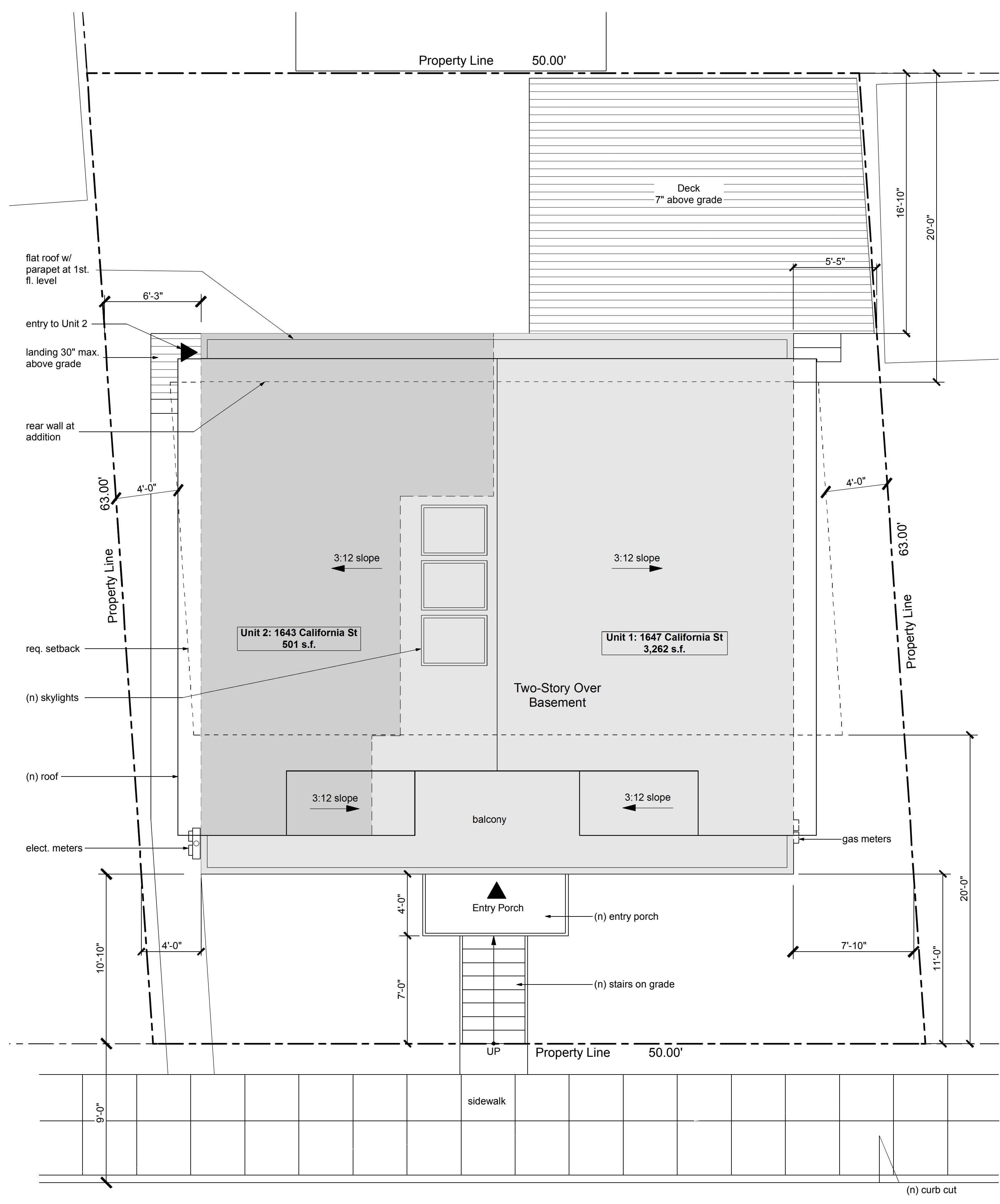
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Checked By: SSG

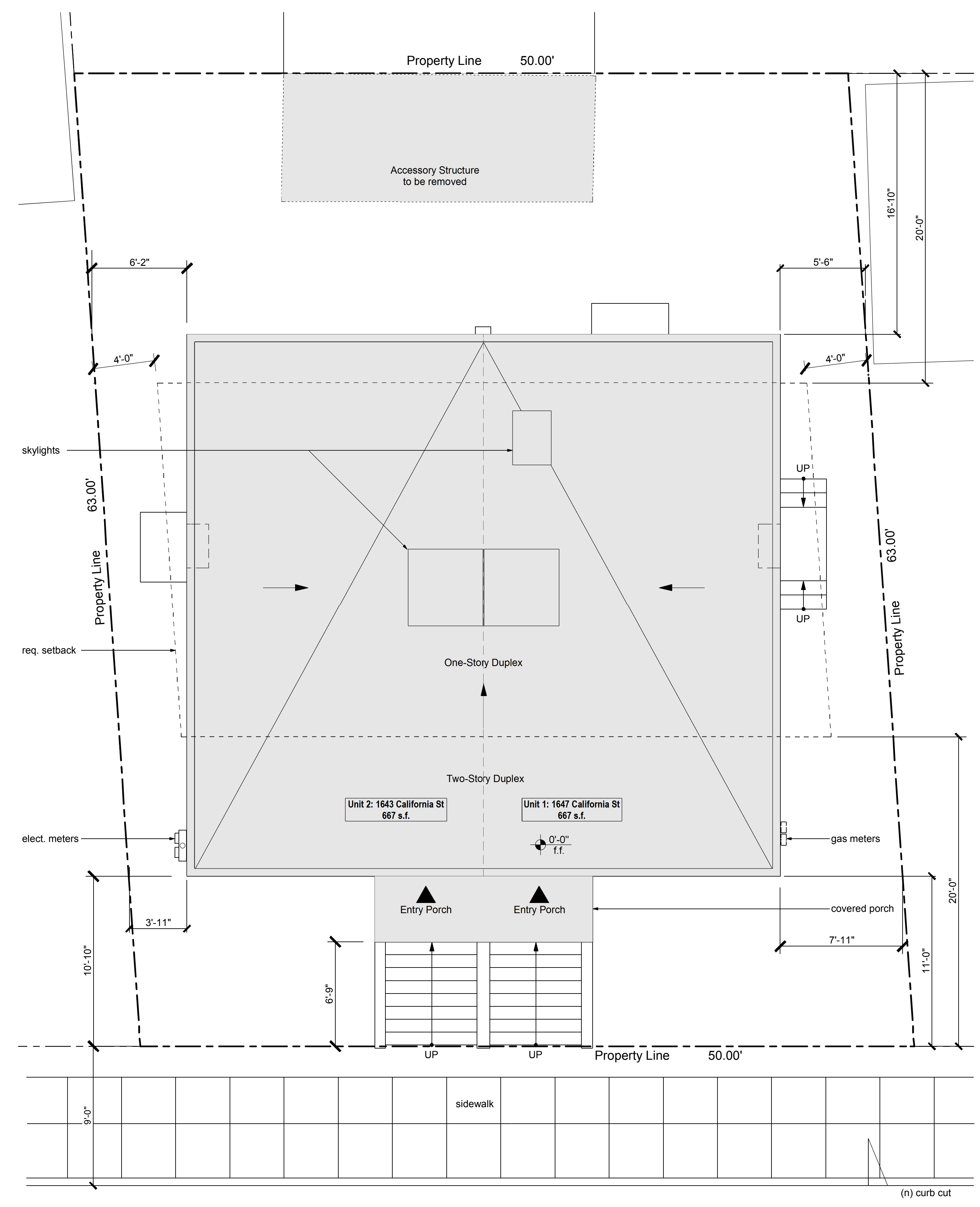
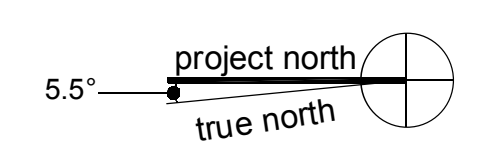
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 Redesign: 5-25-2021
 Planning Review: 6-29-2021
 Planning Review: 7-15-2021

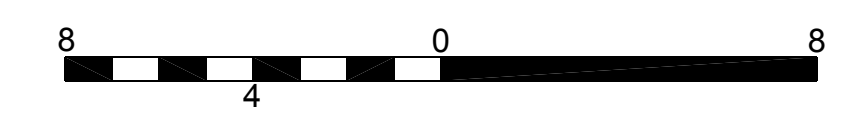
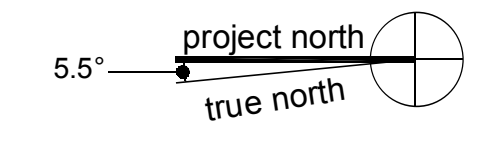
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2 Proposed Site Plan

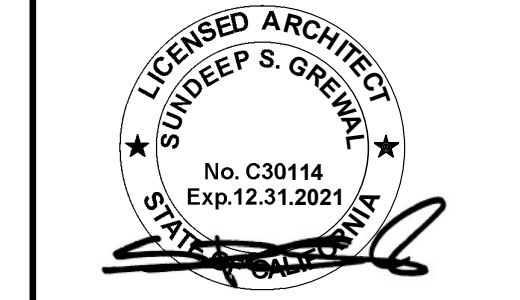


1 Existing Site Plan





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Sheet Contents:
 Site Survey

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 SSG

Checked By:
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Scale:
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Revisions:
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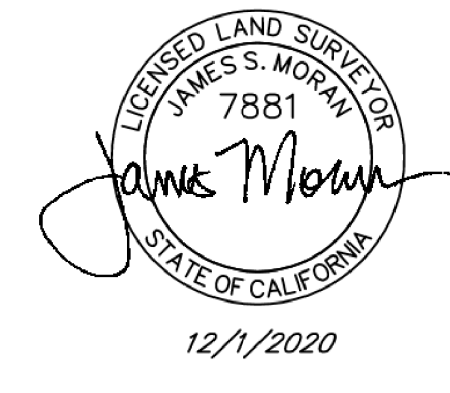
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HOUSE LOCATION SURVEY

PORTION OF LOTS 1, 2 AND 3, MAP OF VIRGINIA TRACT, FILED OCTOBER 4, 1890 (8 M 43)
 LOCATED AT 1643-1647 CALIFORNIA STREET
 CITY OF BERKELEY, COUNTY OF ALAMEDA, CALIFORNIA

NOVEMBER 17, 2020 SCALE: 1" = 8'

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



- LEGEND**
- FOUND MONUMENT PER PM 6679 (213 M 50)
 - BLDG. BUILDING
 - C.O. CLEAN-OUT
 - D/W DRIVEWAY
 - F.H. FIRE HYDRANT
 - J.P. JOINT POLE
 - M.H. MAN HOLE
 - S/W SIDEWALK
 - T.C. TOP OF CURB

GENERAL NOTES

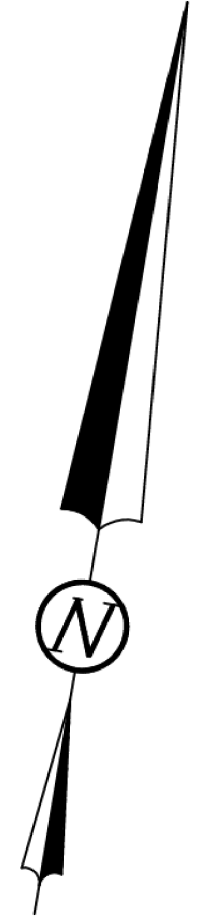
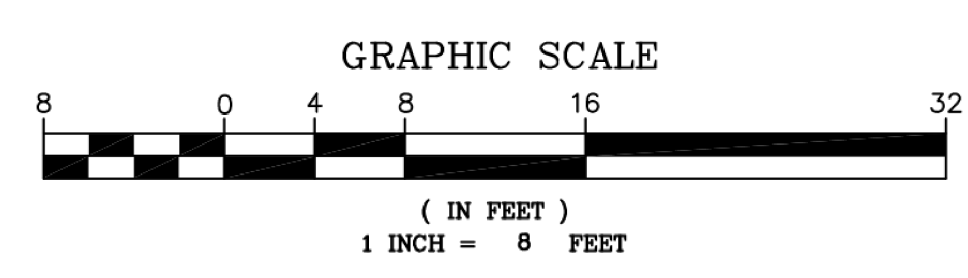
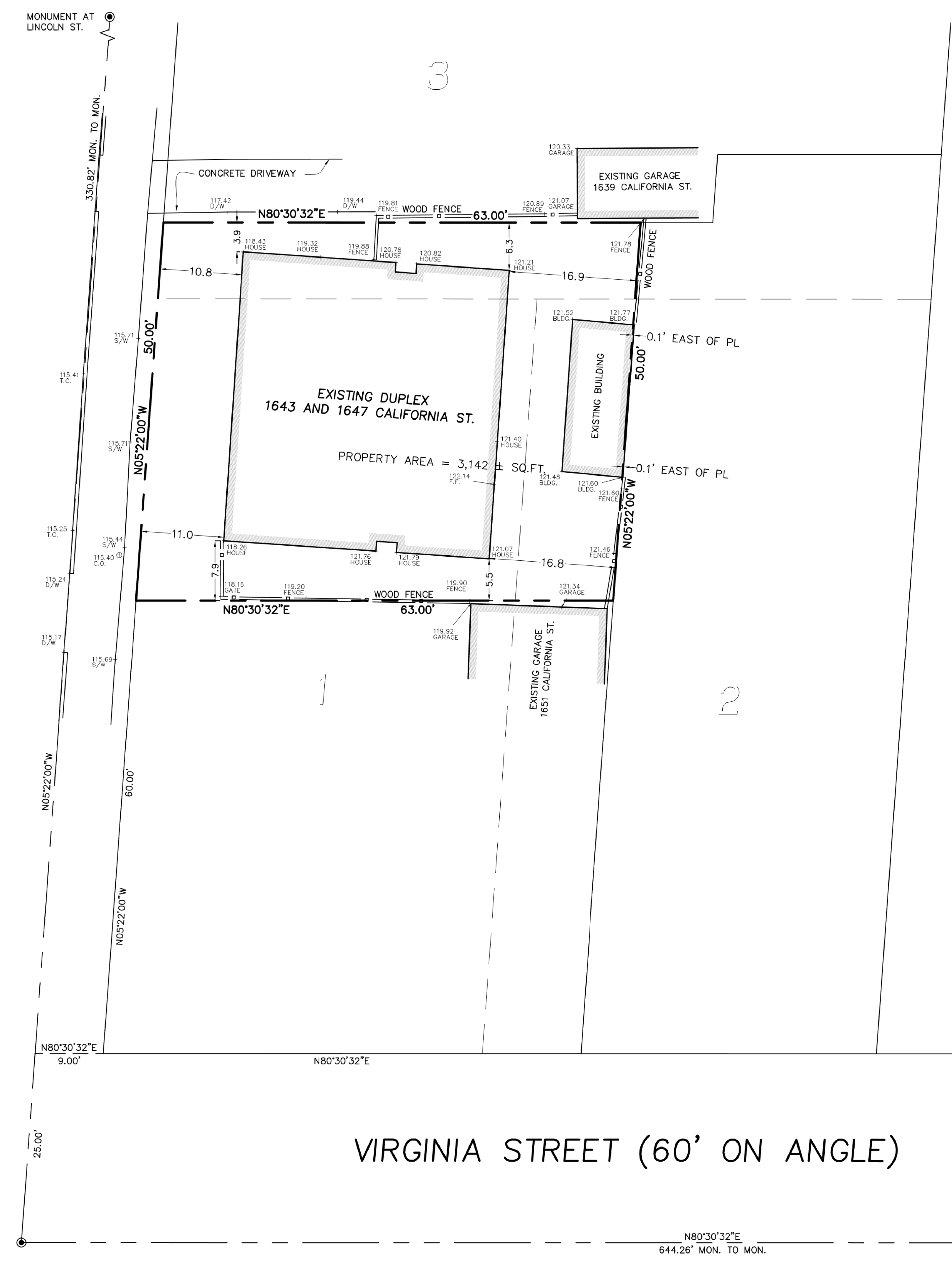
BENCHMARK: MONUMENT PIN ON THE WEST SIDE OF SACRAMENTO STREET AT VIRGINIA STREET. ELEVATION = 108.683 PER CITY OF BERKELEY ENGINEERING DIVISION RECORDS. ELEVATIONS ARE BASED UPON THE CITY OF BERKELEY DATUM.

THIS SURVEY IS BASED UPON THE GRANT DEED TO LAWYERS ASSET MANAGEMENT INC. RECORDED DECEMBER 1, 1989 SERIES 89-324628, ALAMEDA COUNTY RECORDS.

THE BEARINGS ON THIS MAP ARE BASED UPON THE MONUMENT LINE IN CALIFORNIA STREET WITH A BEARING OF N05°22'00"W AS SHOWN ON PARCEL MAP 6679 FILED MARCH 29, 1994 IN BOOK 213 OF MAPS PAGES 49-50.

CALIFORNIA STREET (60' ON ANGLE)

VIRGINIA STREET (60' ON ANGLE)





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Sheet Contents:
 Existing Floor Plans
 Existing Exterior Elevations

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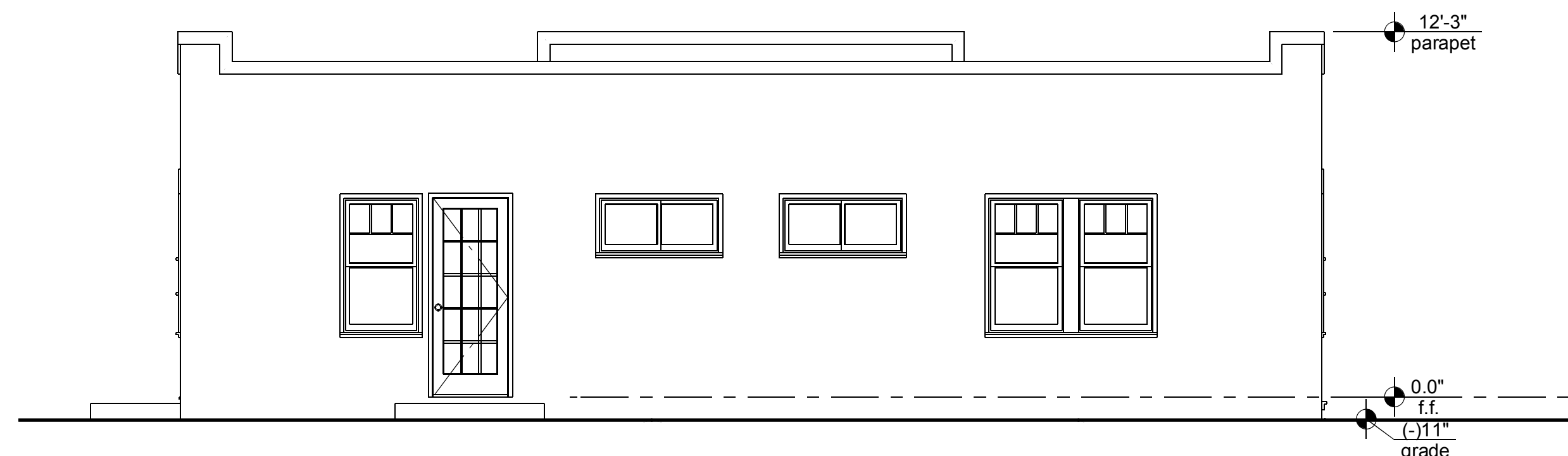
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Checked By: SSG

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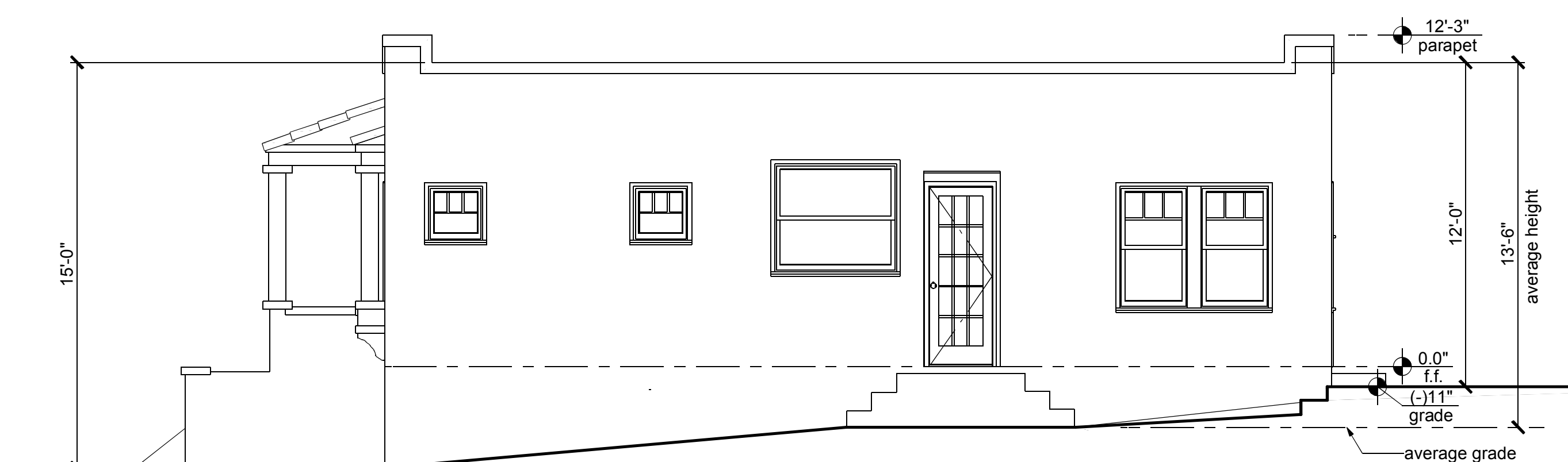
Sheet **A1.1**



5 Existing East Elevation - Rear



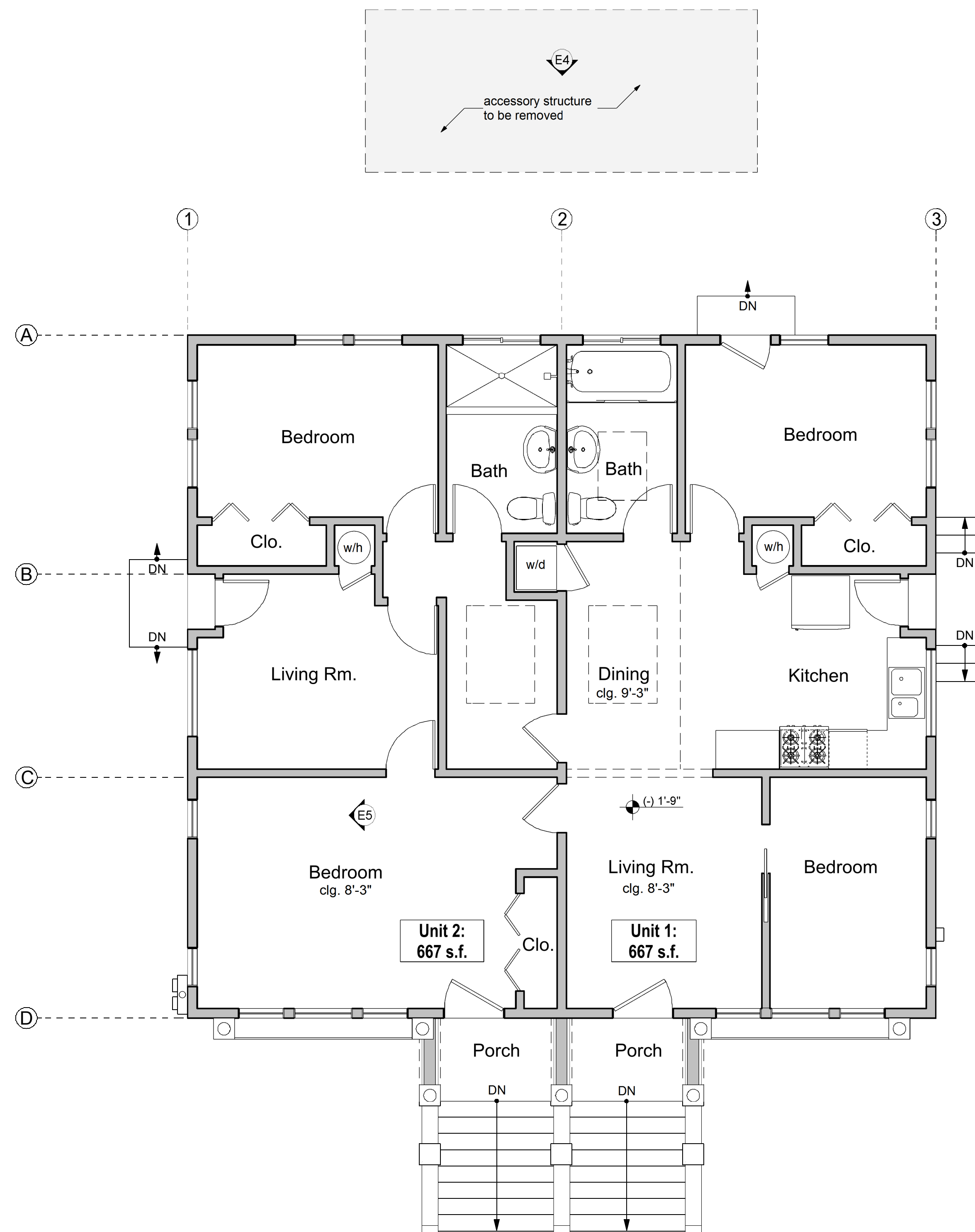
4 Existing North Elevation - Left Side



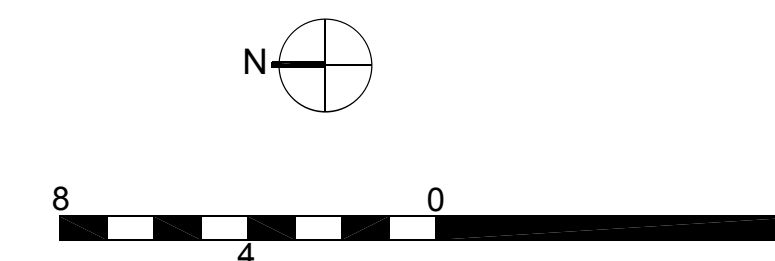
3 Existing South Elevation - Right Side



2 Existing West Elevation - Front



1 Existing First Floor Plan





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Sheet Contents:
Proposed Floor Plan
Proposed Site Plan

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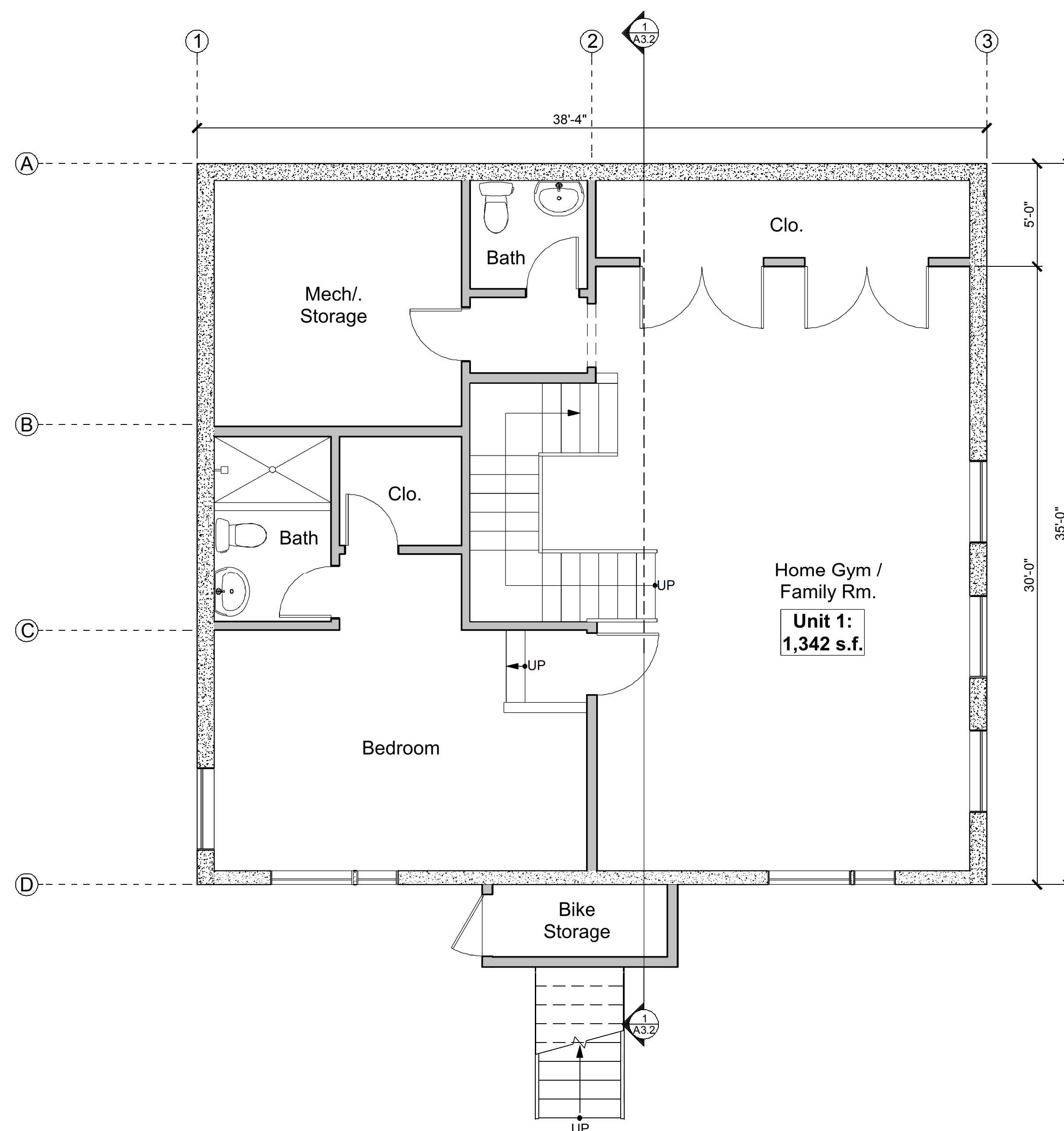
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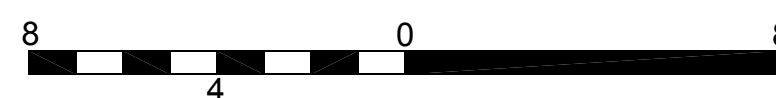
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Planning Review: 6-29-2021
Planning Review: 7-15-2021

Sheet **A2.1**

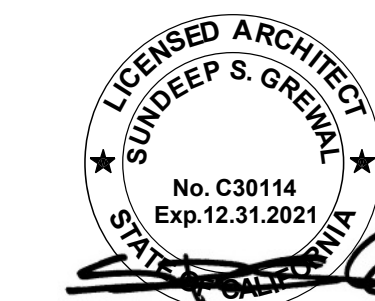


1 Proposed Basement Floor Plan





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Sheet Contents:
 Proposed Floor Plans

