

**Steve Ross**

Ensenada Avenue  
Berkeley, CA 94707

September 19, 2022

Zoning Adjustments Board  
c/o ZAB Secretary  
Land Use Planning Division  
1947 Center Street, 2nd Floor  
Berkeley, CA. 94707  
[zab@cityofberkeley.info](mailto:zab@cityofberkeley.info)

SUBJECT: 605 Neilson Street #ZP2021-0190 - Demo & Construct New Home

Dear ZAB,

I wish to express my concerns regarding the enormous new home proposed 605 Neilson Street (southeast corner of Neilson & Thousand Oaks). While my home is not directly adjacent to the proposed project, I live a block away and walk by the property almost daily.

I request that the ZAB carefully review this project and find that, as proposed, it does not comply with the Zoning Ordinance and would have detrimental impacts on surrounding properties and the neighborhood. It is particularly alarming that staff would recommend approval of this significant project as a consent calendar item, with little substantial analysis regarding potential detrimental impacts (the primary purpose of a discretionary review application), especially when considering the cumulative detrimental impacts that result in combination with the new 2-story, 3 bedroom, 2 1/2 bath supersized Accessory Dwelling Unit (ADU) that has just been constructed on the east side of the property. I raise the following key concerns regarding this proposal, as described in more detail below:

- 1. This is a New Construction project, Not an Addition**
- 2. New Construction Should Comply with Setbacks and Lot Coverage**
- 3. The 3rd Story Roof Deck and Bedroom Lofts are Excessive and Detrimental**
- 4. Deck along Thousand Oaks will likely result in a Fence over 6 feet**

## **5. New 2-story ADU at Rear is Inappropriate and Detrimental**

### **DISCUSSION**

#### **1. This is a New Construction project, Not an Addition**

Staff has classified the project as a Major Residential Addition when it should be described as Demolition of the existing home and construction of a New Dwelling Unit. In an attempt to avoid full compliance with the Zoning Ordinance (including lot coverage and setback requirements, etc.) the Demolition Diagram (Sheet A-005) calculates that “only” 45.38% of the exterior walls will be removed, which is a complete fallacy. The project would have to be classified as a demolition if over 50% of the exterior walls were removed. Staff has not adequately questioned or evaluated the applicant’s deceiving and overly-optimistic Demolition Diagram on Sheet A-005. Consider this: the proposed project will replace the existing 1920s era home - essentially a single story with a second-floor attic conversion - with a completely new three story structure that must comply with current structural engineering standards, and other building code requirements.

This project requires significant excavation (at least 67 cubic yards, per Sheet A-002) of a new basement for the JADU at the lowest level, and entirely new foundations and structural framing to support the two full floors of new construction above. I guarantee that when the contractor eventually requests their rough framing inspection by the City’s building inspector, significantly less than 50% of the existing exterior walls will remain (25% would be remarkable). City planners are not involved during construction, and building inspectors are not concerned with the percentage of demolition. On most construction projects, extensive dry rot is discovered and removed during construction, and modern structural engineering requirements dictate the need for new framing. Wholesale demolition is simply what happens with extensive construction projects such as this, despite the applicant and architect’s optimistic (or intentionally deceptive) assertions and drawings which are mostly intended to deceive the planning staff into classifying the project as an addition and not a demolition. Ask yourself: How does all that existing framing stay in place when the foundation is replaced and existing walls are demolished to build what is really an entirely new building?

Staff may have attempted to address this deception by inserting Condition of Approval #12, which references the City’s demolition threshold and requires that “prior to obtaining a building permit, the applicant shall demonstrate on a graphic and written construction plan that the structure will not be demolished.” The condition

also requires the submittal of a report from an “independent” structural engineer that evaluates the feasibility of retaining structural elements and avoiding demolition. However, such a report should be provided to planning staff now, at the entitlement stage, and if truly objective, it would show that the project is a demolition.

*Regardless of the games being played to avoid its classification as a demolition, it should be obvious to staff and the ZAB that this project is not an addition, but an entirely new construction project and therefore must comply with all provisions of the Zoning Ordinance.*

## **2. New Construction Should Comply with Setbacks and Lot Coverage**

As a demolition and new construction project, the proposed should be required to comply with all aspects of the Zoning Ordinance, including a required 20-foot setback in the front yard and the 40% lot coverage limit.

The project proposes to maintain the non-conforming setback of 13'7" to the front entry with a 2nd story balcony above it facing Neilson Street. This is only possible because staff has classified it as an addition rather than a new construction project. The project also proposes to maintain the existing lot coverage of 47%, rather than 40% required by the code. And I wonder if staff confirmed that the applicant's lot coverage calculation includes the ADU's 9-foot roof that extends over the rear deck.

*I urge the ZAB and staff to hold this project to the standards for new construction and impose the applicable Zoning Ordinance standards, including setback and lot coverage limits.*

## **3. The 3rd Story Roof Deck and Bedroom Lofts are Unnecessary, Excessive and Detrimental**

The south elevation of the proposed building presents a 3-story facade facing its neighbor at 613 Neilson, with the Junior ADU at the lowest level, plus two entire floors of the main unit above, topped by a roof deck. As if that isn't enough floor area, the two rear bedrooms each have a loft/mezzanine. These lofts above the rear bedrooms require a gable roof that unnecessarily increases the height of the structure while providing very little useable area. This unnecessary increase in the building height will block views and sunlight and increase shading on neighbors' yards and homes.

