



Office of the City Manager

PUBLIC HEARING
April 26, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jordan Klein, Director, Planning and Development Department

Subject: ZAB Appeal: 1643-1647 California Street, Use Permit #ZP2021-0001

RECOMMENDATION

Conduct a public hearing, and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP2021-0001 to: 1) create a new lower basement level, 2) construct a new second story, and 3) modify the existing duplex layout resulting in a 3,763 square foot duplex on an existing property, and dismiss the appeal.

FINANCIAL IMPLICATIONS

None.

CURRENT SITUATION AND ITS EFFECTS

On January 8, 2021, Sundeep Grewel ("Applicant") submitted an application for a Use Permit (UP) to remodel and expand a duplex located at 1643 and 1647 California Street.

On January 19, 2021, the City mailed postcards to neighboring property owners and occupants within 300 feet to inform the public of the receipt of a Zoning Permit application at the site, and posted a project yellow poster.¹

In response to this notification, staff received several communications regarding the project, both in support and opposition. Concerns raised include:

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

¹ The standard protocol for installation of a Project Yellow Poster and neighborhood contact and signatures was waived from March 2020 until July 2021.

Support of the application includes:

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

On December 9, 2021, the Zoning Adjustments Board (ZAB) conducted a public hearing for the Use Permit. After hearing public comments and holding discussion, the ZAB approved the Use Permit by a vote of 9-0-0-0 (Yes: Duffy, Kahn, Kim, Gaffney, O'Keefe, Olson, Sanderson, Thompson, Tregub; No: None; Abstain: None; Absent: None).

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

On or before April 12, 2022, staff posted the public hearing notice at the site and two nearby locations, and mailed notices to property owners and occupants within 300 feet of the project site, and to all registered neighborhood groups that cover this area. The Council must conduct a public hearing to resolve the appeal.

Project Description

The project site is located in the North Berkeley neighborhood, on the east side of California Street at the corner of California and Virginia Street. It is one block east of Sacramento Street and four blocks west of Martin Luther King Jr. Way. The surrounding area consists of residential uses including one- and two-story single-family dwellings and two-story multi-family buildings.

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

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

The project would make several alterations to the existing property. An existing accessory structure (shed) would be removed. The existing residential structure would be shifted by 1-inch to the south to create a conforming left (north) side setback of 4 feet. The proposal would restore one additional dwelling unit at 1643 California, but

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

BACKGROUND

The issues raised in the appellants' letters and staff's responses follow. For the sake of brevity, the appeal issues are not re-stated in their entirety. Please refer to the attached appeal letter (Attachment 2) for the full text.

Issue #1: Appellants allege that ZAB and staff erroneously applied the Housing Accountability Act (HAA) in a way that inappropriately limited ZAB's ability to modify the project. The appellants contend that the HAA only applies to very-low to moderate income housing developments. They further contend that since the project does not add new units, or provide low-income housing, the HAA should not apply, and ZAB should modify the project to address the appellants' concerns.

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

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

The HAA applies to a "housing development project," which could be residential units only or a mixed-use development consisting of residential and nonresidential that is at least two-thirds residential, as well as transitional or supportive housing. The definition of housing development project uses the plural "units", meaning that it applies to two or more units.

The HAA also applies only when a project meets the local agency's objective development standards. Although the existing structure is non-conforming for lot

coverage, density, and yards, the proposed additions would continue, but not worsen, these non-conformities. The project is eligible for zoning adjustments through the use permit process, and there are no objective standards or findings for considering such permits, so the HAA still applies to the project. Therefore, the City may not deny the project or approve the project at a reduced density without basing its decision on the written findings under Section 65589.5(j), listed above.

Pursuant to Berkeley Municipal Code (BMC) Section 23C.04.070.C², additions and/or enlargements of lawful non-conforming structures that are non-conforming by reason of lot coverage are permitted with a Use Permit if the addition/enlargement does not increase coverage or exceed the height limit. The property is eligible for the use permit because it is non-conforming for the maximum allowable lot coverage, with 50 percent coverage where 45 percent is the maximum on this R-2 zoned property. The proposed project would remove an existing shed in the rear yard which would reduce the lot coverage to 44 percent, but the standards are different for a one-story or a two-story house, so the property would remain non-conforming for the revised allowable lot coverage of 40 percent.

While the proposed structure would still be non-conforming to the allowable lot coverage, the project would reduce the non-conformity from 5 percent over the allowable limit to 4 percent over the allowable limit. The proposed addition is located over existing covered area, and therefore does not increase the non-conforming lot coverage. Additionally, the addition consists of a second story addition, reaching a total of 23 feet, 10 inches, which complies with the maximum average height limit of 28 feet.

Pursuant to BMC Section 23C.04.070.E, additions and/or enlargements of lawful non-conforming structures that are non-conforming by reason of residential density are permitted with a Use Permit if the addition/enlargement does not increase the density or exceed the height limit. The project proposes to maintain the density at two units, and the addition would comply with the allowable average height limit in the district.

Pursuant to BMC Section 23C.04.070.C, additions and/or enlargements which vertically extend or alter a portion of a building which encroaches into a non-conforming yard are permitted with an Administrative Use Permit if the existing use of the property is conforming and if the addition/enlargement would not: 1) reduce any yard below the minimum setback requirements or further reduce existing non-conforming yards; or 2) exceed the maximum or calculated height limits. The existing residential structure is non-conforming to the front, rear, and left (north) side setbacks. The proposed addition/enlargement of the house would correct the non-conforming left side setback, but is proposed to vertically extend the non-conforming front and rear setbacks. The

² The prior Zoning Ordinance was in effect at the time this application was deemed complete. The version of the BMC Title 23, Zoning Ordinance, that was in effect at the time this application was deemed complete is available online: [https://www.cityofberkeley.info/Planning_and_Development/Land_Use_Division/Zoning_Ordinance_Revision_Project_\(ZORP\).aspx](https://www.cityofberkeley.info/Planning_and_Development/Land_Use_Division/Zoning_Ordinance_Revision_Project_(ZORP).aspx)

front setback would be vertically extended both up (with the second story) and down (with the basement), while the rear setback would be vertically extended down with the expansion of the basement. The second story at the rear would comply with the required 20-foot rear setback. Because the enlargement of the building would comply with the permitted residential use on the property, and the vertical expansions within the non-conforming setbacks would not further reduce the non-conformity, these expansions are permissible.

Since the ZAB decision, the City has determined that “to lower density” means a reduction in the units built per acre. This is consistent with guidance from the California Department of Housing and Community Development. Therefore, a condition of approval that limited the size of the units would not lower the density of the project. Even if an application to expand an existing dwelling unit were found to be a housing development project, the expansion could be modified without lowering the density.

ZAB considered and discussed the evidence presented at the hearing, and acted within its purview to approve the proposed project, although ZAB may have had faulty information that led them to believe that they could not modify the project. Council may add conditions to the proposed project to address the appellants’ concerns (such as the three specific modifications to the project that were requested by the appellant, as described on page 9 of the appeal letter, included as attachment 2), or may remand the project back to ZAB.

Issue #2: Appellants allege that staff failed to provide adequate opportunities for neighbors to receive information and provide input on the proposed project. The appellants contend that after public comment had been closed, the ZAB chair read from a memo on the interpretation of the HAA that affected how the ZAB voted on the proposed project. Appellants claim that the memo had not been made publicly available, and that they were not able to comment on the memo during the public comment portion of the ZAB meeting. If the appellants had been aware of the memo before the ZAB meeting, they state that their letters to staff and ZAB, and public comments during the meeting, would have been different.

Response: The August 26, 2021 ZAB meeting packet included a communication from the Land Use Planning Manager to staff, that was included as a staff communication to ZAB³. The memo discusses the HAA, Density Bonuses, and objective standards. Before public comment opened at the December 9 meeting, staff and ZAB did briefly discuss the HAA and objective standards and how both relate to the project. The ZAB chair referenced the memo from the Land Use Planning Manager before public comment was opened.

³ See page 4 of the agenda:

https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_ZAB/2021-08-26_ZAB_Agenda.pdf.

Neighbors have shared letters of opposition with staff and ZAB throughout the application process, and were able to share their concerns during the ZAB meeting. Neighbors at 1609 Virginia are concerned about the increased shadows on their kitchen windows and bedroom windows, and deck and yard, during the afternoon and evening during the summer, and increased shadows on a detached office/bedroom during the winter. The neighbors are also concerned about views from the addition to their deck and yard, and kitchen and bedroom. The neighbor at 1651 California is concerned about views from the addition to her yard and kitchen. In addition, the appellants find the number of Administrative Use Permits and Use Permits required for the proposed project to be excessive.

Members of the ZAB described the impacts as “typical of an urban setting,” noted that the applicant had changed the roof from a butterfly roof to a gable to lower the height, the project had been revised from three stories to two stories with a below-grade basement, and that the addition met the 20-foot setback requirements at the front and rear. Even if neighbors are opposed to a project, ZAB may choose to not modify a project and approve it as is. Staff recommends the Council dismiss this appeal point.

Issue #3: Appellants allege that several procedural requirements were not met when story poles were not installed, the typical zoning project “yellow poster” was not installed, and the staff report was not available far enough in advance before the ZAB meeting.

Response: Page 10 of [Zoning Project Application Submittal Requirements](#) addresses when story poles are required: for new main buildings and additions exceeding 14 feet in average height in the Hillside Overlay District. This project is not in the Hillside Overlay. At the project planner’s discretion story poles may be required for projects outside of the Hillside Overlay when there is a concern about a protected view⁴, but views were not discussed prior to or during the ZAB hearing.

The appellants also state that the typical “yellow poster” was not installed by the applicant. When the application was submitted in January 2021, the 2-foot by 3-foot yellow poster requirement was on hold due to COVID-19 shelter-in-place orders. In July 2021, the yellow poster requirement was reinstated for new applications (page 4 of the [Submittal Requirements](#)). In January 2021, staff sent postcards informing neighbors of the project and posted a smaller yellow poster, similar to what is posted before public hearings, as that was the procedure at the time. Normal noticing procedures were followed by staff prior to the ZAB meeting in December 2021.

The appellants contend that the ZAB staff report was not posted by the morning of December 8, and they had to reach out to the planner to get a copy of the report.

⁴ Defined in BMC 23F.04 – View Corridor: 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 Island or any other significant vista that substantially enhances the value and enjoyment of real property.

However, the ZAB agenda, with links to the staff reports and attachments, was posted to the ZAB webpage on December 2, 2021.

Staff recommends the Council dismiss these appeal points.

Issue #4: Appellants dislike the City's Zoom meeting format. The appellants contend that ZAB meetings conducted over Zoom should have "video and chat channels enabled for all participants so that affected parties can communicate easily."

Response: Like all public meetings that have occurred during the COVID-19 pandemic, ZAB meetings are conducted over Zoom, using a webinar format. The ZAB chair, ZAB secretary, and ZAB clerk can allow people to talk during the appropriate times outlined in the agenda. Similar to regular public meetings, members of the public must request to speak when public comment is called for, and the amount of time members of the public may speak is limited by the ZAB chair and enforced by the clerk.

Staff recommends the Council dismiss this appeal point.

Issue #5: Appellants are frustrated with the City's appeal process. The appellants contend that they sent emails to ZAB and the project planner after the ZAB meeting to find out the appeal procedure, but they never got a thorough answer, until they contacted the Office of the City Clerk on January 7.

Response: Page 7 of the December 9, 2021 ZAB agenda, like all ZAB agendas, describes the procedure to request a Notice of Decision.

Staff recommends the Council dismiss this appeal point.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The project approved by the ZAB is in compliance with all applicable State and local environmental requirements, would be located in a transit-rich area, and would be built and operated according to current codes for energy conservation, waste reduction, low toxicity, and other factors.

RATIONALE FOR RECOMMENDATION

The ZAB considered all of the information received from staff, the applicant, and the neighbors, and determined that the project is consistent with the zoning ordinance and applicable policies of the General Plan, and would not result in detrimental impacts to residents, adjacent properties, the surrounding area, or to the general welfare of the city.

Staff believes that the ZAB considered and discussed the evidence presented at the hearing, and acted within its purview to approve the proposed project. None of the issues raised on appeal are different from those raised at the ZAB hearing, and no new evidence or argument would dispute the reasoned findings of the ZAB. Therefore, staff

recommends that the City Council uphold the ZAB decision to approve 2,229 square-foot addition, with an average height of 23 feet 10 inches.

ALTERNATIVE ACTIONS CONSIDERED

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

Action Deadline:

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

CONTACT PERSONS

Jordan Klein, Director, Planning & Development Department, (510) 981-7534
Steven Buckley, Land Use Planning Manager, (510) 981-7411
Allison Riemer, Project Planner, (510) 981-7433

Attachments:

- 1: Resolution
 - Exhibit A: Findings and Conditions
 - Exhibit B: Project Plans, dated July 15, 2021
- 2: Appeal Letter, received January 10, 2022
- 3: ZAB Staff Report, dated December 9, 2021
- 4: Index to Administrative Record
- 5: Administrative Record
- 6: Public Hearing Notice

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

UPHOLD THE ZONING ADJUSTMENTS BOARD (ZAB) DECISION TO APPROVE USE PERMIT #ZP2021-0001 TO: 1) CREATE A NEW LOWER BASEMENT LEVEL, 2) CONSTRUCT A NEW SECOND STORY, AND 3) MODIFY THE EXISTING DUPLEX LAYOUT RESULTING IN A 3,763 SQUARE FOOT DUPLEX ON AN EXISTING PROPERTY, AND DISMISS THE APPEAL.

WHEREAS, on January 8, 2021, Sundeep Grewel (“Applicant”) submitted an application for a Use Permit (UP) to remodel and expand a duplex located at 1643 and 1647 California Street; and

WHEREAS, on December 9, 2021, the Zoning Adjustments Board (ZAB) conducted a public hearing for the Use Permit. After hearing public comments and holding discussion, the ZAB approved the Use Permit by a vote of 9-0-0 (Yes: Duffy, Kahn, Kim, Gaffney, O’Keefe, Olson, Sanderson, Thompson, Tregub; No: None; Abstain: None; Absent: None; and

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

WHEREAS, on or before April 12, 2022, staff posted the public hearing notice at the site and two nearby locations, and mailed notices to property owners and occupants within 300 feet of the project site, and to all registered neighborhood groups that cover this area; and

WHEREAS, on April 26, 2022, the Council held a public hearing to consider the ZAB’s decision, and, in the opinion of this Council, the facts stated in or ascertainable from the public record, including the staff report and comments made at the public hearing, warrant approving the project.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Council hereby adopts the findings for approval made by the ZAB in Exhibit A, affirms the decision of the ZAB to approve Use Permit #ZP2021-0001, and dismisses the appeal.

Exhibits

A: Findings and Conditions

B: Project Plans, dated July 15, 2021

FINDINGS AND CONDITIONS

DECEMBER 9, 2021

1643 & 1647 California Street

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

PERMITS REQUIRED

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

I. CEQA FINDINGS

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

II. FINDINGS FOR APPROVAL

1. As required by Section 23B.32.040.A of the BMC, the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:
 - A. The project will add a second level to the home, of which there are several examples in the neighborhood.
 - B. The second story addition will step in and comply with the required front and rear yard setbacks.

- C. A basement is proposed to be added. While adding additional square footage to the building, the basement will not create any new impacts to the surrounding neighbors due to its placement partially below grade, maintaining the existing first floor level.
- D. The neighborhood is a mix of residential uses, including apartments and single-family and multi-family homes. Existing structures in the immediate neighborhood vary in height from one to two stories; and
- E. The project approval is subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, thereby ensuring the project will not be detrimental.

III. OTHER FINDINGS FOR APPROVAL

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

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

IV. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

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

1. Conditions Shall be Printed on Plans

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

2. Applicant Responsible for Compliance with Conditions

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

3. Uses Approved Deemed to Exclude Other Uses (Section 23B.56.010)

- A. This Permit authorizes only those uses and activities actually proposed in the application, and excludes other uses and activities.
- B. Except as expressly specified herein, this Permit terminates all other uses at the location subject to it.

4. Modification of Permits (Section 23B.56.020)

No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Board, except that the Zoning Officer may approve changes that do not expand, intensify, or substantially change the use or building.

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

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

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

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

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

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

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

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

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

9. Indemnification Agreement

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

V. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD

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

Prior to Submittal of Any Building Permit:

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

Project Liaison _____
Name Phone #

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

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

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

12. Toxics. The applicant shall contact the Toxics Management Division (TMD) at 1947 Center Street or (510) 981-7470 to determine which of the following documents are required and timing for their submittal:

A. Environmental Site Assessments:

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

B. Soil and Groundwater Management Plan:

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

C. Building Materials Survey:

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

Documentation evidencing disposal of hazardous waste in compliance with the survey shall be submitted to TMD within 30 days of the completion of the demolition. If asbestos is identified, Bay Area Air Quality Management District Regulation 11-2-401.3 a notification must be made and the J number must be made available to the City of Berkeley Permit Service Center.

D. Hazardous Materials Business Plan:

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

During Construction:

13. Construction Hours. Construction activity shall be limited to between the hours of 8:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and Noon on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.
14. Public Works - Implement BAAQMD-Recommended Measures during Construction. For all proposed projects, BAAQMD recommends implementing all the Basic Construction Mitigation Measures, listed below to meet the best management practices threshold for fugitive dust:
 - A. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
 - B. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
 - C. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
 - D. All vehicle speeds on unpaved roads shall be limited to 15 mph.
 - E. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
 - F. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
 - G. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.
 - H. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.
15. Air Quality - Diesel Particulate Matter Controls during Construction. All off-road construction equipment used for projects with construction lasting more than 2 months shall comply with **one** of the following measures:
 - A. The project applicant shall prepare a health risk assessment that demonstrates the project's on-site emissions of diesel particulate matter during construction will not exceed health risk screening criteria after a screening-level health risk assessment is conducted in accordance with current guidance from BAAQMD and OEHHA. The health risk assessment shall be submitted to the Land Use Planning Division for review and approval prior to the issuance of building permits; or

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

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

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

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

The applicant shall secure the City Traffic Engineer's approval of a TCP. Please contact the Office of Transportation at 981-7010, or 1947 Center Street, and ask to speak to a traffic engineer. In addition to other requirements of the Traffic Engineer, this plan shall include the locations of material and equipment storage, trailers, worker parking, a schedule of site operations that may block traffic, and provisions for traffic control. The TCP shall be consistent with any other requirements of the construction phase.

Contact the Permit Service Center (PSC) at 1947 Center Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dashboard permits). Please note that the Zoning Officer and/or Traffic Engineer may limit off-site parking of construction-related vehicles if necessary to protect the health, safety or convenience of the surrounding neighborhood. A current copy of this Plan shall be available at all times at the construction site for review by City Staff.

19. Avoid Disturbance of Nesting Birds. Initial site disturbance activities, including vegetation and concrete removal, shall be prohibited during the general avian nesting season (February 1 to August 30), if feasible. If nesting season avoidance is not feasible, the applicant shall retain a qualified biologist to conduct a preconstruction nesting bird survey to determine the presence/absence, location, and activity status of any active nests on or adjacent to the project site. The extent of the survey buffer area surrounding the site shall be established by the qualified biologist to ensure that direct and indirect effects to nesting birds are avoided. To avoid the destruction of active nests and to protect the reproductive success of birds protected by the MBTA and CFGC, nesting bird surveys shall be performed not more than 14 days prior to scheduled vegetation and concrete removal. In the event that active nests are discovered, a suitable buffer (typically a minimum buffer of 50 feet for passerines and a minimum buffer of 250 feet for raptors) shall be established around such active nests and no construction shall be allowed inside the buffer areas until a qualified biologist has determined that the nest is no longer active (e.g., the nestlings have fledged and are no longer reliant on the nest). No ground-disturbing activities shall occur within this buffer until the qualified biologist has confirmed that breeding/nesting is completed and the young have fledged the nest. Nesting bird surveys are not required for construction activities occurring between August 31 and January 31.
20. Archaeological Resources (Ongoing throughout demolition, grading, and/or construction). Pursuant to CEQA Guidelines section 15064.5(f), "provisions for historical or unique archaeological resources accidentally discovered during construction" should be instituted. Therefore:
- A. In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist, historian or paleontologist to assess the significance of the find.
 - B. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified professional would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Berkeley. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by the qualified professional according to current professional standards.
 - C. In considering any suggested measure proposed by the qualified professional, the project applicant shall determine whether avoidance is necessary or feasible in light of factors such as the uniqueness of the find, project design, costs, and other considerations.
 - D. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while mitigation measures for cultural resources is carried out.
 - E. If significant materials are recovered, the qualified professional shall prepare a report on the findings for submittal to the Northwest Information Center.

- 21. Human Remains (Ongoing throughout demolition, grading, and/or construction).** In the event that human skeletal remains are uncovered at the project site during ground-disturbing activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to Section 15064.5 (e)(1) of the CEQA Guidelines. If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.
- 22. Paleontological Resources (Ongoing throughout demolition, grading, and/or construction).** In the event of an unanticipated discovery of a paleontological resource during construction, excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified paleontologist (per Society of Vertebrate Paleontology standards [SVP 1995,1996]). The qualified paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the project on the qualities that make the resource important, and such plan shall be implemented. The plan shall be submitted to the City for review and approval.
- 23. Stormwater Requirements.** The applicant shall demonstrate compliance with the requirements of the City's National Pollution Discharge Elimination System (NPDES) permit as described in BMC Section 17.20. The following conditions apply:
- A. The project plans shall identify and show site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants to the City's storm drainage system, regardless of season or weather conditions.
 - B. Trash enclosures and/or recycling area(s) shall be covered; no other area shall drain onto this area. Drains in any wash or process area shall not discharge to the storm drain system; these drains should connect to the sanitary sewer. Applicant shall contact the City of Berkeley and EBMUD for specific connection and discharge requirements. Discharges to the sanitary sewer are subject to the review, approval and conditions of the City of Berkeley and EBMUD.
 - C. Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to stormwater pollution. Where feasible, landscaping should be designed and operated to treat runoff. When and where possible, xeriscape and drought tolerant plants shall be incorporated into new development plans.
 - D. Design, location and maintenance requirements and schedules for any stormwater quality treatment structural controls shall be submitted to the Department of Public Works for review with respect to reasonable adequacy of the controls. The review does not relieve the property owner of the responsibility for complying with BMC Chapter 17.20 and future revisions to the City's overall stormwater quality ordinances. This review shall be shall be conducted prior to the issuance of a Building Permit.

- E. All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.
 - F. All on-site storm drain inlets/catch basins must be cleaned at least once a year immediately prior to the rainy season. The property owner shall be responsible for all costs associated with proper operation and maintenance of all storm drainage facilities (pipelines, inlets, catch basins, outlets, etc.) associated with the project, unless the City accepts such facilities by Council action. Additional cleaning may be required by City of Berkeley Public Works Engineering Dept.
 - G. All on-site storm drain inlets must be labeled “No Dumping – Drains to Bay” or equivalent using methods approved by the City.
 - H. Most washing and/or steam cleaning must be done at an appropriately equipped facility that drains to the sanitary sewer. Any outdoor washing or pressure washing must be managed in such a way that there is no discharge or soaps or other pollutants to the storm drain. Sanitary connections are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
 - I. Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry to the storm drain system. If any cleaning agent or degreaser is used, wash water shall not discharge to the storm drains; wash waters should be collected and discharged to the sanitary sewer. Discharges to the sanitary sewer are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
 - J. The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations, or a project stop work order.
- 24. Public Works.** All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter thick and secured to the ground.
- 25. Public Works.** The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.
- 26. Public Works.** The project sponsor shall maintain sandbags or other devices around the site perimeter during the rainy season to prevent on-site soils from being washed off-site and into the storm drain system. The project sponsor shall comply with all City ordinances regarding construction and grading.
- 27. Public Works.** Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season the applicant shall obtain approval of an erosion prevention plan by the Building and Safety Division and the Public Works Department. The applicant shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.
- 28. Public Works.** The removal or obstruction of any fire hydrant shall require the submission of a plan to the City’s Public Works Department for the relocation of the fire hydrant during construction.

