ATTACHMENT 9 - Administrative Record
EXISTING
DECEMBER 21
2 HRS BEFORE SUNSET

PREVIOUSLY SUBMITTED
DECEMBER 21
2 HRS BEFORE SUNSET

CURRENT PROPOSAL
DECEMBER 21
2 HRS BEFORE SUNSET

(E) STRUCTURE SHADOW OUTLINE
1533 BEVERLY PLACE

AFFFECTED PROPERTY
1535 BEVERLY PLACE

PREVIOUSLY SUBMITTED DESIGN
SHADOW OUTLINE
PREV. SUBMITTED DESIGN
1533 BEVERLY PLACE

CURRENT PROPOSAL
SHADOW OUTLINE
CURRENT PROPOSAL
1533 BEVERLY PLACE

1533 BEVERLY PLACE
EXISTING STRUCTURE
AFFFECTED PROPERTY

1535 BEVERLY PLACE
EXISTING STRUCTURE
AFFFECTED PROPERTY

1533 BEVERLY PLACE
SHADOW OUTLINE

1535 BEVERLY PLACE
SHADOW OUTLINE
**EXISTING**

JUNE 21
2 HRS. AFTER SUNRISE

**PREVIOUSLY SUBMITTED**

JUNE 21
2 HRS. AFTER SUNRISE

**CURRENT PROPOSAL**

JUNE 21
2 HRS. AFTER SUNRISE

---

1529 BEVERLY PLACE
AFFECTED PROPERTY

1533 BEVERLY PLACE
EXISTING STRUCTURE

1529 BEVERLY PLACE
PREVIOUSLY SUBMITTED DESIGN
SHADOW OUTLINE

1533 BEVERLY PLACE
PREVIOUSLY SUBMITTED DESIGN
SHADOW OUTLINE

1529 BEVERLY PLACE
CURRENT PROPOSAL
SHADOW OUTLINE

1533 BEVERLY PLACE
CURRENT PROPOSAL

---

SUMMER SOLSTICE
2 HRS. AFTER SUNRISE
SUMMER SOLSTICE
2 HRS BEFORE SUNSET

SMALLWOOD-GARCIA RESIDENCE
JUNE 21
2 HRS BEFORE SUNSET

EXISTING
1535 BEVERLY PLACE
AFFFECTED PROPERTY
1533 BEVERLY PLACE

PREVIOUSLY SUBMITTED
1535 BEVERLY PLACE
AFFFECTED PROPERTY
1533 BEVERLY PLACE

CURRENT PROPOSAL
1535 BEVERLY PLACE
AFFFECTED PROPERTY
1533 BEVERLY PLACE

(E) STRUCTURE SHADOW OUTLINE
1533 BEVERLY PLACE

PREVIOUSLY SUBMITTED DESIGN
SHADOW OUTLINE
1533 BEVERLY PLACE

CURRENT PROPOSAL
SHADOW OUTLINE
1533 BEVERLY PLACE

1535 BEVERLY PLACE
EXISTING STRUCTURE

1533 BEVERLY PLACE
AFFFECTED PROPERTY

1535 BEVERLY PLACE
AFFFECTED PROPERTY

BEDROOMS
LIVING ROOM
GARAGE

1535 BEVERLY PLACE
AFFECTED PROPERTY

1533 BEVERLY PLACE
AFFECTED PROPERTY

1535 BEVERLY PLACE
AFFECTED PROPERTY

1533 BEVERLY PLACE
AFFECTED PROPERTY
Re: 1533 Beverly Place_ Smallwood Garcia Residence
Revision 6, July 24, 2019

Dear Allison Riemer,

This is a response to your email requesting adjustments to the Shadow Studies submitted by our office on July 1, 2019:

- It is hard to read the font on 1529 Beverly, please make it more clear what rooms the windows correspond to.
  
  Answer: Names have been added in a clear font, below the images

- Please depict the noon shadows for the summer and winter solstice
  
  Answer: Sheets A1.2 and A2.2 were added with information for the noon on Winter and Summer solstice respectively.

- On 1.1 and 2.1 the proposed design is labeled “existing.”
  
  Answer: The word “existing” was replaced with the correct words: “Previous” and “Current proposal”

- Can the view of the rendering on 1.1 be rotated? It is difficult to discern shadows affecting 1535 Beverly.
  
  Answer: The view was rotated slightly to better show the effect of the shadow on 1535 Beverly Place. This is a tight space so the difference is slight. Please note that Sheet A2.2 does not show the elevations of the neighbors’ houses as there is no effect on them on June 21 at noon (shown in plan, within the Project’s property only)

Thank you,

Joanna Wieloch-Kim
Project Manager
Eisenmann Architecture

Email Cc: Stacy Eisenmann, Shelley Caldwell, Greg Powell
EXISTING
JUNE 21 NOON

PREVIOUSLY SUBMITTED
JUNE 21 NOON

CURRENT PROPOSAL
JUNE 21 NOON

JUNE 21 AT NOON SHADOW DOES NOT AFFECT NEIGHBORS'S HOUSE
DECEMBER 21 AT NOON SHADOW DOES NOT AFFECT NEIGHBOR'S HOUSE
EXISTING
JUNE 21
NOON

PREVIOUSLY SUBMITTED
JUNE 21
NOON

CURRENT PROPOSAL
JUNE 21
NOON

(E) STRUCTURE SHADOW OUTLINE
1533 BEVERLY PLACE

PREVIOUSLY SUBMITTED DESIGN
SHADOW OUTLINE
1533 BEVERLY PLACE

CURRENT PROPOSAL
SHADOW OUTLINE
1533 BEVERLY PLACE

JUNE 21 AT NOON SHADOW DOES NOT AFFECT NEIGHBORS’S HOUSE
Date: August 1, 2019
To: Allison Riemer, Assistant Planner; Greg Powell, Principal Planner, City of Berkeley Planning Dept.
From: Amy Di Costanzo, 1710 Sonoma Avenue
Re: ZP2018-0153: Design approach for application to enlarge 1533 Beverly Place

The Smallwood-Garcias’ Applicant Statement, dated 7/16/2018, and submitted last year with the first version of Eisenmann Architecture’s design, defined their proposed project as follows:

WHY: Accommodate future family visits from grown children and future grandchildren.

WHAT: Enlarge their house by adding bedrooms and bathrooms.

HOW: Build a second story on top of their existing house.

Neither I nor any of the other neighbors dispute the WHY or the WHAT of this proposed project. I and other neighbors do oppose and object to the current version of HOW they propose to accomplish their goal (revised design submitted May 2019.)

The fundamental reason that I and other neighbors oppose the current proposal is simple: the applicants seek to benefit and improve their lives via a design choice (adding a second story) that degrades the quality of the lives of the people around them. That is, the applicants would end up better off and their neighbors would end up worse off than we are now. They would benefit at our expense. This is inherently unfair and inequitable.

The applicants have stated that their desire to enlarge their house is to have space for family visits. This reason is understandable, and none of us are opposed to the applicants enlarging their house, but it is crucial to recognize that hosting visitors is a part-time, intermittent, and occasional use of space.

In contrast, the detrimental negative impacts that a second story would cause on views and loss of direct sunlight would be full-time and permanent. The neighbors would suffer the detrimental impacts every day of the year - whether the applicants had visitors or not.

This is especially problematic because, I believe, it is feasible for them to meet their goal (of enlarging their house) by pursuing a design approach that would NOT cause detriment to their neighbors (excavating and adding new space below the existing house), but they have been dismissive of this possibility.

Last year I and 4 other neighbors suggested to the Smallwood-Garcias the design approach of excavating underneath their existing house, and building living space underneath the house. Our stated intention was to find a solution that meets the needs of ALL who would be affected by the proposal to enlarge 1533 Beverly Place.

The architect dismissed this possibility immediately, and at a later date, saying it wasn’t feasible. Her objections were safe egress issues at the back of the house, and the interior stairs would take up valuable space that could be used for a bedroom. However, there are many nearby projects that clearly show that it is feasible.

New living space under the main floor could be connected to the existing house by interior stairs. Alternatively, it could be a separate ADU. The addresses listed below are all projects where additional living space was created below an existing 1-story house.
None of these nearby examples raised the existing house. They all added living space underneath the original first floor without altering the shell of the existing structure:

- 1220 Colusa Avenue
- 1732-1734 Sonoma Avenue
- 1208 Monterey Avenue
- 1102 Colusa Street

The project at 1220 Colusa qualified for approval because “The project would not enlarge the shell of the existing house and therefore would not impact surrounding neighbor’s light or views.”

The project at 1260 Monterey (a 2nd-story addition) qualified for approval because “The project will not affect any significant views in the neighborhood” and “The project will not unreasonably obstruct sunlight or air, nor will it cast new shadows on the windows or a substantial area of open space of adjacent residences.”

The same cannot be said, even with the revisions the applicants have submitted, for the proposed 2nd-story project at 1533 Beverly Place.

In contrast to their proposal to add a 2nd-story, adding living space below their existing house is a solution that creates zero detrimental impacts to their neighbors. If space were added below the existing house as an ADU, it would save the space devoted to a staircase in the current version of their design, allowing for more bedrooms, and it would avoid the issue of creating emergency egress at the back of the excavated space, since it would not go all the way to the back of the existing house.

My husband and I bought a house with an unobstructed main-floor view corridor of the bay, San Francisco skyline, and surrounding vistas almost 40 years ago. The Applicants bought a house without this view. They are now seeking to build an addition that would give them this unobstructed view, which would in turn obstruct my view as I experience it daily.

There is no mention of views in their Applicants’ Statement, only the need for more space to host family for visits. Yet over a year ago, as I was on the phone with Applicant Bryn Smallwood-Garcia, she emphatically exclaimed “At least you’ve had a view. I haven’t. I want one!”

The applicants have presented themselves as being desirous of finding a solution that is fair to everyone and that meets most of their needs. An addition that benefits them at our expense does not meet the goal of being fair to everyone.

I urge the City to apply the protections in the Municipal code that protect our significant views and access to direct sunlight, recognizing that adding a second story at 1533 Beverly Place would cause unreasonable significant detrimental view and increased shading impacts, and therefore, to deny this application.

I remain open to working with the Smallwood-Garcias to find a solution that does not cause their neighbors to suffer permanent full-time losses while they benefit from part-time occasional use.

Sincerely,

Amy Di Costanzo
1710 Sonoma Avenue
NOTICE OF ADMINISTRATIVE DECISION

AUP #ZP2018-0153 -- APPROVED
1533 BEVERLY PLACE
Project Description: To enlarge an existing 1,212 sq. ft., 1-story single-family dwelling with a non-conforming front setback on a 4,200 sq. ft. lot by: 1) adding a 1,035 sq. ft. addition, including a new second story, with an average height of 23 ft. - 7 ½ in., and 2) adding a fifth bedroom.

Appeal Period: August 13, 2019 to September 3, 2019 (see reverse)

All application materials may be viewed online: www.cityofberkeley.info/zoningapplications, or in person at the Permit Service Center at 1947 Center Street, 3rd Floor, open 8:30 AM to 4 PM Monday, Wednesday - Friday & 8:30 AM to 2:30 PM Tuesday (closed 2nd Friday of every month).
### TO APPEAL THIS DECISION (see Section 23B.28.060 of the Berkeley Municipal Code):

1. Submit a letter clearly and concisely setting forth the grounds for the appeal to the Zoning Officer, at the Permit Service Center, 1947 Center Street, 3rd Floor, Berkeley. You may contact the Land Use Planning Division by phone at (510) 981-7410 if you have any questions.

2. The appeal must be received prior to 4:00 p.m. on the last day of the appeal period shown above (if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day).

3. Submit the required fee (checks and money orders must be payable to ‘City of Berkeley’):
   - A. The basic fee for appeals of a Zoning Officer decision to the Zoning Adjustments Board is $200. This fee may be reduced to $75 if the appeal is signed by persons who lease or own at least 35 percent of the parcels or dwelling units within 300 feet of the project site, or at least 20 such persons (not including dependent children), whichever is less.
   - B. The fee for appeals of affordable housing projects (defined as projects which provide 50 percent or more affordable units for households earning 80% or less of Area Median Income) is $500, which may not be reduced.
   - C. The fee for all appeals by Applicants is $2500.

If no appeal is received, the permit will be issued on the first business day following expiration of the appeal period, and the project may proceed at that time.

### NOTICE CONCERNING YOUR LEGAL RIGHTS:

If you object to this decision, the following requirements and restrictions apply:

1. If you challenge this decision in court, you may be limited to raising only those issues you or someone else raised in an appeal of the decision.

2. You must appeal to the Zoning Adjustments Board within twenty (20) days after the Notice of Decision of the action of the Zoning Officer is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.

3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.

4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.

