



Office of the City Manager

PUBLIC HEARING  
May 23, 2023

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Jordan Klein, Director, Planning & Development Department  
 Subject: ZAB Appeal: 469 Kentucky Avenue, Use Permit #ZP2022-0087

#### RECOMMENDATION

Conduct a public hearing and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board (ZAB) decision to approve Use Permit # ZP2022-0087 to demolish a single-family dwelling and construct a three-story, 3,310 square foot single-family dwelling with a two-car garage, and dismiss the appeal.

#### FISCAL IMPACTS OF RECOMMENDATION

None.

#### CURRENT SITUATION AND ITS EFFECTS

On July 8, 2022, Maurice Levitch submitted an application on behalf of property owner Aidan Keefe to demolish an existing single-family dwelling at 469 Kentucky Avenue and construct in its place a three-story, 3,310 square foot single-family dwelling with an Accessory Dwelling Unit (ADU)<sup>1</sup>, and a two-car garage (see Attachments 1A and 1B).

On November 8, 2022 the application was deemed complete.

On January 12, 2023, the ZAB conducted a public hearing for the use permit application (#ZP2022-0087). After hearing public comments and holding discussion, the ZAB approved the use permit by a vote of 8-0-0-0 (Ayes: Tregub, Duff, Gaffney, Thompson, Lunaparra, O'Keefe, Kahn and Sanderson; Noes (none), Abstain (none), Absent (none)), with added conditions for staff review of privacy screening, protection of a shared pergola, notice and limits on road closures, and outdoor screens on windows for bird safety.

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<sup>1</sup> Per BMC 23.306.030, ADU's are permitted with a Zoning Certificate. They are not part of ZAB's discretionary review. The ADU is only mentioned here for purposes of context.

On January 31, 2023, staff issued a Notice of Decision of the ZAB approval.

On February 9, 2023, the City Clerk received an appeal filing from Stephen B. Bedrick.

On or before May 9, 2023, staff posted the public hearing notice at the site and three nearby locations, and notices were mailed to property owners and occupants within 300 feet of the project site, and to all interested neighborhood organizations. The Council must conduct a public hearing to resolve the appeal.

### BACKGROUND

The project site is located at 469 Kentucky Avenue in the Berkeley Hills, within the Hillside Overlay Zone, on steep terrain in a residential area that includes a mix of one-, two-, and three-story single-family dwellings, with areas of open space in excess of that required, and mature vegetation. This section of Kentucky Avenue is narrow and the road is divided, with the northbound lane at a higher elevation than the southbound lane. The site is developed with a three-story, 1,773 square-foot single-family dwelling, and a single-car garage located in the front setback. The applicant proposes to demolish the existing structures and construct a three-story 3,310 square-foot single-family dwelling with an attached ADU, and a two-car garage. The proposed two-car garage would be located in the front setback, similar to the existing structure. The project also includes a detached shed at the rear of the property, and an uncovered garbage and recycling enclosure at the front of the property. The roof of the proposed dwelling unit would have a maximum height of 31 feet, 8.5 inches and an average height of 29 feet, 4 inches. The applicant team shared that the proposed dwelling was designed to minimally expand the footprint beyond that of the existing dwelling, and avoid increasing the height of the structure by excavating the ground floor to gain additional floor area.

The proposed ground floor level would consist of a TV room, a laundry room, and a studio-style ADU with entry access via an exterior staircase and landing over the garage roof. The second floor would consist of four bedrooms and two bathrooms, with access to a front balcony. The top floor would contain the kitchen, dining room, family room, and a study. This floor would provide access to the front and rear balconies. Pursuant to Berkeley Municipal Code (BMC) 23.502.020(B), the TV room and the study meet the definition of a bedroom;<sup>2</sup> accordingly, the proposed dwelling would include a total of six bedrooms. The ADU is not included in the bedroom count because ADUs are not subject to discretionary review. However, if the proposed ADU is not developed concurrently with the proposed project, a Use Permit Modification would be required for

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<sup>2</sup> *Bedroom.* Any habitable space in a dwelling unit or habitable accessory structure other than a kitchen or living room that is intended for or capable of being used for sleeping with a door that closes the room off from other common space such as living and kitchen areas that is at least 70 square feet in area, exclusive of closets and other appurtenant space, and meets Building Code standards for egress, light and ventilation. A room identified as a den, library, study, loft, dining room, or other extra room that satisfies this definition will be considered a bedroom for the purposes of applying this requirement. Bathrooms, toilet rooms, closets, halls, storage or utility spaces and similar areas are not considered habitable spaces.

any additional rooms that meet the BMC criteria for a bedroom. The red maple in the back yard would be retained, the small lemon tree and a yucca in the front would be removed during construction. Replacement trees and other plantings would be incorporated into the landscaping for the property.

#### RATIONALE FOR RECOMMENDATION

The issues raised in the appellant's letter and staff responses are provided below. For the sake of brevity, the appeal issues are not restated in their entirety. Please refer to the appeal letter and its attachments (Attachment 3) for the full text.

#### Issue:

**The appellants assert that the demolition process, including dumpsters and dump trucks, is likely to totally block their narrow, one-lane, one-way street for hours at a time. This will prevent residents from being able to come and go from their house, and will obstruct emergency vehicles and delivery trucks.**

#### Response:

The appellant's objections are not to the proposed removal of the old home and construction of a new one, per se. Rather, they are concerned with a perceived detriment to the access route to and from their home during demolition and construction activities. However, it is a standard condition on permits of this type, and is specifically a condition of approval on the permit in question, that the applicant prepare a Transportation Construction Plan (TCP) for all phases of construction. Specifically, the TCP is required to address site activities that would require alterations, closures, blockages to sidewalks, pedestrian paths, or vehicle travel lanes; storage of building materials, dumpsters, debris anywhere in the public right-of-way; provision of exclusive contractor parking on-street; or significant truck activity. The TCP is also required to 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 applicant is required to secure the City Traffic Engineer's approval of the TCP prior to initiating construction activities.

Construction and demolition activities occur under a variety of challenging situations within the Hillside Overlay Zone, and accordingly the City requires applicants to prepare TCPs specifically to mitigate concerns such as those expressed by the appellant. As directed by the City's condition of approval, the Traffic Engineer will review the applicant's prepared TCP to ensure that appropriate measures are included to address street access during construction, a schedule for site operations that may block traffic, and traffic control measures along Kentucky Avenue. Therefore, the appellant's concerns regarding street access during construction would be addressed by implementation of the required TCP.

**Issue:**

**The appellant asserts that they were unable to properly present their objections to the ZAB because staff did not provide their January 4, 2023 objection letter to ZAB commissioners prior to the hearing, and they were not granted the opportunity to speak during the January 12, 2023 virtual hearing.**

**Response:**

All supplemental communications received from members of the public and interested parties regarding the projects listed on the January 12, 2023 ZAB hearing agenda were shared with ZAB commissioners via email on January 11, 2023. The supplemental communication was also posted on the ZAB webpage here: <https://berkeleyca.gov/your-government/boards-commissions/zoning-adjustments-board>

The communications specific to the 469 Kentucky Avenue project included two letters from the appellant dated January 4, 2023 and January 9, 2023. Both letters included the appellant's concerns regarding street access during construction, among other topics. During the January 12, 2023 ZAB hearing, a total of four individuals requested to speak on the item. Three of the four individuals expressed concerns regarding traffic along Kentucky Avenue during demolition and construction activities, road closures, hazardous materials, dust control, privacy, and the inclusion of bird safe glass. The fourth individual, self-identified as Kathryn Sullivan, was provided with the opportunity to speak on the item but appeared to experience audio issues, and as a result the ZAB could not hear the individual's comments.

Prior to making a decision on the item, ZAB considered the whole of the record including the two letters received from the appellant. In addition, members of the public raised similar concerns regarding street access along Kentucky Avenue. During deliberation, the ZAB noted that the City's conditions of approval require the applicant to prepare a TCP to mitigate issues related to street access during demolition and construction. Further, the ZAB conditioned the project to require that the applicant notify neighbors 48 hours in advance of any potential road closures, and avoid road closures during routine waste collection services. ZAB was made aware of the appellant's concerns and considered those concerns as part of the decision-making process.

**ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS**

The project approved by the ZAB is compliant with all applicable State and local environmental requirements and would be built and operated according to current codes for energy conservation, waste reduction, low toxicity, and other factors.

**ALTERNATIVE ACTIONS CONSIDERED**

Pursuant to BMC Section 23.410.040(G), the Council may (1) continue the public hearing, (2) reverse, affirm, or modify the ZAB's decision, or (3) remand the matter to

ZAB Appeal: 469 Kentucky Avenue, Use Permit #ZP2022-0087

PUBLIC HEARING  
May 23, 2023

the ZAB.

Action Deadline:

Pursuant to BMC Section 23.410.040(l), if the disposition of the appeal has not been determined within 30 days from the date the public hearing was closed by the Council (not including Council recess), then the decision of the Board shall be deemed affirmed and the appeal shall be deemed denied.

CONTACT PERSON

Jordan Klein, Director, Planning & Development Department, (510) 981-7534  
Steven Buckley, Land Use Planning Manager, Planning & Development Department  
(510) 981-7411  
Russell Roe, Associate Planner, Planning & Development Department, (510) 981-7548

ATTACHMENTS

- 1: Resolution
  - Exhibit A: January 12, 2023 ZAB hearing Findings and Conditions
  - Exhibit B: Project Plans
- 2: January 12, 2023 ZAB hearing staff report
- 3: Appeal letter, dated received February 9, 2023
- 4: Public Comments received prior to January 12, 2023 ZAB hearing
5. Index to Administrative Record
6. Administrative Record
- 7: Public Hearing Notice

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

AFFIRMING THE ZONING ADJUSTMENTS BOARD DECISION TO APPROVE USE PERMIT #ZP2022-0087 TO DEMOLISH A SINGLE-FAMILY DWELLING AND CONSTRUCT A 3,310 SQUARE FOOT THREE-STORY SINGLE-FAMILY RESIDENCE AND TWO-CAR GARAGE, AND DISMISS THE APPEAL

WHEREAS, on July 8, 2022, Maurice Levitch submitted an application for Use Permit #ZP2022-0087 to demolish a single-family dwelling and construct a 3,310 square foot three-story single-family residence and two-car garage; and

WHEREAS, on November 8, 2022 staff deemed this application complete; and

WHEREAS, on December 22, 2022, staff mailed public hearing notices to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations, and posted notices within the neighborhood at three locations; and

WHEREAS, on January 12, 2023 the Zoning Adjustments Board (ZAB) conducted a public hearing for the Use Permit. After hearing public comments and holding discussion, the ZAB approved the Use Permit by a vote of 8-0-0-0, with added conditions for staff review of privacy screening, protection of a shared pergola, notice and limits on road closures, and outdoor screens on windows for bird safety; and

WHEREAS, on January 31, 2023, staff issued the notice of the ZAB decision; and

WHEREAS, on February 9, 2023, the City Clerk receive an appeal filing from Stephen B. Bedrick; and

WHEREAS, on or before May 9, 2023, staff posted public hearing notices near the site and mailed notices to property owners and occupants within 300 feet of the project site and to all registered neighborhood groups that cover this area; and

WHEREAS, on May 23, 2023, the Council held a public hearing to consider the ZAB's decision, and in the opinion of this Council, the facts stated in, or ascertainable from, the public record, including the staff report and comments made at the public hearing, warrant approving the project.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Council hereby adopts the findings made by the ZAB in Exhibit A to affirm the decision of the ZAB to approve Use Permit #ZP2022-0087, adopts the conditions of approval in Exhibit A; adopts the project plans in Exhibit B; and dismisses the appeal.

Exhibits

Exhibit A: Findings and Conditions, date January 12, 2023

Exhibit B: Project Plans, received July 8, 2022

# Attachment 1, Exhibit A

## Findings and Conditions

JANUARY 12, 2022

### 469 Kentucky Avenue

Use Permit #ZP2022-0087 to demolish a single-family dwelling and construct a 3,310 square foot three-story single-family residence and two-car garage.

#### PERMITS REQUIRED

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- Use Permit to demolish a dwelling unit, per Berkeley Municipal Code (BMC) Section 23.326.030
- Use Permit to construct a new single-family dwelling, per BMC Section 23.202.020(A)
- Use Permit for a sixth bedroom on a parcel, per BMC Section 23.202.030
- Administrative Use Permit for exceeding 28-feet in average height, per BMC Sections 23.202.050(D) and 23.210.020(C)(2)
- Administrative Use Permit for a reduced front setback in the Hillside Overlay, per BMC Section 23.210.020(C)(4)
- Administrative Use Permit for a new accessory building, per BMC 23.304.060(A)
- Administrative Use Permit for an unenclosed accessory structure within a required setback, per BMC 23.304.070(C)(1)

#### I. CEQA FINDINGS

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1. This project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Sections 15303 (“New Construction or Conversion of Small Structures”)
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

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1. As required by BMC Section 23.326.020-030 of the BMC, the demolition phase of the project would not be materially detrimental to the housing needs and public interest of the affected neighborhood and Berkeley. It does not eliminate two or more units constructed before June 1980. The building was not removed from the rental market under the Ellis Act during the preceding five years, and there have not been any verified cases of harassment or threatened or actual illegal eviction during the immediately preceding three years.



2. As required by Section 23.406.040(E)(1) 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. Consistency with Development Standards: The proposed project conforms to the applicable Development Standards for the R-1(H) District (BMC Sections 23.202.050(D) & 23.210.020(C)(2)), with the exception of the front setback. The proposal to construct one dwelling unit at this site is permissible because: (1) the proposed construction of a dwelling on the subject property conforms to the R-1(H) District standards for Uses Permitted; (2) the proposed side and rear setbacks meet or exceed the R-1(H) District requirements; (3) the proposed three-stories and 31.687 foot maximum height will not exceed the R-1 District limit of 35 feet; (4) the proposed average height is 29.3 feet, which is approvable with an AUP; (5) the proposed lot coverage is 39.7 percent where 40 percent is allowed, and (6) the project includes 1,308 square feet of usable open space where 400 square feet is required.
  - B. Shadows: The new dwelling will cast slight new shadows on neighboring yards and buildings at certain times of year and times of day. However, impacts would be limited in duration and effect and would not substantially diminish sunlight for the affected residences.
  - C. Views: Substantial southwestward views are available from the area surrounding the project site, including from Kentucky Avenue, neighboring residences, and the residences uphill to the northeast of the project site. Sightlines available from these residences occur mostly over and beyond the proposed residence, and views of the San Francisco Bay will be substantially maintained. Thus, given existing conditions, including existing trees that obstruct views and the existing slope in the neighborhood, and the proposed height of the new dwelling, the proposed project will not unreasonably obstruct views.
  - D. Privacy and Air: The proposed single-family dwelling unit exceeds side and rear setback requirements in the R-1(H) Zoning District, and is consistent with the existing development and building-to-building separation pattern in this neighborhood.
  - E. Accessory Building and Unenclosed Accessory Structure. The proposed eighty-five square foot accessory building at the rear of the lot is under ten feet in average height and is more than seventy-five feet from the front lot line, and meets the applicable development standards. The garbage enclosure within the front setback will provide screening of solid waste containers.
  - F. Number of Bedrooms. The sixth bedroom will provide additional living area for the residents of the single-family dwelling and will not increase the density on the lot.
  - G. General Non-Detriment: The proposed project will have minimal impact on the neighborhood. New shading will be limited on nearby residential uses, and privacy impacts have been kept minimal. 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 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.

3. Per BMC 23.210.020(A), the project will meet the purpose of the Hillside Overlay Zone because:
    - A. The proposed two-car garage in the front setback is necessary due to the steep upward slope of the lot and is consistent with neighboring properties, which also have garages at the fronts of their lots. It will provide two off-street parking spaces on a narrow street in a location that is vulnerable to wildfire.
    - B. The additional height responds to the topography of the site while giving reasonable protection to views.
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### III. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

The following conditions, as well as all other applicable provisions of the Zoning Ordinance, apply to this Permit:

#### 1. Conditions Shall be Printed on Plans

The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions.' *Additional sheets* may also be used if the *second* sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

#### 2. Compliance Required (BMC Section 23.102.050)

All land uses and structures in Berkeley must comply with the Zoning Ordinance and all applicable City ordinances and regulations. Compliance with the Zoning Ordinance does not relieve an applicant from requirements to comply with other federal, state, and City regulations that also apply to the property.

#### 3. Approval Limited to Proposed Project and Replacement of Existing Uses (BMC Sections 23.404.060.B.1 and 2)

- A. This Permit authorizes only the proposed project described in the application. In no way does an approval authorize other uses, structures or activities not included in the project description.
- B. When the City approves a new use that replaces an existing use, any prior approval of the existing use becomes null and void when permits for the new use are exercised (e.g., building permit or business license issued). To reestablish the previously existing use, an applicant must obtain all permits required by the Zoning Ordinance for the use.

#### 4. Conformance to Approved Plans (BMC Section 23.404.060.B.4)

All work performed under an approved permit shall comply with the approved plans and any conditions of approval.

#### 5. Exercise and Expiration of Permits (BMC Section 23.404.060.C)

- A. A permit authorizing a land use is exercised when both a valid City business license is issued (if required) and the land use is established on the property.
- B. A permit authorizing construction is exercised when both a valid City building permit (if required) is issued and construction has lawfully begun.
- C. The Zoning Officer may declare a permit lapsed if it is not exercised within one year of its issuance, except if the applicant has applied for a building permit or has made a substantial good faith effort to obtain a building permit and begin construction. The Zoning Officer may declare a permit lapsed only after 14 days written notice to the applicant. A determination that a permit has lapsed may be appealed to the ZAB in accordance with Chapter 23.410 (Appeals and Certification).
- D. A permit declared lapsed shall be void and of no further force and effect. To establish the use or structure authorized by the lapsed permit, an applicant must apply for and receive City approval of a new permit.

**6. Permit Remains Effective for Vacant Property (BMC Section 23.404.060.D)**

Once a Permit for a use is exercised and the use is established, the permit authorizing the use remains effective even if the property becomes vacant. The same use as allowed by the original permit may be re-established without obtaining a new permit, except as set forth in Standard Condition #5 above.

**7. Permit Modifications (BMC Section 23.404.070)**

No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Board. 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.

**8. Permit Revocation (BMC Section 23.404.080)**

The City may revoke or modify a discretionary permit for completed projects due to: 1) violations of permit requirements; 2) Changes to the approved project; and/or 3) Vacancy for one year or more. However, no lawful residential use can lapse, regardless of the length of time of the vacancy. Proceedings to revoke or modify a permit may be initiated by the Zoning Officer, Zoning Adjustments Board (ZAB), or City Council referral.

**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.

**IV. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD**

Pursuant to BMC 23.404.050(H), 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 #

11. Roof Color. To avoid glare towards above grade residents, the roof shall be a shade of gray, green, brown or blue. The roof shall not be white or a similarly bright color, and shall not be of reflective material. Prior to issuance of a Building Permit, the applicant shall provide a sample and/or information regarding roof material and color for review and approval by the Zoning Officer.

12. Address Assignment. The applicant shall file an “Address Assignment Request Application” with the Permit Service Center (1947 Center Street) for any address change or new address associated with this Use Permit. The new address(es) shall be assigned and entered into the City’s database prior to the applicant’s submittal of a building permit application.

13. Pergola: The applicant shall submit a detailed plan, signed by both parties, showing how the shared pergola between 467 and 469 Kentucky Avenues will be protected and/or modified during and after construction.

14. Privacy Screening: The applicant shall submit a detailed plan, signed by both parties, showing the agreed-upon method of protecting privacy at 467 Kentucky Avenue from views from the front deck of the proposed house.

**Prior to Issuance of A Building Permit**

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15. Per the Supplemental Geotechnical Peer Review prepared by Cotton, Shires and Associates, Inc., and dated November 8, 2022:

Geotechnical Plan Review - The applicant’s geotechnical consultant should review and approve all geotechnical aspects of the final project building and grading plans (i.e., site preparation and grading, shoring design, site surface and subsurface drainage improvements including site runoff discharge, and design parameters for foundations and retaining walls) to ensure that their recommendations have been properly incorporated.

The results of the plan review should be summarized by the Geotechnical Consultant in a letter and submitted to the City Engineer for review and approval prior to issuance of building permits.

16. Number of Bedrooms / Accessory Dwelling Unit (ADU): If the proposed ADU is not developed concurrently with the project, the applicant shall obtain a Use Permit Modification if the additional rooms that meet the definition of a bedroom bring the total number of bedrooms over six.
17. 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.
18. 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](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/>

### **Prior to Issuance of Any Building (Construction) Permit**

19. HVAC Noise Reduction. Prior to the issuance of building permits, the project applicant shall submit plans that show the location, type, and design of proposed heating, ventilation, and cooling (HVAC) equipment. In addition, the applicant shall provide product specification sheets or a report from a qualified acoustical consultant showing that operation of the proposed HVAC equipment will meet the City's exterior noise requirements in BMC Section 13.40.050. The City's Planning and Development Department shall review the submitted plans, including the selected HVAC equipment, to verify compliance with exterior noise standards.
20. Electric Vehicle (EV) Charging. Each dwelling unit shall install a listed raceway, wiring, and power to allow for future Level 2 (240 Volt/40 amp) plug-in electric vehicle (EV) charging system installation as specified by the Berkeley Green Code (BMC Section 19.37.040). Readiness for EV charging and EV charging station installations shall be noted on the construction plans.
21. Water Efficient Landscaping. Landscaping, totaling 500 square feet of more of new landscaping or 2,500 square feet or more of renovated irrigated area, shall comply with the State's Model Water Efficient Landscape Ordinance (MWELo). MWELo-compliant landscape documentation including a planting, grading, and irrigation plan shall be included in site plans. Water budget calculations are also required for landscapes of 2,500 square feet or more and shall be included in site plans. The reference evapotranspiration rate (ET<sub>o</sub>) for Berkeley is 41.8.
22. Prohibition of Natural Gas Infrastructure in New Buildings. The project shall comply with the City of Berkeley Prohibition of Natural Gas Infrastructure in New Buildings (BMC Chapter 12.80).
23. Recycling and Organics Collection. Applicant shall provide recycling and organics collection areas for occupants, clearly marked on site plans, which comply with the Alameda County Mandatory Recycling Ordinance (ACWMA Ordinance 2012-01).

24. Public Works ADA. Plans submitted for building permit shall include replacement of sidewalk, curb, gutter, and other streetscape improvements, as necessary to comply with current City of Berkeley standards for accessibility.

**During Construction:**

25. 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.
26. The height and location of the proposed structure, property lines and spot elevations shall be verified by a licensed surveyor or engineer on site after foundation forms are placed, but before pouring concrete or placing construction material in its permanent position. This verification shall be to the satisfaction of the Zoning Officer.
27. Per the Supplemental Geotechnical Peer Review prepared by Cotton, Shires and Associates, Inc., and dated November 8, 2022:

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

The results of these inspections and the as-built conditions of the project should be described by the geotechnical consultant in a letter and submitted to the City Engineer for review prior to final (granting of occupancy) project approval.

28. 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 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.

29. 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.
30. 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.
31. 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.

32. Road Closures: Occupants of all homes on Kentucky Avenue between Michigan Avenue and Maryland Avenue shall be notified of all road closures at least 48 hours in advance. Roads shall not be closed on garbage and recycling collection days.

- 33. 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.
- 34. 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.
- 35. 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.

36. 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.
37. Paleontological Resources (Ongoing throughout demolition, grading, and/or construction).
- A. *Qualified Paleontologist*. The project applicant shall retain a Qualified Paleontologist prior to excavations or ground disturbance that will exceed three feet in depth. The Qualified Paleontologist shall direct all mitigation measures related to paleontological resources. A qualified professional paleontologist is defined by the SVP standards as an individual preferably with an M.S. or Ph.D. in paleontology or geology who is experienced with paleontological procedures and techniques, who is knowledgeable in the geology of California, and who has worked as a paleontological mitigation project supervisor for a least two years (SVP 2010).
  - B. *Paleontological Worker Environmental Awareness Program (WEAP)*. Prior to ground disturbance, the applicant shall incorporate information on paleontological resources into the Project's Worker Environmental Awareness Training (WEAP) materials, or a stand-alone Paleontological Resources WEAP shall be submitted to the Department of Planning and Development at the City of Berkeley. The Qualified Paleontologist or his or her designee shall conduct training for construction personnel regarding the appearance of fossils and the procedures for notifying paleontological staff should fossils be discovered by construction staff. The Paleontological WEAP training shall be fulfilled simultaneously with the overall WEAP training, or at the first preconstruction meeting at which a Qualified Paleontologist attends prior to ground disturbance. Printed literature (handouts) shall accompany the initial training. Following the initial WEAP training, all new workers and contractors must be trained prior to conducting ground disturbance work.
  - C. *Paleontological Monitoring*. The extent of required paleontological monitoring for the project shall be determined by the Qualified Paleontologist based on an evaluation of the previously undisturbed geologic units exposed during ground disturbing activity. The Qualified Paleontologist shall conduct an initial spot check and evaluation of geologic conditions for ground disturbing activity for excavations between 5-10 feet below ground surface (BGS). The evaluation shall be based on field evidence including lithology of geologic units and results of micro-screening or other inspections for fossil resources. If the paleontologist determines that geologic units exposed between 5-10 feet BGS have high paleontological sensitivity, then full-time monitoring shall be conducted for the duration of ground disturbing

activity. If sediments between 5-10 feet BGS are determined to not be paleontological sensitive, spot checks should be conducted again for ground disturbance between 10-15 feet BGS and again for ground disturbance between 15-20 feet BGS, and again to the full depth of ground disturbance. If spot checks indicate low or no paleontological sensitivity, or if full time monitoring results in no fossil discoveries once the full depth of ground disturbance has been reached, paleontological monitoring can be discontinued for the remainder of project activity. Monitoring shall be reinstated if any new ground disturbances are required to depths exceeding previous depths of previous work, and reduction or suspension shall be reconsidered by the Qualified Paleontologist at that time.

- D. In the event of a fossil discovery by the paleontological monitor or construction personnel, all work in the immediate vicinity of the find shall cease. A Qualified Paleontologist shall evaluate the find before restarting construction activity in the area. If it is determined that the fossil(s) is (are) scientifically significant, the Qualified Paleontologist shall complete the following conditions to mitigate impacts to significant fossil resources:
- 1) *Salvage of Fossils.* If fossils are discovered, the paleontological monitor shall have the authority to halt or temporarily divert construction equipment within 50 feet of the find until the monitor and/or lead paleontologist evaluate the discovery and determine if the fossil may be considered significant. Typically, fossils can be safely salvaged quickly by a single paleontologist and not disrupt construction activity. In some cases, larger fossils (such as complete skeletons or large mammal fossils) require more extensive excavation and longer salvage periods. In this case, the Construction Contractor may be requested to supply heavy equipment and an operator to assist in the rapid removal of a large fossil specimen(s) or sediment sample(s). Bulk matrix sampling may be necessary to recover small invertebrates or microvertebrates from within paleontologically- sensitive Quaternary old alluvial deposits.
  - 2) *Preparation and Curation of Recovered Fossils.* Once salvaged, significant fossils shall be identified to the lowest possible taxonomic level, prepared to a curation-ready condition, and curated in a scientific institution with a permanent paleontological collection (such as the UCMP), along with all pertinent field notes, photos, data, and maps. Fossils of undetermined significance at the time of collection may also warrant curation at the discretion of the Qualified Paleontologist.
- E. *Final Paleontological Mitigation Report.* Upon completion of ground disturbing activity (and curation of fossils if necessary) the Qualified Paleontologist shall prepare a final report describing the results of the paleontological monitoring efforts associated with the project. The report shall include a summary of the field and laboratory methods, an overview of the project geology and paleontology, a list of taxa recovered (if any), an analysis of fossils recovered (if any) and their scientific significance, and recommendations. The report shall be submitted to the Department of Planning and Development at the City of Berkeley. If the monitoring efforts produced fossils, then a copy of the report shall also be submitted to the designated museum repository.

38. Halt Work/Unanticipated Discovery of Tribal Cultural Resources. In the event that cultural resources of Native American origin are identified during construction, all work within 50 feet of the discovery shall be redirected. The project applicant and project construction contractor shall notify the City Planning Department within 24 hours. The City will again contact any tribes who have requested consultation under AB 52, as well as contact a qualified archaeologist, to

evaluate the resources and situation and provide recommendations. If it is determined that the resource is a tribal cultural resource and thus significant under CEQA, a mitigation plan shall be prepared and implemented in accordance with State guidelines and in consultation with Native American groups. If the resource cannot be avoided, additional measures to avoid or reduce impacts to the resource and to address tribal concerns may be required.

- 39. 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.

40. 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.
41. 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.
42. 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.
43. 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.
44. 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.
45. 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.

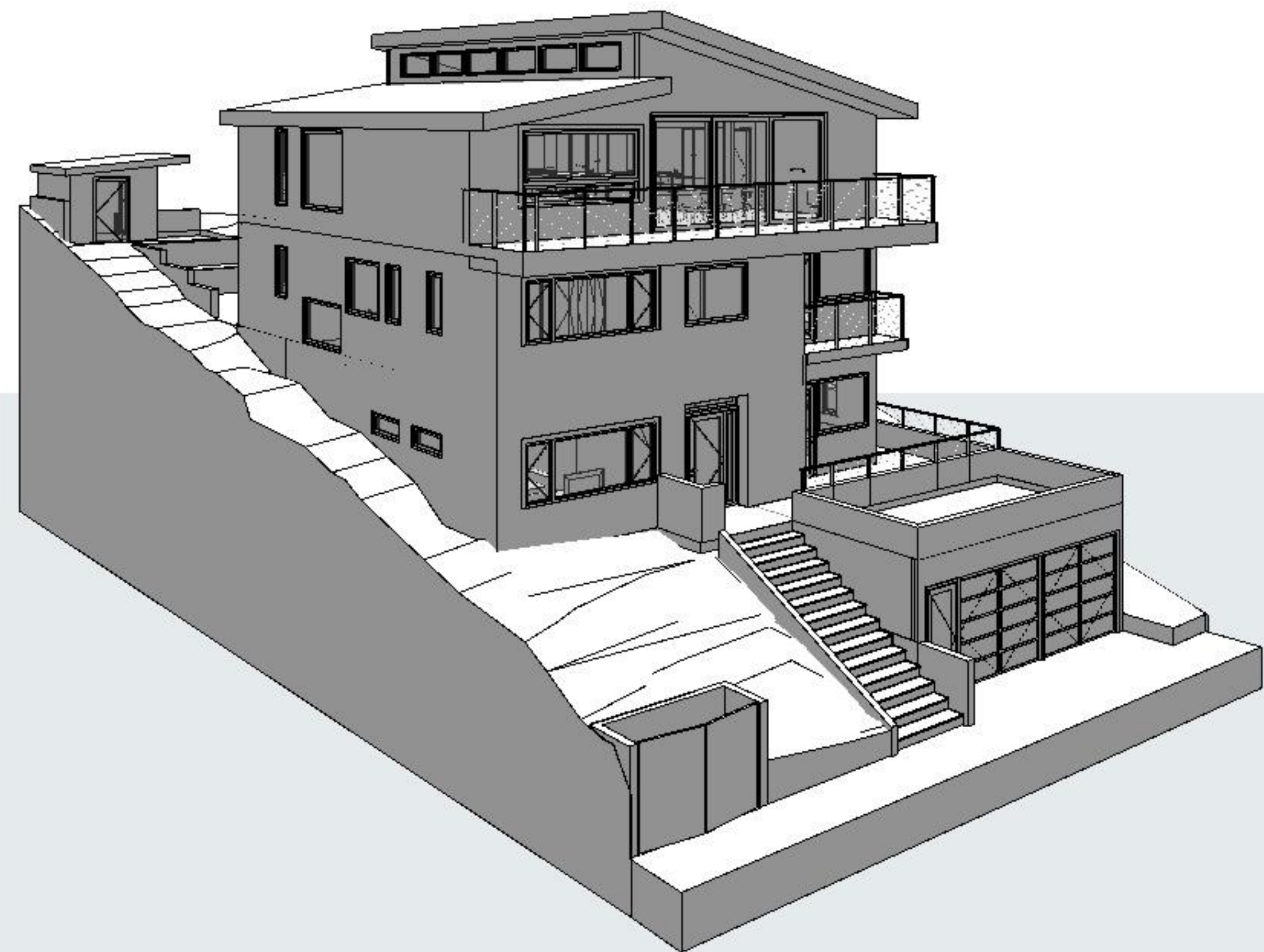
**Prior to Final Inspection or Issuance of Occupancy Permit:**

46. 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.
47. 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 December 19, 2022, except as modified by conditions of approval.

**At All Times:**

48. 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.
  49. Windows. Windows shall be fitted with screens located on the outer side of the glass.
  50. Rooftop Projections. No additional rooftop or elevator equipment shall be added to exceed the approved maximum roof height without submission of an application for a Use Permit Modification, subject to Board review and approval.
  51. Drainage Patterns. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.
  52. Privacy Screening. The agreed-upon privacy screening plan shall be maintained.
  53. Electrical Meter. Only one electrical meter fixture may be installed per dwelling unit.
  54. Residential Permit Parking. No Residential Permit Parking (RPP) permits shall be issued to project residents, nor shall commercial placards be issued to non-residential occupants and/or users of the site. The project planner shall notify the Finance Department, Customer Service Center, to add these addresses to the list of addresses ineligible for RPP permits. The property owner shall notify all tenants of rental units, and/or buyers of condominium units, of this restriction in leases and/or contracts, and shall provide sample leases and/or contracts including such notification to the project planner prior to issuance of an occupancy permit or final inspection.
-

MASSING PERSPECTIVE



N.T.S.

# KEEFE RESIDENCE

469 KENTUCKY AVE., BERKELEY CA 94707

## SCOPE OF WORK

DEMOLISH EXISTING 3 STORY SINGLE FAMILY 4 BEDROOM HOME: 1,733 SF WITH EXISTING DETACHED 240 SF 1-CAR GARAGE. CONSTRUCT NEW 3 STORY SINGLE FAMILY 3.5 BATH, 5 BEDROOM (4 BEDROOMS ON SECOND FLOOR + 1 BEDROOM ON GROUND FLOOR, LABELLED TV ROOM) HOME WITH ATTACHED GROUND FLOOR ADU: 3,310 SF PRIMARY UNIT AND 494 SF ADU WITH DETACHED 488 SF 2-CAR GARAGE. PROJECT INCLUDES NEW GRADING/LANDSCAPING, TRASH ENCLOSURE, AND 85 SF ACCESSORY BUILDING.