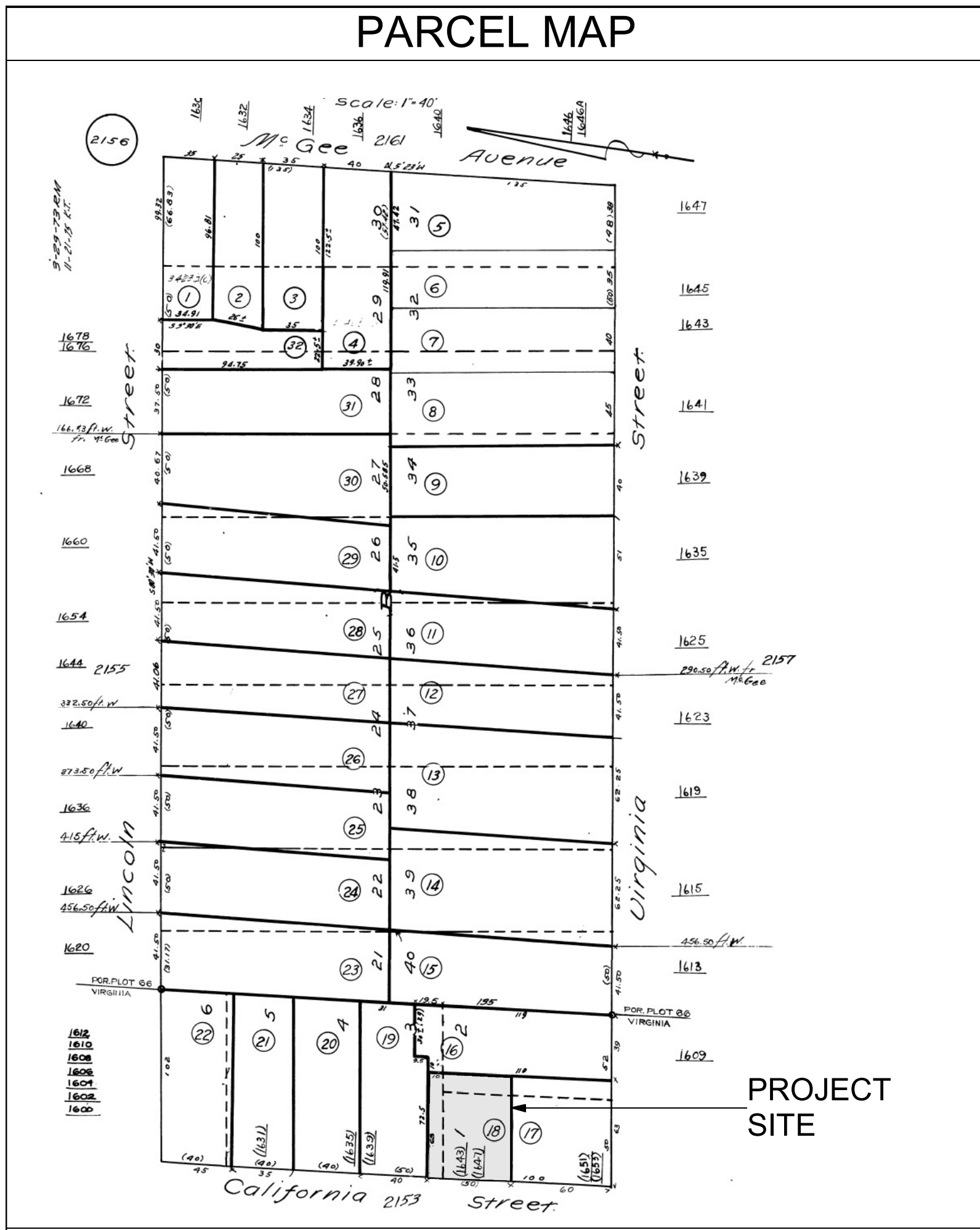
- 29. Public Works.** If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.

Prior to Final Inspection or Issuance of Occupancy Permit:

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

At All Times:

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



SITE PHOTOS



Aerial of existing duplex



Front and right Side of existing duplex



Front and left Side of existing duplex

OPPENHEIMER RESIDENCE

1643 & 1647 California St. CA 94703

SCOPE OF WORK

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

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

Basement/First floor:

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

Second floor:

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

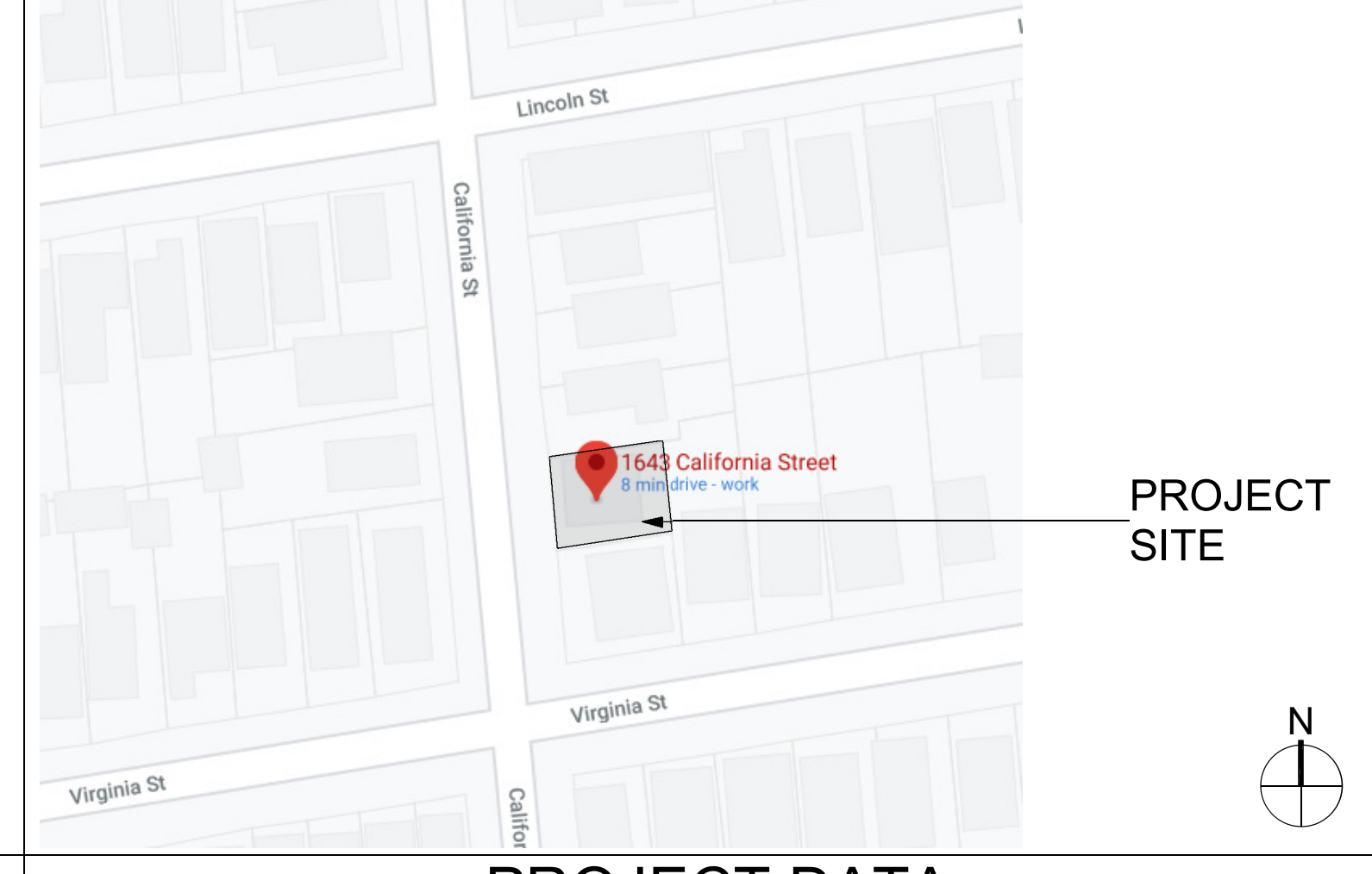
Third floor:

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

Miscellaneous:

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

VICINITY MAP



PROJECT DIRECTORY

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

Architect:
Sundeep Grewal
Studio G+S, Architects
2223 5th St.
Berkeley, CA 94710
Tel: 510-548-7448
sunny@sgsarch.com

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

PROJECT DATA

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

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

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

Historic Preservation
Landmarks or Structure of Merit: No

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

Wildlife Urban Interface: No

SHEET INDEX

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

APPLICABLE CODES

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

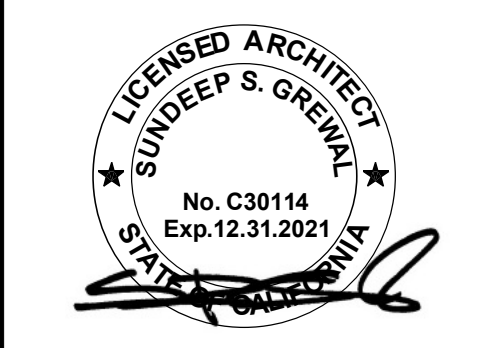
This project shall conform to all the above codes and any local and state laws and regulations adopted by the City of Berkeley, CA.

ABBREVIATIONS

& @ perpen. # (e) (n) (r) a.f.f. acous. adj. alum. approx. arch. asph. board bd. bldg. blk. blkg. bm. bot. b.p. b/w cab. cem. cer. cl. clg. clkg. c.o. clo. clr. col. comp. conc. constr. cont. det. d.f. dia. dim. dir. disp. d.w. dr. drw. drg. drgs. e. ea. el. elec. encd. eq. eqpt. ext. f. f.d.c.	and at perpendicular pound or number existing new renovated above finished floor acoustical adjacent/ adjustable aluminum approximate architectural asphalt board building block blocking beam bottom building paper between cabinet cement ceramic center line ceiling caulking cleanout closet clear column composition concrete construction continuous detail douglass fir diameter dimension direction disposal dishwasher door drawer drawing drawings east each elevation electrical enclosure equal equipment exterior frosted fire dept. connection	fdn. fin. fl. flash. flor. f.o.c. f.o.s. ft. ftg. furn. g.a. gal g.s.m. gl. gnd. grade gyp. bd. h.b. hdwd. h.f. horiz. hgt i.d. insul. intl. jt. kit. lav. loc. lt. max. m.c. mech. memb. mfr. min. mir. misc. mtd. mtl. n. nat. nec. neo. n.i.c. no. nom. n.s. o.a. o.c. o.d. opng. opp. pl. p.lam. plywd.	foundation finish floor flashing fluorescent face of concrete face of finish face of studs foot or feet footing furnace gauge gallon galvanized sheet metal glass ground grade gypsum board hose bibb hardwood hem fir horizontal height inside diameter (dia.) insulation interior joint kitchen lavatory location light maximum medicine cabinet mechanical membrane manufacturer minimum mirror miscellaneous mounted metal north natural necessary neoprene not in contract number nominal not to scale overall on center outside diameter (dim.) opening opposite property line plastic laminate plywood	pr. p.s. pt. p.t. pdt. r. r.a. ref. refr. rgtr. reinf. req. rm. r.o. rwd. r.w.l. s. s.c. sched. sect. sh. shr. sim. s.mech. s.o. spec. sq. s.s.d. sst. std. stl. stor. struct. sym. t. t.b. tel. t. & g. thk. t.b.r. t.o. t.p.d. t.v. typ. unf. u.o.n. vert. v.g. v.i.f. w.h. w. w/ wd. w/o w.o. wp. wt.	pair plumbing stack point pressure treated painted riser return air reference refrigerator register reinforced required room rough opening redwood rain water leader south solid core schedule section shelf shower similar see mechanical drawings sash opening specification square see structural drawings stainless steel standard steel storage structure symmetrical tread or tempered towel bar telephone tongue & groove thick to be removed top of toilet paper dispenser television typical unfinished unless otherwise noted vertical vertical grain verify in field water heater west with wood without where occurs waterproof weight
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2223 Fifth St.
Berkeley, CA 94710
Ph: 510.548.7448
info@sgsarch.com
www.sgsarch.com



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

Sheet Contents:
Sheet Index
Applicable Codes
Abbreviations
Vicinity Map
Project Data
Scope of Work
Project Directory
Photos

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Project No: 20-13-420

Drawn By: SSG

Checked By: SSG

Scale: N/A

Revisions:
Use Permit Set: 12-10-2020

Redesign: 5-25-2021

Planning Review: 6-29-2021

Planning Review: 7-15-2021

Planning Review: 8-26-2021

Sheet A0.0



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



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

Sheet Contents:
Existing Site Plan
Proposed Site Plan

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Project No:
20-13-420

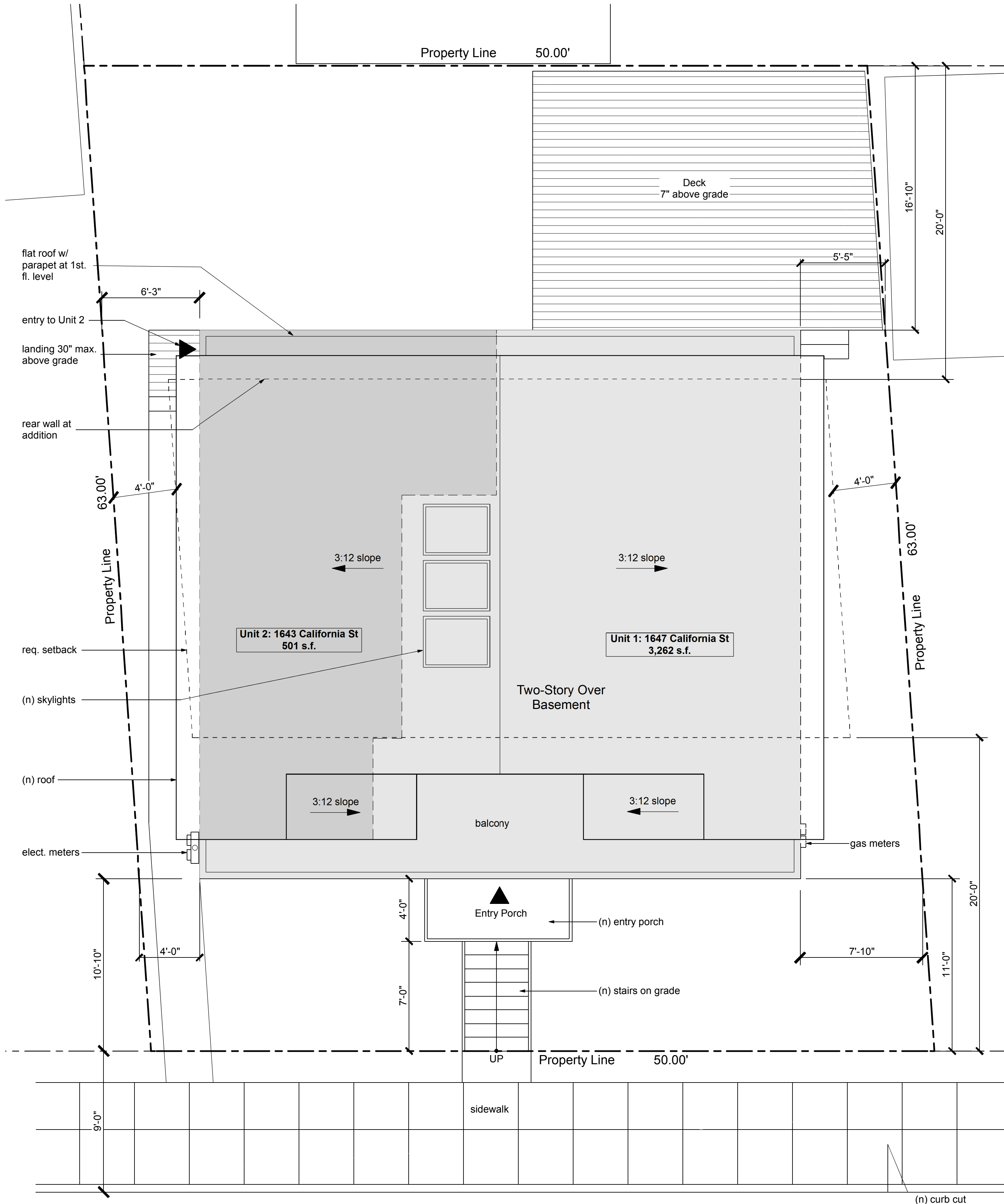
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Checked By:
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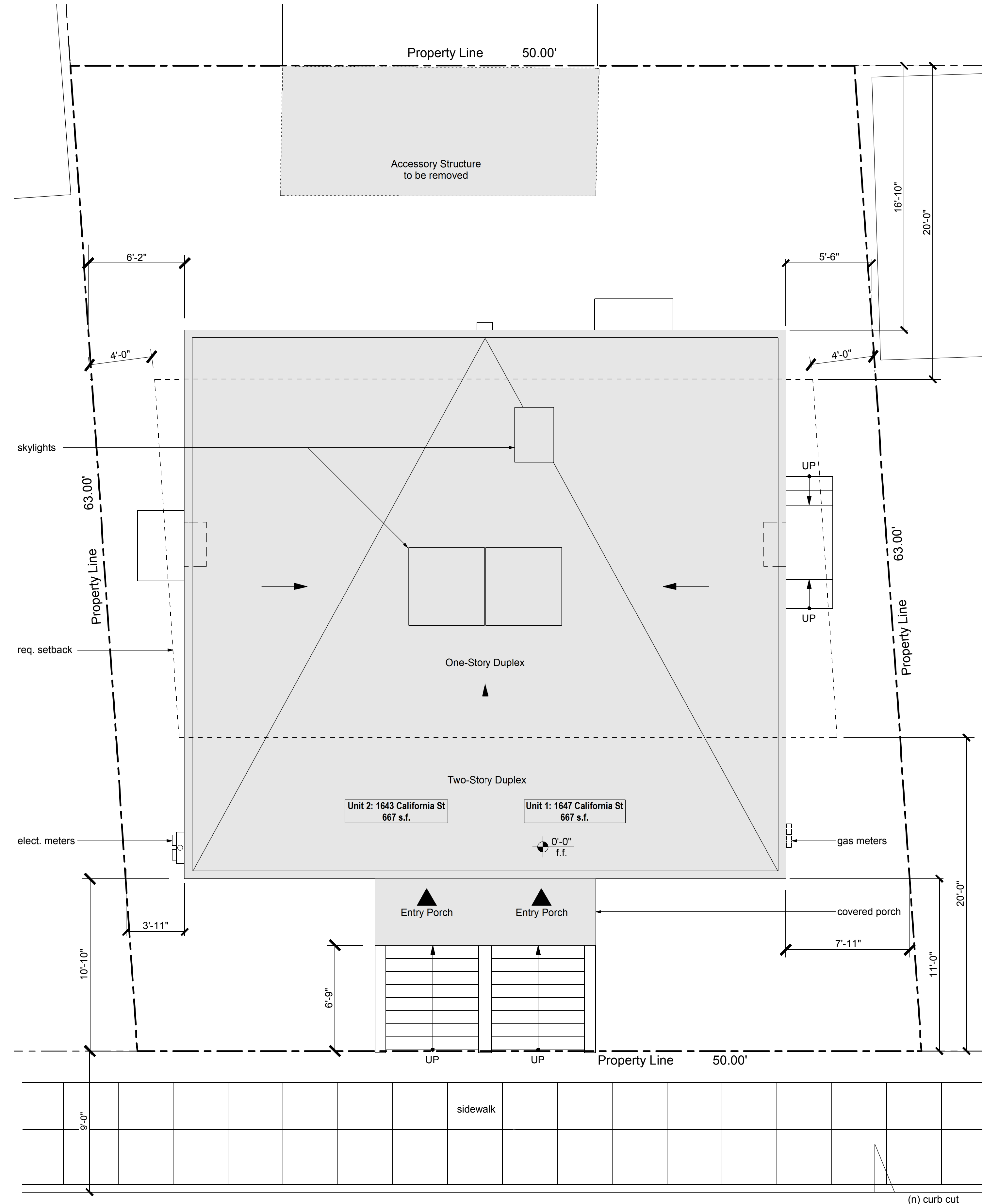
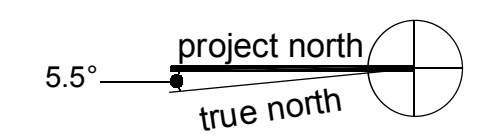
Scale:
1/4" = 1'-0"

Revisions:
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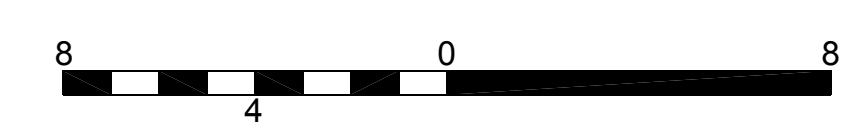
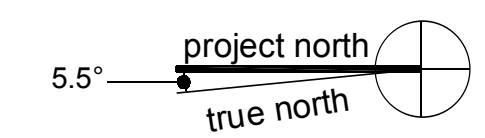
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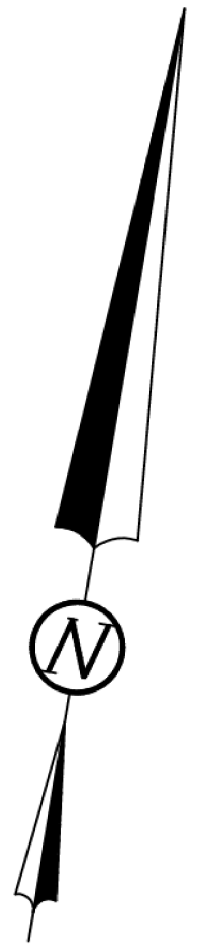