5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a “taking” of property for public use without just compensation under the California or United States Constitutions, your appeal of this decision must include the following information:
   - A. That this belief is a basis of your appeal.
   - B. Why you believe that the decision or condition constitutes a “taking” of property as set forth above.
   - C. All evidence and argument in support of your belief that the decision or condition constitutes a “taking” as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City and in court.
<table>
<thead>
<tr>
<th>NAME1</th>
<th>NAME2</th>
<th>ADDRESS1</th>
<th>ADDRESS2</th>
</tr>
</thead>
<tbody>
<tr>
<td>University of California Berkeley Facilities Services</td>
<td>A&amp;E Building, Room 300</td>
<td>BERKELEY CA</td>
<td>94702</td>
</tr>
<tr>
<td>Urban Creeks Council</td>
<td>861 REGAL RD</td>
<td>BERKELEY CA</td>
<td>94708</td>
</tr>
<tr>
<td>Bananas Inc.</td>
<td>5232 CLAREMONT AVE</td>
<td>OAKLAND CA</td>
<td>94618</td>
</tr>
<tr>
<td>Berkeley Central Library</td>
<td>2090 KITTREDGE ST</td>
<td>BERKELEY CA</td>
<td>94704</td>
</tr>
<tr>
<td>Adams Broadwell Joseph &amp; Cardoza</td>
<td>601 GATEWAY BLVD. Su 100</td>
<td>SO SAN FRANCISCO</td>
<td>94080</td>
</tr>
<tr>
<td>Public Notice Journal</td>
<td>PO Box 330356</td>
<td>SAN FRANCISCO</td>
<td>94133</td>
</tr>
<tr>
<td>FUJIMOTO WILLIAM S &amp; JUDITH A TRS</td>
<td>1527 BEVERLY PL</td>
<td>BERKELEY CA</td>
<td>94706</td>
</tr>
<tr>
<td>OCCUPANT(S)</td>
<td>1527 BEVERLY PL</td>
<td>Albany CA</td>
<td>94706</td>
</tr>
<tr>
<td>OCCUPANT(S)</td>
<td>1716 SONOMA AVE</td>
<td>Berkeley CA</td>
<td>94707</td>
</tr>
<tr>
<td>OCCUPANT(S)</td>
<td>1535 BEVERLY PL</td>
<td>Albany CA</td>
<td>94706</td>
</tr>
<tr>
<td>OCCUPANT(S)</td>
<td>1538 BEVERLY PL</td>
<td>Albany CA</td>
<td>94706</td>
</tr>
<tr>
<td>OCCUPANT(S)</td>
<td>1708 SONOMA AVE</td>
<td>BERKELEY CA</td>
<td>94707</td>
</tr>
<tr>
<td>OCCUPANT(S)</td>
<td>1710 SONOMA AVE</td>
<td>BERKELEY CA</td>
<td>94707</td>
</tr>
<tr>
<td>OCCUPANT(S)</td>
<td>1532 BEVERLY PL</td>
<td>Albany CA</td>
<td>94706</td>
</tr>
<tr>
<td>OCCUPANT(S)</td>
<td>1534 BEVERLY PL</td>
<td>Albany CA</td>
<td>94706</td>
</tr>
<tr>
<td>OCCUPANT(S)</td>
<td>1706 SONOMA AVE</td>
<td>BERKELEY CA</td>
<td>94707</td>
</tr>
<tr>
<td>OCCUPANT(S)</td>
<td>1543 BEVERLY PL</td>
<td>Albany CA</td>
<td>94706</td>
</tr>
<tr>
<td>OCCUPANT(S)</td>
<td>1533 BEVERLY PL</td>
<td>Albany CA</td>
<td>94706</td>
</tr>
<tr>
<td>OCCUPANT(S)</td>
<td>1529 BEVERLY PL</td>
<td>Albany CA</td>
<td>94706</td>
</tr>
<tr>
<td>Stacy Eisenmann Eisenmann Architecture</td>
<td>853 Ramona Avenue</td>
<td>Albany, CA</td>
<td>94706</td>
</tr>
</tbody>
</table>
1533 Beverly Place
Administrative Use Permit #ZP2018-0153

To enlarge an existing 1,212 sq. ft., 1-story single-family dwelling with a non-conforming front setback on a 4,200 sq. ft. lot by: 1) adding a 1,035 sq. ft. addition, including a new second story, with an average height of 23 ft.-7 ½ in., and 2) adding a fifth bedroom.

ZONING OFFICER DECISION: The Zoning Officer of the City of Berkeley has APPROVED the following permits pursuant to Berkeley Municipal Code (BMC) Section 23B.28.050, and based on the attached findings and conditions (attachment 1) and plans (attachment 2):

- Administrative Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23D.16.070.C to construct a residential addition greater than 14 ft. in average height;
- Administrative Use Permit pursuant to BMC Section 23D.16.030 to construct a major (more than 600 sq. ft.) residential addition;
- Administrative Use Permit pursuant to BMC Section 23D.16.050.A to add a fifth bedroom to a parcel; and
- Administrative Use Permit pursuant to BMC Section 23C.04.070.B for an addition which vertically extends the non-conforming front yard.

DATE NOTICE IS ISSUED: August 12, 2019
APPEAL PERIOD: August 9, 2019 to September 3, 2019

ATTACHMENTS:
1. Findings and Conditions
2. Project Plans, dated received July 1, 2019

FOR FURTHER INFORMATION:
All application materials for this project are available online at: http://www.cityofberkeley.info/zoningapplications and at the Permit Service Center, Third Floor, at 1947 Center Street, between 8:30 AM to 4 PM Monday, Wednesday - Friday & 8:30 AM to 2:30 PM Tuesday (closed 2nd Friday of every month). Questions about the project should be directed to the project planner, Allison Riemer, at (510) 981-7433 or ariemer@cityofberkeley.info.

PUBLIC NOTICE, PURSUANT TO BMC SECTION 23B.28.040 B&C:
This Notice of Administrative Decision was:
1. Forwarded to the Zoning Adjustments Board and sent to the Main Library;
2. Posted at three visible locations in the vicinity of the subject property and at a bulletin board at the Zoning counter.
3. Mailed to neighborhood and community organizations for which the project falls within their expressed area of interest, as set forth in BMC Section 23B.24.060;
4. Mailed to property owners and residents in a 300 foot radius.
The validity of the proceedings, however, shall not be affected by the failure of any such property owner, occupant or neighborhood or community organization to receive such mailed notice.
TO APPEAL THIS DECISION, PURSUANT TO BMC SECTION 23B.28.060:

To appeal this decision, you must:
1. Submit a letter clearly and concisely setting forth the grounds for the appeal, along with the required fee (see below) to the Zoning Officer, at the Permit Service Center, 1947 Center Street, 3rd Floor, Berkeley.
2. The appeal and required fee (see below) must be received prior to 4:00 p.m. on the last day of the appeal period shown above (if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day).
3. Submit the required fee to the Permit Service Center (see above; checks and money orders must be payable to ‘City of Berkeley’):
   a. The basic fee for appeals of a Zoning Officer decision to the Zoning Adjustments Board is $200. This fee may be reduced to $75 if the appeal is signed by persons who lease or own at least 35 percent of the parcels or dwelling units within 300 feet of the project site, or at least 20 such persons (not including dependent children), whichever is less.
   b. The fee for appeals of affordable housing projects (defined as projects which provide 50 percent or more affordable units for households earning 80% or less of Area Median Income) is $500, which may not be reduced.
   c. The fee for all appeals by Applicants is $2500.

If an appeal is filed, the Zoning Officer shall set the matter for consideration by the Zoning Adjustments Board. An appeal stays the issuance and exercise of the AUP until a decision is rendered or the appeal is withdrawn. If no appeal is received, the permit will be issued on the first business day following expiration of the appeal period, and the project may proceed at that time.

NOTICE CONCERNING YOUR LEGAL RIGHTS:

If you object to this decision, the following requirements and restrictions apply:
1. If you challenge this decision in court, you may be limited to raising only those issues you or someone else raised in an appeal of the decision.
2. You must appeal to the Zoning Adjustments Board within twenty (20) days after the Notice of Decision of the action of the Zoning Officer is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.
4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a “taking” of property for public use without just compensation under the California or United States Constitutions, your appeal of this decision must including the following information:
   A. That this belief is a basis of your appeal.
   B. Why you believe that the decision or condition constitutes a “taking” of property as set forth above.
   C. All evidence and argument in support of your belief that the decision or condition constitutes a “taking” as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City and in court.
1533 Beverly Place

Administrative Use Permit #ZP2018-0153

To enlarge an existing 1,212 sq. ft., 1-story single-family dwelling with a non-conforming front setback on a 4,200 sq. ft. lot by: 1) adding a 1,035 sq. ft. addition, including a new second story, with an average height of 23 ft.-7 ½ in., and 2) adding a fifth bedroom.

PERMITS REQUIRED

- Administrative Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23D.16.070.C to construct a residential addition greater than 14 ft. in average height;
- Administrative Use Permit pursuant to BMC Section 23D.16.030 to construct a major (more than 600 sq. ft.) residential addition;
- Administrative Use Permit pursuant to BMC Section 23D.16.050.A to add a fifth bedroom to a parcel; and
- Administrative Use Permit pursuant to BMC Section 23C.04.070.B for an addition which vertically extends the non-conforming front yard.

CEQA FINDINGS

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to CEQA Guidelines Sections 15301 and 15303 ("Existing Facilities" and "New Construction or Conversion of Small Structures"). 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.

FINDINGS FOR APPROVAL

2. As required by BMC Section 23B.28.050.A, the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:

A. The subject property will continue to conform to the applicable provisions of BMC Sections 23D.16.070-080 including density, height, yards, lot coverage, usable open space, and minimum on-site parking: one dwelling unit on the lot, where only one dwelling unit is allowed; an average height of 23 ft.-7 ½ in. with the addition, where the
average height limit is 28 ft.; side yards of 9.6 ft. and 4 ft. where 4 ft. is required; rear yard of 34.9 ft., were 20 ft. is required; 39% lot coverage, where the maximum allowed is 40%; over 600 sq. ft. of usable open space, where a minimum of 400 sq. ft. is required; and the required off-street parking space within the existing garage.

B. The addition will maintain the privacy of the abutting neighbors as it is outside of the required side and rear setbacks, and the non-conforming front setback is retained. The windows within the second story could potentially allow views to adjacent properties. However, staff believes the project will not unreasonably impact the privacy of neighboring dwellings because while windows would now face second floor windows on the properties to the north, they would be more than 35 ft. from the neighboring dwellings to the north, thereby minimizing privacy impacts. While the addition will be approximately 4 ft. from the edge of the one-story garage attached to the west façade of the neighboring dwelling to the east at 1535 Beverly Place, the garage does not contain habitable space and thus, will not be affected by new window openings; and the addition will be approximately 10 ft. from the wall of the dwelling at 1535 Beverly Place. The addition will be approximately 19 ft. from the dwelling adjacent to the west at 1529 Beverly Place.

C. While the project increases the number of bedrooms on this parcel, as defined in BMC Section 13.24.020 (Definitions), from three to five, the addition of a fifth bedroom would provide more room for residents within the single-family residence and would not result in an increase in dwelling unit density.

3. Pursuant to BMC Section 23D.16.090.B, the Zoning Officer finds that the major residential addition would not unreasonably obstruct sunlight, air, or views for the following reasons:

A. Sunlight: The 1,035 sq. ft. addition will not result in a significant loss of direct sunlight on neighboring dwellings. Shadow studies submitted by the applicant document the addition’s projected shadow angles and lengths at three times throughout the day during the summer and winter solstice.

   a. Two hours after sunrise on the winter solstice, shadows on the east side of the dwelling at 1529 Beverly Place will increase and cover a kitchen window, and partially cover a dining room window.

   b. Two hours before sunset on the winter solstice, the shadows on the west side of the dwelling at 1535 Beverly Place will increase slightly, but will only reach a small corner of a bedroom window.

   c. Two hours after sunrise on the summer solstice, shadows on the east side of the dwelling at 1529 Beverly Place will increase and cover the living room and dining room windows.

   d. Two hours before sunset on the summer solstice, shadows on the west side of the dwelling at 1529 Beverly Place will increase and cover the living room and dining room windows.

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

B. Air: The addition is found to be consistent with the existing development and building-to-building separation pattern – or air – in this R-1 neighborhood because the addition will be outside of all required setbacks (while maintaining the non-conforming front setback), and will not exceed height or story limits. Therefore, there will be no impacts to air.
C. Views: BMC Chapter 23F.04 defines view corridors as a significant view of the Berkeley Hills, San Francisco Bay, Mt. Tamalpais, or a significant landmark such as the Campanile, Golden Gate Bridge, and Alcatraz, or any other significant vista that substantially enhances the value and enjoyment of real property. The topography of this neighborhood slopes generally from the east down towards the west and lots located on the north side of Beverly Place in the vicinity of the project site are situated lower in elevation than lots to the north, including the adjacent lots on Sonoma Avenue.

As documented by the story poles, the second-story addition will be within the view corridor of the properties to the north. 1708 Sonoma Avenue currently has views of the San Francisco Bay over Emeryville, and the hills of the Peninsula south of San Francisco from their deck, bedroom, and kitchen that will be eliminated with the addition; however, views of the San Francisco skyline and the Marin Headlands will remain. 1710 Sonoma Avenue currently has views of the San Francisco Bay and the lower portion of the San Francisco skyline from their deck, kitchen, and first floor bedroom that will be eliminated with the addition; however, views of the Golden Gate Bridge, the Marin Headlands, the upper portion of the San Francisco skyline, the upper portion of the Bay Bridge, and the hills of the Peninsula south of San Francisco will remain, and views from the second floor will remain open. 1716 Sonoma Avenue currently has a view of the Golden Gate Bridge from the kitchen nook that will be reduced with the addition; however, views of one of the towers of the Golden Gate Bridge will continue to be visible from the kitchen nook, and a partial view of the San Francisco skyline, and a full view of the Golden Gate Bridge from the kitchen and dining rooms will remain. Since the current expansive views are reduced, but not eliminated, view impacts are determined to be non-detrimental.