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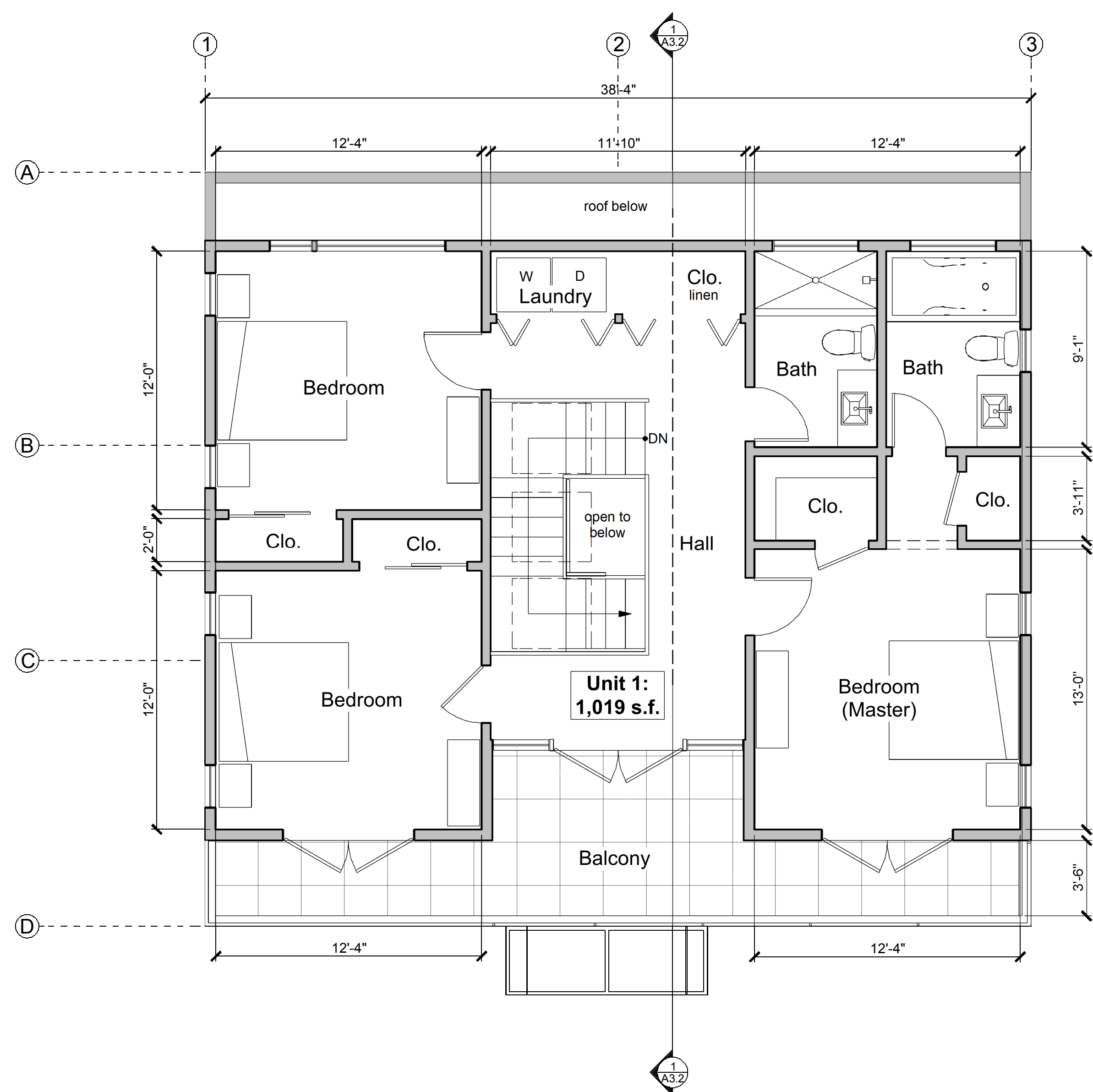
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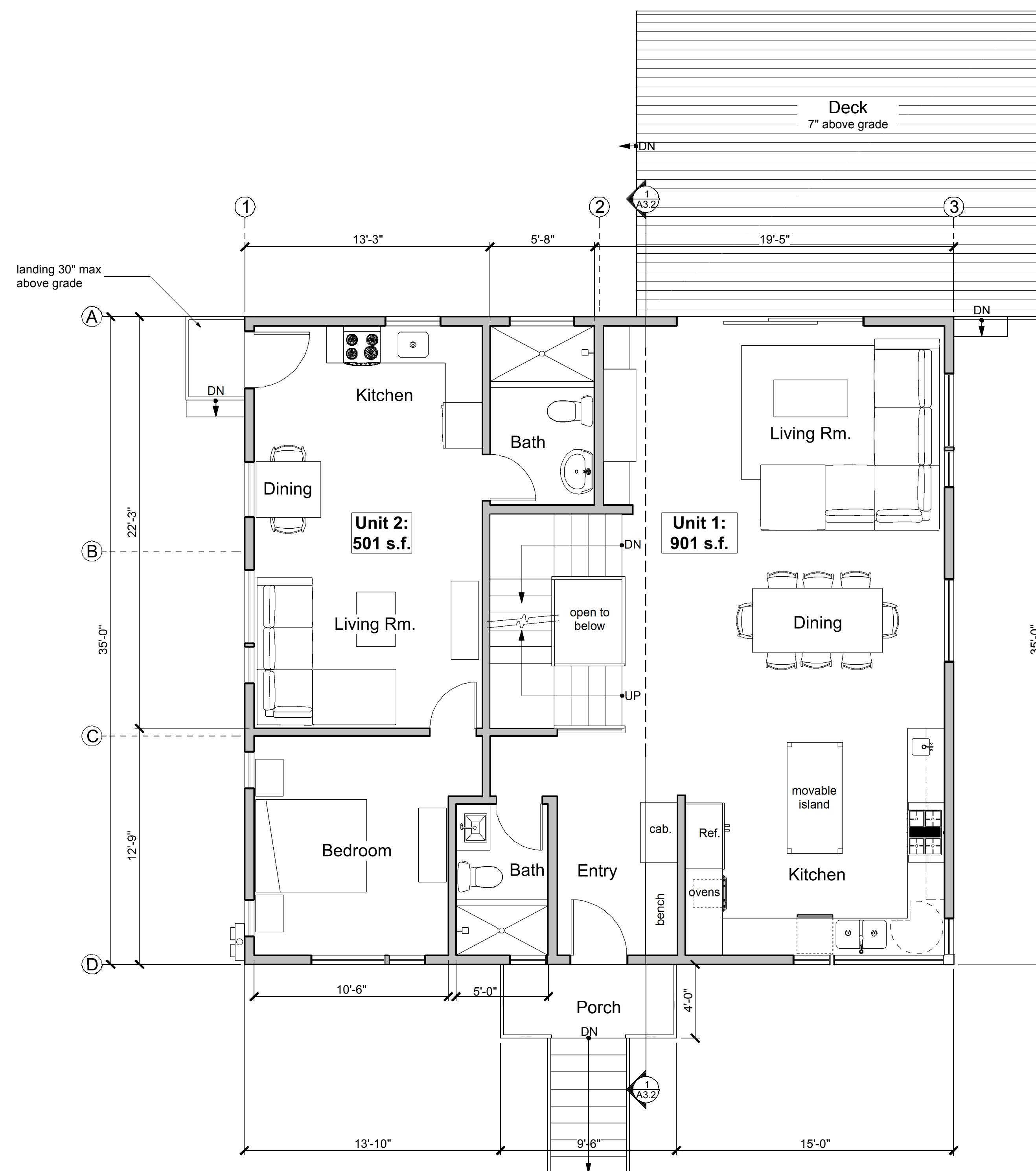
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 Planning Review: 6-29-2021
 Planning Review: 7-15-2021

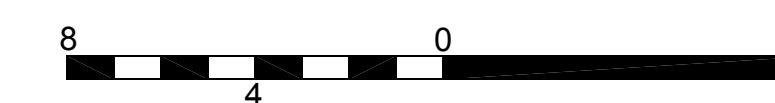
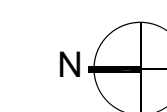
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2 Proposed Second Floor Plan

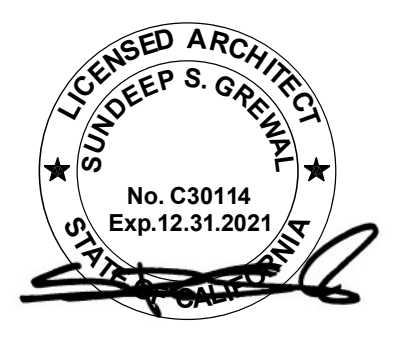


1 Proposed First Floor Plan





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Previous Proposal



Previous Proposal



Previous Proposal



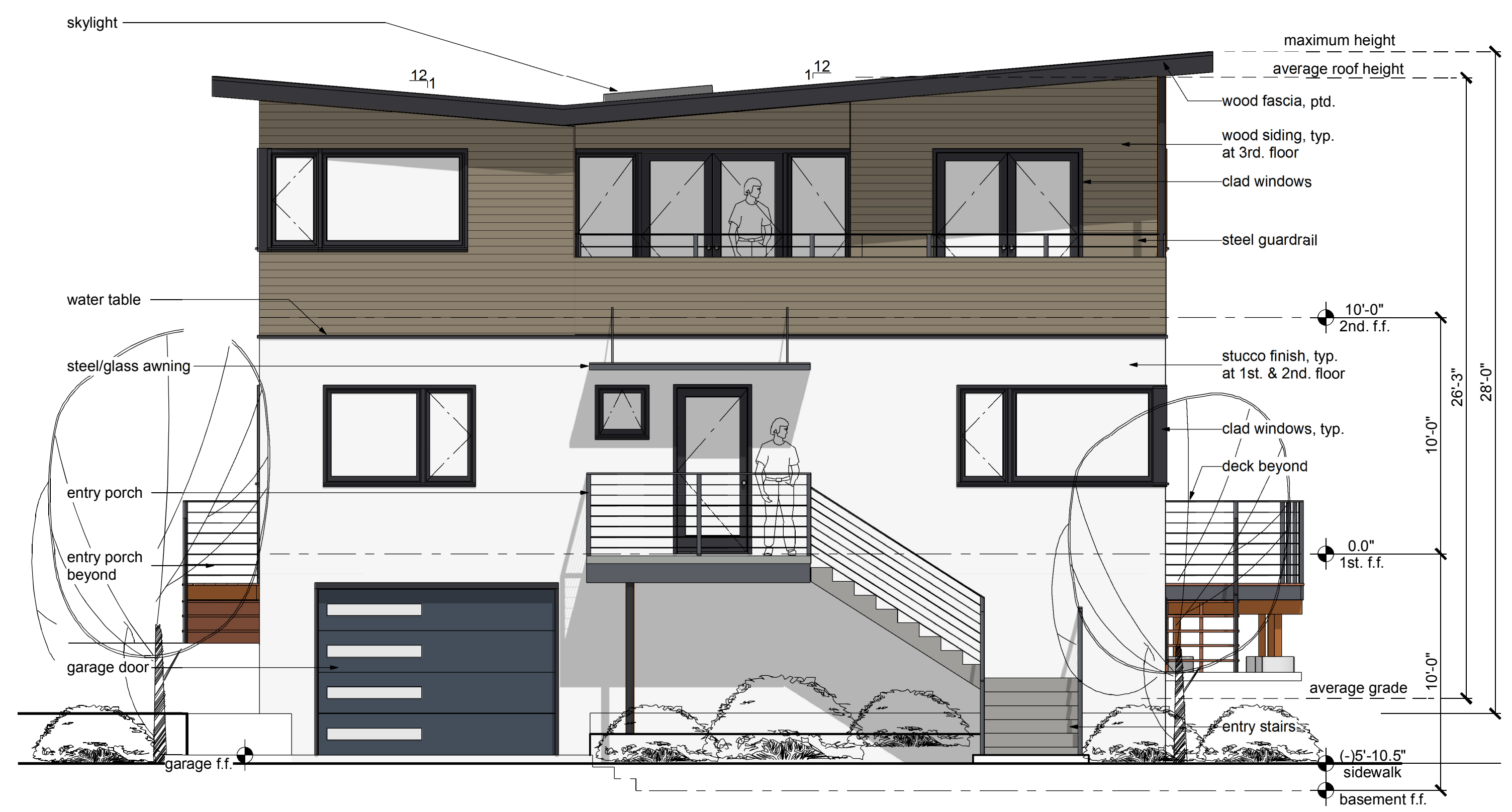
Current Proposal



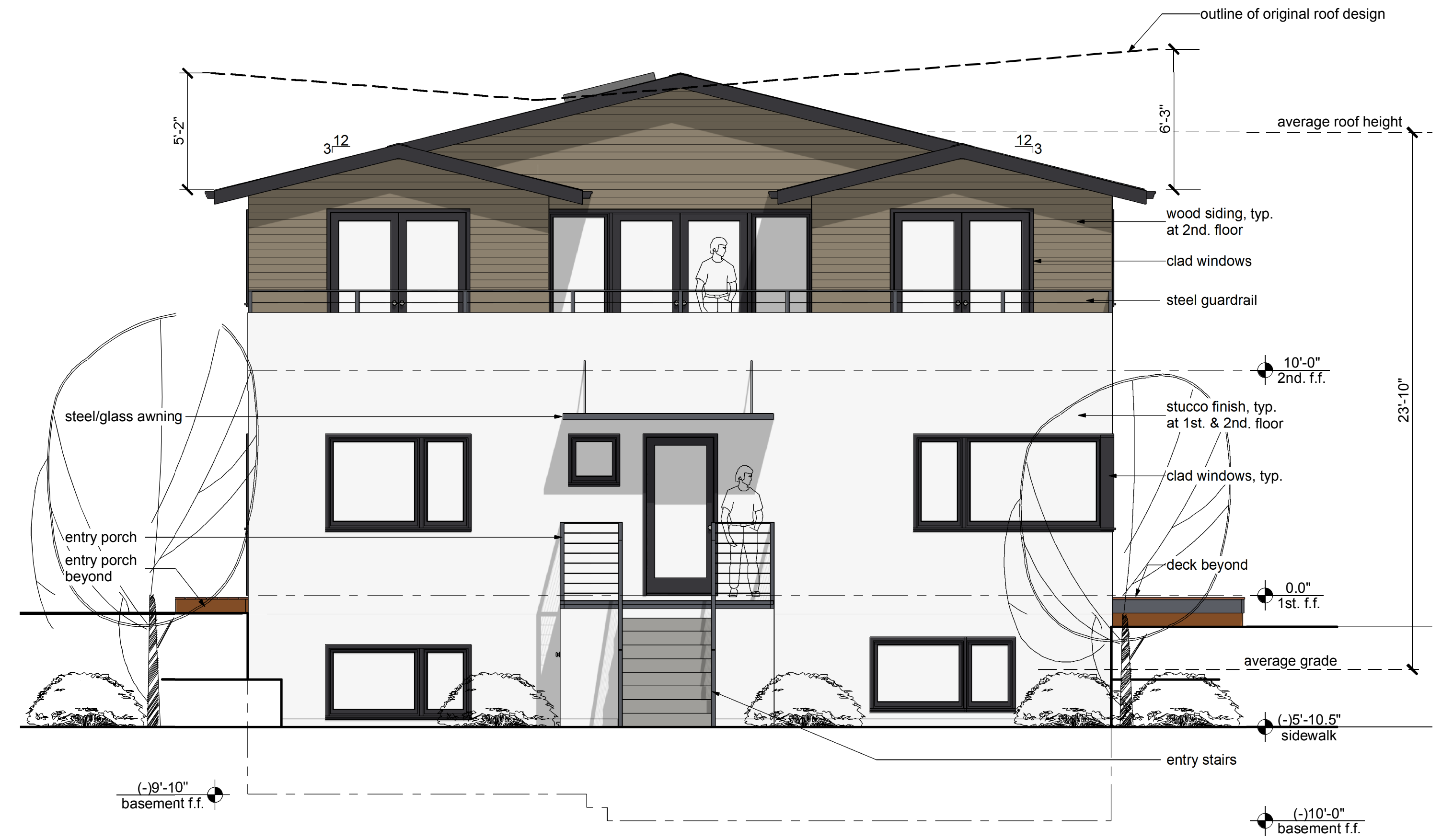
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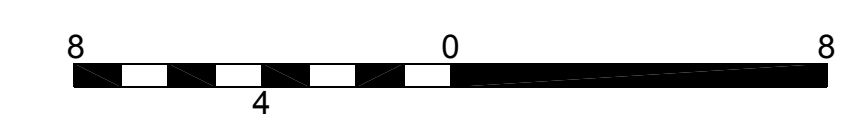
Current Proposal



2 Proposed West Elevation - Front
 Original Proposal



1 Proposed West Elevation - Front
 Current Proposal



Sheet Contents:
 Front Elevation Comparison

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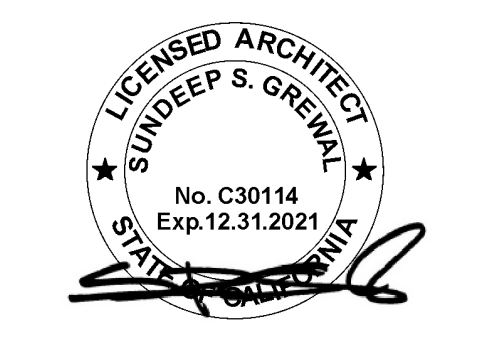
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Sheet A3.1



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Sheet Contents:
 Proposed Exterior Elevations

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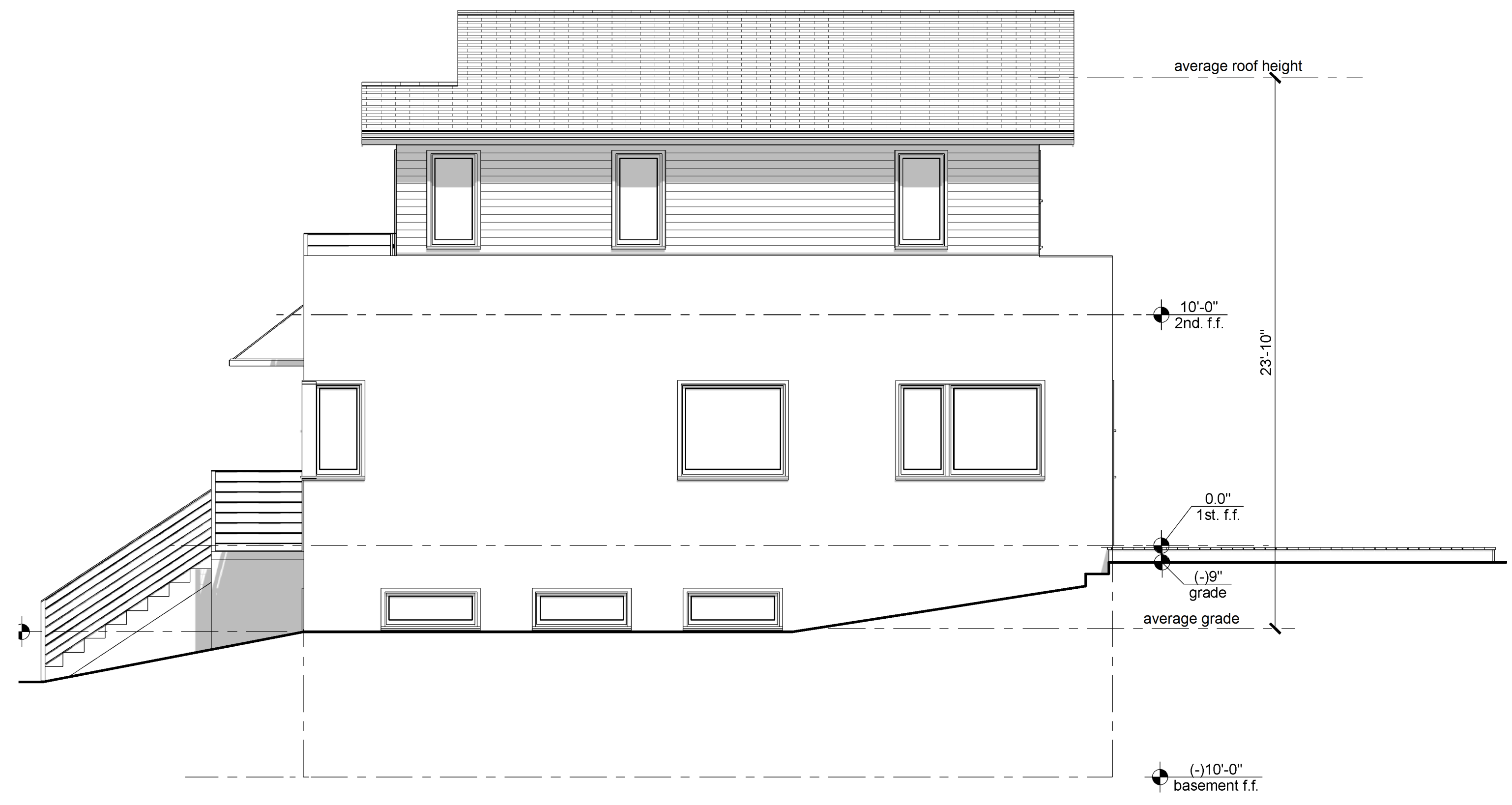
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Checked By: SSG

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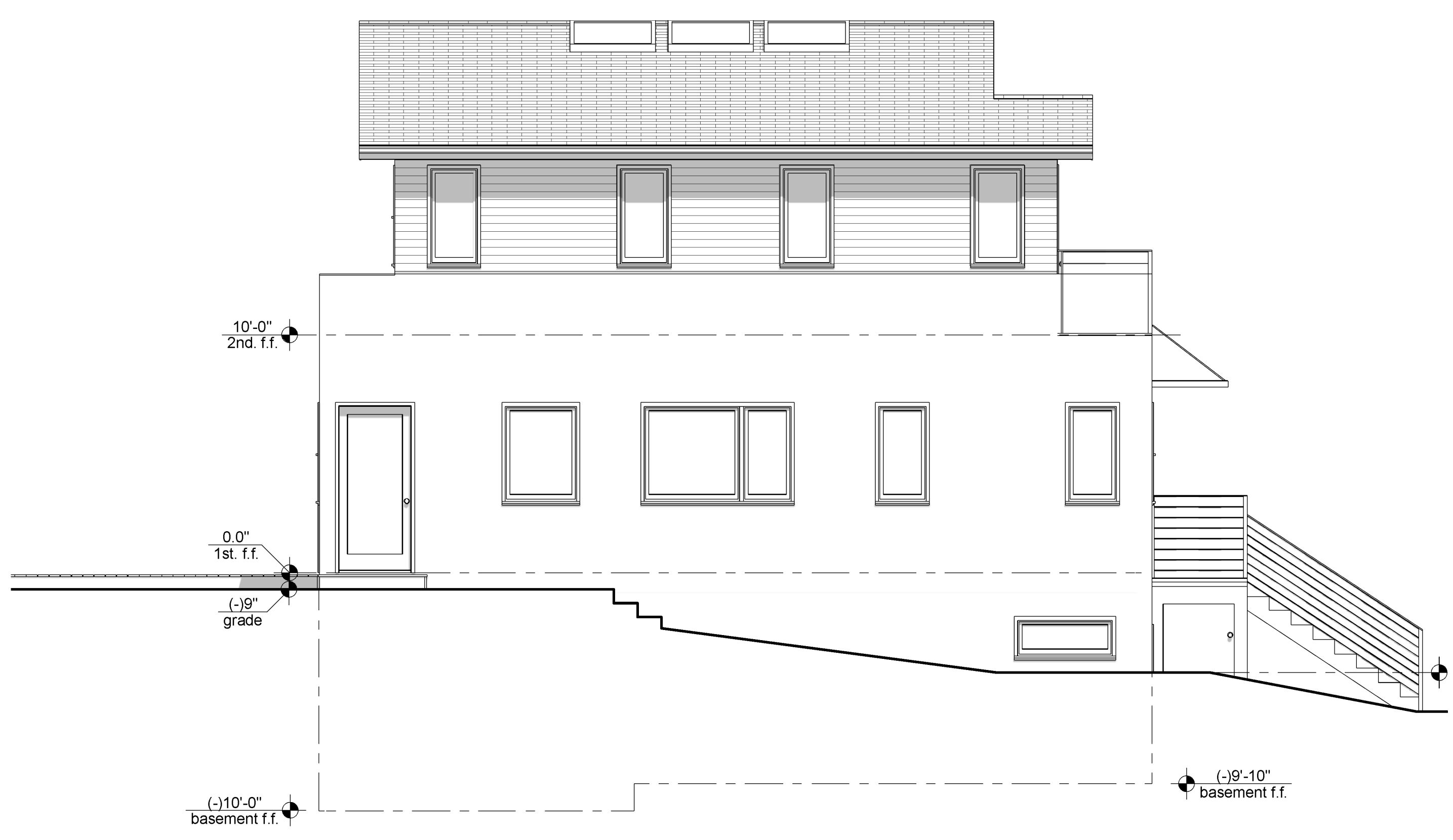
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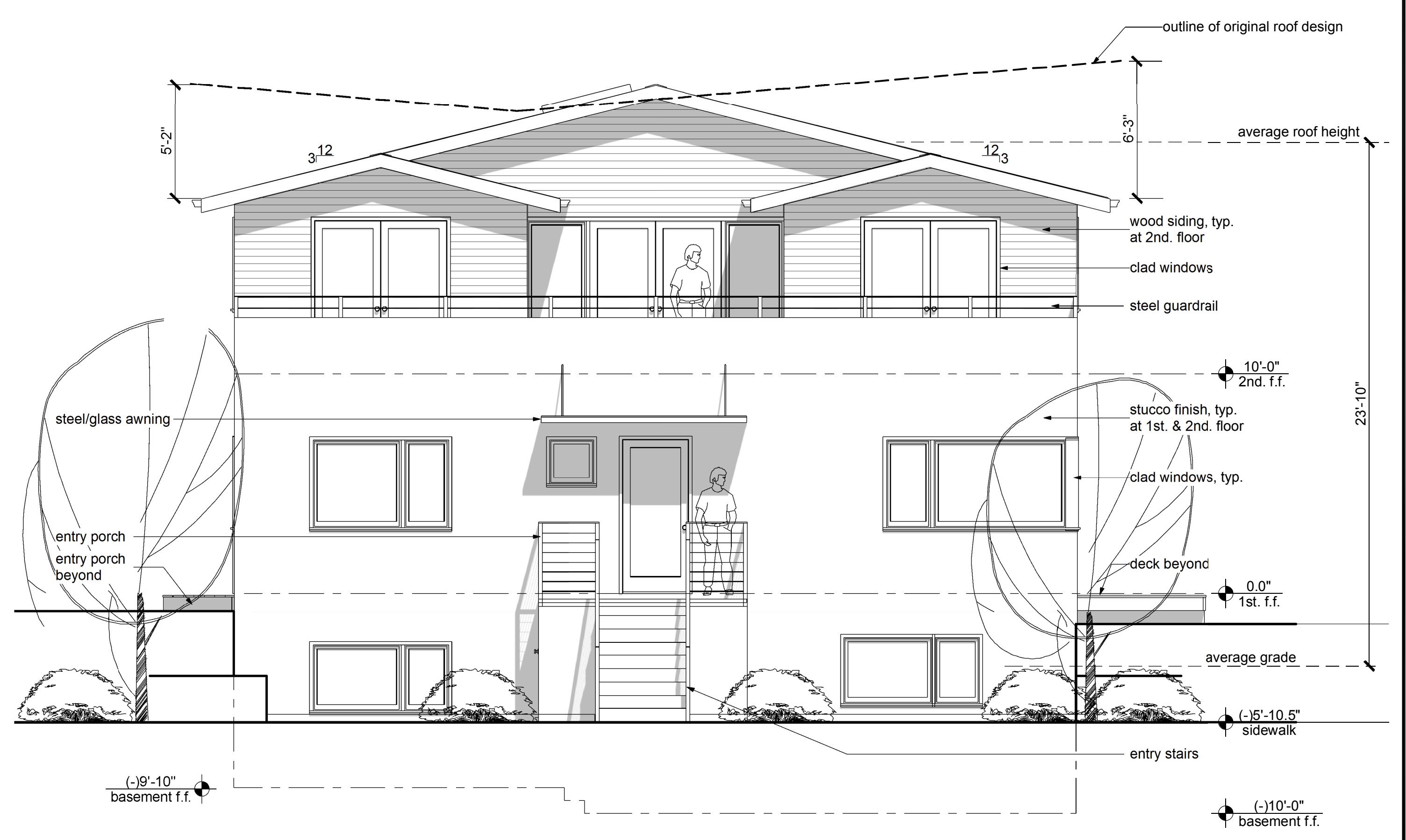
4 Proposed South Elevation - Right Side



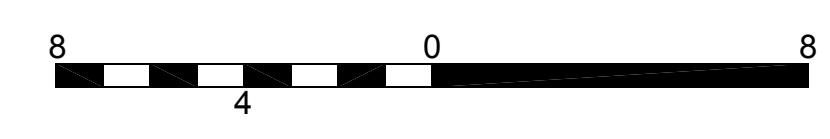
3 Proposed East Elevation - Rear



2 Proposed North Elevation - Left Side



1 Proposed West Elevation - Front





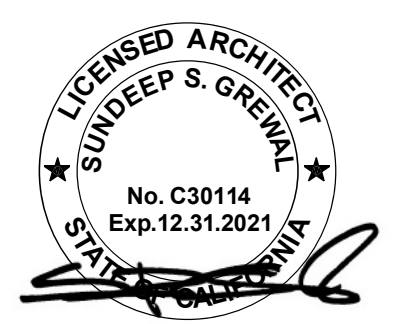
2 Renderings



1 Proposed Building Section



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Sheet Contents:
 Building Section
 Renderings

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Checked By:
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Scale:
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Sheet
A3.3

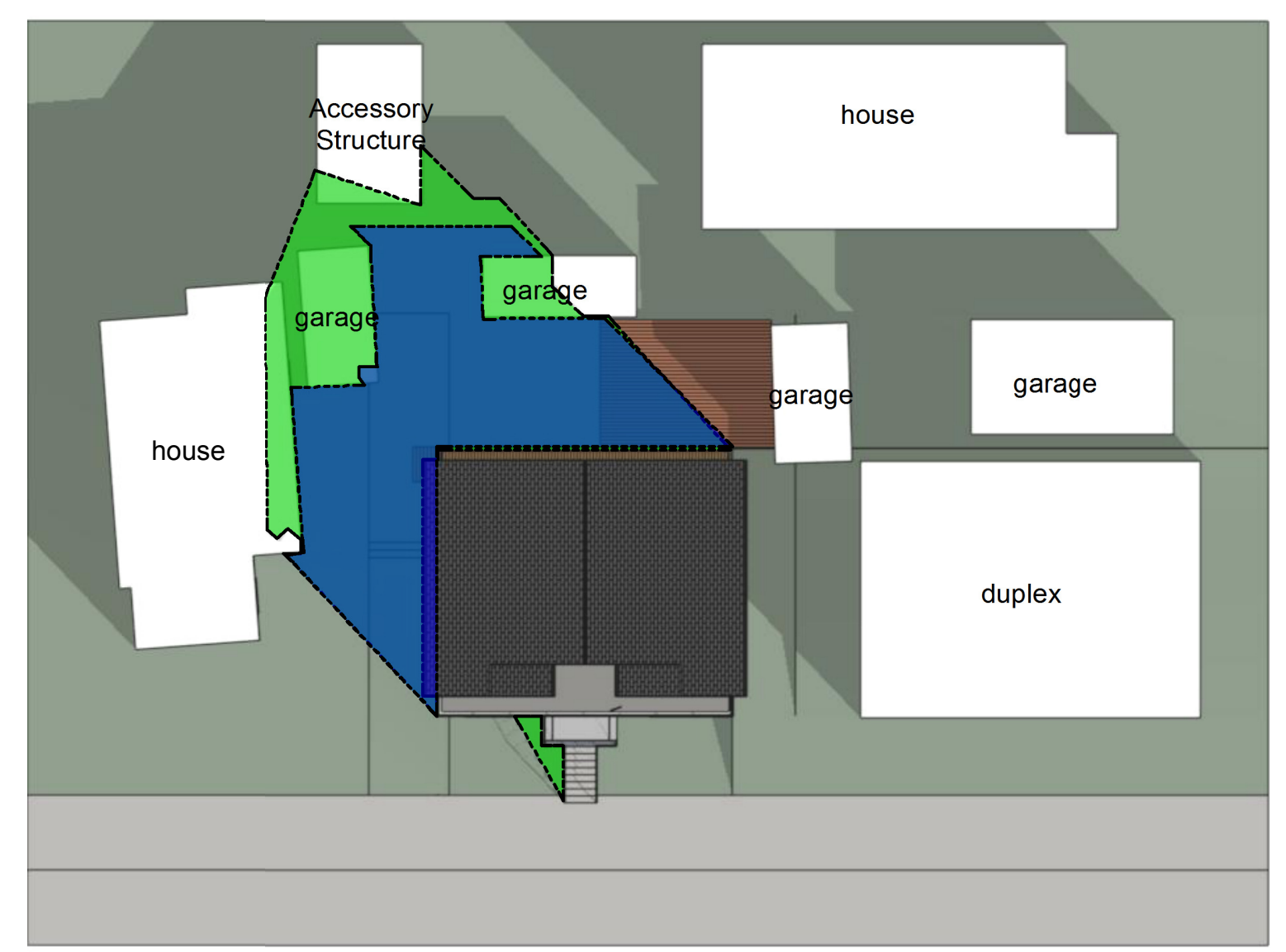


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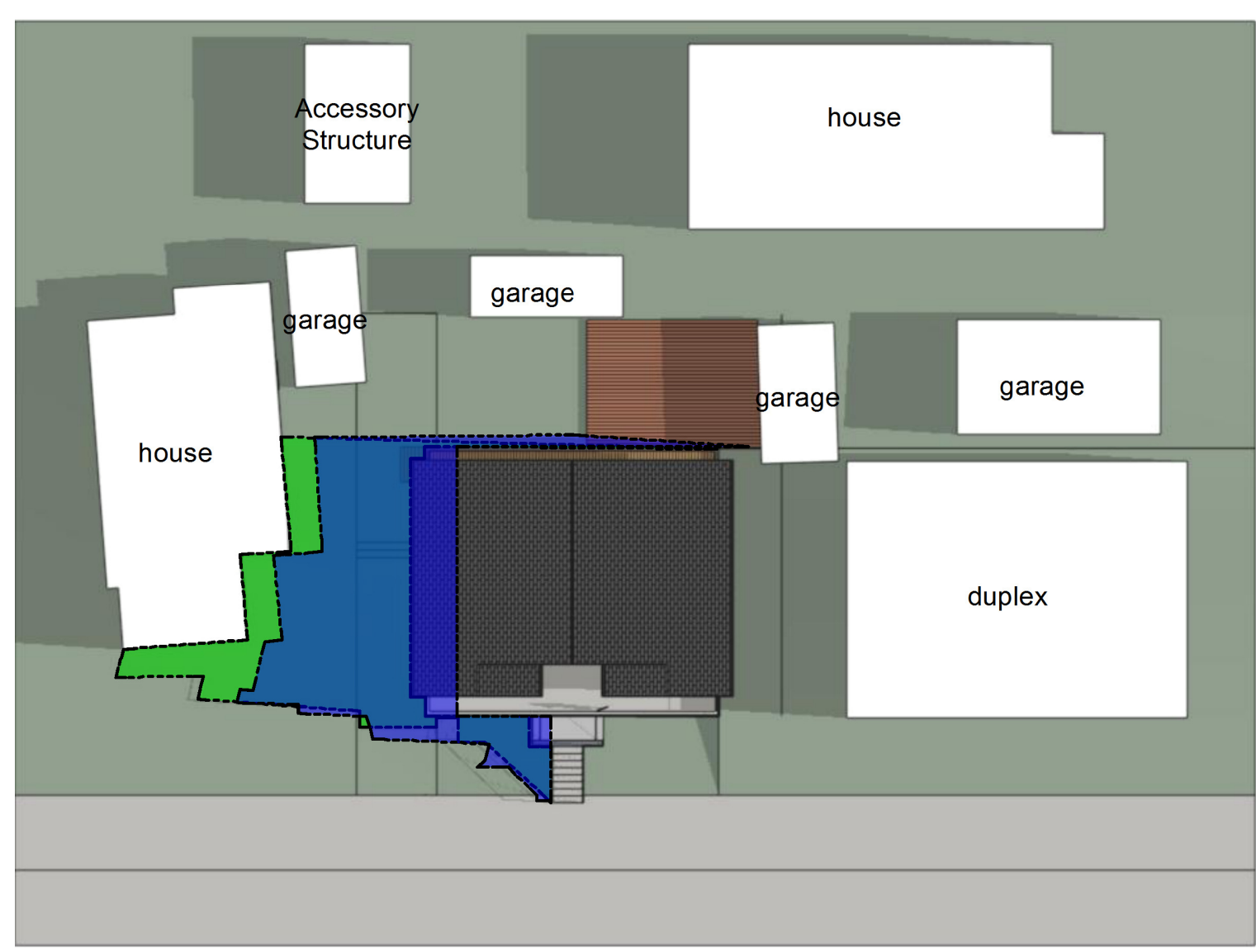
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Existing Shadow Line
 New Shadow Line