2 Proposed Site Plan

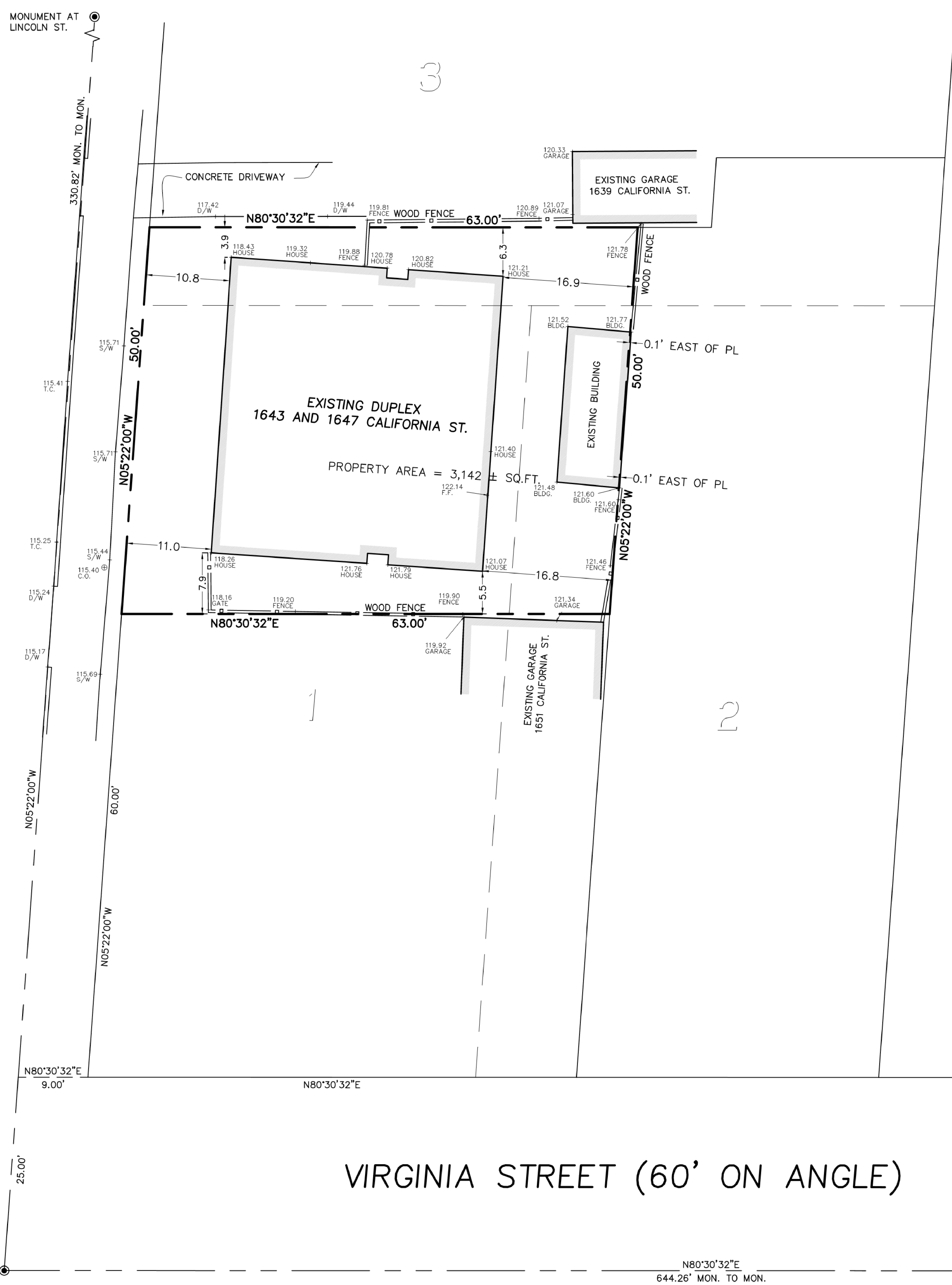


1 Existing Site Plan

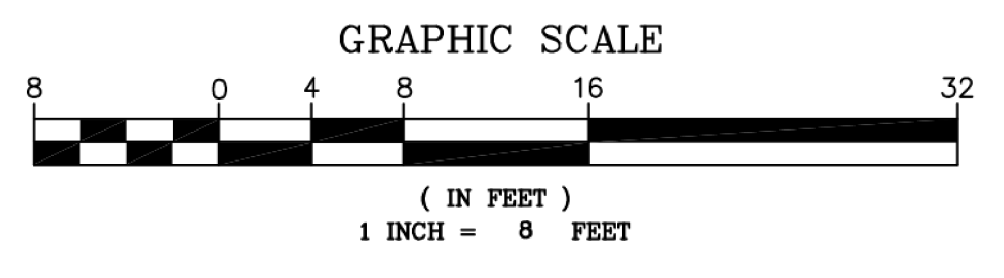




CALIFORNIA STREET (60' ON ANGLE)



VIRGINIA STREET (60' ON ANGLE)



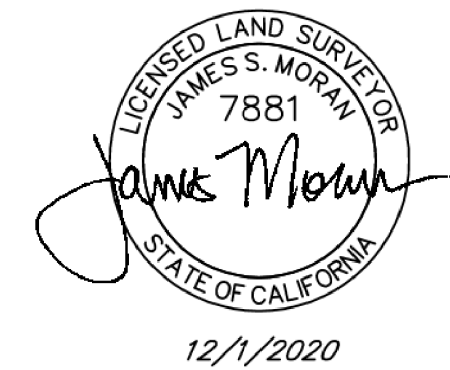
HOUSE LOCATION SURVEY

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

NOVEMBER 17, 2020 SCALE: 1" = 8'

MORAN ENGINEERING, INC.

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



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

GENERAL NOTES

BENCHMARK: MONUMENT PIN ON THE WEST SIDE OF SACRAMENTO STREET AT VIRGINIA STREET. ELEVATION = 108.683 PER CITY OF BERKELEY ENGINEERING DIVISION RECORDS. ELEVATIONS ARE BASED UPON THE CITY OF BERKELEY DATUM.
THIS SURVEY IS BASED UPON THE GRANT DEED TO LAWYERS ASSET MANAGEMENT INC. RECORDED DECEMBER 1, 1989 SERIES 89-324628, ALAMEDA COUNTY RECORDS.
THE BEARINGS ON THIS MAP ARE BASED UPON THE MONUMENT LINE IN CALIFORNIA STREET WITH A BEARING OF N05°22'00"W AS SHOWN ON PARCEL MAP 6679 FILED MARCH 29, 1994 IN BOOK 213 OF MAPS PAGES 49-50.



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Ph: 510.548.7448
info@sgsarch.com
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Berkeley, CA 94703
APN: 58-2156-18

Sheet Contents:
Site Survey

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Project No: 20-13-420

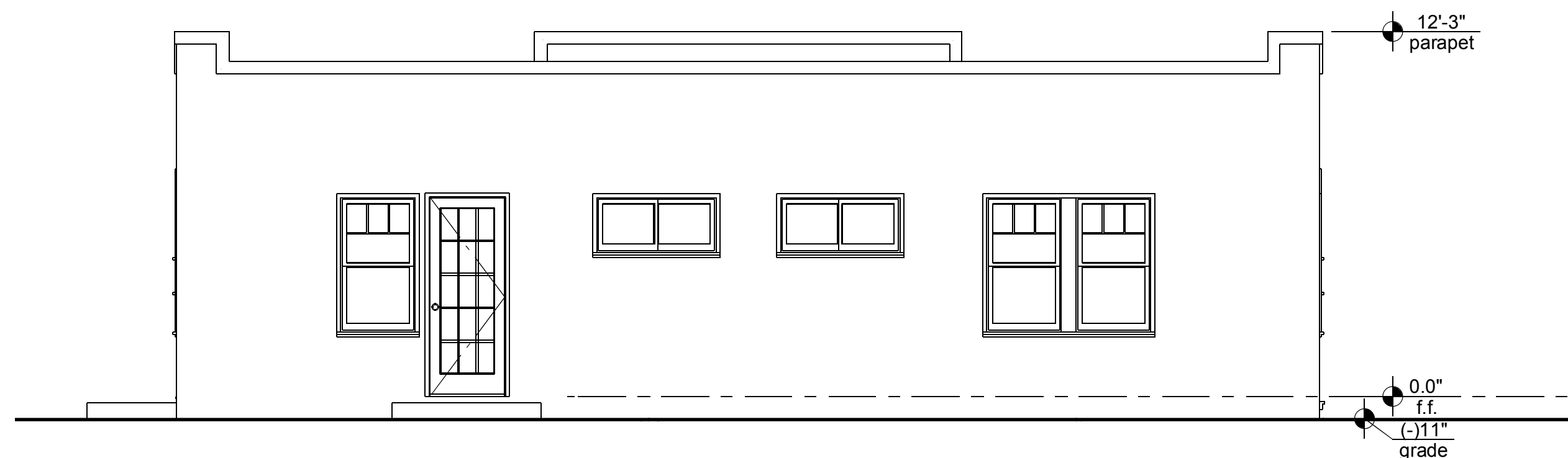
Drawn By: SSG

Checked By: SSG

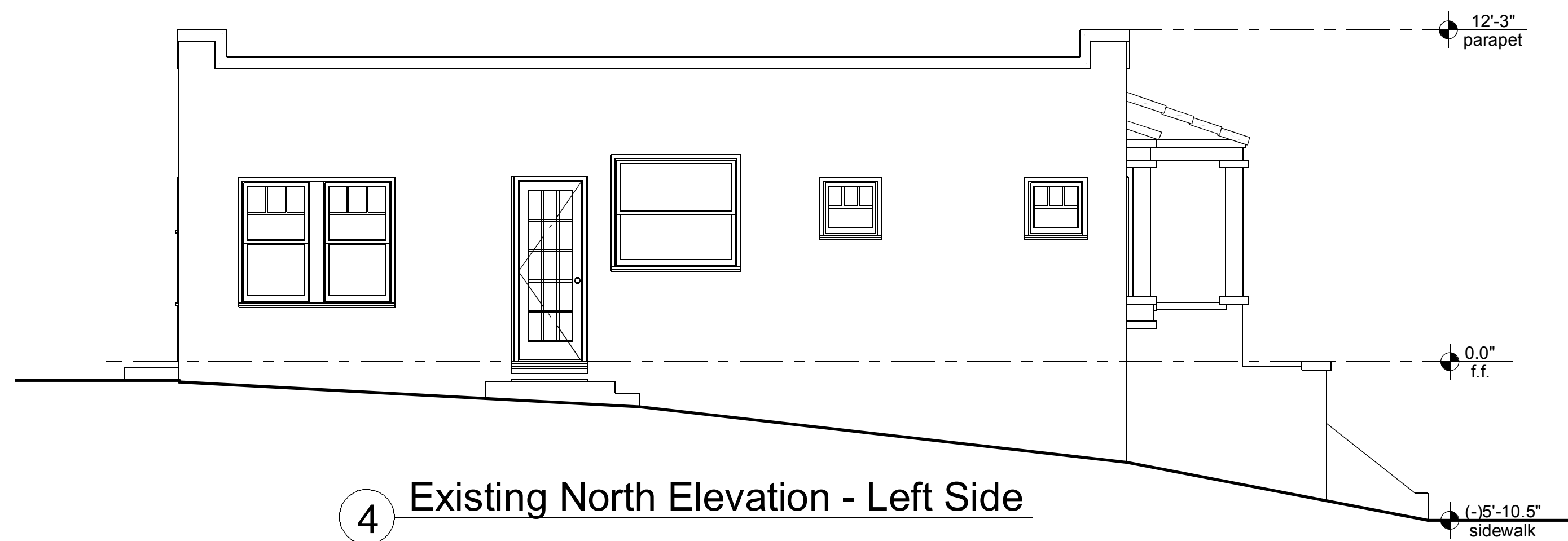
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Revisions:
Use Permit Set: 12-10-2020
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Planning Review: 6-29-2021
Planning Review: 7-15-2021

Sheet **A0.2**



5 Existing East Elevation - Rear



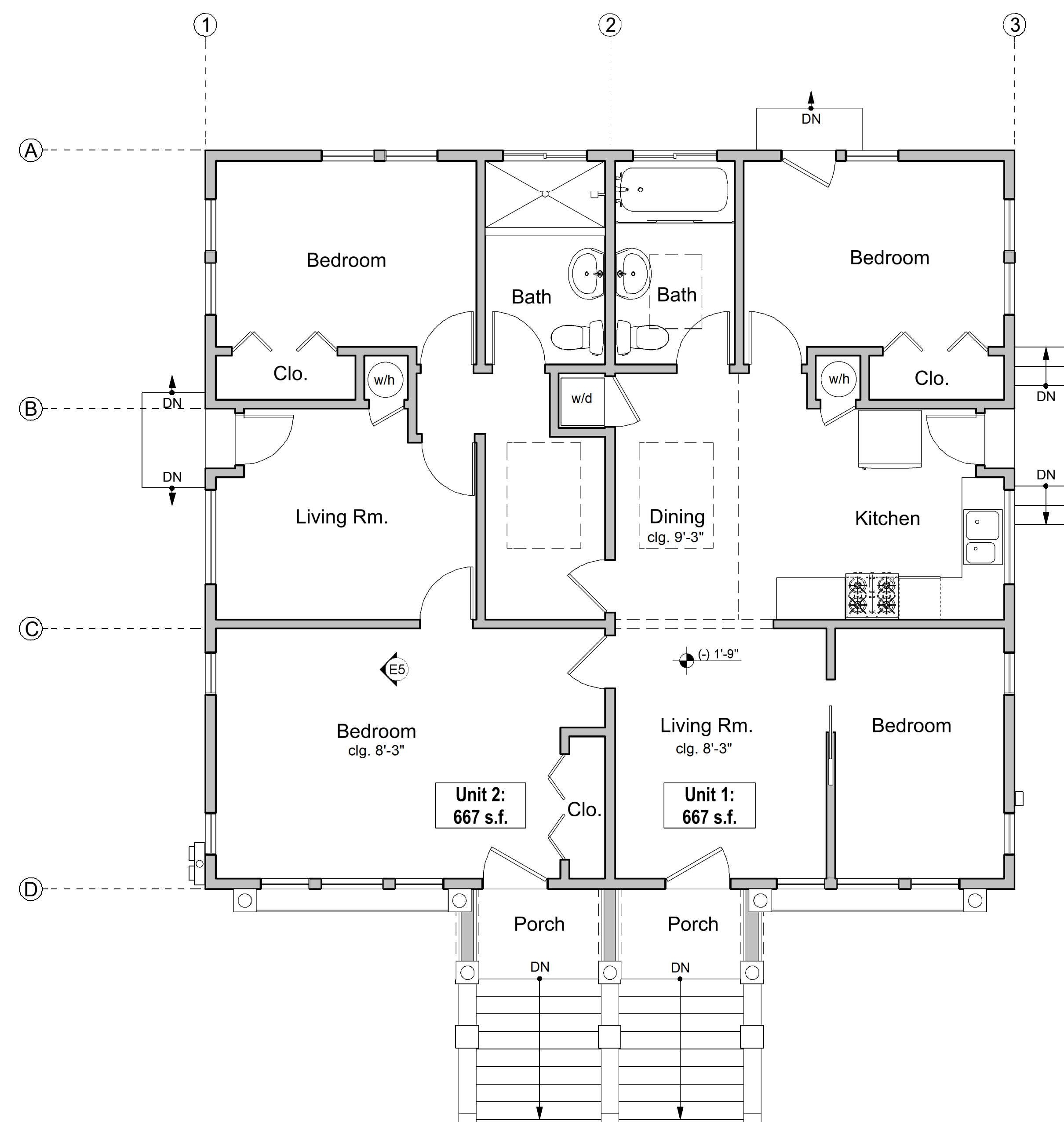
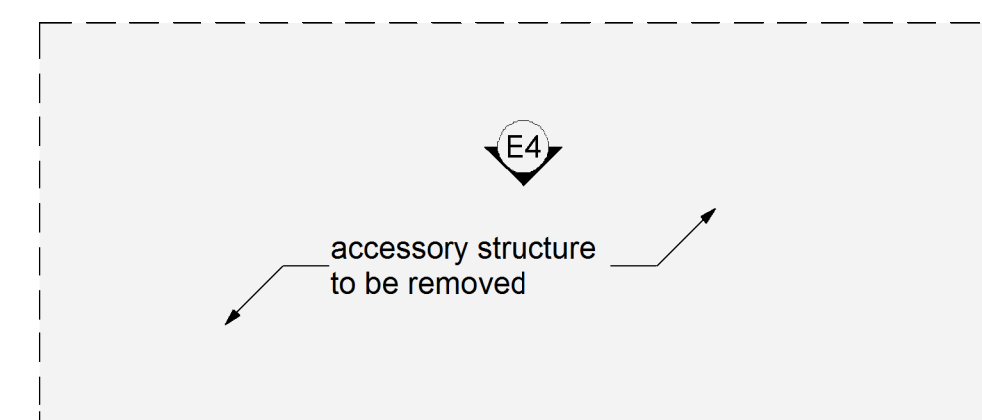
4 Existing North Elevation - Left Side



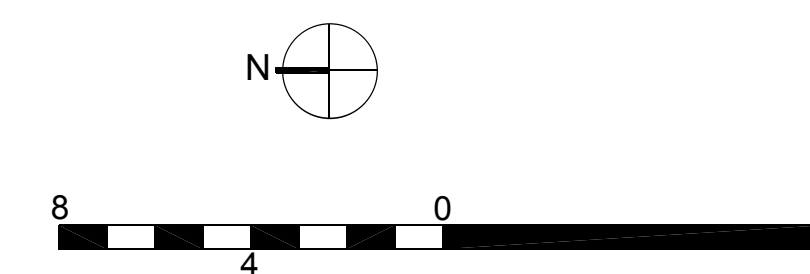
3 Existing South Elevation - Right Side



2 Existing West Elevation - Front



1 Existing First Floor Plan



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Sheet Contents:
Existing Floor Plans
Existing Exterior Elevations

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Drawn By: SSG

Checked By: SSG

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Sheet **A1.1**



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Ph: 510.548.7448
info@sgsarch.com
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Sheet Contents:
Proposed Floor Plan
Proposed Site Plan

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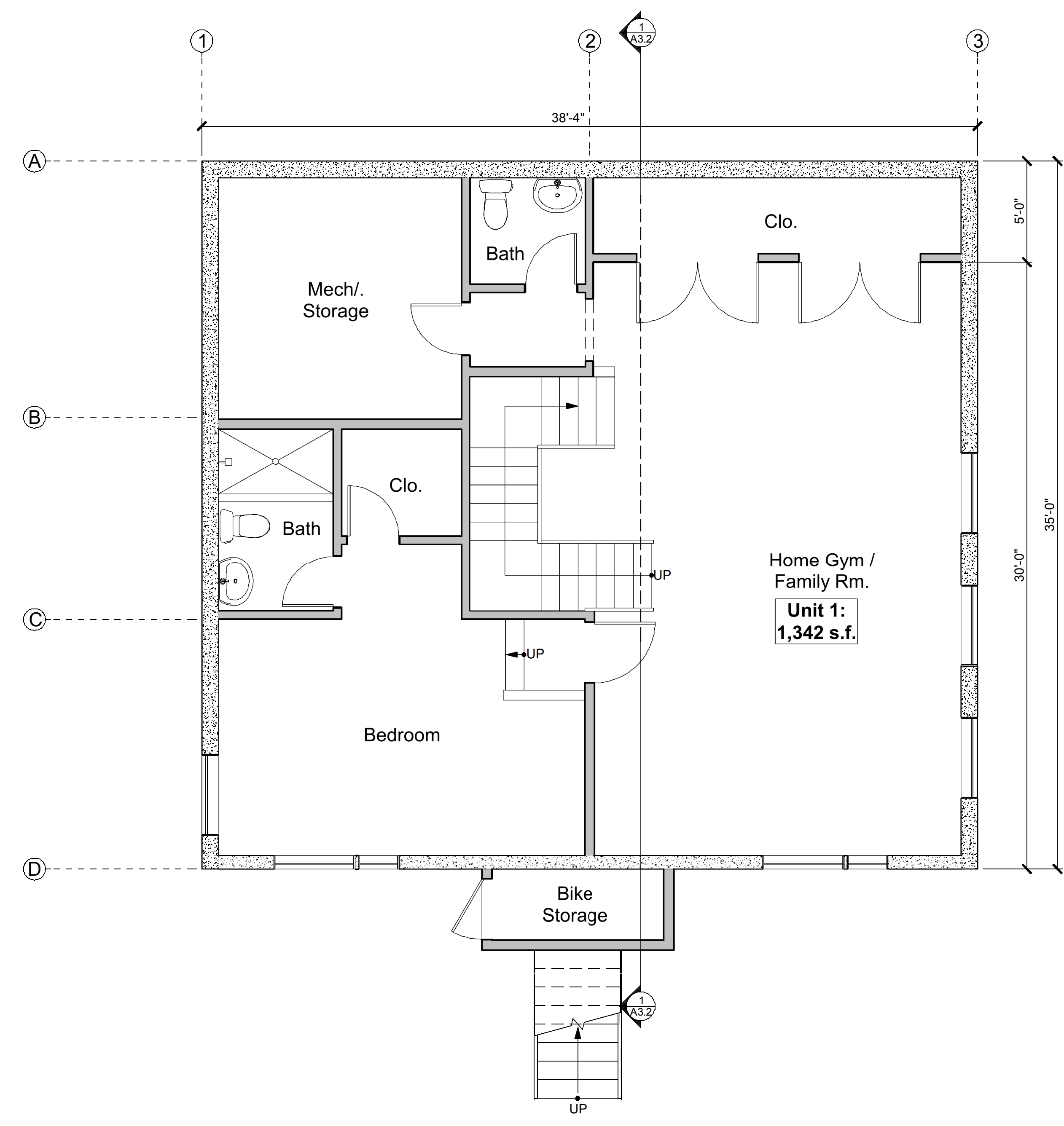
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Checked By: SSG

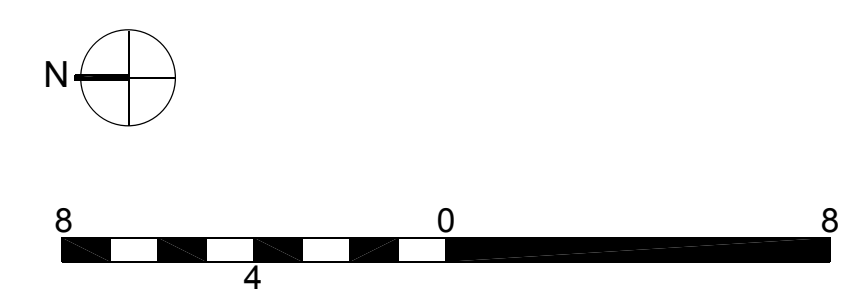
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Planning Review: 6-29-2021
Planning Review: 7-15-2021