4. Pursuant to BMC Section 23C.04.070.B, the Zoning Officer finds that:
   A. Although the addition would vertically extend a non-conforming front yard, the addition may be authorized as the existing use of the property is conforming (single-family dwelling in the R-1 Single-Family Residential District);
   B. The existing entry steps, porch, and roof will be replaced, and will not exceed the average height limit; and
   C. The addition will not further reduce the existing non-conforming front yard.
STANDARD CONDITIONS

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

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

2. Applicant Responsible for Compliance with Conditions
   The applicant shall ensure compliance with all of the following conditions, including submittal to the project planner of required approval signatures at the times specified. Failure to comply with any condition may result in construction being stopped, issuance of a citation, and/or modification or revocation of the Use Permit.

3. Uses Approved Deemed to Exclude Other Uses (BMC Section 23B.56.010)
   A. This Permit authorizes only those uses and activities actually proposed in the application, and excludes other uses and activities.
   B. Except as expressly specified herein, this Permit terminates all other uses at the location subject to it.

4. Modification of Permits (BMC Section 23B.56.020)
   No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Zoning Officer.

5. Plans and Representations Become Conditions (BMC Section 23B.56.030)
   Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

6. Subject to All Applicable Laws and Regulations (BMC Section 23B.56.040)
   The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments.

7. Exercised Permit for Use Survives Vacancy of Property (BMC Section 23B.56.080)
   Once a Permit for a use is exercised and the use is established, that use is legally recognized, even if the property becomes vacant, except as set forth in Standard Condition #8, below.
8. Exercise and Lapse of Permits (BMC Section 23B.56.100)
   A. A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.
   B. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
   C. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has: (1) applied for a building permit; or, (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

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

ADDITIONAL CONDITIONS IMPOSED BY THE ZONING OFFICER

Pursuant to BMC Section 23B.28.050.D, the Zoning Officer 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 #
Standard Construction-related Conditions Applicable to all Projects:

11. 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.

12. Construction activity shall be limited to between the hours of 8:00 a.m. and 6:00 p.m. on Monday through Friday, and between 9:00 a.m. and noon on Saturday. No construction-related activity shall occur on Sunday or on any Federal Holiday.

13. 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.

14. Subject to approval of the Public Works Department, the applicant shall repair any damage to public streets and/or sidewalks by construction vehicles traveling to or from the project site.

15. All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter in thickness and secured to the ground.

16. All active construction areas shall be watered at least twice daily, and all piles of debris, soil, sand or other loose materials shall be watered or covered.

17. Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.

18. Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.
19. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way.

20. 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.

21. Any construction during the wet season shall require submittal of a soils report with appropriate measures to minimize erosion and landslides, and the developer shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.

22. 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.

23. 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.
24. 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 CEQA Guidelines Section 15064.5 (e)(1). If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to Health and Safety Code Section 7050.5(c), 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.

25. 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.

Prior to Issuance of Occupancy Permit or Final Inspection:
26. All construction at the subject property shall substantially conform to the approved Use Permit drawings or to modifications approved by the Zoning Officer.

27. All landscape, site and architectural improvements shall be completed per the attached approved drawings received July 1, 2019.

At All Times (Operation):
28. 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.

29. Noise and exterior lighting shall be controlled so as to prevent verified complaints from the surrounding neighborhood. This shall include noise created by employees working on the premises before or after patrons arrive.

30. 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.

31. Electrical Meter. Only one electrical meter fixture may be installed per dwelling unit.
Prepared by: Allison Riemer
For Greg Powell, Zoning Officer
I. ZONING PROJECT APPLICATION FORM

ZP2019-0051  PLN201__  Intake Planner: Beth Greene
☐ Administrative Use Permit  ☐ Pre-Application
☐ Use Permit / Variance
☐ Modification of any of the Above

Project Address: 1533 Beverly Place  Unit/Suite #: NA
Project Description: Second story addition appeal of Decision re: ZP2018-0153

Property Owner Name: Bryn & John Smallwood-Garcia
Owner’s Mailing Address: 26 White Pine Drive, Brookfield, CT 06804
Phone #: Home  ☐ Mobile  ☐ Business  E-mail:

Applicant Name (or write "same"): Amy DiCostanzo
Applicant’s Mailing Address: 1710 Sonoma Ave. Berkeley CA 94707
Phone #: 510.772.6326 Home  ☐ Mobile  ☐ Business  E-mail: amyamydc@gmail.com

For projects involving only the following four items and refer to the handout indicated in the right-hand column none of the items on pages 2-3 of this form, please instead of filling out this form.

1. Converting existing Rental or Tenant In Common (TIC) Units to Condominiums?
2. Demolition of, or exterior alterations to, a designated City of Berkeley Landmark, Structure of Merit, or structure in a City Historic District (or interior alterations to such buildings if publicly owned)?
3. Application to designate a City Landmark, Structure of Merit or Historic District?
4. Exterior changes (including signs) to (1) any structure (new or existing) in a non-residential zoning district OR (2) a commercial or mixed-use building in the R-4 District?

Continued on Page 2

ATTACHMENT 9 - Administrative Record
Page 465 of 530
## ZONING PROJECT APPLICATION FORM

You must disclose whether or not any of the following are true of the project:

<table>
<thead>
<tr>
<th>Description</th>
<th>No</th>
<th>Yes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over 7,500 square feet of office, retail, restaurant, hotel, lodging, manufacturing, light industrial, research and development, warehouse or storage?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If so, Affordable Child Care and Affordable Housing Fees apply. Refer to Council Resolutions #66,618-N.S. &amp; #66,617-N.S.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Any new commercial or industrial building, more than five or more Dwelling Units; or an addition or more than 10,000 square feet.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If so, Percent for Public Art on Private Projects Program applies, per BMC Chapter 23C.23.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Project involves the elimination or rehabilitation of any dwelling units, and/or any of the dwelling units on the property controlled rental units?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If so, your application will be referred to the Rent Stabilization Board. No action is required on your part. You may contact them at (510) 981-7368 if you have any questions.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Construction activity within the drip line of a Coast Live Oak tree with circumference over 18&quot; at 4'-6&quot; above ground (or 26&quot; aggregate circumference for multi-trunked trees)?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If so, the Moratorium on the removal of Coast Live Oaks Ordinance applies, per BMC Chapter 6.52.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Removal of 25% or more of a main building's exterior walls and roof (including replacement of existing structural members)?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If so, the Demolition Ordinance may apply, per BMC Chapter 23C.08.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Smoke Shops or Drug Paraphernalia?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cultivation, Distribution, Manufacture or Sale of Cannabis?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Demolition or substantial change of a building &gt;40 years old?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If so, the Demolition Ordinance will apply, per BMC Chapter 23C.08, as well as Section 15300.2 of the CEQA Guidelines.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Construction on a parcel that is within 40' of an open creek or 25' of a culverted creek?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If so, the Preservation and Restoration of Natural Watercourses Ordinance applies, per BMC Chapter 17.08</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Under penalty of perjury, I certify that:

1. the above information is true and complete to the best of my knowledge, and
2. the attached paper and electronic copies of this application are the same.

("Owner's signature, or signed letter authorizing applicant to apply on owner's behalf, is required for all applications.

Applicant Signature: __________________________ Owner's Signature: __________________________

Printed: __________________________ Printed: __________________________

Date: __________________________ Date: __________________________
Date: August 20, 2019
To: The City of Berkeley Zoning Adjustments Board (ZAB)
From: Amy Di Costanzo – 1710 Sonoma Ave.
RE: APPEAL of DECISION

With this letter I am appealing the Zoning Officer Decision which approves the 2nd story addition Permit at 1533 Beverly Place – ZF2018-0153 dated 8/12/2019.

Background: I have been the owner of and have resided at 1710 Sonoma Ave. for almost 40 years. My husband and I bought a small, fixer-upper bungalow because we loved the view from the back.

Our kitchen, primarily while seated at the kitchen table, near the French doors to the back deck, is the "Hub" of the house, where we eat, talk, work, relax, play games, do puzzles, etc., while enjoying the unobstructed view of Berkeley greenery, the SF Bay, the Bridge, and the SF Skyline. It is the only public room in the house that has a view. In good weather we also sit outside on the back deck where we enjoy the same view. I now find myself in an unsettling situation, facing neighbors who wish to return to Berkeley after 10 years away, and whose 2nd story addition, as now designed, will unreasonably diminish my view while gaining an unobstructed view for themselves.

Therefore, I am appealing the Notice of Decision on the following grounds:

The evidence used by the Staff regarding my view and my loss of view is not supported by the facts; thus, the facts cannot support the findings.

BMC 23F.04, describes significant views (among which are the SF bay, the Bay Bridge, and the SF skyline), as elements which substantially enhance the value and enjoyment of real property.

The decision correctly describes the view I will lose; i.e. eliminated by the approved addition – San Francisco Bay and the Bay Bridge. I have attached five photographs with story poles that show what we currently can see and what we would lose. Three are taken while seated at the kitchen/dining table, two are while seated on a deck chair. The relevant portion is the red tape which shows exactly which of my views would be eliminated. (We would also lose our view of the bay and SF skyline from our garden and from the stairs going down to our garden, which is not mentioned.)

The decision erroneously states: Beginning with "However" "(despite losing the view elements listed)....views of the Golden Gate Bridge and the Marin Headlands...remain." I do not now have any view of the Golden Gate Bridge or the Marin Headlands from the kitchen. While the decision correctly states that because I would keep the view of "...the upper portion of the Bay Bridge and the upper portion of the San Francisco skyline and the hills of South San Francisco", it takes no account of the fact that my current unobstructed view corridor from the kitchen table and seated on the deck would be reduced to partial, fragmented, and insignificant views, in that I lose the view of the Bay while at the table, and I lose the Bay, and most of the Bay Bridge and the SF skyline from the deck. Nor does the decision factor in vents, flues, pipes, chimneys, skylights, fans, satellite dishes, nor solar panels or other protrusions from the roof. Each one of those elements would further block important pieces of my remaining view.

The decision dismisses my main floor view loss on the grounds that I would retain my views from the second floor, "However......the views from the second floor will remain open". This is a false equivalency: Retaining a private-area second floor view does not make losing a first floor view from a public area inconsequential, they are not interchangeable. The decision implies that if I relocate the activities, for myself, my family, and visitors to my bedroom, then my loss is not unreasonable.
The decision incorrectly characterizes my view loss as insignificant. That conclusion ignores the facts of this case and applicable Berkeley laws:

B. To deny a Use Permit for a major residential addition or residential addition subject to § 16.07.010 the Zoning Officer or Board must find that although the proposed residential addition satisfies all other standards of this Ordinance, the addition would unreasonably obstruct sunlight, air or views. (Ord. 7426-NS § 8, 2015: Ord. 6980-NS § 1 (part), 2007: Ord. 6763-NS § 7 (part). 2003: Ord. 6478-NS § 4 (part), 1999).

The Applicants’ Statement re: the purpose of their addition, “To provide additional (rooms) for a retiring couple planning to have extended visits from their children and grandchildren”. This purpose can be attained in such a way that will not impose the undeniably permanent harm to my significant view. This harm substantially decreases the enjoyment of my property and is unreasonable, and I am therefore appealing this Decision.

Sincerely,

[Signature]

Amy Di Costanzo
1710 Sonoma Ave.
Explanation of Photographs

Re: Permit #ZP2018-0153 Appeal Letter (1710 Sonoma Ave.)

There are five photographs attached to the Appeal Letter showing the view from the back of my house towards San Francisco. The red tape on the story poles represents the flat roof of the proposed second story at 1533 Beverly Place. The area enclosed by the poles and under the red tape would be eliminated from view.

Three photos are taken from the seated position at the breakfast/dining table at the back of the kitchen. The double doors are shown open onto the deck. Photo #1 and photo #2 show the view from different seats around the table. Photo #3 is the same as photo #2 but zoomed in.

Two photos are taken from the seated position on a deck chair. Photo #5 is the zoomed in version of photo #4.

Amy Di Costanzo
CITY OF BERKELEY

 Permit Service Center
 1947 Center St, 3rd floor
 Berkeley, CA 94704

 RECEIPT
 PLN2019-0051

 Applicant Information

 Amy Di Costanzo
 1710 SONOMA AVE
 BERKELEY CA 94707-2550

 Property Information

 Parcel Number: 061 262902400

 Project Information

 Type: Planning
 Group: Special Request
 Category: NA
 Sub-Category: Appeal
 Project: Appeal of ZP2018-0153 - 1533 Beverly Place

 Location

 1533 BEVERLY PI
 BERKELEY, CA 94706

 Received

 AUG 28 2019

 Land Use Planning

 Payor: Amy DiConstanzo Payment Status: Paid Date Printed: 8/28/2019
 Cashier: DOCOWANS Payment Method: Credit Card Auth: 0717

 Fees:

 APPL010 - APPEAL of AUP - Non Applicant $200.00

 Total: $200.00

 Property Address:
 1533 BEVERLY PI
 BERKELEY, CA 94706
We appeal the Zoning Officer Decision which approved the application to build a second story at 1533 Beverly Place, dated 8/12/2019.

Background: We are the owners of and have resided at 1529 Beverly Place for 26 years. The amount of sunlight our house receives is the reason we bought this house, and Berkeley Municipal Code protects this valuable asset. The process by which this application was evaluated and reviewed was incomplete and flawed, by the standards of the Berkeley Municipal Code (BMC) and the Planning Department’s own requirements.

Therefore, we are appealing the Notice of Decision on the following grounds:

1: The interpretation of Significant Loss of Direct Sunlight is unreasonable and the logic presented to support the Decision is faulty.