### SITE INFORMATION

APN#: 062 294502800  
ZONING DISTRICT: R-1H  
LOT SIZE: 5,088 sq. ft.  
YEAR BUILT: 1926  
WILDFIRE ASSESSMENT DISTRICT:  
HISTORIC: NO  
LIQUEFACTION (SEISMIC HAZARDS MAPPING ACT): NO  
LIQUEFACTION SEVERITY: N/A  
  
FLOOD ZONE (100-YEAR OR 1%): NO  
LANDSLIDE (SEISMIC HAZARDS MAPPING ACT): YES  
CREEK BUFFER: NONE  
FIRE ZONE: 2

### BUILDING INFORMATION

EXISTING:  
NUMBER OF UNITS: 1  
CONSTRUCTION TYPE: V  
OCCUPANCY: R  
FIRE SPRINKLERS: NO  
STORIES: 2 + PARTIAL BASEMENT  
GROSS FLOOR AREA: 1773 SF  
YEAR BUILT: 1926  
  
PROPOSED:  
NUMBER OR UNITS: 2  
PRIMARY DWELLING UNIT (3310 SF) + ATTACHED ADU (494 SF)  
  
CONSTRUCTION TYPE: TBD  
OCCUPANCY: R  
FIRE SPRINKLERS: YES  
STORIES: 3  
GROSS FLOOR AREA: 3,804 SF

## PROJECT TEAM

### ARCHITECT

MAURICE LEVITCH, AIA  
LEVITCH ASSOCIATES, INC.  
  
1029 HEINZ AVENUE  
BERKELEY, CA 94710  
TEL: 510.845.6941  
FAX: 510.845.6950  
EMAIL: MAURICE@LEVITCH.COM

### SURVEYORS

MORAN ENGINEERING, INC.  
1930 SHATTUCK AVE. SUITE A  
BERKELEY, CA 94704  
TEL: 510.848.1930

## Keefe Residence

Project Address:  
469 KENTUCKY AVE.  
BERKELEY, CA 94707

Owner:  
AIDAN KEEFE

469 KENTUCKY AVE.  
BERKELEY, CA 94707  
MOBILE: (415) 317-7845  
EMAIL: aidan.keefe@gmail.com

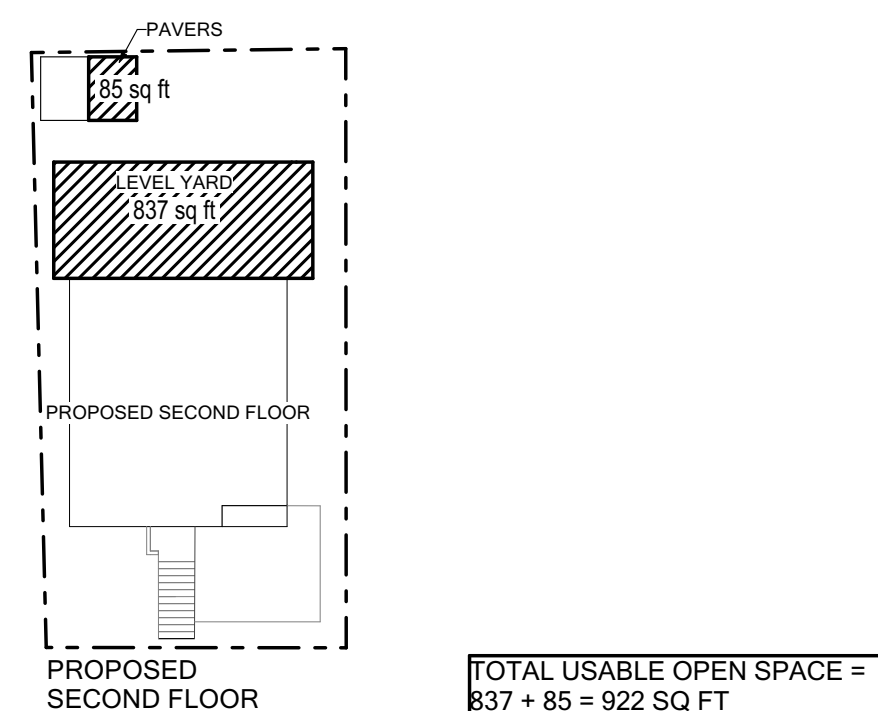


LEVITCH ASSOCIATES INC.  
1029 HEINZ AVENUE BERKELEY CA 94710  
Tel: (510)845-6941 Fax: (510) 845-6950  
www.levitch.com

## USE PERMIT

Sheet Contents:  
COVER SHEET

## USABLE OPEN SPACE DIAGRAM



## AREA TABULATIONS

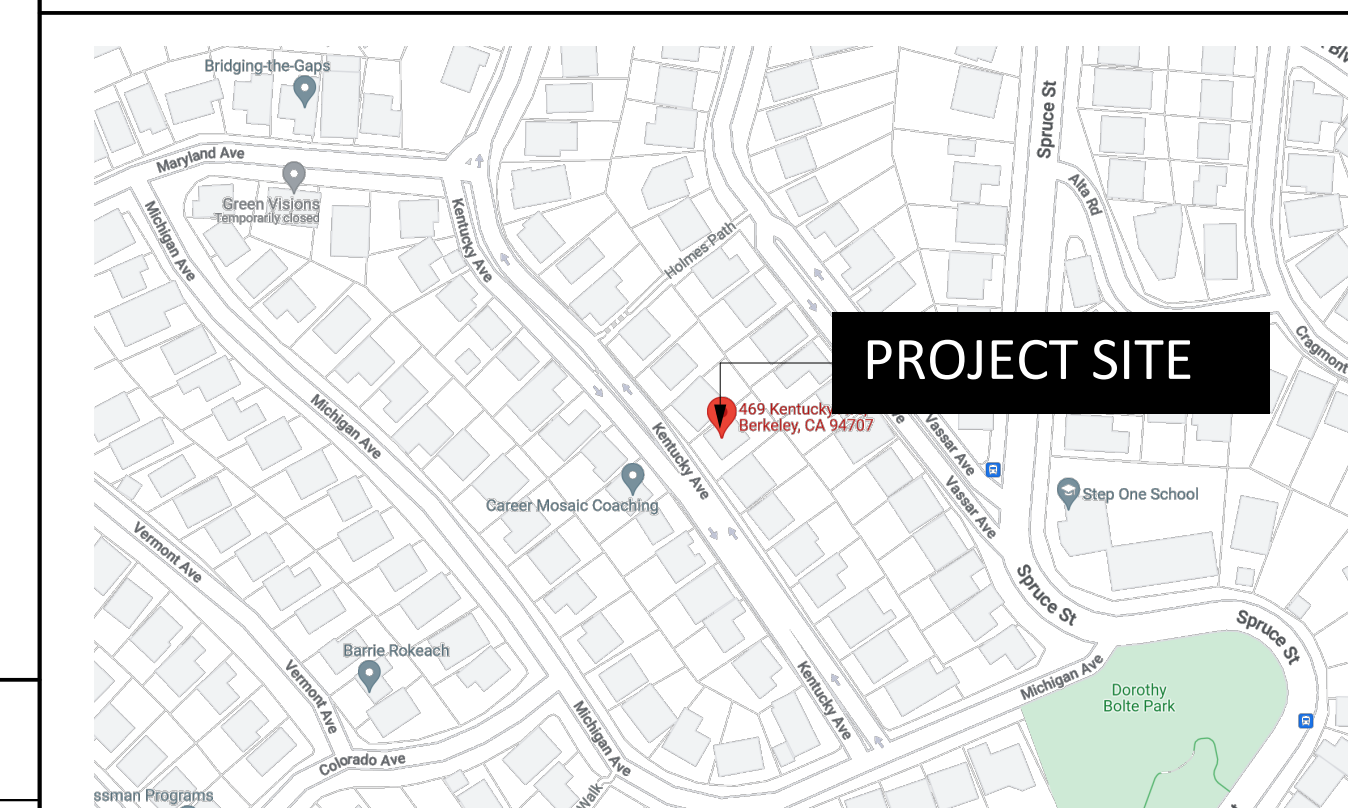
	EXISTING	PROPOSED	REQUIRED/ PERMITTED
# OF DWELLING UNITS	1	1 + ADU	-
# OF PARKING SPACES	1	2	1
# OF BEDROOMS	4	5	-
# OF BATHROOMS	2	3.5	-
FRONT YARD SETBACK	4'	4'	20'
SIDE YARD SETBACK (LEFT)	4.7'	5'	4'
SIDE YARD SETBACK (RIGHT)	9.7'	9.25'	4'
REAR YARD SETBACK	38.8'	38.16'	20'
BUILDING HEIGHT (# OF STORIES)	3	3	3
AVERAGE HEIGHT	25.5'	29.3'	28'
MAXIMUM HEIGHT	28.75'	31.687'	35'
LOT AREA	5,088 sq ft	5,088 sq ft	5,000 sq ft
GROSS FLOOR AREA	1,773 sq ft	4,350 sq ft	-
BUILDING FOOTPRINT	1,601 sq ft	2,020 sq ft	2,035.2
LOT COVERAGE	31.5%	39.7%	40%
USEABLE OPEN SPACE	181 sq ft	922 sq ft	800 sq ft

## SHEET INDEX

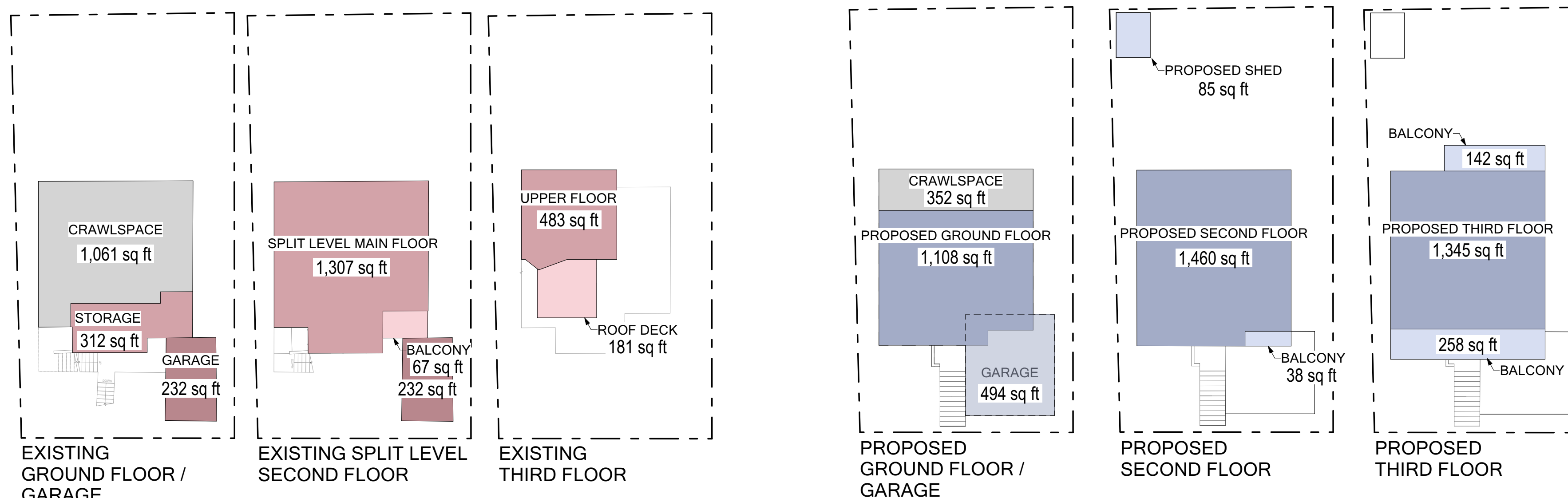
### PRELIMINARY

- A1 COVER SHEET
- A2 SITE PLAN
- A3 EXISTING FLOOR PLANS
- A4 PROPOSED FLOOR PLANS
- A5 PROPOSED FLOOR PLANS
- A6 PROPOSED ELEVATIONS
- A7 PROPOSED ELEVATIONS
- A8 PROPOSED ELEVATIONS
- A9 PROPOSED ELEVATIONS
- A10 PROPOSED SECTIONS
- A11 LANDSCAPE AND GRADING PLAN
- A12 SHADOW STUDY
- A13 SHADOW STUDY ELEVATIONS
- S1 SITE SURVEY

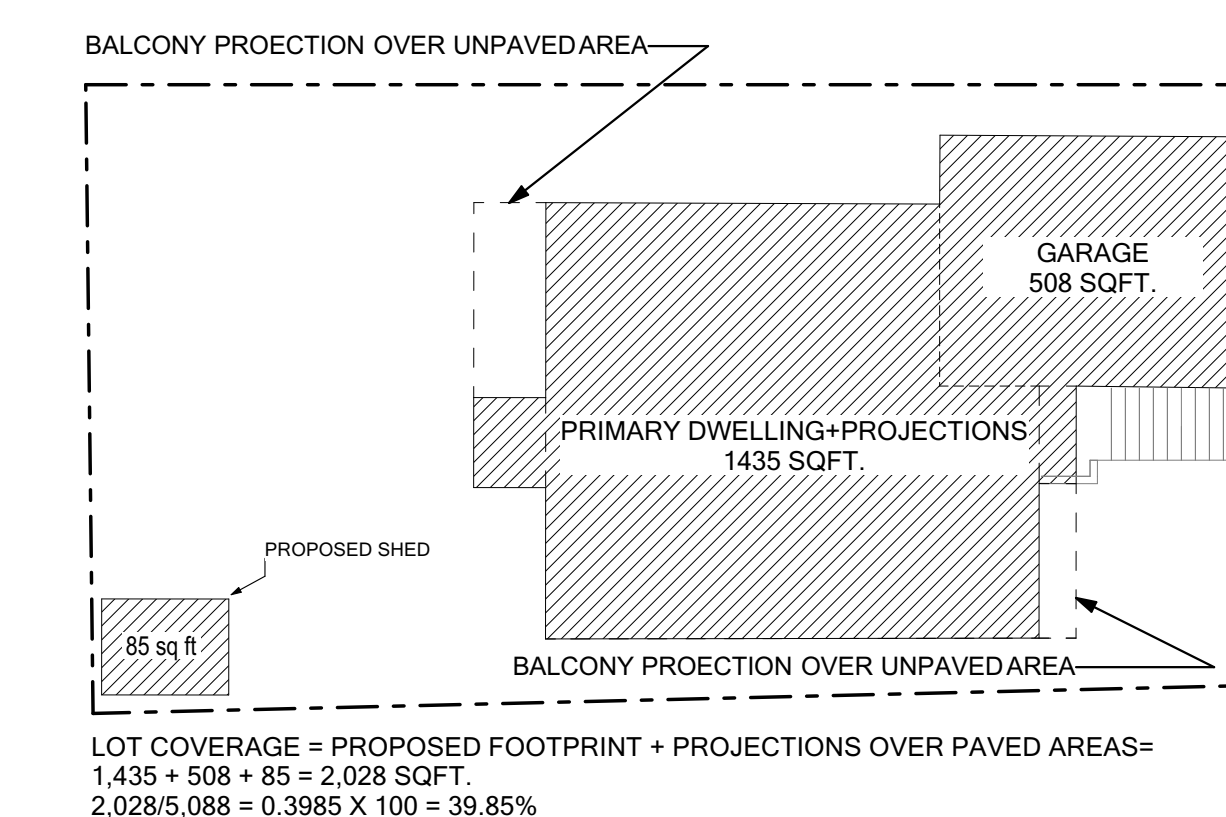
## VICINITY MAP



## AREA CALCULATIONS AND DIAGRAMS



## LOT COVERAGE DIAGRAM



LOT COVERAGE = PROPOSED FOOTPRINT + PROJECTIONS OVER PAVED AREAS = 1,435 + 508 + 85 = 2,028 SQFT.  
2,028/5,088 = 0.3985 X 100 = 39.85%

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Project No:

2136

Date:

December 19, 2023

Drawn By:

CH/KM

Checked By:

SG

A1



I HAVE REVIEWED THE PLANS FOR DEMOLITION OF EXISTING 4-BEDROOM HOME AND CONSTRUCTION OF A NEW 4,292 GROSS SQUARE FOOT PROJECT, INCLUDING A 5-BEDROOM HOME WITH AN ATTACHED 1-BEDROOM ACCESSORY DWELLING UNIT AND AN ATTACHED 2-CAR GARAGE AT 469 KENTUCKY AVE

NAME (PRINTED)	SIGNATURE	ADDRESS	RENTER OR OWNER	DATE	HAVE NO OBJECTIONS	HAVE OBJECTIONS (PLEASE STATE BRIEFLY)	HAVE NO COMMENT
		467 KENTUCKY AVE.	RENT / OWN				
		475 KENTUCKY AVE.	RENT / OWN				
		462 KENTUCKY AVE.	RENT / OWN				
		466 KENTUCKY AVE.	RENT / OWN				
		472 KENTUCKY AVE.	RENT / OWN				
		470 VASSAR AVE.	RENT / OWN				
		476 VASSAR AVE.	RENT / OWN				
		480 VASSAR AVE.	RENT / OWN				

# Keefe Residence

Project Address:  
469 KENTUCKY AVE.  
BERKELEY, CA 94707

Owner:  
AIDAN KEEFE

469 KENTUCKY AVE.  
BERKELEY, CA 94707  
MOBILE: (415) 317-7845  
EMAIL: aidan.keefe@gmail.com



LEVITCH ASSOCIATES INC.  
1029 HEINZ AVENUE BERKELEY CA 94710  
Tel: (510)845-6941 Fax: (510) 845-6950  
www.levitch.com

## USE PERMIT

Sheet Contents:  
SITE PLAN

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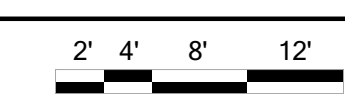
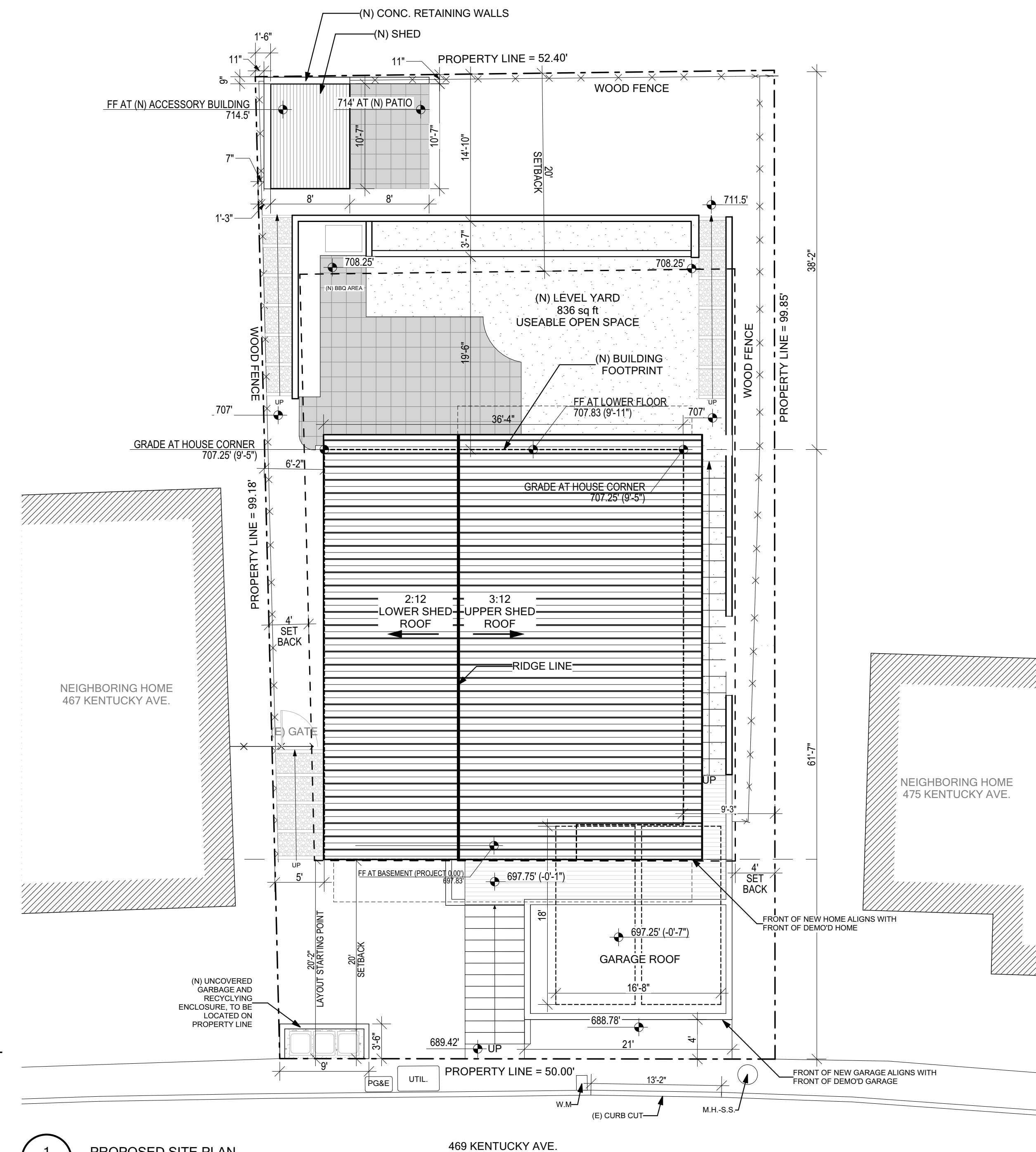
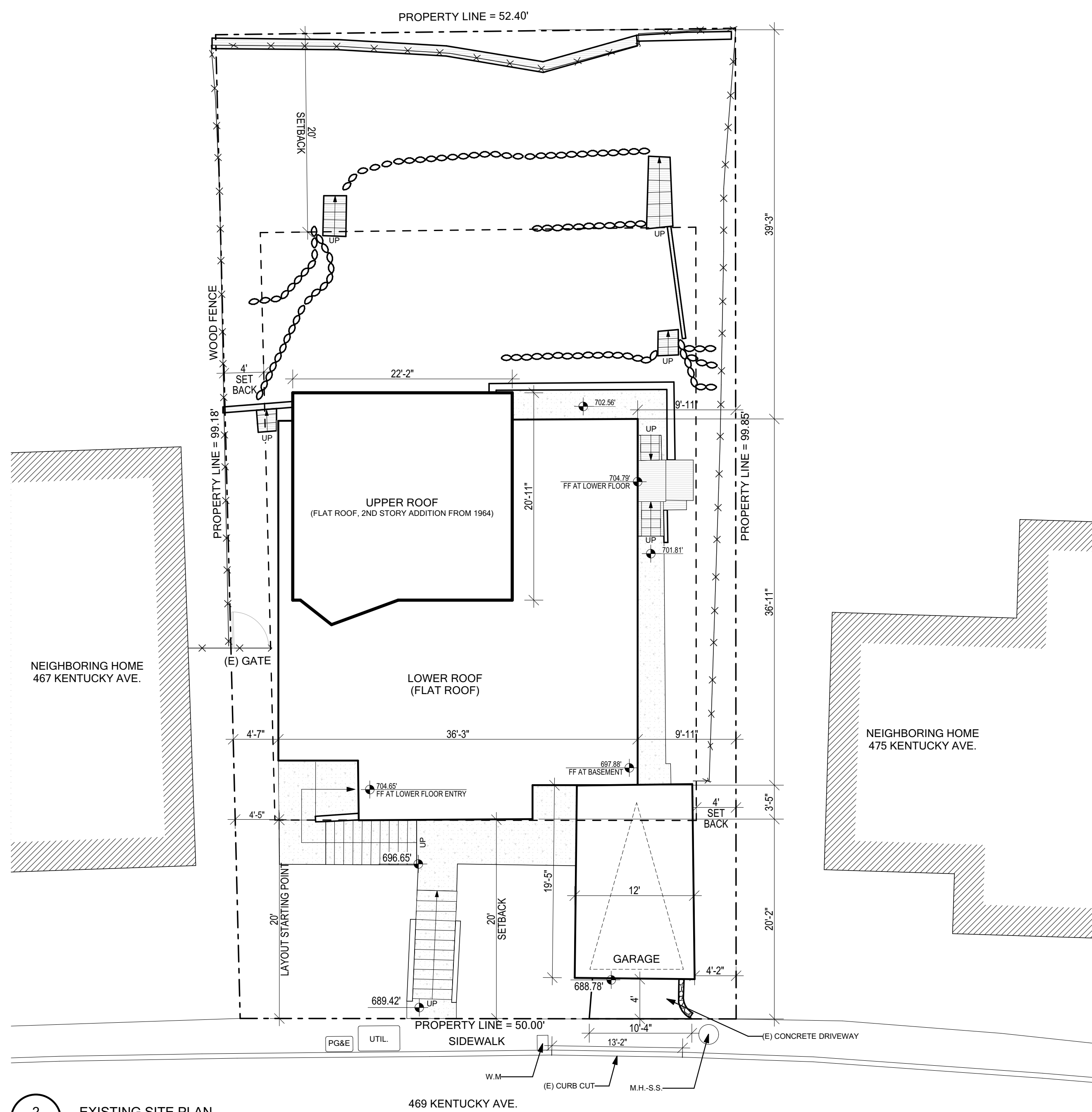
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Project No:  
**2136**

Date:  
**December 19, 2023**

Drawn By:  
**CH/KM**

Checked By:  
**SG**

**A2**



# Keefe Residence

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Sheet Contents:  
EXISTING FLOOR PLANS

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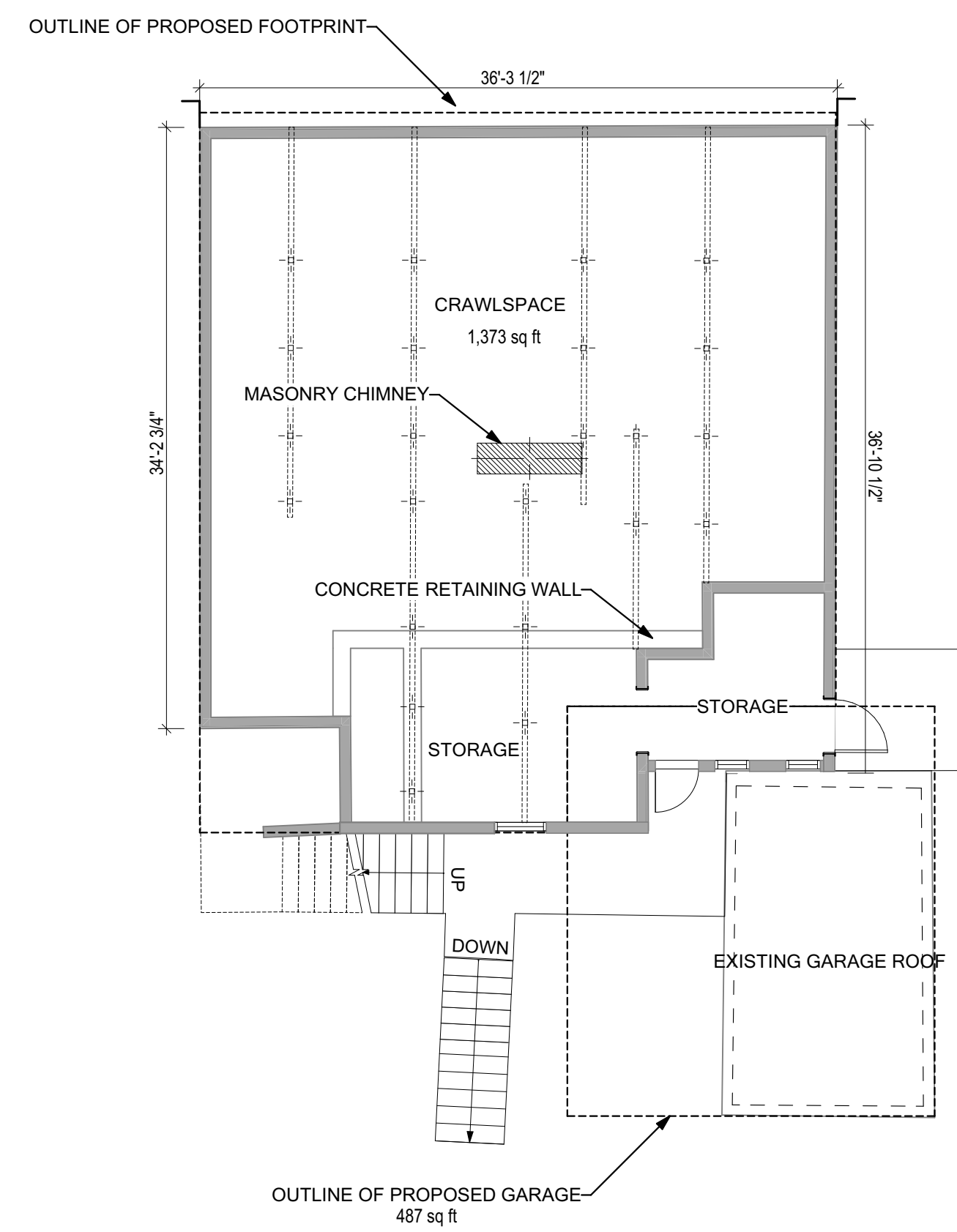
Project No:  
**2136**

Date:  
**December 19, 2023**

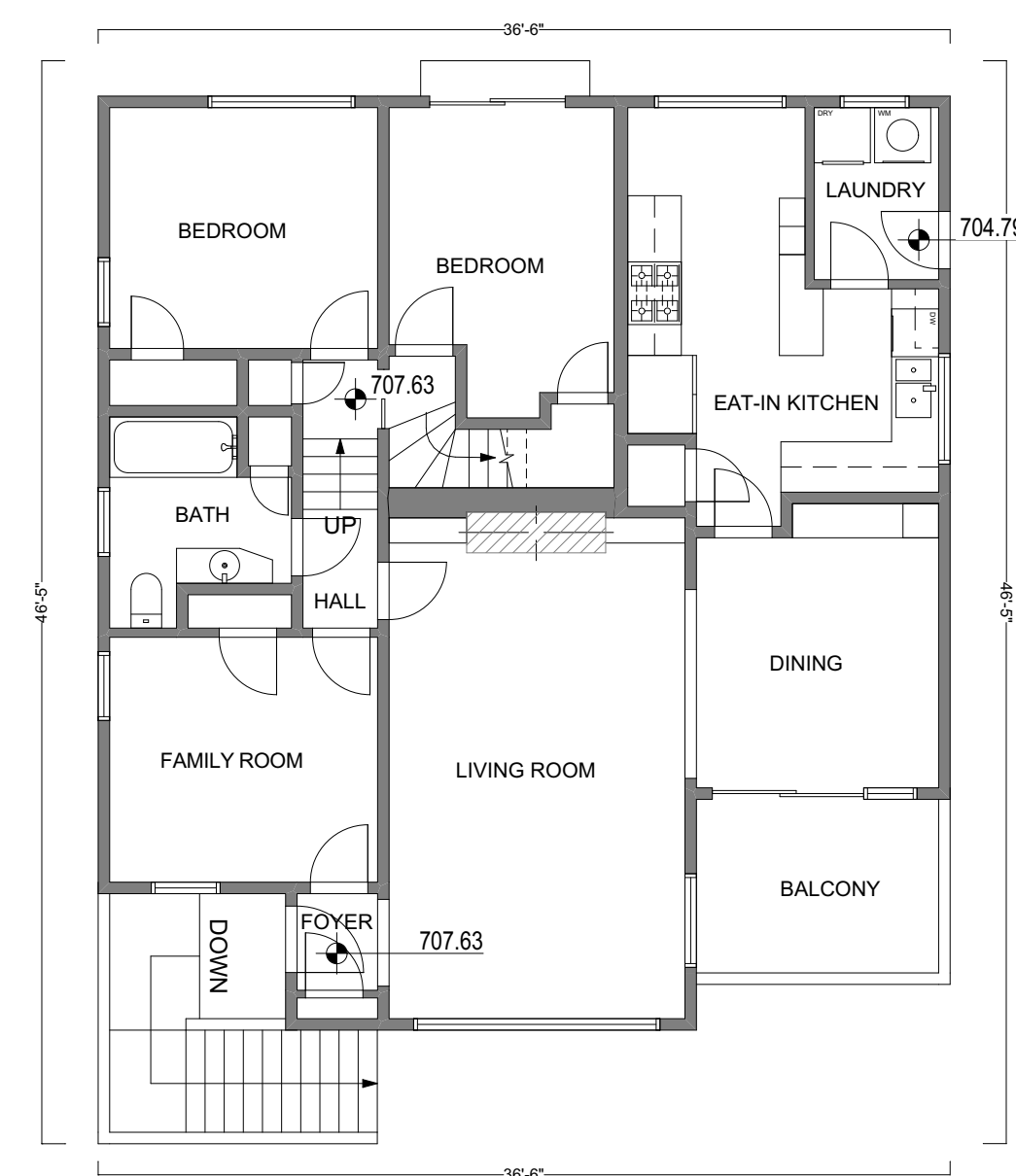
Drawn By:  
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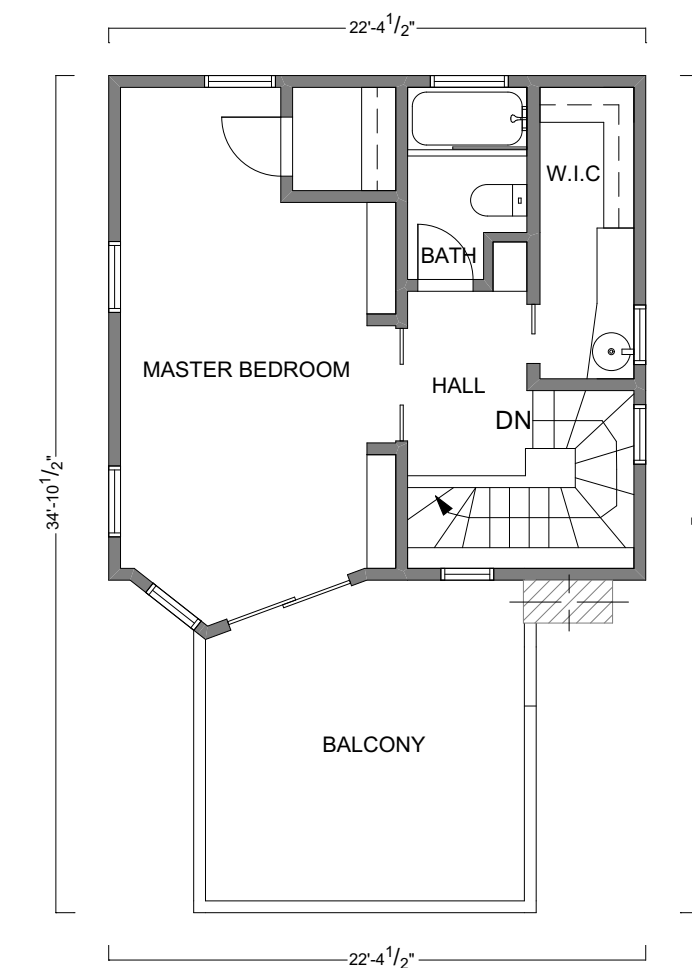
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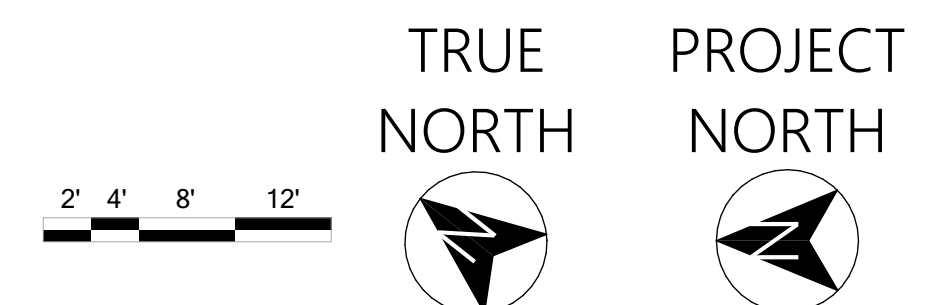
**1**  
A3 EXISTING GROUND FLOOR / GARAGE  
SCALE: 1/8" = 1'-0"