Sheet **A2.1**

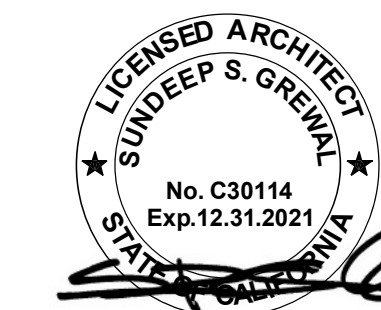


1 Proposed Basement Floor Plan





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Proposed Floor Plans

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Drawn By: SSG

Checked By: SSG

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

Revisions:
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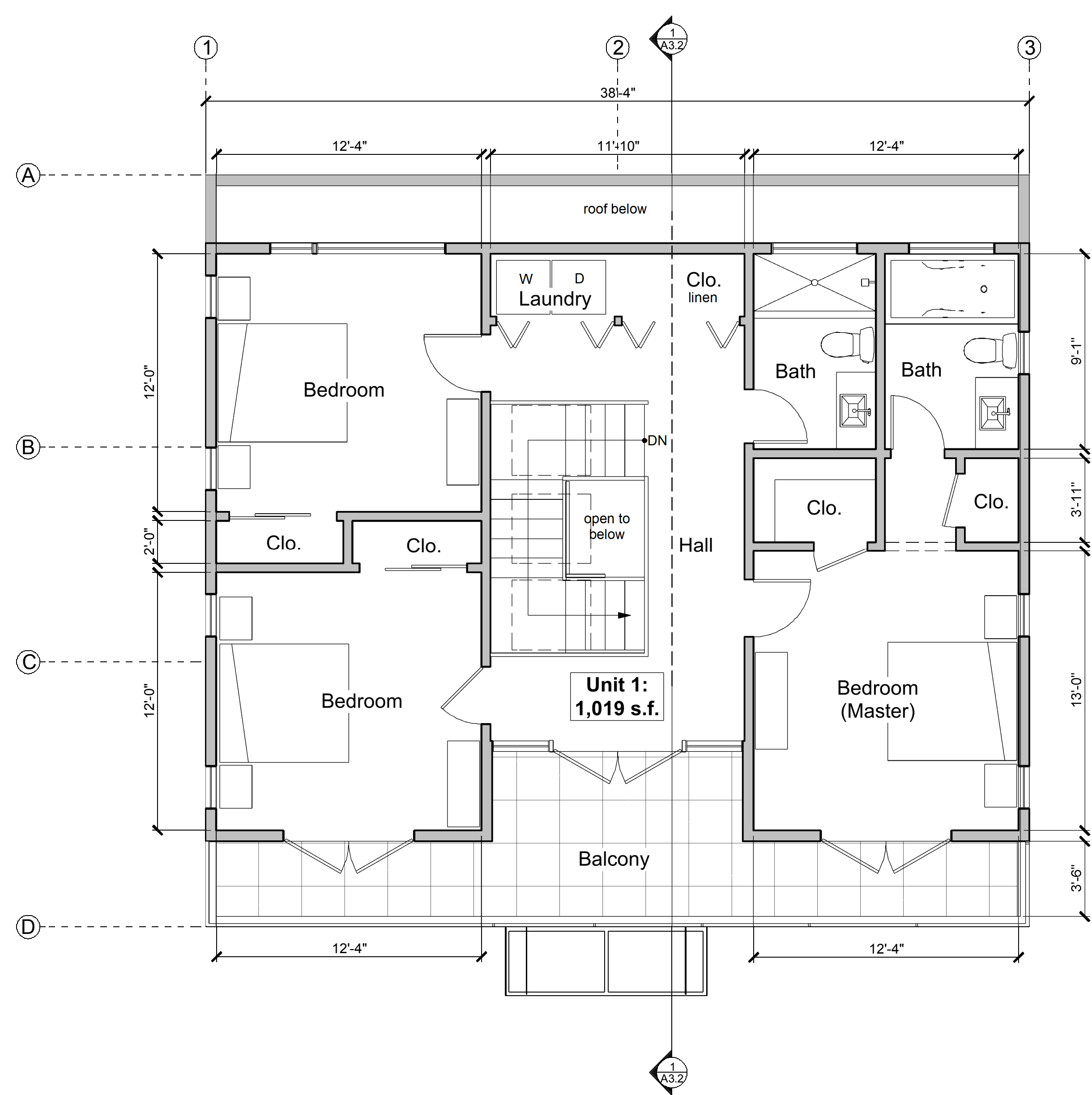
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Planning Review: 6-29-2021

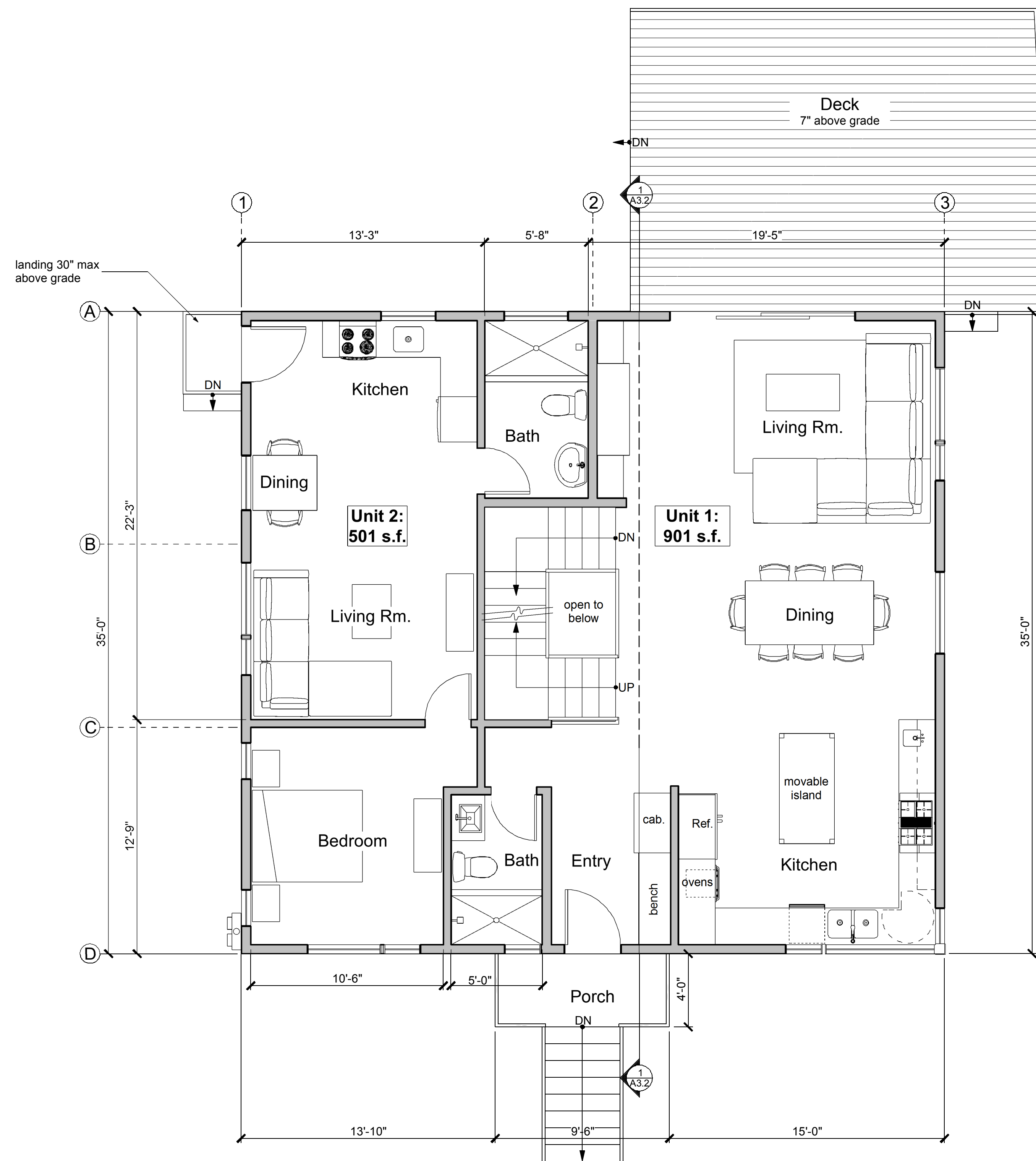
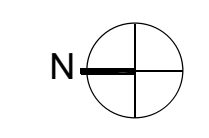
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Sheet

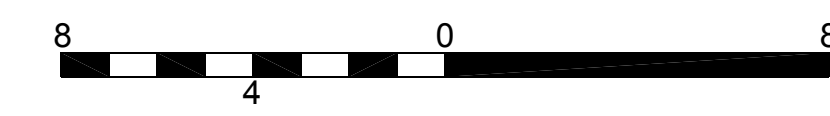
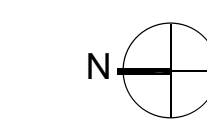
A2.2



2 Proposed Second Floor Plan



1 Proposed First Floor Plan





Previous Proposal



Previous Proposal



Previous Proposal



Current Proposal



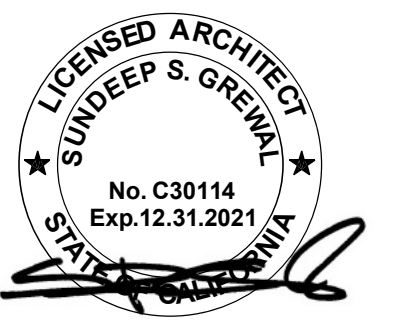
Current Proposal



Current Proposal



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Sheet Contents:
Front Elevation Comparison

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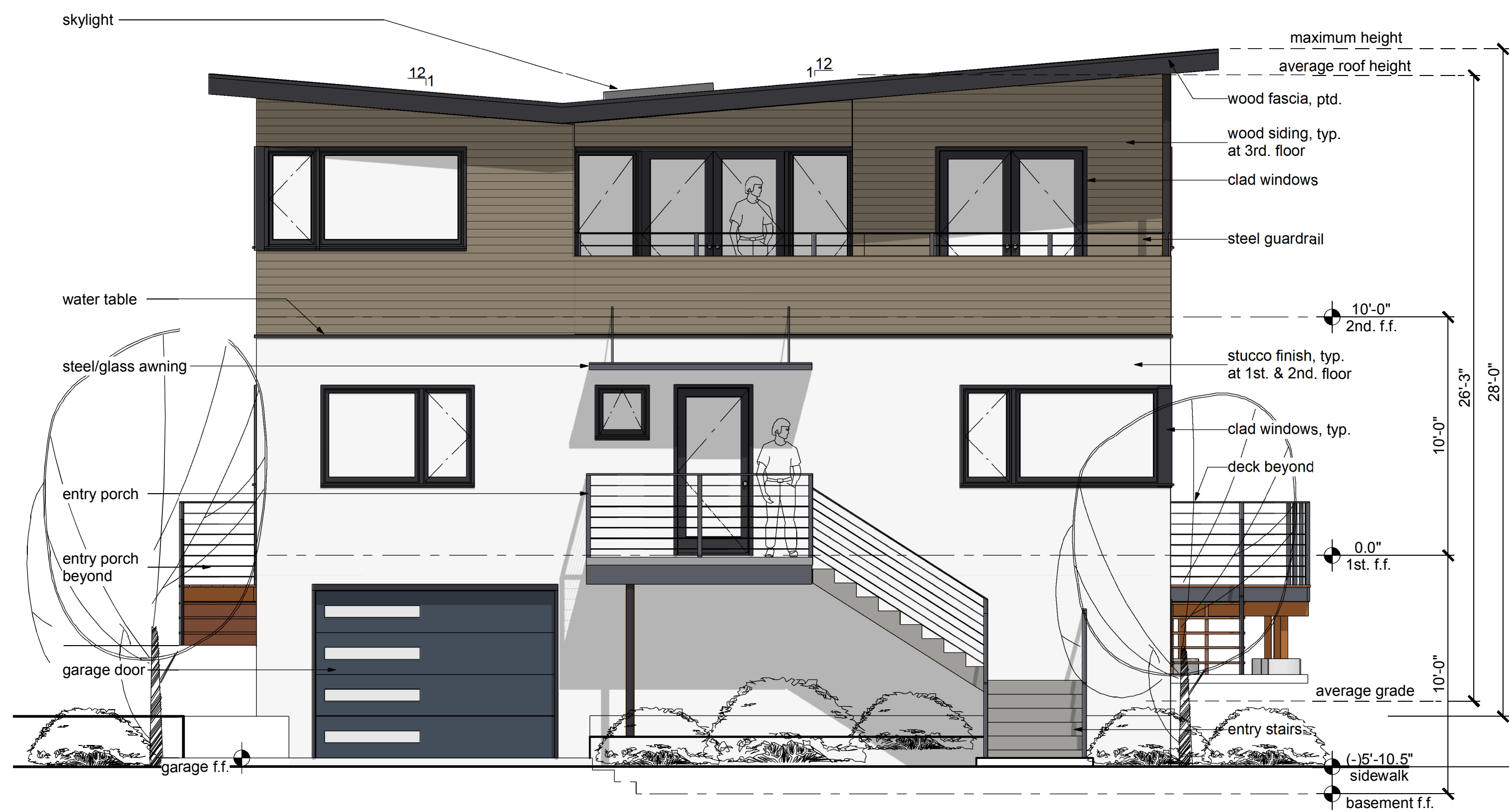
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Drawn By: SSG

Checked By: SSG

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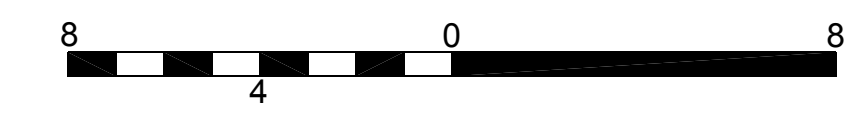
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Planning Review: 6-29-2021
Planning Review: 7-15-2021



② Proposed West Elevation - Front
Original Proposal



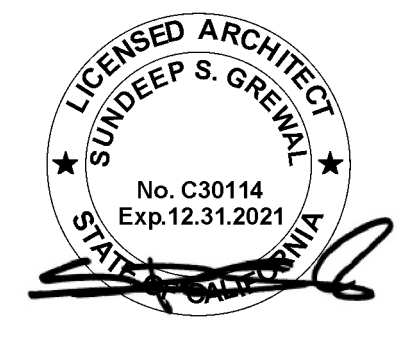
① Proposed West Elevation - Front
Current Proposal



Sheet **A3.1**



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Sheet Contents:
Proposed Exterior Elevations

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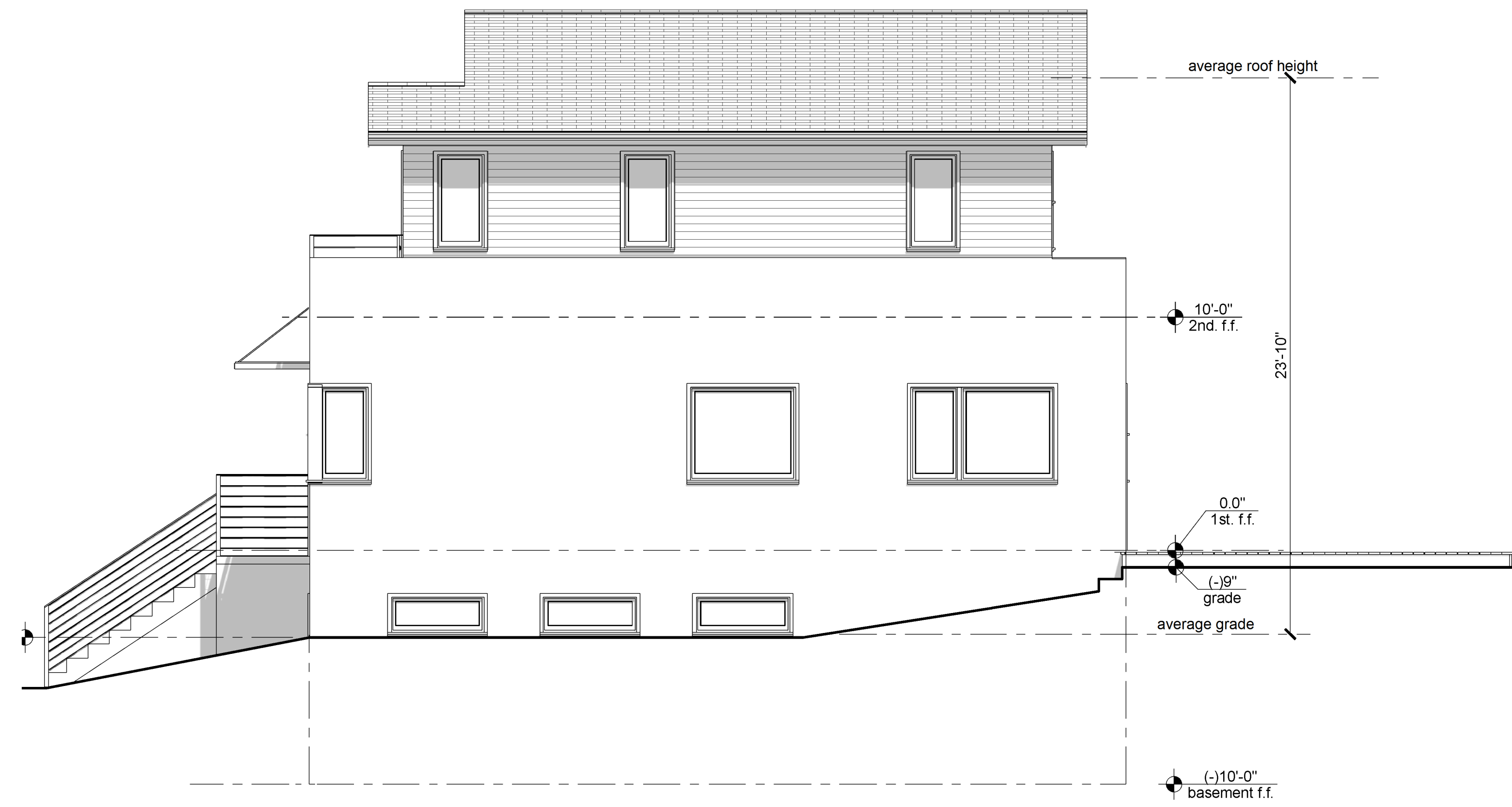
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Checked By: SSG

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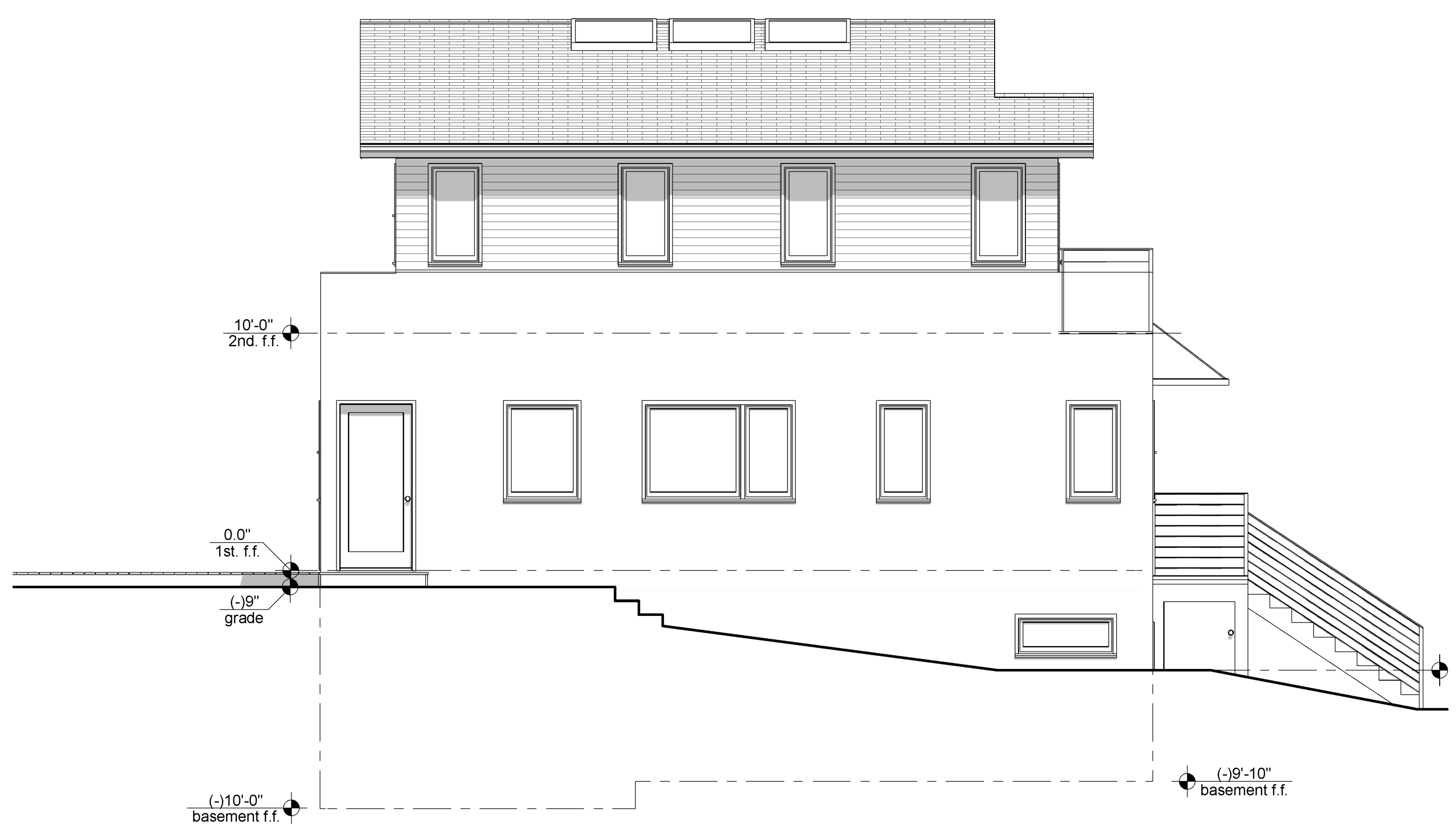
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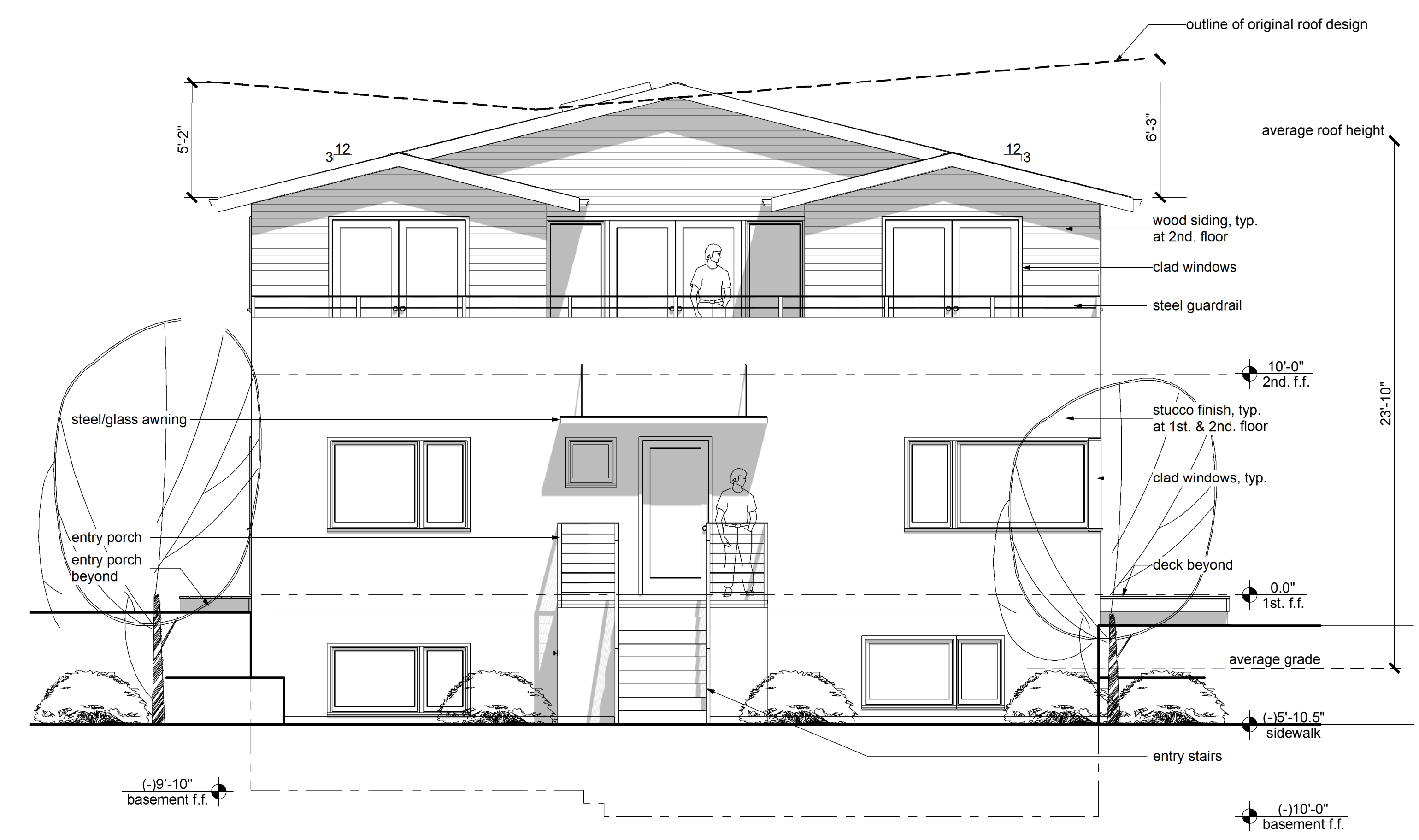
4 Proposed South Elevation - Right Side