In addition, the home's circular stairway leads to a large (~230 sq. ft.) roof deck (essentially on the 4th floor, over 30 feet above the JADU entrance) that could present privacy and noise impacts to surrounding properties. The roof deck and lofts are shown on the Mezzanine Plan Sheet A-104. The stairway's access to the roof deck may be the primary purpose for the tall gable roof that also results in the lofts.

*In summary, the rooftop deck and its access stairway, and bedroom lofts unnecessarily increase the height of the structure and result in detrimental light, view, privacy, and noise impacts to surrounding properties. Eliminating the gable roof and roof deck would reduce the scale of the project and its impacts to neighbors.*

#### **4. Deck along Thousand Oaks will likely result in Fence over 6 feet**

A large deck (with built-in outdoor kitchen) is shown in the side yard extending to within 18 inches of the sidewalk along Thousand Oaks. The plans show a 6-foot high fence along the sidewalk (North Elevation, Sheet A-203 and Images, A-400). However, the deck elevation is several feet above the sidewalk grade, which continues to slope down toward Neilson. As such, the fence would only be 2-3 feet higher than the deck at the west side. Even if this isn't a safety concern, it does seem highly likely that the owners would want a taller fence for privacy of their deck. As such, the 6-foot fence height seems unrealistic. Rather than allow a higher looming nonconforming fence over 6 feet next to the sidewalk, the deck should be pushed back to allow more room for a landscape buffer between the sidewalk and deck.

*In summary, ensure the fence height along Thousand Oaks does not exceed 6 feet, and consider revising deck/fence/landscaping to minimize impacts to the streetscape.*

#### **5. The New 2-story ADU at Rear is Inappropriate and Detrimental**

I am supportive of the additional housing stock being added in Berkeley and elsewhere through the construction of ADUs in single family zones, and I support the construction of an ADU and JADU on this lot, in addition to a primary home. This neighborhood - including the immediate block - has recently see the construction of several ADUs, through the conversion of existing garages, the excavation and conversion of crawl space on sloping lots, and through the construction of new detached units. One neighbor at 626 Peralta has been trying to permit the construction of a modular ADU on the vacant half of his extra wide lot for at least 6 months. Unfortunately, his very modest and thoughtful project that has been stalled due to an overly cautious staff with concerns about potential impacts to oak trees, despite having a generous setback from the trees and the ADU's elevated construction on piers to protect tree roots.

The ADU that has just been constructed at the rear of 605 Neilson has baffled me and my neighbors since it was first permitted. The 2-story, 3-bedroom, 2 1/2 building with an attached garage is larger than many of the original 2-bedroom, 1-bath bungalows common in Berkeley and this neighborhood. Once construction commenced, the

building footprint was excavated 4 feet below the existing grade so that the two-story ~20-foot high structure could somehow comply with the City's abstract 16-foot height limit and be permitted solely through issuance of a building permit. The cumulative detrimental impacts of this ADU should be considered when reviewing what is now being proposed for the primary house that is the subject of a discretionary permit application.

The ADU's north and east walls are located just 4 feet from the street side and rear property lines, and these walls include a projecting horizontal architectural band and roof eaves as close as 2 feet from the neighbor's rear yard along the east property line. There's even a subterranean bedroom patio directly abutting the sidewalk (but three feet below), which will have a fence along the sidewalk to give the small cave a semblance of privacy. The south side of the building also includes a 9-foot deep roof extending over its south-facing deck. Floor to ceiling glass windows for the upper level living room and kitchen face east and directly loom over the neighboring rear yard of 600 Peralta. The ADU is so close to the property line that construction tools have fallen into the neighbor's rear yard.

This architectural edifice seems designed to be set on a wine country estate rather than being shoehorned into a rear yard in this suburban Berkeley neighborhood. It is remarkable that the City could have allowed this supersized 2-story ADU to be built with only a building permit given its detrimental impacts to the neighboring properties and its proximity to the sidewalk.

*In summary, the cumulative detrimental impacts of the newly constructed 2-story, 3-bedroom, 2 1/2 bath ADU should be considered in the review and approval of the proposed primary home project, because the proposed home project will exacerbate the detrimental impacts to neighbors. The proposed development plan, in sum, truly exceeds the limits of what should rationally be permitted on this property when the required non-detriment findings are properly evaluated. Is this really consistent with the stated purposes of the R-1 District, copied below?*

*23.202.050 R-1 Single-Family Residential District*

*A. District Purpose. The purpose of the Single-Family Residential (R-1) district is to:*

- 1. Recognize and protect the existing pattern of development in the low-density, single-family residential areas of the city consistent with the General Plan;*
- 2. Make housing available for persons who desire detached housing and a relatively large amount of usable open space;*
- 3. Protect adjacent properties from unreasonable obstruction of light and air; and*

*4. Permit community facilities such as religious assembly uses, schools, parks, and libraries which serve the local population and are not detrimental to the immediate neighborhood.*

In conclusion, I strongly urge the ZAB and staff to call this project what it is, demolition and construction of a new home, and to consider the cumulative detrimental impacts of the proposed project in light of the enormous ADU that has already been shoehorned into the rear yard of this property.

Sincerely,

*Steve Ross*