**2**  
A3 EXISTING SPLIT LEVEL SECOND FLOOR  
SCALE: 1/8" = 1'-0"



**3**  
A3 EXISTING THIRD FLOOR  
SCALE: 1/8" = 1'-0"



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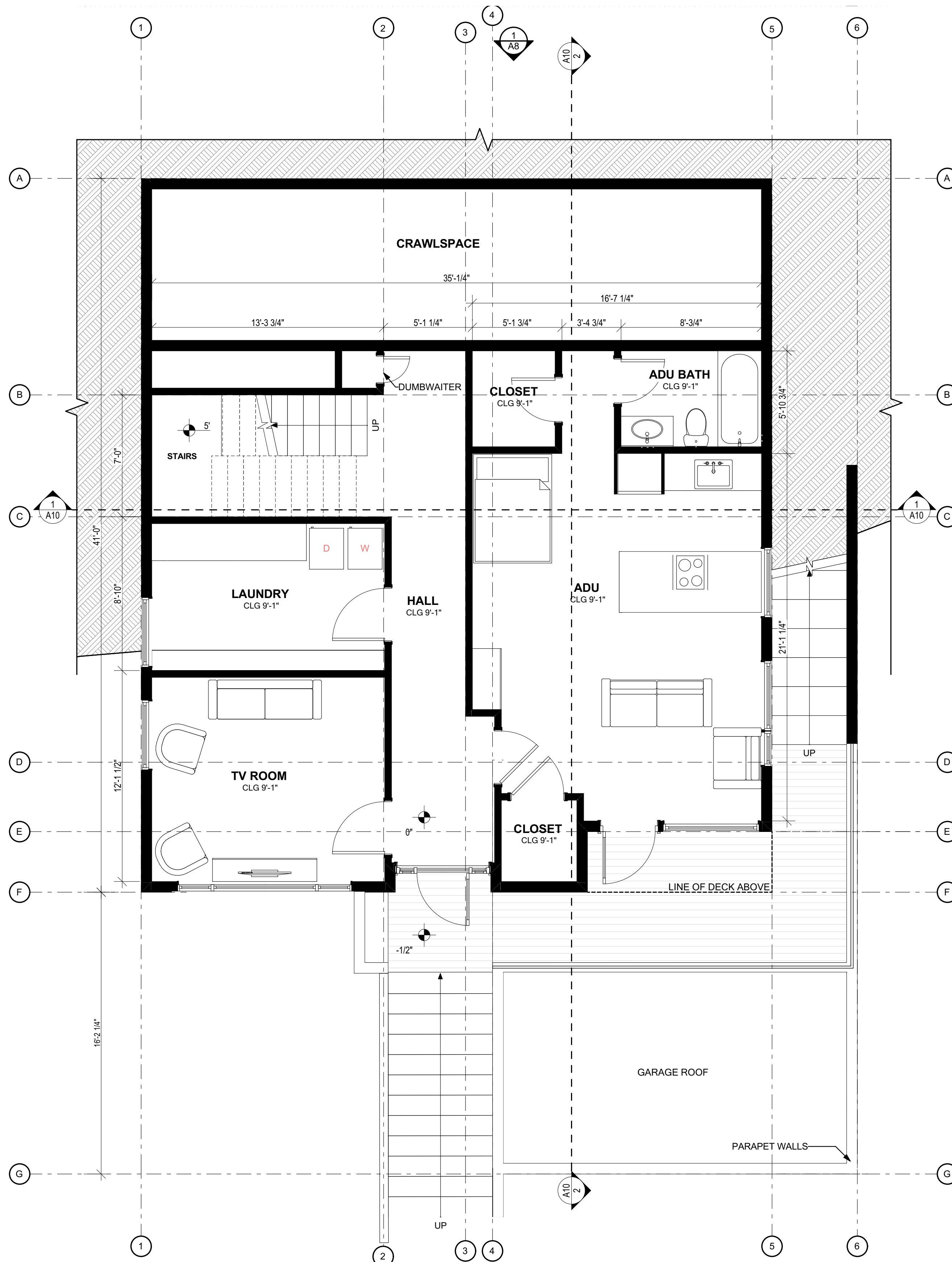
Project No:  
2136

Date:  
December 19, 2023

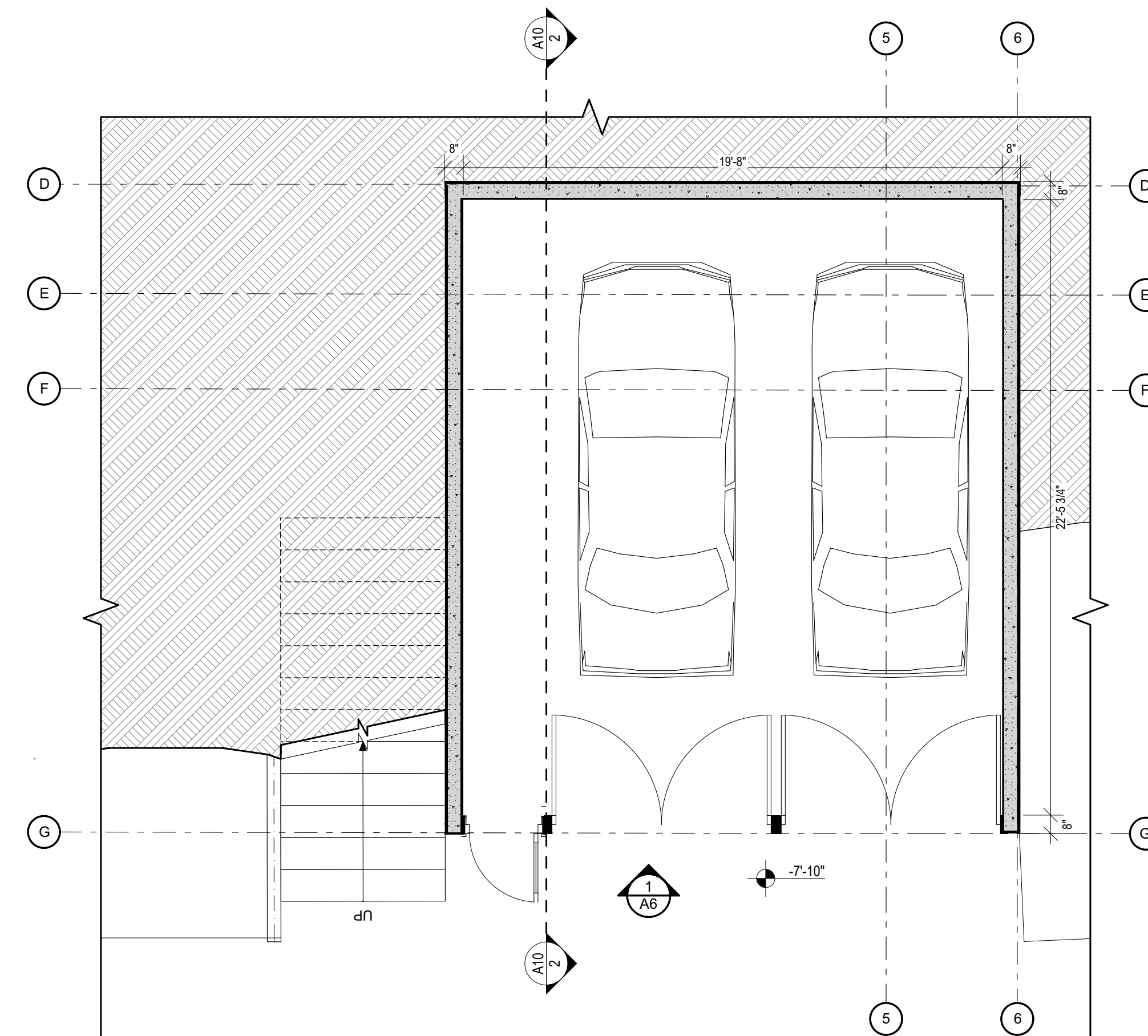
Drawn By:  
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Checked By:  
SG

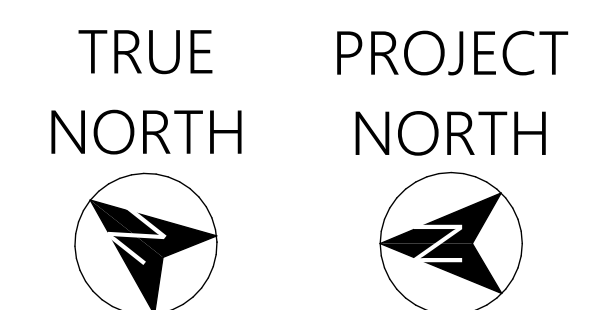
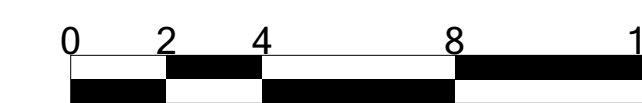
A4

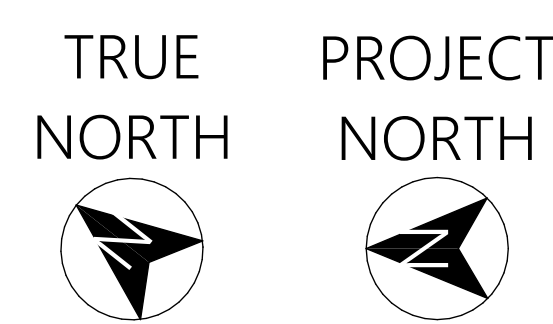
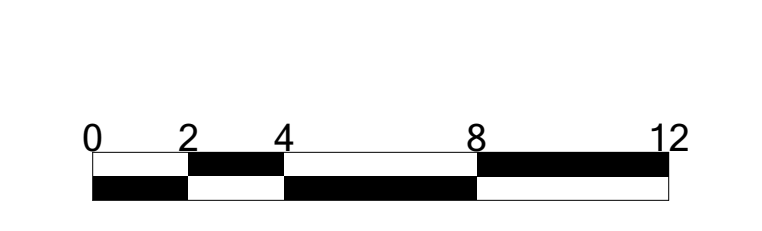
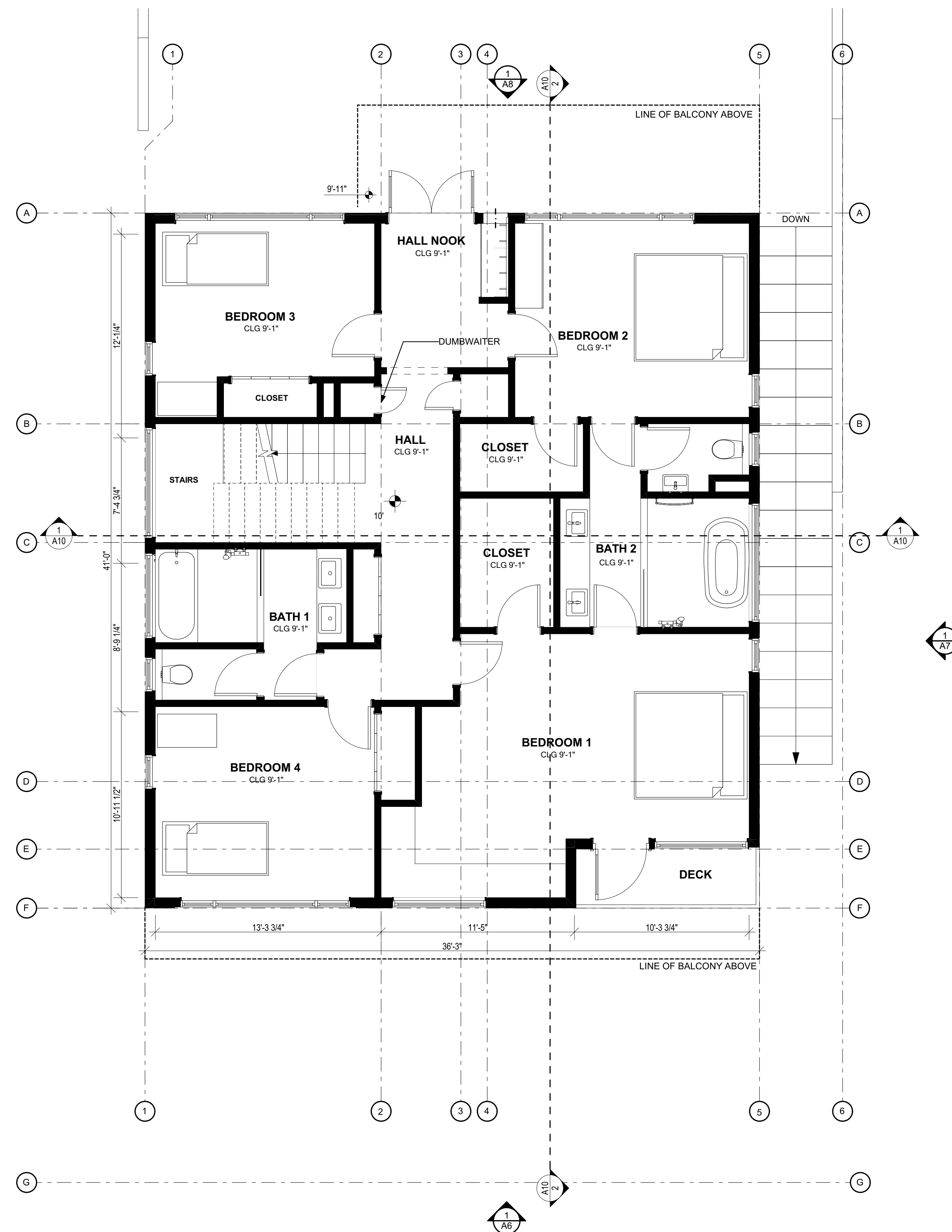
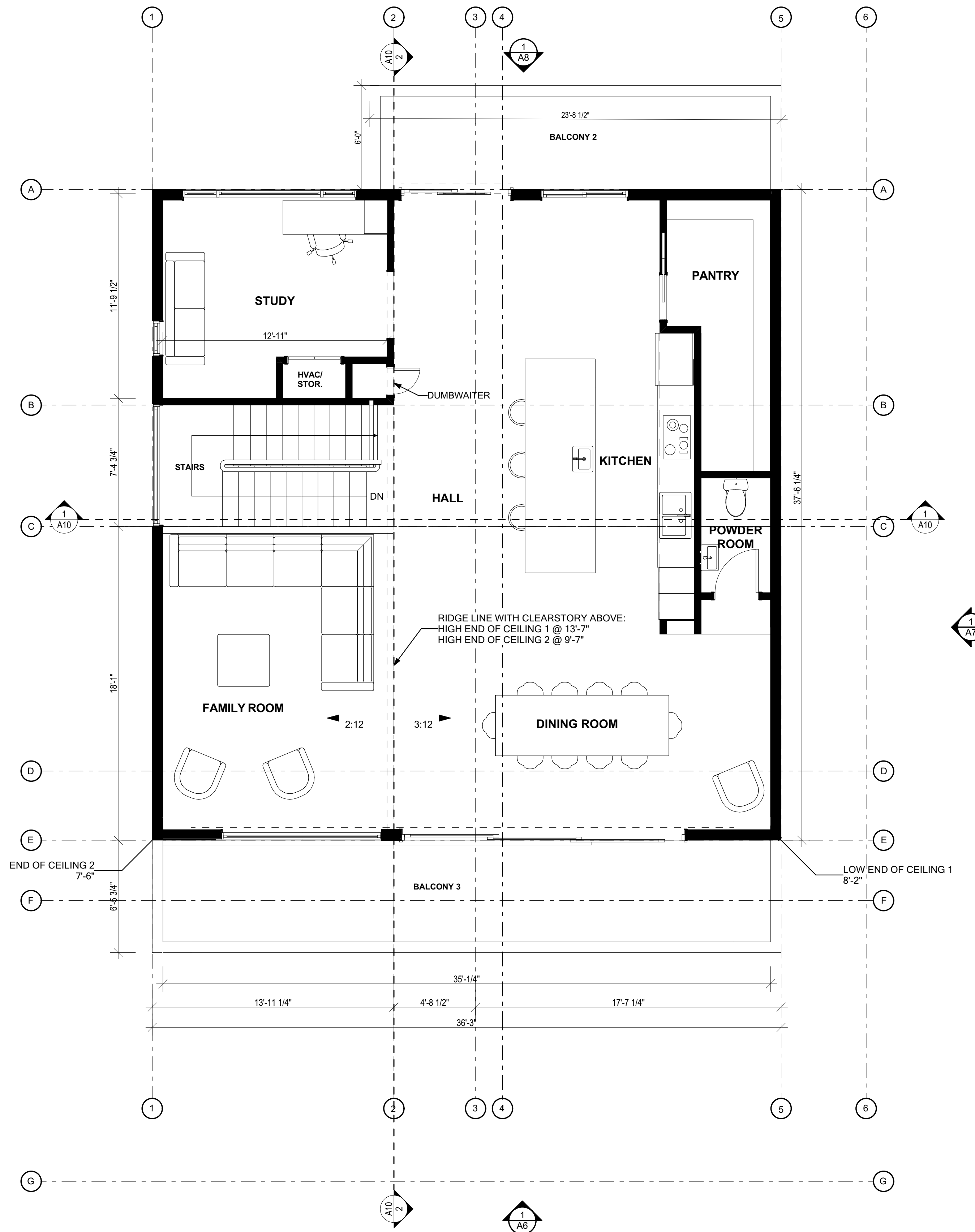


2  
A4 PROPOSED GROUND FLOOR  
SCALE: 1/4" = 1'-0"



1  
A4 PROPOSED GARAGE FLOOR  
SCALE: 1/4" = 1'-0"





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**CH/KM**

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**A5**

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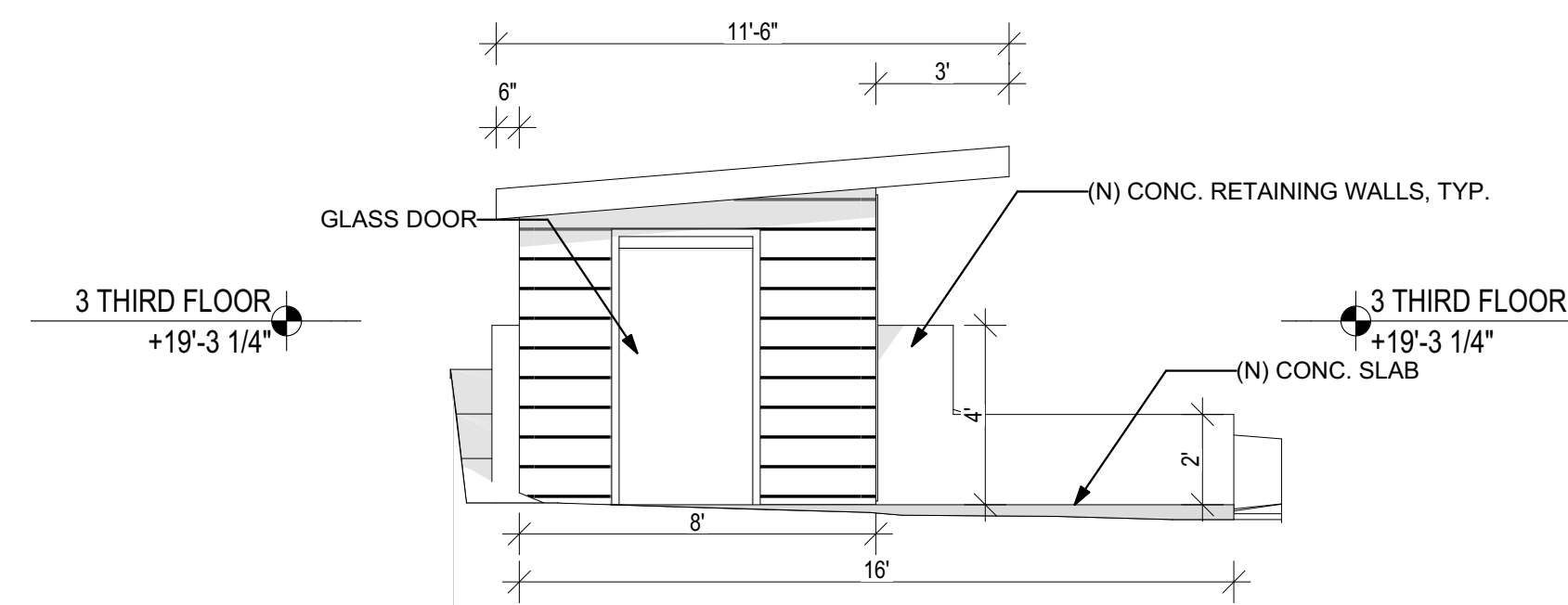
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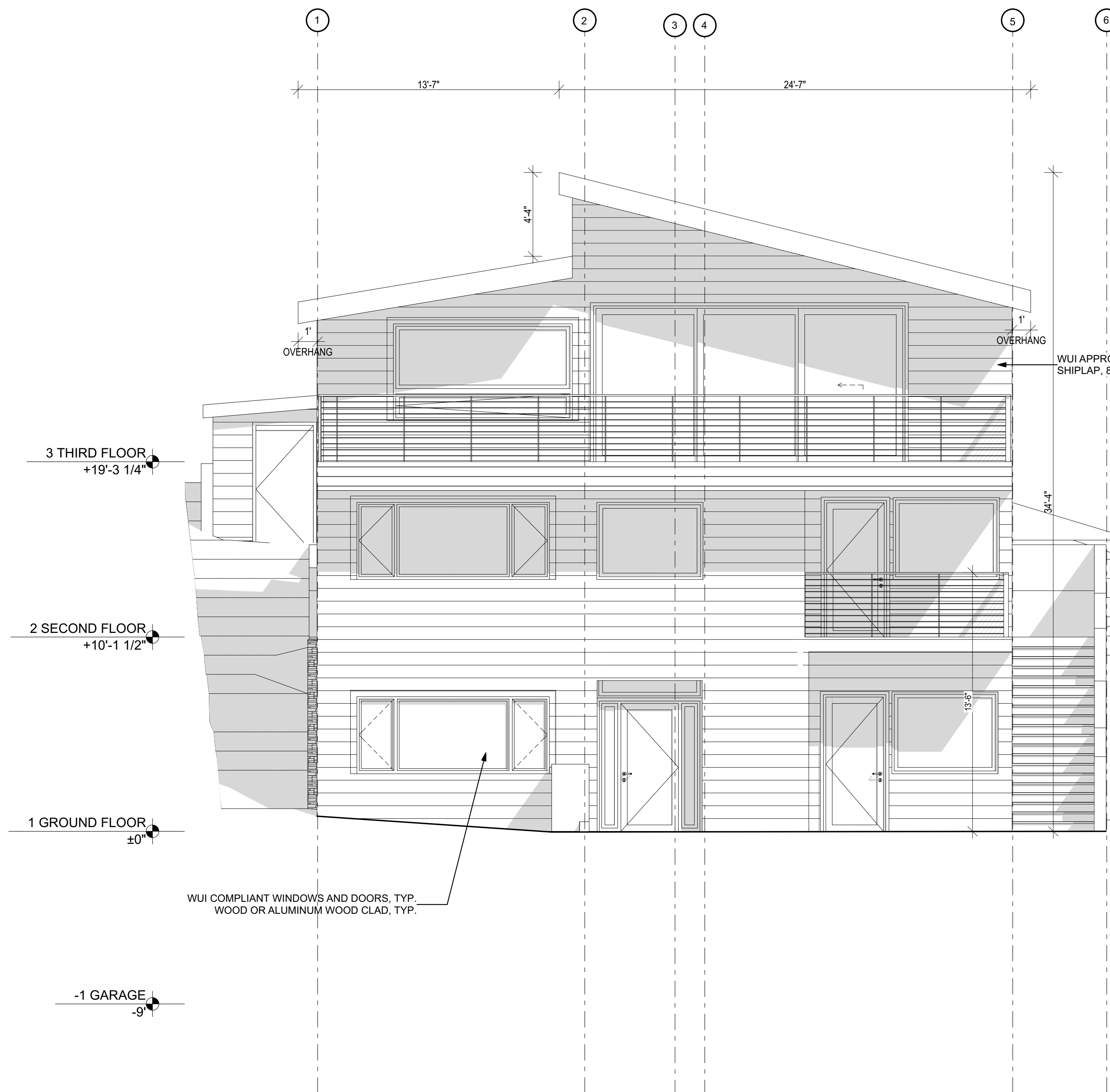
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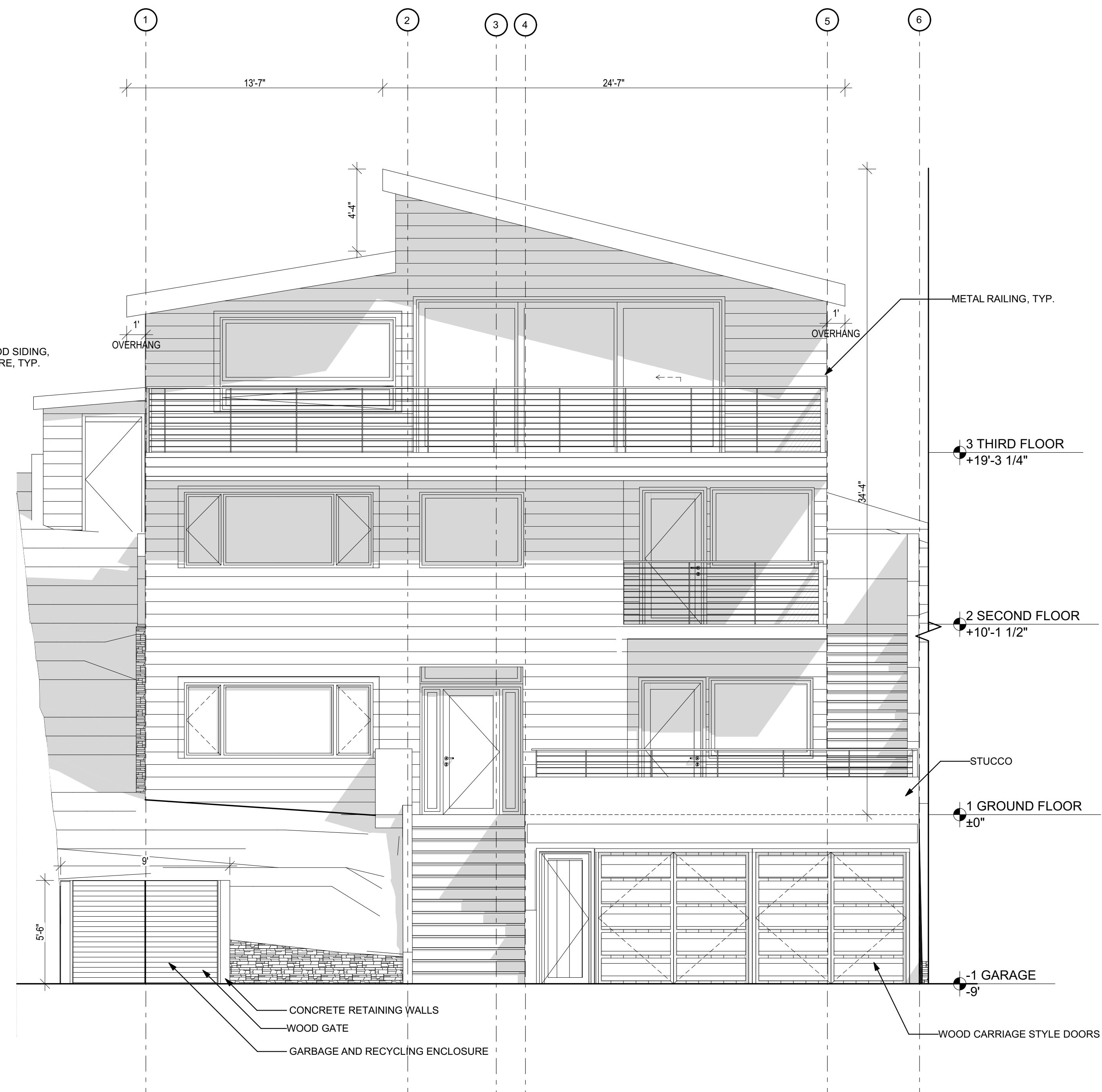
A6



3 WEST ELEVATION: SHED  
A6 SCALE: 1/4" = 1'-0"



1 WEST ELEVATION MAIN HOUSE  
A6 SCALE: 1/4" = 1'-0"



2 WEST ELEVATION STREET VIEW  
A6 SCALE: 1/4" = 1'-0"



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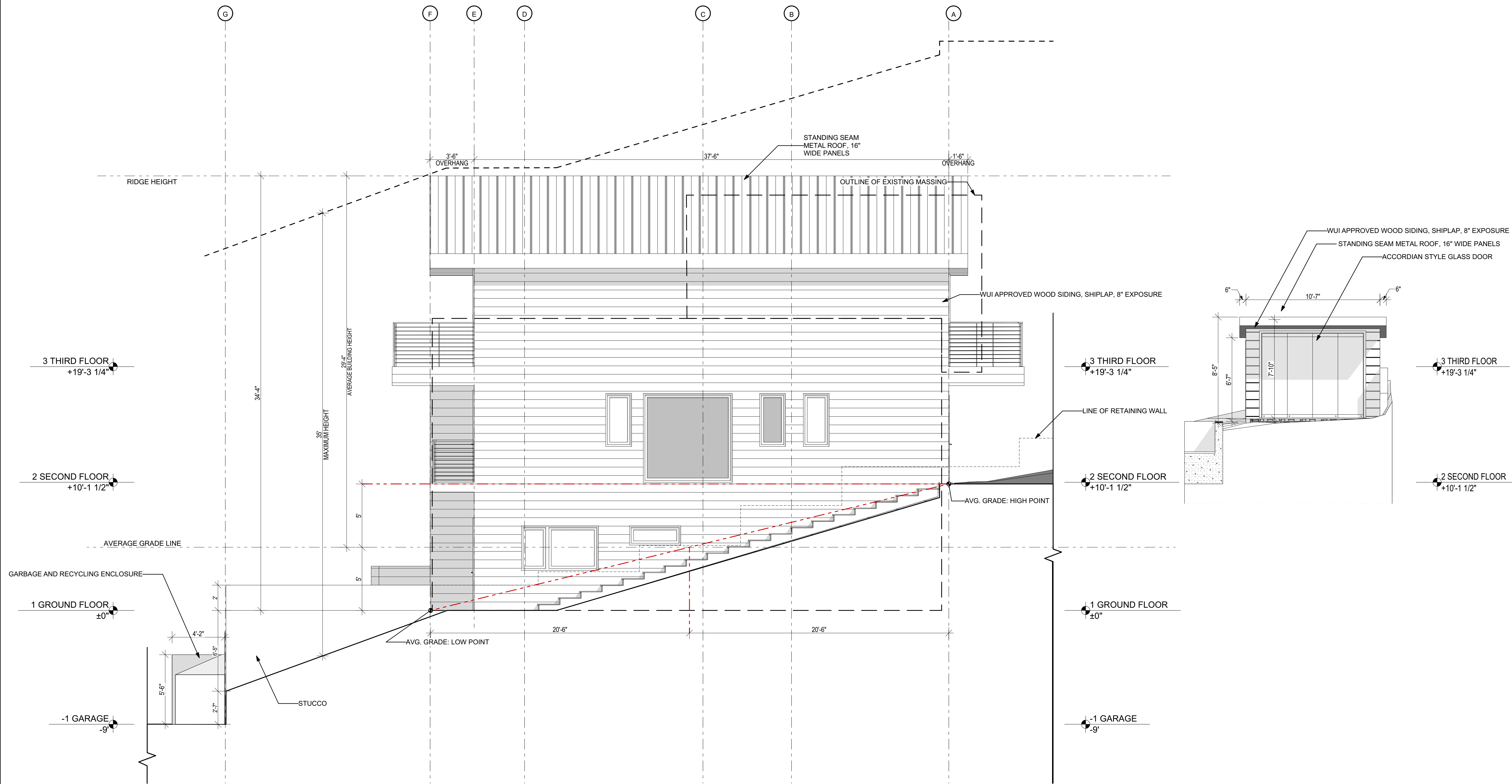
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A7