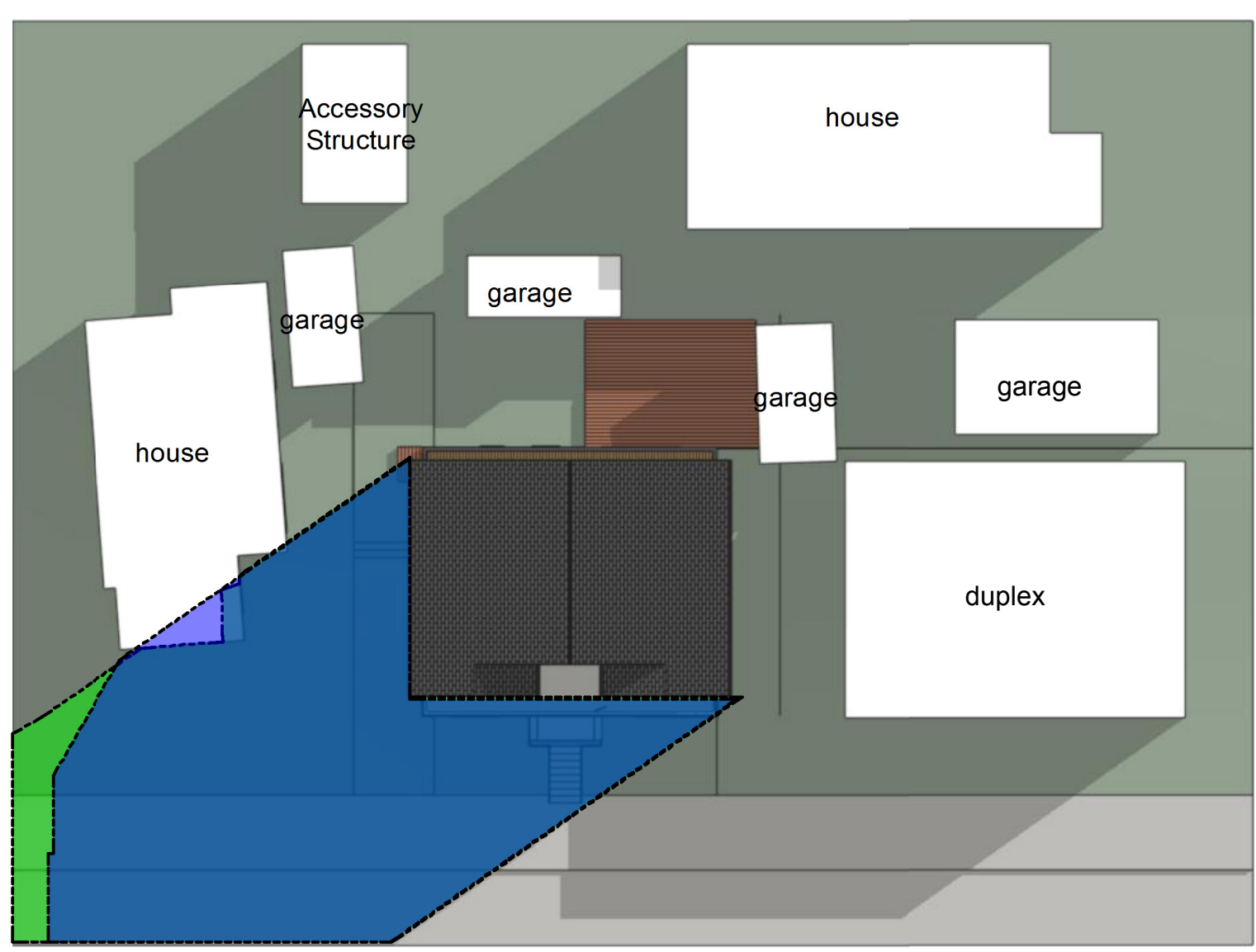
Proposed

12-21-2021 / 2:54 pm



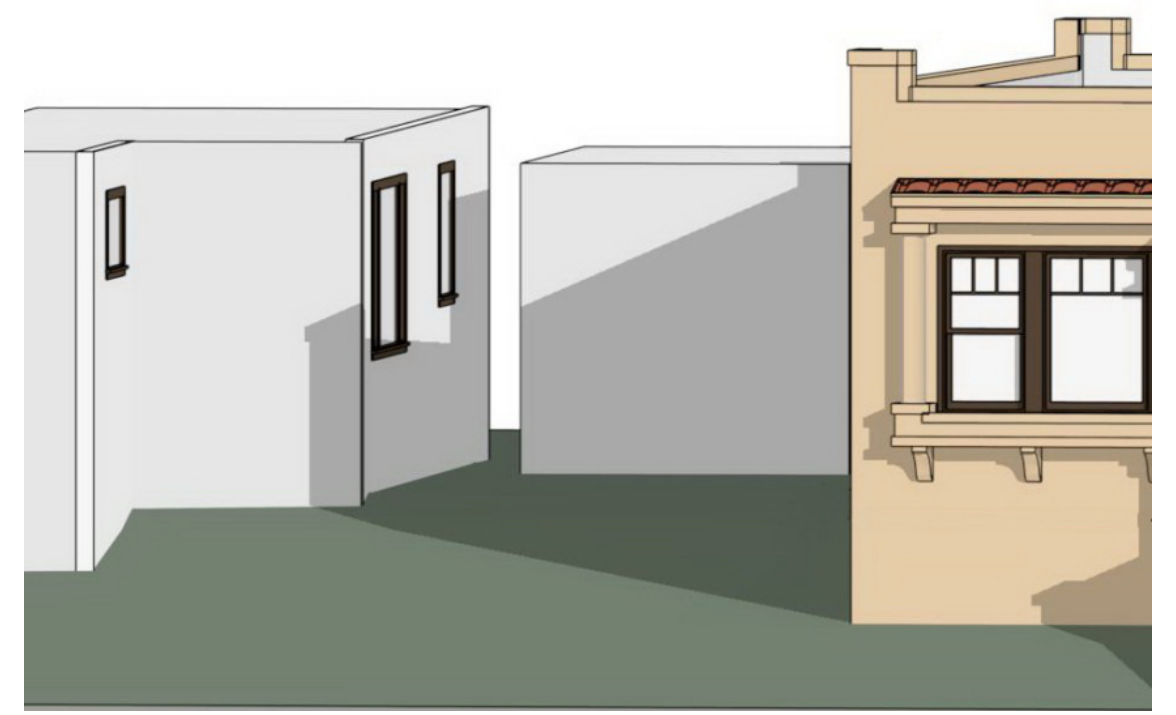
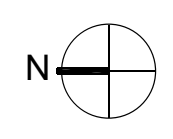
Proposed

12-21-2021 / 12:00 pm



Proposed

12-21-2021 / 9:21 am

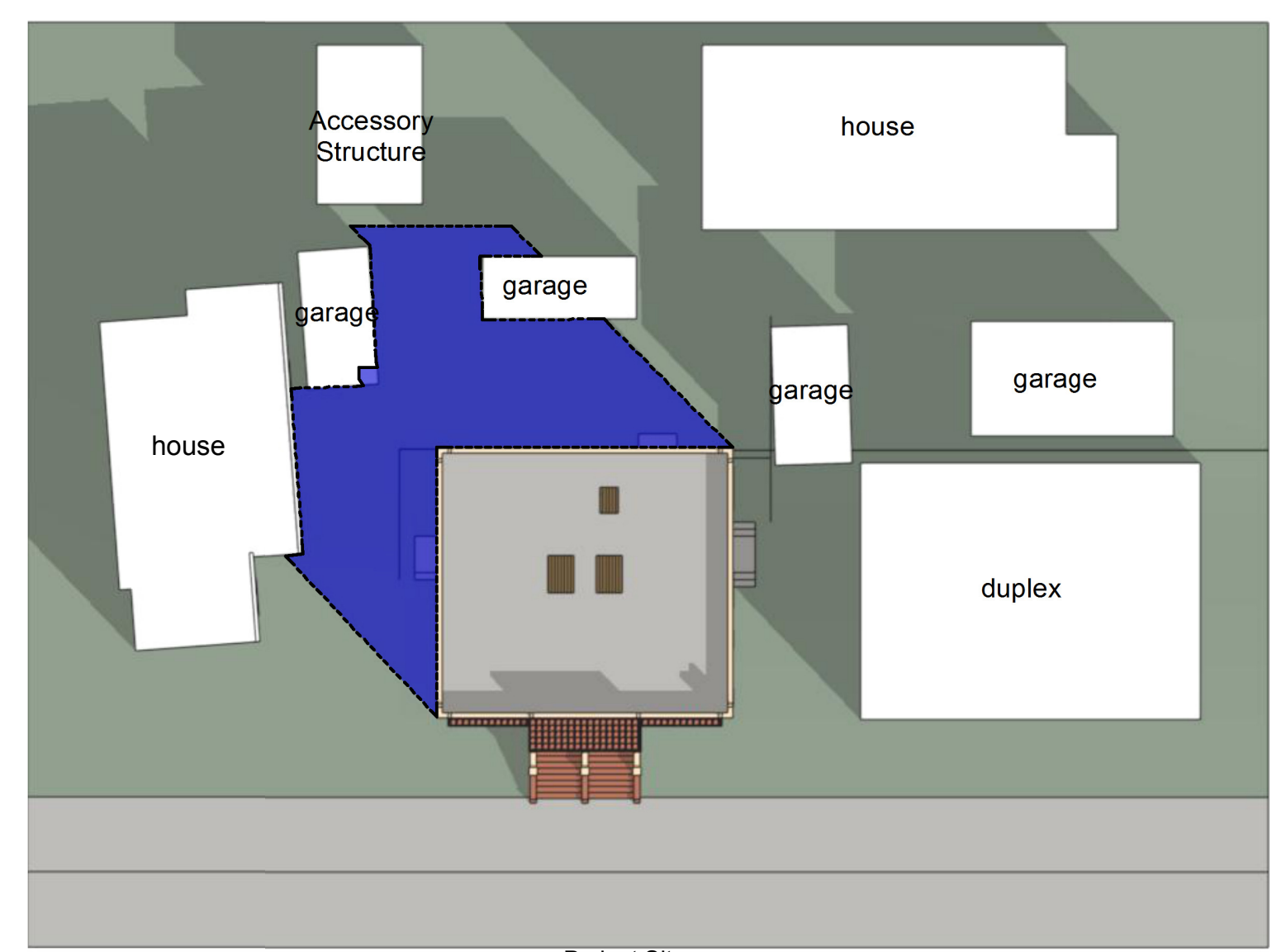


Shadow Accuracy Simulation
 12-08-2020 / 3:00 pm



Actual
 12-08-2020 / 3:00 pm

Shadow Accuracy Simulation



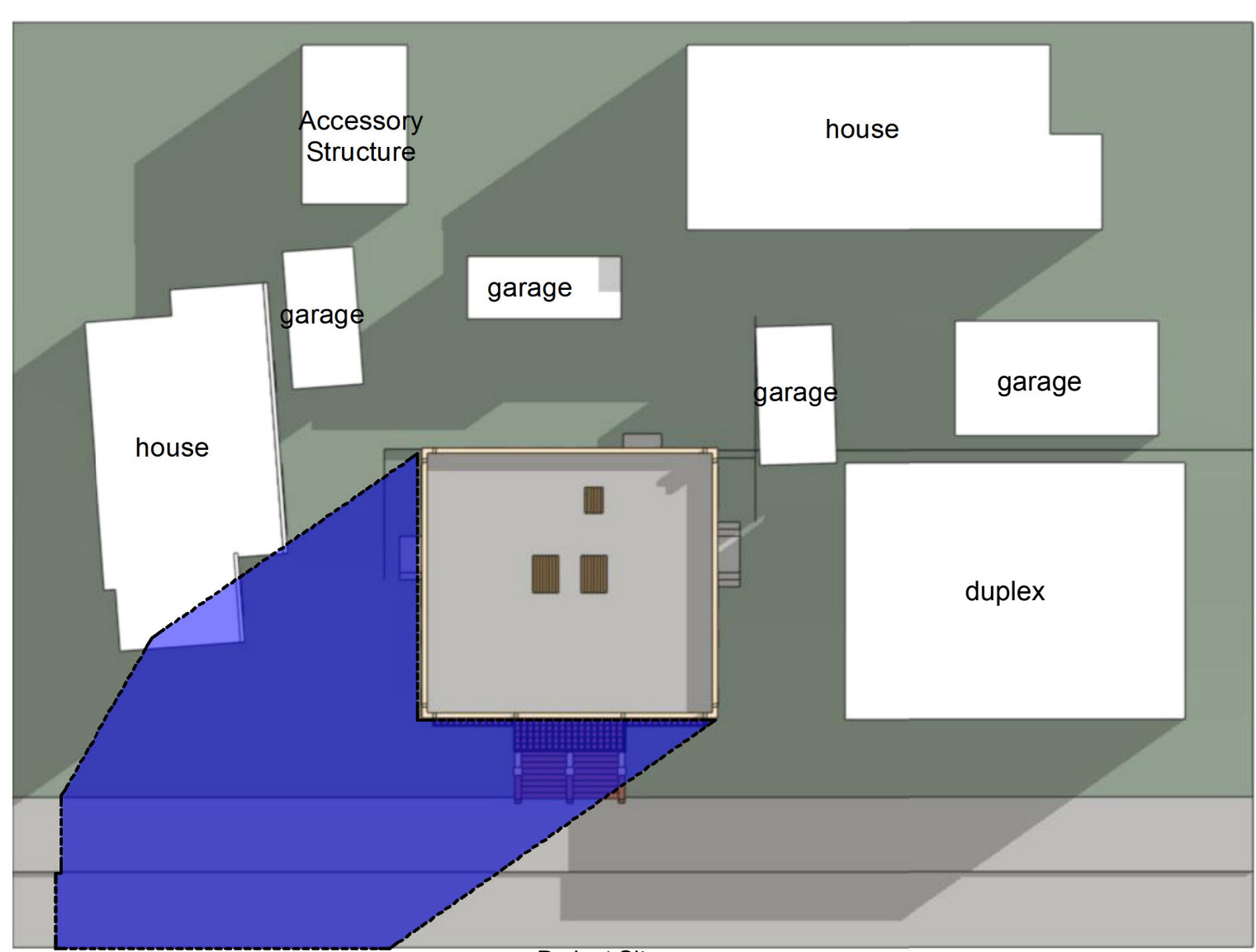
Existing

12-21-2021 / 2:54 pm



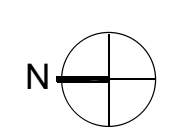
Existing

12-21-2021 / 12:00 pm



Existing

12-21-2021 / 9:21 am



Sheet Contents:
 Shadows Studies

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Project No: 20-13-420

Drawn By: SSG

Checked By: SSG

Scale: NTS

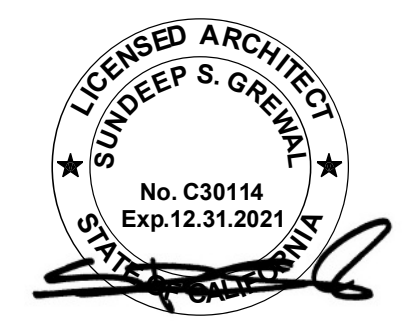
Revisions:
 Use Permit Set: 12-10-2020
 Redesign: 5-25-2021
 Planning Review: 6-29-2021
 Planning Review: 7-15-2021

Sheet **A4.1**

Existing Shadow Line
New Shadow Line



2223 Fifth St.
Berkeley, CA 94710
Ph: 510.548.7448
info@sgsarch.com
www.sgsarch.com



OPPENHEIMER RESIDENCE
1643 & 1647 California St.
Berkeley, CA 94703
APN: 58-2156-18

Sheet Contents:
Shadows Studies

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Project No: 20-13-420

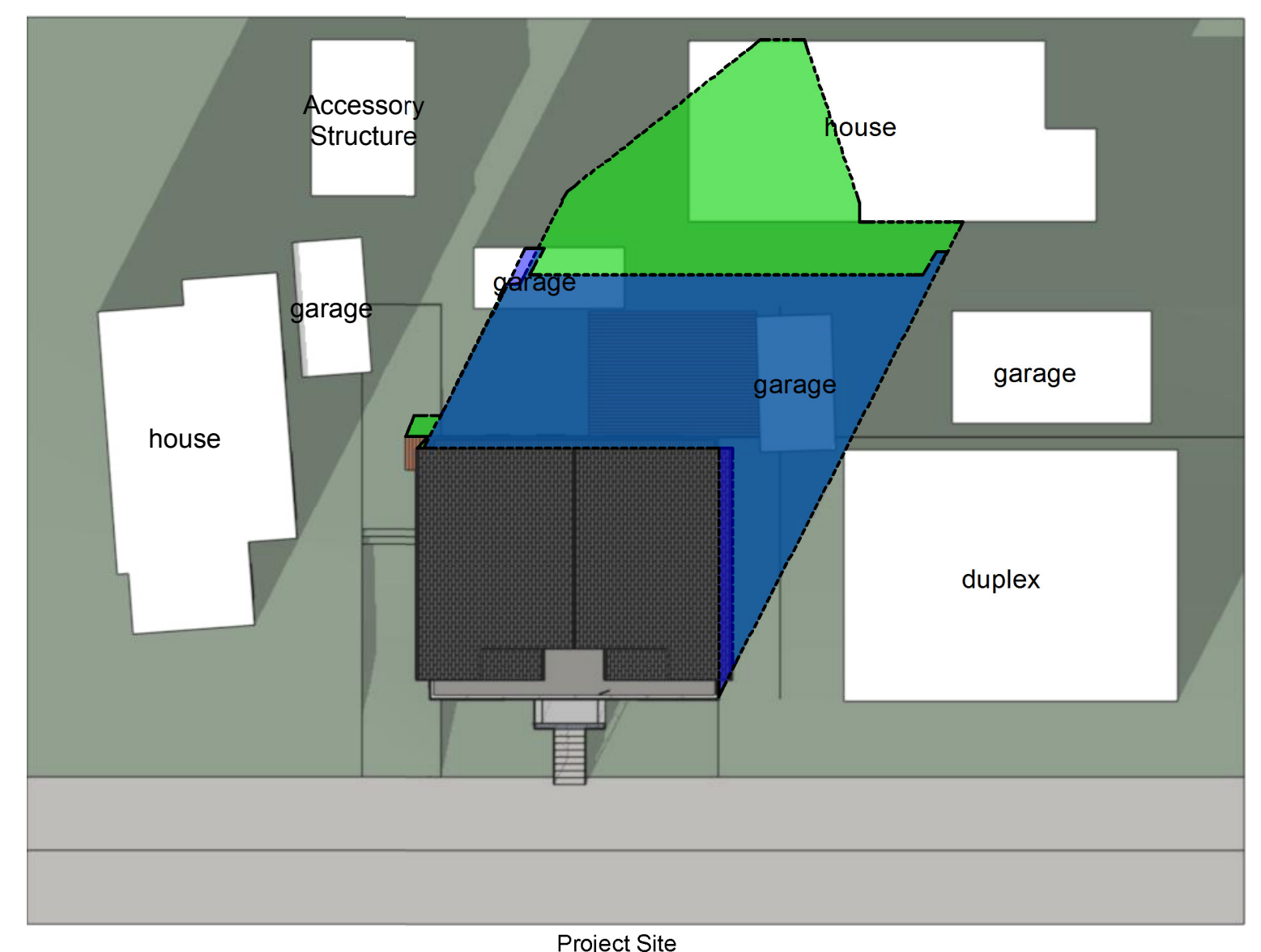
Drawn By: SSG

Checked By: SSG

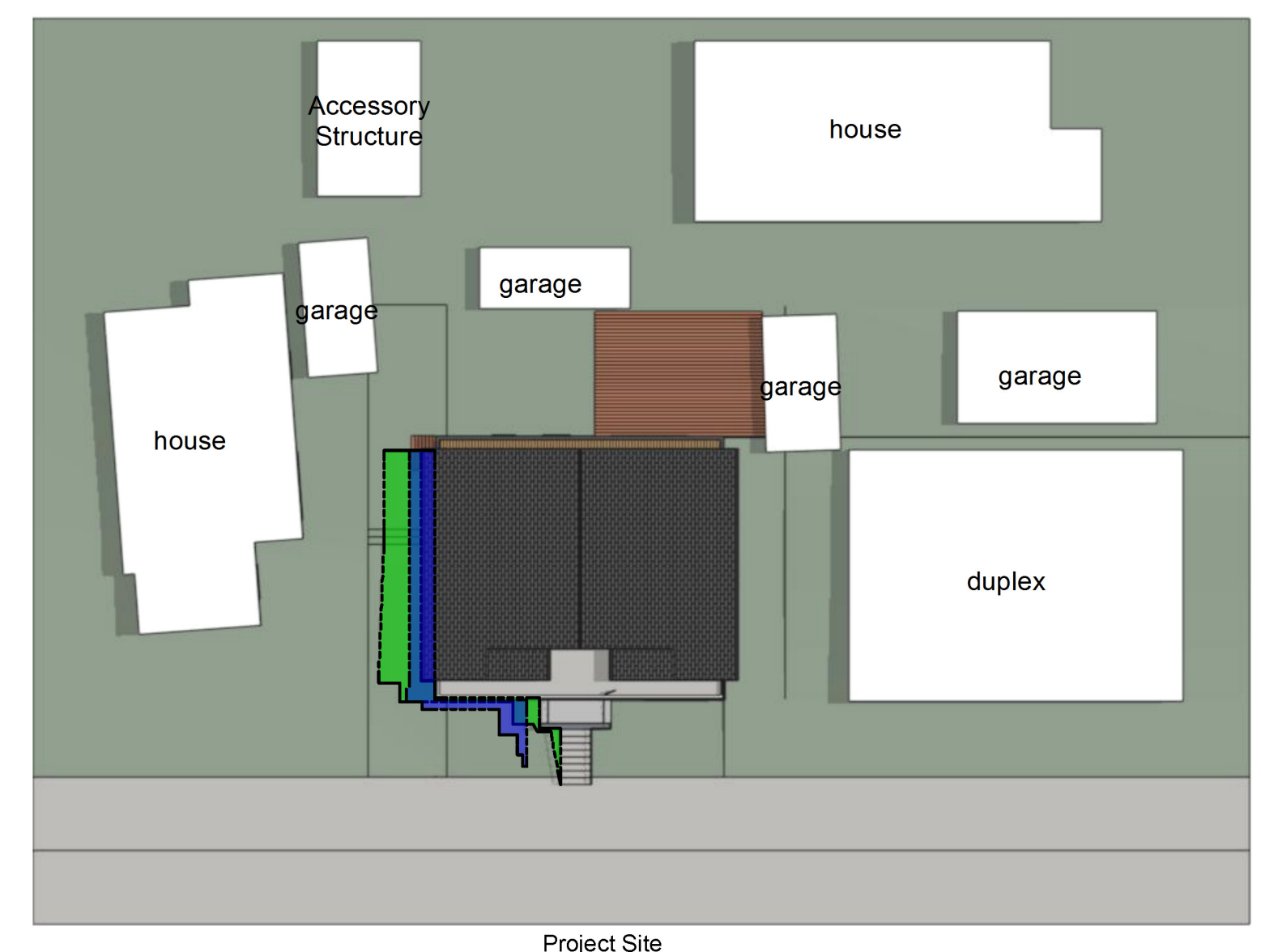
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Revisions:
Use Permit Set: 12-10-2020
Redesign: 5-25-2021
Planning Review: 6-29-2021
Planning Review: 7-15-2021

Sheet **A4.2**



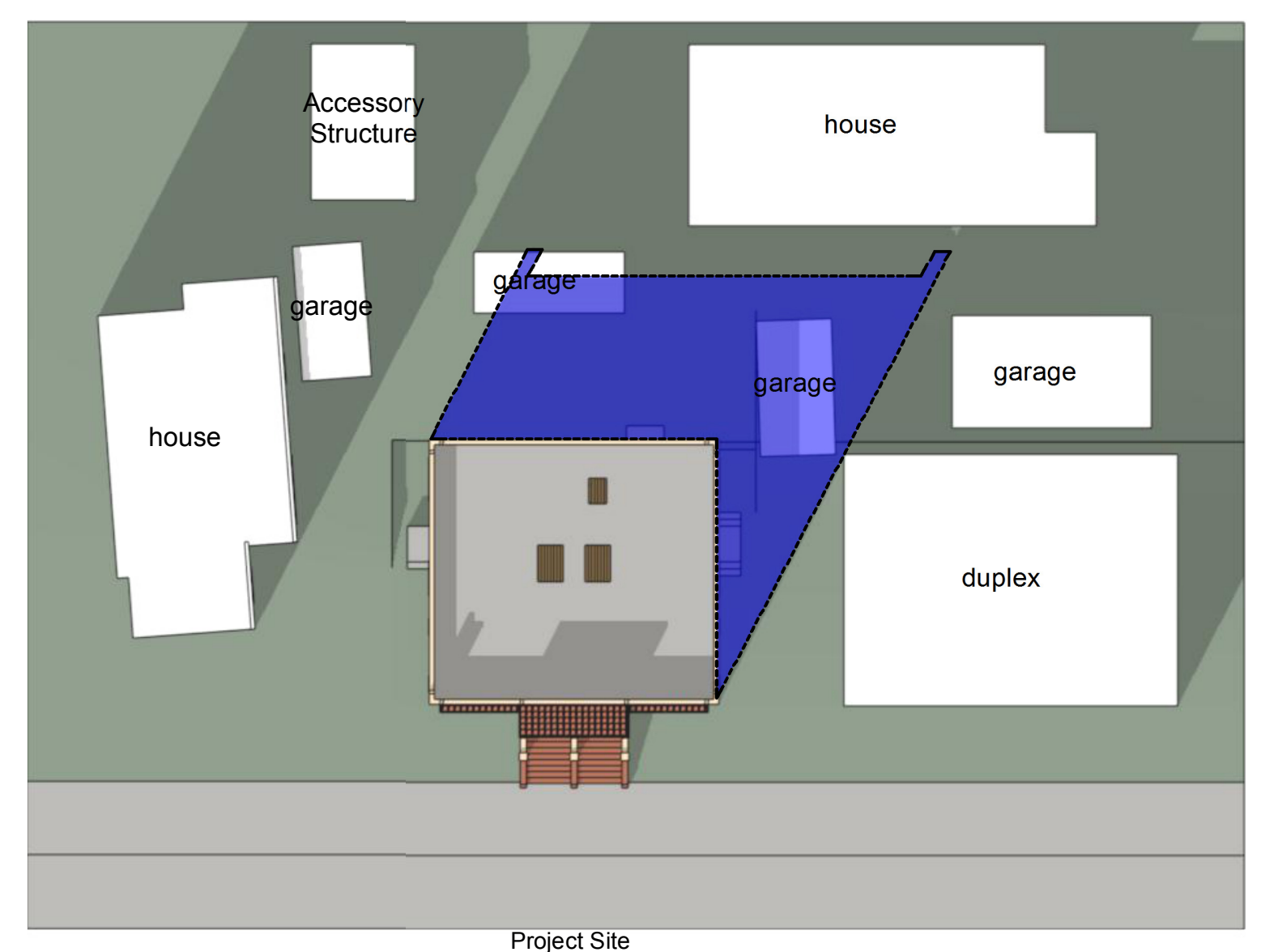
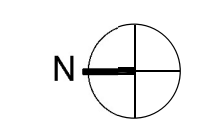
Proposed
6-21-2021 / 6:35 pm