2: The applicants never fulfilled the requirement the City established in the first Incomplete Letter to address our concerns, and the City failed to enforce this requirement.

3: The shadow studies submitted failed to meet City of Berkeley requirements.

First ground of objection: The BMC requires a negative finding that a project would not cause Significant Loss of Direct Sunlight, and this legal requirement is not met here. The logic used to conclude that the shading impact would not be detrimental is faulty.

The 8/12/19 Decision correctly states that our property would be subject to increased shading at two hours after sunrise on June 21 and December 21. But the Decision incorrectly states that this shading does not represent a significant loss of direct sunlight because it “will occur on limited areas” and “only for a few hours a day.”

1533 Beverly Place and all the houses adjacent to it sit on rectangular parcels. In particular, 1533 and 1529 are adjacent, with 1533 to the east of 1529, and the front of both houses face almost due south. Therefore, by definition and the laws of geometry, the loss of direct sunlight that would be caused by a second-story addition at 1533 affects “only” our eastern elevation. However, the eastern elevation represents the entire public portion of our house, the rooms in which we spend 90% of our morning hours: the kitchen, the dining room, and the living room. This is not a “limited area”; it is the large majority of the space in which we spend our waking hours.
We currently receive several hours of direct sunlight on our eastern elevation per day. A second-story addition at 1533 would eliminate the majority of what we currently receive, starting shortly after sunrise, when the sun clears the hills to the east of us and the current ridge of 1533, and continuing through mid-to-late morning. The shadow studies represent only individual moments in time; they do NOT represent the entirety of the loss this project would cause to us.

Our dining room, being in the middle of the elevation, would be impacted EVERY DAY OF THE YEAR, and the living room and the kitchen would each be impacted for approximately 9 months a year.

On 9/2/17, at 9:17 am, our eastern windows were receiving FULL SUN. If the addition were in place, our windows would NOT have been receiving ANY FULL SUN. We would lose hundreds of hours of direct sunlight per year, and we would lose these hours of direct sunlight during the time of day that we use these rooms for our morning routines, including making and eating breakfast, exercising, and planning our day. This does represent significant loss. We dispute the characterization in the Decision that this loss is not significant.

Second ground of objection: The Applicants failed to fulfil the requirement to address our concerns, and the City failed to enforce the obligation to address our concerns.

On August 16, 2018, in Item #4 of the first Incomplete Letter issued for this application, the City directed the Applicants to address our concerns. We had expressed directly to the homeowners and the architect in email on 8/19/18, and in a letter to the City and the architect dated 9/7/18. Our 9/7/18 letter is attached to this appeal.

Our objections included, and still include, the detrimental health, safety, and financial impacts that loss of direct sunlight would impose on us. There is NO DOUBT that a second-story addition at 1533 Beverly Place would make our house darker, for multiple hours a day, all year round. Sunlight has beneficial health effects. A darker house is more dangerous, requires more electricity to replace illumination currently received from the sun. We also object to the shading that would occur on our front and back yards, which is also protected in the City’s Municipal code.

The architect submitted a brief statement dated 9/20/18 that makes NO MENTION of our objections to detrimental health, safety, and financial impacts, and which makes inaccurate and misleading statements.

On 11/16/18, we documented to the City how the applicants’ 9/20/18 statement DID NOT address our concerns, and asked that the city enforce the requirement that had been placed on the applicants to do so before the application was deemed complete and ready to review. Our 11/16/18 letter is attached to this appeal.

In 2019, the applicants prepared a revised version of their design. This revised design lowers the horizontal roofline (which is what determines the shading impact this addition would cause) by only two feet; thus the revised design retains almost all of the height of the earlier/original design. This is not
enough of a reduction in impact to alleviate our objections, as we would still lose a substantial portion of the direct sunlight we currently receive.

The reduction of detrimental shading impact is in fact negligible, as shown by the diagrams in the shadow study dated 7/30/19. On both solstices, ALL of our eastern windows are currently COMPLETELY unshaded at 2 hours after sunrise – their current roofline is BELOW the bottom edge of our tallest east-facing windows (the living room windows). Their current proposal shows that even their revised proposed addition would be still be casting shade on our ROOF at those same points in time. Windows that are currently FULLY in direct sun would be FULLY shaded.

On 6/18/19, we informed the City that our concerns were STILL unaddressed, even by the revised design. The revised design would still cause the loss of hundreds of hours of direct sunlight. This is a substantial impact. In fact, at the meeting held at the home of the applicants on 5/1/19, Architect Stacy Eisenmann acknowledged to me directly, in person, that this revised design does not address our concerns.

The City failed to enforce the obligation that the City itself had imposed on the applicants (to address our concerns). It was inappropriate for the City to review this application before the obligation imposed in Item #4 of the City’s Incomplete letter of 8/16/18 had been met. Our 6/18/19 letter is attached to this appeal.

Third ground of objection: The Applicants Failed to Submit Shadow Studies that Meet City Requirements.

In Item #6 of the City’s 8/16/18 Incomplete Letter, the City (a) Informed the Applicants that their original shadow study was not prepared per the guidelines, (b) Directed them to resubmit a revised shadow study, and (c) provided a link to these guidelines.

The Applicants never submitted shadow studies that met all of the requirements specified in the guidelines, as detailed below:

Requirement #1 of the document titled III.A.7 SHADOW STUDY – STEP-BY-STEP INSTRUCTIONS: Submit diagrams showing shadows cast by the project for three times of the year, the third time being within one week of the application date.

Requirement #2 of the document titled III.A.7 SHADOW STUDY – STEP-BY-STEP INSTRUCTIONS: Include photographs of the structures that would be affected taken within one week of the application date, to corroborate the accuracy of the shadow study.

The Applicants never included diagrams or photographs dated within one week of submission/application. They failed to meet these two requirements in any of the shadow studies they submitted, and the City failed to enforce these requirements.
SUMMARY

- The revised proposal to build a second-story addition at 1533 would cause significant loss of direct sunlight to the windows of our eastern elevation, which illuminate half of our house, for multiple hours per day, resulting in hundreds of hours of loss of direct sunlight per year. This would be a significant loss.

- Light flows from our living room, dining room, and kitchen through doorways to the other areas of our house. Therefore, the proposed addition would cause our entire house to be darker.

- The City used an inappropriate interpretation of “significant loss” in the Decision to approve this application. To lose the majority of what we currently have – to lose 2/3, or 3/4 or more of the direct sunlight we currently receive – would be a significant loss.

- This significant loss of direct sunlight would cause us multiple detrimental impacts, including health and safety, wellbeing, and financial.

- We are strongly opposed to enduring these detrimental impacts, and we have expressed these objections repeatedly.

- The City imposed a requirement on the Applicants to address our concerns, and the Applicants failed to do so.

- The City failed to require the Applicants to fulfill their obligation to address our concerns.

- The City used faulty logic to deem that the shading impacts would not be detrimental. We currently receive several hours of direct sunlight (in the morning only) on our eastern windows, which we would lose most of. To say that the loss is “only for a few hours of the day,” and so therefore, the loss is not detrimental, is unreasonable.

- The City failed to enforce the obligations that were imposed on the applicants: To address our concerns, and to submit shadow studies that meet the requirements specified in the Shadow Study Step-by-Step Instructions.

The decision by the City to approve this application was reached by a flawed process that ignored key legal requirements, as described above. Therefore, the decision itself is unsupported by the findings listed in the decision.

Robin Ramsey & Hank Roberts
1529 Beverly Place, Berkeley CA

Ramsey-Appeal_Planing_Decision_2019-08-12
Re: ZP2018-0153
**Applicant Information**
Robin Ramsey  
1529 BEVERLY PL  
BERKELEY CA 94706-2507

**Property Information**
Parcel Number: 061 262902500

---

**Project Information**
Type: Planning  
Group: Special Request  
Category: NA  
Sub-Category: Appeal  
Project:  
Work Description: APPEAL OF ZP2018-0153 1533 BEVERLY PL

**Location**
1529 BEVERLY PL  
BERKELEY, CA 94706

---

**Payor:** Robin G Ramsey  
**Payment Status:** Paid  
**Date Printed:** 9/3/2019  
**Cashier:** RASMITH  
**Payment Method:** Check  
**Check #:** 3589

<table>
<thead>
<tr>
<th>Fees:</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>APPL010 - APPEAL of AUP - Non Applicant</td>
<td>$200.00</td>
</tr>
<tr>
<td><strong>Total:</strong></td>
<td><strong>$200.00</strong></td>
</tr>
</tbody>
</table>

**Property Address:**  
1529 BEVERLY PL  
BERKELEY, CA 94706
INVOICE

Date: 09/03/19

Invoice #: 414680
Record #: PLN2019-0053
Address: 1529 BEVERLY PL

Received
SEP 03 2019
Land Use Planning

<table>
<thead>
<tr>
<th>Date Assessed</th>
<th>Invoiced Fee Item</th>
<th>Fee</th>
<th>Paid</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>9/3/2019</td>
<td>APPEAL of AUP - Non Applicant APPL010</td>
<td>$200.00</td>
<td>$0.00</td>
<td>$200.00</td>
</tr>
</tbody>
</table>

Totals: $200.00 | $0.00 | $200.00 |

Print Date: 9/3/2019
Date: September 7, 2018
To: Allison Riemer, Assistant Planner for the City of Berkeley, and Stacy Eisenmann, Architect:
From: Hank Roberts and Robin Ramsey, 1529 Beverly Place, Berkeley
Re: Impacts of and Objections to a 2nd-story addition at 1533 Beverly Place, Berkeley

1: Introduction

This letter describes some of the detrimental impacts a 2nd-story addition at 1533 Beverly Place would impose on neighbors, both on Beverly Place and Sonoma Avenue, and expresses our objections to this project.

We've examined the shadow studies included in the initial application for this project. It's problematic that the shadow study was incomplete when it was submitted, and that the elements that are missing are the diagrams that document the new shadows this addition would cast on adjacent residences. At this time, since we do not have a complete shadow study, our objections are expressed in general/estimated terms. We have also observed the shadow lines in real-time for the last week, created by the recently-installed story poles and flagging tape that connects them.

1.1: A note about terminology used in this letter:
We use the phrase Ambient Daylight to describe the light we receive from direct exposure to the sky - the illumination that is reflected within the atmosphere all day long. We have this exposure to the sky in the upper one-third of all our eastern windows. It accounts for a substantial portion of the total illumination we currently receive from the sun.

Reflected daylight describes daylight that is reflected off solid objects, such as walls. This is the least-desirable and least-useful category of daylight. This would be a large portion of what our eastern windows would receive if this 2nd-story addition was built.

1.2: A note about the layouts of our houses:
The original floor plans for 1529 and 1533 Beverly Place are very similar, near-mirror images. Some differences include placement of interior doors and closets, and our house does not have a living room bay window, but otherwise, they both have the same layout: living room, dining room, and kitchen on the driveway side; and 3 bedrooms and 1 bathroom on the non-driveway side.

We have 4 windows on our eastern wall: one large kitchen window, the set of dining room windows combined (2 small double-hung windows on the sides and one larger picture window in the middle), and two living room windows (northern and southern).

These windows all receive a combination of: (1) Direct Sunlight (in the morning hours) and (2) Ambient Daylight (all day long, from sunrise to sunset).

Many aspects of our home exist to increase and utilize the amount of natural illumination we receive (both Direct Sunlight and Ambient Daylight), and to distribute this illumination within and throughout the house as much as
possible over the course of the entire day. This includes 4 sun tubes and 6 doors with glass panes (3 interior and 3 exterior).

1.3: Windows toward the center of our eastern elevation:
All of the Direct Sunlight and all of the Ambient Daylight we receive from our dining room windows and the northern living room window comes directly over 1533 Beverly Place.

1.4: Windows toward the corners of our eastern elevation:
Our kitchen window and southern living room window receive most of their Direct Sunlight and Ambient Daylight over 1533 Beverly, and some of their Direct Sunlight and Ambient Daylight over 1533’s back yard (summertime) or front yard (wintertime).

2: DETRIMENTAL IMPACTS

2.1: Impact #1: Significant Loss of Direct Sunlight on eastern windows and 4 sun tubes:
The shadows currently being cast by the story poles and connecting tape show that a 2nd-story addition at 1533 Beverly would cast new shadows on our eastern windows until mid-morning (10:15am on Aug. 31st). The shadow diagrams that were included in the initial submission for this project show that at both summer and winter solstice, our eastern windows currently receive Direct Sunlight PRIOR to 2 hours after sunrise (on June 21st, that is 7:47 am, and on December 21st, that is 9:21 am).

That is, both of the shadow lines on the street view diagrams that are marked as (E) for existing intersect our eastern elevation below the tops of the windows on our east wall at those times. If the average amount of Direct Sunlight we would lose is 1.25 or 1.5 hours per day (an estimate), that means we would lose 450-550 hours of Direct Sunlight over the course of a year. This loss would occur during one of the primary times we use these rooms, early to mid-morning.

On June 21st, sunrise is 5:47 am, and on Dec. 21st, it is 7:21 am. Our eastern rooms currently receive Direct Sunlight in the morning hours starting early and lasting until mid-to-late morning. This is when we use the kitchen for preparing breakfast and lunch, and eat breakfast in the dining room. The proposed addition would not only be shading our eastern windows completely at 2 hours after sunrise year-round, it would block Direct Sunlight to the sun tube in our dining room, which was installed to further brighten the eastern side of our house.