1 SOUTH ELEVATION  
SCALE: 1/4" = 1'-0"



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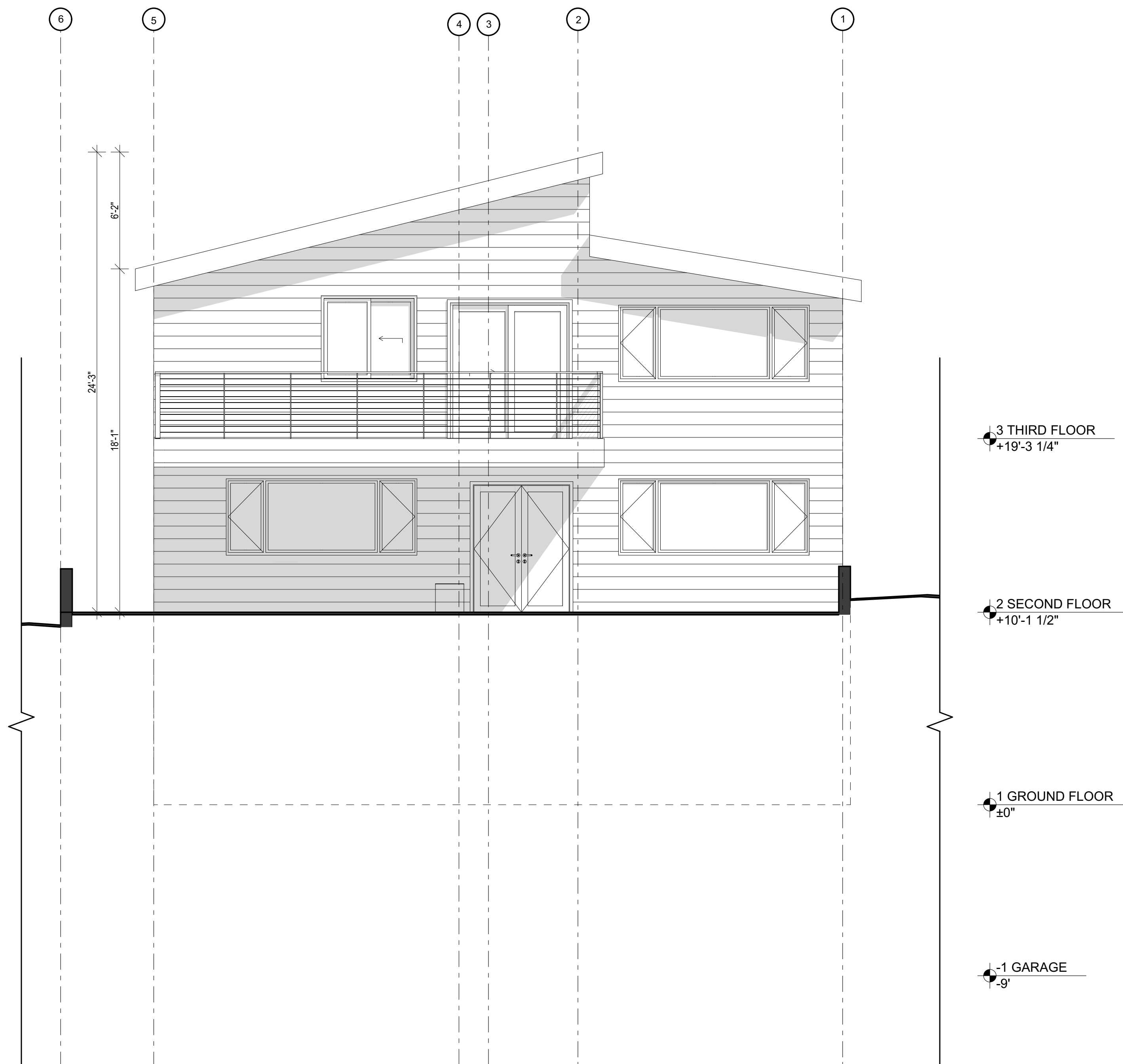
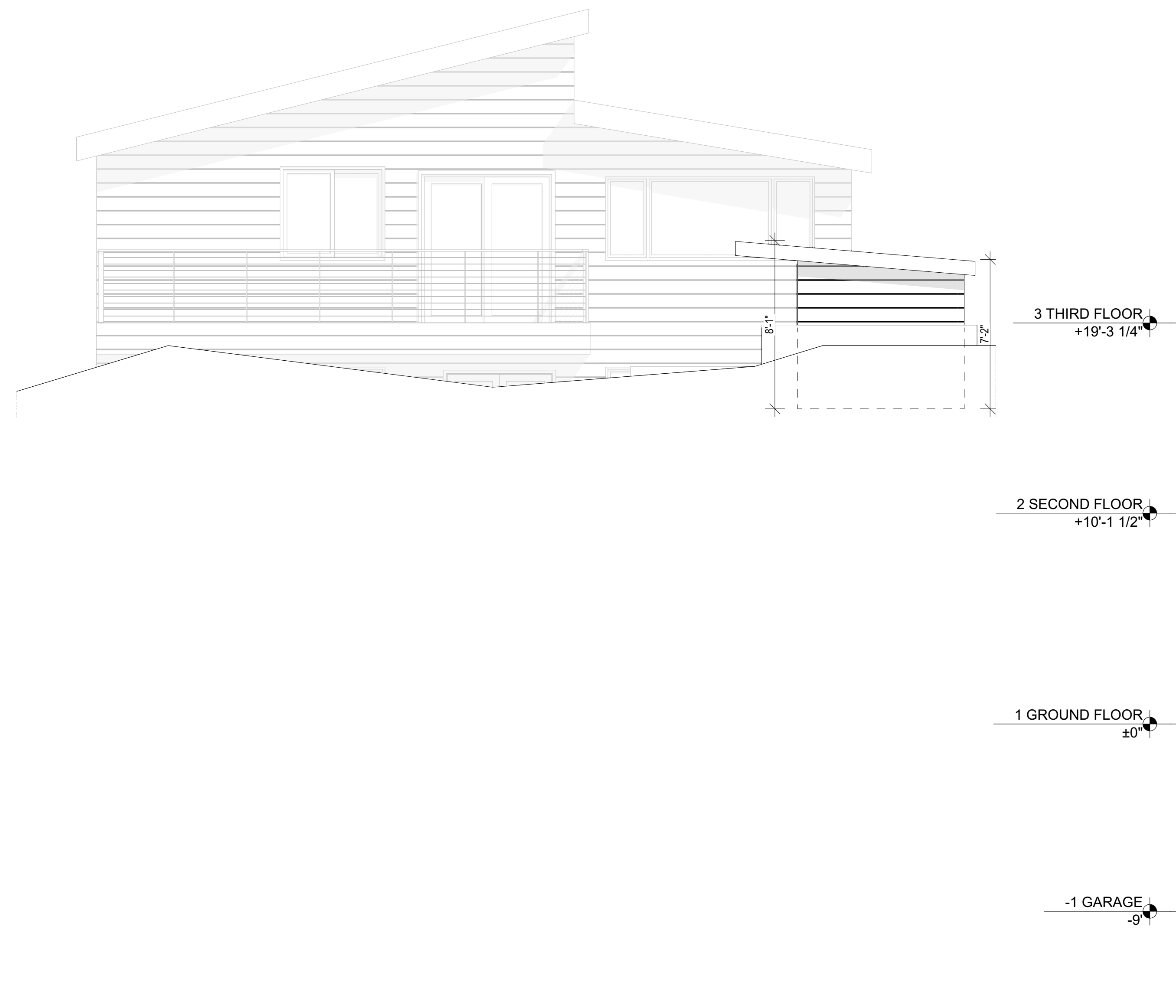
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A8



2 EAST ELEVATION: SHED  
A8 SCALE: 1/4" = 1'-0"

1 EAST ELEVATION  
A8 SCALE: 1/4" = 1'-0"



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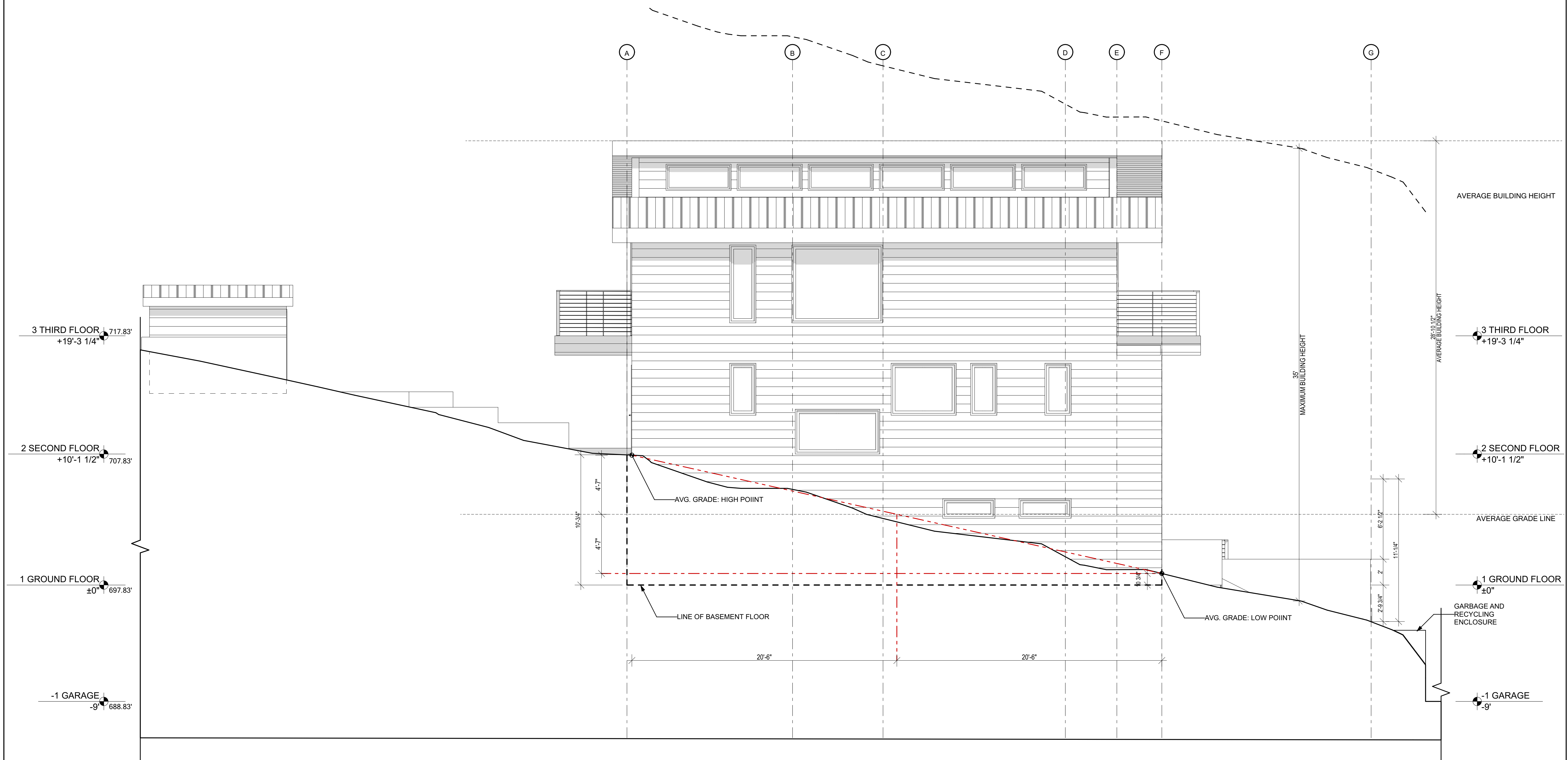
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2136

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A9



1 NORTH ELEVATION  
A9 SCALE: 1/4" = 1'-0"





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PROPOSED SECTIONS

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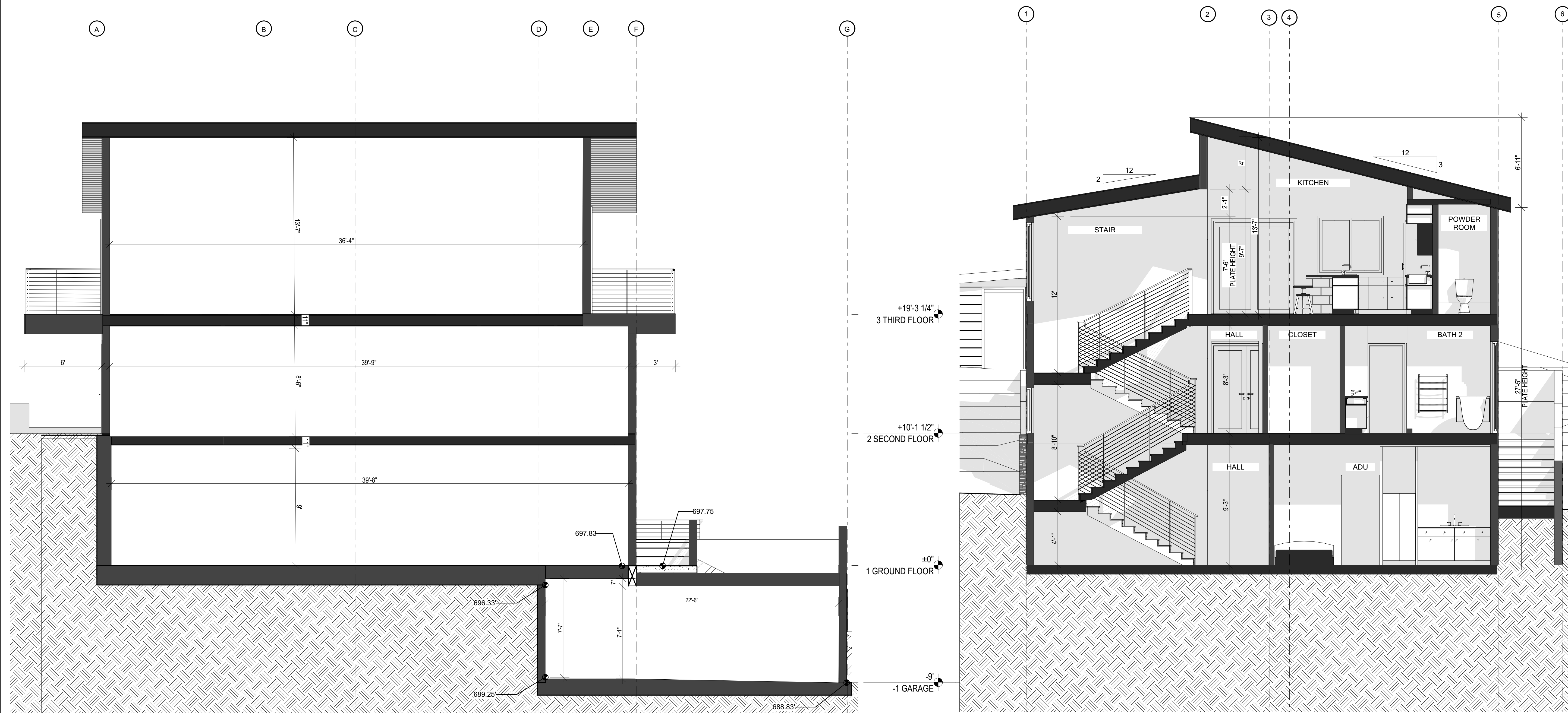
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A10

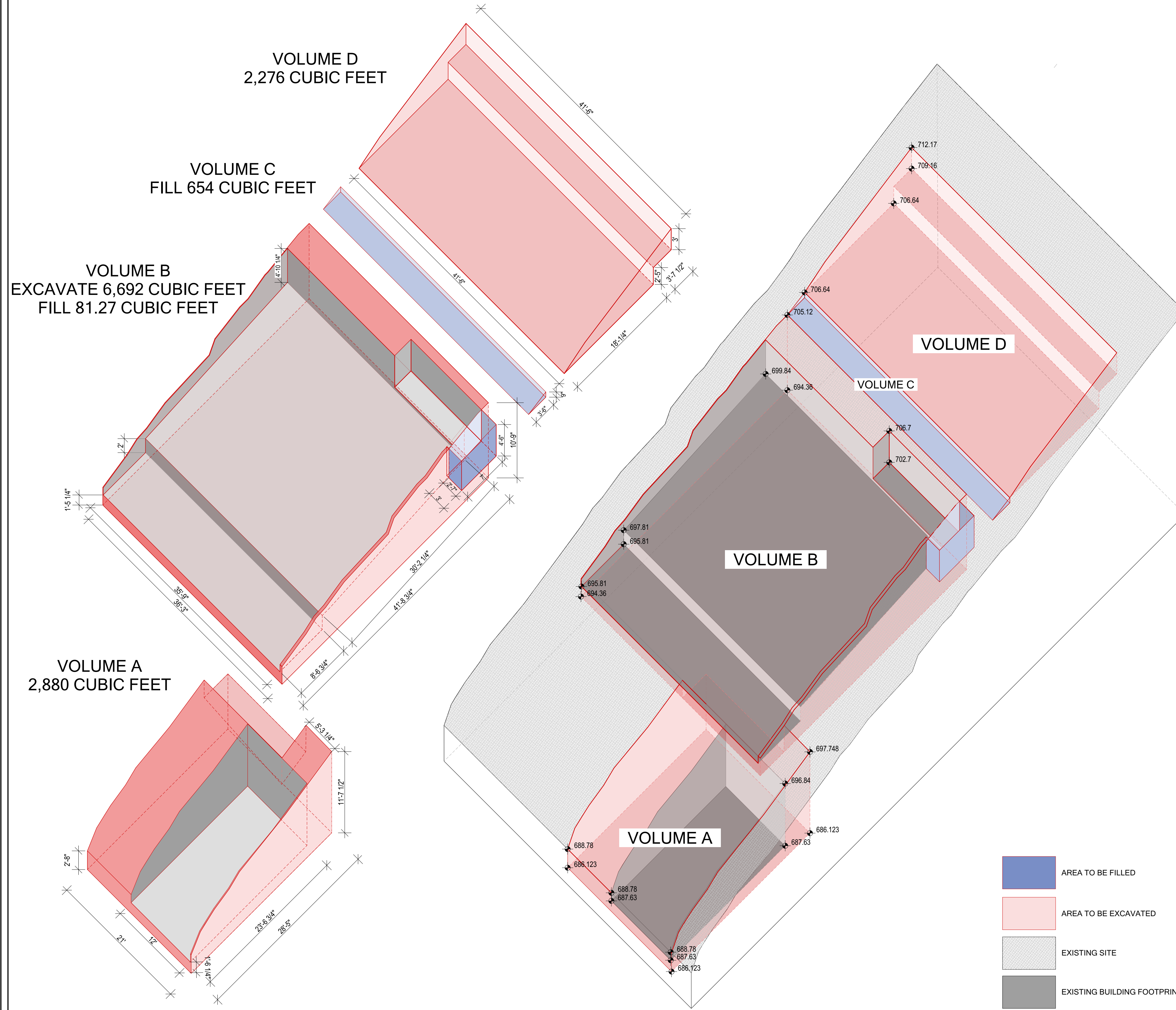


2 SECTION B  
A10 SCALE: 1/4" = 1'-0"

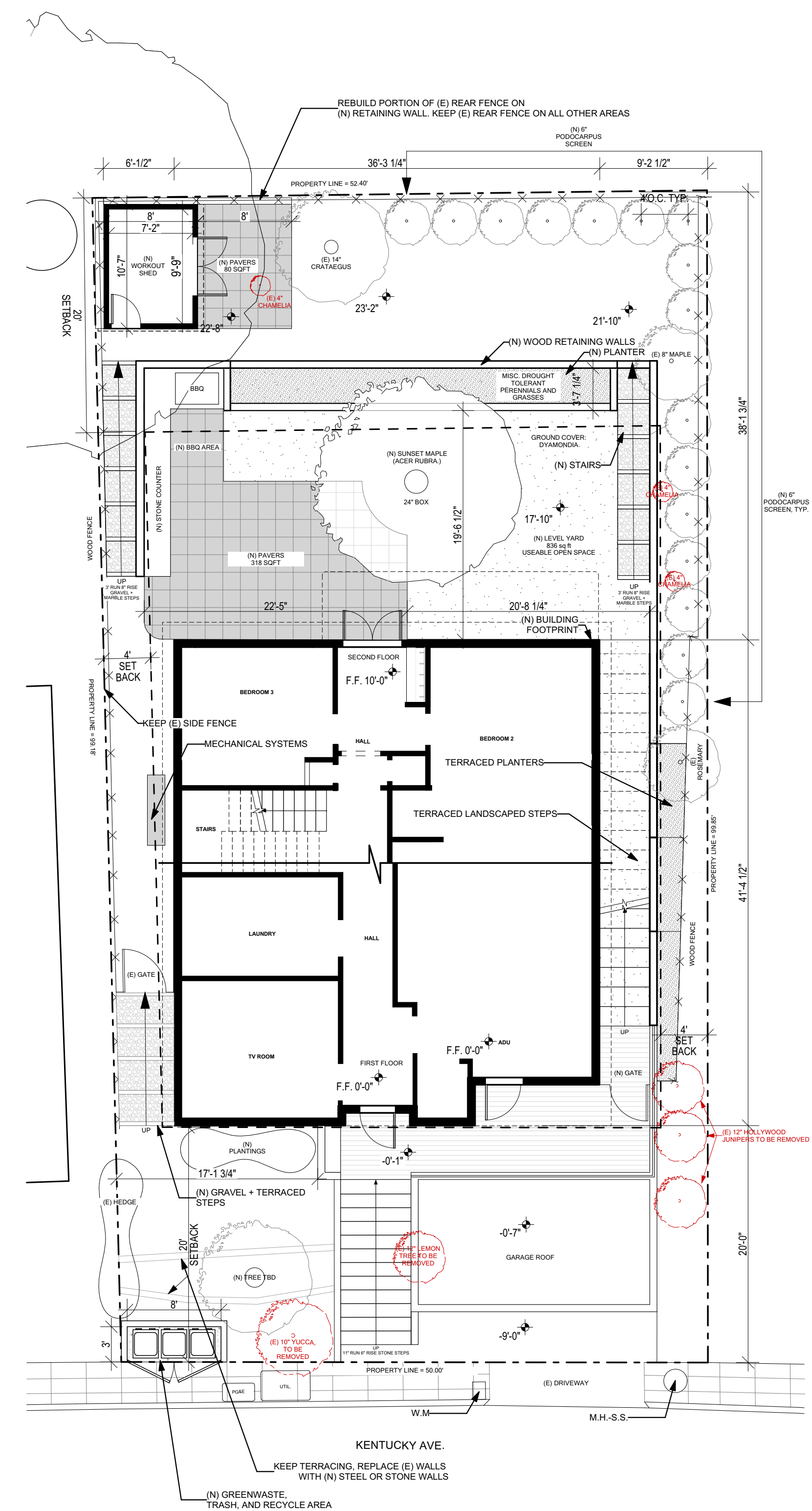
1 SECTION A  
A10 SCALE: 1/4" = 1'-0"



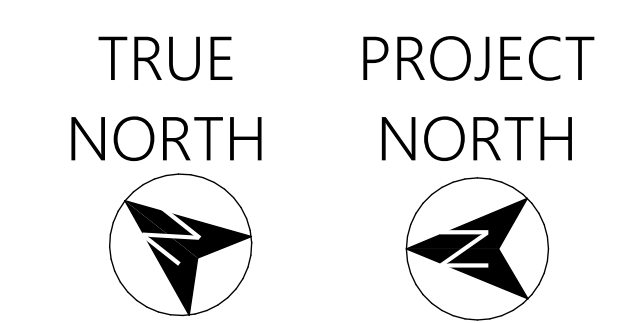
TOTAL EXCAVATION = 11,848 CUBIC FEET  
TOTAL FILL = 735.27



- AREA TO BE FILLED
- AREA TO BE EXCAVATED
- EXISTING SITE
- EXISTING BUILDING FOOTPRINT



1 A11 LANDSCAPE PLAN  
SCALE: 1/8" = 1'-0"



5 A11 CONCEPTUAL GRADING DIAGRAM  
SCALE: 1/8" = 1'-0"

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Sheet Contents:  
LANDSCAPE AND GRADING  
PLAN

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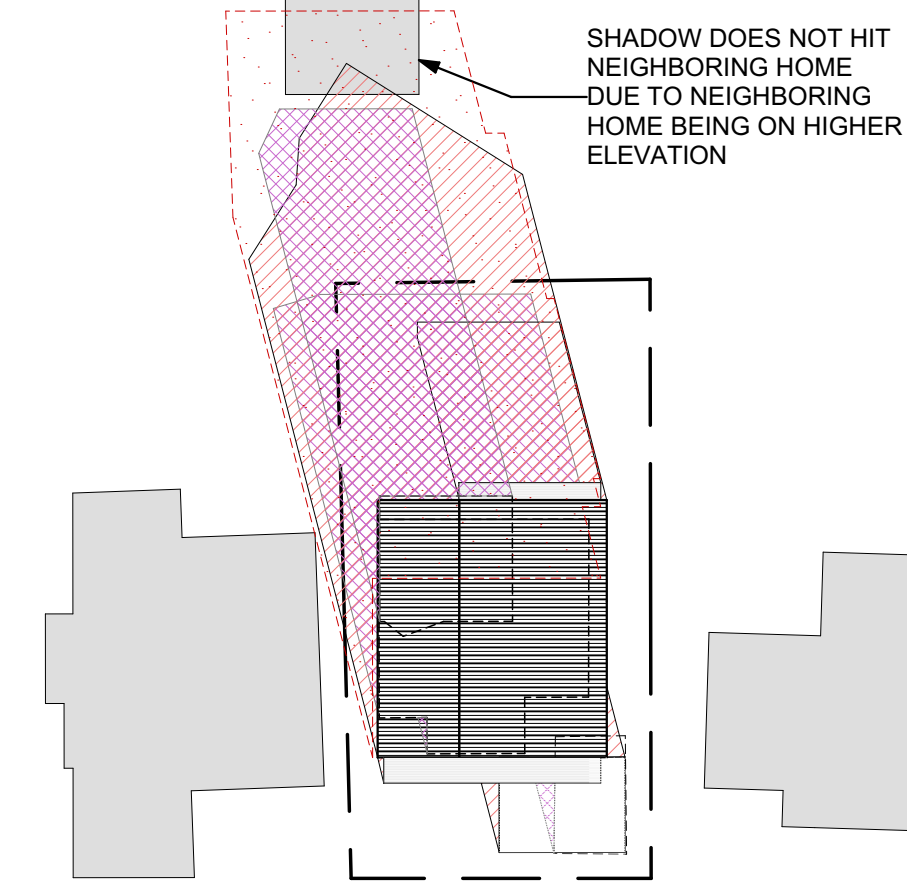
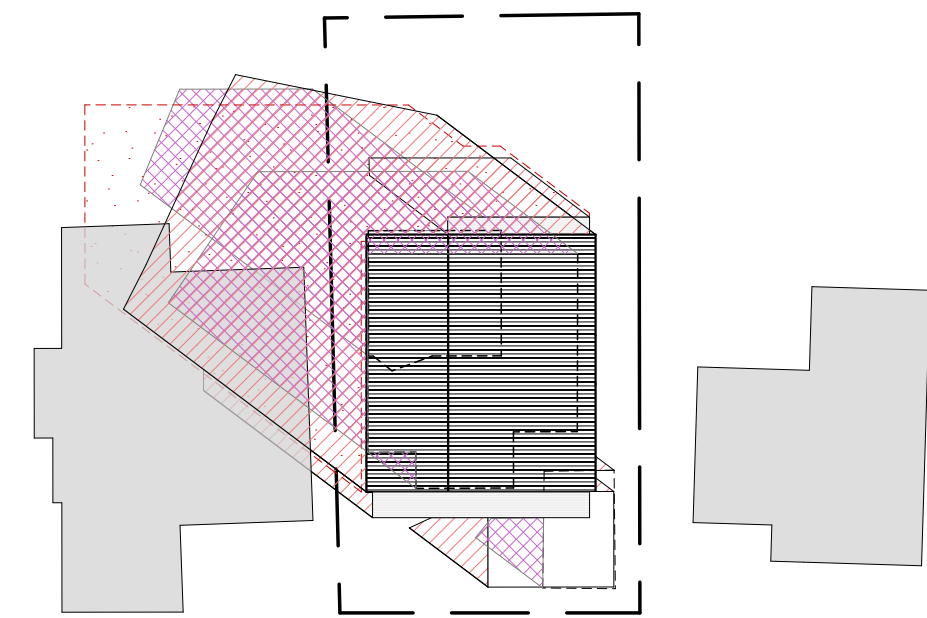
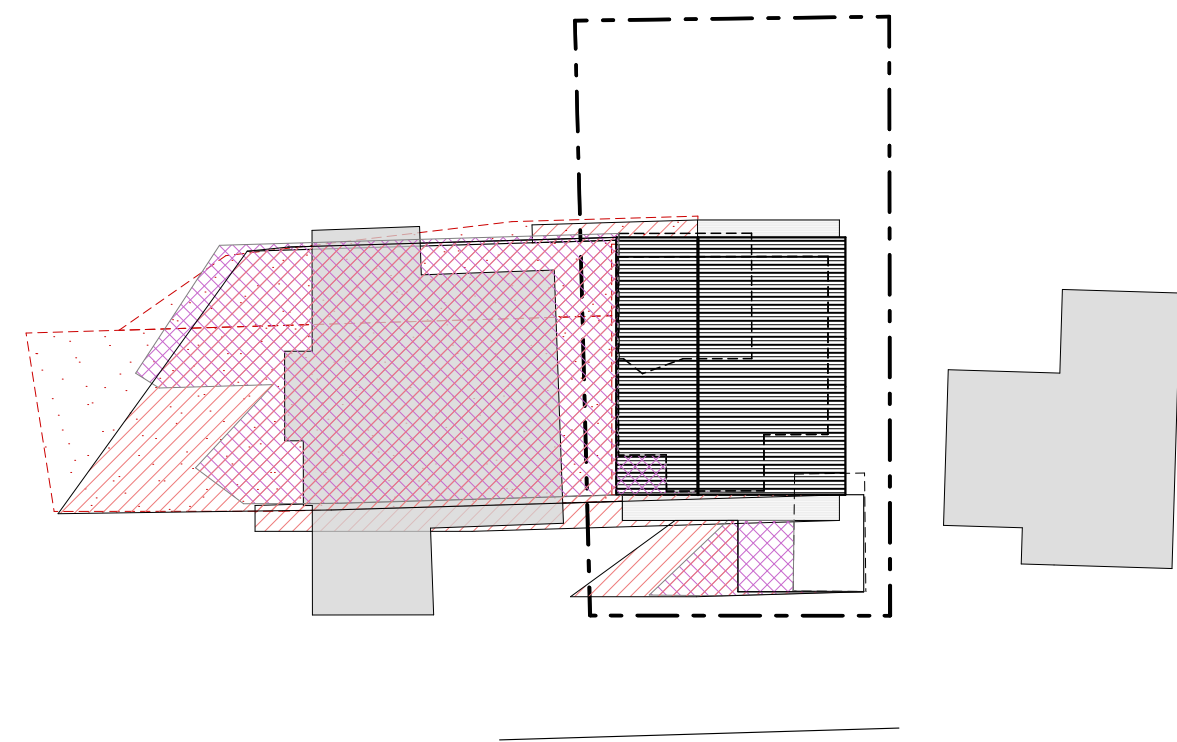
# A11

2 HOURS AFTER SUNRISE

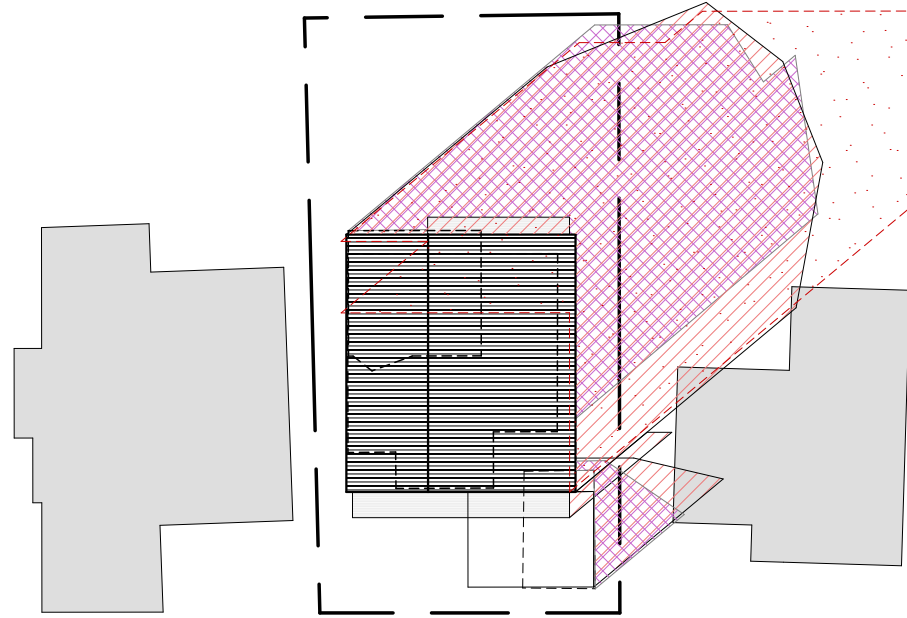
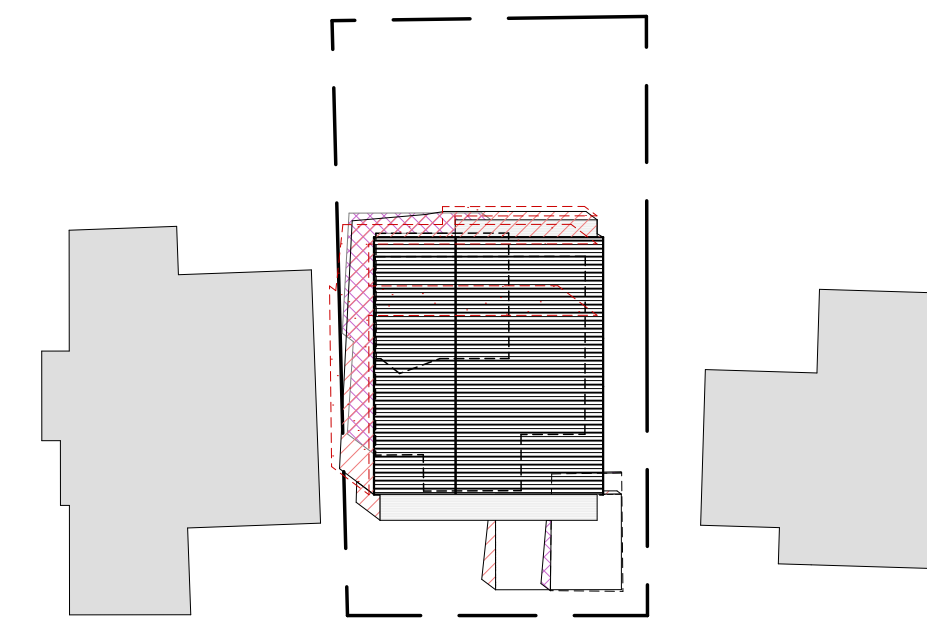
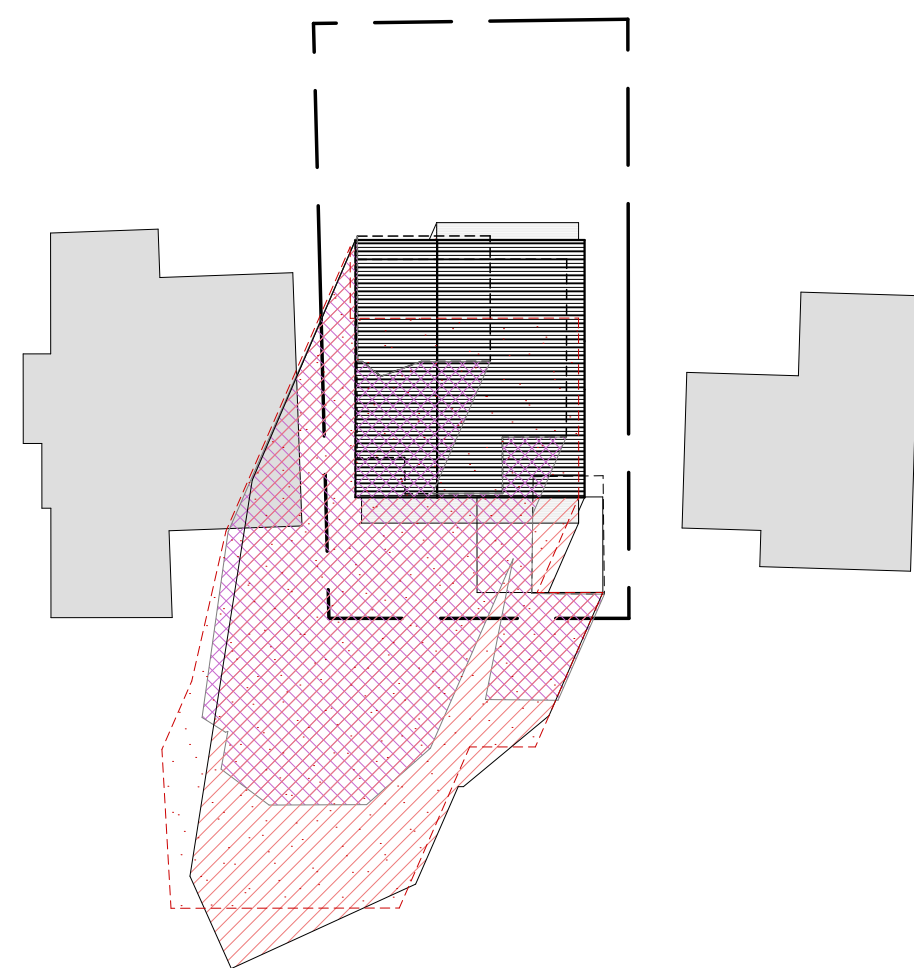
NOON