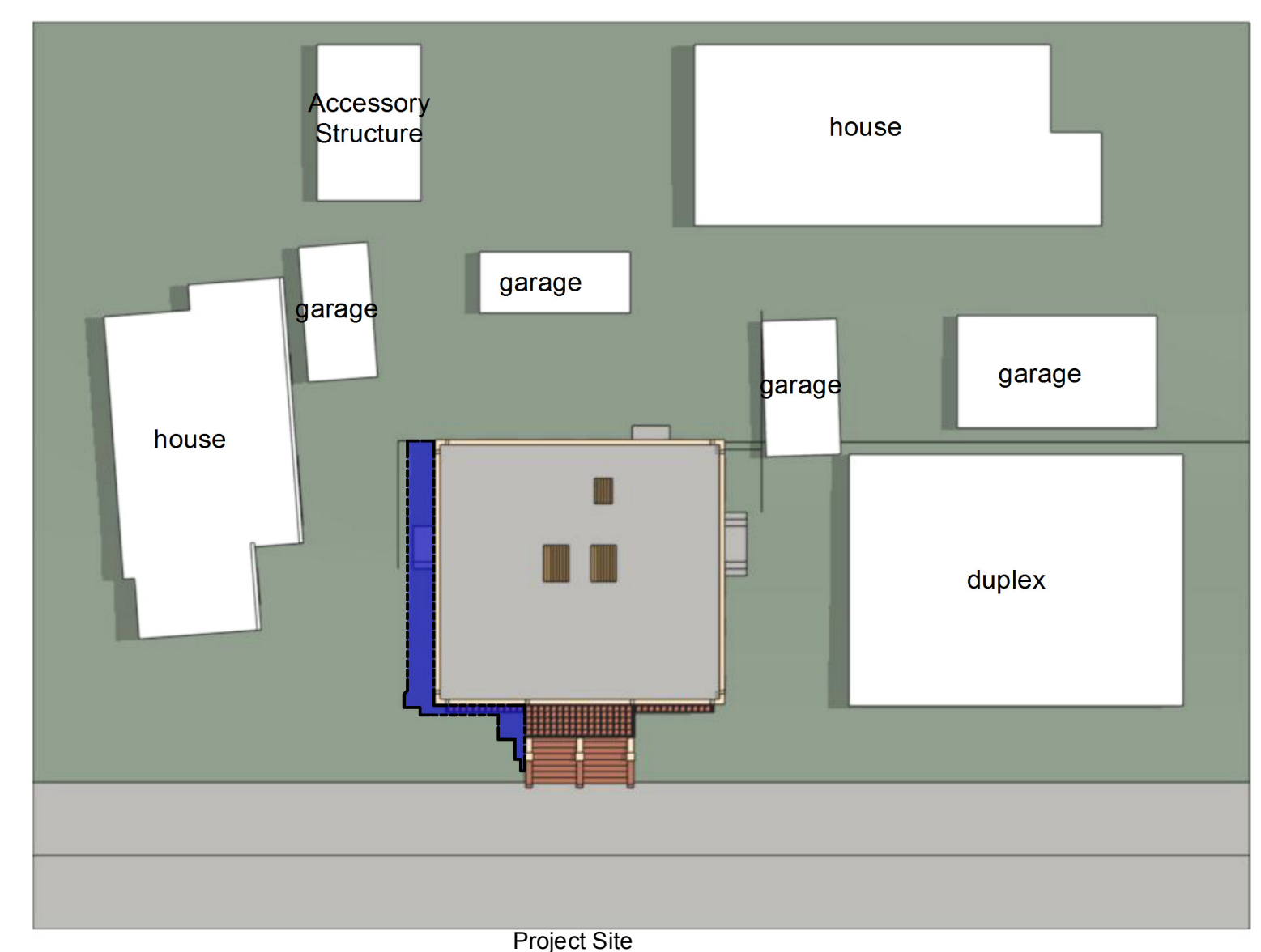
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6-21-2021 / 12:00 pm



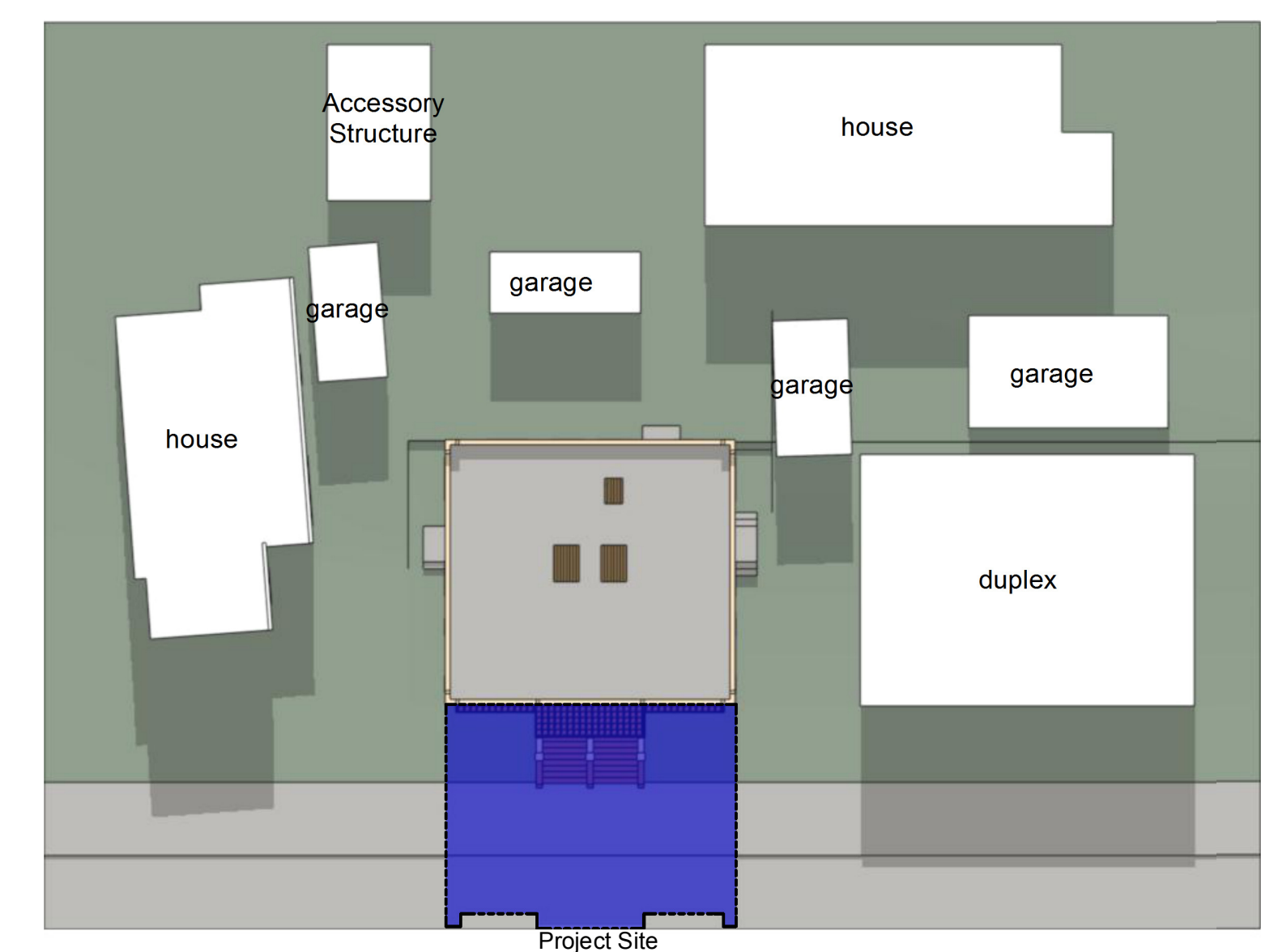
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6-21-2021 / 7:47 am



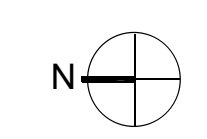
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6-21-2021 / 6:35 pm



Existing
6-21-2021 / 12:00 pm

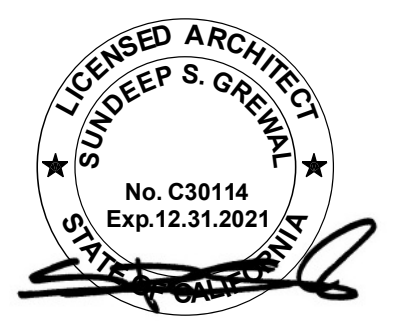


Existing
6-21-2021 / 7:47 am

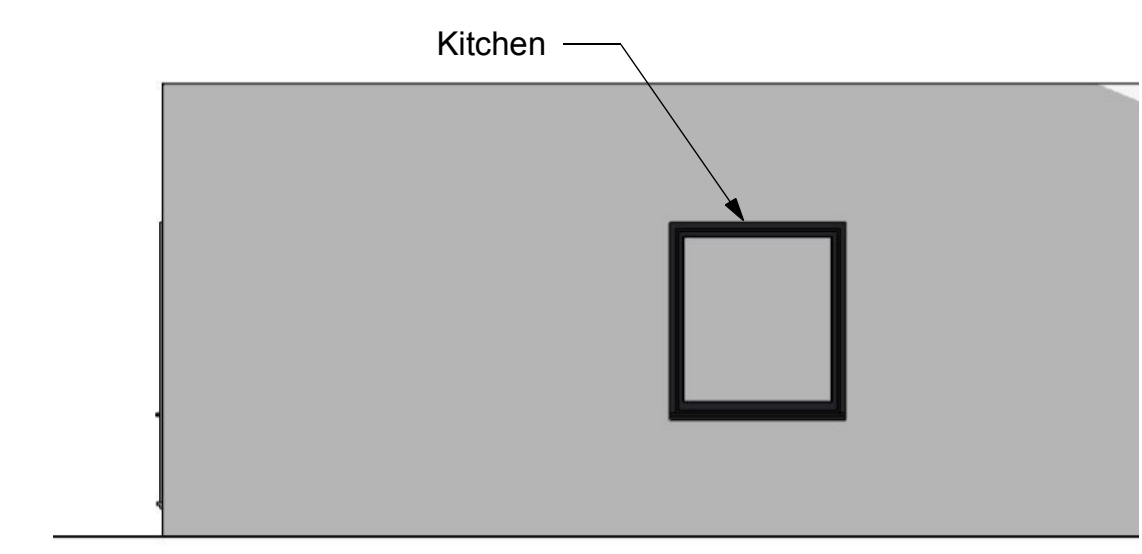




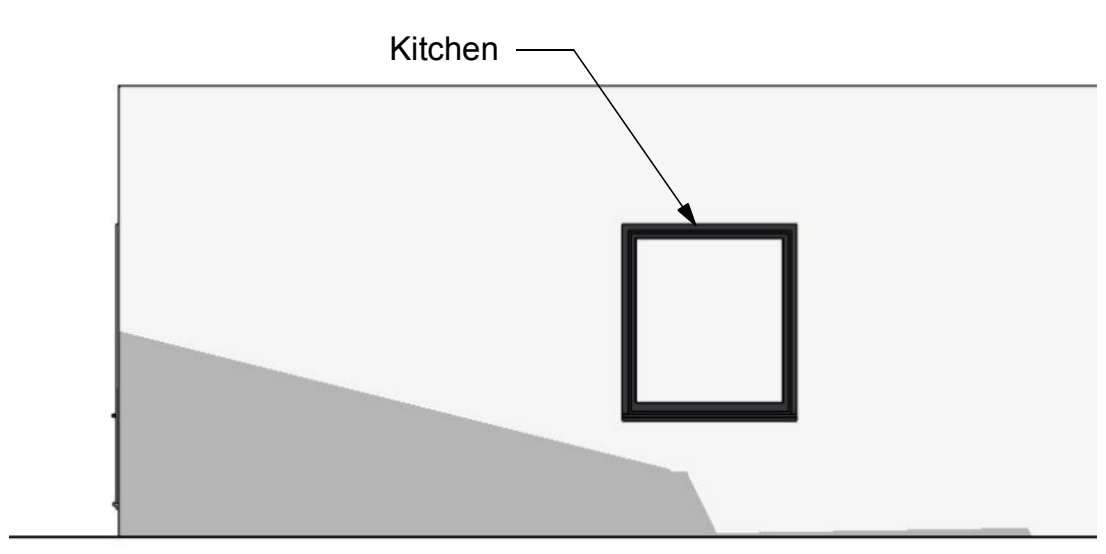
2223 Fifth St.
 Berkeley, CA 94710
 Ph: 510.548.7448
 info@sgsarch.com
 www.sgsarch.com



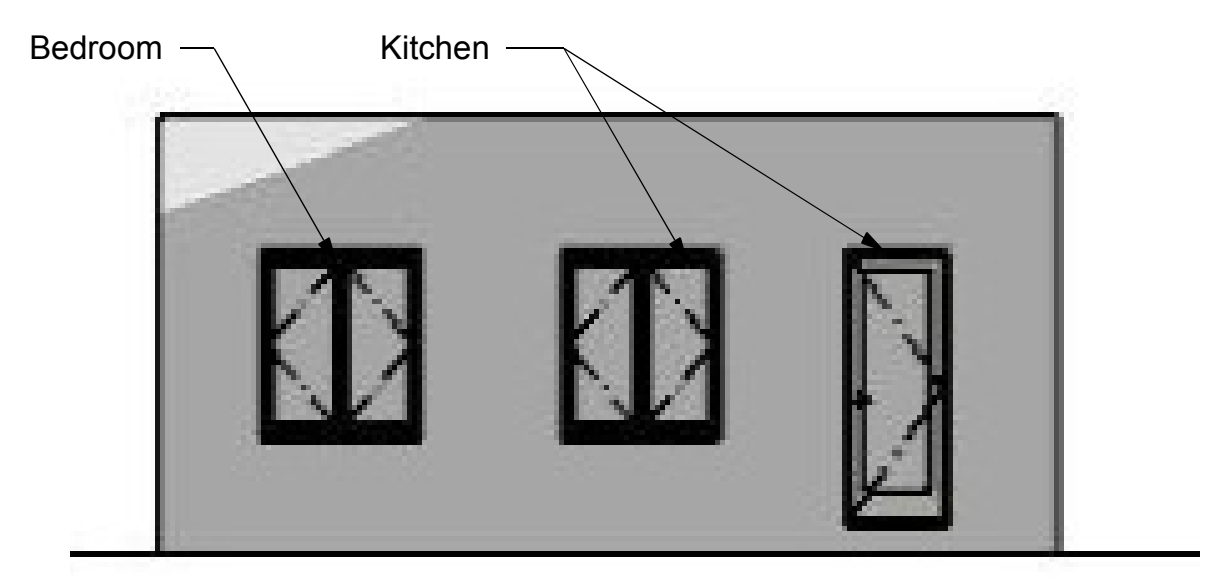
**OPPENHEIMER
 RESIDENCE**
 1643 & 1647 California St.
 Berkeley, CA 94703
 APN: 58-2156-18



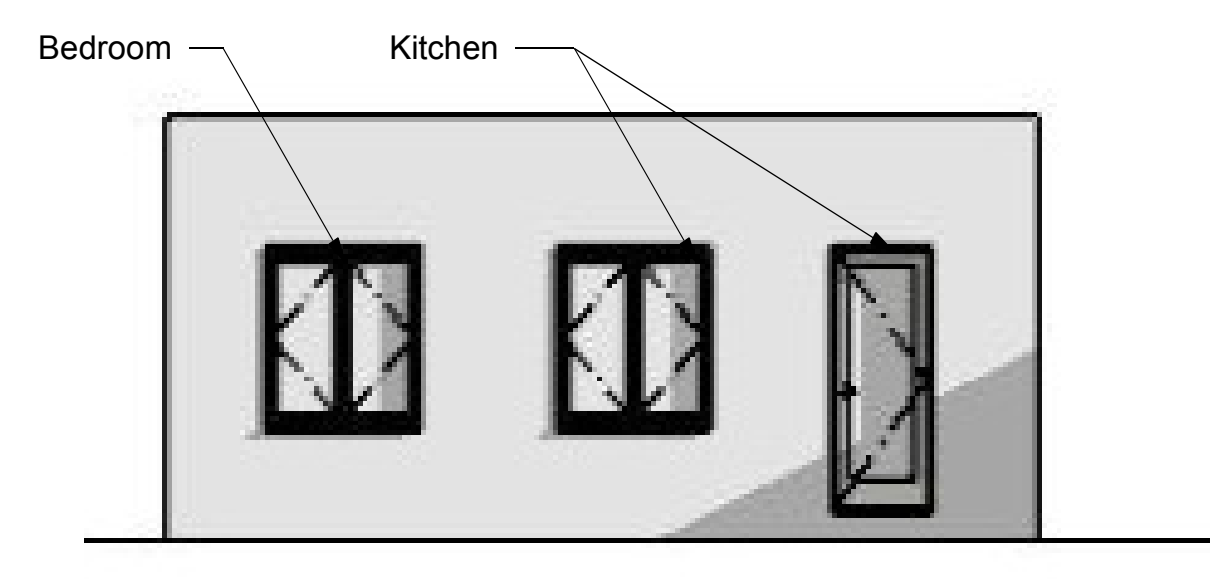
Proposed West Wall



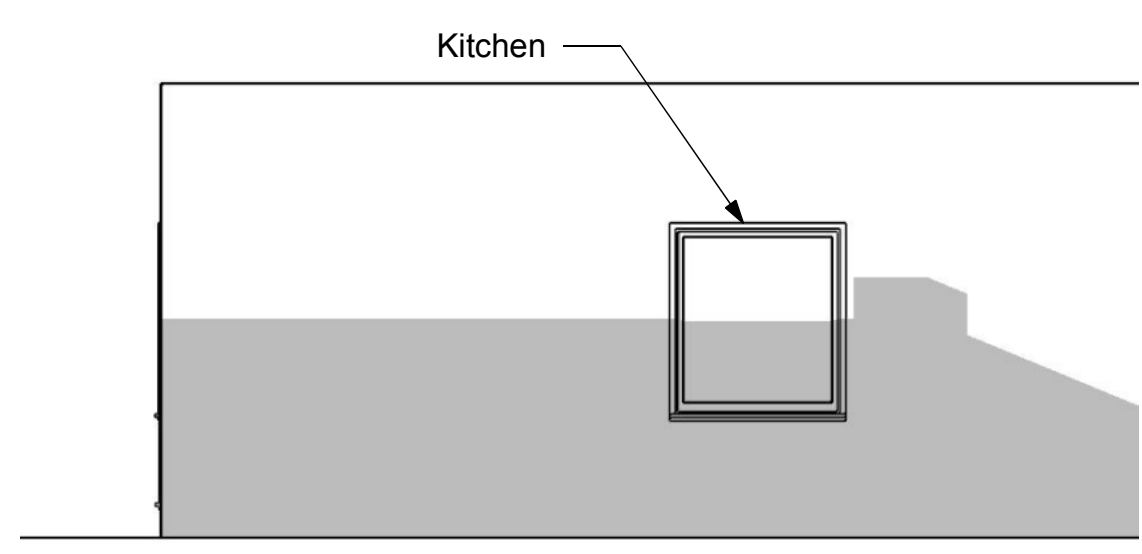
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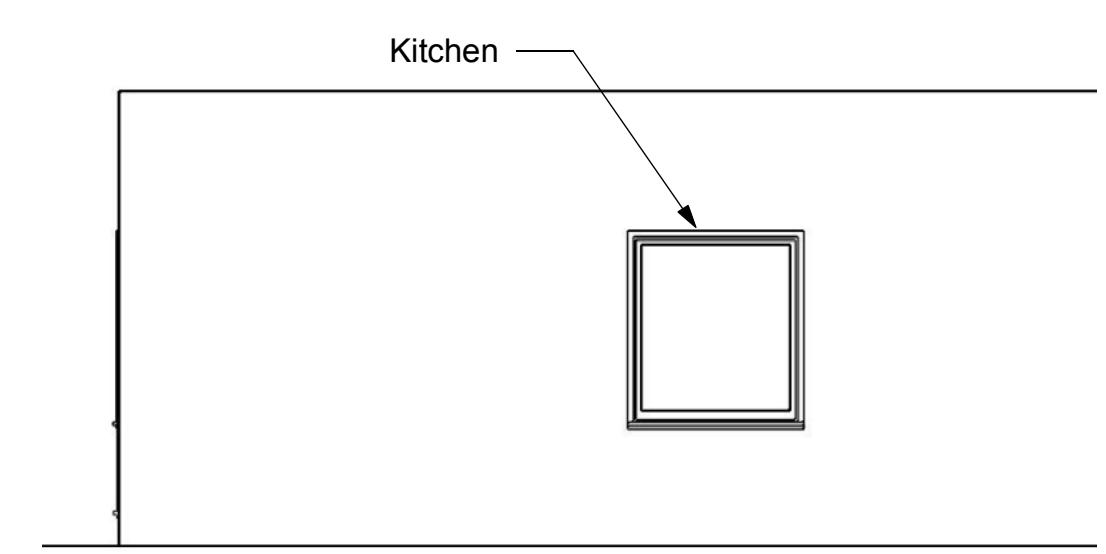
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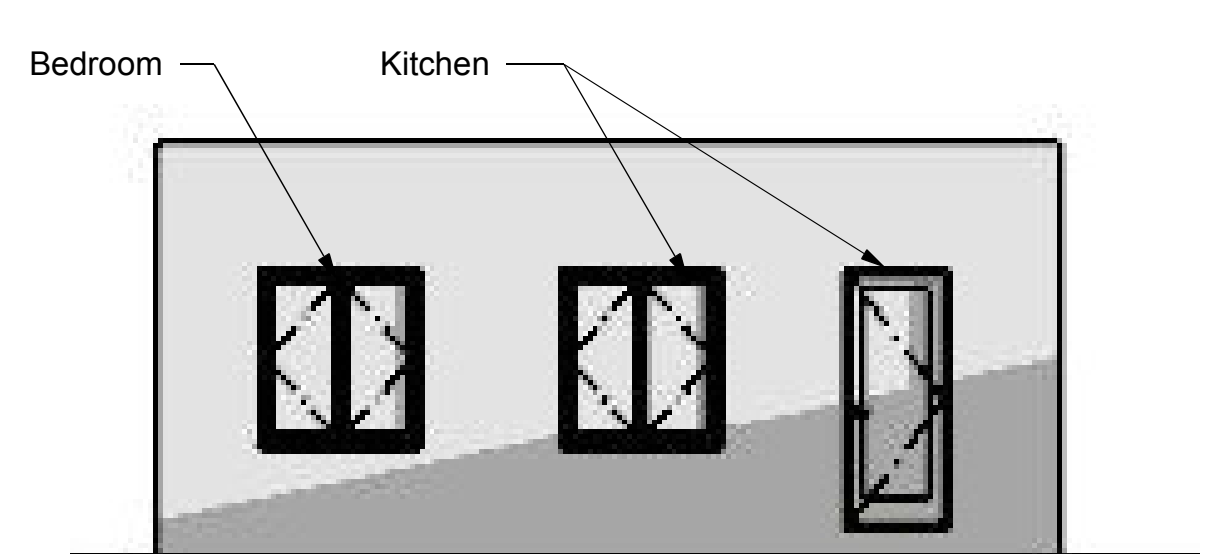
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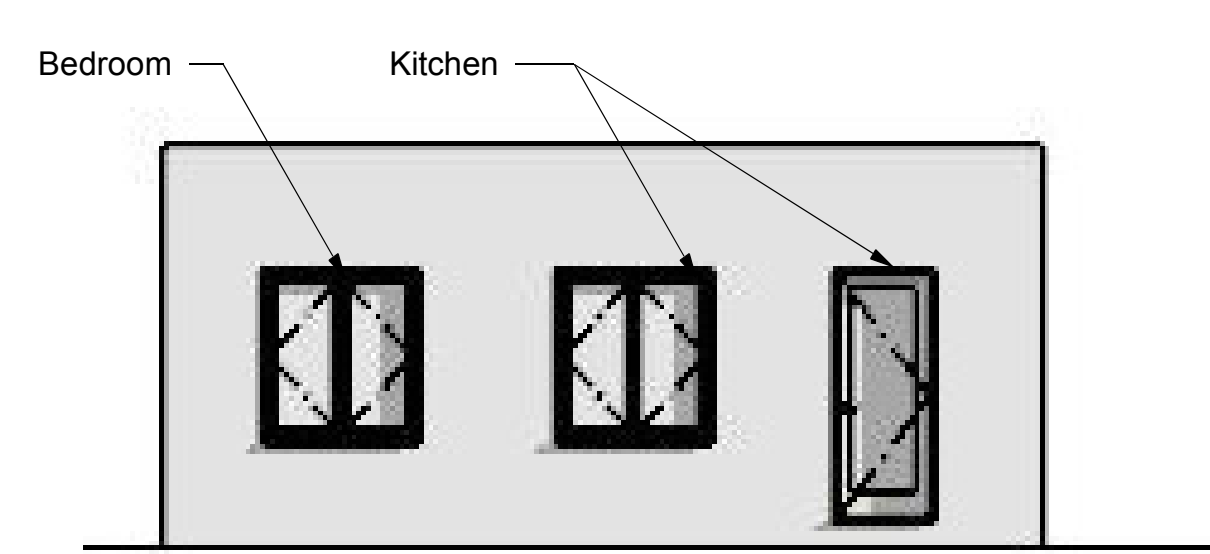
Existing West Wall



Existing West Wall



Existing North Wall



Existing North Wall

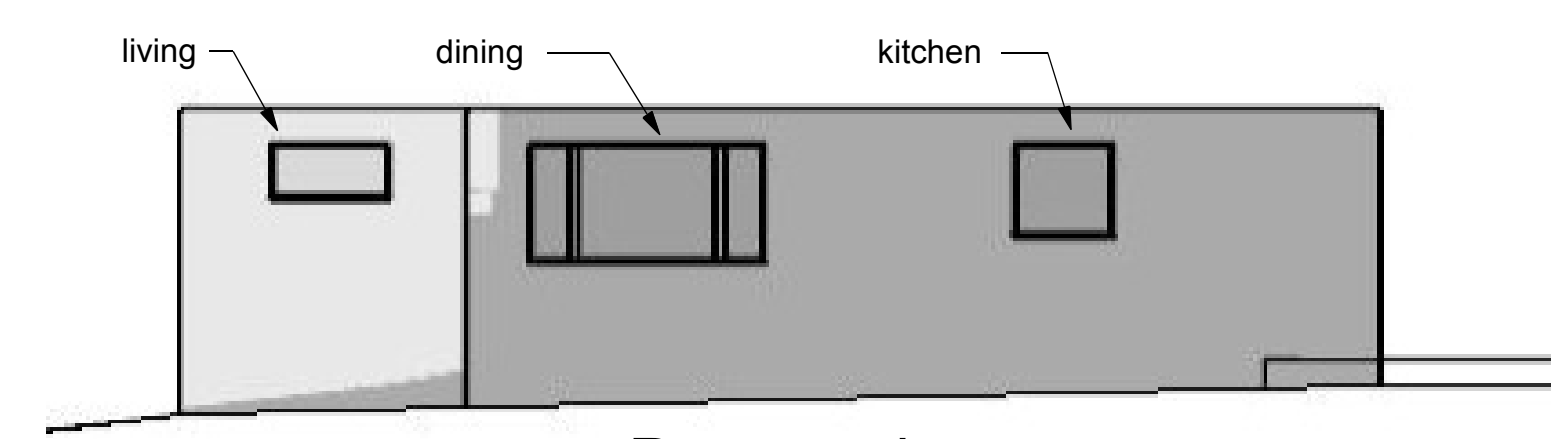
6-21-2021 / 6:35 pm

6-21-2021 / 5:00 pm

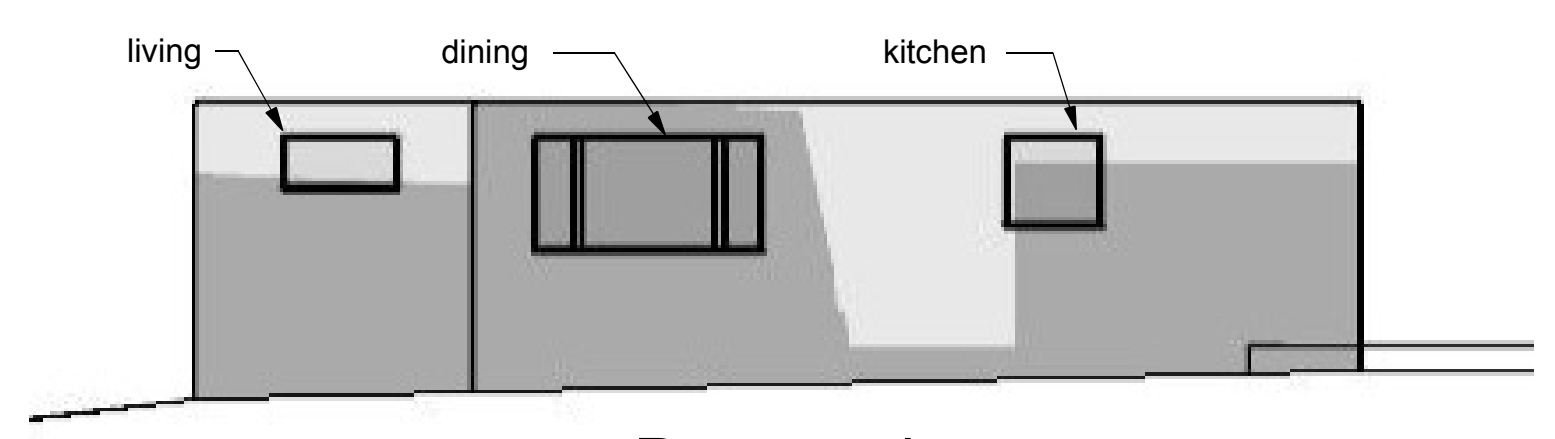
6-21-2021 / 6:35 pm

6-21-2021 / 5:00 pm

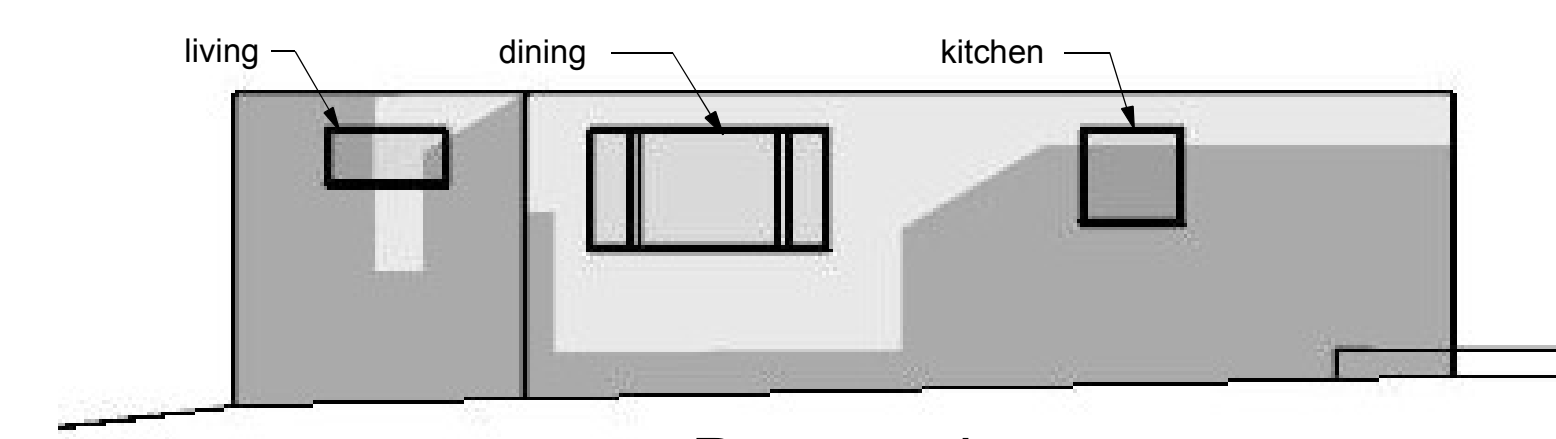
1609 Virginia St. Shadow Impact Study



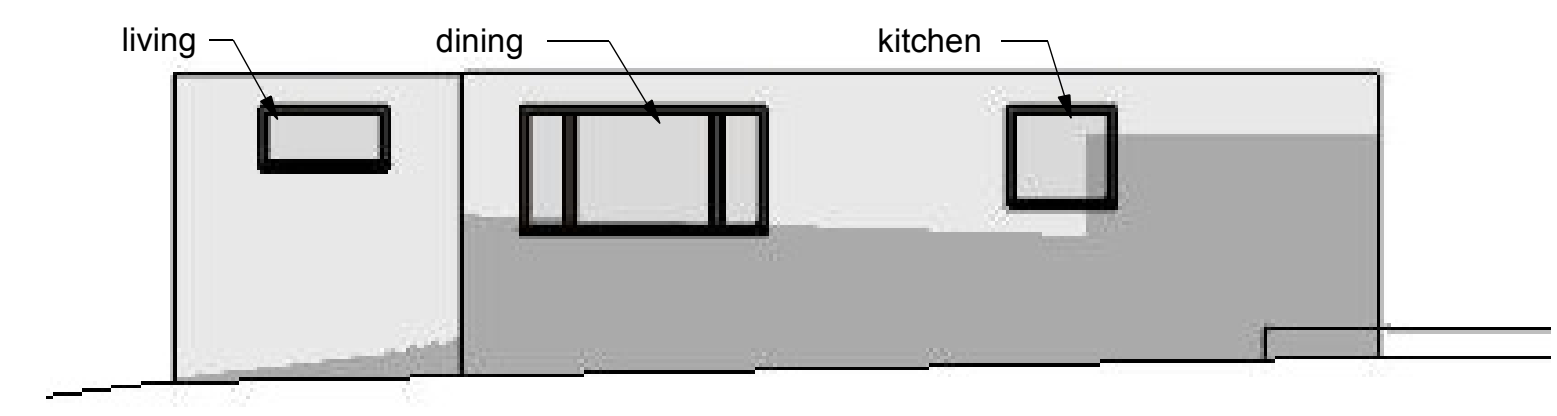
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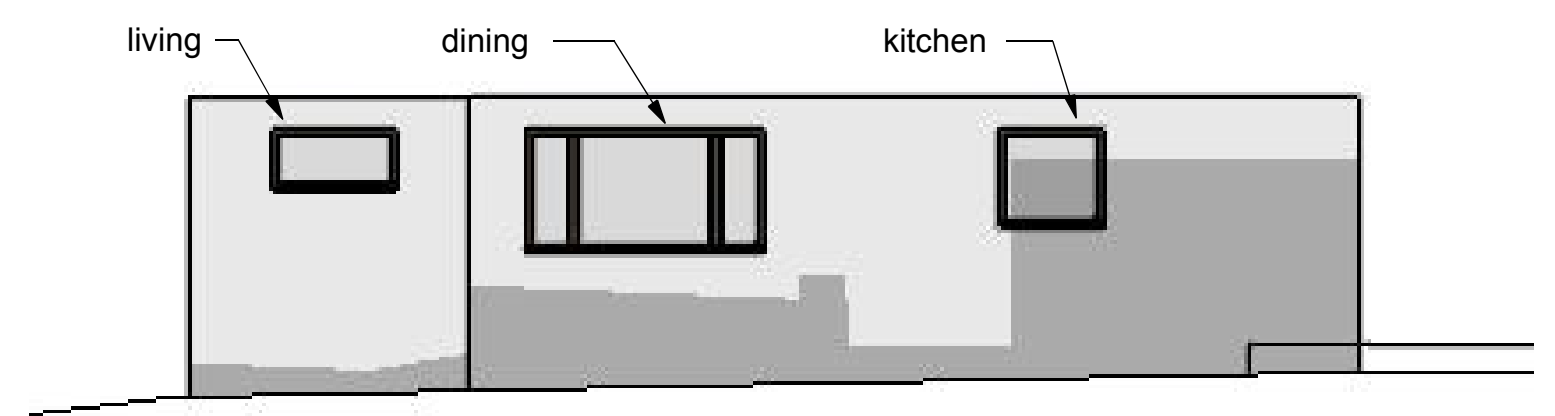
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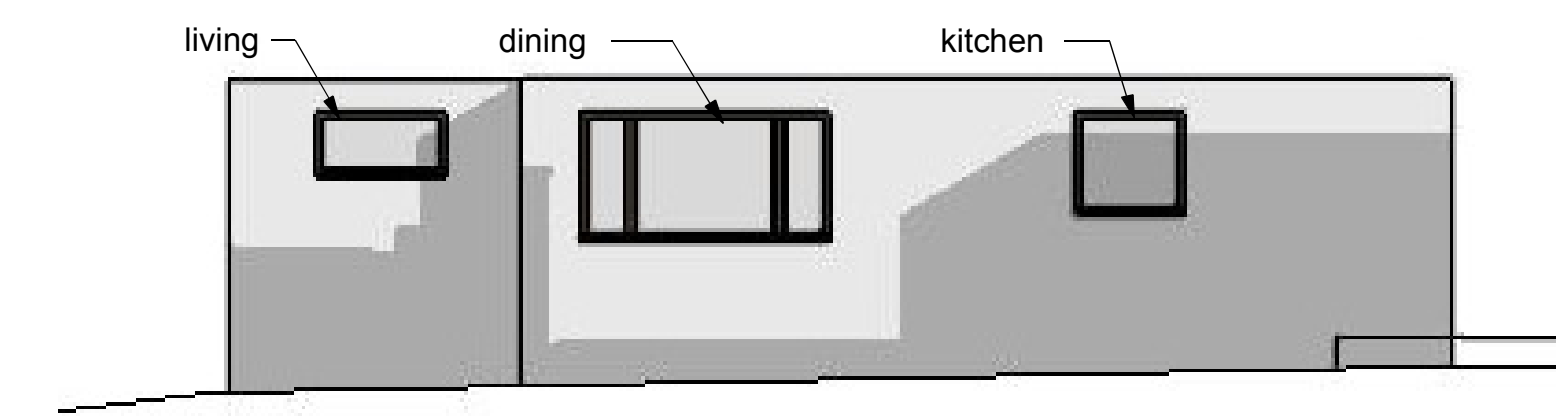
Proposed