We have a total of 4 sun tubes in our house. In addition to the one in the dining room, we have two in the central hallway, and one in the middle bedroom. The plan view shadow diagrams included on page 26 of the initial application show that our roof would receive significantly increased amounts of shading over the course of an entire year. This would result in a loss of hours of Direct Sunlight on our sun tubes year round, negatively impacting their effectiveness at providing interior illumination, especially to our western rooms.

This additional illumination we currently receive from the sun tube in the Dining room contributes to increased illumination in the living room and kitchen as well, since these rooms are all connected, AND in the central hallway. We have an interior door with 10 glass panes in the doorway connecting our Dining room and the central hall, specifically chosen to allow light to travel between these spaces, even when the door is closed.
We also have an interior door to the 3rd bedroom with a glass panel (66”H by 19”W), and the original bathroom door has a glass panel (25”H x 19”W), both of these doors function to distribute the light from windows and sun tubes among and within the rooms on the west side of our house.

The illumination from sun tubes to the western rooms of our house is important to us, as the west-facing rooms get less Direct Sunlight and less Ambient Daylight via their windows, due to being closer to our neighbors on that side.

2.2: Impact #2: Substantial Loss of Ambient Daylight (Illumination received from exposure to the sky):
We would also lose all the Ambient Daylight we currently receive from direct exposure to the sky in the dining room, and from the northern living room window on the east wall, most of the Ambient Daylight from the kitchen window, and some of the Ambient Daylight received from the southern living room window on the east wall.

This Ambient Daylight illuminates the windows prior to and following the portion of the day that they receive Direct Sunlight in the mornings. This loss would negatively impact us all day long, from sunrise to sunset, all year round.

2.3: Impact #3: Increased shading of Outdoor Spaces (front & back yards) and corresponding darkening of the rooms facing the front and back of our house:
This project would increase the percentage of outdoor space that is shaded at 2 hours after sunrise from approximately 50% of our front yard (on June 21st) and 50% of our back yard (on Dec. 21st), to 100% shaded on those dates. Doubling the amount of outdoor shading we would experience due to this addition is another substantial, detrimental impact.

A 50% increase in how much our outdoor spaces are shaded in the morning would darken the rooms that face south (living room and 1st bedroom) and north (3rd bedroom and kitchen), as they face spaces that would be shaded rather than sunny.

These losses of Direct Sunlight and Ambient Daylight would cause serious and detrimental impacts in the following categories: Health and Safety, Aesthetics and Wellbeing, and Financial, as described below:

3: OBJECTIONS

3.1: Loss of Direct Sunlight & Ambient Daylight is hazardous – Health and Safety Objections:
A 2nd-story addition at 1533 Beverly would have detrimental impacts on our safety: Age-related changes in vision mean that a darker house is more dangerous than a well-illuminated house. The American Optometric Association notes that as we age, we need more light to see as well as we used to. This is why we’ve added sun tubes and installed interior and exterior doors with glass panels. The US National Library of Medicine, National Institutes of Health, documents that “optical changes in the aged eye contribute to aging-related contrast sensitivity deficits”. Darker rooms have lower levels of contrast than well-illuminated rooms.

The sky itself is a significant source of light, separate and apart from the light received from Direct Sunlight. Our house has 180 degrees of sky-exposure north-to-south in all the windows along the eastern wall, and nearly 180 degrees of sky-exposure east-to-west, due to having one-story houses on both sides.
All of our east-facing windows provide significant amounts of illumination ALL DAY LONG, due to the Ambient Daylight received from this exposure to the sky. This is a different category of illumination than Direct Sunlight. The loss of the illumination received from Ambient Daylight is not shown in the shadow studies. Instead of receiving light from the sky, we would be facing a solid mass with walls and a roof that rise higher than our line of sight from our eastern windows.

Thus, the loss of Ambient Daylight illumination we would experience is much greater than just the number of hours that a second story would shade our east-facing windows and suntubes, since it would impact us from sunrise to sunset. Even at the end of the day, our eastern windows provide a great deal of illumination, due to how bright the sky is from the sun shining from the west over the houses on our block.

3.2: Loss of Direct Sunlight and Ambient Daylight – Aesthetic and Wellbeing Objections:
The detrimental impact would be the change from bright and cheerful to dark and gloomy. Currently, we are able to see both the sun rise and the moon rise over 1533 Beverly from our eastern rooms. It is very meaningful to us to sit at the dining room table, or stand at the kitchen sink, and see the sunrise in the morning, and the moonrise in the evening. We love seeing so much sky, including clouds, birds, and the reflection of the sunset in the eastern sky. This has a major positive impact on our wellbeing. The amount of light our house gets and the amount of sky we can see are the primary reasons we bought this house.

A recent Harvard Business Review article addresses this aspect of the indoor experience; the article is about employees and the workplace environment, but the results and conclusions are just as relevant to us as human beings within our own home. The article, entitled "The #1 Office Perk? Natural Light", dated 9/3/2018 (https://hbr.org/2018/09/the-1-office-perk-natural-light) presents these findings:

In a research poll of 1,614 North American employees, we found that access to natural light and views of the outdoors are the number one attribute of the workplace environment. The study also found that the absence of natural light and outdoor views hurts the employee experience. Over a third of employees feel that they don’t get enough natural light in their workspace. 47% of employees admit they feel tired or very tired from the absence of natural light or a window at their office, and 43% report feeling gloomy because of the lack of light.

Research by Cornell University Professor Dr. Alan Hedge reinforces the connection of natural light and employee wellbeing. Dr. Hedge’s recent research study found optimization of natural light in an office significantly improves health and wellness among workers. In fact, this research revealed that workers in daylight office environments reported a 51% drop in the incidence of eyestrain, a 63% drop in the incidence of headaches and a 56% reduction in drowsiness.

3.3: Loss of Direct Sunlight and Ambient Daylight – Financial Objections:
Financial Objection #1: Trying to replace illumination that we currently receive from Direct Sunlight and Ambient Daylight using electricity would have a significant, detrimental, and unwelcome financial impact. Electric illumination is an expensive and inadequate substitute for natural sunlight and daylight.
Financial Objection #2: The additional amount of shading this project would cause on our roof would reduce the options we currently have for installing solar panels. There are trade-offs to where panels are placed on a roof with a north-south ridge, and we do not want to lose the options we currently have for future panel placement.

3.4: Loss of Sunlight and Daylight – Whole House and Lot Objections:
The shadow studies and story poles make it clear that our entire house would be darker, less safe, and less enjoyable, due to:

1. Loss of Direct Sunlight on our eastern windows,
2. Loss of Direct Sunlight on our sun tubes, affecting both the rooms on the west and the dining room,
3. Loss of sky exposure from our eastern windows, which supplies substantial Ambient Daylight illumination separate from and in addition to Direct Sunlight,
4. Loss of sky exposure from our eastern windows which allows us to see the sun rise, the moon rise, reflections of the sunset in the evening in the eastern sky, and to watch clouds and birds move in the sky, and
5. Our living room and 3rd bedroom windows facing exterior portions of our lot that would be shaded significantly more than they are now.

3.5: Loss of Privacy, and Scale of Neighborhood Objections:
The height and mass of the proposed addition, and the kitchen and 2nd-story bump-outs, would combine to create a looming feeling. Both of 1533 Beverly’s next-door neighbors are one-story houses, and all three of the houses across the street (1532, 1534, and 1538) are one story as well.

Overall, 1533 Beverly is higher than our lot, which increases the impact that the height and mass of this project would have on us. Being in our backyard, and walking back and forth in our side yard/driveway since the story poles have been installed, and imagining the space being occupied by the mass of a 2nd story, including the bump-outs on the west and north sides, makes being outdoors feel like being down in a canyon. Sitting at an outdoor dining table outside our kitchen door would mean looking at a house taller than any of its surroundings, with a mass that is nearly doubled from the volume of its existing square footage.

4: Summary

4.1: Project Benefits to Applicants and Costs to Neighbors:
The proposed addition would benefit the applicants, at substantial cost to multiple neighbors, both on Sonoma Avenue and on Beverly Place. There are no corresponding benefits to the neighbors that would offset or ameliorate the losses – of Significant Views, Direct Sunlight, Ambient Daylight, and Privacy – that this project would impose.

4.2: Applicants’ stated need is Occasional, Intermittent, and Part-Time.

Neighbors’ losses would be Substantial and Full-Time:
The applicants stated that their need is to have space for visiting relatives. This describes an occasional and part-time use of space, occurring intermittently.

The losses this project would impose on multiple neighbors would be substantial and full-time. Neighbors would lose significant views, sunlight, daylight, and privacy 365 days a year, whether applicants’ relatives were visiting or not.
The contrast between part-time occasional benefit to the applicants, and full-time substantial losses to the neighbors is stark and disturbing, and we consider the lopsided Benefit/Loss ratio, which favors the applicants and disfavors a number of the surrounding neighbors, to be incompatible with the character of the neighborhood.

4.3: Applicants have other option(s)?
There appear to be other alternatives for the applicants to gain extra space: Expanding into space below the house (nearby examples: 1208 Monterey and 1102 Colusa), and/or possibly remodeling the back building into a (one-story) ADU, could give the applicants additional space to host visiting relatives while avoiding the detrimental impacts that a 2nd-story addition would impose on the neighbors.

4.4: The Berkeley Municipal Code protects neighbors from detrimental impacts caused by loss of sunlight and privacy, obstruction of significant views, and construction incompatible with the character of the neighborhood:

How does staff decide whether to approve an AUP? (from the AUP FAQ page):
To approve an AUP, staff must find that the project would not be "detrimental" to neighbors or to the City’s general welfare, and make any other findings required by the Zoning Ordinance. Staff may place conditions on a project if necessary to make the required findings or promote the public welfare.

"Detriment" is determined on a case-by-case basis, depending on the project type and setting. Staff can provide further guidance during preliminary review as to whether or not a particular project may cause detriment. In general, a project may be considered detrimental if it has the following impacts:

a) Residential areas:
- Substantial loss of direct sunlight or privacy in a dwelling or an adjacent dwelling
- Unreasonable obstruction of a neighbor’s significant view
- Construction that is incompatible with the scale and character of the neighborhood

5: Conclusion
We believe that this application does not meet the criteria required for project approval. This addition, if built, would cause substantial detrimental impacts to multiple neighbors in all three of the categories listed above, which would negatively affect our health and safety, and our general and financial wellbeing, as described in Items 3.1 through 3.5 above.

Berkeley’s Municipal Code protects our welfare from these detrimental impacts. Therefore, we ask the City of Berkeley to deny a Use Permit for the application to build a 2nd-story addition at 1533 Beverly Place.

Please let us know if you have any questions.

Thank you,

Robin Ramsey & Hank Roberts
1529 Beverly Place, Berkeley CA
## 1529 Beverly Place
Objections and Concerns:
Summarized from our letter of 9/7/2018

<table>
<thead>
<tr>
<th>Objection</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Significant Loss of Direct Sunlight on eastern windows and 4 sun tubes</td>
<td>Inaccurate, Misleading, and Incomplete: The architect seems to be implying that any impact would only occur twice a year, at two hours after sunrise on June 21st and Dec. 21st. This is of course false. It also ignores the reality of when we benefit from receiving direct sunlight, which includes the hours both before and after the “two hours after sunrise” points in time represented in the shadow study. The reality is that the proposed 2nd-story addition would create hours of shading that would impact both our windows and our suntubes, every day of the year, in the hours before, at, and after “two hours after sunrise.” We have been photographing the shadows created by the story poles and flagging tape to gauge the impact on our windows and suntubes. It is simply not true to state that none of our solar tubes would be shaded. The shading impact is multiple hours a day at this time of year, which means we would be detrimentally impacted for hundreds of hours per year. We are developing and will submit an analysis which quantifies the impact on each window and each suntube.</td>
</tr>
<tr>
<td>Substantial Loss of Ambient Daylight (Illumination received from exposure to the sky all day long)</td>
<td>Incomplete - the architect did not address this concern.</td>
</tr>
<tr>
<td>Increased shading of Outdoor Spaces (front &amp; back yards) and corresponding darkening of the rooms facing the north and south elevations of our house (living room, front bedroom, kitchen, back bedroom)</td>
<td>Incomplete - the architect did not address this concern. Additionally, the architect tried to use the movement of shadows to the backyard in December as a mitigating point in response to the objection to the shading of the east-facing kitchen window, which highlights how this objection (to shading of our outdoor space) was ignored.</td>
</tr>
<tr>
<td>Loss of Direct Sunlight &amp; Ambient Daylight is hazardous – Health and Safety Objections</td>
<td>Incomplete - the architect did not address this concern. This is a serious concern, which the architect ignored. The proposed 2nd-story would make our house significantly darker. This would create safety hazards, as detailed in our original letter of objection. We emphatically object to being subjected to conditions detrimental to our own safety.</td>
</tr>
<tr>
<td>Loss of Direct Sunlight and Ambient Daylight – Aesthetic and Wellbeing Objections</td>
<td>Incomplete - the architect did not address this concern.</td>
</tr>
<tr>
<td>Loss of Direct Sunlight and Ambient Daylight – Financial Objections: Cost of Electric Illumination</td>
<td>Incomplete - the architect did not address this concern. This is a serious concern, which the architect ignored. The proposed 2nd-story would make our house significantly darker. It would be expensive to replace the natural illumination that we currently receive (from sunlight and daylight) with artificial lighting (using electricity). This would be a permanent detrimental impact, and we emphatically object to absorbing this expense for the benefit of the applicants.</td>
</tr>
<tr>
<td>Loss of Direct Sunlight and Ambient Daylight – Financial Objections: Reduction of Solar Panel Placement options</td>
<td>Incomplete - the architect did not address this concern.</td>
</tr>
</tbody>
</table>
Date: April 4, 2019

To: Allison Riemer, Assistant Planner; Greg Powell, Principal Planner
City of Berkeley Planning and Development Department (BPDD)

From: Robin Ramsey and Hank Roberts, 1529 Beverly Place, Berkeley

Re: AUP #ZP2018-0153, application for proposed 2nd story at 1533 Beverly Place

Subject: Request for an update on the status of this project

Dear Ms. Riemer;

I appreciate you letting me know that you received our correspondence of Nov. 16, 2018. That letter described the ways that the Response to Neighbor Concerns, contained in a 9/20/18 letter to the city from Eisenmann Architecture, failed to address our concerns.