2 HOURS BEFORE SUNSET

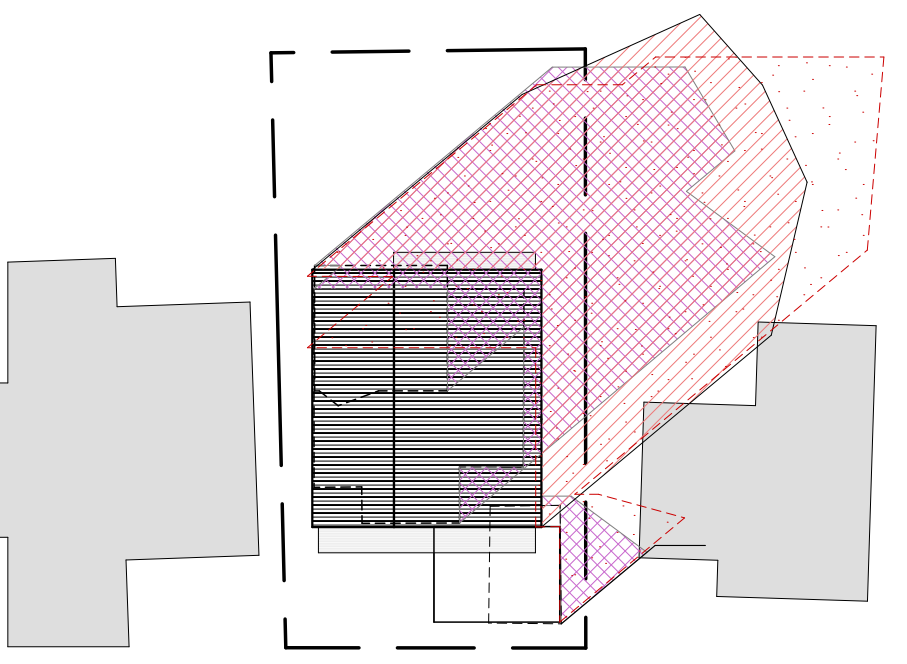
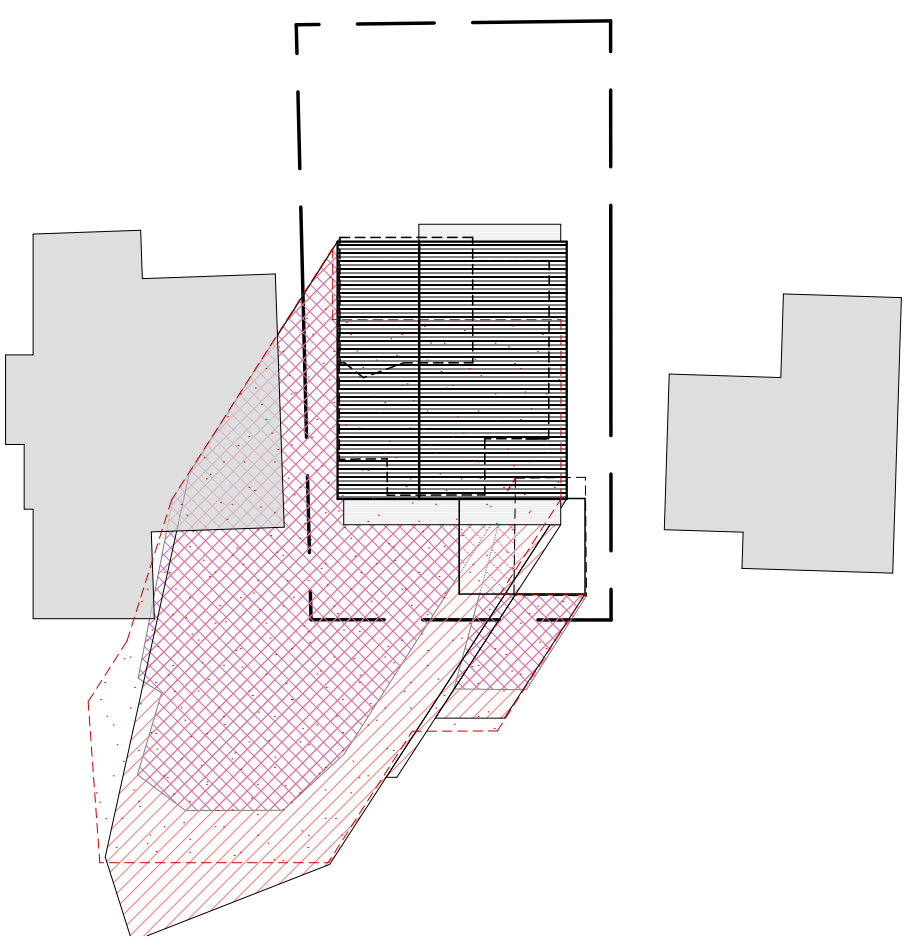
12/21



6/21



5/11



NOTE: ALL BUILDINGS BEING SHADOWED ARE SHOWN IN THE DIAGRAM

469 KENTUCKY BACKYARD:  
PHOTO TAKEN ON 5/11/22 AT 12:00 PM



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SHADOW STUDY

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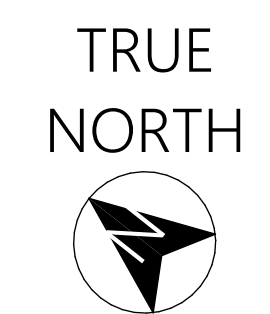
Date:  
December 19, 2022

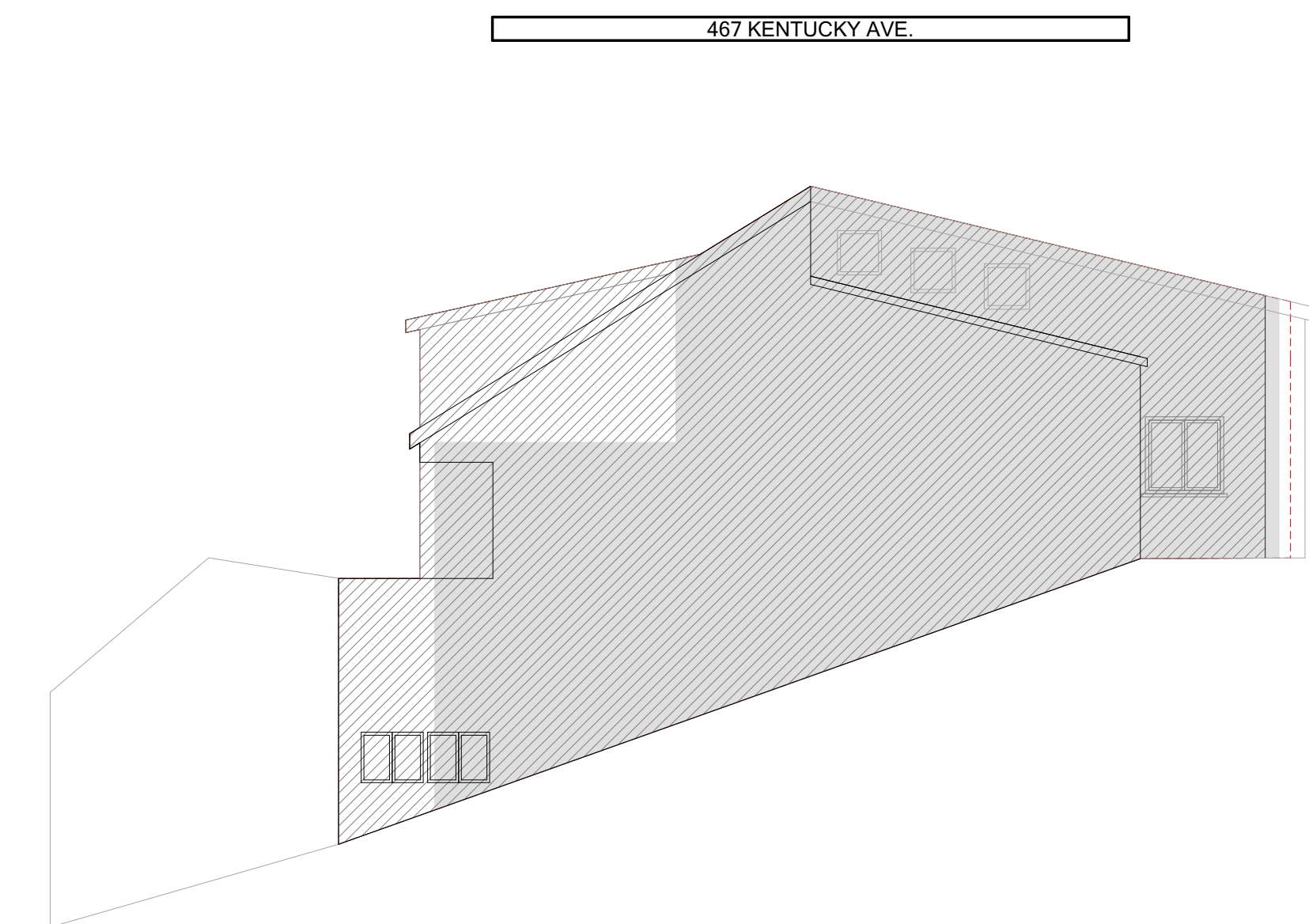
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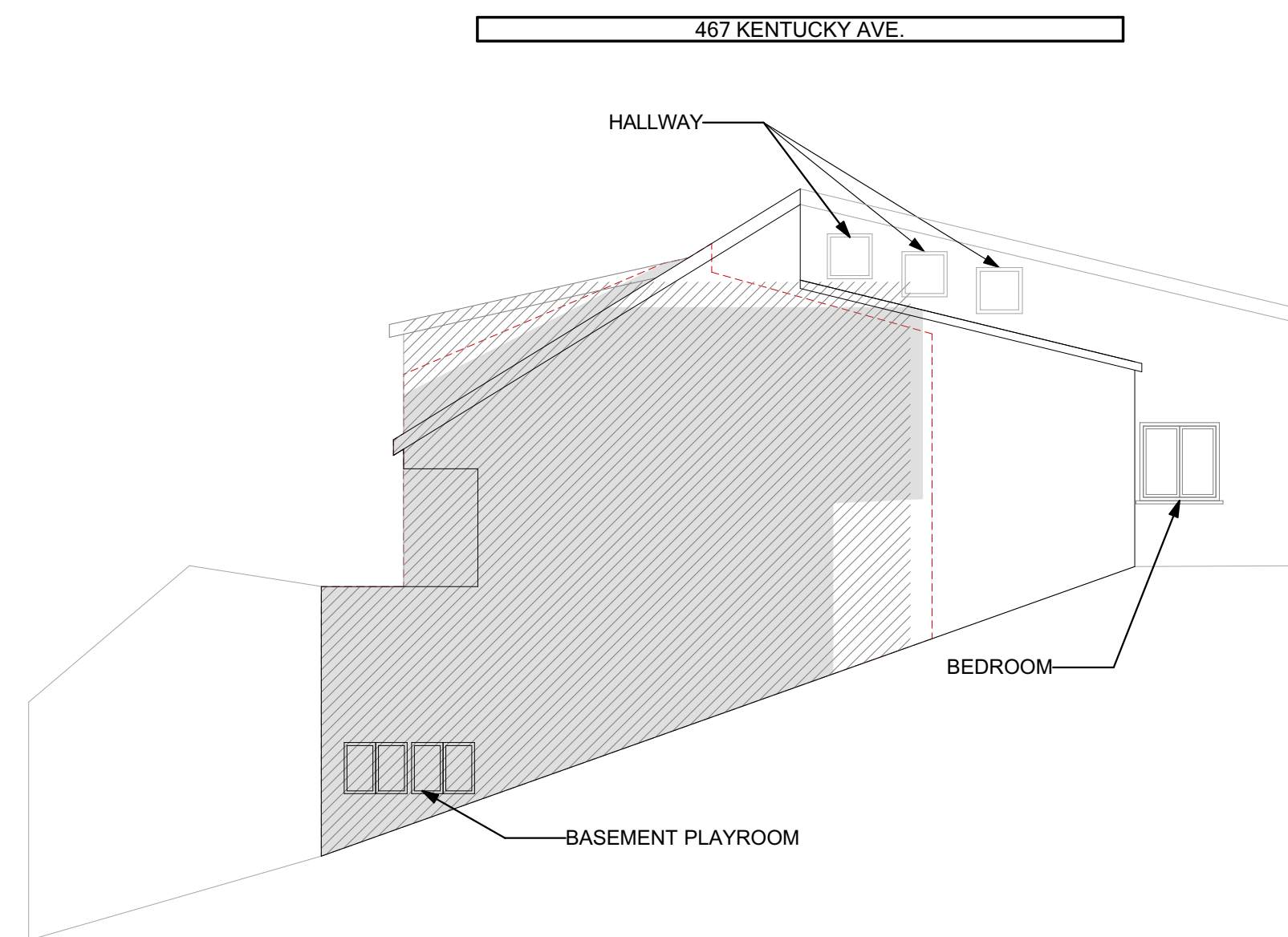
# A12

2 SHADOW STUDY  
A12 SCALE: 1/32" = 1'-0"

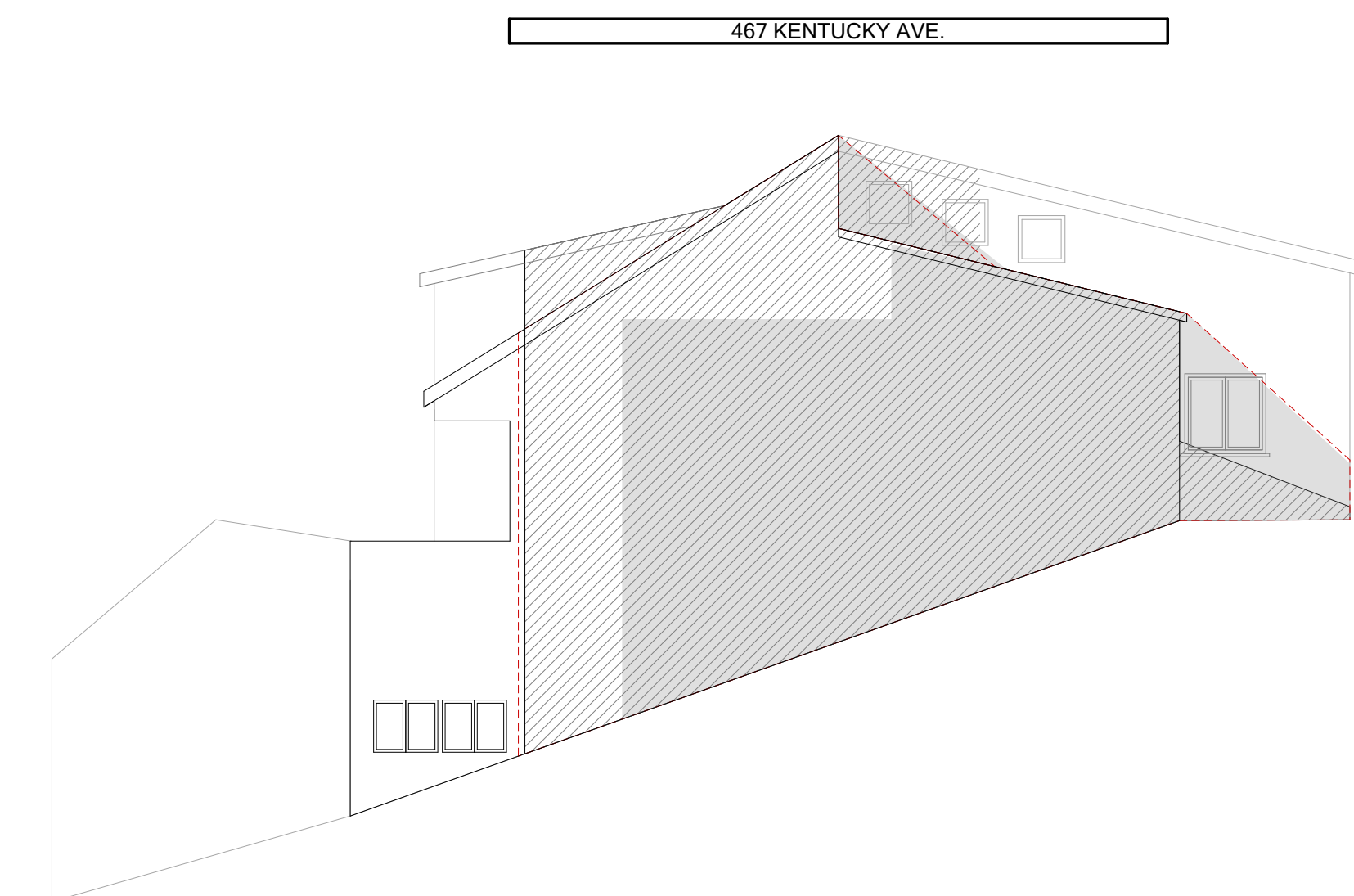




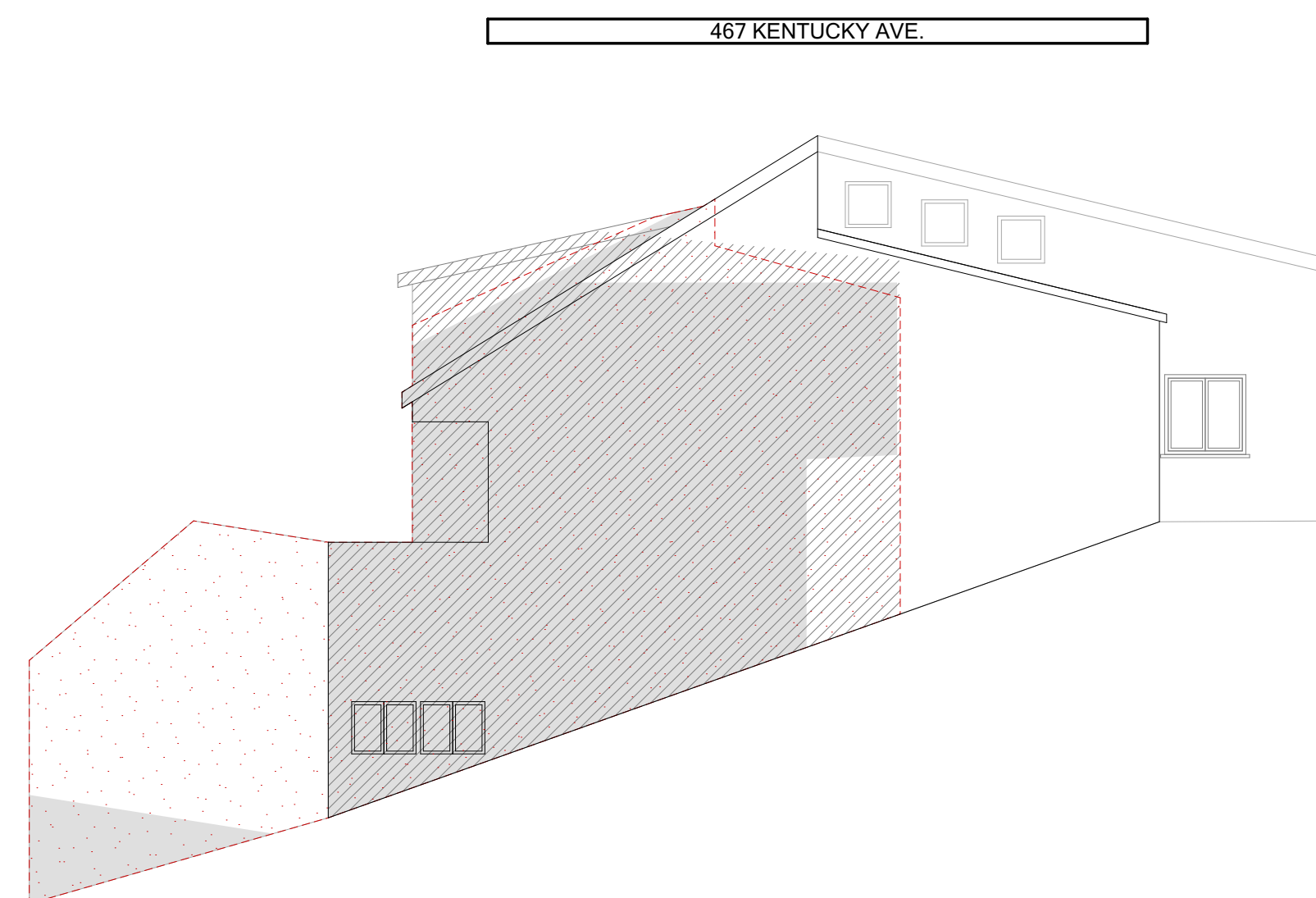
467 KENTUCKY AVE.  
DECEMBER 2 HOURS AFTER SUNRISE



467 KENTUCKY AVE.  
JUNE - 2 HOURS AFTER SUNRISE



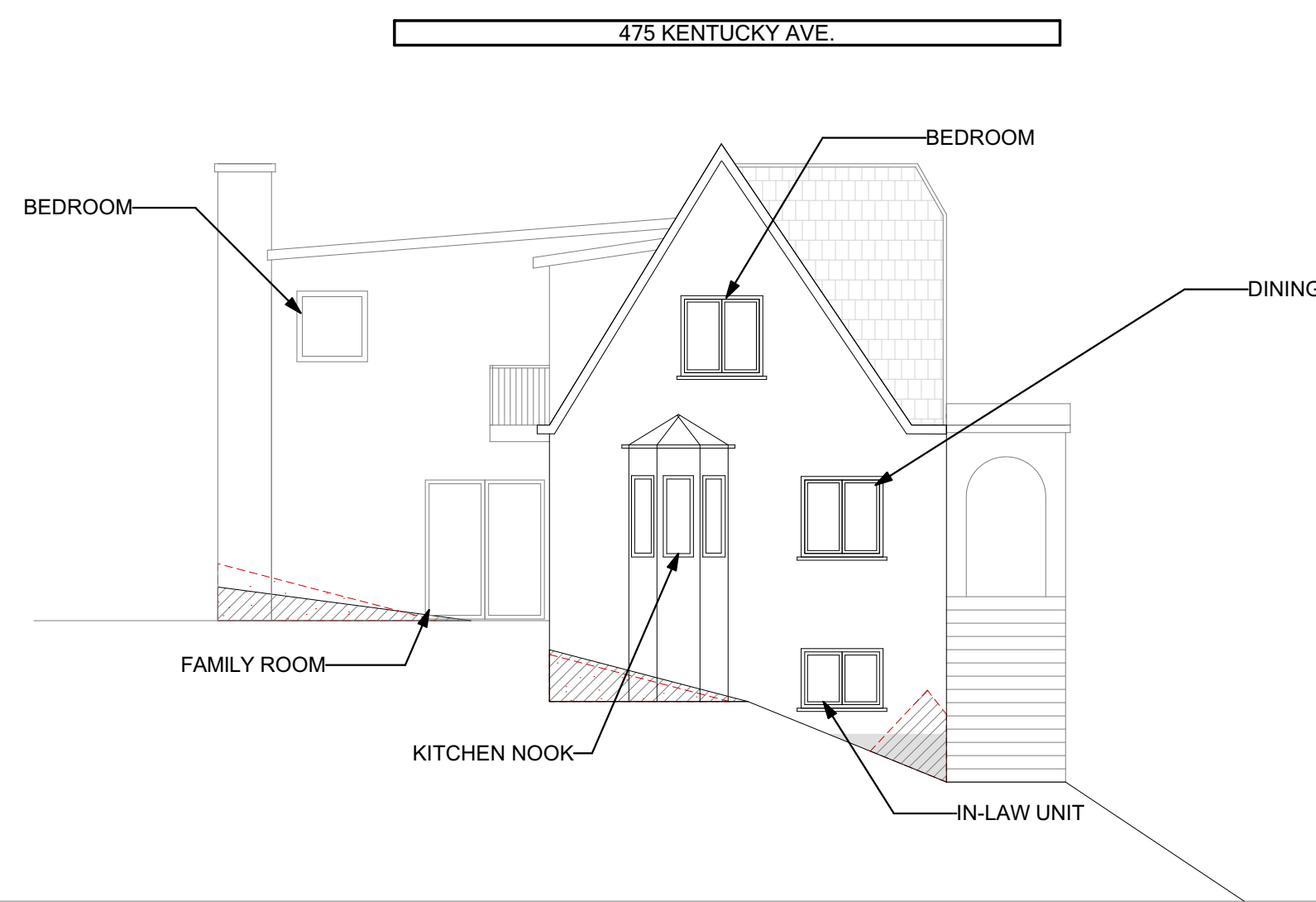
467 KENTUCKY AVE.  
DECEMBER, NOON



467 KENTUCKY AVE.  
5/11 - 2 HOURS AFTER SUNRISE



475 KENTUCKY AVE.  
JUNE - 2 HOURS BEFORE SUNSET



475 KENTUCKY AVE.  
5/11 - 2 HOURS BEFORE SUNSET



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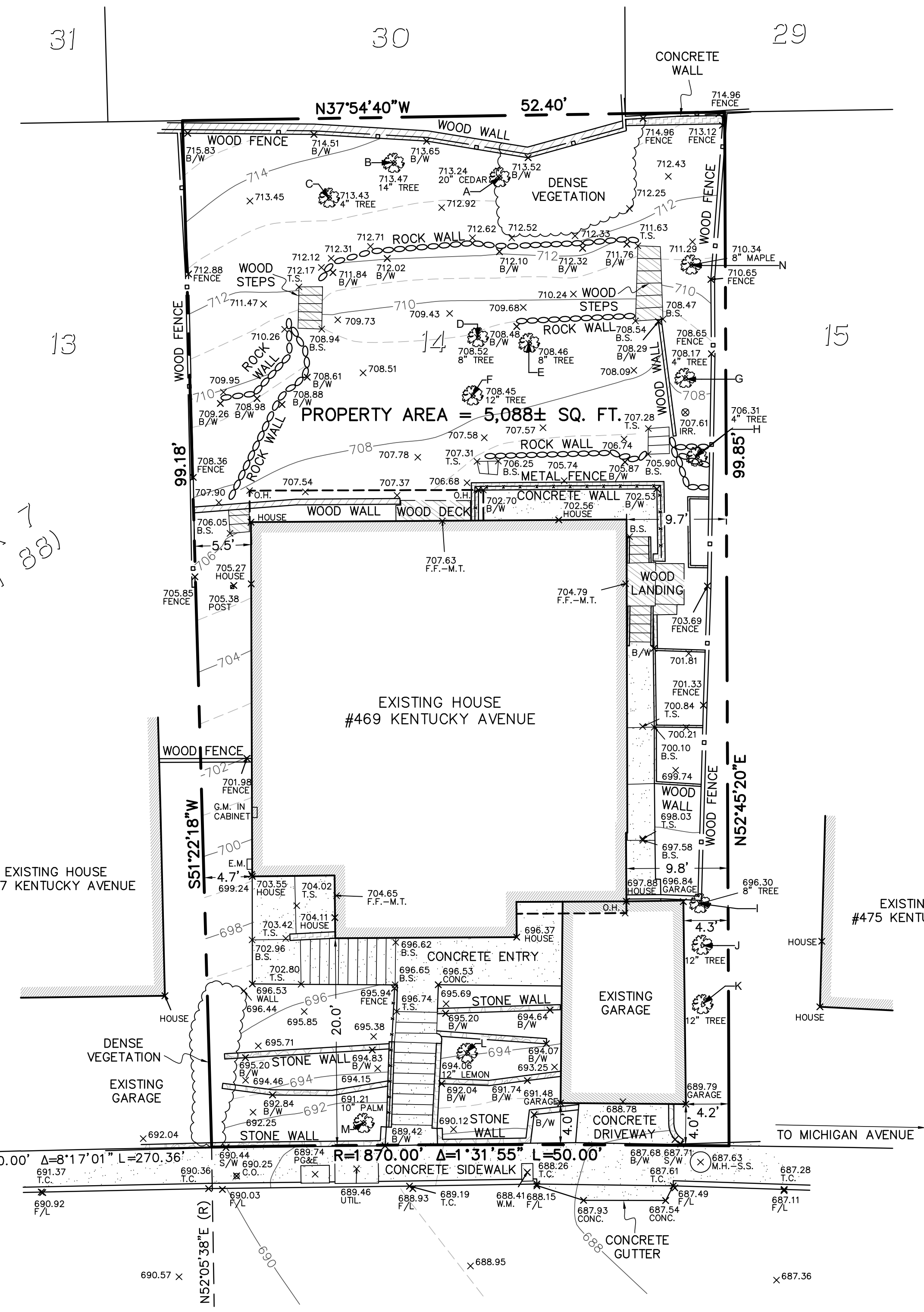
Checked By:  
SG

A13

TREE INVENTORY PREPARED BY LEVITCH ASSOCIATES		
X	SPECIES NAME	DBH
A	CALOCEDRUS DECURRENS	20"
B	CRATAEGUS PHAENOPYRUM	14"
C	CAMELLIA JAPONICA	4"
D	POPULUS FREMONTI	8"
E	POPULUS FREMONTI	8"
F	POPULUS FREMONTI	12"
G	CAMELLIA JAPONICA	4"
H	CAMELLIA JAPONICA	4"
I	JUNIPERAS OCCIDENTALIS	8"
J	JUNIPERAS OCCIDENTALIS	12"
K	JUNIPERAS OCCIDENTALIS	12"
L	CITRUS LIMON	12"
M	YUCCA ALOIFOLIA	10"
N	ACER JAPONICUM	8"

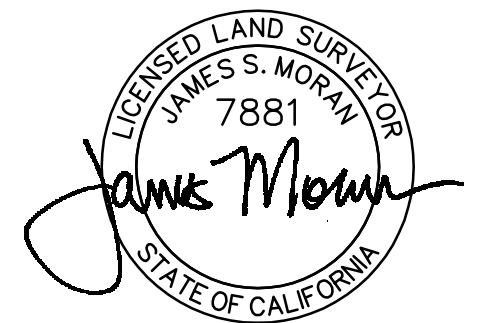
**LEGEND**

- B.S. BASE OF STEPS
- B/W BASE OF WALL
- C.O. CLEAN OUT
- CONC. CONCRETE
- E.M. ELECTRIC METER
- F.F. FINISHED FLOOR
- F/L FLOWLINE
- G.M. GAS METER
- IRR. IRRIGATION
- M.H. MAINTENANCE HOLE
- M.T. METAL THRESHOLD
- O.H. OVERHANG
- PG&E PACIFIC GAS AND ELECTRIC
- S.S. SANITARY SEWER
- S/W SIDEWALK
- T.C. TOP OF CURB
- T.S. TOP OF STEPS
- UTIL. UNKNOWN UTILITY
- W.M. WATER METER
- BUILDING LINE
- CONCRETE
- CONCRETE WALL
- ROCK WALL
- STONE
- WOOD
- WOOD WALL
- METAL FENCE
- WOOD FENCE
- FOUND MONUMENT IN WELL, AS NOTED
- (R) RADIAL



BLOCK 7  
(26 M 88)

**GENERAL NOTES:**  
 THIS MAPPING IS BASED ON A FIELD SURVEY PERFORMED ON APRIL 19, 2021.  
 DIMENSIONS ARE IN FEET AND DECIMAL FEET.  
 DIMENSIONS SHOWN TO THE PROPERTY LINES WERE MEASURED FROM THE BUILDING CORNERS.  
 NO TITLE REPORT WAS PROVIDED, EASEMENTS MAY EXIST.  
**BASIS OF BEARINGS:**  
 THE MONUMENT LINE IN KENTUCKY AVENUE WAS TAKEN AS NORTH 04°34'43" EAST AS SHOWN ON THOUSAND OAKS HEIGHTS (26 M 88).  
**BENCHMARK:**  
 ELEVATIONS ARE BASED ON CITY OF BERKELEY DATUM.  
 THE 2" BRASS DISC MONUMENT AT THE INTERSECTION OF KENTUCKY AND VASSAR AVENUES, DESIGNATED "B1625" WAS TAKEN AS ELEVATION = 697.93 FEET PER CITY OF BERKELEY ENGINEERING RECORDS.



05-28-2021

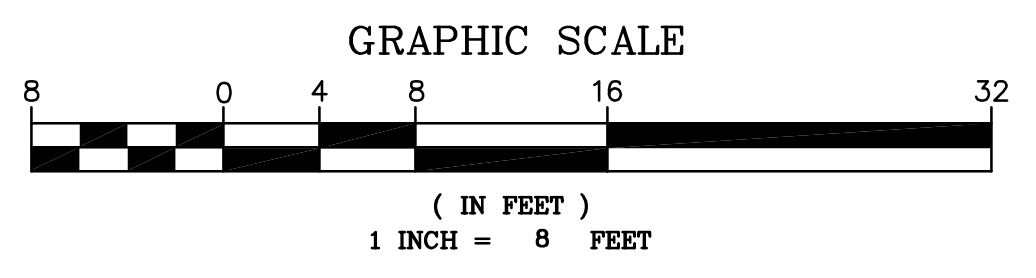
**KENTUCKY AVENUE (50' WIDE)**

**BOUNDARY AND TOPOGRAPHIC SURVEY**

LOT 14, BLOCK 7, THOUSAND OAKS HEIGHTS (26 M 88)  
 LOCATED AT 469 KENTUCKY AVENUE  
 CITY OF BERKELEY, COUNTY OF ALAMEDA, CALIFORNIA

MAY 28, 2021 SCALE: 1" = 8'

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





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  
JANUARY 12, 2023

# 469 KENTUCKY AVENUE

Use Permit #ZP2022-0087 to demolish a single-family dwelling and construct a 3,310 square foot three-story single-family residence and two-car garage.

## I. Background

### A. Land Use Designations:

- General Plan: Low Density Residential (LDR)
- Zoning: R-1(H) – Single-Family Residential, Hillside Overlay

### B. Zoning Permits Required:

- Use Permit to demolish a dwelling unit, per Berkeley Municipal Code (BMC) Section 23.326.030
- Use Permit to construct a new single-family dwelling, per BMC Section 23.202.020(A)
- Use Permit for a sixth bedroom on a parcel, per BMC Section 23.202.030
- Administrative Use Permit for exceeding 28-feet in average height, per BMC Sections 23.202.050(D) and 23.210.020(C)(2)
- Administrative Use Permit for a reduced front setback in the Hillside Overlay, per BMC Section 23.210.020(C)(4)
- Administrative Use Permit for a new accessory building, per BMC 23.304.060(A)
- Administrative Use Permit for an unenclosed accessory structure within a required setback, per BMC 23.304.070(C)(1)

**CEQA Recommendation:** It is staff’s recommendation to ZAB that this project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Sections 15303 (“New Construction or Conversion of Small Structures”) of the CEQA Guidelines. 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.