Existing



Existing



Existing

12-21-2021 / 2:54 pm

12-21-2021 / 12:00 pm

12-21-2021 / 9:21 am

1639 California St. Shadow Impact Study

Sheet Contents:
 Shadows Studies

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Project No: 20-13-420

Drawn By: SSG

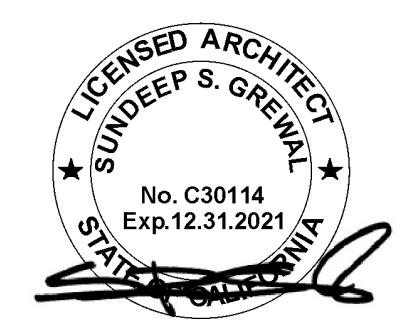
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Scale: NTS

Revisions:
 Use Permit Set: 12-10-2020
 Redesign: 5-25-2021
 Planning Review: 6-29-2021
 Planning Review: 7-15-2021

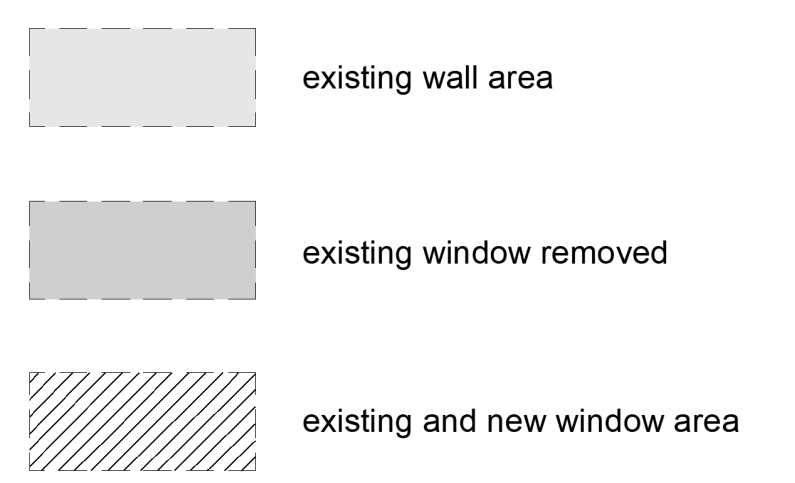
studio
g+s
ARCHITECTS

2223 Fifth St.
 Berkeley, CA 94710
 Ph: 510.548.7448
 info@sgsarch.com
 www.sgsarch.com



**OPPENHEIMER
 RESIDENCE**
 1643 & 1647 California St.
 Berkeley, CA 94703
 APN: 58-2156-18

Wall demolition Notes:
 Total wall area: 1,921 s.f.
 Total wall removed: 520 s.f. (existing and new openings)
 Percentage removed: 27.1%



4 Proposed South Elevation - Right Side



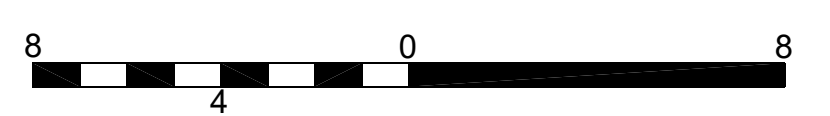
3 Proposed East Elevation - Rear



2 Proposed North Elevation - Left Side



1 Proposed West Elevation - Front



Sheet Contents:
 Demolition Diagram

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Project No:
 20-13-420

Drawn By:
 SSG

Checked By:
 SSG

Scale:
 1/4" = 1'-0"

Revisions:
 Use Permit Set: 12-10-2020
 Redesign: 5-25-2021
 Planning Review: 6-29-2021
 Planning Review: 7-15-2021
 Planning Review: 8-26-2021



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

NOTICE OF PUBLIC HEARING

1643 & 1647 California Street

Use Permit #ZP2021-0001 to 1) create a new lower basement level, 2) construct a new second story, and 3) modify the existing duplex layout, resulting in a 3,763 square foot duplex.

The Zoning Adjustments Board of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 23.406.040.D, on July 14, 2022, **conducted via Zoom**, see the **Agenda for details at: https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2022-07-14_ZAB_Agenda.pdf**. The meeting starts at 7:00 p.m.

PUBLIC ADVISORY: Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the Zoning Adjustments Board (ZAB) will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.

A. Land Use Designations:

- General Plan: Medium Density Residential
- Zoning: R-2 – Restricted Two-Family Residential District

B. Zoning Permits Required:

- Use Permit, under Berkeley Municipal Code (BMC) Section 23C.04.070.C, to enlarge a lawful non-conforming structure that is non-conforming by reason of violation of the maximum allowable lot coverage;
- Use Permit, under BMC Section 23C.04.070.E, to enlarge a lawful non-conforming structure that is non-conforming by reason of violation of the maximum allowable density;
- Administrative Use Permits, under BMC Section 23C.04.070.B, to horizontally extend two non-conforming yards (front and rear);
- Administrative Use Permit, under BMC section 23D.28.030, to permit a major residential addition;
- Administrative Use Permit, under BMC Section 23D.28.070.C, to allow an addition over 14 feet in height; and
- Administrative Use Permit, under BMC Section 23D.28.050, to construct a fifth bedroom.

C. CEQA Recommendation: Categorically exempt pursuant to Section 15301 of the CEQA Guidelines (“Existing Facilities”).

1643 & 1647 CALIFORNIA STREET
Page 2 of 3

NOTICE OF PUBLIC HEARING
Posted JUNE 29, 2022

D. Parties Involved:

- Applicant Sundeep Grewel, Berkeley
- Property Owner Ido and Tamar Oppenheimer, Berkeley

Further Information:

All application materials are available online at: <http://www.cityofberkeley.info/zoningapplications>. The Zoning Adjustments Board final agenda and staff reports will be available online 6 days prior to this meeting at: <http://www.cityofberkeley.info/zoningadjustmentsboard>.

Questions about the project should be directed to the project planner, Allison Riemer, at (510) 981-7433 or ariemer@cityofberkeley.info.

Written comments or a request for a Notice of Decision should be directed to the Zoning Adjustments Board Secretary at zab@cityofberkeley.info.

Communication Disclaimer:

Communications to Berkeley boards, commissions or committees 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 a City board, commission or committee, 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 secretary of the relevant board, commission or committee. 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 secretary to the relevant board, commission or committee for further information.

Communications and Reports:

Written comments must be directed to the ZAB Secretary at the Land Use Planning Division (Attn: ZAB Secretary), or via e-mail to: zab@cityofberkeley.info. All materials will be made available via the Zoning Adjustments Board Agenda page online at this address: <https://www.cityofberkeley.info/zoningadjustmentboard/>.

All persons are welcome to attend the virtual hearing and will be given an opportunity to address the Board. Comments may be made verbally at the public hearing and/or in writing before the hearing. The Board may limit the time granted to each speaker.

Correspondence received by 5:00 PM, eight days before this public hearing, will be provided with the agenda materials provided to the Board. Note that if you submit a hard copy document of more than 10 pages, or in color, or with photos, you must provide 15 copies. Correspondence received after this deadline will be conveyed to the Board in the following manner:

- **Correspondence received by 5:00 PM two days before** this public hearing, will be conveyed to the Board in a Supplemental Communications and Reports, which is released around noon one day before the public hearing; or

- **Correspondence received after 5:00 PM two days before** this public hearing will be saved in the project administrative record.

It will not be possible to submit written comments at the meeting.

**Accessibility Information / ADA Disclaimer:**

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date.

SB 343 Disclaimer:

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available to the public. Please contact the Land Use Planning Division (zab@cityofberkeley.info) to request hard-copies or electronic copies.

Notice Concerning Your Legal Rights:

If you object to a decision by the Zoning Adjustments Board regarding a land use permit project, the following requirements and restrictions apply:

1. If you challenge the decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice.
2. You must appeal to the City Council within fourteen (14) days after the Notice of Decision of the action of the Zoning Adjustments Board is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, the following requirements apply:
 - A. That this belief is a basis of your appeal.
 - B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
 - C. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.

From: Zoning Adjustments Board (ZAB)
Subject: FW: 1643-1647 California ST #ZP2021-0001

From: david.hornung@gmail.com <david.hornung@gmail.com>
Sent: Saturday, November 27, 2021 8:47 AM
To: Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>
Subject: Fwd: 1643-1647 California ST #ZP2021-0001

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Begin forwarded message:

From: david.hornung@gmail.com
Date: November 27, 2021 at 8:43:28 AM PST
To: zab@cityofberkeley.edu
Subject: 1643-1647 California ST #ZP2021-0001

Hello,

I'm writing in support of the update and enlargement of the property at 1643 California. It's been in rough shape for a long time and getting a refresh will be nice for the neighborhood and certainly the people that will live there. Hopefully it doesn't permanently displace the current tenants.

David
1536 Virginia

Cell: 415.385.5777
Jmalmuth@aol.com

The Malmuth Family
1636 California Street
Berkeley, CA 94703

December 1, 2021

Re: Proposed renovation at 1643 & 1647 California Street

Attention: The Berkeley Zoning Board:

I have had the opportunity to review Ido and Tamar Oppenheimer's original renovation plans and the renovation plans they are now proposing subsequent to modifications. I support the Oppenheimer's desire to upgrade the rather dilapidated structure they have been living in for the last 32 years. Indeed, based on my experience as a long-term Berkeley resident, I believe their project will provide the upgrade in our neighborhood that, overall, will be positive for our little section of California Street between Virginia and Lincoln. In sum, I believe the renovation will result in a positive contribution for their family and for our neighborhood.

My wife and I moved into 1636 California Street in April 1983. During the intervening 32 years we raised our 3 children and have continued to enjoy what has essentially been decades very close and stable relationships with our neighbors. Ido and Tamar Oppenheimer moved into 1643 & 1647 California Street a very small duplex, at the end of 1989. We, as our other long-term neighbors, count them as an integral part of our California Street community. During the intervening 31 years that Ido and Tamar lived across the street from us they also raised their lovely children, Gal, Tal, Or and Ron. The house that Ido and Tamar bought back in 1989 can be best described as a fixer upper. Ido was a tile installer and worked hard leaving early and getting home late. He actually tiled our home during its renovation. However, with the costs of raising their four children, Ido and Tamar could not afford the expense of renovating their home. As the years pass our neighborhood watched as their home fell into greater disrepair. It was sad to see but there was nothing they could do.

Gal, Tal, and Or are now adults, have secured jobs in the Bay Area and moved out of their childhood home at 1643 & 1647 California Street. Ron however is disabled. He has been diagnosed with a genetic disorder called X-linked retinoschisis XLR5 gene and is losing his limited sight. Ron is not permitted to drive. He relies exclusively on BART and the bus for some semblance of independence. The North Berkeley BART is two blocks from our homes as is the nearest bus stop. Now that 3 of Ido and Tamar's children have finished college they have an opportunity to renovate their home. Ido and Tamar are ecstatic, as are we, and their other neighbors; after so many years living in a rapidly dilapidating and unsafe structure, they will finally be able fix up their home while securing a place for Ron to live.

Ido and Tamar's home is very small and their lot is one of the smallest in the surrounding area. Their family has grown and they regularly have large family gatherings of one kind or another. As such, their needs have grown but the size of their house remains, small and cramped. It is for this reason I am writing the City of Berkeley. I understand that a principle exists regarding percentage of lot coverage. However, less tangible but no less important things that may not be included in the building codes include, long-term and stable neighborhoods, community, and assistance with a disabled child.

I have spoken to Ido and Tamar. Their dream is to remain in Berkeley in the house of their dreams where they have lived for 32 years, raised their children and have been such an integral part of our neighborhood. And as one of their close neighbors I pray that Berkeley will find a way to allow them to remodel their home to fit their needs and Ron's.

ATTACHMENT 4
ZAB 07-14-2022
Page 3 of 15

Cell: 415.385.5777
Jmalmuth@aol.com

The Malmuth Family
1636 California Street
Berkeley, CA 94703

Thank you,

A handwritten signature in black ink, appearing to read "Jeff Malmuth", with a stylized flourish extending to the right.

Jeff Malmuth

Cell: 415.385.5777
Jmalmuth@aol.com

The Malmuth Family
1636 California Street
Berkeley, CA 94703

November 1, 2020

Re: Proposed renovation at 1643 & 1647 California Street

To whom it may concern:

My wife and I moved into 1636 California Street in April 1983. During the intervening 37 years we raised our 3 children and have continued to enjoy what has essentially been decades very close and stable relationships with our neighbors. Ido and Tamar Oppenheimer moved into 1643 & 1647 California Street a very small duplex, at the end of 1989. We, as our other long-term neighbors, count them as an integral part of our California Street community. During the intervening 31 years that Ido and Tamar lived across the street from us they also raised their lovely children, Gal, Tal, Or and Ron. The house that Ido and Tamar bought back in 1989 can be best described as a fixer upper. Ido was a tile installer and worked hard leaving early and getting home late. He actually tiled our home during its renovation. However, with the costs of raising their four children, Ido and Tamar could not afford the expense of renovating their home. As the years past our neighborhood watched as their home fell into greater disrepair. It was sad to see but there was nothing they could do.

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Ido and Tamar's home is very small and their lot is one of the smallest in the surrounding area. Their family has grown and they regularly have large family gatherings of one kind or another. As such, their needs have grown but the size of their house remains, small and cramped. It is for this reason I am writing the City of Berkeley. I understand that a principle exists regarding percentage of lot coverage. However, less tangible but no less important things that may not be included in the building codes include, long-term and stable neighborhoods, community, and assistance with a disabled child.

I have reviewed the proposed renovation plans and I am in full agreement with them. I believe the renovation will result in a positive contribution for their family and for our neighborhood.

I have spoken to Ido and Tamar. Their dream is to remain in Berkeley in the house of their dreams where they have lived for 31 years, raised their children and have been such an integral part of our neighborhood. And as one of their close neighbors I pray that Berkeley will find a way to allow them to remodel their home to fit their needs and Ron's.

Thank you,



Jeff Malmuth

November 17, 2020

To Whom It May Concern:

I am the homeowner living at 1639 California St. since 1979. It has been my pleasure to be a neighbor of the Oppenheimer Family since they arrived in 1989. I have been invited to dance, circus performances, graduations, front yard visits and profited from their apricot and lemon tree for many years. As their family grew, they decided to enlarge their living space, rather than move to a bigger home. While this is against City of Berkeley housing regulations, the outside of their home has deteriorated and I support their plans to upgrade, improve and remodel their home to suit their changing needs. The stairs are steep and showing separation from the foundation. Their safety, as well as visitors and essential workers will continue to be at risk, and City of Berkeley impediments only add to the time delay in this repair. I recently invested in a complete renovation of my front yard, and this leaves the Oppenheimers home looking vulnerable and frankly, unattractive. This remodel makes sense and should be allowed to proceed.

Sincerely,

Barbara Fritz
1639 California St.
Berkeley, 94703

Nicholas Armour, City Project Planner

This is an addendum/clarification of my previous letter regarding the planned project at 1647 California St. of Ido and Tamar Oppenheimer. While I am pleased that plans to upgrade the property are in progress, the current design will have serious consequences affecting my property:

- 1) I will lose nearly all the light from the south for most of winter.
- 2) The lack of light will significantly impact the extra warmth I enjoy during those darker days. I expect an added burden relating to costs of heating the house when I am home will have a financial as well as ecological impact. As I am now retired, I am often spending more daylight hours at home, especially in the southward-facing room. Ido and Tamar are aware of my disappointment in their design, in spite of minor alterations, shade studies demonstrate loss of light.

I don't know how much my dislike of this aspect of the plans will effect City of Berkeley decisions, I am requesting some consideration of the current plan.

Sincerely,

Barbara Fritz
1639 California St.
(510) 508-1822
bfritz@sonic.net

Regarding Opposition to Application of Remodel at 1643/1647 California Street

- The proposed 3,800 sq ft, 6-bathroom, 3-level house is very excessive for the neighborhood. It will have a significant negative impact on my privacy and enjoyment of my patio and kitchen. I feel that the quality of my life will actually be degraded if this project is permitted to go forward as currently presented.
- The impact on the enjoyment of my patio will be significant. Currently, the area is very private. I have trees and bushes along the fence that divides my property with that of 1609 Virginia Street. The other three sides of the patio are flanked by the back wall of my house and the walls of my two garages. I mainly see the sky when looking up. If the owners to my north are allowed to build their proposed remodel, I would see a looming structure looking down on me and my guests instead of the sky. As I have a fairly small interior (about 800 sq ft), and we often spill onto the patio in nice weather, my privacy and the pleasure in my home would be greatly diminished. Also, privacy in my kitchen would be impacted as the remodel would allow the owners to look down into that area of my house.
- I don't think the owners of this remodel project know the comfort and enjoyment that their neighbors take from the use of their outdoors areas. They almost never use their backyard and have not developed it with sitting areas, plants, etc. That is their choice of course, but I just don't think that they realize what they are asking of their neighbors. Especially during Covid 19, I regularly have family and friends for gatherings on my patio, and we all enjoy it immensely. The lack of privacy would clearly have a very negative impact on our gatherings.
- I have invested a large amount of money in a remodel of my house/duplex: new roof line, siding, windows, and new foundation on 3 sides of the structure. I also remodeled the interior, keeping it two units and one level. My remodel did not require any variances or use permits as I kept the original footprint. The size of the owner's "duplex" at 1643/1647 California is almost identical to the size of my duplex, but my lot size is larger. I feel that I improved my property and kept within the size and spirit of the neighborhood. I think that the value and visual appeal of my house will significantly decrease with a very large adjacent house impinging on the privacy of my home.
- I know the neighbors at 1609 Virginia Street also considered the spirit and welfare of the neighborhood and the impact on neighbors in their extensive remodel and improvement of their property.
- I think that the large number of special permits that the proposed remodel needs shows that this new project is not appropriate for the neighborhood. The house would be the largest on the block and on the smallest lot. The city planning staff was concerned about the number of Use Permits and Variance requested. They also noted that the elimination

of the top floor would still allow for a large house (2,600 sq ft) for the occupants and would not impact the neighbors in such a negative way.

- I think that parking on California Street could be negatively impacted with this remodel. It is probably fine to have no off street parking for a small house, but this proposed huge house may need more cars for the occupants.
- My son and family live in south Berkeley and will inherit my duplex. I have shown him this remodel plan, and he thinks it is excessive and will decrease the value/appeal of my property.
- I am concerned that the proposed remodel is not for the owners use, and that they simply want to maximize their profit for resale. They have lived in a 1,300 sq ft house for more than 30 years while raising four children, and now they want to suddenly increase the size three times to 3,800 sq ft!
- In all of their submissions, the owners have been untrue concerning my feelings about their remodel when they indicated that I support their plan. They knew that I had significant concerns. I absolutely do not in any way support their plan and have never told them that I do. I am very disappointed about their misrepresentation since we have always had a good relationship. When the owners initially approached me about this remodel, they emailed me a narrative summary of the project. When I said that I couldn't follow the write up, I asked if they were planning a third floor. They replied "Yes" and then offered a blueprint of the project. I was now able to see that I could not endorse it. Because of how I was approached, I am now concerned that the neighbor at 1639 California Street does not realize that she will have no sun on the south side of her house during several months of the winter. Depending on when/what she saw of the remodel plans, there could be a number of things that she would not like.

Because the latest resubmission does not include many of the modifications to the plans that were requested by the City Planning Staff, and it does not consider the quality of life of the neighbors or their property values, I ask the Zoning Adjustment Board to deny or request a major modification to the plan before resubmission and continuation of the hearing.

Sincerely,

Kay Bristol
1651 California Street
Berkeley CA, 94703

(510) 872-9334

November 14th, 2021

To: City of Berkeley Project Planner (Nicholas Armour) & Berkeley Zoning Adjustments Board
RE: 1643/1647 California St., Application #ZP2021-0001

Dear Berkeley ZAB members and Mr. Armour,

As owners and residents of 1609 Virginia St., the property directly east of (behind) 1643/1647 California St., we are deeply opposed to the scope of the proposed project. We request that the Zoning Adjustment Board either deny the application outright or ask for a major modification to the plan before resubmission and continuation of the hearing on this matter. We want to clarify that this request is entirely based on the plans and scope of the proposed project and on the impact these would have on our property and the neighborhood; we have had cordial neighborly relations with the project proponents for more than 20 years and hope that will continue, but we simply cannot agree with the proposed project.

Our request is based on multiple factors:

- the impact of the proposed project on privacy, light and air to us and other adjacent neighbors,
- zoning rules and the considerable number of adjustments (Use Permits, Administrative Use Permits, and Variances) being sought via this application,
- the out of proportion scale of the proposed structure considering the small lot size and the zoning in our neighborhood,
- the removal of two small living units, in favor of one large home and an apartment, and
- the fact that the application ignores the suggestions from the city planner regarding how to make the remodel have significantly less impact on the neighborhood.

The proposed expansion from a one-story duplex to a three-story structure (two floors and a fully finished basement) would bring substantial negative impact to our privacy, air and light, and in so doing would be detrimental to the peace and comfort of our family. The value of our home both currently and considering future potential improvements would also be substantially reduced, thus causing injury to our property. This harm would stem specifically from the proposed upper floor. It is also the proposed upper floor that is the primary source of negative impact to the other adjacent properties

1. The substantial reduction in light our property and home would experience is evident in the third iteration of the shadow study Mr. Armour had to request from the applicants. This shadow study shows a considerable decrease in afternoon/evening summer sunlight into our house (through both the kitchen windows on the north and west sides, and through the bedroom windows on the north side) as well as into our deck and yard. The shadow study also shows reduced winter-time light into our accessory structure which is a bedroom/office.
2. In terms of privacy, the windows from the bedroom and bathroom on the east side of the proposed upper floor would look down not only into our yard and onto our back deck, but also directly into the very large northern windows of our kitchen and bedroom (~58 sq. ft. of glazing)

(and through the bedroom, into our bathroom), as well as into the bedroom of our backyard cottage. (Please see pictures at the end of this letter.)

3. Given the small footprint of our house, we use our yard daily, almost year-round, for eating, socializing and relaxing. As we have remodeled our home and yard we have created multiple, small outdoor spaces that we use for various purposes as if these were outside rooms. Our yard is very much an extension of our house. As a result, the harm to privacy and light from the proposed project would have a tremendously negative impact on us.

Together, these impacts to privacy and light would damage both our peace and comfort, and thus our quality of life. The proposed project would also be injurious to the value of our property and to the value of the substantial improvements we have made to our property over the years.

The proposed project is inconsistent with the lot size and the neighborhood as shown by the large number of adjustments (UP/AUP/Variance) that would be needed to proceed. When we were searching for a home to purchase more than 20 years ago, we educated ourselves about zoning ordinances -- as we feel all property owners have the responsibility to do -- so that we would understand both the limitations we might face on future renovations to our property, and the potential for construction and/or limitations on construction of the adjacent properties. It was in part with the knowledge of the non-conforming nature (lot coverage, density and setbacks) of this neighbor's duplex that we purchased our home. We similarly considered those limitations a few years ago when we remodeled our home to maximize our light and privacy without ourselves seeking any zoning adjustments. We knew what the zoning regulations would and would not allow our neighbors to do on their properties, and we redesigned our home with those parameters in mind.

Now the application before you appears to seek a total of seven UP/AUP/variances. These permits and variances are being sought to overcome the limitations of the small lot size of their property and to allow construction that would dramatically lower the value of our house. The list of requested adjustments are:

1. UP for enlarging a non-conforming density unit,
2. UP for addition/expansion of non-conforming lot coverage,
3. AUP for extension of non-conforming rear setback,*
4. AUP for extension of non-conforming front setback,
5. AUP for addition over 600 sq. ft.,
6. AUP for creation of 5th bedroom, and
7. Variance for exceeding lot coverage.

*Note that while the applicants claim in their final submission that the rear setback AUP is no longer needed because they eliminated the rear deck on the upper floor, we wonder whether this is correct given that they still propose to build the full depth of the new basement level within the setbacks. Even if the AUP for extension of non-conforming rear setback is no longer needed, the application would still be asking for six adjustments or exceptions to zoning ordinances

Just the sheer number of exceptions to zoning ordinances requested would seem to be a clear indication that the scope of the proposed project is beyond what is appropriate for this lot and neighborhood.

This exact point was raised by the city project planner in his response to the initial submission, "staff has concerns with numerous Use Permits and Variances requested to expand existing structure." Nevertheless, the applicants' resubmissions failed to heed his suggestions.

Considering the circumstances of this particular case and the injury that would be caused to our peace and comfort as well as to our property and improvements thereto, we hope the ZAB will find it cannot approve the requested use permits and variance.

The proposed remodel is out of character with the neighborhood while also reducing the amount of small, lower cost units on the block. Our neighborhood is zoned as R-2 Restricted Two-Family Residential, with the purpose being to promote medium density residential areas with reasonably open and spacious development including a range of housing types ranging from single-family, to duplexes to small apartment structures. The R-2 zoning exists to "make available housing for persons who desire a range of housing choice with a relatively large amount of open space... (and)... to protect adjacent properties from unreasonable obstruction of light and air."

The property with the proposed remodel was originally built in 1924 as a 1,342 square foot duplex with a 60 sq. ft. porch and no off-street parking on a 3,142 sq. ft lot. This was a 44.6 % lot coverage, exactly the maximum allowed for a single-story structure. Such a duplex on a small lot is a perfect way to incorporate lower income units into a neighborhood. In 1952, the storage sheds (167 sq. ft. not shown on the maps in the submission) were added, further increasing lot coverage to 49.94% and thus making this a non-conforming property.

The proposal now before the board seeks to further expand the density on this lot by allowing one of the largest houses on the block to be built on one of the smallest lots on the block -- without requiring any off-street parking. The proposal seeks permission for two small (667 sq. ft.) units to be replaced by a 3,763 sq. ft structure comprising a very large home (3,262 sq. ft.) and a tiny (501 sq. ft.) apartment. We feel that this proposal does not fit with the purpose and parameters of the zoning for our neighborhood.

The project proponents try to justify their high-density proposal by saying that multi-story homes are normal, that they don't have the space to add off-street parking, and that they are removing the storage sheds to create more yard space. Specifically, the application seems to suggest that the owners should somehow be allowed to make a *quid pro quo* trade by removing the added 167 sq. ft. storage sheds, and instead adding another floor to their structure. This makes no sense given that the initial adjustment allowed to construct the storage sheds had absolutely no impact on the neighbors, while adding another floor on top of the existing roof very much does.

The concern around the proposed structure being too large was noted in the response from the city project planner who asked for "significant modification to the proposal" and recommended elimination of the entire upper floor to eliminate impact to the neighbors. Unfortunately, the proposal resubmission ignored this suggestion.

The property in question is extremely run down and clearly in need of significant repair. While we, like many others in the neighborhood, would therefore like to see the property maintained and renovated, we do not feel it is appropriate to suggest – as the application does – that it is impossible to remodel the property if this application for a massive three-level house is not approved. Both we and other neighbors have invested substantial amounts into extensive remodels that did not adversely impact adjacent properties or require zoning adjustments.

For the above reasons we ask that the Zoning Adjustment Board either deny this proposal outright or request a major modification, in line with the changes originally suggested by the city project planner, before resubmission and continuation of the hearing. A proposal that eliminates the top floor and retains the fully finished basement would still double the size of the living space to ~2700 sq. ft. and would thus still be one of the largest houses on the block, while having no impact on the neighbors.

Most sincerely,

Adam Safir
cederfir@hotmail.com
510-725-9350

Anna Cederstav
acederstav@gmail.com
510-847-3371



Picture 1: View from our north-facing bedroom window at eye level. The beige house beyond our red garage is the one proposed for expansion. The current windows on that property are not visible from our bedroom, but windows on a top story would look directly into our bedroom.



Picture 2: View from our west-facing kitchen window at eye level. The beige and stucco house behind their metal-bar gymnastics structure is where a third level blocking the trees and sky would be built.



Picture 3: View from our north-facing kitchen window at eye level. The current windows on back of 1643/1647 California house are not visible from our kitchen, but the windows on a top story would look directly into our kitchen.

Armour, Nicholas

From: Kay Bristol <kbristol@berkeley.edu>
Sent: Friday, June 25, 2021 2:26 PM
To: Armour, Nicholas
Subject: Remodel ZP2021-0001

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear Mr. Armour

I am the neighbor to the south of the proposed remodel ZP2021-0001 at 1643/1647 California St. I own the small duplex at 1651/1653 California St. I live at 1651 California St. and I really do not want this remodel to be approved. As Anna Cederstav and Adam Safir said, it would adversely effect the light, privacy, appeal and probably the property value of my duplex. I feel the submission of this remodel was misleading as to my support of it.