3 Proposed East Elevation - Rear



2 Proposed North Elevation - Left Side



1 Proposed West Elevation - Front



2 Renderings



1 Proposed Building Section

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2223 Fifth St.
Berkeley, CA 94710
Ph: 510.548.7448
info@sgsarch.com
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Sheet Contents:
Building Section
Renderings

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Checked By: SSG

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

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Sheet **A3.3**

Existing Shadow Line
New Shadow Line



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Berkeley, CA 94710
Ph: 510.548.7448
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Sheet Contents:
Shadows Studies

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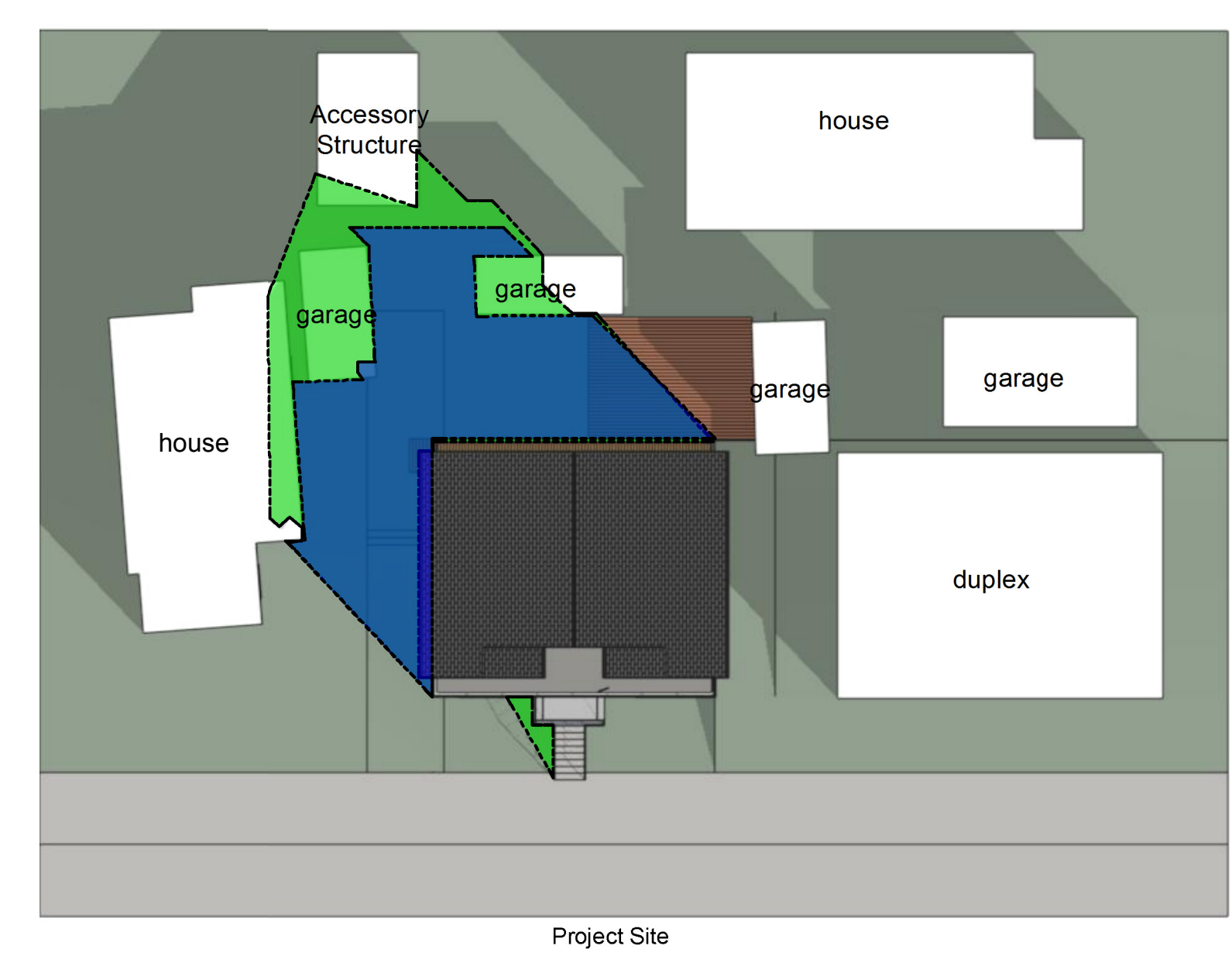
Drawn By:
SSG

Checked By:
SSG

Scale:
NTS

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

Sheet
A4.1



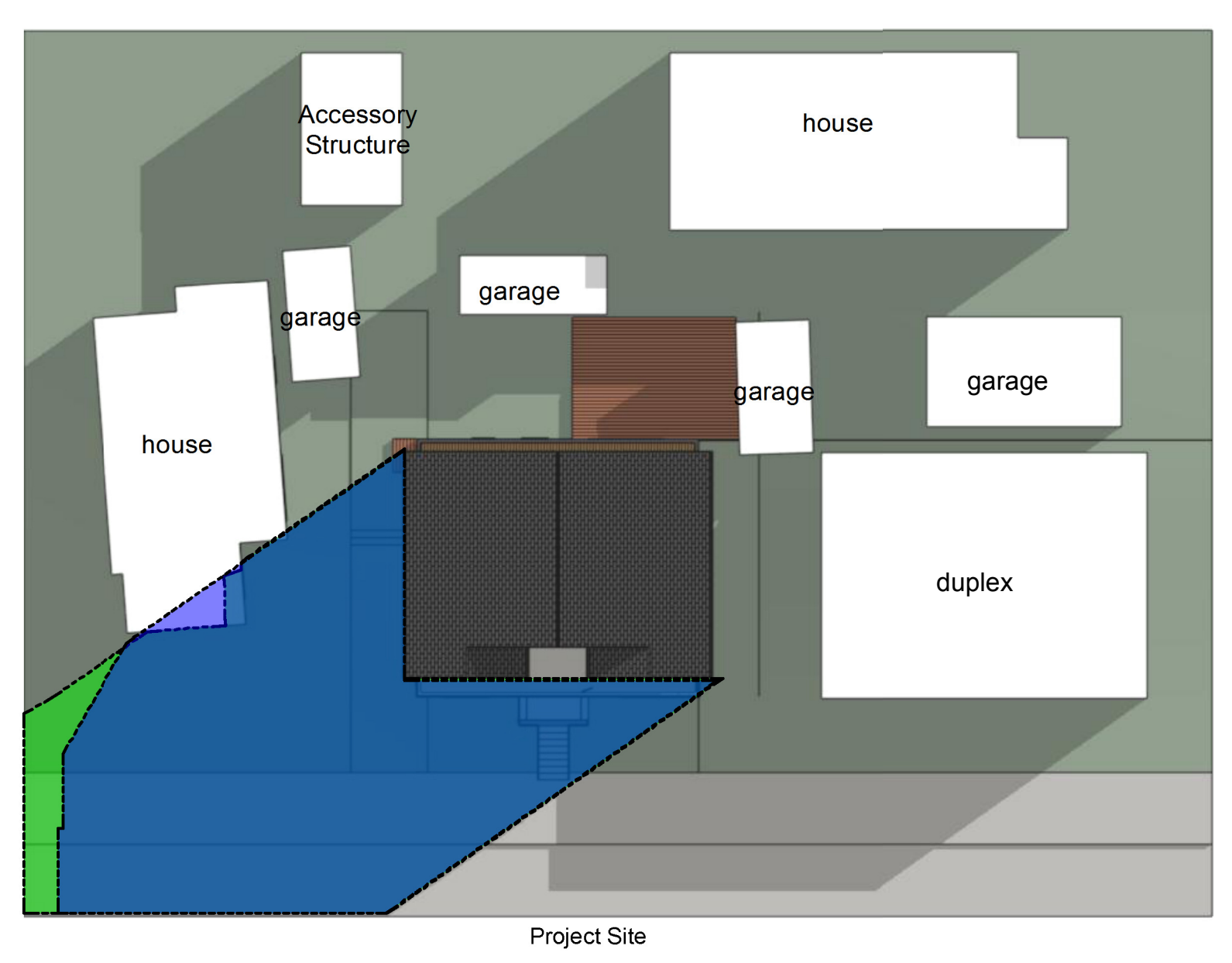
Proposed

12-21-2021 / 2:54 pm



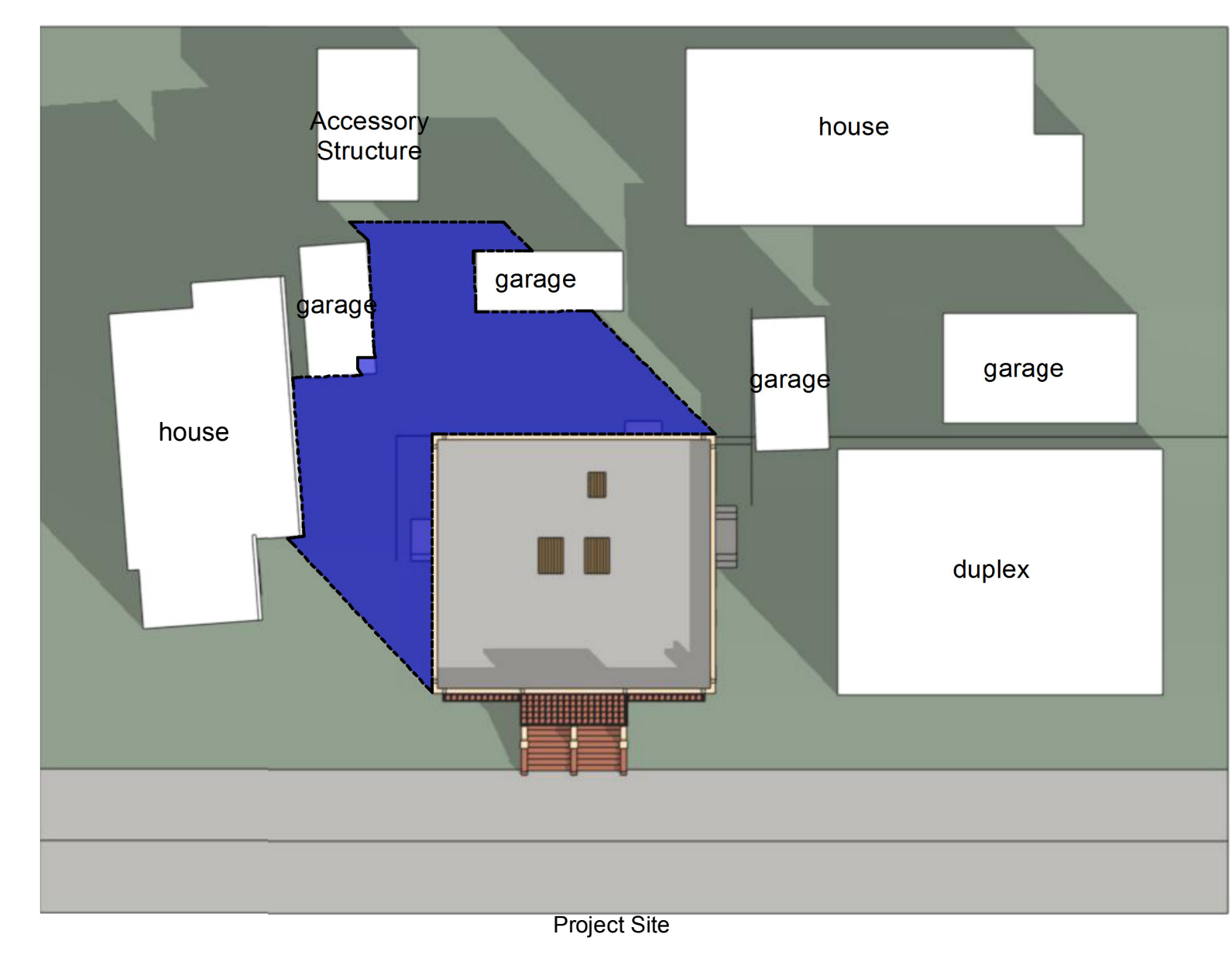
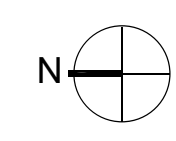
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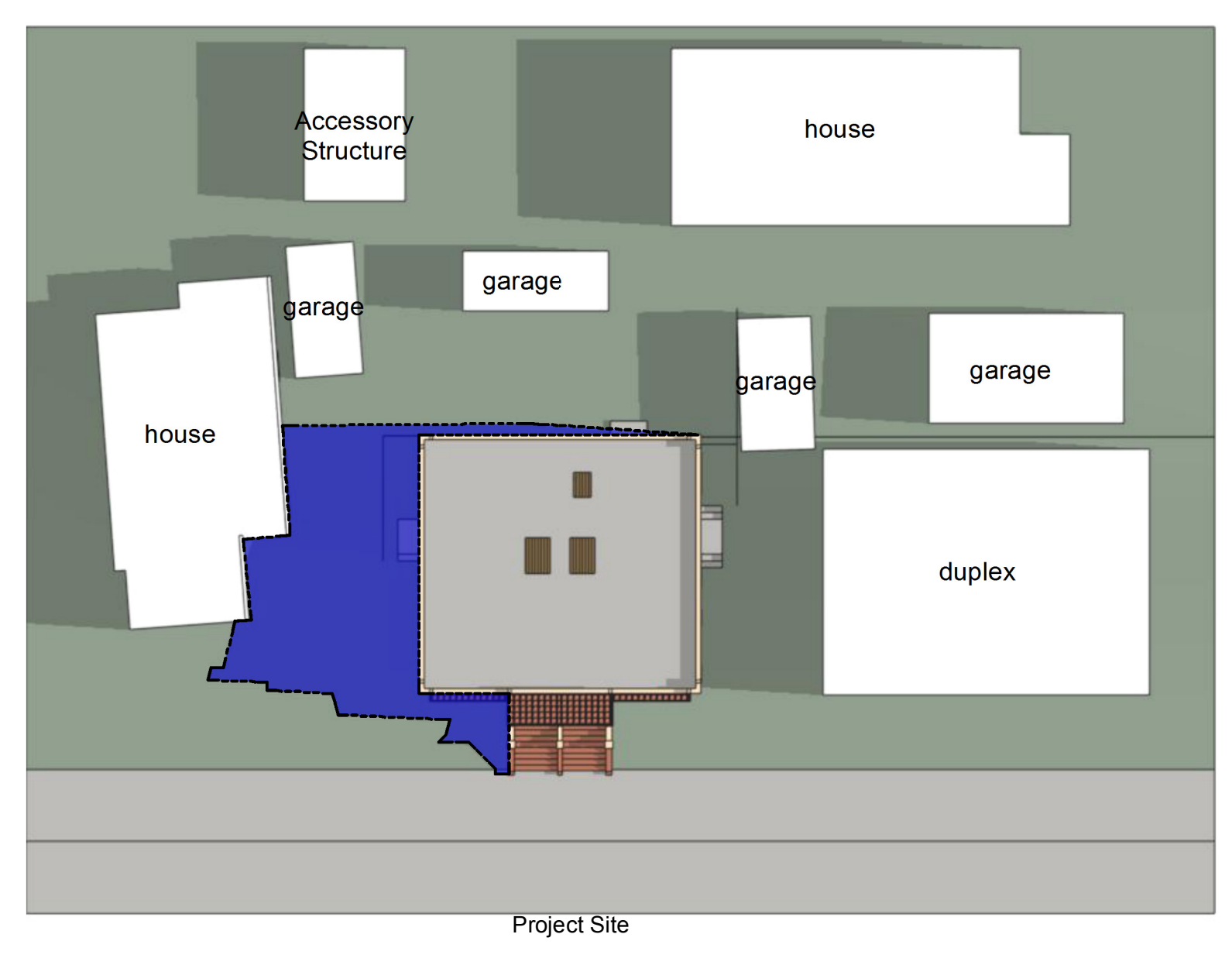
Proposed

12-21-2021 / 9:21 am



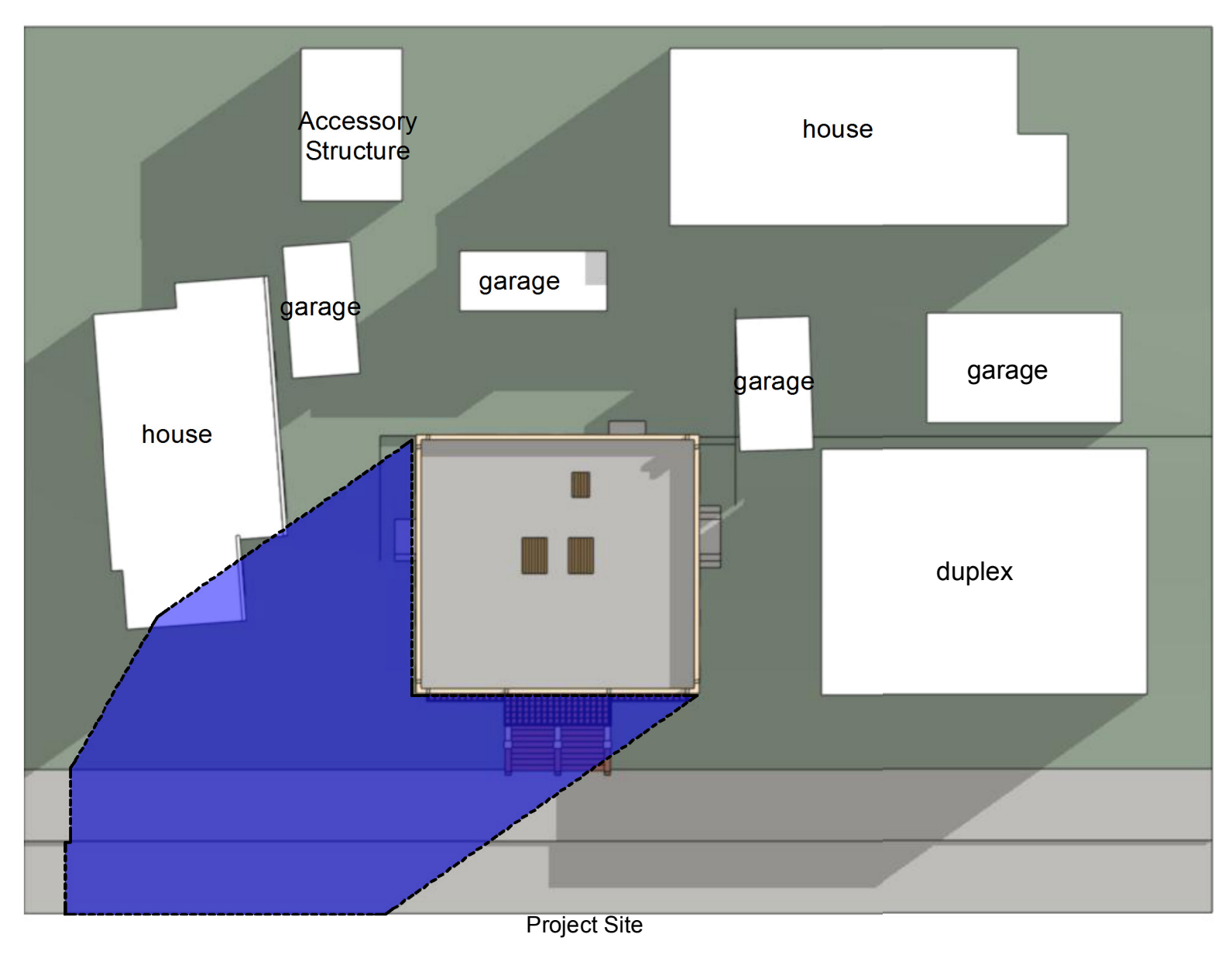
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12-21-2021 / 2:54 pm



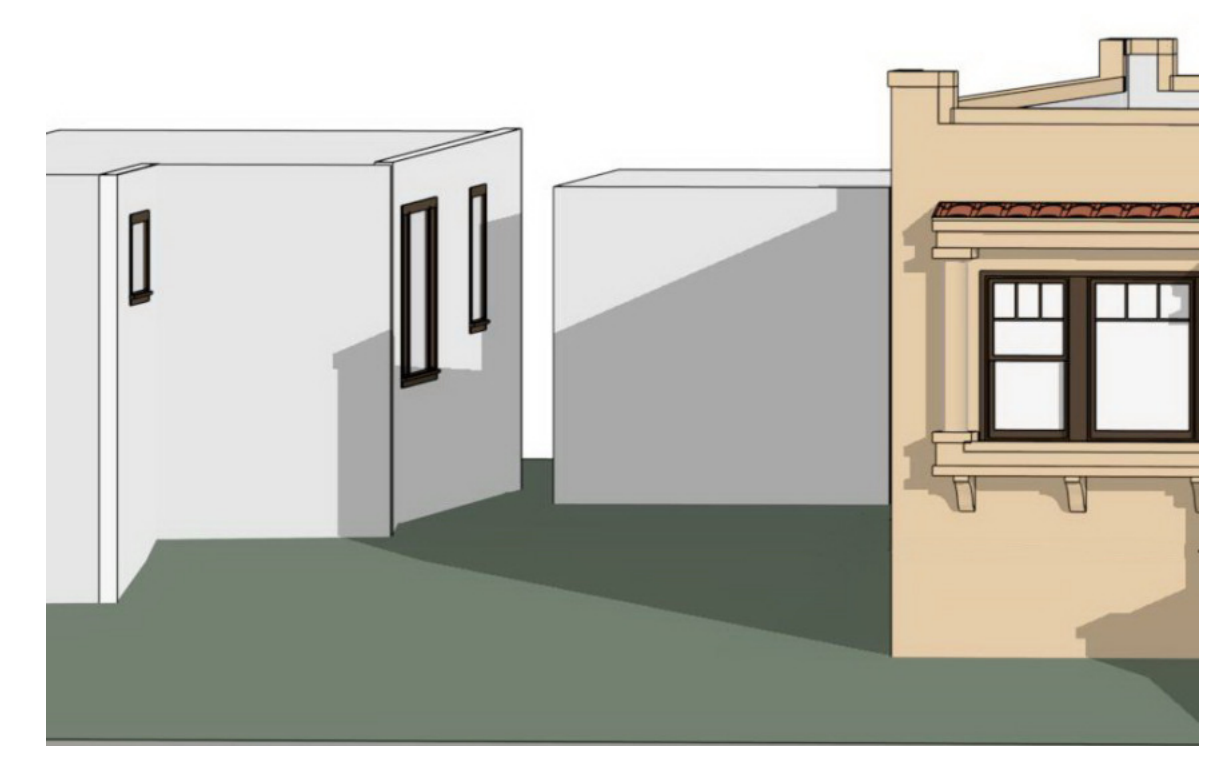
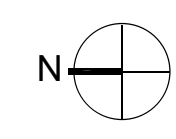
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12-21-2021 / 12:00 pm