**A. Parties Involved:**

- Applicant: Maurice Levitch, 1029 Heinz Avenue, Berkeley
- Property Owner: Aidan Keefe, 469 Kentucky Avenue, Berkeley

Figure 1: Vicinity Map

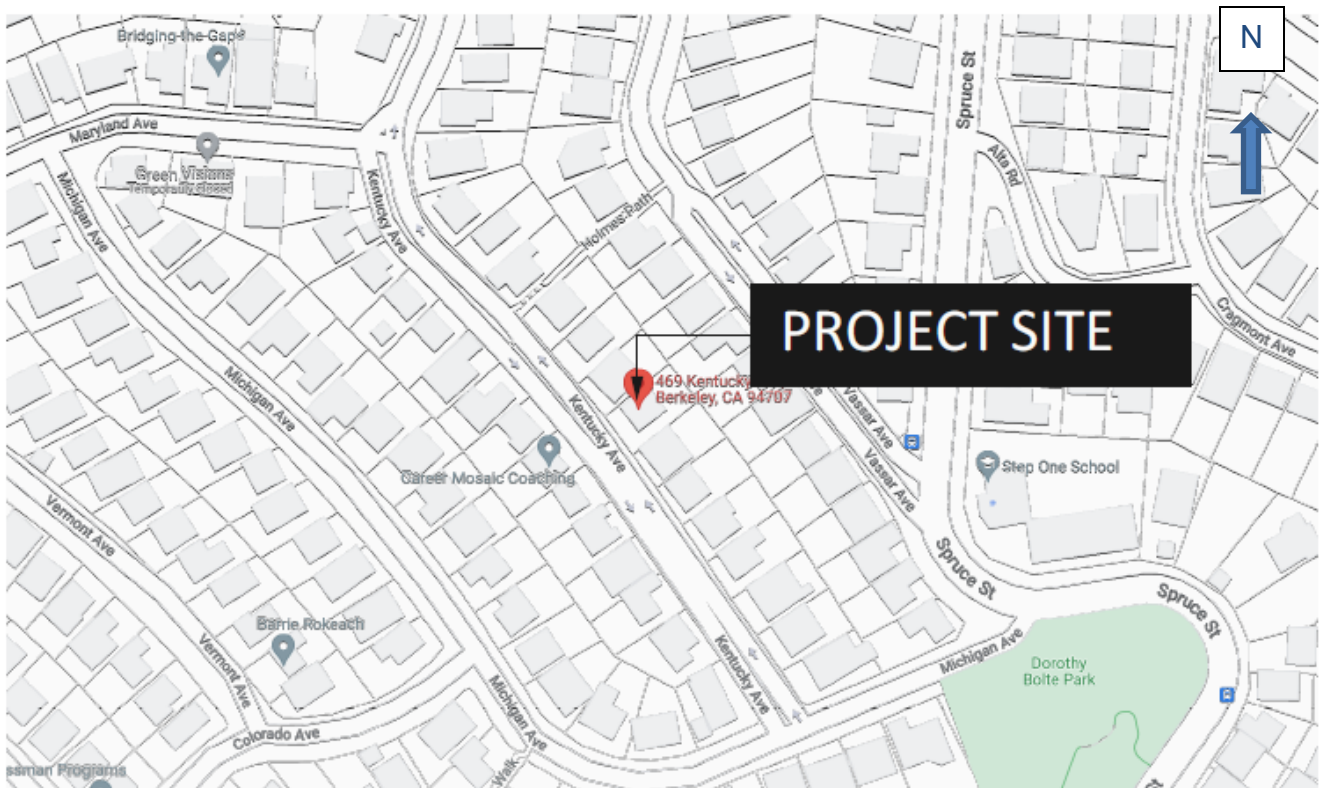




Figure 2: Proposed Site Plan

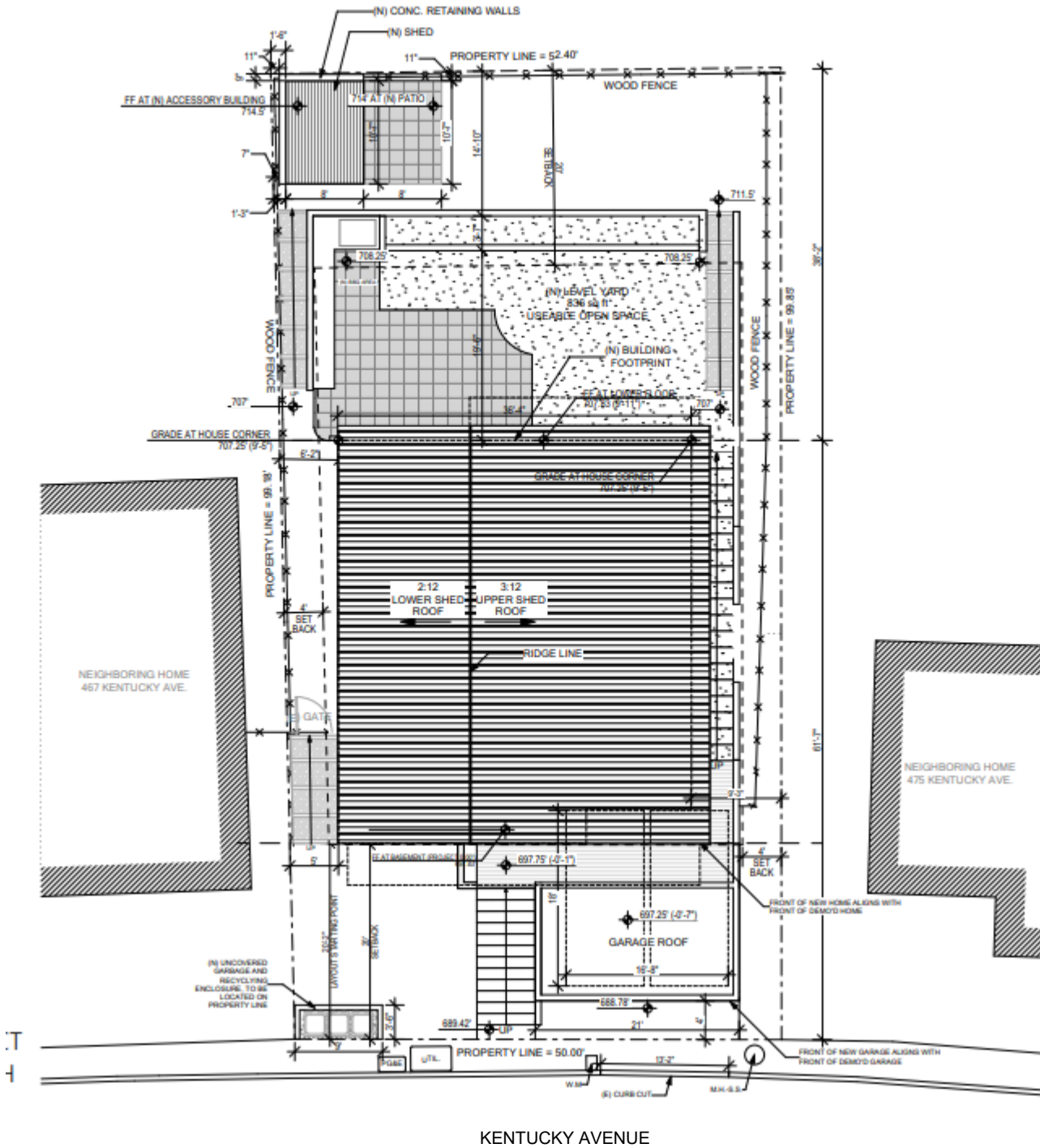


Figure 3: Front Elevation

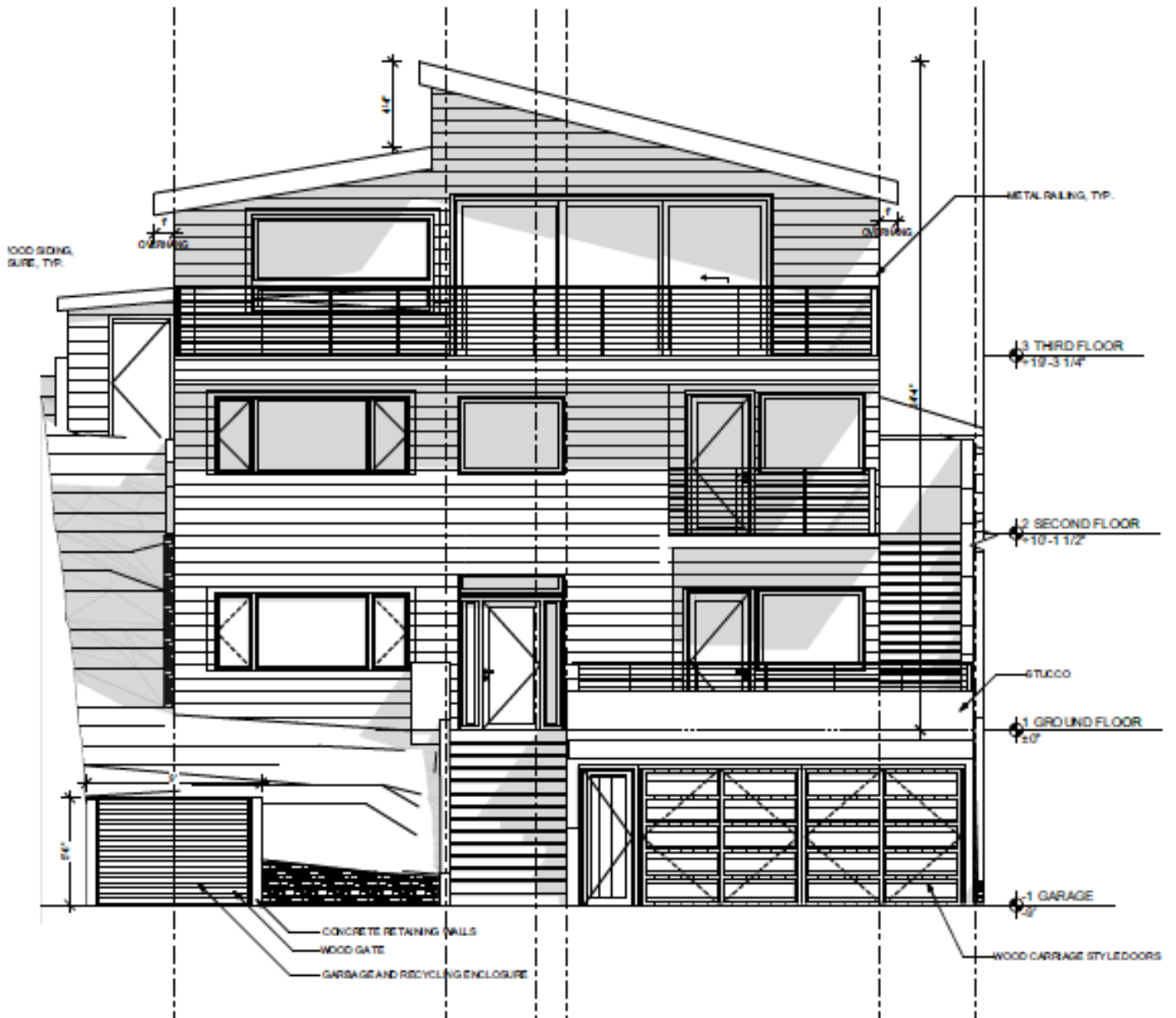
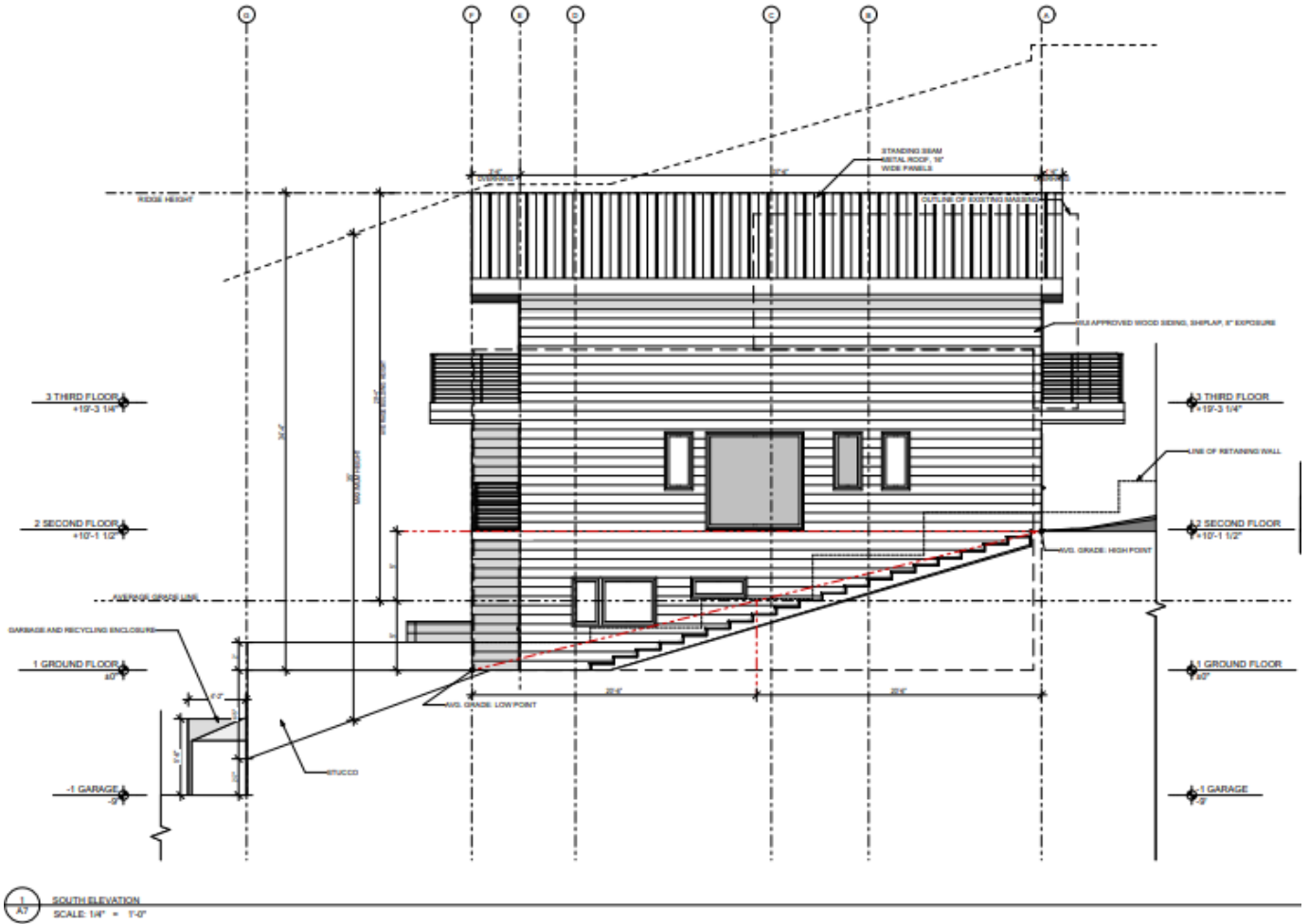


Figure 4: South Elevation



**Table 1: Land Use Information**

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Single-Family Dwelling	R-1(H) – Single-Family Residential, Hillside Overlay	Low Density Residential
Surrounding Properties	North	Single-Family Dwelling (467 Kentucky Avenue)		
	South	Single-Family Dwelling (475 Kentucky Avenue)		
	East	Single-family Dwellings (476 & 480 Vassar Avenue)		
	West	Kentucky Avenue (Single-Family Residential across the street)		

**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	These fees apply to projects with net new non-residential floor area. The project involves only new residential floor area, and thus these requirements do not apply.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)		
Affordable Housing Mitigations for rental housing projects (Per BMC 22.20.065)	No	This fee applies to projects that involve five or more dwelling units on the same lot. The applicant proposes only one new dwelling unit, and thus this requirement does not apply.
Creeks (Per BMC Section 17.08.045)	No	The project site is not within a creek buffer zone.
Density Bonus	No	The project is not requesting a Density Bonus.
Historic Resources	Yes	The project involves the demolition of an existing residential building that is greater than 40 years old. An historic resource evaluation (HRE) was prepared by the California Department of Parks and Recreation and found that this property is not eligible for listing in the California Register of Historic Resources (Attachment 4).
Housing Accountability Act (Gov't Code Section 65589.5(j))	No	The project only consists of one unit.
Housing Crisis Act of 2019 (SB330)	No	The project proposes only one dwelling unit and is not considered a "housing development project," therefore SB 330 does not apply.
Natural Gas Prohibition (Per BMC 12.80.020)	Yes	This project is an application for new construction and was submitted after January 1, 2020, and is therefore subject to the Natural Gas Prohibition.
Oak Trees (Per BMC Section 6.52.010)	No	There are no Coast Live Oak trees on the site.
Rent Controlled Units (Per BMC Chapter 13.76)	No	There are no rent-controlled units at the site, nor would the new unit be subject to rent control restrictions.
Residential Preferred Parking (RPP)	No	The project site is not within an RPP zone.
Seismic Hazards (Per State Hazards Mapping Act SHMA)	Yes	The site is located within an area susceptible to liquefaction, Fault Rupture, or Landslides as

		shown on the State Seismic Hazard Zones map. A geotechnical report was submitted by the applicant that has been peer reviewed by the City's consultant. Conditions of approval will be included in the permit to ensure oversight by the applicant's geotechnical consultant.
Soil/Groundwater Contamination	No	The project site is not listed on the Cortese List (an annually updated list of hazardous materials sites), nor is it within the City's Environmental Management Area.
Transit	Yes	The project area is served by AC Transit line 67. There is an existing bus stop within 0.2 miles to the east near the intersection of Vasser Avenue and Spruce Street.

**Table 3: Project Chronology**

Date	Action
July 8, 2022	Application submitted
July 22, 2022	Application incomplete
August 24, 2022	Application resubmitted
September 7, 2022	Application incomplete
October 25, 2022	Application resubmitted
November 8, 2022	Application deemed complete
December 22, 2022	Public hearing notices mailed/posted
December 23, 2022	Received revised drawings
January 12, 2022	ZAB hearing

**Table 4: Development Standards**

Standard		Existing	Proposed Total	Permitted/Required
BMC Sections 23D16.070-080 & 23E.96.070				
Lot Area (sq. ft.)		5,088	No Change	5,000 min
Gross Floor Area (sq. ft.)		1,733	4,350	n/a
Dwelling Units		1	1	1 max
Building Height	Average (ft.)	25.5	29.3	28 max (35 with AUP)
	Maximum (ft.)	28.75	31.687	35 max
	Stories	3	3	3 max
Building Setbacks (ft.)	Front (Kentucky Ave)	4	4	20 min
	Rear	38.8	38.16	20 min

	Left Side	4.7	5	4 min
	Right Side	9.7	9.25	4 min
Lot Coverage (%)		31.5	39.7	40 max
Usable Open Space (sq. ft.)		181	922	400 min
Parking	Automobile	1	2	1 min

## II. Project Setting

- A. Neighborhood/Area Description:** This is a residential area with a mix of one-, two-, and three-story single-family dwellings, with areas of open space in excess of that required, and mature vegetation. Lots in the neighborhood are generally rectangular with some irregularities due to existing slopes and curved roadways. The neighborhood hills generally slope downwards from the northeast to the southwest and provide primary views westward towards the San Francisco Bay. Given the hilly terrain and limited availability of on-street parking, the dwellings in the neighborhood tend to include attached one- or two-car garages within front setbacks, and often right up to the sidewalks.
- B. Site Conditions:** The project site is located on the east side of Kentucky Avenue, half a block north of Michigan Avenue in the North Berkeley hills, on an upslope lot. The generally rectangular project site is 50 feet wide along Kentucky Avenue, and approximately 99.5 feet deep. Vegetation on the lot is dominated by a large red maple in the back yard. There are not, nor has there recently been, protected Coast Live oak trees on the site.

## III. Project Description

- A. Proposed Project:** The subject parcel is currently developed with a 1,773 square foot three-story single-family home with a single-car garage within the front setback. The owner has applied to demolish the house and garage and replace them with a 3,310 square foot three-story single-family home with an attached Accessory Dwelling Unit (ADU)<sup>1</sup>, and a two-car garage with the same front setback as the original garage. The project also includes a detached shed in the rear of the property, and an uncovered garbage and recycling enclosure at the front property line. The proposed dwelling unit is contemporary in style and would have a shed roof with a maximum height of 31 feet, 8.5 inches and an average height of 29 feet, 4 inches. The applicant team have shared that the new home is designed to only minimally expand the footprint beyond that of the existing home, and that the proposed full excavation of the ground floor level adds floor area while minimizing taller construction.

The proposed ground floor level would consist of a TV room, a laundry room, and a studio-style ADU with access via an exterior staircase and landing over the garage roof. The second floor would consist of four bedrooms and two bathrooms, with access to a front balcony. The top floor would contain the kitchen, dining room, family room, and a study. This floor would open onto front and rear balconies. Both the TV room

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<sup>1</sup> Per BMC 23.306.030, ADU's are permitted with a Zoning Certificate. They are not part of ZAB's discretionary review. They ADU is only mentioned here for purposes of context.

and the study meet the definition of a bedroom<sup>2</sup> (23.502.020(B)), bringing the total number of bedrooms to six. Bedrooms located in ADUs are not included in the count because they are not subject to discretionary review, however, if the ADU is not developed concurrently with the proposed project a Use Permit Modification would be required for any additional rooms that meet the zoning criteria for a bedroom.

Because of the steep terrain, the partially-subterranean attached two-car garage will be located at the front of the lot. It will have a 4-foot nonconforming setback, which is identical to that of the existing garage.

Two accessory structures are also proposed. A 9-foot high, 85 square foot workout shed will be at the rear of the backyard. There will be a roofless garbage and recycling enclosure at the front of the lot at the property line.

The red maple in the back yard is not slated for removal. A small lemon tree and a yucca in the front of the lot are slated for removal, but they are to be replaced by a new tree (species yet to be determined) and other plantings.

#### IV. Community Discussion

**A. Neighbor/Community Concerns:** Prior to submitting this application to the city, the applicant erected a pre-application poster at the project site. They also submitted drawings of the proposed plans to all adjacent and abutting neighbors (Attachment 2). No comments in opposition were received at that time.

However, upon erection of the story poles, the new owners of a house behind the subject site (480 Vasser Avenue) objected to what they perceived as excessive obstruction of their view, and expressed this directly to the applicants. The applicants responded by negotiating a compromise with them, which involved adjusting the roof height and orientation and erecting new story poles. After installation of the new story poles, the next-door neighbor at 467 Kentucky Avenue expressed concerns about privacy. Specifically, he was concerned that the front balcony would allow occupants to look down onto his deck and into his bedroom window. He said he was in contact with the applicant about working out a solution. However, the complaint, came in too late for any solution to be included in this report.

On December 22, 2022, public hearing notices were mailed to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations (Attachment 3). The City also posted notices within the neighborhood at

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<sup>2</sup> *Bedroom.* Any habitable space in a dwelling unit or habitable accessory structure other than a kitchen or living room that is intended for or capable of being used for sleeping with a door that closes the room off from other common space such as living and kitchen areas that is at least 70 square feet in area, exclusive of closets and other appurtenant space, and meets Building Code standards for egress, light and ventilation. A room identified as a den, library, study, loft, dining room, or other extra room that satisfies this definition will be considered a bedroom for the purposes of applying this requirement. Bathrooms, toilet rooms, closets, halls, storage or utility spaces and similar areas are not considered habitable spaces.



three locations. As of the date of this report, Staff has not received any public comments regarding the project.

**B. Committee Review:** This project is not subject to Design Review.

## V. Issues and Analysis

**A. Findings for Use Permit Approval in the R-1(H) District:** Pursuant to BMC Section 23.202.020(B), a new single-family dwelling is allowed in the R-1 zoning district with a Use Permit, provided that its siting meets applicable development standards and subject to the non-detriment finding. As shown in Table 4, the proposed project would meet or exceed all development standards for the dwelling, with the exception of front setback. The average height may be increased from 28 feet up to 35 feet with an Administrative Use Permit (AUP) in the R-1 (BMC 23.202.050(D) as well as under the Hillside Overlay (BMC 23.210.020(C)(2)). Since it comes in well below the allowed maximum height, and the applicant revised the proposed height in response to concerns raised by a neighbor, it is Staff's opinion that height-related issues will be negligible.

In the Hillside Overlay, an AUP to reduce required setbacks (BMC 23.210.020(C)(4)) can be approved upon finding the project is consistent with the purpose of the Hillside overlay zone as state in BMC 23.210.020(A). While the main dwelling meets the 20-foot front setback, the proposed two-car garage would be located in the front setback, about 4 feet from the front lot line. This is necessary due to the steep upward slope of the lot. It is also consistent with many neighboring properties, which also have garages at the fronts of their lots.

The proposed project would meet the following purposes of the Single-Family Residential, Hillside Overlay, R-1(H) District:

1. Implement General Plan policies regarding Hillside Development while recognizing and protecting the existing pattern of development in the low density, single family residential areas of the City;
2. Make available housing for persons who desire detached housing accommodations and a relatively large amount of Usable Open Space;
3. Protect adjacent properties from unreasonable obstruction of light and air;
4. Protect the character of Berkeley's Hillside Districts and their immediate environs;
5. Give reasonable protection to views yet allow appropriate development of all property; and
6. Allow modifications in standard yard and height requirements when justified

because of steep topography, irregular lot pattern, unusual street conditions, or other special aspects of the Hillside District area.

**B. General Non-Detriment Finding:** Staff believes the project would not be detrimental to the health, safety, peace, morals, comfort, or general welfare of residents or workers in the area because it would be consistent with the development pattern in the area. The applicant proposes to construct a single-family dwelling in a neighborhood of single-family dwellings and with a siting/design that would be compatible with the surrounding built environment. Staff believes that the proposed project would not unreasonably obstruct sunlight, privacy, air, or views as analyzed below:

1. Sunlight/Shadow: Shadow studies submitted by the applicant document the existing and proposed shadow effects at three times each day at the summer and winter solstices and the spring equinox. The studies show that the new dwelling would cast slight new shadows on neighboring yards and buildings at certain times of year and times of day. However, while the proposed dwelling would cast new shadows, impacts would be limited in duration and effect and would not substantially diminish sunlight for the affected residences. The most significant shadow effects on neighboring properties are already in existence due to the existing house at 469 Kentucky. Additional effects due to increased heights mostly avoid impacts on neighboring lots. Staff recommends that the Board find that these potential impacts are non-detrimental.
2. Privacy: The proposed dwelling would result in smaller setbacks from property lines, but would still exceed required minimums except in the front of the lot. The main dwelling is setback 20 feet, while the two-car garage would be located in the required front setback in the same area as the existing single-car garage. The garage location is necessary due to topography. The proposed new garage would not change this setback (see Table 4 above).

Front and rear third-floor balconies are proposed for the new house. Due to window locations and terrain, the rear balcony does not appear to be cause for any privacy concerns. The front balcony could potentially cause privacy concerns for the properties at 469 and 475 Kentucky Avenue. While there is already a balcony on the third floor of the existing house, views of 475 Kentucky are currently blocked by a row of juniper trees. However, those would be removed, which would open up views between dwellings. Other than this issue, which is common in an urban residential environment, Staff believes the proposed dwelling would not be detrimental regarding privacy.

3. Air: As discussed above, the proposed single-family dwelling unit exceeds all side and rear setback requirements in the R-1(H) Zoning District, and would be consistent with the existing development and building-to-building separation pattern – or air – in this neighborhood. The reduced front setback to accommodate the garage on this uphill lot is a common in this area, and is

adjacent to the open area of the street. Additionally, the proposed project would exceed the usable open space requirement. (See Table 4 above).

4. Views: Per BMC Chapter 23.502.020(V), a significant view is a view of the Berkeley Hills, San Francisco Bay, Mt. Tamalpais, or a significant landmark or any other significant vista that substantially enhances the value and enjoyment of real property. As described above under Project Setting, substantial southwestward views are available from the area surrounding the project site, including from Kentucky Avenue, neighboring residences, and the residences uphill to the northeast of the project site.

The proposed three-story residence replaces an existing three-story residence. The new residence would be approximately three feet higher than the existing residence. Story poles, erected in November 2022, revealed that the view of San Francisco Bay from at least one residence, 480 Vasser Avenue, would be partially diminished due to the width of the new third story. After receiving this feedback from the owners of 480 Vasser Avenue, the applicants revised their plans and erected new story poles. The new plans changed the orientation of the proposed roof so that views of the bay were substantially preserved. (Attachment 5). Staff believes the proposed project, as revised, would not unreasonably obstruct views.

## VI. Other Considerations

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

1. Policy LU-3–Infill Development: Encourage infill development that is architecturally and environmentally sensitive, embodies principles of sustainable planning and construction, and is compatible with neighboring land uses and architectural design and scale.
2. Policy LU-7–Neighborhood Quality of Life, Action A: Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area.
3. Policy UD-16–Context: The design and scale of new or remodeled buildings should respect the built environment in the area, particularly where the character of the built environment is largely defined by an aggregation of historically and architecturally significant buildings.
4. Policy UD-24–Area Character: Regulate new construction and alterations to ensure that they are truly compatible with and, where feasible, reinforce the desirable design characteristics of the particular area they are in.
5. Policy UD-32–Shadows: New buildings should be designed to minimize impacts on solar access and minimize detrimental shadows.
6. Policy H-16–Family Housing: Support and encourage housing projects that include units affordable and suitable for households with children and large families.

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

Staff Analysis: The proposed project is architecturally compatible with neighboring development. It is consistent with development standards of the Hillside Overlay Zone. It does not cause substantial air, sunlight, or privacy issues for the adjacent properties, and it is compatible with the General Plan goal of providing family housing in the R-1 District.

## VII. Recommendation

Because of the project’s consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board APPROVE Use Permit ZP2022-0087 pursuant to Section 23.406.040 and subject to the attached Findings and Conditions (Attachment 1).

### Attachments:

1. Findings and Conditions
2. Project Plans, received July 8, 2022
3. Notice of Public Hearing
4. Historic Evaluation Report
5. Story Pole Photos

**Staff Planner:** Russell Roe, [rroe@cityofberkeley.info](mailto:rroe@cityofberkeley.info), (510) 981-7548

CITY OF BERKELEY - CITY CLERK  
2023 FEB 9 AM 9:19

STEPHEN B. BEDRICK  
----- ATTORNEY AT LAW -----  
1970 BROADWAY, SUITE 1200  
OAKLAND, CALIFORNIA 94612  
  
TELEPHONE: (510) 452-1900  
FAX: (510) 452-1980  
sbedrick@sonic.net

February 8, 2023

City Clerk  
City of Berkeley  
2180 Milvia St.  
Berkeley, CA 94704

Re: Appeal of ZAB's approval of demolition permit and use permit at  
469 Kentucky Avenue

Dear Sirs/Madams:

My wife and I live at 485 Kentucky Avenue, four houses south of the subject property. I appeal the ZAB's approval of permits to demolish a perfectly good single family house at 469 Kentucky Avenue. The notice of decision was mailed January 31, 2023. I attach the appeal fee.

The major problem is that the demolition process, including dumpsters and dump trucks, is likely to totally block our narrow, one-lane, one-way street for hours at a time. This will prevent us and several other residents from being able to drive away from our houses. This will obstruct fire trucks, emergency vehicles, and delivery vans. This will be detrimental to the health and safety of the neighbors and the neighborhood.

I attach prior letters to the ZAB which describe the problem in more detail. Other neighbors have opposed this project on similar grounds.

We were unable to properly present our objections to the ZAB for two reasons. First, city staff failed to submit my January 4, 2023 letter of objection (attached here) to the ZAB in a timely fashion. Second, at the beginning of the ZAB zoom hearing, we informed the chair that we wished to speak, but the ZAB

Page Two  
City of Berkeley  
February 8, 2023

staff failed to “unmute” us at the appropriate time, so we were not allowed to speak.

I oppose the grant of the demolition permit and the use permit. In the alternative, I request that the following conditions, at a minimum, be imposed:

1. That the street not be obstructed for more than 10 minutes at a time;
2. That the street not be obstructed for more than 30 minutes per day;
3. That notice of any intended street obstruction be given to the affected neighbors at least 48 hours in advance; (ZAB approved this one condition);
4. That traffic monitors be on site whenever the street is blocked so they can ensure that these time limits are complied with;
5. That traffic monitors be on site when the street is blocked, to assist residents who have difficulty getting to or from their homes;
6. That the city traffic engineer prepare a plan which includes these conditions; and
7. That the city traffic engineer be tasked with enforcing these conditions.

Thank you.

Very truly yours,



STEPHEN B. BEDRICK  
SBB/AD

Encl.

**STEPHEN B. BEDRICK**

----- ATTORNEY AT LAW -----  
1970 BROADWAY, SUITE 1200  
OAKLAND, CALIFORNIA 94612

TELEPHONE: (510) 452-1900  
FAX: (510) 452-1980  
sbedrick@sonic.net

January 4, 2023

Land Use Planning Division  
(Attn: ZAB Secretary)  
City of Berkeley  
1947 Center St., 2nd Floor  
Berkeley, CA 94704

also by e-mail to  
[zab@cityofberkeley.info](mailto:zab@cityofberkeley.info)

Re: 469 Kentucky Ave.  
Use Permit ZP 2022-0087  
Hearing: January 12, 2023

Dear Sirs/Madams:

My family and I live at 485 Kentucky Avenue, four houses south of the proposed project at 469 Kentucky Avenue. I write to oppose the project, the use permit, and the demolition permit, because they will be detrimental to the health and safety of the neighborhood residents.

Our block of Kentucky Avenue is highly unusual, as it consists of two one-way streets. You need to see it to understand it. It is terraced, with a divider strip between the upper, northbound lane - - where my house and the proposed project are located - - and the lower southbound lane.

The divider strip is six to eight feet wide and six to ten feet high. There is a curb on the left side of the northbound lane. There is a six to ten foot drop off from the upper northbound side of Kentucky to the lower southbound side. Trucks have partially fallen over the edge, because the street was not wide enough for them.

Each lane of the street is effectively a one-way street. Each lane is so narrow, that people must park their cars half-way on the sidewalk to avoid being

struck by passing cars and trucks. There have been several such accidents. The street is so narrow that boxy UPS trucks can barely get by.

We oppose the demolition, because it is not necessary, and because it would be detrimental to our health and safety. The house at 469 Kentucky is an attractive Mediterranean. It is quite liveable and has been continuously occupied for many years. Demolition would be contrary to our much beloved Neighborhood Preservation Ordinance, and should not be allowed.