Anna, Adam and I have each spent a large amount of money remodeling our properties in their original footprint. We do not want the aesthetics or resale value of efforts to be diminished.

If possible, could you please advise me if this remodel project moves forward?

Regards,
Kay Bristol
1651 California St,
Berkeley, CA 94703
510-872-9334

June 25th, 2021

To: Project Planner, City of Berkeley (Nicholas Armour)
RE: 1643/1647 California Street, Application #ZP2021-0001

Dear Mr. Armour,

As the owners and residents of 1609 Virginia St., the property directly east of the above cited proposed project, we would like to express our opposition to the proposed remodel of 1643/1647 California St. The proposed project requests multiple zoning exceptions/variances to enable construction of a three-story house (two stories plus a finished basement) in place of the current one-story structure.

While we recognize that the house in question is in need of repairs, we do not agree with the proposed expansion. The proposed remodel would bring significant adverse impacts to the light, air, and privacy of our house and yard, which in turn would dramatically reduce our property value.

When we purchased our home in 1999, we researched the zoning regulations to determine whether adjoining properties could be remodeled in ways that would harm our property value. We learned that the excessive lot coverage and non-compliance with rear property setbacks meant that neither of the structures due west of ours, should be allowed to undergo substantial expansions. We can only assume that the Oppenheimers did similar research before purchasing their house, and thus knew they would likely not be allowed to do this kind of remodel.

We know from personal experience how strict the City of Berkeley is with variances and rear property setbacks. In 2006, we wanted to insulate the ceiling in our backyard cottage. Yet the City would not allow us to raise the roof of that structure by the mere couple of inches required to install the insulation required by code. We can thus only assume that the City will absolutely not permit the substantial variances requested for this project

For the record, we note that the application states that "We also have support of both neighbors on each side." This is incorrect. There are three neighbors in question. We most certainly do not support the proposed project and we know that the neighbor immediately to the south is similarly opposed, again because of the proposed height increase, privacy and lot coverage issues.

Please contact us with any follow-up questions you may have, as well as to let us know if this project advances, in which case we would plan to submit more detailed comments.

Most sincerely,

Adam Safir
cederfir@hotmail.com
510-725-9350

Anna Cederstav
acederstav@gmail.com
510-847-3371



2223 5th St. | Berkeley, CA 94710 | 510.548.7448 | info@sgsarch.com | www.sgsarch.com

July 5, 2022

Zoning Adjustment Board

RE: 1643/1647 California Street, Application #ZP2021-0001

Dear members of Zoning Adjustment Board,

This project was brought before you in Dec. 2021 and was approved unanimously by the Board with a vote of 9 to 0. Since the approval, the project was appealed to the City Council. The City Council decided to send it back to ZAB for a new review. The council did not request changes to our design, however, they requested that ZAB review the project again to ensure the HAA guidelines and Rent Ordinance were correctly applied to the project.

We have no objections to the HAA guidelines being applied to the project. We believe the project would be approved whether or not the HAA guidelines are applied.

We checked with the Rent Stabilization Counselor, and they informed us that a project of this type does not require any changes. Both units have been owner-occupied since 1994.

We believe the project, as designed, should be approved again by ZAB. The project meets the zoning guidelines, as described in the original staff report. The project has already been modified multiple times to address feedback from neighbors and the Planning office. The Planning staff informed us that they continue to recommend approving the project.

This letter includes a summary of the feedback we have received and the changes that have already been made to respond to the feedback.

Previous planning recommendations/concerns and how they were addressed in the current proposal:

1. Third Floor Setbacks are not code-compliant – Per Section 23D.28.070.D, 3rd stories must be set-back 6-feet from side property lines.

- **Response:** We changed the project design so that the project will no longer be a three story building. The building will be two stories over a basement, so the third floor setback requirements no longer apply.
- **Details:** The proposed design no longer has a garage at the basement level. Since the garage is eliminated, the building will not be raised up 3'-0" (as was in the original plan). The first floor level remains where it is now. Per the building and planning

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definition of a floor, the basement is no longer a floor. Therefore the building is two stories over a basement and the third floor setback is not an issue.

2. Rear yard setback not met.

- **Response:** The upper floor plan was redesigned so the new addition meets the rear yard setback requirement.

3. While Staff understands that any expansion of this building will trigger Use Permits and Variances, Staff recommends a significant design modification to this proposal before Staff could potentially make the findings and consider support of the application. Specifically, staff recommends elimination of the entire third floor, while retaining the concept of lifting the house slightly to create the new lower floor.

- **Response:** We completed significant design modifications based on Staff recommendations and Planning concerns, and now Staff recommends approving the project.
- **Details:**
 1. The proposed design no longer has a garage at the basement level. Since the garage is eliminated, the building will not be raised up 3'-0" as was in the original plan. The first floor level remains where it is now. This will reduce the overall building height.
 2. We have eliminated the balcony at the rear (east side). Therefore, no AUP needed for the rear yard setback.
 3. We have also set back the second floor addition from the existing front house wall (set back 2'-8" - 13'-6 from the front property line). The existing structure is set back 10'-10" from the front property line. This helps to keep the existing front facade height with minimal changes and recessing the addition back.
 4. We have adjusted the position of the north side of the house by 1" to ensure we have the appropriate setback.
 5. Redesign the roof. This brings the overall building height down by 5'-2" on the left and 6'-3" on the right, when compared to the original submittal.
 6. We made some minor changes to the building materials to isolate the second floor addition from the existing single story above the basement. When compared to the earlier version, this helps with the overall scale and massing of the house.
 7. Overall, the building looks like and feels like a two-story house over a basement. Just like hundreds of houses in Berkeley.

Neighbor's concerns:

The project went through multiple changes to address potential concerns from neighbors to the North, East, and South (see Figure 1).

Figure 1. Satellite view showing the neighbors to the North, East, and South.



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Affect on 1639 California St – Barbara Fritz (house on North "left" side)

- **Response:** The project continues to have full support from Ms. Fritz.

- **Details:**
 1. Ms. Fritz approved the previous design (as stated in her first letter dated Nov. 17, 2020).
 2. Since the redesign, modifications have further reduced any impact on Ms. Fritz's property. Our redesign of the project lowered the high point of the roof by 5'-2" on her side of the property, thus reducing the impact to her house.
 3. Ms. Fritz continues to support the project after the redesign and has submitted a letter of support of the project, signed April 8, 2022 (see Figure 2).

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Affect on 1651 California St – Kay Bristol (house on South "right" side)

Ms. Bristol expressed potential privacy concerns caused by visibility into her backyard.

- **Response:** We took privacy into consideration and adjusted the layout to address the concerns. The window near Ms. Bristol's backyard is now a small bathroom window with obscure glass that does not have visibility into Ms. Bristol's backyard.

- **Details:**
 1. Today, Ms. Bristol's property has 3 windows facing the Oppenheimer property: 2 small living room windows with obscure glass and 1 kitchen window. The buildings are far apart (over 15 feet): they are separated by a setback on the Oppenheimer property and a driveway on Ms. Bristol's property. The windows are already visible from the Oppenheimer property, so this project doesn't make any meaningful changes to the visibility of these windows.
 2. Visibility into Ms. Bristol's backyard is already very limited from the 2nd floor because of the placement of Ms. Bristol's garage and vegetation (see Figure 3). Despite limited visibility, we still made modifications to reduce potential concerns.
 3. The original 2nd floor design had 2 bedrooms on the south side of the property. We changed the layout so there is now 1 bedroom and 1 bathroom on the south side of the property.
 4. With the new layout, the room near Ms. Bristol's backyard is a bathroom. It has a small bathroom window with obscure glass, so it does not have visibility into Ms. Bristol's backyard.
 5. With these changes, we feel that we've reasonably addressed the privacy concerns. All houses have windows that face other houses. That's the reality of living in an urban setting.

Ms. Bristol expressed concern that the Oppenheimers are motivated to complete the project so they can sell the house, instead of living in it.

- **Response:** The Oppenheimers want to complete the project and keep living in their home.

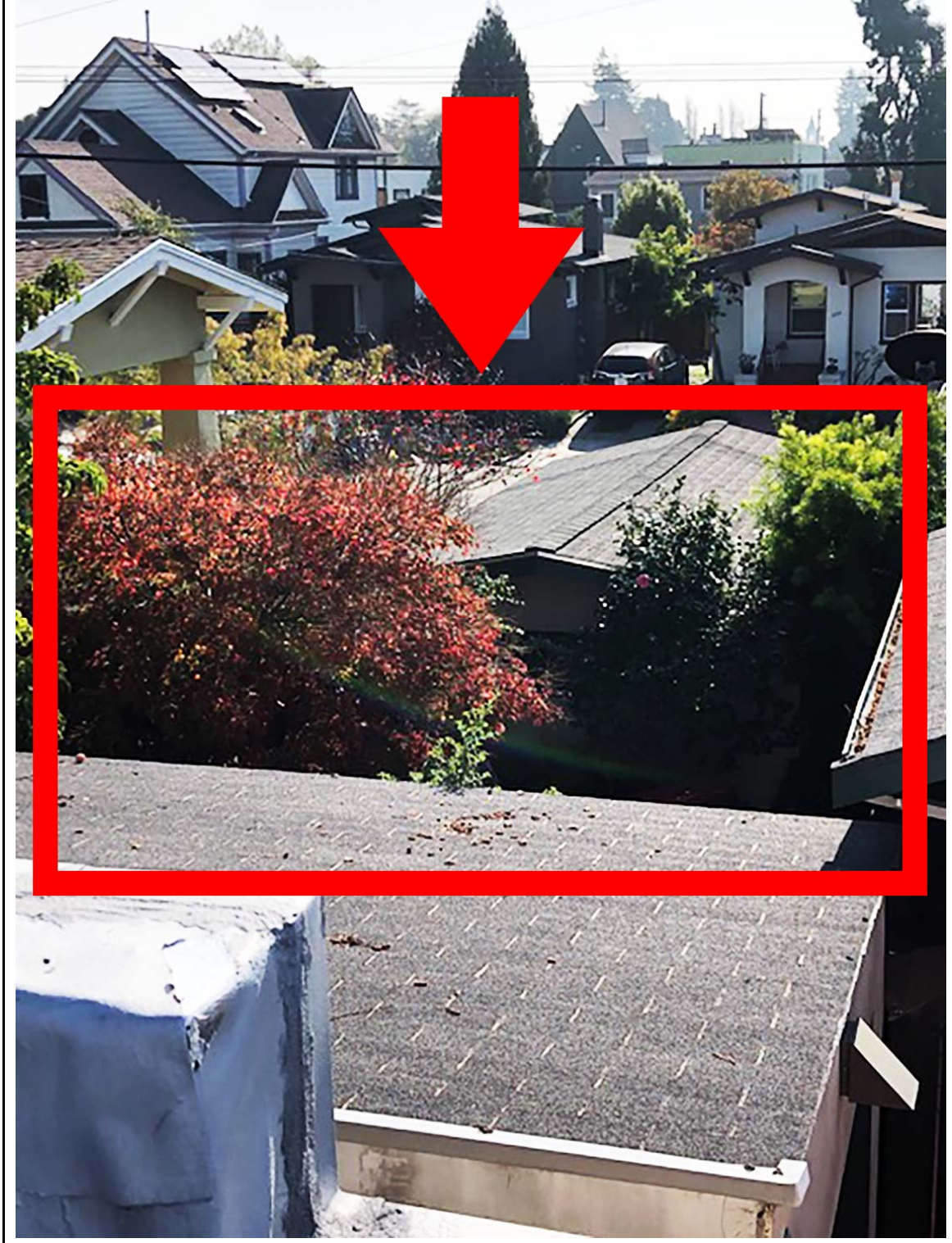
Figure 3. Photo taken from the Oppenheimer's roof, facing South. The view into the

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backyard of 1651 California St. is limited because of the placement of Ms. Bristol's garage and vegetation (identified with a red box and red arrow). This roof is the height of the proposed second story.



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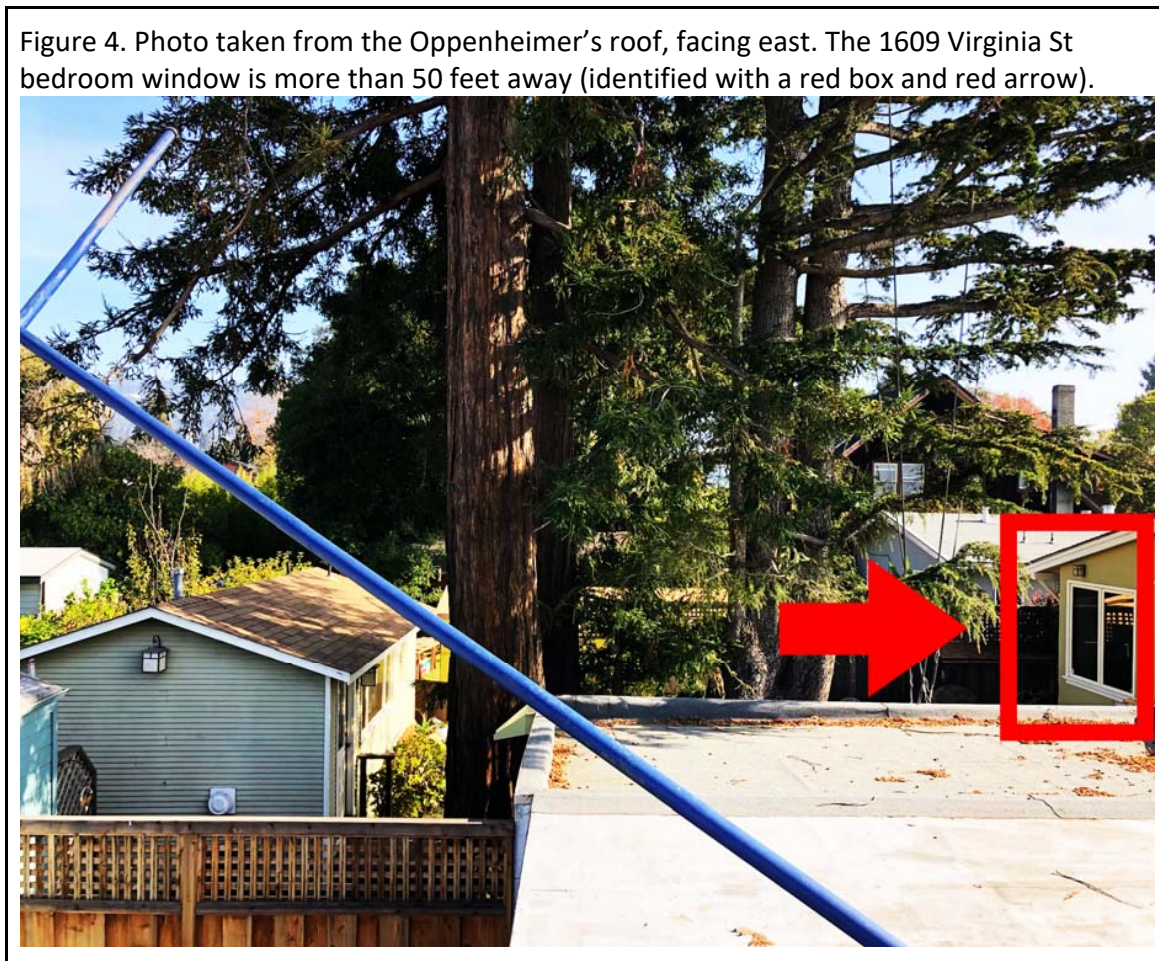
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Affect on 1609 Virginia St – Adam Safir and Anna Cederstav (house on East "rear" side).

Privacy concerns: "The impact of the proposed project on privacy, light and air to us and other adjacent neighbors."

- **Response:** There is very little impact on privacy, light and air to 1609 Virginia St.
- **Details:**
 1. The 1609 backyard is adjacent and in-line with the Oppenheimer house. 1609 Virginia St building is not directly in-line with the Oppenheimer house, it is South-East of the Oppenheimer house.
 2. The proposed design is generally orientated towards California St (the front of the property, far from the rear property).
 3. We changed the layout so that the room closest to 1609 Virginia St is a bathroom. With this new layout, the rear windows closest to 1609 Virginia St are high shower windows with obscure glass.
 4. The remaining room on the North-East corner is a bedroom. In this position, the bedroom window is more than 50 feet away from the 1609 Virginia St property bedroom window. The angles of the windows are not directly facing each other. The distance and the angle minimize the privacy concern (see Figure 4).
 5. The decreased height of the project has reduced the light impact. The only sunlight impact is shortly before sunset during the summer. The house is already partially in shadow at these times due to the large trees that are already in 1609 Virginia St's backyard.
 6. With these changes, we feel that we've reasonably addressed the privacy and lighting concerns. All houses have windows that face other houses and we've ensured their position, size, and material minimize any privacy concerns.



Number of adjustments: "Zoning rules and the considerable number of adjustments (Use Permits, Administrative Use Permits, and Variances) being sought via this application."

- **Response:** Projects on this site naturally trigger several AUPs or use permits. The variance is no longer requested, per staff report.

Scale for neighborhood: "The out of proportion scale of the proposed structure considering the small lot size and the zoning in our neighborhood"

- **Response:** We are proposing a second story addition with a scale that is typical for the neighborhood.
- **Details:** The original design lifted the existing house to create a new garage and a full floor at the ground floor which created a three story house. The current design does not lift the existing house. We have eliminated the much-desired off-street parking

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since it is not feasible without lifting the house. The current ground floor is mostly below grade. This is a second story addition only.

Removal of units: "The removal of two small living units, in favor of one large home and an apartment"

- **Response:** No unit is being removed. This project keeps the property with 2 units.
- **Details:** We checked with the Rent Stabilization Counselor, and they informed us that a project of this type does not require any changes. Both units have been owner-occupied since 1994. If either unit was to be rented in the future, the homeowner's would register the unit as required.

Ignoring city planner: "The fact that the application ignores the suggestions from the city planner regarding how to make the remodel have significantly less impact on the neighborhood."

- **Response:** The application does not ignore suggestions from the City Planner, and the project has undergone significant changes to accommodate feedback from the City Planner and the neighbors.
- **Details:**
 1. Eliminated the need to raise the existing house to create a garage level.
 2. Reduced the project roof height by 5'-2" on the left side and 6'-3" on the right side.
 3. Set back the front and rear façade of the new addition.
 4. We have adjusted the position of the north side of the house by 1" to ensure we have the appropriate setback.
 5. Complied with other requests from the City Planner.

Potential deck at rear: Mr. Safir stated that the owners might build a roof deck at the rear upper floor facing their house.

- **Response:** The project does not contain any deck in the rear of the building.
- **Details:** The roof area in question is only 3'-1" deep, which is not enough for a roof deck. This roof area was created to comply with the setback requirements. The Oppenheimer family does not intend to build an illegal deck.

City handling: Mr. Safir's expressed concerns with how the city handled this project/ZAB hearing:

- *Appellants allege that ZAB and staff erroneously applied the Housing Accountability Act (HAA) in a way that inappropriately limited ZAB's ability to modify the project.*
- *Appellants allege that staff failed to provide adequate opportunities for neighbors to receive information and provide input on the proposed project.*

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- *Appellants allege that several procedural requirements were not met when story poles were not installed, the typical zoning project “yellow poster” was not installed, and the staff report was not available far enough in advance before the ZAB meeting.*
- *Appellants dislike the City’s Zoom meeting format.*
- *Appellants are frustrated with the City’s appeal process.*
- **Response:** Please see staff report and responses to the City Council.

This project that is before you once again is the same project that you originally approved unanimously 9 to 0. Even after applying HAA guidelines, we believe the project meets the city’s zoning guidelines. The project has gone through significant changes to respond to feedback from the city and neighbors. We started with a three story house with off-street parking, and the project is now a two story house over a basement and NO off-street parking. What we are proposing is merely a second story addition that is not much different from any other second story addition. We are keeping both residential units as required. Because of the unique size of this parcel, nothing can be done here without requesting several Use Permits.

We really hope you can see the merits of this project and the compromises we have made throughout the process.



Sundeep Grewal – project architect

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June 9th, 2022

To: City of Berkeley Project Planner (Allison Riemer) & Berkeley Zoning Adjustments Board
RE: 1643/1647 California St., Application #ZP2021-0001

Dear Ms. Riemer and Berkeley ZAB members,

This letter explains our continued opposition to the proposed expansion and modification of the duplex at 1643/1647 California St. that is once again before the ZAB. Please note that we are not opposed to a remodel of this structure, as it is indeed in dire need of repairs. Rather, we oppose the proposed conversion of this relatively small duplex on a very small lot into an enormous single-family home with an associated in-law unit, all for use by a single family.

We feel that if the city planning department and ZAB were to permit this project, Berkeley would be applying subjective interpretations of what is considered to be “acceptable impacts” to arbitrarily permit construction that substantially increases the value of one Berkeley property at the expense of two neighboring properties. Because we see no reason why the city should approve the proposed project without major modifications, this submission presents multiple options for modifications and conditions that could be required to advance Berkeley’s development goals as formulated by the City Council, and to reduce impacts on neighbors.

A. The appeal to the City Council

Given that this project is once again before the ZAB as a result of our successful appeal to the City Council, we first want to explain our reasons for presenting the appeal:

1. Starting in February of 2021 and throughout the year leading up to the December ZAB meeting, we had multiple discussions and email exchanges with Nick Armour¹ in which we discussed various levels of potential modifications to the proposal. These ranged from the elimination of added floor(s) to modification of window sizes. In our final conversation before the 12/9 ZAB meeting, Mr. Armour suggested that we request “major modifications” to the project and reference his 2/5/21 staff advisory comments. Those comments recommended the proponent eliminate the upper floor and propose a two-level, 2700 square feet design that would raise the height of the building by only three feet, such that while “there would likely still be some impacts to the light, air, and privacy and/or views of neighboring properties, these impacts would be substantially reduced.” Acting on Mr. Armour’s advice, we therefore focused our submission and intervention to the ZAB on our desire for such major modification and the denial of the project as proposed. Nevertheless, and to our utter surprise, the final staff report presented by Mr. Armour to the ZAB suggested approval of the project - possibly due to the erroneous interpretation of the HAA. Moreover, when asked about potential other modifications by the ZAB during the hearing, Mr. Armour made no mention of the options we had discussed with him. We were floored, to put it mildly.

¹ Nick Armour is the prior city planner on this project who resigned shortly after the initial ZAB hearing about this project.

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2. While we appreciate the use of Zoom for these meetings and especially during the pandemic, we felt that our participation in parts of the ZAB meeting was restricted unjustly. During the 12/9 meeting, ZAB members asked questions to which we had answers and we did 'raise our hand', but were not called on to provide answers. With no chat and no video available, we were not able to communicate with the board in response to questions asked, nor was it possible to otherwise signal that we had such answers. Thus, for example, the question about whether any other modifications to the project had been proposed went unanswered.
3. We were confident that the Planning department memo cited during the ZAB's discussion of this project was based on a significant misinterpretation of the law, as has since been confirmed by the City Attorney's office and by the City Council.² This definition was debated by ZAB members and clearly influenced the interpretation of the board's authority to limit the size of the addition. As a result of our appeal, the city attorney reviewed the Planning department memo and found it to be incorrect (density only means number of units as it always has), thus clarifying that the ZAB indeed has the authority to require not only minor modifications, but can also compel major modifications that reduce the square footage of proposed projects, as long as project revisions do not force a decrease in the number of residential units. The ZAB thus clearly has the authority to deny the additional levels proposed, in whole or in part.
4. We believed the limits that seemed to be being placed on the ZAB's authority to deny projects to be counter to the desire for sustainable and just development in Berkeley. The ZAB is appointed by the City Council and according to the city web-site serves to "approve or deny permits related to the use and development of land in Berkeley." The City Council has a clear agenda and is enacting policies to promote environmentally sustainable housing, meet ambitious climate change targets, promote diverse and integrated neighborhoods, and increase the availability of housing for low to medium-income families. Protecting the existing smaller housing units in Berkeley is critical to all of the above goals. A policy - as seemingly proposed by the Planning Department - in which all projects that can seek a permit for expansion must receive said permit up to the maximum potentially allowed project size, runs entirely counter to the idea that the ZAB exists to help the City Council approve and deny permits related to development in our city, in accordance with the goals adopted by the City Council. If every UP or AUP that is sought must be issued by default, there would be little need for a ZAB. And there would be no way for the city to meet its ambitious just and sustainable development goals. A big driver for our appeal was to reaffirm the right and responsibility of the ZAB to limit certain kinds of development in Berkeley. It's not just about making minor modifications, it's about radically re-envisioning what kind of development happens in Berkeley.

B. The proposed project in light of City priorities and responsibilities

From our perspective, projects like the one proposed are clearly not aligned with current development or climate change goals and priorities in Berkeley, and the planning department and ZAB should therefore be exercising their full authority to modify or deny the project.

1. **The city should be protecting existing smaller lower-income units in Berkeley whenever it has the authority to do so.** That is especially the case when - as is apparently the case here - those units are rent-controlled. The mayor and the city council have been working diligently to add

² That interpretation inappropriately limited the ZABs authority to require project modifications by considering the definition of 'density' to mean not only 'number of units' but also 'square footage and number of bedrooms'.

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affordable housing that promotes economic and racial diversity in Berkeley. While most of the attention is on new housing, an existing network of more affordable housing is integrated in neighborhoods via duplexes and other low-impact multi-unit buildings. This historical infrastructure is a critical piece of Berkeley's more affordable housing, and should be protected with the full authority available to the city. If the city fails to preserve such units, it will reduce availability of more affordable units in neighborhoods and push that type of housing into large multi-unit structures on the major thoroughfares, a distinctly anti-integration move.

- a. When the project proponents purchased their duplex more than 30 years ago as a young couple, they were purchasing the smallest property on the block, and one that was already built beyond maximum allowed lot coverage. Likely their decision to purchase this property was related to affordability. Those units should not now be turned into a mansion. Other young homeowners, elderly residents, and/or those with more limited finances need access to that housing.
 - b. We recognize that the project proponents may somehow feel the need for a huge five-bedroom, six-bathroom house with a home gym and storage room to be able to entertain their adult children, and eventually grandkids. Even when they first purchased it, this property was too small for their family, which is why they illegally converted the duplex into a single-family home. If the owners have outgrown the property they purchased, they should find a different property rather than trying to push the limits on construction beyond what is allowed.
 - c. Two of three of the adjacent neighbors have significantly remodeled their homes to improve utility without increasing either footprints or height in ways that impact neighbors. Although the project proponents have repeatedly asserted this to be the case, there is no argument to be made that a remodel of this two-unit structure somehow requires a significant expansion in size. The duplex immediately to the south of this property is a perfect example of how this kind of duplex can be nicely remodeled to maintain two small, one-story units.
2. The city has a responsibility to balance decisions such that it is not unduly favoring one property owner's interests over those of others.
- a. In this case, if the proposed project were to proceed, we – the owners of the property at 1609 Virginia- would be losing critical summer light on the west and north sides of our house. Our backyard is almost entirely shaded by two large redwoods and because it lies north of our house. As a result, much of the sun we get is on the small back-yard deck and in the garden sitting area we have created in the former driveway to the west of our house (see pictures 1a and 1b below). The latter is also the area in which we hang all of our washed clothes to dry. (Something we do to save energy/help prevent greenhouse gas emissions.) Both of these areas would be significantly shaded in the late afternoon/early evening by the proposed upper story if this project were to proceed.

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Picture 1a and 1b (taken 3:30pm 6/9/22): 1a – picture of our rear deck, taken looking south-west; 1b – picture of our ‘driveway’, taken looking north (property in question is to the left/west of the berry vines and garage).

- b. All of us – the owners of 1609 Virginia and 1639/1641 California - would be losing privacy in our house and yards. For 1609 Virginia, the project would add multiple windows that look directly into our garden and into the very large bedroom and kitchen windows on the north side of our house (see pictures 2a and 2b below). In addition, the project design has left a clear avenue for the project proponents to via a simple permit-modification bring back a second story deck on the east side of the house, from which occupants would similarly look straight into our house and back yard.³



Pictures 2a and 2b. 2a – north fenestration; 2b – west/rear fenestration

The privacy in the yard of the property at 1639/1641 California is similarly impacted, not to mention the “feel” and lack of space/air that will be created by a towering new structure so close to our houses that obstructs our view of the sky from multiple windows and sitting areas.

³ Said deck was removed in one of the submissions as required by the planner. Nevertheless, the location of the windows and a maintained parapet feature mean that the deck could easily be built either illegally or after requesting a simple permit modification, unless specific conditions prohibiting that deck are written into the permit.

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- c. While we understand that we live in an urban environment, we diligently checked zoning codes when we bought our house and therefore knew that the lot with the proposed project was already built to exceed lot coverage on a very small lot. We believed that no vertical additions would occur on that particular lot even though such additions might be allowed on lots with more yard space and lesser lot coverage. We feel that given the size of the lot and the proximity to neighbors, and the fact that we spend a great deal of time in our yards, a structure as tall as the one proposed with considerable shadow and privacy impacts is detrimental not only to our comfort and welfare, but also to our property value and investment. Moreover, the removal of a small, rent-controlled unit presents a detriment to the neighborhood in light of the need for more affordable types of units. Conversely, permitting this construction would very positively and arbitrarily benefit the project proponents by allowing them to convert their duplex into a multi-million-dollar mansion with an attached ADU.
- d. The presence and proposed removal of a small backyard shed that has neither electricity nor plumbing and generates no impact on neighbors is being used to permit construction of a second story/third level with substantial impacts on neighbors. When the duplex was first constructed, it was built to the exact limit of maximum allowed lot coverage. Sometime thereafter, a backyard shed was built, thus exceeding lot coverage. Now, the city is considering counting the removal of that shed as a reduction in lot coverage that will enable construction of a two-story building that exceeds lot coverage. With or without the shed, no second story should be allowed on this property, and the removal of the shed is certainly not an equitable trade-in for the second story. If the shed didn't exist and couldn't be removed a variance would be required for this project. If this were new construction, a two-story structure would definitely not be allowed on this lot at the current footprint. In either scenario, a far smaller building design would be required, to protect the neighborhood and prevent detrimental impacts on neighbors. It is important to note that permitting the removal of a shed to obviate the need for a variance for lot coverage sets a precedent and creates a pathway by which any Berkeley homeowner who desires to build a multi-story structure exceeding lot coverage could first get a permit to build a shed, likely without objections from neighbors, and then simply "trade" that shed in for a multistory building that requires no variance. That makes no sense. If the lot coverage is already at the maximum allowed for the lower level, as is the case here, no second story should be allowed without a variance, which should not be given lightly.

In light of the above we ask that the ZAB work to find a compromise where the property can be repaired/remodeled and possibly even expanded by adding some square footage in a way that prevents impacts or allows only truly minimal impact to neighbors.

The below is a range of requests/suggestions for modifications of the proposed project listed in order of our preference, with the first options by far being preferred.

1. Choose to protect and maintain the lower income, rent controlled units of this North-Berkeley duplex, by not approving a Use Permit to exceed lot coverage on this property. Require the

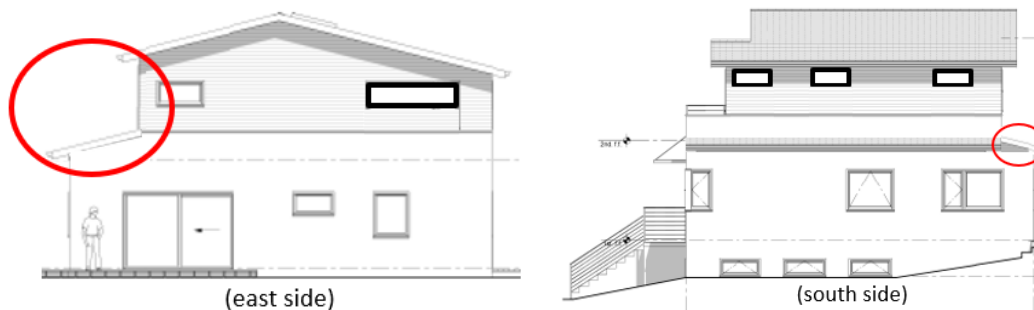
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owners to reconvert the current single-family residence into the original and legally registered duplex, thus bringing back the second unit to the neighborhood.