Existing

12-21-2021 / 9:21 am

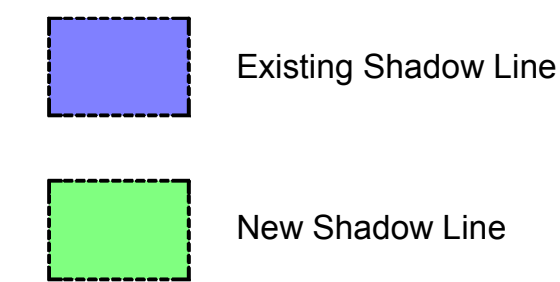


Shadow Accuracy Simulation
12-08-2020 / 3:00 pm



Actual
12-08-2020 / 3:00 pm

Shadow Accuracy Simulation



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Shadows Studies

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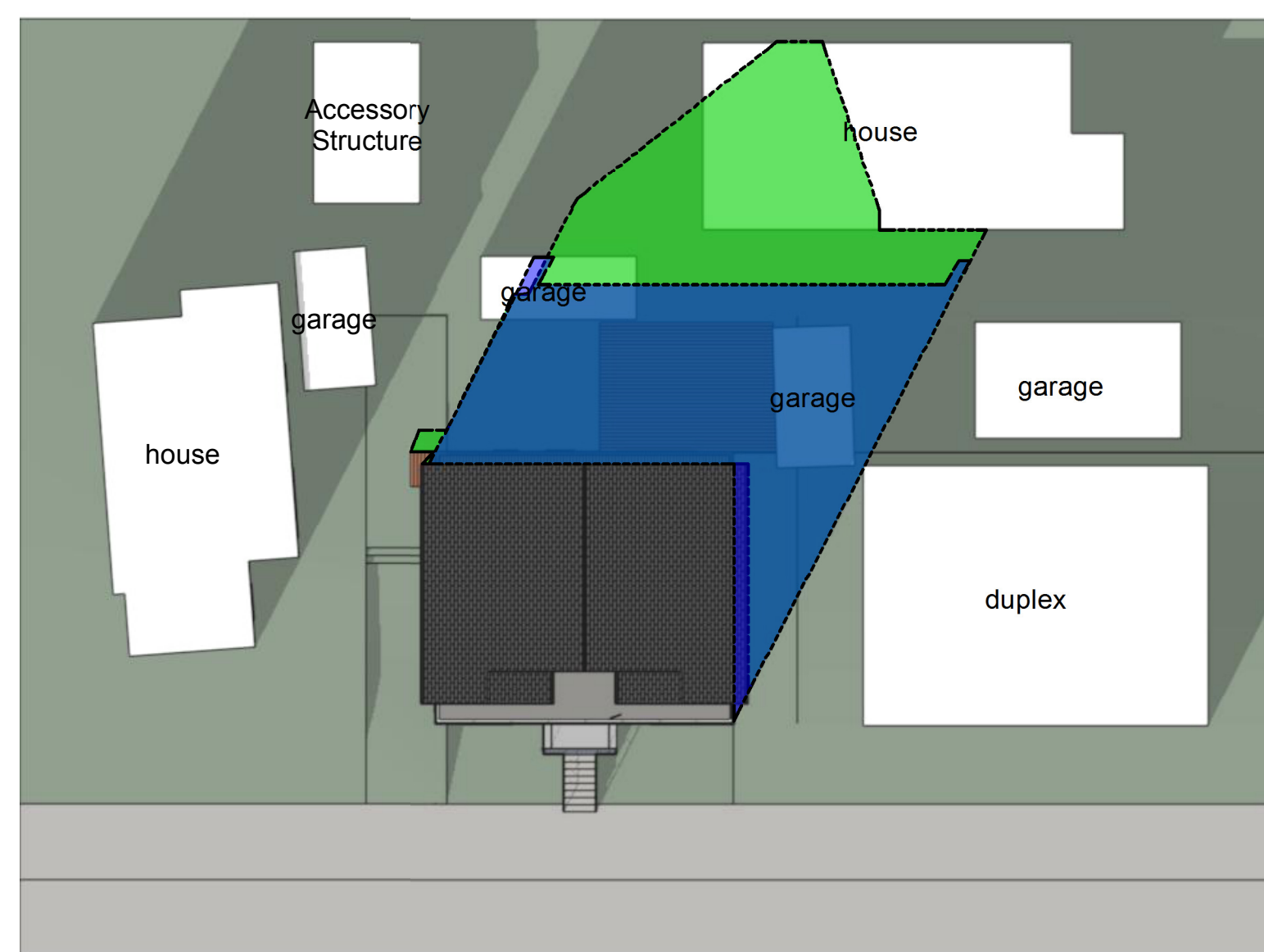
Drawn By:
SSG

Checked By:
SSG

Scale:
NTS

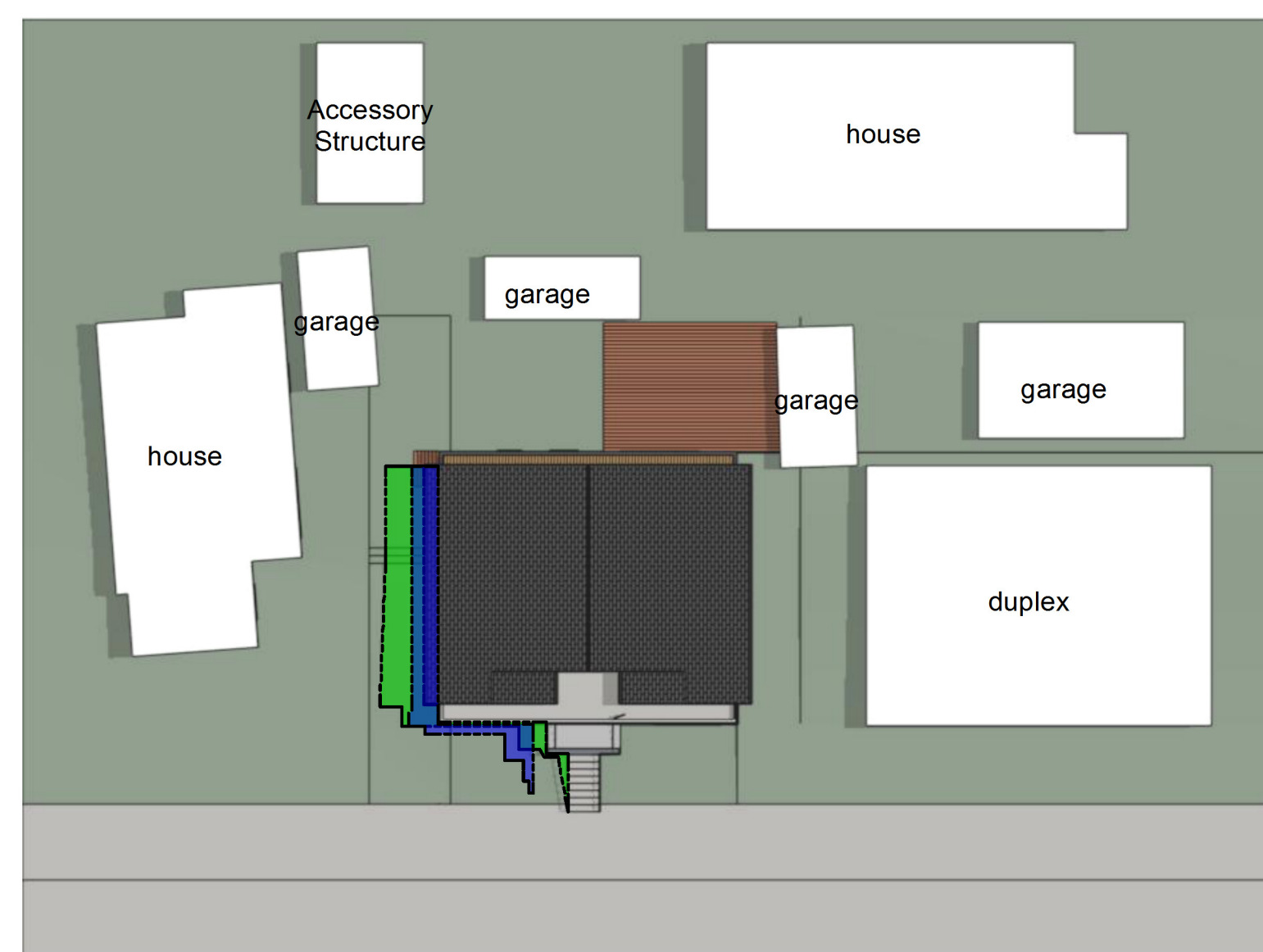
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Planning Review: 6-29-2021
Planning Review: 7-15-2021

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A4.2



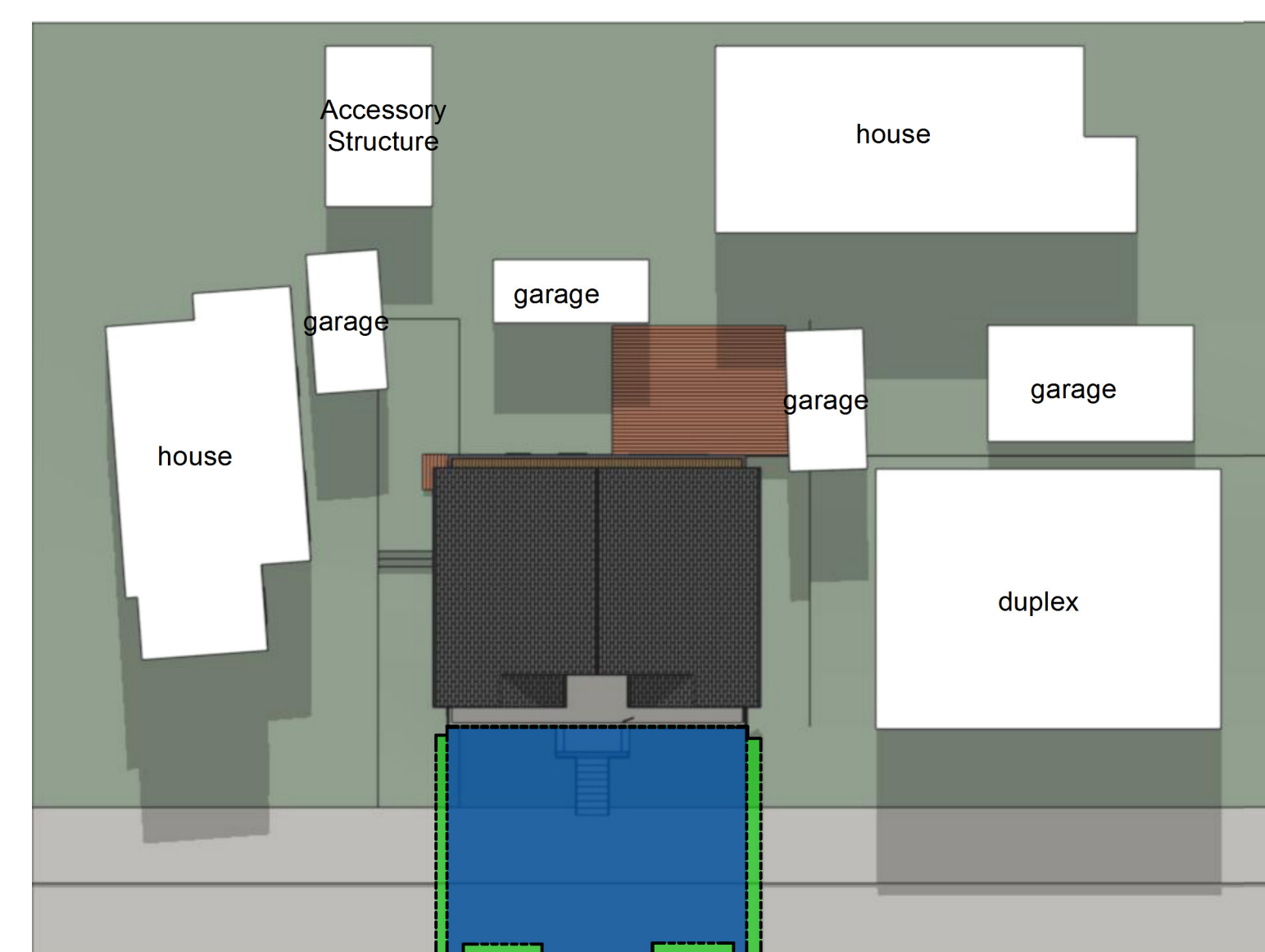
Project Site

Proposed
6-21-2021 / 6:35 pm



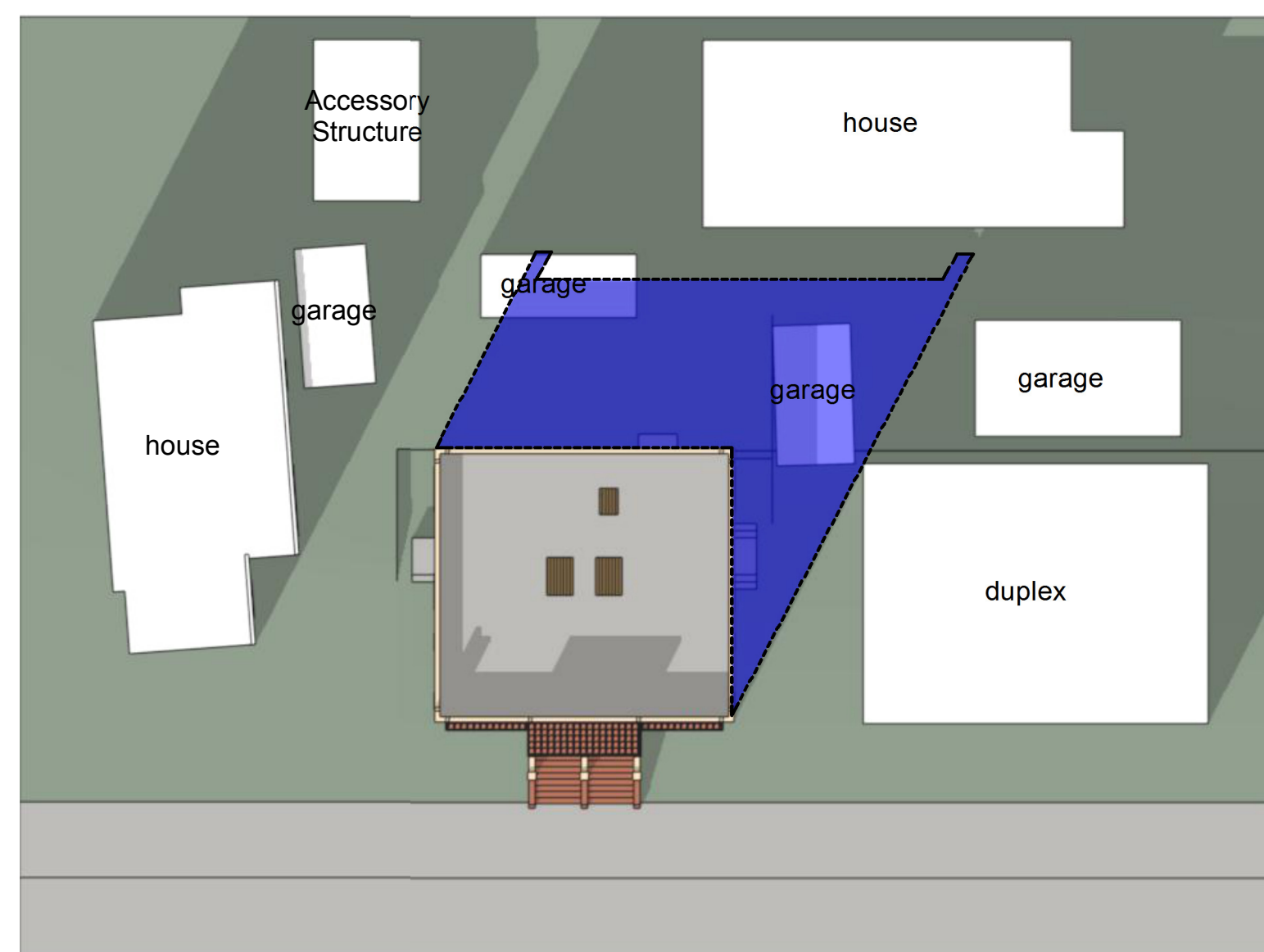
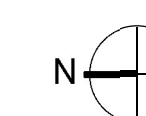
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Proposed
6-21-2021 / 12:00 pm



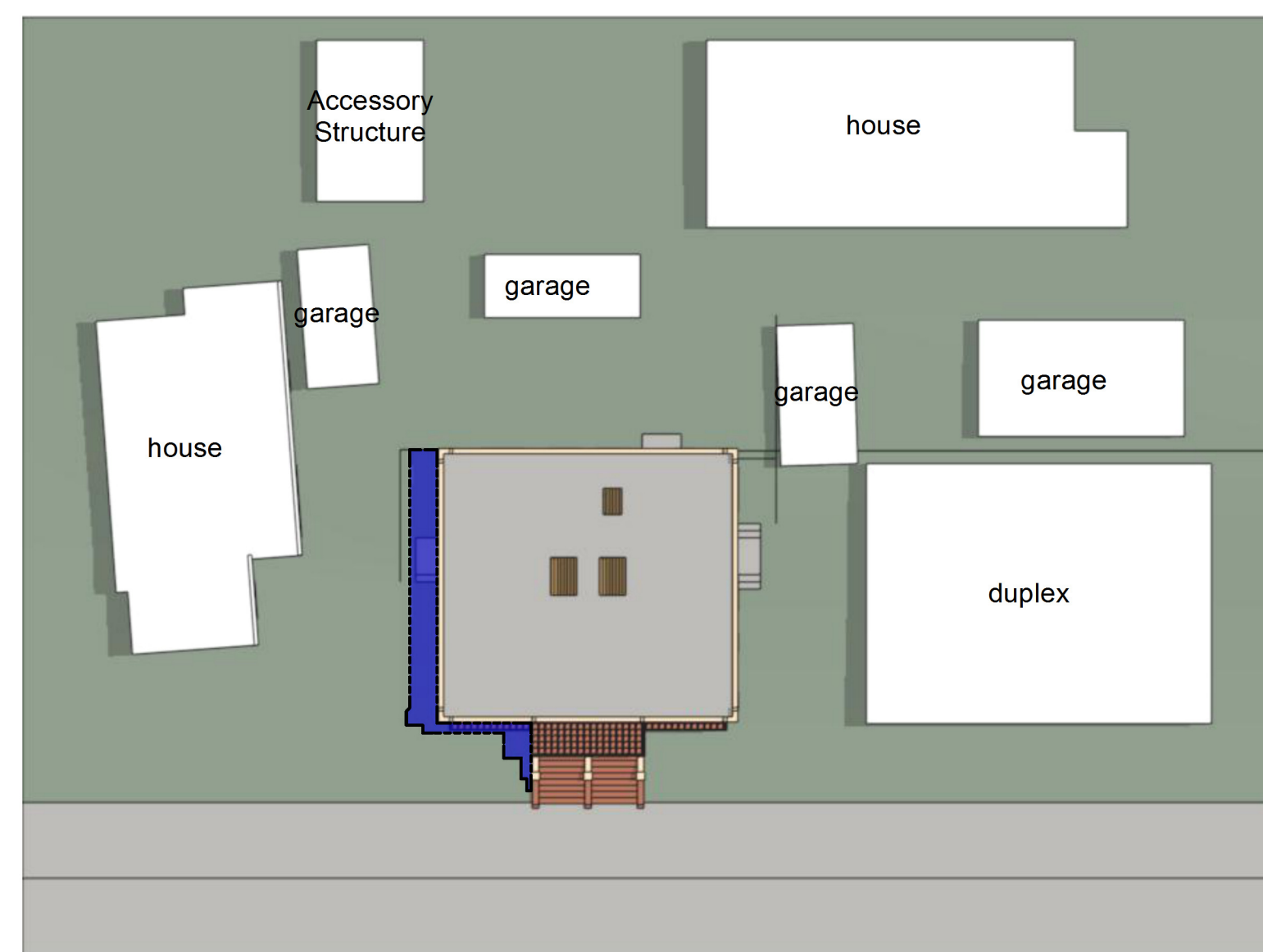
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Proposed
6-21-2021 / 7:47 am



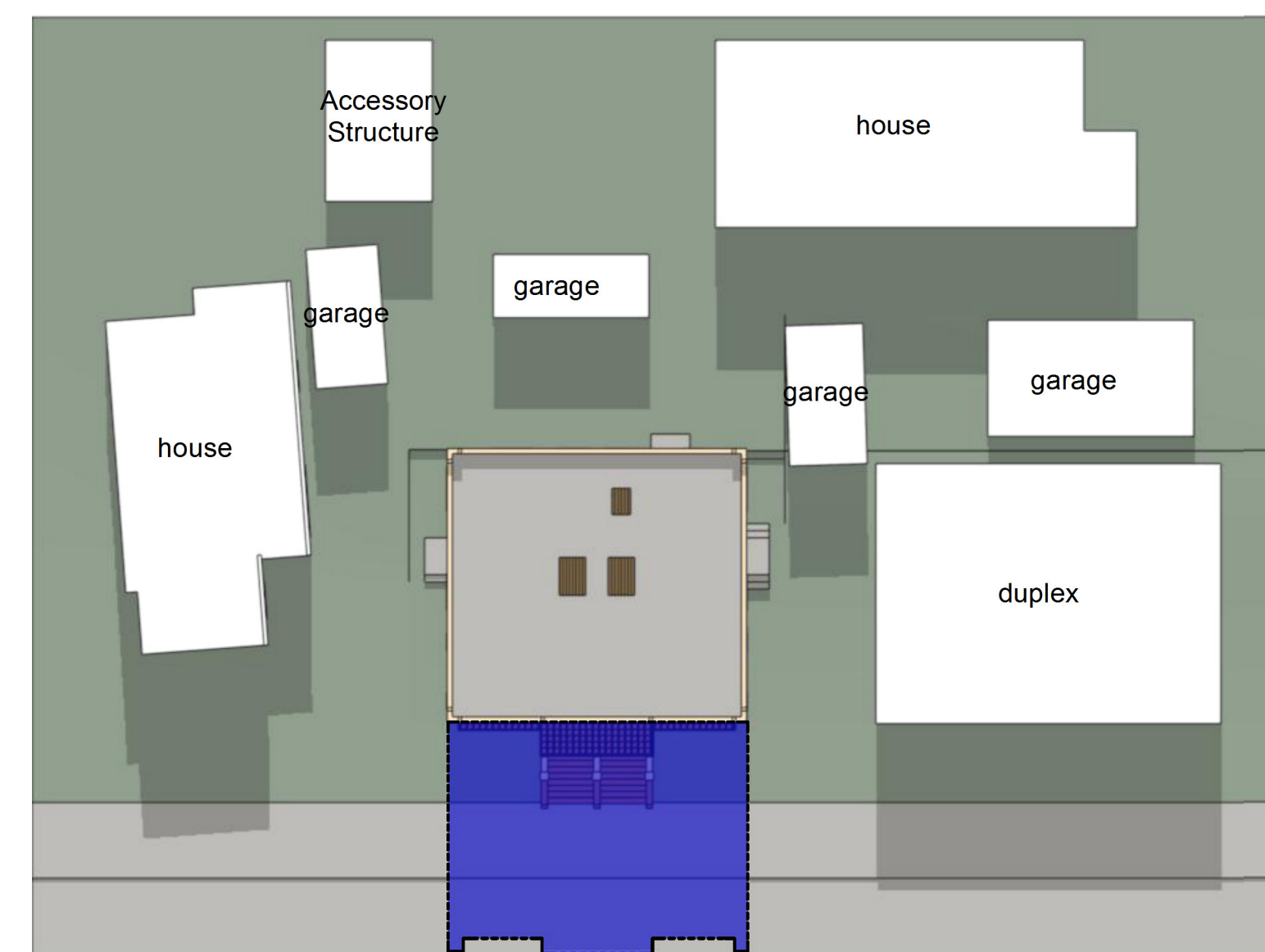
Project Site

Existing
6-21-2021 / 6:35 pm



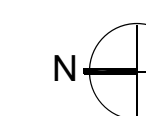
Project Site

Existing
6-21-2021 / 12:00 pm



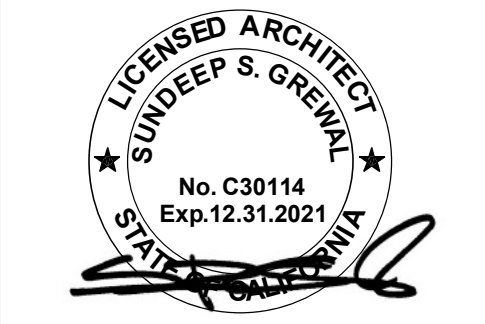
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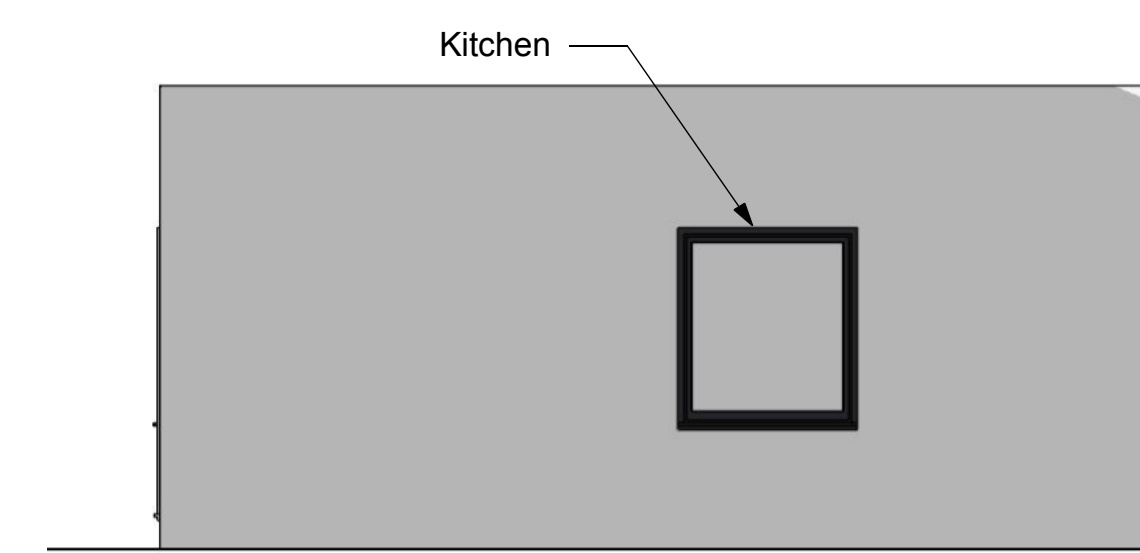