I also thank you very much for the time you spent with me in your office in January 2019. I am following up on that conversation; you asked me to send you some of the pictures we reviewed, which I am enclosing in my next email to you. I have additional pictures taken after that day, which I am also including.

Item #4 in the BPDD’s Incomplete letter of 8/16/18 calls for the applicants to explain, in writing:

- **HOW** our concerns are or will be addressed, and/or
- **WHY** they cannot be addressed

We have not yet received either of these explanations.

The city’s website shows the status of this application as Incomplete as of today. Is this accurate? Can you please update us regarding the status of Item #4, from the city’s Incomplete letter of 8/16/18 in particular?

I see from other letters uploaded recently that we are not the only neighbors whose concerns have not been addressed yet. Can we expect that they will be addressed in the future? What are the next steps going forward?

Thank you very much for your time and attention to these questions, and I look forward to your response.

Sincerely,

Robin Ramsey and Hank Roberts
1529 Beverly Place, Berkeley CA
Date: June 18, 2019

To: Allison Riemer, Assistant Planner; and Greg Powell, Principal Planner; City of Berkeley Planning and Zoning Department

Re: AUP #ZP2018-0153, 1533 Beverly Place – Objections based on Substantial Loss of Direct Sunlight

Dear Ms. Riemer and Mr. Powell:

We are writing to let you know that the applicants have not fulfilled the requirement to address our concerns, which was placed on them in Item #4 of the city’s Incomplete Letter dated 8/16/2018.

They have not addressed our concerns in writing; they have not addressed our concerns in person; and they have not addressed our concerns via the revisions they have made to the original design that they submitted for this project last July.

We have requested data that would quantify the shading impact this project would have on us 3 times: last year on 8/19/2018, in relation to their initial design; and this year, in relation to their revised design, on 5/10/2019 and 6/5/2019.

On 6/5/2019, Eisenmann Architecture told us that we could pay them to produce data that would quantify the amount of shading this project would cause, but that they would not do so without payment from us. We were surprised to receive this response because when we first requested this data (last year, on 8/19/2018), Ms. Eisenmann wrote, on 8/20/2018, that they would respond in depth by the end of the week. We never received the in-depth response that Ms. Eisenmann said they would send us.

We asked again for data that would help quantify the loss of sunlight (that the revised design would cause) on 5/10/2019, and on that day, Ms. Wieloch-Kim, Studio Director for Eisenmann Architecture, wrote that “We will contact Bryn and John and we will respond to your request next week.” They did not keep that commitment either, and we wrote to them again on 6/5/2019.

They have produced shadow study diagrams that show the shading impact of their proposed designs at various points in time, but individual shadow study diagrams do not quantify how much loss of direct sunlight this project would cause over time.

Reducing the height of the roof edge by 24 inches does not take this project out of the category that would cause “substantial loss of direct sunlight.” The fundamental basis of our objection to this proposal is the TOTAL AMOUNT of direct sunlight we would lose every day, year-round.

This loss would be substantial and it would impose significant and detrimental health, safety, and financial impacts on us and our wellbeing.

This application cannot be deemed complete unless and until they have met their obligation to address our concerns. Please confirm your receipt of this letter, and thank you for your attention to this issue.

Robin Ramsey & Hank Roberts
1529 Beverly Place, Berkeley CA
Zoning Adjustments Board
NOTICE OF PUBLIC HEARING

SUBJECT: 1533 Beverly Place – Appeal
          Administrative Use Permit #ZP2018-0153

       Meeting starts at 7:00 pm.

WHERE: Berkeley Unified School District, Board Room
       1231 Addison Street, Berkeley
       Wheelchair Accessible
Subject: Appeal of the zoning officer's decision to approve Administrative Use Permit #ZP2018-0153 to enlarge an existing 1,212 sq. ft. 1-story single-family dwelling with a non-conforming front setback on a 4,200 sq. ft. lot by: 1) adding a 1,035 sq. ft. addition, including a new second story, with an average height of 23 ft. - 7 ½ in., and 2) adding a fifth bedroom.

CEQA STATUS: Categorically exempt pursuant to Sections 15301 and 15303 ("Existing Facilities" and "New Construction or Conversion of Small Structures") of the CEQA Guidelines.

**NOTICE CONCERNING YOUR LEGAL RIGHTS:**

If you challenge the decision of the City in court, you may be limited to raising only those issues you or someone else raised for the public hearing or in written correspondence submitted to the Board at, or prior to, the public hearing. All application materials are available at the Land Use Planning Division, during normal office hours or online at: http://www.cityofberkeley.info/zoningapplications.

The Zoning Adjustments Board agenda and all agenda materials regarding this project will be available online 6 days prior to this meeting at: http://www.cityofberkeley.info/zab.

Send written comments to the Land Use Planning Division (Attn: ZAB Secretary), 1947 Center Street, Second Floor, Berkeley, CA 94704 or via e-mail to: zab@cityofberkeley.info. To ensure inclusion in the agenda materials to be published the week prior to this hearing, please submit correspondence by 8:00 AM Thursday. For any correspondence submitted after Thursday, submit 15 copies for staff to deliver to the Board at its meeting. For more information, call the Land Use Planning division (510) 981-6418(TDD) or 6418(V) or 6347(TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418(V) or 6418-6347(TDD) at least three business days before the meeting date. PLEASE NOTE: If your contact information is included in any communication to the Board, it will become part of the public record, and will be accessible on the City Website.

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

The Board may limit the time granted to each speaker. Comments may be made verbally at the public hearing and/or in writing before the hearing. The Board may limit the time granted to each speaker.

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

The Board may limit the time granted to each speaker. Comments may be made verbally at the public hearing and/or in writing before the hearing. The Board may limit the time granted to each speaker.
1533 Beverly Pl  

69 notices  

mailed out 01-30-20

kovach joan m tr  
forer bonnie  
James Alexander D & Wiener Lauren G TRS  
georgen mark p & whitman susan r TRS  
kelemen stanley TR  
kaczynski helmut & neff colleen  
robinson ronald J & trang p  
simmons william s & cheryl l  
eisenbud david & rhodes robert TRS  
smallwoodgarcia john & ann b  
sanka kiran & karpura  
dortort fred r TR  
hayes linda k & kasarda ralph w jr etal  
snyder staeppan w & dorrance carol j TRS  
skipper roscoe & brucker gwendolyn TRS  
occupant(s)  
occupant(s)  
occupant(s)  
occupant(s)  
occupant(s)  
occupant(s)  
occupant(s)  
occupant(s)  
occupant(s)  
occupant(s)  
occupant(s)  
occupant(s)  
occupant(s)  
occupant(s)  
occupant(s)  
occupant(s)  
occupant(s)  
Stacy Eisenmann, Eisenmann Architecture

1716 sonoma ave  
1720 sonoma ave  
1725 sonoma ave  
1726 sonoma ave  
1727 sonoma ave  
1728 sonoma ave  
1730 sonoma ave  
196 president ave  
2 ajax pl  
26 white pine dr  
46 kenyon ave  
678 woodmont ave  
8548 ivory creek dr  
964 overlook rd  
989 tulare ave  
1098 sierra st a  
1098 sierra st b  
1532 beverly pl  
1533 beverly pl  
1542 beverly pl  
1547 posen ave b  
1548 beverly pl  
1551 beverly pl  
1553 posen ave a  
1555 beverly pl  
1558 beverly pl  
1559 posen ave  
1711 sonoma ave  
1724 sonoma ave  
1331 seventh street, suite g  
Berkeley CA  
Berkeley CA  
Berkeley CA  
Berkeley CA  
Berkeley CA  
Berkeley CA  
Berkeley CA  
Berkeley CA  
Berkeley CA  
Berkeley CA  
Berkeley CA  
Berkeley CA  
Berkeley CA  
Berkeley CA  
Berkeley CA  
Berkeley CA  
Berkeley CA  
Berkeley CA  
Berkeley CA  
Berkeley CA  
1711 sonoma ave  
94707  
94707  
94707  
94707  
94707  
94707  
94707  
2906  
94708  
6804  
94708  
94708  
95828  
94708  
94707  
94707  
94707  
94706  
94706  
94706  
94706  
94706  
94706  
94706  
94706  
94706  
94706  
94707  
94707  
94710
I am requesting a Notice of Decision for the **ZAB Hearing** that took place on **February 13th, 2020** be sent to me at the following address:

**Amy Di Costanzo**
1710 Sonoma Ave.
Berkeley, CA 94707

Thank you very much,

Amy Di Costanzo
Riemer, Allison

From: Rena Rickles <rena@rickleslaw.com>
Sent: Monday, February 24, 2020 3:34 PM
To: Riemer, Allison
Cc: Allen, Shannon; Amy Di Costanzo
Subject: RE: 1533 Beverly Place--NOD

Allison and Shannon,
Could you please include me on the mailing list when you send out the NOD?
Thank you.
Rena

RENA RICKLES
Law offices of Rena Rickles
1970 Broadway, Suite 1200
Oakland, CA 94612
Phone: (510) 452-1600
Fax: (510) 451-4115
Rena@RicklesLaw.com

This transmittal is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this transmittal is not the intended recipient or the employee or agent responsible for delivering the transmittal to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited.

From: Riemer, Allison <ARiemer@cityofberkeley.info>
Sent: Monday, February 24, 2020 9:11 AM
To: Rena Rickles <rena@rickleslaw.com>
Cc: Allen, Shannon <ShAllen@cityofberkeley.info>
Subject: RE: 1533 Beverly Place--video link

Hi Rena,

The video is available here: http://berkeley.granicus.com/MediaPlayer.php?publish_id=3cf005c9-5723-11ea-9ca4-0050569183fa
We don't edit the video. We just add timestamps for the agenda items.

Best,
Allison

From: Rena Rickles [mailto:rena@rickleslaw.com]
Sent: Friday, February 21, 2020 4:24 PM
To: Riemer, Allison <ARiemer@cityofberkeley.info>
Cc: Allen, Shannon <ShAllen@cityofberkeley.info>
Subject: RE: 1533 Beverly Place--video link

Hi Allison,

Our request for the video was the raw, un-cut version. Is there a link to obtain that video?
Rena

RENA RICKLES
Law offices of Rena Rickles
1970 Broadway, Suite 1200
Oakland, CA 94612
PROOF OF SERVICE

DATE: February 27, 2020

TO: Whom It May Concern

FROM: Melinda Jacob, OSII

SUBJECT: USE PERMIT #ZP2018-0153 – 1533 BEVERLY PLACE

I, the undersigned, certify that I am employed in the City of Berkeley, County of Alameda, California; that I am over eighteen years of age; that I am not a party to the within action; and that my business address is 1947 Center Street, Berkeley, California 94704. On this date, I served the following documents:

ZONING ADJUSTMENTS BOARD NOTICE OF DECISION

On the parties stated below by placing true copies thereof in sealed envelope(s) addressed as shown below by the following means of service:

- By First Class Mail - I am readily familiar with the City’s practice for collecting and processing of correspondence for mailing. Under the practice, the correspondence is deposited with the U.S. Postal Service on the same day as collected, with First Class postage thereon fully prepaid, in Berkeley, California, for mailing to the addressee following ordinary business practices.

- By Personal Service - I caused each such envelope to be given to the City of Berkeley mail service person to personally deliver to the office of the addressee.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 27, 2020 at Berkeley, California.

Melinda Jacob, OSII
DATE OF BOARD DECISION: February 13, 2020
DATE NOTICE MAILED: February 27, 2020
APPEAL PERIOD EXPIRATION: March 12, 2020
EFFECTIVE DATE OF PERMIT (Barring Appeal or Certification)\(^1\): March 13, 2020

1533 Beverly Place

Appeal of the Zoning Officer’s decision to approve Administrative Use Permit #ZP2018-0153 to enlarge an existing 1,212 sq. ft., 1-story single-family dwelling with a non-conforming front setback on a 4,200 sq. ft. lot by: 1) adding a 1,035 sq. ft. addition, including a new second story, with an average height of 23 ft.-7 ½ in., and 2) adding a fifth bedroom.

The Zoning Adjustments Board of the City of Berkeley, after conducting a public hearing, DISMISSED the appeal and APPROVED the following permits:

- Administrative Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23D.16.070.C to construct a residential addition greater than 14 ft. in average height;
- Administrative Use Permit pursuant to BMC Section 23D.16.030 to construct a major (more than 600 sq. ft.) residential addition;
- Administrative Use Permit pursuant to BMC Section 23D.16.050.A to add a fifth bedroom to a parcel; and
- Administrative Use Permit pursuant to BMC Section 23C.04.070.B for an addition which vertically extends the non-conforming front yard.