Demolition would involve a huge amount of dust, debris, and air pollution. The neighborhood needs to be protected from that.

Demolition would require hundreds of empty dumpsters to be hauled in by multiple trucks, and hundreds of full dumpster loads of debris to be hauled out. That would result in the street being blocked for hours at a time.

The neighbors south of the project, including us, would be essentially trapped in our houses, unable to drive away in our cars, because the one lane, one-way northbound exit route would be blocked by demolition trucks and dumpsters. The neighbors north of the project might be able to leave their houses, but they would not be able to drive home, because the return route to their houses would be blocked.

Parking on the opposite side of the street does not solve the problem. All of the parking spaces on the non-obstructed southbound side of the street are usually filled. And even if there were available spaces on the southbound (lower) side of the street, the divider strip is too steep for most of us to walk up from the lower side of the street to the upper side, especially when carrying groceries or other packages. And people often slip trying to walk down the steep divider strip.

There also is a potential flooding problem. The upper side of the street is hilly. The street goes down and up and down again. During the first year of the pandemic, it was a wonderful place for neighborhood children to learn how to ride their bicycles on hills. But when it rains, the hilly street funnels heavy water run off down to the storm drains, which are just below, and one house away from, the



proposed project. There is a serious risk that dirt, dust, and debris from the demolition would clog the storm drains and the fragile neighborhood drainage system. That would lead to flooding on both sides of Kentucky Ave., especially of houses on the lower side of Kentucky.

There is a natural spring which bubbles up, even on dry summer days, near the storm sewer drain on the lower side of the street. The spring needs to be protected. In addition, because of the spring, the water table on that side of the street is probably relatively high. That exacerbates the potential flooding risk to the houses on the lower side of the street.

There are further problems. The applicant's geotechnical engineer's December 29, 2021 letter states at p. 2 that Berkeley does not require compliance with CGS 117A, regarding seismic hazards, for a "partial repair or remodel." But the proposed project is a complete teardown, not a remodel, so that exception to the CGS 117A guidelines does not apply.

Finally, City staff wrote a letter to the applicant on July 22, 2022, saying that the application was incomplete. Your website does not contain any response, especially regarding lot coverage.

For all these reasons, we oppose the demolition project. We also request that any hearing or decision be postponed or continued. The 20 day period initially available to the public to examine the application and its 100 pages of supporting documents included the long Christmas and New Year's weekends. That made it difficult for some neighbors to obtain, examine, and comment on the application.

Very truly yours,

STEPHEN B. BEDRICK  
SBB/SBM

**KATHRYN ANN SELIGMAN  
485 KENTUCKY AVENUE  
BERKELEY, CA 94707  
kseligman@comcast.net**

January 4, 2023

Land Use Planning Division  
(Attn: ZAB Secretary)  
City of Berkeley  
1947 Center Street, 2<sup>nd</sup> Floor  
Berkeley, CA 94704

Re: 469 Kentucky Avenue  
Use Permit ZP 2022-0087  
Hearing: January 12, 2023

I reside with my family at 485 Kentucky Avenue, four houses south of the proposed demolition and rebuilding project at 469 Kentucky Avenue. We have lived in our home since July 1988 – more than 34 years. I write to oppose the proposed project, the use permit and the demolition permit, because the project will be detrimental to the health, safety, and quality of life of those of us who reside on the northbound one-way street that is on the east side of Kentucky Avenue, specifically the block between the intersections of Michigan and Maryland Avenues.

The lengthy proposed project will undoubtedly cause significant adverse effects detrimental to those who live on both sides of the street – noise, dust, debris, pollution, blockages and disruption.

**However, I am particularly concerned with the effect the project will have on the ability of myself and similarly situated neighbors to safely drive away from our homes and return to our homes on our northbound one-way one-lane block of Kentucky Avenue. Simply put, large trucks needed to bring supplies and workers and to haul away the significant debris resulting from demolition and reconstruction, as well as dumpsters full of debris will inevitably block most or all of our very narrow one-way street for significant periods of time, making it**

**impossible or very perilous to drive our cars past the project on our block of the street. Not only will residents be prevented from driving down the street to get from or to our homes, but so will the vehicles of persons who visit us, work for us, deliver mail and packages, haul garbage, or most importantly, provide emergency services (e.g. ambulances, firetrucks, water and power trucks).**

To understand this significant impairment of our ability to leave from or return to our homes by vehicle, you need to understand the unusual configuration of our block of Kentucky Avenue. I hope the photos sent along with this letter will be helpful, but you really need to see it in person to understand.

Our block of Kentucky Avenue (between Michigan and Maryland) is essentially two one-lane one-way streets. We live on the eastern side of the street, so traffic on our side (our lane) heads only north towards Maryland. Traffic on the western side of the street heads only south towards Michigan. The proposed project is also on the eastern side of the street.

The street is terraced and the two sides or lanes of the street are separated by a wide divider strip that is planted with bushes, shrubs and a few trees and slants downward from our side (the eastern side of the street) to the other side (the western side of the street). The planted divider strip is about 6 to 10 feet high and wide, so there is a 6 to 10 foot drop off from the upper (eastern) side of the street to the lower (western) of the street. Obviously, one cannot drive across the divider strip to the other side of the street. Moreover, it is very, very difficult to traverse the divider on foot, particularly for us older adults.

Thus, if the single one-way northbound lane on the eastern side of the street is completely or significantly blocked, there is no way to turn one's car around or make a u-turn in the middle of the terraced block to head the other way. It would be difficult and unsafe to navigate a u-turn in the narrow lane, with parked cars on one-side and the drop off on the other side. The person driving northbound is essentially stuck until the vehicle blocking the street moves on. This happens, unfortunately, with some frequency, on days when garbage is being picked up or many packages are being delivered.

If the proposed demolition and rebuilding project at 469 Kentucky Avenue is approved, we anticipate there would be many days over months when large

trucks and dumpsters would completely or mostly be blocking our narrow one-lane one-block northbound street. Those of us who live south of 469 Kentucky (which is near the middle of the block) would be prevented from driving away from our homes. The street is too narrow and hilly to safely navigate a u-turn and drive south. Trying to back out towards Michigan is also dangerous. Those who live north of 469 Kentucky would have difficulty returning to their homes, unless they dangerously drove the wrong way on the northbound street

These significant and inevitable problems of egress and ingress on our narrow one-lane one-way street are aggravated by the fact that so many of us park at least some of our vehicles on the street in front of our homes. You will note that we usually park our vehicles in the proper northbound direction with the passenger side wheels up on the curb. We do this out of necessity because the street is so narrow. Many of us have had our vehicles hit or sideswiped when we do not park on the curb.

Many of us park on the street at the curb because we do not have usable garages and driveways. The garages are too small or converted to other uses. Or, as is the case in our family, our garage only holds one vehicle. My husband parks his car in the garage (when it is not flooded) and my son and I park our vehicles along the curb in front of our house. Many of the driveways on our block are narrow, sloped or poorly graded, so parking in the driveway is not always an option.

Parking is often hard to find on our block of Kentucky Avenue, and on intersecting streets, as persons who visit us or work in our homes are all too aware. The vehicles, dumpsters and equipment needed for the proposed demolition and remodeling project will also take up needed parking spaces and make it impossible, difficult or hazardous for us to continue parking our cars on the street on our block.

Parking elsewhere – across the street on the other side of Kentucky or on neighboring streets is not a viable option. The other side of our block of Kentucky (the western side with the southbound lane) has few available parking spaces. As noted above, traversing the planted barrier is difficult and hazardous, particularly if one is carrying groceries or something else from the car to home. We live closer to the intersection of Kentucky and Michigan. Michigan is a very steep street heading downhill from Spruce Street to Kentucky. There are not a lot of available

places to park on Michigan, and carrying groceries or other items from the vehicle to the home is also difficult. The street is steep and not well lighted. The options for Kentucky Avenue residents parking their vehicle on other intersecting or nearby streets are uncertain, difficult, hazardous or inconvenient –not to mention the inconvenience caused to people who live on these other streets when we park our vehicles in front of their home for months.

Those of us who live on the eastern side of the divided block of Kentucky Avenue, particularly those of us who live south the proposed demolition and rebuilding project should not have to face these hazards, inconveniences and disruptions to our lives for the many months (possibly years) that it will take to complete this project.

For the reasons discussed above, I oppose the demolition and rebuilding project at 469 Kentucky on behalf of myself, my family and similarly situated neighbors.

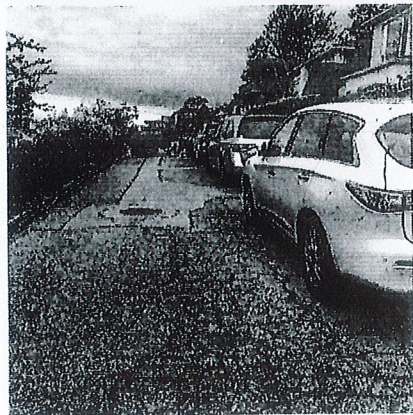
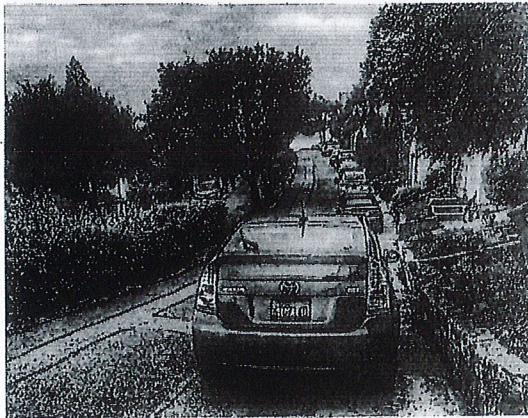
Sincerely yours,

KATHRYN ANN SELIGMAN

**Photographs of Kentucky Avenue, 400 Block: Divided Portion of Street**

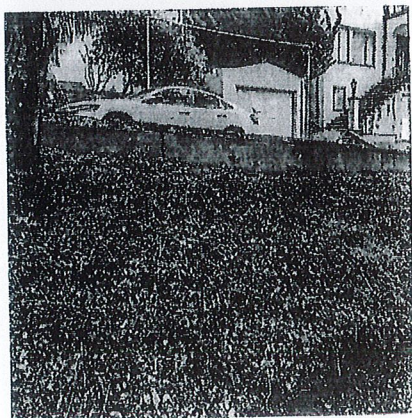
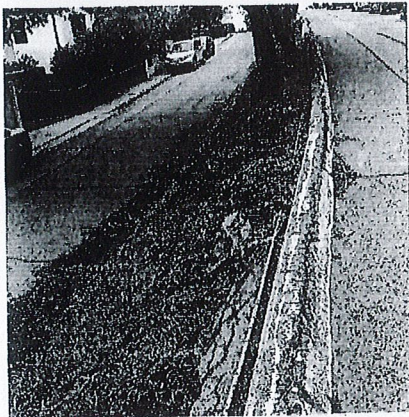
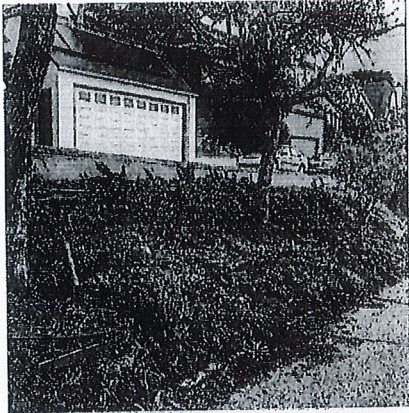
Cars Parked Along the Curb on the East / Uphill Side of Street

*Please note that the cars have their passenger side tires on the curb, so traffic can pass by.*

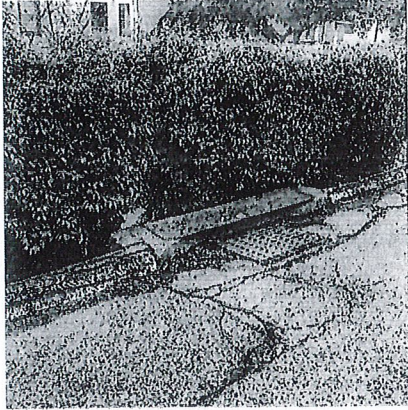


Planted Divider in the Middle of Kentucky Avenue Separating Two One-way Streets

*Please note that the West / downhill block is many feet below the East / Uphill block and most residents cannot safely walk across the street from one side to the other.*



Storm Drain on the East / Uphill Block of Kentucky Avenue  
*Please note that the storm drain is near the project site.*





**STEPHEN B. BEDRICK**  
----- ATTORNEY AT LAW -----  
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sbedrick@sonic.net

January 9, 2023

Land Use Planning Division  
(Attn: ZAB Secretary)  
City of Berkeley  
1947 Center St., 2nd Floor  
Berkeley, CA 94704

also by e-mail to  
[zab@cityofberkeley.info](mailto:zab@cityofberkeley.info)

Re: 469 Kentucky Ave. (Second letter)  
Use Permit ZP 2022-0087  
Hearing: January 12, 2023

Dear Sirs/Madams:

We oppose the demolition project in the R-1-H zone for multiple reasons:

1. The blocking of a narrow one-way street will prevent some neighborhood residents from driving to and from their homes. It also will obstruct emergency vehicles and delivery trucks.
2. The demolition on a hillside lot threatens the geologic stability of the abutting homes.
3. The demolition and removal of debris risks damaging and threatening the integrity of the abutting homes.
4. The demolition threatens to obstruct nearby storm drains, and threatens neighborhood flooding.

The staff report supplied to the Board Members on Friday January 6, 2023 is so incomplete as to be misleading. The staff report claims that no objections were made by neighbors. That is false. Several neighbors (including me) wrote opposition letters to the Board on January 4 and January 5, 2023, before the staff report is ordinarily sent to the Board members. At the minimum, we request that the January 12, 2023 hearing be continued until the opposition letters are presented to the Board in time for staff and Board members to consider them.

If, in the alternative, the Board is inclined to approve the demolition of this attractive and perfectly functional house, we request that the following mitigation measures be taken:

1. No demolition or excavation during rainy weather or rainy season (Oct. 15- May 1).
2. Demolition only to be performed by a contractor with experience in demolition on hillsides as steep as this one.
3. A certified engineer must be on site during demolition, to supervise, and to prevent accidents.
4. A retaining wall of sufficient height should be constructed on either side of the project, the entire length of the property, to prevent soil and foundation slippage.
5. A temporary fence should be constructed to protect the neighboring houses from flying debris.
6. The applicant should post a bond sufficient to compensate the abutting houses from any damage.
7. Regarding obstruction of the street by demolition activities:
  - a) Obstruction traffic by demolition activities, including use of trucks and dumpsters, should be limited to 30 minutes per day.
  - b) The time or times of street obstruction should be posted in the neighborhood at least 48 hours in advance, so neighbors can plan their exits and entrances.
  - c) Traffic monitors shall be on the scene whenever trucks or dumpsters are present, to prevent unwarranted street blockage, and to assist residents who have difficulty in getting to or from their homes.

Very truly yours,

STEPHEN B. BEDRICK  
SBB/SBM

Land Use Planning Division  
(Attn: ZAB Secretary)  
City of Berkeley  
1947 Center St 2nd Floor  
Berkeley, CA 94704

Re: 469 Kentucky Ave.  
Use Permit ZP 2022-0087  
Hearing: January 12, 2023

Dear Sirs/Madams:

I live at 483 Kentucky Avenue, three doors south of this project. I oppose this demolition project at 469 Kentucky Ave because it risks damage to the adjacent houses, geologic slippage, flooding, and traffic obstruction. As a parent of a 6 month old, I am particularly concerned with the persistent and extraordinary noise and potential for toxic pollutants resulting from the demolition. As a committee member on the Kentucky Ave Disaster Preparedness Group, I am concerned a project of this scale on such a narrow street could seriously impede evacuation and emergency personnel in the event of an earthquake or wildfire.

I largely agree with the letters sent by our neighbors Stephen Bedrick and Ren Ng. The staff and Board should continue the hearing to consider our objections.

Thank you.  
Ben Young

**From:** [Cynthia Foster](#)  
**To:** [Roe, Russell](#)  
**Subject:** Fwd: Use Permit #ZP2022-0087, 469 Kentucky Avenue  
**Date:** Tuesday, January 10, 2023 2:49:32 PM

---

**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.

Sent from my iPad

Begin forwarded message:

**From:** Cynthia Foster <cynthiamfoster@gmail.com>  
**Date:** January 10, 2023 at 2:48:45 PM PST  
**To:** zab@cityofberkeley.info  
**Subject:** Use Permit #ZP2022-0087, 469 Kentucky Avenue

Land Use Planning Division  
Attn: ZAB Secretary

City of Berkeley

1947 Center St., 2nd Floor Berkeley, CA 94704

Sent via email

Dear Sirs/Madams,

I live at 479 Kentucky Avenue and am writing to oppose the project at 469 Kentucky Avenue. I have several concerns, including the size of the proposed residence, demolition, parking, and access to the street during both demolition and construction.

I will assume the project will be approved based on where we are in the project proposal, so I will focus on concerns of demolition/construction and access to the street.

Kentucky Avenue is 2 one-way streets with a median in the middle of the upper and lower portions of the street. It's a small neighborhood

street and additional traffic will be disruptive at best. Parking is already limited.

Emergency vehicles, delivery trucks, USPS, and City refuse/recycling trucks carefully manage access to the street. The City trucks are cognizant of neighborhood traffic on Tuesday mornings and quite considerate of the neighbors as they seem to understand our unique street.

My concerns with the demolition and subsequent construction have to do with access to entering and exiting the street. It's a narrow (one way) street and with the amount of trucks and dumpsters involved in this project, it's most likely the street will be blocked for extended periods of time. It is very difficult to turn a car around and exit in the wrong direction. It's been done in emergencies, but should not be done on a consistent basis, particularly due to construction blocking the street.

- \* With large trucks even partially blocking part of the street, emergency vehicles may not be able to access the street.
- \* Will neighbors be given 48 hours notification when the street will be blocked in order to make plans for access to their homes?
- \* Will this project create geologic slippage due to hillside and/or geologic stability issues to houses adjacent to this project?
- \* When the street is obstructed during this project, can the time be limited to specific hours and/or a set amount of time?
- \* Will construction companies work with neighbors when large delivery trucks are expected? What is their responsibility with monitoring traffic?
- \* Last, but not least, where will the construction crews park? Can they be informed not to block stairs which limits access to homes? I'm asking this specifically as on multiple occasions, a vehicle from the architect's firm has blocked the stairs to, and also the driveway at, my house.

Thank you for your consideration,

Cynthia Foster

479 Kentucky Avenue

Berkeley, CA 94707

510-499-6880

Sent from my iPad

Ren and Yi Ng  
467 Kentucky Ave  
Berkeley, CA 94707

January 4th, 2023

To: Zoning Adjustments Board, City of Berkeley

**Regarding: Request to Postpone Approval of Use Permit ZP2022-0087 for 469 Kentucky Ave**

Dear Members of the Zoning Adjustments Board,

We are the neighbor immediately north of the site for Use Permit ZP2022-0087.

We are writing to respectfully request that you postpone approval of this use permit, for two reasons. First, to provide us more time to work with the owner and architect regarding our objections to the current design. Second, to provide time for them to add information about how they will mitigate the potential detrimental effects of demolition/construction with respect to property damage, health and safety, traffic access, etc. Both are described in detail below, and we request that these important issues be addressed in the application before a permit is approved.

**(A) Information Flow Problems and The Need for More Time**

The architect has sent us two sets of detailed design plans directly – the first in February 2022 and the second on December 20th, 2022. However, two days ago, we discovered that the versions of these plans on the city website include additional documents that we did not previously receive and were unaware of. These documents include additions, design revisions, soil studies, shadow studies, landscaping plans, etc. The latest design revisions were only uploaded yesterday, on January 3<sup>rd</sup> 2023. We have only had what we believe is the complete version of the documents for 1-2 days, and need more time to study and absorb this large body of information and discuss all our concerns with the owner and architect. We are writing now to meet the deadline in advance of the January 12<sup>th</sup> ZAB meeting.

**(B) Objections to the Current Design Based on Privacy Intrusion and Sun Shadowing**

The following design problems emerged only after erection of the story poles, and examination of changes in the latest design documents.

Our chief objection to the current proposal is privacy intrusion. Our home has a secluded deck adjoining the master bedroom. The proposed design for 469 has a balcony that will provide direct views from a close distance onto our private deck (3<sup>rd</sup> floor) and into our master bedroom (see Figure 1 below). If built as designed, this balcony will intrude on two of our most private spaces, and be detrimental to our peace, comfort and property. We are currently in discussions with the owner and architect regarding this problem, and request more time to design a well considered, mutually acceptable modification and document it in the use permit before approval.

Additional design concerns include:

- Privacy loss on our main deck area with barbeque and dining seating (2nd floor). This deck area is not visible from existing 469 Kentucky decks or windows, except the front door and adjacent window. The proposed balcony and potentially the proposed windows on the 3<sup>rd</sup> floor look down on our deck area. In the latest changes to the plan, the proposed balcony has changed from opaque siding to a wraparound glass design (see Figure 2), which increases the problem of visual privacy loss. We are working with the architect to understand the implications of the latest design, and request time to document any modifications, if necessary, in the use permit before approval.
- There is a new shadow study in the latest design documents. We need more time to study and understand its implications, but a preliminary examination shows that the proposed structure will block more morning light onto our deck.

### (C) Concerns About Demolition, Property Damage, Health and Safety, Traffic, Etc.

In studying the latest versions of the documents proposed for approval, we were left with many questions and concerns about how the project plans to mitigate detrimental effects of demolition and construction to property, health and safety, traffic, parking, etc. We have not had time to discuss these with the owner and architect yet. We request that you postpone approval of the use permit so that they can provide more information to us and the neighborhood to allay these concerns.

Demolition.

We request addition of a demolition plan, that details how the project will mitigate detrimental effects related to the following issues:

- Hazardous materials. We have two children, ages 7 and 9, and we will be living at the demolition and construction site for 1-2 years. We are concerned about detrimental health effects due to hazardous materials, such as lead dust and asbestos. We request addition of a hazardous material study, and for health and safety issues for neighbors to be addressed comprehensively in the demolition plan.
- Property damage. We are concerned about potential damage to our home during demolition and construction. Our house is separated from 469 Kentucky by just 8 feet for the full depth and height of our three-story houses (see Figure 3) on a steep hill.
- Erosion and settling. Given the proximity of our houses (again, 8 feet separation for the full depth), we are concerned that excavating and levelling the hill for the new house may cause unintended hillside erosion and/or settling that damages the foundation and/or structural integrity of our home.
- Tree Safety. In the backyard of our property is a notable tree – a healthy 90-year-old Giant Sequoia (see Figure 3B). It appears that the landscaping plan for 469 Kentucky will excavate and/or hardscape a backyard area covering approximately  $\frac{1}{4}$  of the root system for this tree. We are concerned of unintended detrimental impacts to the tree's health and stability, potentially creating a safety risk to surrounding residents and property.
- How will shared property between our houses be preserved or replaced during demolition and construction? In the space between our houses are shared fences, walking path, and a ~10 foot tall pergola that touches both buildings (see Figure 3). The pergola's doors have for years



prevented deer access to both our backyards – how will we prevent deer access to our backyard after demolition? We realized that the current document plans do not mention these pieces of property, and we have not had a chance to discuss yet.

- Drainage is a serious problem on our steep hillside, but we fortunately do not currently experience a problem on our lot or for our foundation. We are concerned about drainage changes and potential new problems due to the demolition, excavation and new construction.
- Noise. How will demolition and construction noise be managed to acceptable levels not to interfere with professional requirements for work from home? This is a very important issue, because one of us works from a home office 4-5 days a week.

#### Community Impacts: Traffic, Street Safety, Street Access and Parking

Our street is unusual, because it is comprised of two one-way roads separated by a steep median drop (8 feet tall at the site). The one-way roads are narrow enough that traffic cannot pass if cars park normally, so residents much park partially atop the sidewalk. The road itself has a steep hill section, and access is via Michigan Avenue, one of the steepest hills in Berkeley. These are some of the significant environmental challenges facing the project and the neighborhood.

The project to completely demolish and build a new 3800 square foot home is by far the most complex construction project on the street in years, possibly decades. We request that the application add a plan for mitigating detrimental impacts to neighborhood traffic, street safety, street access and parking. The concerns include:

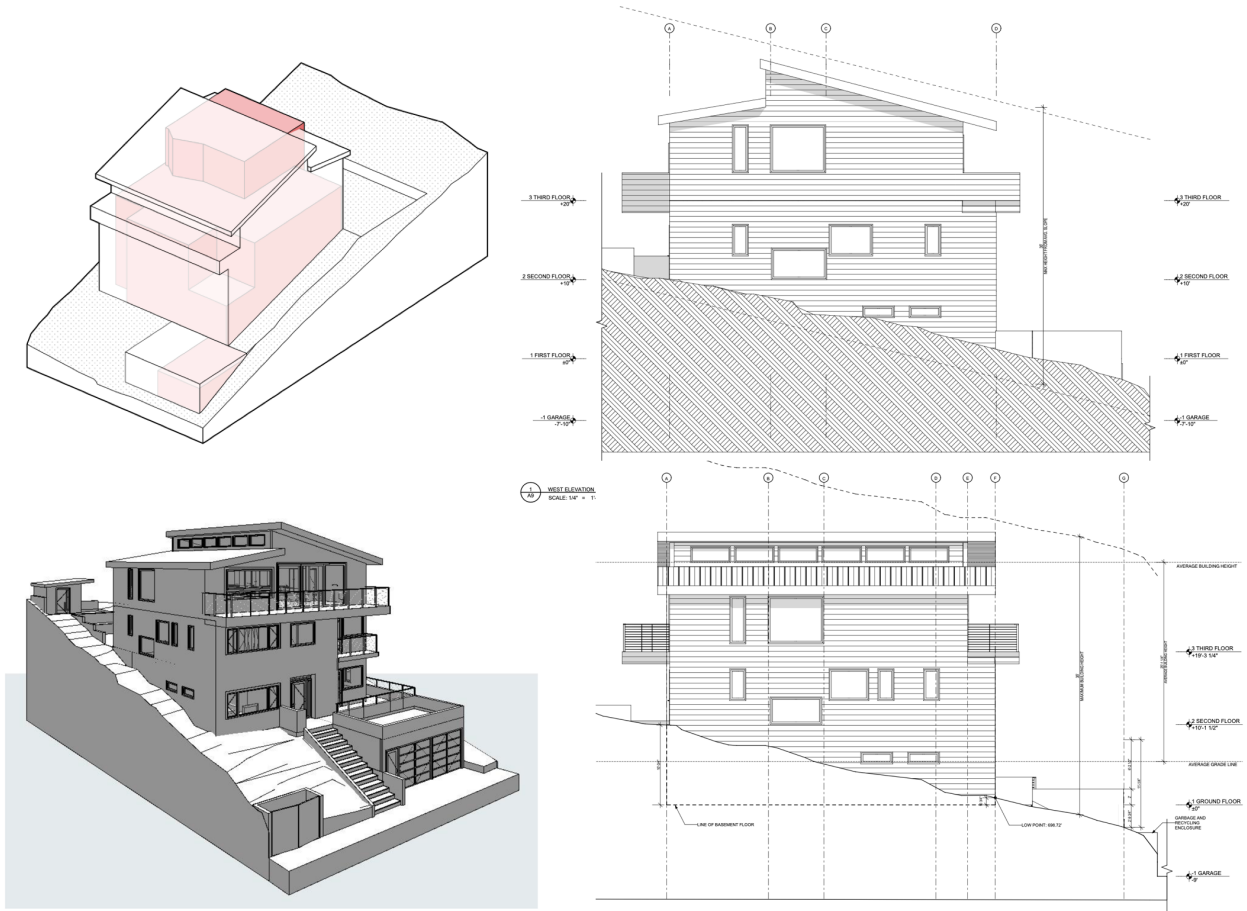
- How will construction parking be managed so as not block thoroughfare?
- How will access by fire trucks and emergency vehicles be preserved at all times, given that this is already very challenging due to the narrow one-way road and parking situation.
- Construction vehicle accidents are a serious concern. Near the intersection with Michigan Avenue, in the past two years there were several serious accidents involving construction vehicles due to the steepness and narrowness of the roads. One accident destroyed the railing and part of the front steps of the house at the end of Kentucky Ave. Another serious incident involved a moving backhoe that threatened the safety of two children, including one of our own, and was referred to Councilmember Sophie Hahn for follow up.
- The street surface itself is old and in poor repair. On our side of the street, there is a long sunken strip of asphalt that already causes tire damage to resident cars (including rupturing one of the tires on our car). This project will require innumerable trips by heavy vehicles that will have a detrimental effect on this fragile surface, and damage must be mitigated.
- How will construction parking be managed to avoid depriving residents of parking?
- Last but not least, there are many families living on this street with young children, who often play and bike on the street – everyday in the summer. Visibility is poor, especially in a tall truck coming over and down the steep hill towards the construction site. What safety measures will be put in place to protect the neighborhood?

In summary, we request that you postpone the approval of this use permit until the above issues are addressed. Thank you for your consideration of our request.

Yours sincerely,  
Ren and Yi Ng



**Figure 1:** Privacy intrusion from proposed deck onto our private deck and master bedroom. Top left: photo from our deck showing location of proposed deck railing (story poles). Top right: photo sitting on bed inside bedroom showing location of proposed deck railing. Bottom left: photo from direction of proposed 469 deck towards our bedroom. Bottom right: detail of direct view of bed in bedroom.



**Figure 2:** Recent changes in design. We have been sent two versions of the design. Top row: rendering and elevation from previous design sent to us in February 2022, with proposed balcony as opaque siding. Bottom row: rendering and elevation from latest design (uploaded January 3<sup>rd</sup>, 2023) with proposed balcony as wraparound glass. This change increases loss of privacy concerns.



**Figure 3.**

Left, A Rear view of pergola between 469 Kentucky (left) and our home (right).

Right, B: Front view of pergola, with 90-year-old Giant Sequoia in background. The houses are separated by 8 feet as shown for the full depth and height of the houses.

The Carrolls  
475 Vassar Avenue  
Berkeley, CA 94708  
510-525-8023

January 8, 2023

Russell Roe  
City of Berkeley Planner  
RRoe@CityofBerkeley.info

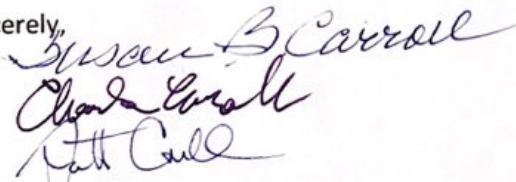
Dear Mr. Roe,

We are writing to voice our support for the home project of the Keefe family at 469 Kentucky Avenue in Berkeley. Our home is directly one street up from the Keefes and we see over their home to the San Francisco skyline. They have been conscientious about their neighbors, including us, with their planning and communication for this work, and their project will not have a negative impact on our home nor our neighborhood.

We have lived in our home since 1968, and, like the Keefes, raised our family here. We are very glad to see that their family will be able to continue to live in the neighborhood through the project they are taking on.

Please feel free to call us if you have any questions. We are signing as two generations of Carrolls who are living in our home.

Sincerely,

The image shows three handwritten signatures in black ink. The top signature is 'Susan B. Carroll', the middle one is 'Charles Carroll', and the bottom one is 'Scott Carroll'. The signatures are written in a cursive style.

Susan Carroll (homeowner)  
Charles Carroll (son)  
Scott Carroll (son)

David Z. Ritvo and Phyllis F. Ritvo  
471 Vassar Ave.  
Berkeley, CA, 94708

January 8, 2023

Russel Roe  
Planning Manager  
City of Berkeley  
[Rroe@cityofberkeley.info](mailto:Rroe@cityofberkeley.info)

re: Zoning Adjustment Board Meeting regarding the proposed project at 469 Kentucky Ave., Berkeley

Dear Mr. Roe:

Thank you for sending us the announcement of the Zoning Adjustment Board's meeting regarding the proposed project at 469 Kentucky Ave., Berkeley and for its invitation to neighbors to provide input regarding the project. We would like to take this opportunity to do so.

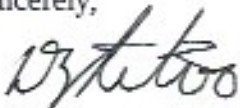
We have resided at 471 Vassar Ave., just uphill from the proposed project at 469 Kentucky Ave., for the past forty two plus years. As long-term residents of the neighborhood we love, we have a deep interest in maintaining its sense of community and neighborliness.

We have reviewed the project and seen the Planning Department staff report regarding the project.

We are in complete agreement with the staff report: This project is in keeping with the nature of the neighborhood and will not adversely effect the neighbors or the neighborhood.

We urge the Zoning Adjustment Board to agree with the staff report, and we look forward to the folks at 469 Kentucky Ave. being able to go ahead with their project without delay.

Sincerely,



David Z. Ritvo



Phyllis F. Ritvo

cc: Aidan Keefe, 469 Kentucky Ave., Berkeley, CA

**Pam and Les Bradford**  
476 Vassar Avenue  
Berkeley, CA 94708  
510-527-8421

**January 9, 2023**

**Russell Roe**  
City of Berkeley Planner  
[Roe@CityofBerkeley.info](mailto:Roe@CityofBerkeley.info)

**Dear Mr. Roe,**

**This letter is in support of the home project of the Keefe family at 469 Kentucky Avenue in Berkeley. Our property sits east of that property, directly behind their residence; we share a fence and have been their neighbors since 1990. Their project will not have any negative impact on our home or view of the San Francisco Bay and Aidan Keefe has communicated with us from the beginning of his efforts to make home improvements. We certainly hope he will be able to continue with the work projected and be a part of our neighborhood.**

**Sincerely,**

**Pamela Bradford**  
**Lester Bradford**

STEPHEN B. BEDRICK  
----- ATTORNEY AT LAW -----  
1970 BROADWAY, SUITE 1200  
OAKLAND, CALIFORNIA 94612  
  
TELEPHONE: (510) 452-1900  
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sbedrick@sonic.net

January 9, 2023

Land Use Planning Division  
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also by e-mail to  
[zab@cityofberkeley.info](mailto:zab@cityofberkeley.info)

Re: 469 Kentucky Ave. (Second letter)  
Use Permit ZP 2022-0087  
Hearing: January 12, 2023

Dear Sirs/Madams:

We oppose the demolition project in the R-1-H zone for multiple reasons:

1. The blocking of a narrow one-way street will prevent some neighborhood residents from driving to and from their homes. It also will obstruct emergency vehicles and delivery trucks.
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Very truly yours,

STEPHEN B. BEDRICK  
SBB/SBM

**KATHRYN ANN SELIGMAN  
485 KENTUCKY AVENUE  
BERKELEY, CA 94707  
kseligman@comcast.net**

January 4, 2023

Land Use Planning Division  
(Attn: ZAB Secretary)  
City of Berkeley  
1947 Center Street, 2<sup>nd</sup> Floor  
Berkeley, CA 94704

Re: 469 Kentucky Avenue  
Use Permit ZP 2022-0087  
Hearing: January 12, 2023

I reside with my family at 485 Kentucky Avenue, four houses south of the proposed demolition and rebuilding project at 469 Kentucky Avenue. We have lived in our home since July 1988 – more than 34 years. I write to oppose the proposed project, the use permit and the demolition permit, because the project will be detrimental to the health, safety, and quality of life of those of us who reside on the northbound one-way street that is on the east side of Kentucky Avenue, specifically the block between the intersections of Michigan and Maryland Avenues.