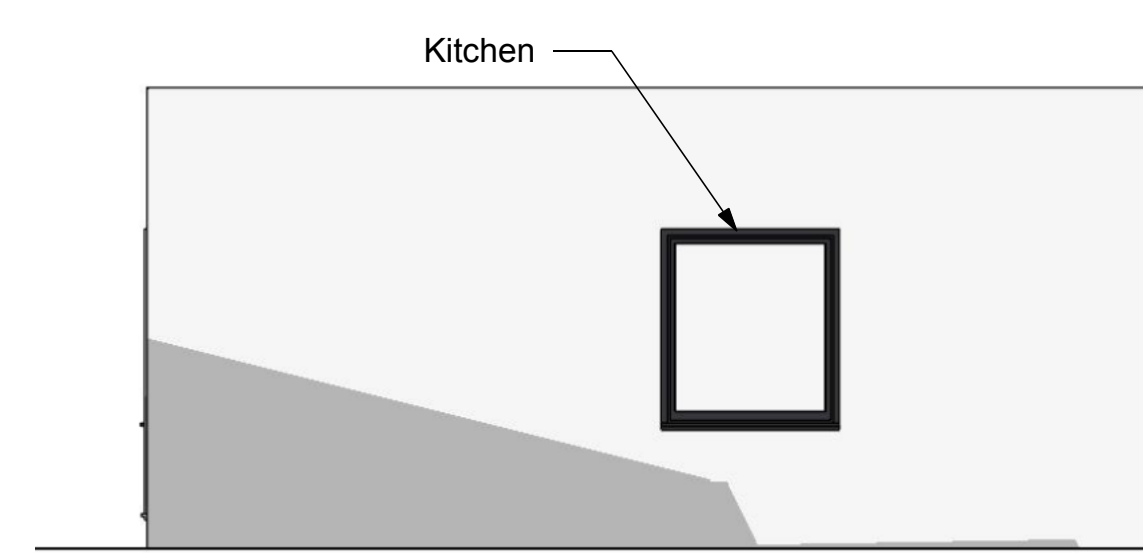
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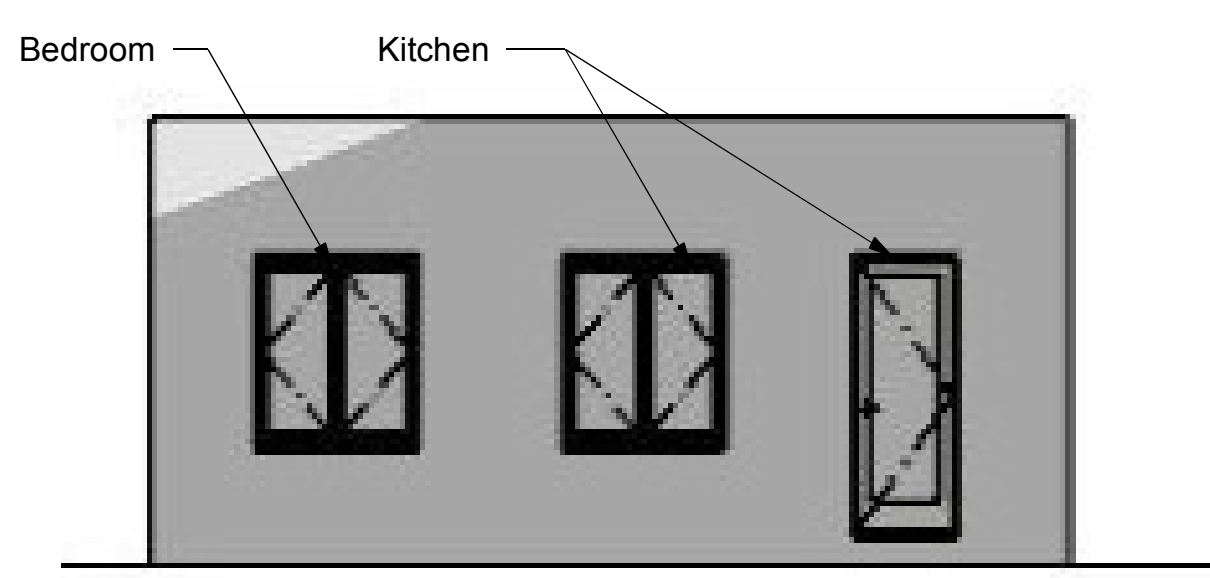
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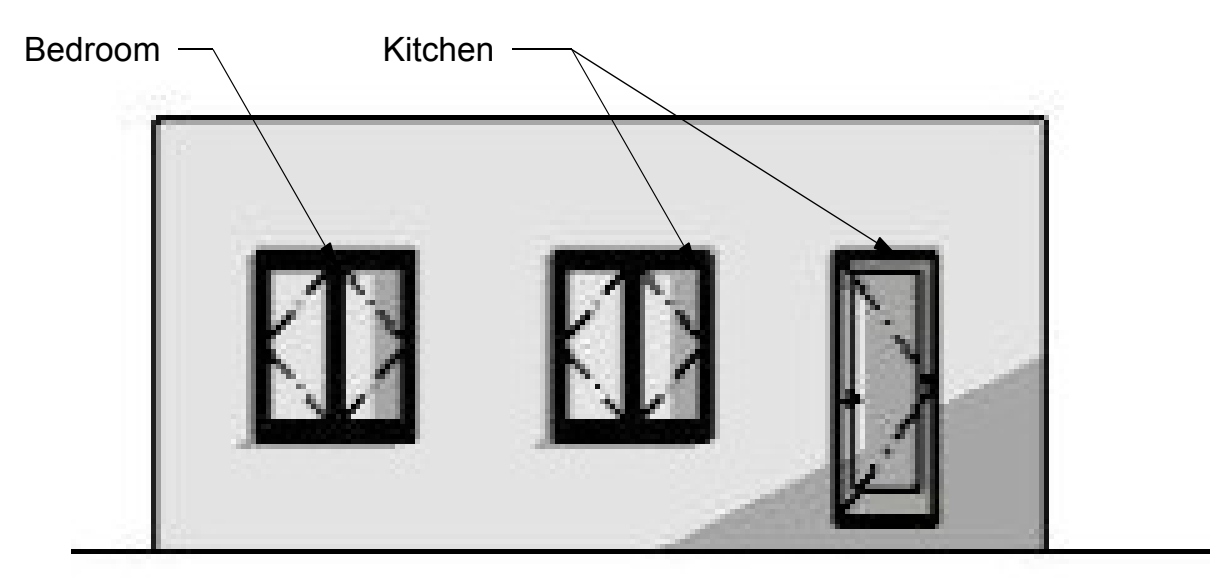
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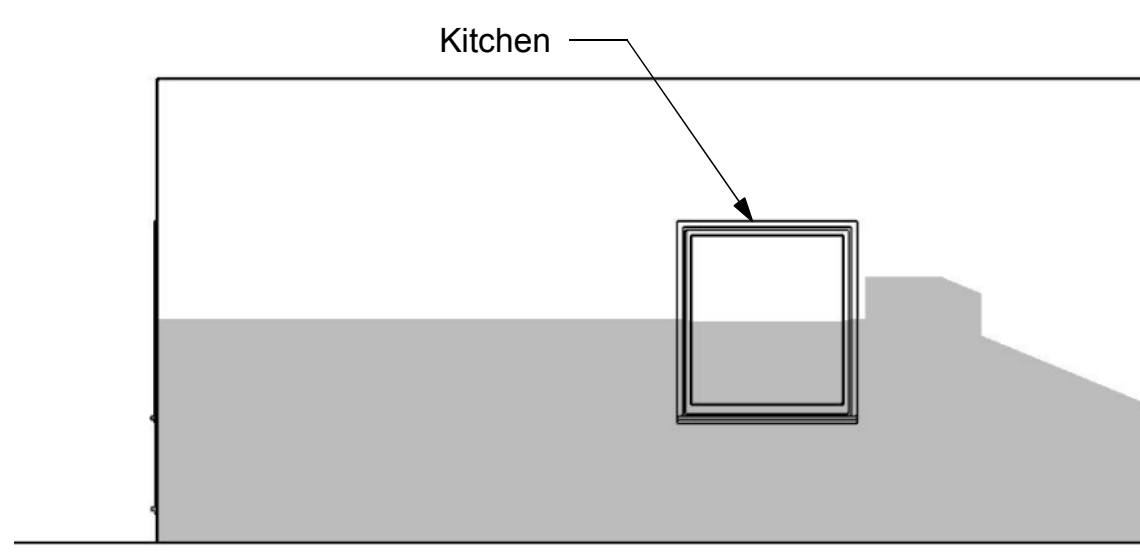
Proposed West Wall



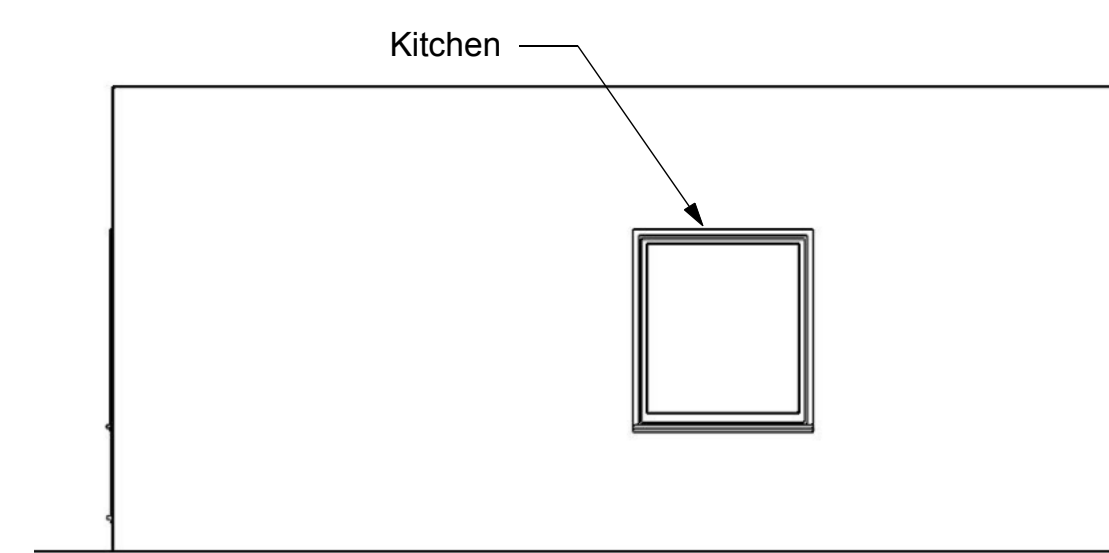
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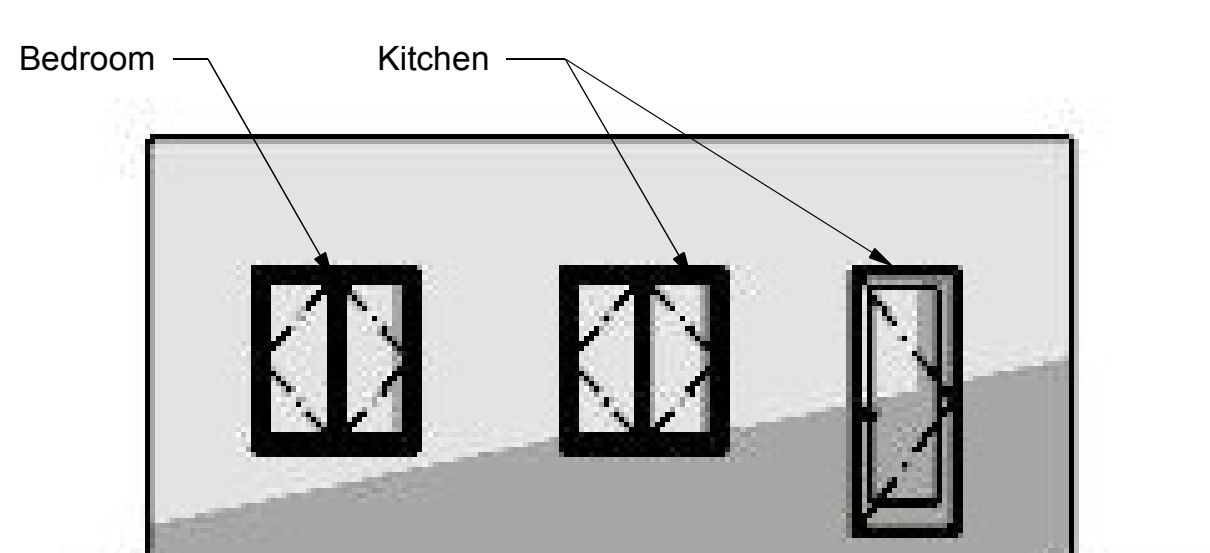
Proposed North Wall



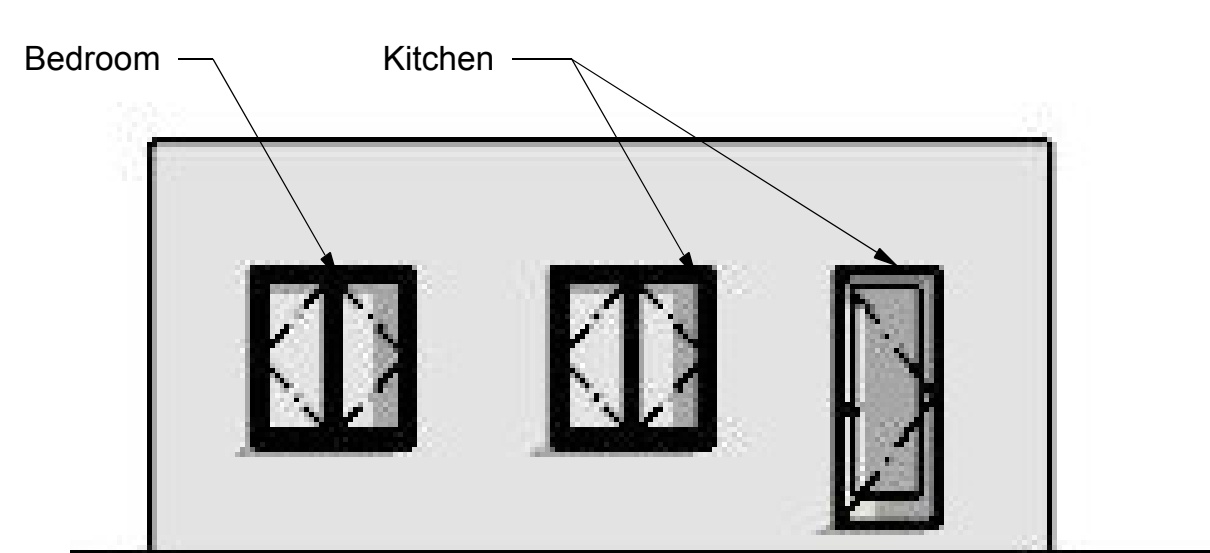
Existing West Wall



Existing West Wall



Existing North Wall



Existing North Wall

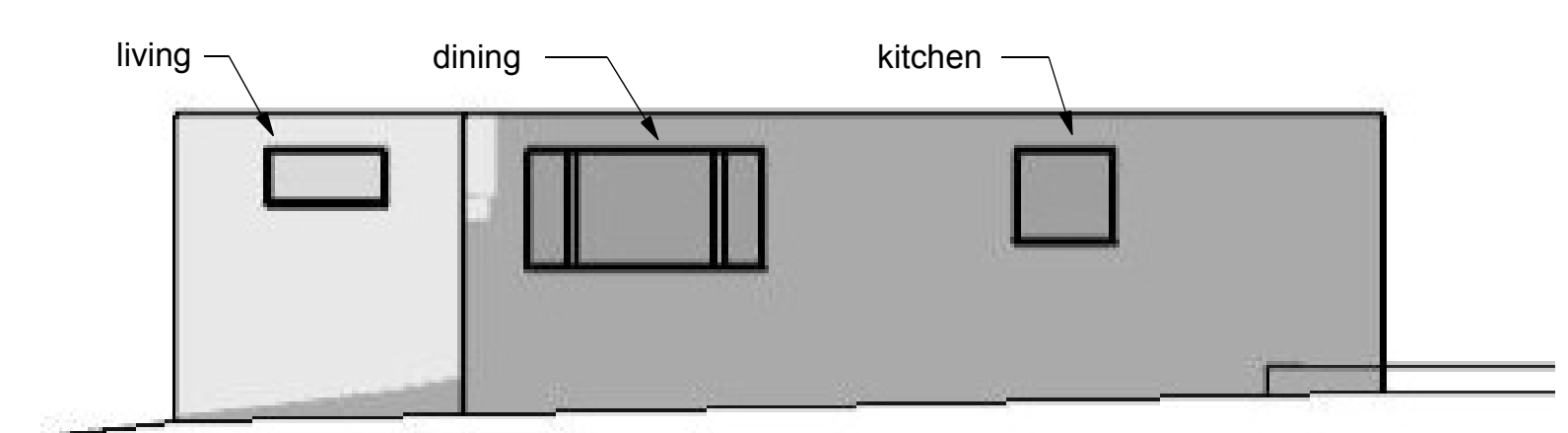
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6-21-2021 / 5:00 pm

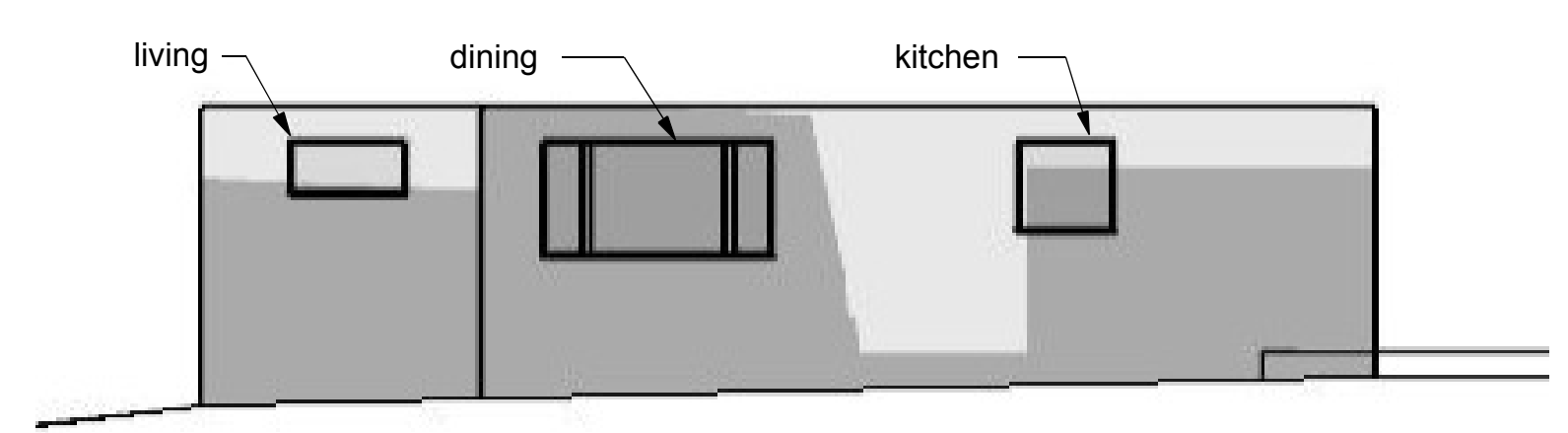
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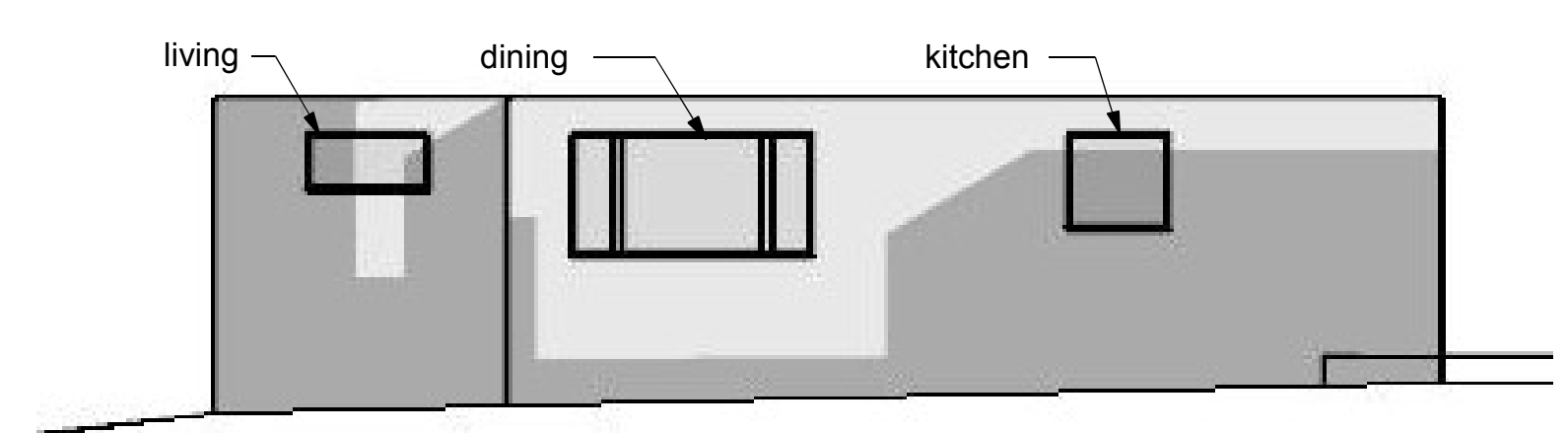
1609 Virginia St. Shadow Impact Study