APPLICANT: Stacy Eisenmann, Eisenmann Architecture, 1331 Seventh Street, Suite G, Berkeley CA 94710

APPELLANTS: Amy Di Constanzo, 1710 Sonoma Street, Berkeley CA; and Hank Roberts and Robin Ramsey, 1529 Beverly Place, Berkeley CA

\(^1\) Pursuant to BMC Section 23B.32.090, the City Council may certify any ZAB decision for review during the 14-day appeal period after the notice of the ZAB’s decision is issued. Certification has the same effect as an appeal. However, BMC Section 1.04.070 suspends or “tolls” the Council’s deadline to certify when the Council is on recess. Thus, in cases where the 14-day appeal period is scheduled to end during a Council recess, the certification deadline is extended past the end of the recess for the remainder of the appeal period. In cases where the appeal period begins during a Council recess, the certification deadline is extended until 14 days after the first Council meeting after the recess. Extension of the certification deadline has no effect on the appeal deadline.
PROPERTY OWNER: Bryn and John Smallwood-Garcia, 26 White Pine Drive, Brookfield, CT 06804

ZONING DISTRICT: R-1 – Restricted Single-Family Residential

ENVIRONMENTAL REVIEW STATUS: Categorically exempt pursuant to Sections 15301 and 15303 (“Existing Facilities” and “New Construction or Conversion of Small Structures”).

FINDINGS, CONDITIONS AND APPROVED PLANS ARE ATTACHED TO THIS NOTICE

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>Abstain</th>
<th>Absent</th>
</tr>
</thead>
<tbody>
<tr>
<td>CLARK</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>KAHN</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>KIM</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>O’KEEFE</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>OLSON</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>AGUILAR-CANABAL</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SELAWSKY</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SHEAHAN</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>TREGUB</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

BOARD VOTE: 5 2 1 1

ATTEST: Shannon, Allen, Zoning Adjustments Board Secretary

PUBLICATION OF NOTICE:
Pursuant to BMC Section 23B.32.050, this notice shall be mailed to the applicant at the mailing address stated in the application and to any person who requests such notification by filing a written request with the Zoning Officer on or before the date of the Board action. This notice shall also be filed with the City Clerk. In addition, the notice shall be forwarded to the Zoning Adjustments Board and to the Main Library. The notice shall also be posted at a bulletin board at the Zoning Counter. The City Clerk shall make the notice available to interested members of the Council and the public.

FURTHER INFORMATION:
Questions about the project should be directed to the project planner, Allison Riemer, at (510) 981-7433 or ariemer@cityofberkeley.info. All project application materials, including full-size plans, may be viewed online at https://aca.cityofberkeley.info/Community/ or in the Permit Service Center at the Zoning Counter at 1947 Center Street, Third Floor, during normal office hours.
TO APPEAL THIS DECISION (see Section 23B.32.050 of the Berkeley Municipal Code):

To appeal a decision of the Zoning Adjustments Board to the City Council you must:

1. Submit a letter clearly and concisely setting forth the grounds for the appeal to the City Clerk, located at 2180 Milvia Street, 1st Floor, Berkeley. The City Clerk’s telephone number is (510) 981-6900.

2. Submit the required appeal fee (checks and money orders payable to “City of Berkeley”):
   A. The fee for persons other than the applicant is $500. This fee may be reduced to $100 if the appeal is signed by persons who lease or own at least 50 percent of the parcels or dwelling units within 300 feet of the project site, or at least 25 such persons (not including dependent children), whichever is less.
   B. The fee for all appeals by Applicants is $2,500.

3. The appeal must be received prior to 5:00 p.m. on the "APPEAL PERIOD EXPIRATION" date shown on page 1 (if the close of the appeal period falls on a weekend or holiday, then the appeal period expires the following business day).

If no appeal is received, the permit will be issued on the first business day following expiration of the appeal period, and the project may proceed at that time.

NOTICE CONCERNING YOUR LEGAL RIGHTS:

If you object to this decision, the following requirements and restrictions apply:

1. If you challenge this decision 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 Zoning Adjustments Board at, or prior to, the public hearing.

2. You must appeal to the City Council within fourteen (14) days after the Notice of Decision of the action of the Zoning Adjustments Board is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.

3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.

4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.

5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a “taking” of property for public use without just compensation under the California or United States Constitutions, your appeal of this decision must including the following information:
   A. That this belief is a basis of your appeal.
   B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
   C. All evidence and argument in support of your belief that the decision or condition constitutes a “taking” as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.
ATTACHMENT 1

FINDINGS AND CONDITIONS
FEBRUARY 13, 2020

1533 Beverly Place

Administrative Use Permit #ZP2018-0153

To enlarge an existing 1,212 sq. ft., 1-story single-family dwelling with a non-conforming front setback on a 4,200 sq. ft. lot by: 1) adding a 1,035 sq. ft. addition, including a new second story, with an average height of 23 ft.-7 ½ in., and 2) adding a fifth bedroom.

PERMITS REQUIRED

- Administrative Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23D.16.070.C to construct a residential addition greater than 14 ft. in average height;
- Administrative Use Permit pursuant to BMC Section 23D.16.030 to construct a major (more than 600 sq. ft.) residential addition;
- Administrative Use Permit pursuant to BMC Section 23D.16.050.A to add a fifth bedroom to a parcel; and
- Administrative Use Permit pursuant to BMC Section 23C.04.070.B for an addition which vertically extends the non-conforming front yard.

CEQA FINDINGS

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to CEQA Guidelines Sections 15301 and 15303 (“Existing Facilities” and “New Construction or Conversion of Small Structures”). 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.

FINDINGS FOR APPROVAL

2. As required by BMC Section 23B.28.050.A, the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:

A. The subject property will continue to conform to the applicable provisions of BMC Sections 23D.16.070-080 including density, height, yards, lot coverage, usable open space, and minimum on-site parking: one dwelling unit on the lot, where only one dwelling unit is allowed; an average height of 23 ft.-7 ½ in. with the addition, where the
average height limit is 28 ft.; side yards of 9.6 ft. and 4 ft. where 4 ft. is required; rear yard of 34.9 ft., were 20 ft. is required; 39% lot coverage, where the maximum allowed is 40%; over 600 sq. ft. of usable open space, where a minimum of 400 sq. ft. is required; and the required off-street parking space within the existing garage.

B. The addition will maintain the privacy of the abutting neighbors as it is outside of the required side and rear setbacks, and the non-conforming front setback is retained. The windows within the second story could potentially allow views to adjacent properties. However, staff believes the project will not unreasonably impact the privacy of neighboring dwellings because while windows would now face second floor windows on the properties to the north, they would be more than 35 ft. from the neighboring dwellings to the north, thereby minimizing privacy impacts. While the addition will be approximately 4 ft. from the edge of the one-story garage attached to the west façade of the neighboring dwelling to the east at 1535 Beverly Place, the garage does not contain habitable space and thus, will not be affected by new window openings; and the addition will be approximately 10 ft. from the wall of the dwelling at 1535 Beverly Place. The addition will be approximately 19 ft. from the dwelling adjacent to the west at 1529 Beverly Place.

C. While the project increases the number of bedrooms on this parcel, as defined in BMC Section 13.24.020 (Definitions), from three to five, the addition of a fifth bedroom would provide more room for residents within the single-family residence and would not result in an increase in dwelling unit density.

3. Pursuant to BMC Section 23D.16.090.B, the Zoning Officer finds that the major residential addition would not unreasonably obstruct sunlight, air, or views for the following reasons:
   A. Sunlight: The 1,035 sq. ft. addition will not result in a significant loss of direct sunlight on neighboring dwellings. Shadow studies submitted by the applicant document the addition’s projected shadow angles and lengths at three times throughout the day during the summer and winter solstices.
      a. Two hours after sunrise on the winter solstice, shadows on the east side of the dwelling at 1529 Beverly Place will increase and cover a kitchen window, and partially cover a dining room window.
      b. Two hours before sunset on the winter solstice, the shadows on the west side of the dwelling at 1535 Beverly Place will increase slightly, but will only reach a small corner of a bedroom window.
      c. Two hours after sunrise on the summer solstice, shadows on the east side of the dwelling at 1529 Beverly Place will increase and cover the living room and dining room windows.
      d. Two hours before sunset on the summer solstice, shadows on the west side of the dwelling at 1535 Beverly Place will increase and cover the bedroom and living room windows.

   Because the impacts to neighboring properties will occur on limited areas, and will only partially shade neighboring buildings for a limited time during the year, and only for a few hours of the day, the residential addition will not result in a significant loss of direct sunlight on abutting residences, and these shading impacts are not deemed detrimental.
   B. Air: The addition is found to be consistent with the existing development and building-to-building separation pattern – or air – in this R-1 neighborhood because the addition will be outside of all required setbacks (while maintaining the non-conforming front setback), and will not exceed height or story limits. Therefore, there will be no impacts to air.
C. Views: BMC Chapter 23F.04 defines view corridors as a significant view of the Berkeley Hills, San Francisco Bay, Mt. Tamalpais, or a significant landmark such as the Campanile, Golden Gate Bridge, and Alcatraz, or any other significant vista that substantially enhances the value and enjoyment of real property. The topography of this neighborhood slopes generally from the east down towards the west and lots located on the north side of Beverly Place in the vicinity of the project site are situated lower in elevation than lots to the north, including the adjacent lots on Sonoma Avenue.

As documented by the story poles, the second-story addition will be within the view corridor of the properties to the north. 1708 Sonoma Avenue currently has views of the San Francisco Bay over Emeryville, and the hills of the Peninsula south of San Francisco from their deck, bedroom, and kitchen that will be eliminated with the addition; however, views of the San Francisco skyline and the Marin Headlands will remain.

From 1710 Sonoma Avenue, while seated at the kitchen table, the view of San Francisco Bay will be reduced with the addition at 1533 Beverly Place. When one is seated at the kitchen table, the Bay Bridge and the San Francisco Skyline will be visible over the addition, however the Bay will not be visible. While standing at the back of the kitchen, the view of the Bay will be reduced, but the Bay, Bay Bridge, and Skyline will still be visible over the addition. More of the Bay will be visible while standing in the kitchen, than while seated in the kitchen. Views from the second floor will not be obstructed by the project.

1716 Sonoma Avenue currently has a view of the Golden Gate Bridge from the kitchen nook that will be reduced with the addition; however, views of one of the towers of the Golden Gate Bridge will continue to be visible from the kitchen nook, and a partial view of the San Francisco skyline, and a full view of the Golden Gate Bridge from the kitchen and dining rooms will remain.

Since the current expansive views are reduced, not eliminated, and remain largely intact, view impacts are determined to be non-detrimental.

4. Pursuant to BMC Section 23C.04.070.B, the Zoning Officer finds that:
   A. Although the addition would vertically extend a non-conforming front yard, the addition may be authorized as the existing use of the property is conforming (single-family dwelling in the R-1 Single-Family Residential District);
   B. The existing entry steps, porch, and roof will be replaced, and will not exceed the average height limit; and
   C. The addition will not further reduce the existing non-conforming front yard.
STANDARD CONDITIONS

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

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

2. **Applicant Responsible for Compliance with Conditions**
   The applicant shall ensure compliance with all of the following conditions, including submittal to the project planner of required approval signatures at the times specified. Failure to comply with any condition may result in construction being stopped, issuance of a citation, and/or modification or revocation of the Use Permit.

3. **Uses Approved Deemed to Exclude Other Uses (BMC Section 23B.56.010)**
   A. This Permit authorizes only those uses and activities actually proposed in the application, and excludes other uses and activities.
   B. Except as expressly specified herein, this Permit terminates all other uses at the location subject to it.

4. **Modification of Permits (BMC Section 23B.56.020)**
   No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Zoning Officer.

5. **Plans and Representations Become Conditions (BMC Section 23B.56.030)**
   Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

6. **Subject to All Applicable Laws and Regulations (BMC Section 23B.56.040)**
   The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments.

7. **Exercised Permit for Use Survives Vacancy of Property (BMC Section 23B.56.080)**
   Once a Permit for a use is exercised and the use is established, that use is legally recognized, even if the property becomes vacant, except as set forth in Standard Condition #8, below.
8. Exercise and Lapse of Permits (BMC Section 23B.56.100)
   A. A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.
   B. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
   C. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has: (1) applied for a building permit; or, (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

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

ADDITIONAL CONDITIONS IMPOSED BY THE ZONING OFFICER

Pursuant to BMC Section 23B.28.050.D, the Zoning Officer 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. **Certification of Height of Tape on Story Poles.** A licensed surveyor shall certify the height of the red tape currently on the story poles. Appellant (Amy Di Costanzo) to select the surveyor. A letter from the surveyor documenting the height of the tape shall be submitted with the Building Permit.

12. **Certification of the Existing Top of the Roof.** The elevation of the existing top of the roof shall be verified by a licensed surveyor. A letter from the surveyor documenting the existing top of the roof shall be submitted with the Building Permit. (See Condition 32 for new roof specifications.)

13. **Finished Floor.** The new finished floor shall be two feet lower than the existing surveyed finished floor, as measured from the front of the dwelling and shown in the sections on sheet A3.2 of the plans received by Land Use Planning on July 1, 2019. This condition shall be noted in the Building Permit plan set.

14. **Roof Features.** All roof features (vents, ducts, chimneys) shall be located on the west side of the roof, except one vent for the bathroom may be located on the east side of the roof, subject to the review and approval of Building & Safety.

15. **Roof Color.** The color of the roof shall be a dark color, such as brown, the roof color of 1708 Sonoma Avenue. The color shall be noted on the elevations and roof plans of the Building Permit plan set.