The lengthy proposed project will undoubtedly cause significant adverse effects detrimental to those who live on both sides of the street – noise, dust, debris, pollution, blockages and disruption.

**However, I am particularly concerned with the effect the project will have on the ability of myself and similarly situated neighbors to safely drive away from our homes and return to our homes on our northbound one-way one-lane block of Kentucky Avenue. Simply put, large trucks needed to bring supplies and workers and to haul away the significant debris resulting from demolition and reconstruction, as well as dumpsters full of debris will inevitably block most or all of our very narrow one-way street for significant periods of time, making it**

**impossible or very perilous to drive our cars past the project on our block of the street. Not only will residents be prevented from driving down the street to get from or to our homes, but so will the vehicles of persons who visit us, work for us, deliver mail and packages, haul garbage, or most importantly, provide emergency services (e.g. ambulances, firetrucks, water and power trucks).**

To understand this significant impairment of our ability to leave from or return to our homes by vehicle, you need to understand the unusual configuration of our block of Kentucky Avenue. I hope the photos sent along with this letter will be helpful, but you really need to see it in person to understand.

Our block of Kentucky Avenue (between Michigan and Maryland) is essentially two one-lane one-way streets. We live on the eastern side of the street, so traffic on our side (our lane) heads only north towards Maryland. Traffic on the western side of the street heads only south towards Michigan. The proposed project is also on the eastern side of the street.

The street is terraced and the two sides or lanes of the street are separated by a wide divider strip that is planted with bushes, shrubs and a few trees and slants downward from our side (the eastern side of the street) to the other side (the western side of the street). The planted divider strip is about 6 to 10 feet high and wide, so there is a 6 to 10 foot drop off from the upper (eastern) side of the street to the lower (western) of the street. Obviously, one cannot drive across the divider strip to the other side of the street. Moreover, it is very, very difficult to traverse the divider on foot, particularly for us older adults.

Thus, if the single one-way northbound lane on the eastern side of the street is completely or significantly blocked, there is no way to turn one's car around or make a u-turn in the middle of the terraced block to head the other way. It would be difficult and unsafe to navigate a u-turn in the narrow lane, with parked cars on one-side and the drop off on the other side. The person driving northbound is essentially stuck until the vehicle blocking the street moves on. This happens, unfortunately, with some frequency, on days when garbage is being picked up or many packages are being delivered.

If the proposed demolition and rebuilding project at 469 Kentucky Avenue is approved, we anticipate there would be many days over months when large

trucks and dumpsters would completely or mostly be blocking our narrow one-lane one-block northbound street. Those of us who live south of 469 Kentucky (which is near the middle of the block) would be prevented from driving away from our homes. The street is too narrow and hilly to safely navigate a u-turn and drive south. Trying to back out towards Michigan is also dangerous. Those who live north of 469 Kentucky would have difficulty returning to their homes, unless they dangerously drove the wrong way on the northbound street

These significant and inevitable problems of egress and ingress on our narrow one-lane one-way street are aggravated by the fact that so many of us park at least some of our vehicles on the street in front of our homes. You will note that we usually park our vehicles in the proper northbound direction with the passenger side wheels up on the curb. We do this out of necessity because the street is so narrow. Many of us have had our vehicles hit or sideswiped when we do not park on the curb.

Many of us park on the street at the curb because we do not have usable garages and driveways. The garages are too small or converted to other uses. Or, as is the case in our family, our garage only holds one vehicle. My husband parks his car in the garage (when it is not flooded) and my son and I park our vehicles along the curb in front of our house. Many of the driveways on our block are narrow, sloped or poorly graded, so parking in the driveway is not always an option.

Parking is often hard to find on our block of Kentucky Avenue, and on intersecting streets, as persons who visit us or work in our homes are all too aware. The vehicles, dumpsters and equipment needed for the proposed demolition and remodeling project will also take up needed parking spaces and make it impossible, difficult or hazardous for us to continue parking our cars on the street on our block.

Parking elsewhere – across the street on the other side of Kentucky or on neighboring streets is not a viable option. The other side of our block of Kentucky (the western side with the southbound lane) has few available parking spaces. As noted above, traversing the planted barrier is difficult and hazardous, particularly if one is carrying groceries or something else from the car to home. We live closer to the intersection of Kentucky and Michigan. Michigan is a very steep street heading downhill from Spruce Street to Kentucky. There are not a lot of available

places to park on Michigan, and carrying groceries or other items from the vehicle to the home is also difficult. The street is steep and not well lighted. The options for Kentucky Avenue residents parking their vehicle on other intersecting or nearby streets are uncertain, difficult, hazardous or inconvenient –not to mention the inconvenience caused to people who live on these other streets when we park our vehicles in front of their home for months.

Those of us who live on the eastern side of the divided block of Kentucky Avenue, particularly those of us who live south the proposed demolition and rebuilding project should not have to face these hazards, inconveniences and disruptions to our lives for the many months (possibly years) that it will take to complete this project.

For the reasons discussed above, I oppose the demolition and rebuilding project at 469 Kentucky on behalf of myself, my family and similarly situated neighbors.

Sincerely yours,

KATHRYN ANN SELIGMAN

**Photographs of Kentucky Avenue, 400 Block: Divided Portion of Street**

Cars Parked Along the Curb on the East / Uphill Side of Street

*Please note that the cars have their passenger side tires on the curb, so traffic can pass by.*



Planted Divider in the Middle of Kentucky Avenue Separating Two One-way Streets

*Please note that the West / downhill block is many feet below the East / Uphill block and most residents cannot safely walk across the street from one side to the other.*



Storm Drain on the East / Uphill Block of Kentucky Avenue  
*Please note that the storm drain is near the project site.*





Land Use Planning Division  
(Attn: ZAB Secretary)  
City of Berkeley  
1947 Center St 2nd Floor  
Berkeley, CA 94704

Re: 469 Kentucky Ave.  
Use Permit ZP 2022-0087  
Hearing: January 12, 2023

Dear Sirs/Madams:

I live at 483 Kentucky Avenue, three doors south of this project. I oppose this demolition project at 469 Kentucky Ave because it risks damage to the adjacent houses, geologic slippage, flooding, and traffic obstruction. As a parent of a 6 month old, I am particularly concerned with the persistent and extraordinary noise and potential for toxic pollutants resulting from the demolition. As a committee member on the Kentucky Ave Disaster Preparedness Group, I am concerned a project of this scale on such a narrow street could seriously impede evacuation and emergency personnel in the event of an earthquake or wildfire.

I largely agree with the letters sent by our neighbors Stephen Bedrick and Ren Ng. The staff and Board should continue the hearing to consider our objections.

Thank you.  
Ben Young

**From:** [Cynthia Foster](#)  
**To:** [Roe, Russell](#)  
**Subject:** Fwd: Use Permit #ZP2022-0087, 469 Kentucky Avenue  
**Date:** Tuesday, January 10, 2023 2:49:32 PM

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**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.

Sent from my iPad

Begin forwarded message:

**From:** Cynthia Foster <cynthiamfoster@gmail.com>  
**Date:** January 10, 2023 at 2:48:45 PM PST  
**To:** zab@cityofberkeley.info  
**Subject:** Use Permit #ZP2022-0087, 469 Kentucky Avenue

Land Use Planning Division  
Attn: ZAB Secretary

City of Berkeley

1947 Center St., 2nd Floor Berkeley, CA 94704

Sent via email

Dear Sirs/Madams,

I live at 479 Kentucky Avenue and am writing to oppose the project at 469 Kentucky Avenue. I have several concerns, including the size of the proposed residence, demolition, parking, and access to the street during both demolition and construction.

I will assume the project will be approved based on where we are in the project proposal, so I will focus on concerns of demolition/construction and access to the street.

Kentucky Avenue is 2 one-way streets with a median in the middle of the upper and lower portions of the street. It's a small neighborhood

street and additional traffic will be disruptive at best. Parking is already limited.

Emergency vehicles, delivery trucks, USPS, and City refuse/recycling trucks carefully manage access to the street. The City trucks are cognizant of neighborhood traffic on Tuesday mornings and quite considerate of the neighbors as they seem to understand our unique street.

My concerns with the demolition and subsequent construction have to do with access to entering and exiting the street. It's a narrow (one way) street and with the amount of trucks and dumpsters involved in this project, it's most likely the street will be blocked for extended periods of time. It is very difficult to turn a car around and exit in the wrong direction. It's been done in emergencies, but should not be done on a consistent basis, particularly due to construction blocking the street.

- \* With large trucks even partially blocking part of the street, emergency vehicles may not be able to access the street.
- \* Will neighbors be given 48 hours notification when the street will be blocked in order to make plans for access to their homes?
- \* Will this project create geologic slippage due to hillside and/or geologic stability issues to houses adjacent to this project?
- \* When the street is obstructed during this project, can the time be limited to specific hours and/or a set amount of time?
- \* Will construction companies work with neighbors when large delivery trucks are expected? What is their responsibility with monitoring traffic?
- \* Last, but not least, where will the construction crews park? Can they be informed not to block stairs which limits access to homes? I'm asking this specifically as on multiple occasions, a vehicle from the architect's firm has blocked the stairs to, and also the driveway at, my house.

Thank you for your consideration,

Cynthia Foster

479 Kentucky Avenue

Berkeley, CA 94707

510-499-6880

Sent from my iPad

Ren and Yi Ng  
467 Kentucky Ave  
Berkeley, CA 94707

January 4th, 2023

To: Zoning Adjustments Board, City of Berkeley

**Regarding: Request to Postpone Approval of Use Permit ZP2022-0087 for 469 Kentucky Ave**

Dear Members of the Zoning Adjustments Board,

We are the neighbor immediately north of the site for Use Permit ZP2022-0087.

We are writing to respectfully request that you postpone approval of this use permit, for two reasons. First, to provide us more time to work with the owner and architect regarding our objections to the current design. Second, to provide time for them to add information about how they will mitigate the potential detrimental effects of demolition/construction with respect to property damage, health and safety, traffic access, etc. Both are described in detail below, and we request that these important issues be addressed in the application before a permit is approved.

**(A) Information Flow Problems and The Need for More Time**

The architect has sent us two sets of detailed design plans directly – the first in February 2022 and the second on December 20th, 2022. However, two days ago, we discovered that the versions of these plans on the city website include additional documents that we did not previously receive and were unaware of. These documents include additions, design revisions, soil studies, shadow studies, landscaping plans, etc. The latest design revisions were only uploaded yesterday, on January 3<sup>rd</sup> 2023. We have only had what we believe is the complete version of the documents for 1-2 days, and need more time to study and absorb this large body of information and discuss all our concerns with the owner and architect. We are writing now to meet the deadline in advance of the January 12<sup>th</sup> ZAB meeting.

**(B) Objections to the Current Design Based on Privacy Intrusion and Sun Shadowing**

The following design problems emerged only after erection of the story poles, and examination of changes in the latest design documents.

Our chief objection to the current proposal is privacy intrusion. Our home has a secluded deck adjoining the master bedroom. The proposed design for 469 has a balcony that will provide direct views from a close distance onto our private deck (3<sup>rd</sup> floor) and into our master bedroom (see Figure 1 below). If built as designed, this balcony will intrude on two of our most private spaces, and be detrimental to our peace, comfort and property. We are currently in discussions with the owner and architect regarding this problem, and request more time to design a well considered, mutually acceptable modification and document it in the use permit before approval.

Additional design concerns include:

- Privacy loss on our main deck area with barbeque and dining seating (2nd floor). This deck area is not visible from existing 469 Kentucky decks or windows, except the front door and adjacent window. The proposed balcony and potentially the proposed windows on the 3<sup>rd</sup> floor look down on our deck area. In the latest changes to the plan, the proposed balcony has changed from opaque siding to a wraparound glass design (see Figure 2), which increases the problem of visual privacy loss. We are working with the architect to understand the implications of the latest design, and request time to document any modifications, if necessary, in the use permit before approval.
- There is a new shadow study in the latest design documents. We need more time to study and understand its implications, but a preliminary examination shows that the proposed structure will block more morning light onto our deck.

### (C) Concerns About Demolition, Property Damage, Health and Safety, Traffic, Etc.

In studying the latest versions of the documents proposed for approval, we were left with many questions and concerns about how the project plans to mitigate detrimental effects of demolition and construction to property, health and safety, traffic, parking, etc. We have not had time to discuss these with the owner and architect yet. We request that you postpone approval of the use permit so that they can provide more information to us and the neighborhood to allay these concerns.

Demolition.

We request addition of a demolition plan, that details how the project will mitigate detrimental effects related to the following issues:

- Hazardous materials. We have two children, ages 7 and 9, and we will be living at the demolition and construction site for 1-2 years. We are concerned about detrimental health effects due to hazardous materials, such as lead dust and asbestos. We request addition of a hazardous material study, and for health and safety issues for neighbors to be addressed comprehensively in the demolition plan.
- Property damage. We are concerned about potential damage to our home during demolition and construction. Our house is separated from 469 Kentucky by just 8 feet for the full depth and height of our three-story houses (see Figure 3) on a steep hill.
- Erosion and settling. Given the proximity of our houses (again, 8 feet separation for the full depth), we are concerned that excavating and levelling the hill for the new house may cause unintended hillside erosion and/or settling that damages the foundation and/or structural integrity of our home.
- Tree Safety. In the backyard of our property is a notable tree – a healthy 90-year-old Giant Sequoia (see Figure 3B). It appears that the landscaping plan for 469 Kentucky will excavate and/or hardscape a backyard area covering approximately  $\frac{1}{4}$  of the root system for this tree. We are concerned of unintended detrimental impacts to the tree's health and stability, potentially creating a safety risk to surrounding residents and property.
- How will shared property between our houses be preserved or replaced during demolition and construction? In the space between our houses are shared fences, walking path, and a ~10 foot tall pergola that touches both buildings (see Figure 3). The pergola's doors have for years

prevented deer access to both our backyards – how will we prevent deer access to our backyard after demolition? We realized that the current document plans do not mention these pieces of property, and we have not had a chance to discuss yet.

- Drainage is a serious problem on our steep hillside, but we fortunately do not currently experience a problem on our lot or for our foundation. We are concerned about drainage changes and potential new problems due to the demolition, excavation and new construction.
- Noise. How will demolition and construction noise be managed to acceptable levels not to interfere with professional requirements for work from home? This is a very important issue, because one of us works from a home office 4-5 days a week.

#### Community Impacts: Traffic, Street Safety, Street Access and Parking

Our street is unusual, because it is comprised of two one-way roads separated by a steep median drop (8 feet tall at the site). The one-way roads are narrow enough that traffic cannot pass if cars park normally, so residents much park partially atop the sidewalk. The road itself has a steep hill section, and access is via Michigan Avenue, one of the steepest hills in Berkeley. These are some of the significant environmental challenges facing the project and the neighborhood.

The project to completely demolish and build a new 3800 square foot home is by far the most complex construction project on the street in years, possibly decades. We request that the application add a plan for mitigating detrimental impacts to neighborhood traffic, street safety, street access and parking. The concerns include:

- How will construction parking be managed so as not block thoroughfare?
- How will access by fire trucks and emergency vehicles be preserved at all times, given that this is already very challenging due to the narrow one-way road and parking situation.
- Construction vehicle accidents are a serious concern. Near the intersection with Michigan Avenue, in the past two years there were several serious accidents involving construction vehicles due to the steepness and narrowness of the roads. One accident destroyed the railing and part of the front steps of the house at the end of Kentucky Ave. Another serious incident involved a moving backhoe that threatened the safety of two children, including one of our own, and was referred to Councilmember Sophie Hahn for follow up.
- The street surface itself is old and in poor repair. On our side of the street, there is a long sunken strip of asphalt that already causes tire damage to resident cars (including rupturing one of the tires on our car). This project will require innumerable trips by heavy vehicles that will have a detrimental effect on this fragile surface, and damage must be mitigated.
- How will construction parking be managed to avoid depriving residents of parking?
- Last but not least, there are many families living on this street with young children, who often play and bike on the street – everyday in the summer. Visibility is poor, especially in a tall truck coming over and down the steep hill towards the construction site. What safety measures will be put in place to protect the neighborhood?

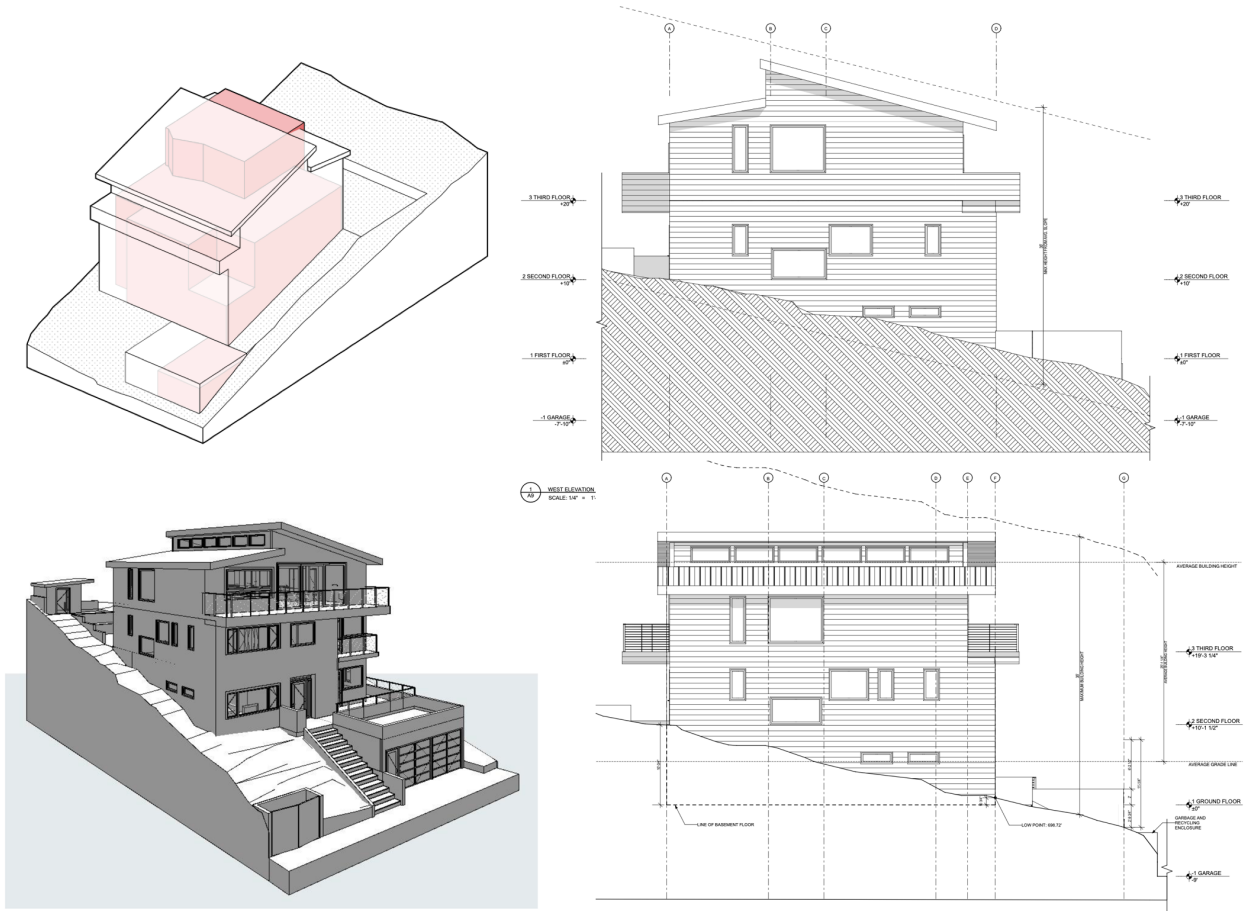
In summary, we request that you postpone the approval of this use permit until the above issues are addressed. Thank you for your consideration of our request.

Yours sincerely,  
Ren and Yi Ng



**Figure 1:** Privacy intrusion from proposed deck onto our private deck and master bedroom. Top left: photo from our deck showing location of proposed deck railing (story poles). Top right: photo sitting on bed inside bedroom showing location of proposed deck railing. Bottom left: photo from direction of proposed 469 deck towards our bedroom. Bottom right: detail of direct view of bed in bedroom.





**Figure 2:** Recent changes in design. We have been sent two versions of the design. Top row: rendering and elevation from previous design sent to us in February 2022, with proposed balcony as opaque siding. Bottom row: rendering and elevation from latest design (uploaded January 3<sup>rd</sup>, 2023) with proposed balcony as wraparound glass. This change increases loss of privacy concerns.



**Figure 3.**

Left, A Rear view of pergola between 469 Kentucky (left) and our home (right).

Right, B: Front view of pergola, with 90-year-old Giant Sequoia in background. The houses are separated by 8 feet as shown for the full depth and height of the houses.

The Carrolls  
475 Vassar Avenue  
Berkeley, CA 94708  
510-525-8023

January 8, 2023

Russell Roe  
City of Berkeley Planner  
RRoe@CityofBerkeley.info

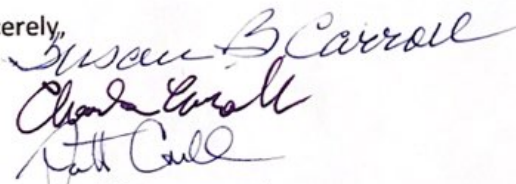
Dear Mr. Roe,

We are writing to voice our support for the home project of the Keefe family at 469 Kentucky Avenue in Berkeley. Our home is directly one street up from the Keefes and we see over their home to the San Francisco skyline. They have been conscientious about their neighbors, including us, with their planning and communication for this work, and their project will not have a negative impact on our home nor our neighborhood.

We have lived in our home since 1968, and, like the Keefes, raised our family here. We are very glad to see that their family will be able to continue to live in the neighborhood through the project they are taking on.

Please feel free to call us if you have any questions. We are signing as two generations of Carrolls who are living in our home.

Sincerely,

The image shows three handwritten signatures in black ink. The top signature is 'Susan B. Carroll', the middle one is 'Charles Carroll', and the bottom one is 'Scott Carroll'. The signatures are written in a cursive style.

Susan Carroll (homeowner)  
Charles Carroll (son)  
Scott Carroll (son)

David Z. Ritvo and Phyllis F. Ritvo  
471 Vassar Ave.  
Berkeley, CA, 94708

January 8, 2023

Russel Roe  
Planning Manager  
City of Berkeley  
[Rroe@cityofberkeley.info](mailto:Rroe@cityofberkeley.info)

re: Zoning Adjustment Board Meeting regarding the proposed project at 469 Kentucky Ave., Berkeley

Dear Mr. Roe:

Thank you for sending us the announcement of the Zoning Adjustment Board's meeting regarding the proposed project at 469 Kentucky Ave., Berkeley and for its invitation to neighbors to provide input regarding the project. We would like to take this opportunity to do so.

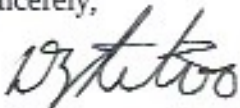
We have resided at 471 Vassar Ave., just uphill from the proposed project at 469 Kentucky Ave., for the past forty two plus years. As long-term residents of the neighborhood we love, we have a deep interest in maintaining its sense of community and neighborliness.

We have reviewed the project and seen the Planning Department staff report regarding the project.

We are in complete agreement with the staff report: This project is in keeping with the nature of the neighborhood and will not adversely effect the neighbors or the neighborhood.

We urge the Zoning Adjustment Board to agree with the staff report, and we look forward to the folks at 469 Kentucky Ave. being able to go ahead with their project without delay.

Sincerely,



David Z. Ritvo



Phyllis F. Ritvo

cc: Aidan Keefe, 469 Kentucky Ave., Berkeley, CA

**Pam and Les Bradford  
476 Vassar Avenue  
Berkeley, CA 94708  
510-527-8421**

**January 9, 2023**

**Russell Roe  
City of Berkeley Planner  
[Rroe@CityofBerkeley.info](mailto:Rroe@CityofBerkeley.info)**

**Dear Mr. Roe,**

**This letter is in support of the home project of the Keefe family at 469 Kentucky Avenue in Berkeley. Our property sits east of that property, directly behind their residence; we share a fence and have been their neighbors since 1990. Their project will not have any negative impact on our home or view of the San Francisco Bay and Aidan Keefe has communicated with us from the beginning of his efforts to make home improvements. We certainly hope he will be able to continue with the work projected and be a part of our neighborhood.**

**Sincerely,**

**Pamela Bradford  
Lester Bradford**

STEPHEN B. BEDRICK  
----- ATTORNEY AT LAW -----  
1970 BROADWAY, SUITE 1200  
OAKLAND, CALIFORNIA 94612  
  
TELEPHONE: (510) 452-1900  
FAX: (510) 452-1980  
sbedrick@sonic.net

January 9, 2023

Land Use Planning Division  
(Attn: ZAB Secretary)  
City of Berkeley  
1947 Center St., 2nd Floor  
Berkeley, CA 94704

also by e-mail to  
[zab@cityofberkeley.info](mailto:zab@cityofberkeley.info)

Re: 469 Kentucky Ave. (Second letter)  
Use Permit ZP 2022-0087  
Hearing: January 12, 2023

Dear Sirs/Madams:

We oppose the demolition project in the R-1-H zone for multiple reasons:

1. The blocking of a narrow one-way street will prevent some neighborhood residents from driving to and from their homes. It also will obstruct emergency vehicles and delivery trucks.
2. The demolition on a hillside lot threatens the geologic stability of the abutting homes.
3. The demolition and removal of debris risks damaging and threatening the integrity of the abutting homes.
4. The demolition threatens to obstruct nearby storm drains, and threatens neighborhood flooding.

The staff report supplied to the Board Members on Friday January 6, 2023 is so incomplete as to be misleading. The staff report claims that no objections were made by neighbors. That is false. Several neighbors (including me) wrote opposition letters to the Board on January 4 and January 5, 2023, before the staff report is ordinarily sent to the Board members. At the minimum, we request that the January 12, 2023 hearing be continued until the opposition letters are presented to the Board in time for staff and Board members to consider them.

If, in the alternative, the Board is inclined to approve the demolition of this attractive and perfectly functional house, we request that the following mitigation measures be taken:

1. No demolition or excavation during rainy weather or rainy season (Oct. 15- May 1).
2. Demolition only to be performed by a contractor with experience in demolition on hillsides as steep as this one.
3. A certified engineer must be on site during demolition, to supervise, and to prevent accidents.
4. A retaining wall of sufficient height should be constructed on either side of the project, the entire length of the property, to prevent soil and foundation slippage.
5. A temporary fence should be constructed to protect the neighboring houses from flying debris.
6. The applicant should post a bond sufficient to compensate the abutting houses from any damage.
7. Regarding obstruction of the street by demolition activities:
  - a) Obstruction traffic by demolition activities, including use of trucks and dumpsters, should be limited to 30 minutes per day.
  - b) The time or times of street obstruction should be posted in the neighborhood at least 48 hours in advance, so neighbors can plan their exits and entrances.
  - c) Traffic monitors shall be on the scene whenever trucks or dumpsters are present, to prevent unwarranted street blockage, and to assist residents who have difficulty in getting to or from their homes.

Very truly yours,

STEPHEN B. BEDRICK  
SBB/SBM

**KATHRYN ANN SELIGMAN  
485 KENTUCKY AVENUE  
BERKELEY, CA 94707  
kseligman@comcast.net**

January 4, 2023

Land Use Planning Division  
(Attn: ZAB Secretary)  
City of Berkeley  
1947 Center Street, 2<sup>nd</sup> Floor  
Berkeley, CA 94704

Re: 469 Kentucky Avenue  
Use Permit ZP 2022-0087  
Hearing: January 12, 2023

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The lengthy proposed project will undoubtedly cause significant adverse effects detrimental to those who live on both sides of the street – noise, dust, debris, pollution, blockages and disruption.

**However, I am particularly concerned with the effect the project will have on the ability of myself and similarly situated neighbors to safely drive away from our homes and return to our homes on our northbound one-way one-lane block of Kentucky Avenue. Simply put, large trucks needed to bring supplies and workers and to haul away the significant debris resulting from demolition and reconstruction, as well as dumpsters full of debris will inevitably block most or all of our very narrow one-way street for significant periods of time, making it**



**impossible or very perilous to drive our cars past the project on our block of the street. Not only will residents be prevented from driving down the street to get from or to our homes, but so will the vehicles of persons who visit us, work for us, deliver mail and packages, haul garbage, or most importantly, provide emergency services (e.g. ambulances, firetrucks, water and power trucks).**

To understand this significant impairment of our ability to leave from or return to our homes by vehicle, you need to understand the unusual configuration of our block of Kentucky Avenue. I hope the photos sent along with this letter will be helpful, but you really need to see it in person to understand.

Our block of Kentucky Avenue (between Michigan and Maryland) is essentially two one-lane one-way streets. We live on the eastern side of the street, so traffic on our side (our lane) heads only north towards Maryland. Traffic on the western side of the street heads only south towards Michigan. The proposed project is also on the eastern side of the street.

The street is terraced and the two sides or lanes of the street are separated by a wide divider strip that is planted with bushes, shrubs and a few trees and slants downward from our side (the eastern side of the street) to the other side (the western side of the street). The planted divider strip is about 6 to 10 feet high and wide, so there is a 6 to 10 foot drop off from the upper (eastern) side of the street to the lower (western) of the street. Obviously, one cannot drive across the divider strip to the other side of the street. Moreover, it is very, very difficult to traverse the divider on foot, particularly for us older adults.

Thus, if the single one-way northbound lane on the eastern side of the street is completely or significantly blocked, there is no way to turn one's car around or make a u-turn in the middle of the terraced block to head the other way. It would be difficult and unsafe to navigate a u-turn in the narrow lane, with parked cars on one-side and the drop off on the other side. The person driving northbound is essentially stuck until the vehicle blocking the street moves on. This happens, unfortunately, with some frequency, on days when garbage is being picked up or many packages are being delivered.

If the proposed demolition and rebuilding project at 469 Kentucky Avenue is approved, we anticipate there would be many days over months when large

trucks and dumpsters would completely or mostly be blocking our narrow one-lane one-block northbound street. Those of us who live south of 469 Kentucky (which is near the middle of the block) would be prevented from driving away from our homes. The street is too narrow and hilly to safely navigate a u-turn and drive south. Trying to back out towards Michigan is also dangerous. Those who live north of 469 Kentucky would have difficulty returning to their homes, unless they dangerously drove the wrong way on the northbound street

These significant and inevitable problems of egress and ingress on our narrow one-lane one-way street are aggravated by the fact that so many of us park at least some of our vehicles on the street in front of our homes. You will note that we usually park our vehicles in the proper northbound direction with the passenger side wheels up on the curb. We do this out of necessity because the street is so narrow. Many of us have had our vehicles hit or sideswiped when we do not park on the curb.

Many of us park on the street at the curb because we do not have usable garages and driveways. The garages are too small or converted to other uses. Or, as is the case in our family, our garage only holds one vehicle. My husband parks his car in the garage (when it is not flooded) and my son and I park our vehicles along the curb in front of our house. Many of the driveways on our block are narrow, sloped or poorly graded, so parking in the driveway is not always an option.

Parking is often hard to find on our block of Kentucky Avenue, and on intersecting streets, as persons who visit us or work in our homes are all too aware. The vehicles, dumpsters and equipment needed for the proposed demolition and remodeling project will also take up needed parking spaces and make it impossible, difficult or hazardous for us to continue parking our cars on the street on our block.

Parking elsewhere – across the street on the other side of Kentucky or on neighboring streets is not a viable option. The other side of our block of Kentucky (the western side with the southbound lane) has few available parking spaces. As noted above, traversing the planted barrier is difficult and hazardous, particularly if one is carrying groceries or something else from the car to home. We live closer to the intersection of Kentucky and Michigan. Michigan is a very steep street heading downhill from Spruce Street to Kentucky. There are not a lot of available

places to park on Michigan, and carrying groceries or other items from the vehicle to the home is also difficult. The street is steep and not well lighted. The options for Kentucky Avenue residents parking their vehicle on other intersecting or nearby streets are uncertain, difficult, hazardous or inconvenient –not to mention the inconvenience caused to people who live on these other streets when we park our vehicles in front of their home for months.

Those of us who live on the eastern side of the divided block of Kentucky Avenue, particularly those of us who live south the proposed demolition and rebuilding project should not have to face these hazards, inconveniences and disruptions to our lives for the many months (possibly years) that it will take to complete this project.

For the reasons discussed above, I oppose the demolition and rebuilding project at 469 Kentucky on behalf of myself, my family and similarly situated neighbors.

Sincerely yours,

KATHRYN ANN SELIGMAN

**Photographs of Kentucky Avenue, 400 Block: Divided Portion of Street**

Cars Parked Along the Curb on the East / Uphill Side of Street

*Please note that the cars have their passenger side tires on the curb, so traffic can pass by.*



Planted Divider in the Middle of Kentucky Avenue Separating Two One-way Streets  
*Please note that the West / downhill block is many feet below the East / Uphill block and most residents cannot safely walk across the street from one side to the other.*



Storm Drain on the East / Uphill Block of Kentucky Avenue  
*Please note that the storm drain is near the project site.*





Administrative Record

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

**City Clerk Department**

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

or from:

**The City of Berkeley, City Council's Web site**

<http://www.cityofberkeley.info/citycouncil/>

**NOTICE OF PUBLIC HEARING – BERKELEY CITY COUNCIL**

**ZAB APPEAL: 469 KENTUCKY AVENUE, USE PERMIT #ZP2022-0087**

**The public may participate in this hearing by remote video or in-person.**

Notice is hereby given by the City Council of the City of Berkeley that on **TUESDAY, MAY 23, 2023 at 6:00 P.M.** a public hearing will be conducted to consider an appeal of the decision by the Zoning Adjustments Board to **APPROVE Use Permit #ZP2022-0087 to demolish a single-family dwelling and construct a 3,310 square foot three-story single-family residence and two-car garage.**

The hearing will be held at the Berkeley Unified School District Board Room located at 1231 Addison Street, Berkeley CA 94702.

A copy of the agenda material for this hearing will be available on the City's website at [www.berkeleyca.gov](http://www.berkeleyca.gov) as of May 11, 2023. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology, as well as any health and safety requirements for in-person attendance.**

For further information, please contact Russell Roe, Project Planner, (510) 981-7548 or [rroe@cityofberkeley.info](mailto:rroe@cityofberkeley.info). Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, or e-mailed to [council@cityofberkeley.info](mailto:council@cityofberkeley.info) in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

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

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Mark Numainville, City Clerk

Mailed by: **May 9, 2023**

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

*If you challenge the above in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Berkeley at, or prior to, the public hearing. Background information concerning this proposal will be available by request from the City Clerk Department and posted on the City of Berkeley webpage at least 10 days prior to the public hearing.*