2. Expand the structure to add only a basement level, thus doubling the square footage of the structure to around 2700 sq.ft. and significantly increasing the size of one of the two units. **This option would be in line with the maximum square footage that the law would allow on this lot, if this project were new construction.** This option would have little to no impact on neighbors.
3. Raise the current structure by ~3 feet such that a new first story could be built at street level, again increasing square footage to around 2700 sq.ft. and allowing easier access and more light into the lower story. Note that this design enables construction of a two-story structure and **is the design that city planner Nick Armour originally suggested to the applicants in his February 2021 staff advisory comments.** In this case, as well as for options 4 and 5 below, addition of a 2-3' obscuring trellis above the current property line fence could mitigate privacy concerns.
4. If the city opts against preserving lower income housing and decides to permit the three-level, two-story structure, then we would request a modification to significantly limit the size of the upper floor addition so that it is pulled back from the south side of the building by approximately 10 feet. This could reduce privacy and shadow impacts on the adjacent neighbors that oppose the project. Also require the modifications described in option 5 below. (See Pictures 3a and 3b)



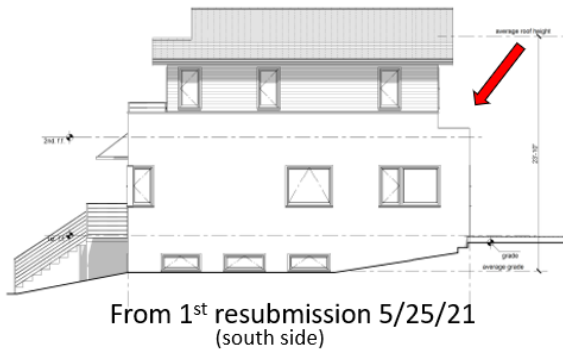
Pictures 3a and 3b. 3a - Reduce upper story square footage on south side until shadow studies show sufficiently reduced impact on neighbors. Also modify east-facing windows to be awning windows that do not look into neighbor's yards; 3b - Remove parapet feature from east side of upper level to prevent potential construction of a deck, and modify south-facing windows to awning windows.

5. As a very last option, if the permit for this mansion on this tiny lot were nevertheless to be issued, require the following modifications on the south and east side of the house
 - a. Modify all upper-level windows facing south and east to be awning windows (positioned above 5') (See Pictures 3a and 3b above)
 - b. Remove the parapet feature from the upper-level east side of the house and replace it with a sloped roof that will not collect debris from the overhanging trees in a difficult-to-reach area. The original submission that the city opposed contained an east-facing deck that was required to be removed in the first resubmission (see Picture 4).

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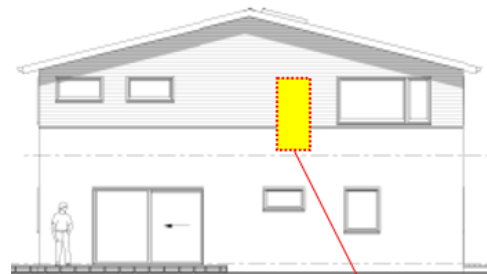
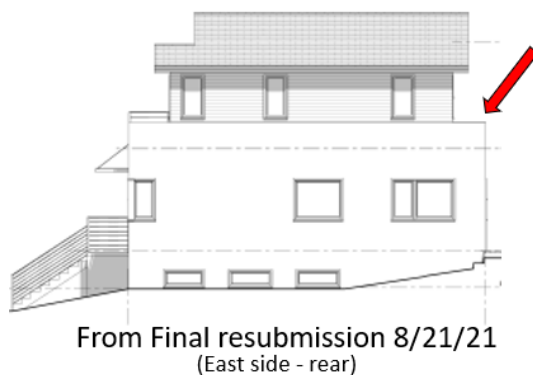
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Picture 4 –No parapet feature on east side as explained on page 3 of the resubmission: “We have eliminated the balcony at the rear (east side)”.

The proponents’ second resubmission brought back the parapet feature of that deck without showing a doorway onto the deck (See Picture 5a and 5b). Considering the inconvenience of having a ‘deck’ that collects debris but is in accessible, we can only assume that the proponents intend to submit for a project-modification post permit-issuance to once again add the door and create the deck. If they were not planning to do so, they would surely have altered the roofline and the placement of their west wall windows in the final design.



Location of possible door addition if a rear ‘deck’ is added later.

Pictures 5a and 5b – parapet feature added back into submission, without the doorway that could be added via a permit-modification after receiving the permit.

Thank you. We greatly appreciate your careful review of this matter. Most sincerely,

Anna Cederstav, Adam Safir, and Kay Bristol

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Jacob, Melinda

From: Zoning Adjustments Board (ZAB)
Subject: FW: The HAA as applied in the December 9 ZAB hearing

From: Anna Cederstav AIDA <acederstav@gmail.com>
Sent: Monday, December 27, 2021 10:31 PM
To: Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>; Armour, Nicholas <NArmour@cityofberkeley.info>; Adam Safir <cederfir@hotmail.com>
Subject: The HAA as applied in the December 9 ZAB hearing

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

To whom it may concern:

These comments are in reference to the December 9, 2021 ZAB hearing, in which the ZAB voted unanimously to approve a project proposed for 1643-47 California street in Berkeley. We would like to request reconsideration of that decision for multiple reasons, the most important being what we see as a potentially incorrect application of the Housing Accountability Act (HAA). If posted as decided at the ZAB hearing, we plan to appeal this decision to the City Council, but we believe it is in the City's best interest to resolve this matter and reconsider the project before it is allowed to reach that level. We are therefore submitting some of our comments about this process and decision in advance of any appeal.

In short, the decision made, if allowed to stand, threatens all of zoning in Berkeley and significantly reduces the power of the City to protect the character of its neighborhoods, as well as the availability of lower income housing within those neighborhoods. The City's interpretation of the law and the ZAB decision made based on that interpretation is entirely counter to the intended purposes of the HAA (to address the housing crisis and particularly the lack of affordable homes at below market rates in California) and could promote massive development of luxury housing in Berkeley, all but eliminating affordable residences in the City. That's because under the current interpretation, there would be no way for the city to stop property owners from enlarging their homes and building to the max limitations of their property – regardless of whether or not their properties comply with existing zoning regulations.

The project proposed for 1643-47 California is on a site where an original duplex was illegally converted by the project proponents from two one-bedroom units into one single-family residence long ago, and which has been owner occupied as such for decades. The proponents now seek to expand the building from a total of 1,342 to 3,763 square feet by reconverting it into a duplex, not creating any new units in the building but rather reducing the size of one unit to a smaller apartment (501 sq ft.), and massively increasing the size of the other unit to become an enormous 5-bedroom, 4-bathroom unit including a home gym (3,262 sq ft. total).

The project in question is – as stated in the staff report – “non-conforming for lot coverage, density, and yards” and “does not comply with the applicable, objective zoning standards.” Nevertheless, the ZAB decided to approve the project over the strong objections of adjacent neighbors and without even considering requiring modifications such as lowering the building height or reducing the amount of square footage to be added.

It was evident during the hearing that the ZAB made its decision in large part because it felt forced under the HAA to approve any project that increases housing availability – defined at one point in the discussion as being the units, number of bedrooms, or square footage in the development. The ZAB also felt it could not require modifications because there are not yet objective standards that have been passed by Berkeley for implementing the HAA.

Further, it was clear at the hearing that the ZAB had little prior experience in applying the law; one ZAB member noted that this was the first time they were asked to review this kind of project with the HAA being in force. At one point, a

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section from a memo from the city attorney that much of the ZAB did not seem to fully understand was used to suggest that the ZAB had no option other than to vote to approve the project.

The process of consideration and review of this project and the decision made by the ZAB sets a dangerous precedent for zoning and housing development in Berkeley and should not be allowed to stand. If the decision made is upheld without further consideration as to the applicability of the HAA, then in effect no future expansion project in Berkeley could be denied because all such projects are likely to request an increase in units, bedrooms, or square footage. This is clearly not the intent of the law. An interpretation of the law along these lines would contravene the HAA in that it would force the city to permit all proposed housing expansions up to the maximum size allowable for the lot even when zoning standards are being violated. The result would be one in which all small – and thus affordable and lower income – housing in Berkeley would eventually disappear.

Our reading of the HAA and experience during the ZAB meeting highlights the following inconsistencies, among others.

1) The HAA states that a preliminary housing development application is to be considered complete when the applicant has provided information including “The number of proposed below market rate units and their affordability levels” (Section 65941.1.10). **This requirement exists because the restrictions placed on cities via the HAA apply largely in cases where the proposed development is intended for “very low, low, medium or moderate income housing.” (Section 65589.5(d))** We saw no information in the application for this project indicating that there has been a discussion as to whether or not the proposed project falls into these categories of affordable housing.

2) The city staff report to the ZAB, in section B “Housing Accountability Act Analysis” suggests that the ZAB can only deny approval of a project if there is a finding of significant adverse impact on public health, and no feasible way of mitigating such impact. However, **a close read of the law, shows that these conditions ONLY APPLY in the event of a “housing development project, ..., for very low, low-, or moderate-income households, or an emergency shelter” (Section 65589.5(d))**

3) Given the above limitation related to the affordability of the housing to be developed, the city should assess whether the proposed development fits into an affordable housing category prior to deciding whether this section of the HAA applies. There are two ways for a housing development to qualify under the HAA (Section 65589.5 (h) (3, 4); either 20% of the units to be developed must constitute low-income housing and be guaranteed to be maintained as such for at least 30 years, or 100% of the units to be developed must fall in the category for moderate income housing. The law provides specific guidance as to how to make these determinations based on recent local income data. Considering the units proposed in this project, we do not see how either of these two conditions could possibly be met for the proposed project, nor do we see any evidence of the city having tried to make the determination. The proponents also explicitly state that they intend to continue using the building as their personal residence and for their son.

4) **Assuming that the above affordable housing requirements are not met by the project, the section of the law cited in the staff report as limiting the rights and power of the city does not apply to this project.** The only other limitations the HAA places with respect to approval for housing developments are delineated in section 65589.5 (j). The staff report to the ZAB clearly states that “the proposed project does not comply with the applicable, objective zoning standards.” Therefore, it is only subsection 2 of section J that applies in this case:

(2) (A) If the local agency considers a proposed housing development project to be inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision as specified in this subdivision, it shall provide the applicant with written documentation identifying the provision or provisions, and an explanation of the reason or reasons it considers the housing development to be inconsistent, not in compliance, or not in conformity as follows:

(i) Within 30 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains 150 or fewer housing units.

5) The above suggests that – rather than believing it has to feel forced to approve this project -- the only thing the city would need to comply with the HAA in this case, is to a) request affordability data on the project to be

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able to consider the project complete and b) assuming the low to moderate income limitation doesn't apply to the project, issue a finding as to why the project is not in compliance with current applicable objective zoning standards within 30 days of the project proposal being deemed complete. There is no reason for the ZAB or City to feel it must approve the project.

6) The staff report also suggested that if it chose to do so, there is nothing that hinders the ZAB from requesting "modifications to the project to mitigate impacts or avoid specific adverse impacts on surrounding properties, so long as the project is not approved at a reduced density." That fact doesn't mean that the ZAB has to approve the project, again considering that the property already fails to meet the zoning standards.

7) Further, during the hearing, it was suggested that the law should be interpreted to mean that cities are prevented from requiring that proposed developments reduce the project square footage. This is counter to the traditional interpretation of density which is taken to mean number of units. Applying a definition based on square footage or bedrooms for determining density should not be allowed because the purpose of the law – as set out in extensive detail in the beginning sections – is clearly to provide AFFORDABLE housing in California, and to make sure that cities do not develop in ways that prevent lower income residents from being able to continue living there. Interpreting this law to mean that Berkeley must approve the conversion of a duplex consisting of two one-bedroom units into a duplex consisting of a small apartment and a gigantic luxury home clearly runs counter to the purpose of the law and sets a dangerous precedent for its interpretation in Berkeley and other California cities.

8) To correctly implement the HAA in the spirit of the law and for the purpose of safeguarding affordable housing in Berkeley, the City and ZAB should-- rather than approving the conversion of a small, affordable living unit into a giant luxury home -- safeguard its right to impose limits on the conversion of affordable units into luxury properties, as it is fully entitled to do when a project that does not provide very low to moderate income housing does not comply with applicable objective zoning standards.

Again, the purpose of the HAA is to increase the amount of affordable housing available in California, and to bring clarity and efficiency to permit processes and timelines. The law should not be interpreted to prevent cities from enforcing zoning standards and laws related to projects that do not in any way contribute to – or worse, detract from—the provision of affordable or lower income housing. The project in question in fact REDUCES the amount of affordable housing in Berkeley and thus should not benefit from the HAA.

We will appreciate a response to this email as well as to our prior requests for information regarding the December 9 ZAB hearing and Berkeley City guidance on how to apply the HAA.

Thank you so much and best wishes for a happy new year!

-Anna Cederstav
1609 Virginia Street

Jacob, Melinda

From: Zoning Adjustments Board (ZAB)
Subject: FW: Thursday 12/9 ZAB meeting - item # - 1643 California

From: Adam Safir <cederfir@hotmail.com>
Sent: Thursday, December 9, 2021 9:08 PM
To: Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>
Subject: Thursday 12/9 ZAB meeting - item # - 1643 California

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A few questions and comments:

- As there is an ongoing discussion about 'objective standards', why are you approving projects at all right now.
- If all use permits have to be approved anyway, this should not be discussed and should be incorporated into what the city planners are doing. You asked why we didn't have any specific asks about the project and it is specifically because we thought that we were at the stage of asking you to request major modifications because of all the UPs/AUPs. If we knew these were a forgone conclusion (which is totally bizarre) then we would absolutely have requests/suggestions.

**Rent Stabilization Board**

June 6, 2022

To: Allison Riemer, Associate Planner, Planning & Development Department

From: Matt Brown, General Counsel

By: Lief Bursell, Senior Planner

Be Tran, Associate Planner

Subject: **1643-47 California Street**

On April 28, 2022, you wrote to Jen Fabish to inform her of the project at 1643-47 California Street. The owners planned to reduce the size of 1643 California by 150 square feet and to increase the size of 1647 California with a second story addition and a below-grade basement. The Zoning Adjustments Board (ZAB) approved the project and the ZAB decision was appealed to City Council. Council remanded the project to ZAB and requested clarification on whether the Rent Stabilization and Eviction for Good Cause Ordinance (“Ordinance”) applied to the property.

Property History

Alameda County records show that Ido and Tamar Oppenheimer have owned the property since December 1989. City of Berkeley records indicate that the building was constructed in 1924 as a one-story duplex.

Rent Stabilization Board records and microfiche records also indicate that 1643-47 California is a duplex. A homeowner’s exemption was not claimed in the 1979 tax rolls; therefore, there is no evidence that property qualifies for the owner-occupied duplex exemption (also known as the “golden duplex” exemption) under Berkeley Municipal Code (BMC) Section 13.76.050 F.

Rental History

Both units at 1643-47 California St. are registered with the Rent Board. The Initial Registration Statement indicates that both units were rented as of May 26, 1981. Rent Stabilization Board records reflect the two units at 1643-47 California Street are claimed as “owner-occupied” since 1998 and 1993, respectively.

Ellis Act

The building at 1643-47 California has not 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 Stabilization Board has no record of any verified cases of harassment or threatened or actual illegal evicting occurring at 1643-47 California.

Rent Control Status

While the both units at 1643 and 1647 California Street were previously registered and under rent control, the property is currently exempt from the Ordinance since both units are claimed as owner-occupied. Owner occupancy does not grant a permanent exemption from the Ordinance and both rent control and eviction protections apply to any future tenancies.

Project Analysis

Since there are currently no tenants at the property, the project as approved by ZAB is not currently affected by the Rent Ordinance. However, both BMC Chapter 23.326 (formerly BMC 23C.08) and the Housing Crisis Act of 2019 Senate Bill (SB) 330 would apply to this project if a dwelling unit was eliminated regardless of whether the units are rented or owner-occupied. BMC 23.326 controls the elimination of any dwelling unit. Under SB 330, both units are considered as “protected units” because both are subject to rent control when rented.

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

Sincerely,



Matt Brown
General Counsel

Attachment 3



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

DECEMBER 9, 2021

1643 & 1647 California Street

Use Permit #ZP2021-0001 to 1) create new lower basement level, 2) construct a new, second story, and 3) modify the existing duplex layout, resulting in a 3,763 square foot duplex on an existing property

I. Background

A. Land Use Designations:

- General Plan: Medium Density Residential
- Zoning: R-2 – Restricted Two-Family Residential District

B. Zoning Permits Required:

- Use Permit, under Berkeley Municipal Code (BMC) Section 23C.04.070.C to enlarge a lawful non-conforming structure that is non-conforming by reason of violation of the maximum allowable lot coverage;
- Use Permit, under BMC Section 23C.04.070.E to enlarge a lawful non-conforming structure that is non-conforming by reason of violation of the maximum allowable density;
- Administrative Use Permits, under BMC Section 23C.04.070.B to horizontally extend two non-conforming yards (front and rear);
- Administrative Use Permit under BMC section 23D.28.030 to permit a major residential addition;
- Administrative Use Permit under BMC Section 23D.28.070.C to allow an addition over 14 feet in height.; and
- Administrative Use Permit under BMC Section 23D.28.050 to construct a fifth bedroom

C. CEQA Recommendation: It is staff's recommendation that the project is categorically exempt pursuant to Section 15301 of the CEQA Guidelines ("Existing Facilities"). The determination is made by ZAB.

Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

D. Parties Involved:

- Applicant Sundeep Grewel, Berkeley
- Property Owner Ido and Tamar Oppenheimer, Berkeley

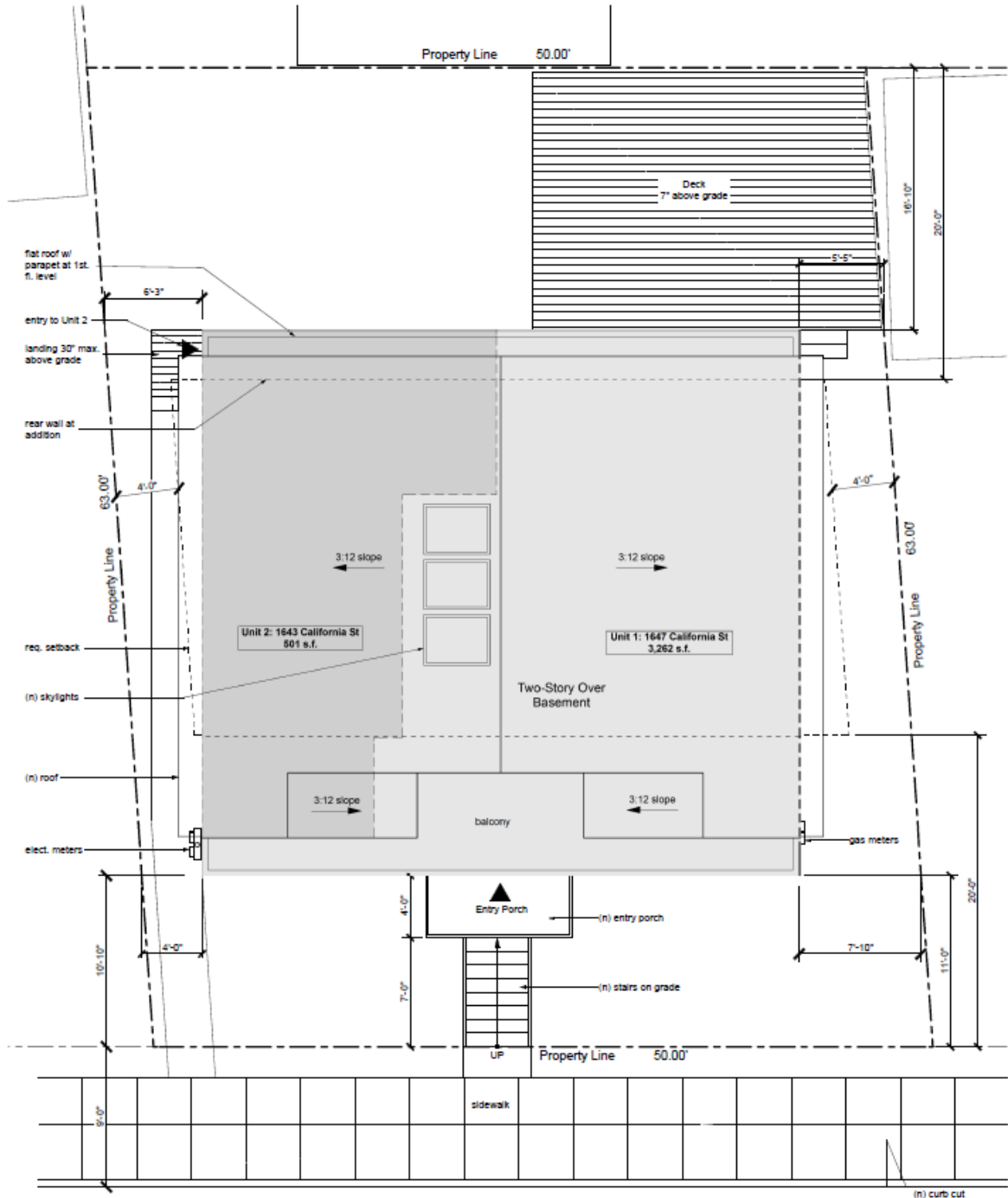
Figure 1: Vicinity Map



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Figure 2: Site Plan



2 Proposed Site Plan



Figure 3: Front Elevation

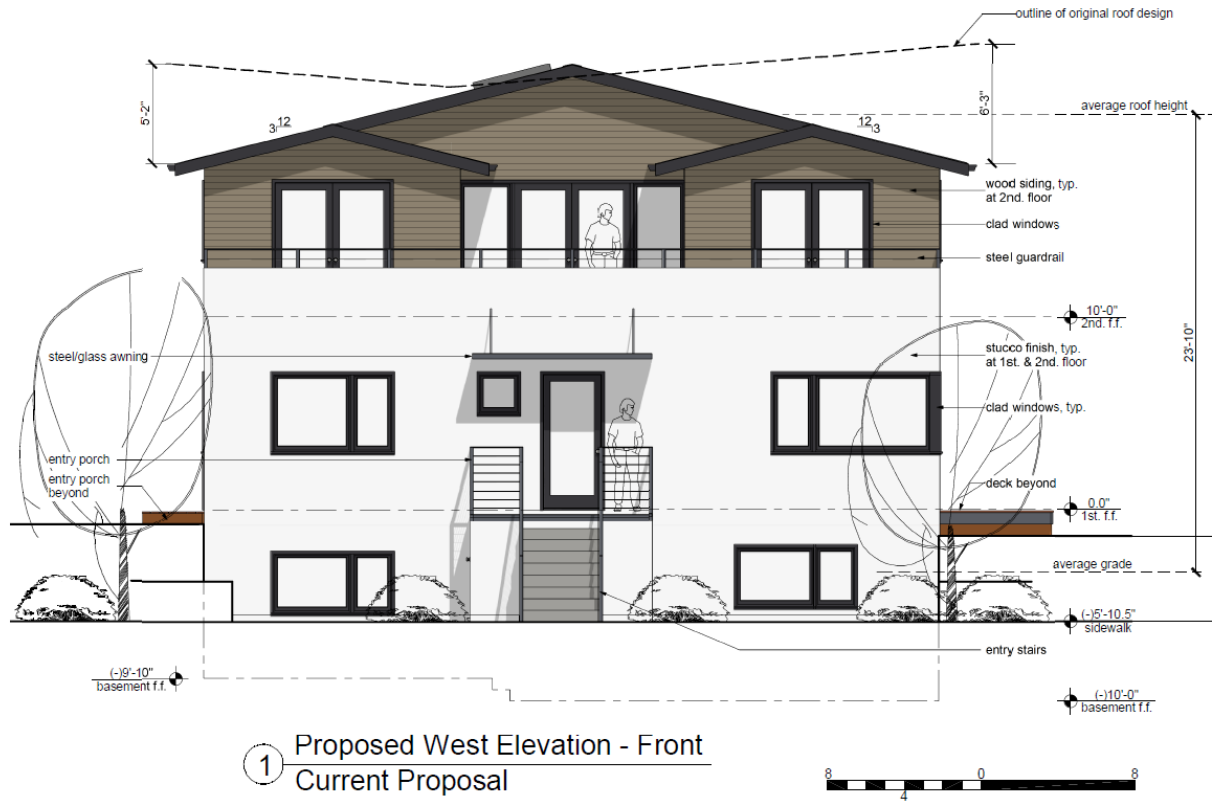


Figure 4: Rear Elevation



Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Multi-Family	R-2	Low Medium Density Residential
Surrounding Properties	North	Single-Family		
	South	Single-Family		
	East	Single-Family		
	West	Multi-Family		

Table 2: Special Characteristics

Characteristic	Applies to Project?	Explanation
Affordable Child Care Fee for qualifying non-residential projects (Per Resolution 66,618-N.S.)	No	Project is entirely residential, and therefore, this project is not subject to this resolution
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)	No	Project is entirely residential, and therefore, this project is not subject to this resolution
Affordable Housing Mitigations for rental housing projects (Per BMC 22.20.065)	No	The project proposes to maintain the two dwelling units that currently exist at the property.
Creeks	No	The site does not contain a mapped creek or a creek culvert.
Density Bonus	No	The project is not proposing to add dwelling units through a Density Bonus application

Natural Gas Prohibition (Per BMC 12.80.020)	No	This project is an application for construction to an existing two-unit structure, and is therefore not subject to the Natural Gas Prohibition.
Historic Resources	No	The project site is not designated as a Landmark by the City, nor is the application proposing to demolish the existing structure.
Housing Accountability Act (Gov't Code Section 65589.5(j))	Yes	The existing structure is non-conforming for lot coverage, density, and yards. The proposed additions would continue these non-conformities. Therefore, the proposed project <u>does not</u> comply with the applicable, objective zoning standards. However, the project is eligible for zoning adjustments through the use permit process, and there are no objective standards or findings for considering such permits, so the HAA still applies to the project. See Section V.B of this report for additional discussion on compliance with the Housing Accountability Act.
Housing Crisis Act of 2019 (SB330)	Yes	The project is: all residential; a mixed-use project with at least two-thirds of the square-footage residential; or for transitional or supportive housing. See Section V.A of this report for additional discussion on the sections of SB330 that apply to the project.
Oak Trees	No	There are no Coast Live Oak Trees on the property.
Rent Controlled Units	No	The property contains two units that are owner occupied and are not considered rent controlled.
Residential Preferred Parking (RPP)	No	This property is not located in a Residential Preferred Parking Zone
Seismic Hazards (SHMA)	No	The site is not located within an area susceptible to liquefaction, Fault Rupture, or Landslides as shown on the State Seismic Hazard Zones map.
Soil/Groundwater Contamination	No	The project site is not listed on the Cortese List (an annually updated list of hazardous materials sites). Per §15300.2 of the CEQA Guidelines, a categorical exemption may be used on sites not listed on the Cortese List.
Transit	Yes	The site is located near the corner of California and Virginia Streets, one block east of Sacramento Street. Sacramento is served by AC Transit line 52 and there are bus stops one block away to the west.

Table 3: Project Chronology

Date	Action
January 8, 2021	Application submitted
September 24, 2021	Application deemed complete
November 23, 2021	Public hearing notices mailed/posted
December 9, 2021	ZAB hearing
February 7, 2022	CEQA deadline

Table 4: Development Standards

Standard		Existing	Proposed Total	Permitted/ Required
BMC Sections 23D.28.070-080				
Lot Area (sq. ft.)		3,100	No change	5,000 min
Gross Floor Area (sq. ft.)		1,334	3,763	N/A
Dwelling Units	Total	2	No Change	1 max (1 per 2,500 sq.ft. of lot area)
Building Height	Average (ft.)	13'-6"	23'-10"	28' max
	Stories	1	2	3 max
Building Setbacks (ft.)	Front	10'	No Change	20' min
	Rear	16'-10"	No Change	20' min
	Left Side	3'-11"	4'-0"	4' min
	Right Side	5'6"	5'5"	4' min
Lot Coverage (%)		50%	44%	40% max
Usable Open Space (sq. ft.)		500	1,029	800 min
Parking	Automobile	0	0	2 min

II. Project Setting

A. Neighborhood/Area Description: The project site is located in the North Berkeley neighborhood, on the east side of California Street at the corner of California and Virginia Street. It is one block east of Sacramento Street and four blocks west of Martin Luther King Jr. Way. The surrounding area consists of residential uses ranging from one- and two-story single-family dwellings, and two-story multi-family buildings. Bus service is available via transit lines on Sacramento Street.

B. Site Conditions: The subject property is a small, rectangular lot, oriented in the east-west direction, and is approximately 3,100 square feet in total area. It features a one-story main building originally constructed as a duplex. The building faces west, toward California Street. At some point in the past, the kitchen of the left side unit (1643 California) was removed without permits, and a doorway was installed between the two units, effectively converting the house to one unit, without the necessary approval of a Use Permit to remove a dwelling.

The property and structure is currently non-conforming due to several reasons: 1) the property is non-conforming to the lot coverage, currently at 50 percent coverage where 45 percent coverage is the limit for a one-story structure; 2) the property is non-conforming to the allowable residential density, containing two units when only one unit is permitted due to the lot size (prior to the unauthorized removal of 1643 California); and 3) the structure is located within the required front, rear, and left side yards.

III. Project Description

Proposed Project: The project would make several alterations to the existing property. The existing residential structure would be shifted by 1-inch to the south to create a conforming left (north) side setback of 4 feet. The proposal would restore the left dwelling unit at 1643 California, but would shrink the size of this unit from 650 square feet to 501 square feet. Additionally, the floor plan of the main level of right unit (1647 California) would be modified to serve as the main living area, with an open floor plan kitchen/dining/living room, plus a full bathroom. The structure would be expanded by creating a new basement level¹, contained below the existing building footprint, solely serving 1647 California. This level would contain a family room/home gym, half bath, one new bedroom with a full bathroom, and closet and storage area. The proposal would add a new second level on top of the existing structure, also solely serving 1647 California, which would contain three new bedrooms and two full bathrooms. The second story would step in at the front to provide a balcony, and would step in from the rear to comply with the required 20-foot rear yard setback. In total, 1647 California would expand by 2,612 square feet, from 650 square feet to 3,262 square feet in total.

Other site work includes the removal of an existing accessory shed, and the construction of an on-grade deck in the southeastern corner of the rear yard.

IV. Community Discussion

A. Neighbor/Community Concerns: On January 19, 2021, the City mailed postcards to neighboring property owners and occupants within 300 feet to inform the public of the receipt of a Zoning Permit application at this site² and posted project yellow posters.

On November 23, 2021, the City mailed public hearing notices to nearby property owners and occupants, and to interested neighborhood organizations and the City posted notices within the neighborhood in three locations.

At the time of writing this report, staff has received several communications regarding the project, both in support and opposition. All communications received have been included as attachment #4.

Concerns raised include:

- a. Neighbors to the east and south have raised concerns due to the proposed increase in size of the house on a small lot.
- b. Concerns from each adjacent neighbor regarding the impacts to privacy and to shadows from the two-story design and increase in height.
- c. Concern with the project being out of scale with the neighborhood and surrounding properties, especially given the existing non-conformities of the property.

¹ The basement would not count as a story, as no portion of the basement level would be exposed to the existing grade by more than 6 feet, per the definition in BMC Section 23F.04.

² To comply with Public Health Orders related to Covid-19, the standard protocol for installation of a Project Yellow Poster and/or neighborhood contact and signatures was indefinitely waived.

Support of the application includes:

- a. Improved structure and project site;
- b. Restoration of the second dwelling unit.

V. Issues and Analysis

A. SB 330 – Housing Crisis Act of 2019: The Housing Crisis Act, also known as Senate Bill 330, seeks to boost homebuilding throughout the State with a focus on urbanized zones by expediting the approval process for and suspending or eliminating restrictions on housing development. Housing development is defined as a project that is: all residential; a mixed-use project with at least two-thirds of the square-footage residential; or for transitional or supportive housing. Sections of SB 330 that apply to the proposed project include the following:

1. Government Code §65905.5(a) states that if a proposed housing development project complies with the applicable, objective general plan and zoning standards in affect at the time an application is deemed complete, then the city shall not conduct more than five (5) hearings in connection with the approval of that housing development project. This includes all public hearings in connection with the approval of the housing development project and any continuances of such public hearings. The city must consider and either approve or disapprove the project at any of the five hearings consistent with applicable timelines under the Permit Streamlining Act (Chapter 4.5 (commencing with §65920)).

The December 9, 2021 ZAB hearing represents the first public hearing for the proposed project since the project was deemed complete. The City can hold up to four additional public hearings on this project, if needed. One of those hearings must be reserved for any possible appeal to the City Council.