**Standard Construction-related Conditions Applicable to all Projects:**

16. **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.
17. Construction activity shall be limited to between the hours of 8:00 a.m. and 6:00 p.m. on Monday through Friday, and between 9:00 a.m. and noon on Saturday. No construction-related activity shall occur on Sunday or on any Federal Holiday.

18. 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.

19. Subject to approval of the Public Works Department, the applicant shall repair any damage to public streets and/or sidewalks by construction vehicles traveling to or from the project site.

20. All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter in thickness and secured to the ground.

21. All active construction areas shall be watered at least twice daily, and all piles of debris, soil, sand or other loose materials shall be watered or covered.

22. Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.

23. Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.

24. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way.

25. The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.

26. Any construction during the wet season shall require submittal of a soils report with appropriate measures to minimize erosion and landslides, and the developer shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.

27. **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.
28. 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.

29. 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 CEQA Guidelines Section 15064.5 (e)(1) . If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to Health and Safety Code Section 7050.5(c), 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.

30. 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.

Prior to Issuance of Occupancy Permit or Final Inspection:

31. **Elevation of the Finished Floor.** The elevation of the new finished floor shall be verified by a licensed surveyor after framing is complete and before final inspection. A letter from the surveyor documenting the finished floor elevation shall be provided to Land Use staff before final inspection.

32. **Maximum Height of the Top of the Roof.** The top of the roof for the addition shall be no higher than 4 feet above the existing roof, as shown in the Existing Section on sheet A3.2, of the plans received by Land Use Planning on July 1, 2019. The elevation of the top of the new roof shall be verified by a licensed surveyor after framing is complete and before final inspection. A letter from the surveyor documenting the top of the roof elevation shall be provided to Land Use staff before final inspection.

33. All construction at the subject property shall substantially conform to the approved Use Permit drawings or to modifications approved by the Zoning Officer.

34. All landscape, site and architectural improvements shall be completed per the attached approved drawings received July 1, 2019.

At All Times (Operation):

35. 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.

36. **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.

37. **Electrical Meter.** Only one electrical meter fixture may be installed per dwelling unit.

______________
Prepared by: Allison Riemer
For Steven Buckley, Zoning Officer
LOT COVERAGE CALCULATIONS:

EXISTING

PROPOSED

LOT SIZE: 4200 SF

45% OF LOT (1): 1890 SF

40% OF LOT (2): N/A

MAIN HOUSE 1208 SF

GARAGE         337 SF

COVERED ENTRY     84 SF

REAR PATIO

128 SF

TOTAL: 1757 SF

PERCENTAGE: 41.83%

39.45%
EXISTING
DECEMBER 21 NOON

(P) STRUCTURE SHADOW OUTLINE

(EXISTING)
DECEMBER 21 NOON

(AFFECTED PROPERTY)
1529 BEVERLY PLACE

PREVIOUSLY SUBMITTED
DECEMBER 21 NOON

(PREVIOUSLY SUBMITTED DESIGN SHADOW OUTLINE)

PREVIOUSLY SUBMITTED DESIGN
1533 BEVERLY PLACE

CURRENT PROPOSAL
DECEMBER 21 NOON

(CURRENT PROPOSAL SHADOW OUTLINE)

CURRENT PROPOSAL
1533 BEVERLY PLACE

DECEMBER 21 AT NOON SHADOW DOES NOT AFFECT NEIGHBORS’S HOUSE
EXISTING
JUNE 21
2 HRS. AFTER SUNRISE

PREVIOUSLY SUBMITTED
JUNE 21
2 HRS. AFTER SUNRISE

CURRENT PROPOSAL
JUNE 21
2 HRS. AFTER SUNRISE

(A) STRUCTURE SHADOW OUTLINE
(E) STRUCTURE SHADOW OUTLINE
PREVIOUSLY SUBMITTED DESIGN
SHADOW OUTLINE
CURRENT PROPOSAL
SHADOW OUTLINE

EXISTING
1533 BEVERLY PLACE

PREVIOUSLY SUBMITTED
1529 BEVERLY PLACE

CURRENT PROPOSAL
1533 BEVERLY PLACE

AFFECTED PROPERTY
1529 BEVERLY PLACE

AFFECTED PROPERTY
1533 BEVERLY PLACE

AFFECTED PROPERTY
1529 BEVERLY PLACE

ATTACHMENT 9 - Administrative Record
Page 520 of 530
EXISTING
JUNE 21
NOON

PREVIOUSLY SUBMITTED
JUNE 21
NOON

CURRENT PROPOSAL
JUNE 21
NOON
March 11, 2020

Mayor Jesse Arreguin
Berkeley Councilmembers
2180 Milvia Street
Berkeley, CA 94704

VIA Email and Hand Delivery

Re: 1533 Beverly Place: Appeal of Zoning Adjustments Board ("ZAB") Decision
February 13, 2020: Grant Appeal

Dear Mayor Arreguin and Councilmembers:

On behalf of Amy Di Costanzo, 40-year resident of 1710 Sonoma Avenue who will lose her view of San Francisco Bay and all of her View Corridor from the only public room with a view in her home, I urge you to grant her appeal.

General Grounds for Appeal
- The evidence does not support the Findings;
- As such the Findings do not support the decision;
- And, acting as it did, the ZAB acted without or in excess of its jurisdiction.

Statement of Facts

When Amy and her husband bought 1710 Sonoma in 1980, it had a lovely view from the back of the kitchen. The other public rooms, living room, formal dining room, study, have almost no natural light and no view. As their family expanded to four children, they planned a 2\textsuperscript{nd}-story expansion. They circulated their proposed plans to every neighbor that could be impacted, redesigning to assure that there would be no view, light, or privacy impacts and there were no objections. After the AUP Decision approving the project, one neighbor opposed because of presumed shadow impacts, but a shadow study proved there were none. That neighbor agreed and withdrew their opposition 2 weeks later, (see attached letters) and the Permit was approved.

\[1\] This letter incorporates by reference all legal and factual arguments made on 2-11-2020 to ZAB
\[2\] Exhibits supporting each and every claim in this Appeal were presented to the ZAB, unfortunately "disinformation" was presented by Applicants' architect, and even though one ZAB member stated early on that it would be important to hear from Appellant, we were not called to respond to the "disinformation". Hard copies of the exhibits will be provided to Council prior to the Council appeal hearing.
Amy is a single mother, and to be able to remain in her home, she rents out two bedrooms, making the view from the kitchen, which also serves as the dining room and family room, all the more precious to her. Yet, even though Staff concurs that Amy will lose all view of the San Francisco Bay, and the lower portion of the San Francisco Skyline from the kitchen and adjoining deck, Staff found that loss not to be detrimental.

Amy appealed the Staff decision to ZAB on the grounds that the uncontroverted view loss as well as her view corridor loss were detrimental, and that there were reasonable design options that would restore part of that loss. Written and testimonial evidence of the feasibility of those design options were presented at the ZAB hearing.

The ZAB's Narrow Decision Which Found That Amy's Significant View Loss Was Not Detrimental Should Be Overturned.

There were significant problematic aspects of this ZAB hearing:

- Only one ZAB member visited the site, notwithstanding Amy's open invitation explaining the need physically be there to understand the impact of her view loss. The ZAB member that did come to the site voted against approval.
- One ZAB member (an alternate)'s questions were at best off point. Throughout the hearing, he asked why Amy did not offer to "buy" a view easement, then stated he was not sympathetic to her cause because "views are a luxury."
- Two (different than the one above) stated that "context" was important to their vote; unfortunately that context was erroneous, and Amy was not permitted to speak to correct that error. Both of these members stated "context" and "fairness" were material to their vote. That "Context": that back in 1993 the City allowed Amy to build her 2nd story addition even though she "very substantially impacted her neighbor's views" (and she has a "very very large house"): so to be "Fair" the City should grant the Applicants Permit, even though Amy's views will be impacted. "My sympathy (for the Appellant) is diminished...I am ready to deny the appeal" said one ZAB member.
- The finding of non-detrimet was based upon photos taken while standing; no credence was given to view loss while sitting.
- The proposed mitigation, lowering the house, was rejected on false information: Just before the final vote, two ZAB members agreed to a mitigation that would have lowered the house. But, on the false information that by so doing the house would be subject to flooding, they withdrew that mitigation.
- The Chair abstained because "I'm uncomfortable with some of the reasoning you gave, and I don't feel comfortable signing onto it."

Had the ZAB Voted on the Facts Before Them; the Outcome Would Most Likely Have Been Different.

- Amy did not seek to bar a 2nd story addition: Amy has accepted some loss to her view and offered two modest proposals, neither of which prevented a 2nd floor. One of the options would not result in the loss of any square feet but
would require lowering the house—feasible in this case because Applicant already has to break into the existing foundation and dig under the house; the other requires a notch in the 2nd story den (5th bedroom), leaves the master bedroom intact, and lowers the rest of the house by a lesser amount. Neither option would have any impact on Applicants’ new views.

- When Amy created her 2nd story she, contrary to the statements of the ZAB members, designed and modified it to insure there would be no view, light, air or privacy impacts on any of her neighbors.

- From a sitting position, which is the position most of us are in the majority of the time we are in our homes, the uncontroverted evidence is that of a major view loss. Instead the ZAB only considered impacts from standing and referred to sitting vs. standing as “splitting hairs”. (see attached photos)

- The asserted damage of flooding by lowering the house is simply untrue. There were two expert witnesses in the audience prepared to refute that claim which did not arise until the Public Hearing closed. They were not called up to do so.

**CONCLUSION**

Amy has lost her “View Corridor” (23F.04 “definitions), and significant elements (all of the San Francisco Bay; bottom part of San Francisco skyline) from the only public room with a view in her home and her deck; that is a major detriment. There are modest and feasible modifications that can mitigate at least some of her view loss while allowing the Applicant to achieve all of their stated goals. These two facts (the evidence), taken together, mandate a finding of “unreasonable detriment”. Therefore, we ask that this Council uphold this appeal to grant Amy’s modest requests.

We thank you in advance for your time and courtesy in this matter.

Very truly yours,

[Signature]

RENA RICKLES

Attachments: Zoning File: 1710 Sonoma 2nd Story Application
View loss; sitting vs. Standing

---

3 This “notch” was suggested by Applicants’ architect, while seated in Amy’s kitchen observing the view impact.
December 24, 1993

Vivian Kahn
Zoning Officer
c/o Current Planning Division
2180 Milvia Street
Berkeley CA 94704

Dear Ms. Kahn,

We wish to submit for consideration our concerns regarding the application of Y.M. Chung and G. DiCostanzo for a major residential addition at 1710 Sonoma Avenue.

Concerns:

We request that the design for the new construction take into consideration minimizing the interference with light and privacy. We value both of these dearly, which were our primary attractions to the house when purchased four and a half years ago, and wish to preserve whatever we can within reason while still allowing the new construction.

We are also concerned with the potential length of time for this new construction to be completed, since much of the work will be performed by the resident. Any recommendations on how to keep the construction period to a reasonable length of time would be welcome.

Situation:

We are on the downslope and our house is effectively 3 - 4 feet lower than the site of proposed construction at 1710 Sonoma Avenue. The kids use the rooms adjacent to 1710 Sonoma Avenue during the day and the light entering those rooms will be reduced significantly by the new construction. This effective height difference also contributes to the additional losses of light and privacy stated below.

For Consideration:

1) **Action** - Minimize the height of the new second story construction to allow maximum light into our adjacent rooms. The present proposal is for an upward extension which is 3 - 4 feet higher than necessary over most of the house, with the exception of the area above their living room which has a higher ceiling. We propose that the new construction which is not directly above their existing living room be made at a “normal” height above the first floor rather than the proposed extended height. **Effect** - This would require some design changes and a less uniform roofline, would effectively reduce the overall height of most of the new construction by 3 - 4 feet while still allowing the additional square footage, and would allow additional light transmission into our adjacent rooms.

2) **Action** - Not extend backwards beyond the present back kitchen wall of 1710 Sonoma Avenue to allow sunlight into our adjacent rooms and preserve some privacy in our backyard and deck areas. The present proposal is to extend the back southwest corner room of the house about 2 feet to the present kitchen wall and then an additional 3 - 4 feet beyond the kitchen wall. We propose that the new construction not extend beyond the present back kitchen wall. **Effect** - This
would reduce the size of the southwest room extension at 1710 Sonoma Avenue somewhat, while allowing us to maintain some of the present sunlight in our house and preserve some of the privacy, although significantly reduced, in our deck and backyard areas.

Presently our backyard and deck areas are completely private, as when we purchased the house. The second floor addition next door will compromise that completely. We realize that it would be beyond our rights to request that these be entirely preserved at the expense of neighbors. However, we feel we will end up conceding most of this privacy in the house and yard and considerable light in the house. We therefore request consideration of these concerns and perhaps some compromises in the design for this new next-door addition to reduce the effects on our residence.

We will not be available from noon on December 27 until January 2 nor from January 13 - 22. Please feel free to contact us at any other. We look forward to hearing from you.

Yours truly,

Sabine & John Harris
1708 Sonoma Avenue
Berkeley, CA 94707
phone: (510) 524-0305

cc: G. DiCostanzo
January 11th, 1994

Vivian Kahn
Zoning Officer
c/o Current Planning Division
2180 Milvia St.
Berkeley, Ca. 94704

Dear Ms. Kahn,

We hereby would like to withdraw from our objections to the planned addition at 1710 Sonoma Ave., stated in a letter to you on December 24th, 1993.

Sincerely,

(Sabine Harris)

(John W. Harris)
Seated at the kitchen table. Doors open to deck.