2. Government Code §65913.10(a) requires that the City determine whether the proposed development project site is a historic site at the time the application for the housing development project is deemed complete. The determination as to whether the parcel is a historic site must remain valid during the pendency of the housing development project, unless any archaeological, paleontological, or tribal cultural resources are encountered during any grading, site disturbance, or building alteration activities.

The project site is not a historic site.

3. Government Code §65950(a)(5) requires a public agency to approve or disapprove a project within 60 days from the determination that the project is exempt from the California Environmental Quality Act. The project was deemed complete on July 8, 2021. Should ZAB determine the application is categorically exempt from CEQA at the December 9, 2021 public hearing, the application must be approved or disapproved by February 7, 2021.

B. Housing Accountability Act Analysis: The Housing Accountability Act (HAA), California Government Code Section 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; 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 existing structure is non-conforming for lot coverage, density, and yards. The proposed additions would continue these non-conformities. Therefore, the proposed project does not comply with the applicable, objective zoning standards. However, the project is eligible for zoning adjustments through the use permit process, and there are no objective standards or findings for considering such permits, so the HAA still applies to the project. Therefore, the City may not deny the project or approve the project at a reduced density without basing its decision on the written findings under Section 65589.5(j), above.

However, the City may request modifications to the project to mitigate impacts or avoid specific adverse impacts on surrounding properties, so long as the project is not approved at a reduced density.

C. Findings for Addition to a Structure on Parcel with Non-Conforming Lot Coverage: Pursuant to BMC Section 23C.04.070.C, additions and/or enlargements of lawful non-conforming structures that are non-conforming by reason of lot coverage are permitted with a Use Permit if the addition/enlargement does not increase coverage or exceed the height limit. As previously mentioned, the property is non-conforming to the maximum allowable lot coverage, with 50 percent coverage, where 45 percent is the District maximum on this R-2 property. The proposed addition would remove an existing shed in the rear yard, which would reduce the lot coverage to 44 percent, while creating a two-story house, which decreases the allowable lot coverage to 40 percent. While the proposed structure would still be non-conforming to the allowable lot coverage, the project would reduce the non-conformity from 5 percent over the allowable limit to 4 percent over the allowable limit. The proposed addition is located over existing covered area, and therefore, does not increase the non-conforming lot coverage. Additionally, while the addition consists of a second story addition, reaching a total of 23 feet, 10 inches, which complies with the maximum average height limit of 28 feet.

D. Findings for Addition to a Structure on Parcel with Non-Conforming Density: Pursuant to BMC Section 23C.04.070.E, additions and/or enlargements of lawful non-conforming structures that are non-conforming by reason of residential density are permitted with a Use Permit if the addition/enlargement does not increase the density or exceed the height limit. The project proposes to maintain the density at two units,

therefore, it does not increase the density. As described in Section V.C, above, the addition would comply with the allowable average height limit in the district.

- E. Findings for Addition to Vertically Extend and Alter a Structure with Non-Conforming Yards:** Pursuant to BMC Section 23C.04.070.C, additions and/or enlargements which vertically extend or alter a portion of a building which encroaches into a non-conforming yard may be of lawful non-conforming structures that are non-conforming by reason of residential density are permitted with an Administrative Use Permit if the existing use of the property is conforming and if the addition/enlargement would not 1) reduce any yard below the minimum setback requirements, or further reduce existing non-conforming yards; or 2) exceed the maximum or calculated height limits. As previously explained, the existing residential structure is non-conforming to the front, rear, and left (north) side setbacks. The proposed addition/enlargement of the house would correct the non-conforming left side setback, but is proposed to vertically extend the non-conforming front and rear setbacks. The front setback would be vertically extended both up (with the second story) and down (with the basement), while the rear setback would be vertically extended down with the expansion of the basement. The second story at the rear would comply with the required 20-foot rear yard setback. As the enlargement of the building would comply with the permitted residential use on the property, and the vertical expansions within the non-conforming setbacks would not further reduce the non-conformity, these expansions are permissible.
- F. Addition of a Fifth Bedroom to an R-2 Parcel:** Pursuant to BMC Section 23D.28.050, an Administrative Use Permit is required to approve the addition of a fifth bedroom to a parcel in the R-2 Zoning District. This project proposes to increase the total number of bedrooms on the property from four to five bedrooms. The addition of this fifth bedroom would not add density to the site, or intensify the use of the residential property.
- G. Restricted Two-Family Residential District (R-2) Findings:** This project proposes to construct a major residential addition over 14-feet in height. As required by BMC Section 23D.28.090.A and BMC 23B.32.040.A, the Zoning Adjustments Board must make a finding of general non-detriment for any Administrative Use Permit in the R-2 Zoning District. This project would add approximately 2,429 square feet to the existing 1,334 square foot duplex. 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 because of the following reasons:
- i. The project would add a second level to the home, of which there are several examples in the neighborhood.
 - ii. The second story addition would step in and comply with the required front and rear yard setbacks.
 - iii. A basement is proposed to be added. While adding additional square footage to the building, the basement would not create any new impacts to the surrounding

neighbors due to its placement partially below grade, maintaining the existing first floor level.

- iv. The neighborhood is a mix of residential uses, including apartments and single-family and multi-family homes. Existing structures in the immediate neighborhood vary in height from one to two stories.
- v. In addition, the project approval is 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 will not be detrimental.

H. General Plan Consistency: The following analysis of conformance with the 2002 General Plan goals and policies is provided only for information purposes and to provide context. They do not require findings of conformance because the proposed project is HAA-compliant.

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 H-33 – Regional Housing Needs: Encourage housing production adequate to meet City needs and the City's share of regional housing needs.
3. 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.
4. Policy UD-17 – Design Elements: In relating a new design to the surrounding area, the factors to consider should include height, massing, materials, color, and detailing or ornament.
5. 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.
6. 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.

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:

- A. APPROVE ZP2021-0001 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 August 26, 2021
3. Notice of Public Hearing
4. Correspondence Received

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December 9, 2021

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Staff Planner: Nicholas Armour, NArmour@cityofberkeley.info, (510) 981-7485

ATTACHMENT 1, EXHIBIT A

FINDINGS AND CONDITIONS

DECEMBER 9, 2021

1643 & 1647 California Street

Use Permit #ZP2021-0001 to 1) create new lower basement level, 2) construct a new, second story, and 3) modify the existing duplex layout, resulting in a 3,763 square foot duplex on an existing property

PERMITS REQUIRED

- Use Permit, under Berkeley Municipal Code (BMC) Section 23C.04.070.C to enlarge a lawful non-conforming structure that is non-conforming by reason of violation of the maximum allowable lot coverage;
- Use Permit, under BMC Section 23C.04.070.E to enlarge a lawful non-conforming structure that is non-conforming by reason of violation of the maximum allowable density;
- Administrative Use Permits, under BMC Section 23C.04.070.B to horizontally extend two non-conforming yards (front and rear);
- Administrative Use Permit under BMC section 23D.28.030 to permit a major residential addition;
- Administrative Use Permit under BMC Section 23D.28.070.C to allow an addition over 14 feet in height.; and
- Administrative Use Permit under BMC Section 23D.28.050 to construct a fifth bedroom

I. CEQA FINDINGS

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15301 of the CEQA Guidelines (“Existing Facilities”).
2. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

II. FINDINGS FOR APPROVAL

1. As required by Section 23B.32.040.A of the BMC, 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:
 - A. The project will add a second level to the home, of which there are several examples in the neighborhood.
 - B. The second story addition will step in and comply with the required front and rear yard setbacks.

- C. A basement is proposed to be added. While adding additional square footage to the building, the basement will not create any new impacts to the surrounding neighbors due to its placement partially below grade, maintaining the existing first floor level.
- D. The neighborhood is a mix of residential uses, including apartments and single-family and multi-family homes. Existing structures in the immediate neighborhood vary in height from one to two stories; and
- E. The project approval is 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 will not be detrimental.

III. OTHER FINDINGS FOR APPROVAL

2. Pursuant to BMC Section 23C.04.070.C, additions and/or enlargements of lawful non-conforming structures that are non-conforming by reason of lot coverage are permitted with a Use Permit if the addition/enlargement does not increase coverage or exceed the height limit. The property is non-conforming to the maximum allowable lot coverage, with 50 percent coverage, where 45 percent is the District maximum on this R-2 property. The proposed addition will remove an existing shed in the rear yard, which will reduce the lot coverage to 44 percent, while creating a two-story house, which decreases the allowable lot coverage to 40 percent. While the proposed structure will still be non-conforming to the allowable lot coverage, the project will reduce the non-conformity from 5 percent over the allowable limit to 4 percent over the allowable limit. The proposed addition is located over existing covered area, and therefore, does not increase the non-conforming lot coverage. Additionally, while the addition consists of a second story addition, reaching a total of 23 feet, 10 inches, which complies with the maximum average height limit of 28 feet.
3. Pursuant to BMC Section 23C.04.070.E, additions and/or enlargements of lawful non-conforming structures that are non-conforming by reason of residential density are permitted with a Use Permit if the addition/enlargement does not increase the density or exceed the height limit. The project proposes to maintain the density at two units, therefore, it does not increase the density. As described in Section V.C of the Staff Report, the addition will comply with the allowable average height limit in the district
4. Pursuant to BMC Section 23C.04.070.C, additions and/or enlargements which vertically extend or alter a portion of a building which encroaches into a non-conforming yard may be of lawful non-conforming structures that are non-conforming by reason of residential density are permitted with an Administrative Use Permit if the existing use of the property is conforming and if the addition/enlargement will not 1) reduce any yard below the minimum setback requirements, or further reduce existing non-conforming yards; or 2) exceed the maximum or calculated height limits. As described in the Staff Report, the existing residential structure is non-conforming to the front, rear, and left (north) side setbacks. The proposed addition/enlargement of the house will correct the non-conforming left side setback, but is proposed to vertically extend the non-conforming front and rear setbacks. The front setback will be vertically extended both up (with the second story) and down (with the basement), while the rear setback will be vertically extended down with the expansion of the basement. The second story at the rear will comply with the required 20-foot rear yard setback. As the enlargement of the building will comply with the permitted residential use on the property, and the vertical expansions within the non-conforming setbacks will not further reduce the non-conformity, these expansions are permissible.
5. Pursuant to BMC Section 23D.28.050, an Administrative Use Permit is required to approve the addition of a fifth bedroom to a parcel in the R-2 Zoning District. This project proposes to increase

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December 9, 2021

FINDINGS & CONDITIONS
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the total number of bedrooms on the property from four to five bedrooms. The addition of this fifth bedroom will not add density to the site, or intensify the use of the residential property.

IV. 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 Board, except that the Zoning Officer may approve changes that do not expand, intensify, or substantially change the use or building.

Changes in the plans for the construction of a building or structure, may be modified prior to the completion of construction, in accordance with Section 23B.56.030.D. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project.

5. Plans and Representations Become Conditions (Section 23B.56.030)

Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

6. Subject to All Applicable Laws and Regulations (Section 23B.56.040)

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments.

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

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

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

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

9. Indemnification Agreement

The applicant shall hold harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments or other losses (including without limitation, attorney's fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval associated with the project. The indemnity includes without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn, set aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the project and granting any permit issued in accordance with the project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs shall include, without limitation, any attorney's fees, expert witness and consultant fees, court costs, and other litigation fees. City shall have the right to select counsel to represent the City at Applicant's expense in the defense of any action specified in this condition of approval. City shall take reasonable steps to promptly notify the Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.

V. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD

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

Prior to Submittal of Any Building Permit:

- 10. Project Liaison.** The applicant shall include in all building permit plans and post onsite the name and telephone number of an individual empowered to manage construction-related complaints generated from the project. The individual's name, telephone number, and responsibility for the project shall be posted at the project site for the duration of the project in a location easily visible to the public. The individual shall record all complaints received and actions taken in response, and submit written reports of such complaints and actions to the project planner on a weekly basis. **Please designate the name of this individual below:**

Project Liaison _____
Name Phone #

Prior to Issuance of Any Building & Safety Permit (Demolition or Construction)

- 11. Construction and Demolition Diversion.** Applicant shall submit a Construction Waste Management Plan that meets the requirements of BMC Chapter 19.37 including 100% diversion

of asphalt, concrete, excavated soil and land-clearing debris and a minimum of 65% diversion of other nonhazardous construction and demolition waste.

12. Toxics. The applicant shall contact the Toxics Management Division (TMD) at 1947 Center Street 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 2 years 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 2 years 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/>

During Construction:

13. Construction Hours. Construction activity shall be limited to between the hours of 8:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and Noon on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.
14. 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:
 - A. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
 - B. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
 - C. 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.
 - D. All vehicle speeds on unpaved roads shall be limited to 15 mph.
 - E. 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.
 - F. 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.
 - G. 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.
 - H. 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.
15. Air Quality - Diesel Particulate Matter Controls during Construction. All off-road construction equipment used for projects with construction lasting more than 2 months shall comply with **one** of the following measures:
 - A. The project applicant shall prepare a health risk assessment that demonstrates the project's on-site emissions of diesel particulate matter during construction will not exceed health risk screening criteria after a screening-level health risk assessment is conducted in accordance with current guidance from BAAQMD and OEHHA. The health risk assessment shall be submitted to the Land Use Planning Division for review and approval prior to the issuance of building permits; or

- B. All construction equipment shall be equipped with Tier 2 or higher engines and the most effective Verified Diesel Emission Control Strategies (VDECS) available for the engine type (Tier 4 engines automatically meet this requirement) as certified by the California Air Resources Board (CARB). The equipment shall be properly maintained and tuned in accordance with manufacturer specifications.

In addition, a Construction Emissions Minimization Plan (Emissions Plan) shall be prepared that includes the following:

- An equipment inventory summarizing the type of off-road equipment required for each phase of construction, including the equipment manufacturer, equipment identification number, engine model year, engine certification (tier rating), horsepower, and engine serial number. For all VDECS, the equipment inventory shall also include the technology type, serial number, make, model, manufacturer, CARB verification number level, and installation date.
- A Certification Statement that the Contractor agrees to comply fully with the Emissions Plan and acknowledges that a significant violation of the Emissions Plan shall constitute a material breach of contract. The Emissions Plan shall be submitted to the Public Works Department for review and approval prior to the issuance of building permits.

- 16. Construction and Demolition Diversion.** Divert debris according to your plan and collect required documentation. Get construction debris receipts from sorting facilities in order to verify diversion requirements. Upload recycling and disposal receipts if using [Green Halo](#) and submit online for City review and approval prior to final inspection. Alternatively, complete the second page of the original [Construction Waste Management Plan](#) and present it, along with your construction debris receipts, to the Building Inspector by the final inspection to demonstrate diversion rate compliance. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement.
- 17. Low-Carbon Concrete.** The project shall maintain compliance with the Berkeley Green Code (BMC Chapter 19.37) including use of concrete mix design with a cement reduction of at least 25%. Documentation on concrete mix design shall be available at all times at the construction site for review by City Staff.
- 18. Transportation Construction Plan.** The applicant and all persons associated with the project are hereby notified that a Transportation Construction Plan (TCP) is required for all phases of construction, particularly for the following activities:
- Alterations, closures, or blockages to sidewalks, pedestrian paths or vehicle travel lanes (including bicycle lanes);
 - Storage of building materials, dumpsters, debris anywhere in the public ROW;
 - Provision of exclusive contractor parking on-street; or
 - 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, 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 1947 Center 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.

19. Avoid Disturbance of Nesting Birds. Initial site disturbance activities, including vegetation and concrete removal, shall be prohibited during the general avian nesting season (February 1 to August 30), if feasible. If nesting season avoidance is not feasible, the applicant shall retain a qualified biologist to conduct a preconstruction nesting bird survey to determine the presence/absence, location, and activity status of any active nests on or adjacent to the project site. The extent of the survey buffer area surrounding the site shall be established by the qualified biologist to ensure that direct and indirect effects to nesting birds are avoided. To avoid the destruction of active nests and to protect the reproductive success of birds protected by the MBTA and CFGC, nesting bird surveys shall be performed not more than 14 days prior to scheduled vegetation and concrete removal. In the event that active nests are discovered, a suitable buffer (typically a minimum buffer of 50 feet for passerines and a minimum buffer of 250 feet for raptors) shall be established around such active nests and no construction shall be allowed inside the buffer areas until a qualified biologist has determined that the nest is no longer active (e.g., the nestlings have fledged and are no longer reliant on the nest). No ground-disturbing activities shall occur within this buffer until the qualified biologist has confirmed that breeding/nesting is completed and the young have fledged the nest. Nesting bird surveys are not required for construction activities occurring between August 31 and January 31.
20. 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.

21. 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.
22. 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.
23. 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:
- 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.
 - 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.
 - 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.
 - Design, location and maintenance requirements and schedules for any stormwater quality treatment structural controls shall be submitted to the Department of Public Works for review with respect to reasonable adequacy of the controls. The review does not relieve the property owner of the responsibility for complying with BMC Chapter 17.20 and future revisions to the City's overall stormwater quality ordinances. This review shall be conducted prior to the issuance of a Building Permit.

- E. All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.
 - F. All on-site storm drain inlets/catch basins must be cleaned at least once a year immediately prior to the rainy season. The property owner shall be responsible for all costs associated with proper operation and maintenance of all storm drainage facilities (pipelines, inlets, catch basins, outlets, etc.) associated with the project, unless the City accepts such facilities by Council action. Additional cleaning may be required by City of Berkeley Public Works Engineering Dept.
 - G. All on-site storm drain inlets must be labeled "No Dumping – Drains to Bay" or equivalent using methods approved by the City.
 - H. Most washing and/or steam cleaning must be done at an appropriately equipped facility that drains to the sanitary sewer. Any outdoor washing or pressure washing must be managed in such a way that there is no discharge or soaps or other pollutants to the storm drain. Sanitary connections are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
 - I. 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.
 - J. The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations, or a project stop work order.
24. 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.
25. 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.
26. 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.
27. 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.
28. 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.

- 29. Public Works.** If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.

Prior to Final Inspection or Issuance of Occupancy Permit:

- 30. Compliance with Conditions.** The project shall conform to the plans and statements in the Use Permit. The developer is responsible for providing sufficient evidence to demonstrate compliance with the requirements throughout the implementation of this Use Permit.
- 31. Compliance with Approved Plan.** The project shall conform to the plans and statements in the Use Permit. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated August 26, 2021, except as modified by conditions of approval.

At All Times:

- 32. 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.
- 33. Electrical Meter.** Only one electrical meter fixture may be installed per dwelling unit.
- 34. Loading.** All loading/unloading activities associated with deliveries to all uses shall be restricted to the hours of 7:00 a.m. to 10:00 p.m. daily.
- 35.** This permit is subject to review, imposition of additional conditions, or revocation if factual complaint is received by the Zoning Officer that the maintenance or operation of this establishment is violating any of these or other required conditions or is detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the neighborhood or is detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.
- 36.** All exterior lighting shall be shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.

January 10, 2022

To: The Berkeley City Council

Re: Application of the Housing Accessibility Act and flaws in participatory processes that **unduly limit the City's** ability to regulate development in Berkeley, as evidenced via the handling of project ZP2021-0001.

This appeal relates to the December 9, 2021 ZAB hearing, in which the ZAB voted unanimously to approve a project proposed for 1643-47 California street in Berkeley (ZP2021-0001). We are appealing the decision by the ZAB in this case for two reasons:

- 1) The ZAB and City interpreted and applied the Housing Accessibility Act (HAA) in a way that severely and inappropriately restricts the City of Berkeley's powers and authority to influence housing development and to safeguard existing lower-income housing in the City.
 - a. The City Planner incorrectly extended protections afforded by the HAA only to very-low to moderate income housing developments, to a project that does not add any new units and instead simply proposes to massively increase the square footage of one unit in an existing duplex.
 - b. The ZAB interpreted the HAA to mean that it has no authority to apply existing objective zoning standards to any project that proposes an increase in square footage of the existing structure. That interpretation is counter to the statements in the City Planner's Staff Report, the law, and existing jurisprudence interpreting the HAA. Moreover, the ZAB only discussed how to apply the law to this project AFTER the opportunity for comment had closed during the hearing, and even though none of that information was previously publicly available.

If this interpretation is allowed to stand, the City of Berkeley would find itself forced to approve all housing projects that propose increasing square footage, regardless of whether the project complies with the applicable zoning standards currently in place, in effect making all Berkeley zoning processes irrelevant.

- 2) The City failed to provide adequate opportunities for affected parties to receive information in a timely manner, be consulted, and provide meaningful input on the proposed project

Because of (1) above, we request that the Council revert the project in question to the Department of Planning & Development to work with the City Attorney and others to determine how the HAA shall apply to this project and to zoning matters in Berkeley generally, including issuing clear and public guidelines as to which specific ZAB and City authorities are limited by the HAA in what kinds of circumstances. (See Section A below.)

We further request that the City Council order that ZAB hold another hearing on this project -- AFTER the City has officially decided and provided information as to how the HAA applies in this case, also mandating that such hearing shall include appropriate public notice and public participation, and that any and all restrictions on potential project modifications be both clearly stated in the Staff Report and during the ZAB hearing before the public comment section.

We also request that the City of Berkeley revise its procedures and processes to ensure effective and informed public participation in ZAB matters, considering that the COVID crisis is no longer a short-term phenomenon and thus does not provide an excuse for compromising informed public participation. (See Section B below). This includes but is not at all limited to public postings for projects, use of story poles, and improved ZAB hearing procedures to facilitate public participation.

In the interim, because the HAA does not require approval of this project, we ask that the City exercise its authority to reject the project or require a resubmission until such time as these matters can be resolved.

Finally, because the need for this appeal stems from the City's inconsistent interpretation of the HAA as well as from public participation concerns more broadly, both of which are of great import to the City generally and not only applicable to this specific project, we request a rebate of the \$500 charge for this appeal.

SECTION A. Inappropriate application of the HAA to justify approval of the proposed project

THE FACTS

The project

As clearly stated in the staff report provided to the ZAB prior to the hearing, the proposed project is "non-conforming for lot coverage, density, and yards" and "does not comply with the applicable, objective zoning standards."

1643-47 California is a North-Berkeley duplex built in 1924 that is registered as a two-unit structure with both units being owner-occupied. The property was illegally converted by the project proponents from two single-bedroom units into one larger single-family residence more than two decades ago, removing a kitchen, and opening the wall between the units. The property has been occupied as a single-family residence ever since.

The project proponent now seeks to expand the building from a total of 1,342 to 3,763 square feet by building a substantially different structure, promising to reconstruct the illegally removed unit. The project does not add any new units beyond what is on record in the city.

Instead of recreating the original and surely more affordable one-bedroom housing units (671 sq ft. each), the proposal seeks permission to create a small apartment (501 sq ft.) and an enormous 5-bedroom, 4-bathroom unit that includes a home gym. (3,262 sq ft.) The project would add two new levels to the existing property.

To accomplish these changes, the project requires two Use Permits and five Administrative Use Permits.

The proposal states that two adults will occupy the 3,262 sq ft. 5-bedroom unit and that their adult son will live in the small apartment.

The project application contains no information regarding any restrictions being created to ensure that the smaller proposed unit would be available as low-income housing, as is required for any application seeking to benefit from the HAA under the rubric of providing low-income housing.

Similarly, the project application contains no information explaining how the 5-bedroom, 4-bathroom unit with a gym could be considered to be housing for moderate-level or below income, another way of triggering application of the HAA.

The ZAB hearing and decision¹

According to statements by ZAB members made during the meeting, this was the first time since the amendments to the HAA came into effect that the ZAB has had to decide whether or not to approve a project that did not meet the applicable zoning standards.

In spite of opposition by all three adjacent neighbors to the proposed third level of the structure, ZAB approved the project without considering requiring modifications such as lowering the building height or reducing the amount of square footage to be added.

It was evident during the hearing that the ZAB made this decision in large part because it felt forced under the HAA to approve any project that increases housing availability – defined broadly at one point in the discussion as being the units, number of bedrooms, or square footage of a development. The ZAB also expressed it could not require design modifications given that Berkeley does not yet have any objective design standards for minimizing impacts on neighboring properties.

At the very end of ZAB discussions, the ZAB chairman searched for, found, and read from a memo apparently produced by the city attorney and provided to the ZAB in October. That section – read out of context – was used as basis to suggest that the ZAB had no option other than to approve the project. The complete memo was shared with neither the public nor the rest of the ZAB at the meeting. We have since been unsuccessful in obtaining a copy of that memo, even after multiple requests to the ZAB and City Planner.

After dedicating much of the meeting to trying to figure out how the HAA might apply and what it was or was not allowed to do, the ZAB hurriedly voted shortly after reading from this memo to approve the proposed project.

During the meeting, ZAB members also clarified that the ZAB is not allowed to consider potential future uses of the projects it reviews even when the ZAB may doubt statements made by project applicants about such future use, thereby inferring that any determinations as to whether a project provides housing for very low to moderate income earners and thus is subject to those provisions of the HAA rests with the City Planning Department.

THE LAW

The text of the HAA (California Code 65589.5²) begins with an extensive discussion of the need for housing and especially affordable housing in California considering the “housing supply and affordability crisis of historic proportions” the State faces.

¹ We have made multiple requests to the ZAB and city planner for access to the recording of the ZAB meeting, so as to substantiate our record of the meeting. Not having received any response, these facts are based on our notes from the meeting and the written documents supplied to the ZAB by the city planner.

² See: https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=65589.5

It is eminently clear that the focus of the law is on providing more affordable housing, with references made to the need for safe and affordable housing; the discrimination against low-income and minority households caused by the lack of affordable housing; worsening poverty and homelessness; constrained supply and protracted unaffordability; low homeownership rates; and the high percentage of incomes paid by Californians on rent, among others.

The law also states that it is the intent of the State that the law be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing.

Relevant to this case, there are two sections of the law that impose restrictions on cities in approving housing developments.

First, Subsection (d) places strict limits on cities with regard to denying an application for a “housing development project for very low, low-, or moderate-income households or an emergency shelter...” To provide clarity on which housing developments would fit into this category, the law provides detailed instructions for how to carry out the calculations to assess whether a unit will qualify as very low, low- or moderate-income housing [Subsections (h)(3) and (h)(4)].

The law further requires that “The developer shall provide sufficient legal commitments to ensure continued availability of units for very low or low-income households in accordance with the provisions of this subdivision for 30 years.” [Subsection (d)(4)]

The vast majority of the law refers to and places limitations only on housing developments that would provide the very-low to moderate level income described above, and as defined in Subsection (h). It is only for such developments or for developments that comply with all applicable objective standards that a City must make a finding of specific adverse impacts upon the public health or safety if it desires to disapprove the project.

Second, Subsection (j) defines the process and timelines by which housing developments in general should be reviewed and either approved or denied. The law sets out two options, providing guidance for what to do if the city considers that:

- a) a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the application was deemed complete; or deems the
- b) housing development project to be inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision

In the case where the agency deems the project out of compliance, the law simply directs the agency to provide the project proponent with a timely explanation of the reason why the project is not in compliance. [Section(j)(2)(i)]

There is nothing in the law that suggests a local agency would be required to approve a project that does not comply with the applicable, objective zoning standards in place at the time that a project application is complete. To the contrary, section (f) of the law states that:

... nothing in this section shall be construed to prohibit a local agency from requiring the housing development project to comply with objective, quantifiable, written development standards,

conditions, and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need pursuant to Section 65584. However, the development standards, conditions, and policies shall be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development.

Other California law, such as Section 65915 discussing density, consistently speak of and define density in terms of the number of units per property or area.³

DISCUSSION AND ANALYSIS

Rather than adding low to moderate income level housing in Berkeley, this project would REDUCE the amount of such housing available. Again, the proponents seek to replace two small and more affordable housing units with one tiny apartment and one huge, 5-bedroom home. There are no provisions made that the project would provide guaranteed low or very-low income housing, and it is difficult to imagine how the very large 5-bedroom unit could be considered to be moderate income-level housing for a two-person household. The project proponents own a large 10-unit Berkeley rental building less than a mile away, and thus unlikely would qualify as a low to moderate income household.

By removing a more affordable unit and replacing it with a luxury home, the project thus runs COUNTER to the expressed purpose of the HAA of seeking to provide more affordable housing in California.

As emphasized in the staff report to the ZAB, the proposed project does not comply with the applicable, objective zoning standards.

As clearly stated on the City of Berkeley Department of Planning & Development website,⁴ Berkeley has a long history of applying zoning requirements to preserve the character of its distinctive neighborhoods and prevent impacts on neighbors. It thus seems highly unlikely that the ZAB would have approved this extremely large building on a tiny lot, in contravention of multiple zoning standards, considering the objections of all three adjacent neighbors, and without requiring modifications to address the concerns of the neighbors, if it were not for the ZAB's apparent belief that it is required to approve any proposal for expanded square footage under the HAA.

To ensure both that all parties receive fair treatment, it is critical that the law be correctly applied. As stated in the judicial opinion in the landmark case on the HAA "California Renters Legal Advocacy and Education Fund vs. the City of San Mateo,

The Legislature insists on objective criteria so as to ensure "reasonable certainty . . . to all stakeholders" about the constraints a municipality will impose. (Assem., 3d reading analysis of Assem. Bill No. 1515, as amended May 1, 2017, p. 2.) Reasonable certainty is important to Department of Housing and Community Development officials, so they understand the impact of a locality's housing element in deciding whether to approve it. Reasonable certainty is important to neighbors, who want to know how big a building can be erected next door, and it is

³ See for example:

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=65915&highlight=true&lawCode=GOV&keyword=density+definition

⁴ See: <https://www.cityofberkeley.info/planning/>

important to those who build housing, so they know what size project can be approved for a particular site. (p.19, emphasis added)

Further, the opinion states that

the HAA should not be construed to prohibit local governments from requiring compliance with “objective, quantifiable, written development standards” that are consistent with meeting the jurisdiction’s share in regional housing need (§§ 65589.5, subd. (f)(1), 65583), (p.24)

In this case, the ZAB failed to enforce the objective standards that are already in place. Those objective standards are ones that adjacent neighbors have studied and considered in both purchasing and renovating their properties. The arbitrary decision by ZAB to not apply the objective standards to deny the projects that all the neighbors oppose – when the HAA in no way limits it from doing so – therefore violates the rights of the neighbors to have reasonable certainty as to what kind of development will be allowed.

A memo⁵ read by a ZAB member during the hearing was interpreted to suggest that the HAA limits the right of the city to require a reduction in the square footage, levels, or number of bedrooms of the proposed projects, even though the project does not comply with objective zoning standards. That interpretation is not consistent with the above legal opinion, which clearly confers on cities the right to apply objective standards. It is also not consistent with either the text of the law or the City Planner’s report that was provided to both the ZAB and to all affected parties.

Section (f) of the law states that cities should facilitate development of the density allowed at the site. But density does not mean square footage, levels, or number of bedrooms. Density is commonly defined as “the amount of development per acre permitted on a parcel under the applicable zoning, commonly measured as dwelling units per acre (du/ac).”⁶ The parcel in question is approved at a density of two units, and the proposal is for two units. That does not mean Berkeley necessarily needs to approve one of those units to be enormous, in violation of the objective standards that neighbors would expect the city to enforce.

Further, as the staff report also makes clear,” the City may request modifications to the project to mitigate impacts or avoid specific adverse impacts on surrounding properties, so long as the project is not approved at a reduced density.”

If the ZAB’s interpretation of how to apply the HAA based on square footage instead of the number of units is allowed to stand, it will set a precedent that limits the rights of the City to enforce objective zoning standards, not only in Berkeley but throughout the State.

The reading of the law in this case not only unduly limits the power of cities to regulate development even further than the HAA already does, but it also prevents cities from protecting low to moderate level income housing within their districts. That’s because if cities have to approve all projects that propose infill to the absolute maximum size a property tolerates, without being able to enforce even

⁵ We have not received a copy of this document even after multiple requests to the City Planner and the ZAB.

⁶ “Understanding Density and Development Intensity,” Presentation by the League of California Cities – Planning Commissioners Academy, | Thursday, March 7, 2019, available at: [https://www.calcities.org/docs/default-source/planning-commissioners-academy---session-materials/understanding-density-and-development-intensity.pdf?sfvrsn=d6b7bb05_3#:~:text=Definition,acre%20\(du%2Fac\)](https://www.calcities.org/docs/default-source/planning-commissioners-academy---session-materials/understanding-density-and-development-intensity.pdf?sfvrsn=d6b7bb05_3#:~:text=Definition,acre%20(du%2Fac)).