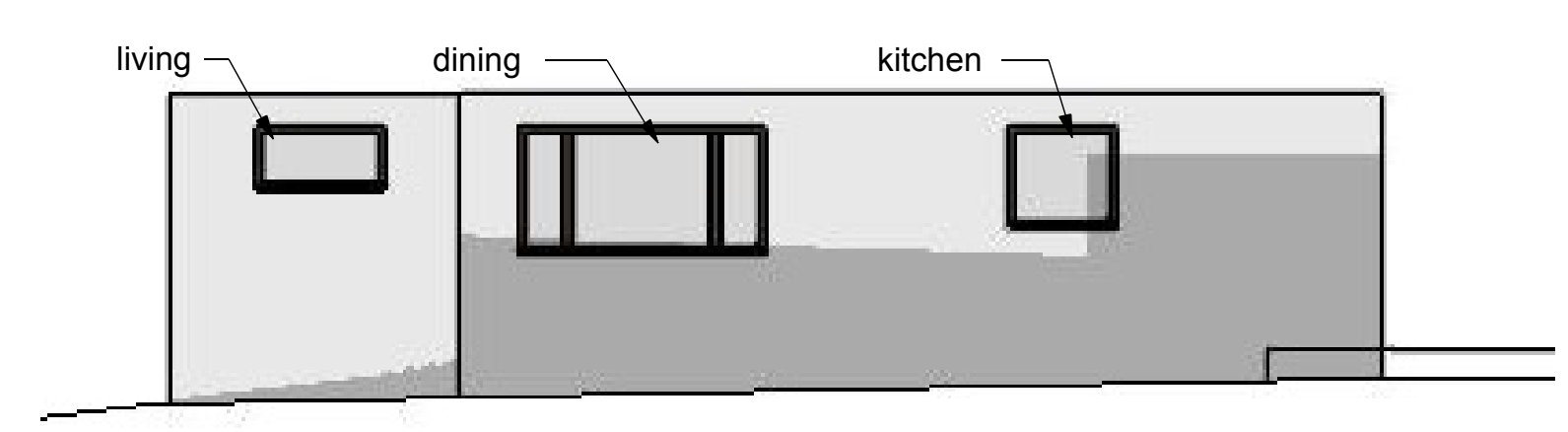
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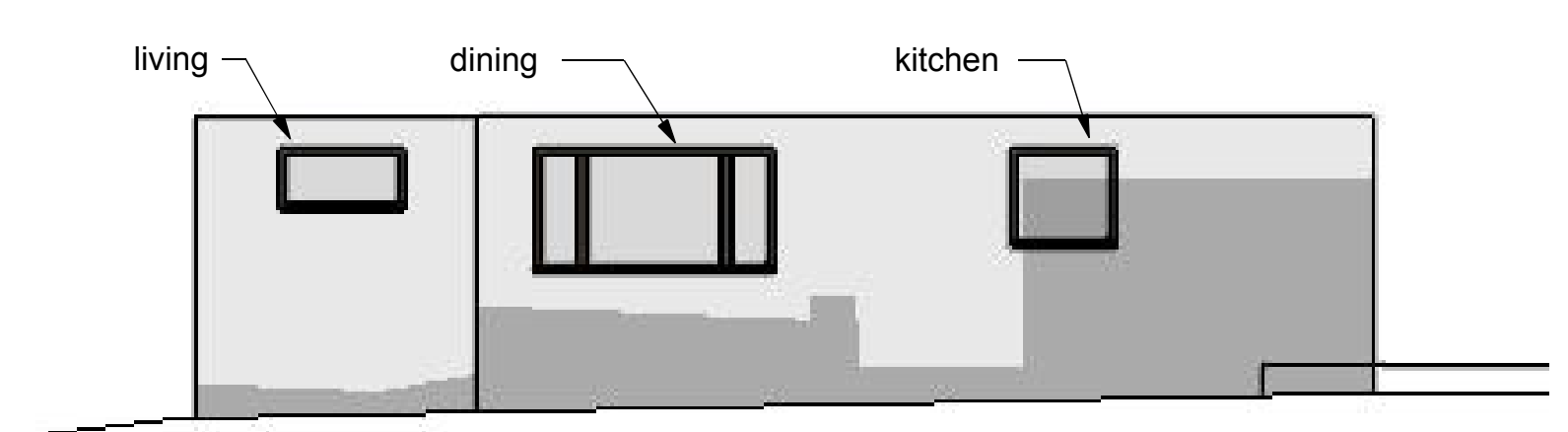
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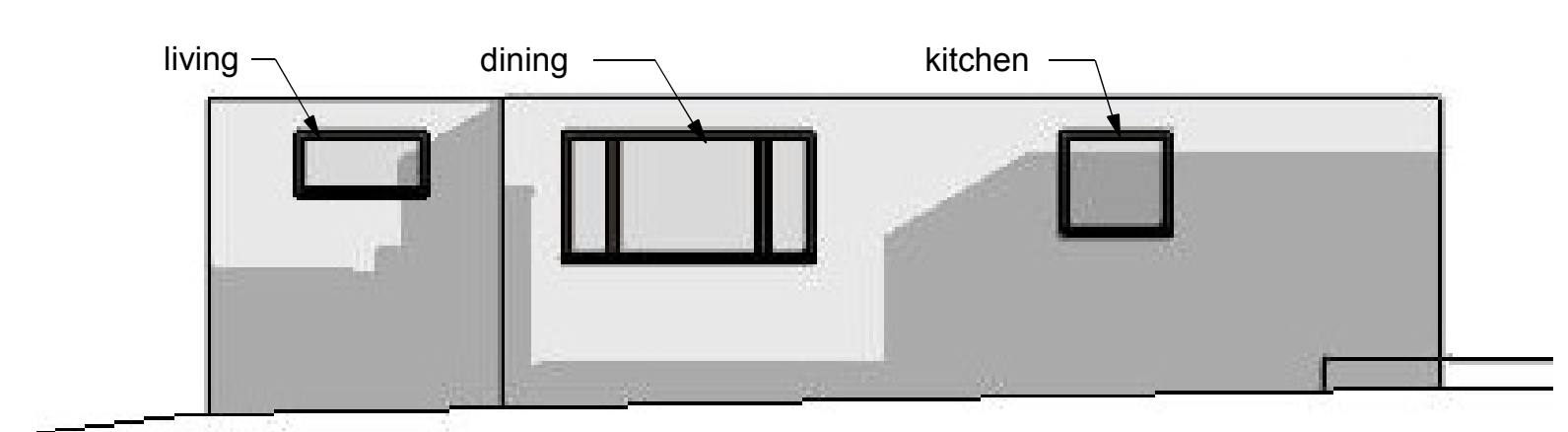
Proposed



Existing



Existing



Existing

12-21-2021 / 2:54 pm

12-21-2021 / 12:00 pm

12-21-2021 / 9:21 am

1639 California St. Shadow Impact Study

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Shadows Studies

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Checked By:
SSG

Scale:
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Revisions:
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Sheet
A4.3



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Ph: 510.548.7448
info@sgsarch.com
www.sgsarch.com



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

Sheet Contents:
Demolition Diagram

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Project No:
20-13-420

Drawn By:
SSG

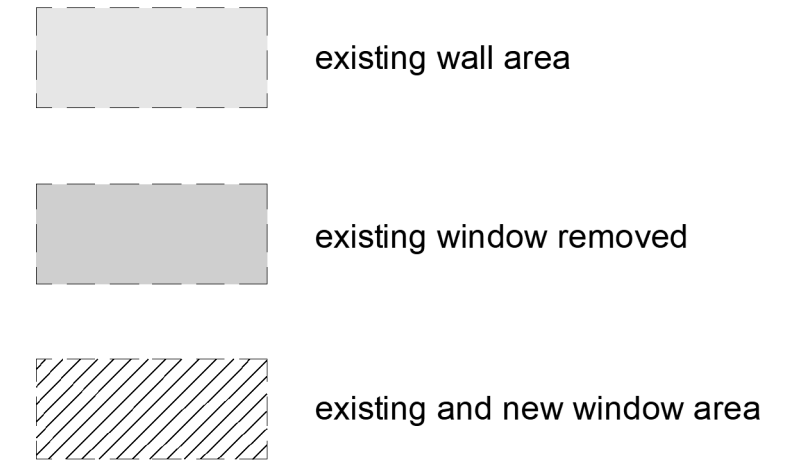
Checked By:
SSG

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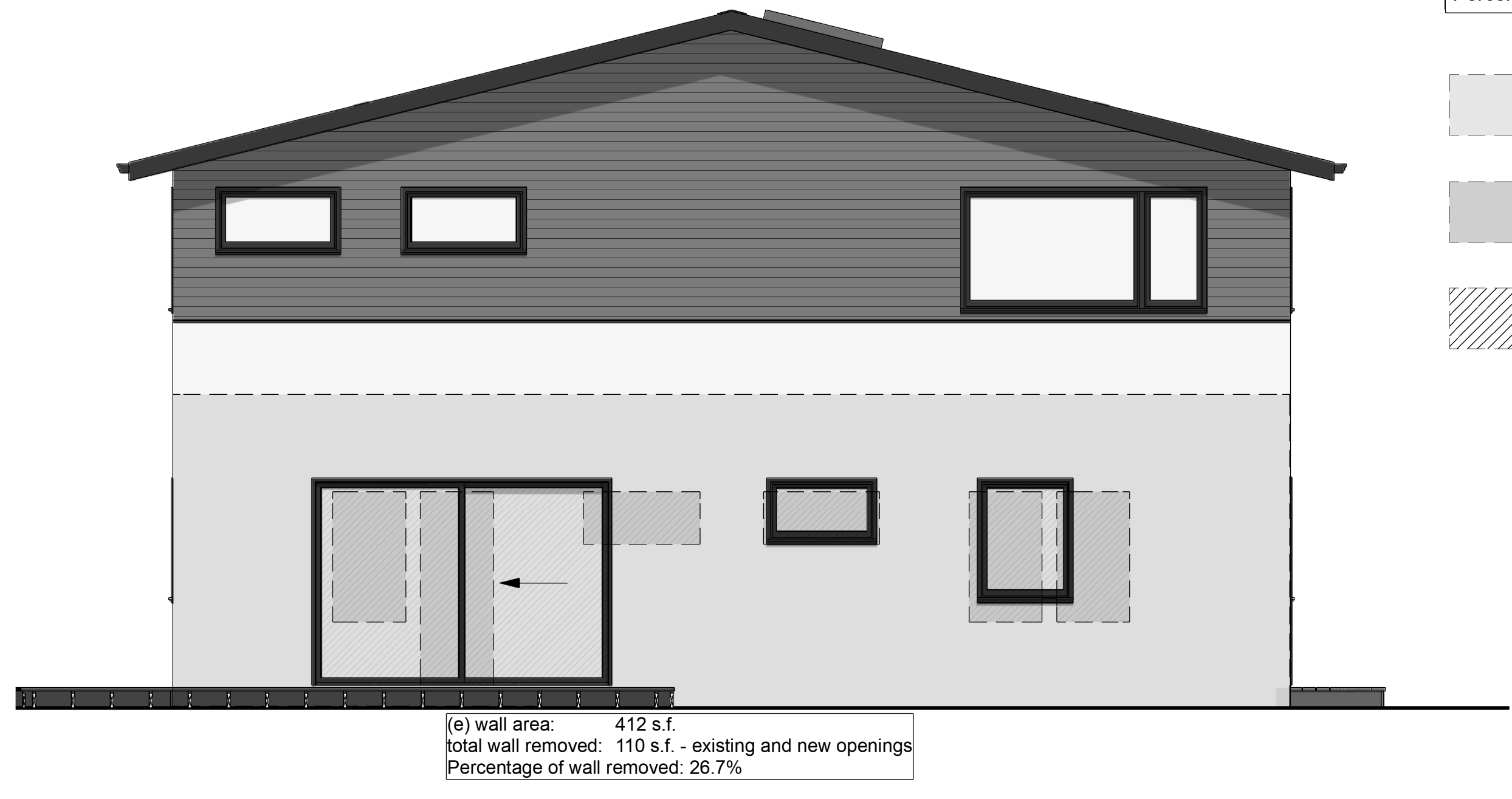
Revisions:
Use Permit Set: 12-10-2020
Redesign: 5-25-2021
Planning Review: 6-29-2021
Planning Review: 7-15-2021
Planning Review: 8-26-2021

Sheet
A5.1

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



4 Proposed South Elevation - Right Side



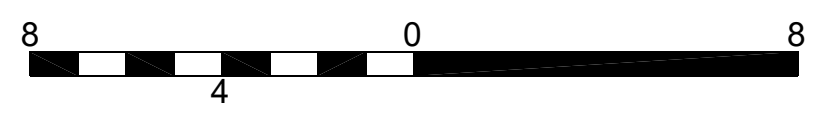
3 Proposed East Elevation - Rear



2 Proposed North Elevation - Left Side



1 Proposed West Elevation - Front



January 10, 2022

To: The Berkeley City Council

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

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

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

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

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

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

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

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

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

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

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

THE FACTS

The project

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

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

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

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

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

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

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

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

*The ZAB hearing and decision*¹

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

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

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

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

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

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

THE LAW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DISCUSSION AND ANALYSIS

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

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

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

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

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

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

³ See for example:

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

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

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

Further, the opinion states that

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

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

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

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

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

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

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

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

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

existing objective standards, there would eventually be no small – and thus more affordable – houses and units left. If this were the case in Berkeley, every property owner could in effect propose adding a couple of bedrooms, thus destroying the small houses available in the city and making it impossible for lower income earners and young families afford to live here. This would entirely change the socioeconomic makeup of Berkeley.

In sum, this proposal does not provide additional housing in Berkeley and does not meet any affordable housing needs and thus should not benefit from restrictions on city powers to influence development created by the HAA This is simply a matter of one family seeking to increase the size of its property – in contravention of zoning standards – without having consulted and reached agreement with its neighbors. There is no justifiable reason why in this circumstance, the ZAB should favor the interests of one property owner over those of its neighbors.

The December 9, 2021 vote by the ZAB to approve the project without modifications was clearly influenced by an erroneous interpretation of the law, with ZAB members voting for the project because they thought they had to do so under the HAA, even after having expressed significant concerns about the size and purpose of the project and about the constraints they felt were being imposed upon them by the law. Recognizing that this was the first time after passage of the new HAA standards that the ZAB had to decide on a case in which a project does not comply with objective standards, and that the ZAB seems to not have fully understood the limitations and powers that law affords to cities, we request that the City Council return this project proposal for another hearing. At that hearing, we would expect that the project be considered for what it is - a proposed expansion that does not comply with objective standards, is not protected under the HAA, and does not count with support from the neighbors, such that the ZAB will feel free to deny the project or impose conditions considering input and requests for modifications from affected neighbors.

SECTION B. Absence of the opportunity for meaningful public participation regarding the project.

Throughout this process we experienced multiple problems with the City's process that created obstacles to the effective and timely participation in the zoning/planning review process. Our full, detailed concerns are described below.

The most egregious issue with respect to public participation in this case was that critical guidance from the City Attorney upon which the ZAB decision was based, was not available to affected parties or apparently to the City Planner until the very end of the ZAB hearing about this project. At that time – after the public participation section of the meeting was closed and with attendee microphones, chats, and videos all turned off on zoom -- and right before the vote was called -- the ZAB chairman found and read a memo to the rest of the ZAB, and in so doing changed the entire focus and purpose of the hearing. Because it had not been previously available, no participant or affected party was able to prepare for or comment on the content of that memo as it potentially applies to the project, and the ZAB made its decision after mere minutes of superficial consideration of this new information. That is not appropriate.

This ZAB hearing was held on December 9th, and the information from the City Attorney that the ZAB Chairman referenced was said to be in an October memo from the City Attorney. The memo supposedly states that any project for which the HAA applies cannot be reduced in square footage. This assertion is completely at odds with comments that the City Planner put in the Staff Report, in his Advisory Comments to the project proponents, and made to us in calls and emails prior to our writing a letter to the ZAB in opposition to the project. As described above, it also seems to be a misinterpretation of what the HAA requires.

One must presume that a memo about zoning from the City Attorney would also have been shared with the Department of Planning and Development and its staff. Nevertheless, the city planner at no point indicated that it would not be possible for the ZAB to deny permits for the proposed third level or otherwise require a significant reduction in size of the project.

In fact, the initial Advisory Comments from the city planner specifically asked for removal of the upper floor to minimize impacts on the neighbors (a reduction in square footage). When speaking with us about our letter to the ZAB he suggested we could reference these comments and ask the ZAB to request "major modifications to the plan prior to continuation of the hearing".

Further, the City Planners comments in the final Staff Report and to us in emails clearly state that the ZAB cannot reduce the number of units (two units, both already existing on this property) but can require other modifications to lessen the impact to neighbors. We therefore chose to focus the comments in our letter and during the hearing to request removal of the upper floor addition to yield a project that would still allow expansion on the non-conforming property from a 1,400 sq ft to 2,700 sq ft structure, on a tiny 3,100 sq ft lot.

The ZAB Chairman who had the additional information from the City Attorney, and presumably read the Staff Report and the submitted public written comments ("Correspondences Received") prior to the hearing, had many opportunities to bring this information to light earlier in the hearing, both right after the City Planner summarized the project, or during the lengthy discussion the ZAB members had about the impacts to lighting and privacy to adjacent neighbors prior to hearing public comment.

Moreover, any information from the City Attorney should have been in the Staff Report as it sets the boundaries for modifications to the plan. If we had been told by the City Planner about this restriction, our letter to the ZAB would have been different, and if we had heard this information from the ZAB chairman during the ZABs initial discussions our oral comments would also have been different.

We thus ask for the City Council to direct the ZAB to reschedule this permit application for a re-hearing, not only as described above in Section A on the HAA, but also so that we and other neighbors can make specific requests to the plan to mitigate the impact to our properties, if the city still decides that it will allow this non-conforming project.

Additionally, we request that the City Council direct the City Planner to require the applicants to erect story poles on their current roof, prior to that ZAB hearing, to show the positioning of the new upper

floor and the location of windows,⁷ as this was never done even though the City's website says that any additions with average heights over 14 feet require application of story poles prior to the ZAB hearing.

If, in the end, the City for some reason decides it still cannot or does not want to deny a project that clearly violates objective standards, exceeds allowed lot density, requires a very large number of UPs and AUPs, is opposed by adjacent neighbors and is completely out of character with the rest of the neighborhood, neighbors might for example request the below modifications:

1. Only permit upper floor window glazing on the south and east side of the development at a height above 5'6" from floor, to increase privacy of neighboring properties.⁸
2. Mandate the construction of a fence between the properties to a height of 8'6" to increase privacy for both neighbors and the project proponents by blocking the direct view between the windows of adjacent houses.⁹
3. Remove the parapet feature on the east side of the top floor. Currently this is set to be built identically to the parapet structure on the front of the house (west side) which is used as a balcony. The parapet feature on the west side is not needed for aesthetic continuity as it isn't continuous on the south and north sides, and on the east side will only act to collect tree droppings from the three tall trees near the property line. These trees are a constant source of complaints from the project proponents as droppings fall on their existing flat roof with a parapet feature. Moreover, to illegally convert that parapet roof structure to a balcony, the owners would only have to add a door to the bedroom on the second floor (a feature that was in their initial submission). Given the project proponent's history of illegal, non-permitted modifications to their property, as described in the fact section above and in the City Planners Staff Report, it would be best to make it impossible for that outside balcony to be easily created.

Complete list of concerns with the city's process and associated impacts to public participation

- The lack of signage and story poles means neighbors were not sufficiently alerted to potential impacts
 - COVID policies from early in the pandemic temporarily removed the requirement for posting a large yellow sign on the property applying for permits to alert neighbors to an application. Signage policies seem to have been changed back to normal during 2021, as we started seeing yellow posters in front of other houses with building proposals, before this proposal was deemed complete. However, we never saw any kind of signage on site describing this project. A few posters were eventually placed on telephone poles, but those were not nearly as noticeable as the traditional large yellow signs on site and have since been removed.

⁷ One concern with the project is whether the proposed project will create a direct clear view from the added upper level into neighbors' bedroom and bathroom, in addition to compromising the privacy of back yards.

⁸ If the project proponents want to keep the total glazing square footage the same to keep the amount of light into that room the same, they have plenty of space in that bedroom on the same wall to extend the 'high windows' toward the south end of that room.

⁹ This would likely require an additional use permit but if the City is willing to issue seven such permits, an eighth seems reasonable as well.

- The project in question never erected ‘story poles’ even though the City’s website says that doing so is required for any addition exceeding 14 feet in height. Again, we saw story poles on other houses in Berkeley that had proposals pending, even before this project was deemed complete.
- Even if temporary COVID policies were put in place to minimize human interaction, once reinstated, requirements should have been applied to all open applications.
- For some period of time, these signage requirements were replaced by postcards the city sent to neighbors. However, those postcards simply listed the address and did not specify on a map which house was affected or what the project implied. The likelihood of people proactively turning to their computer to learn about a proposed project is far lesser after receiving a postcard about an unfamiliar address, than if someone sees signage or story poles on a site.
- This relative lack of information about the project and its impacts - especially the absence of story poles – likely impacted the level of public participation overall, reducing the ability and likelihood of the public commenting on proposals.
- Interactions with the City Planner and the ZAB
 - Over the course of 2021 we had over a dozen email exchanges with the city planner as well as two phone calls. He was very responsive and we greatly appreciate him taking the time to speak with us.
 - Before even hearing the details of our concerns, the City Planner’s advisory comment letter to the applicants called out the impacts to light and privacy to adjacent lots and specifically requested the applicants to remove the upper floor of their proposal (a reduction in square footage).
 - In our final call with the city planner on September 21, 2021, he mentioned options to (1) call out the impact to our light and privacy, (2) reference the suggestions he made in his Advisory Comments to make the scope of the project more reasonably sized by removing the upper floor to minimize/eliminate impacts to neighbors, (3) ask the ZAB to request “major modifications to the plan prior to continuation of the hearing”, and (4) describe the ways in which the applicants misrepresented their neighbors’ support of the project. At no point did he suggest that requesting a reduction in square footage would not be possible.
 - We thus focused our comments on requesting removal of the upper floor addition, to reduce impacts on neighbors but still allow the owners to expand the duplex on their non-conforming property from ~1400 sq ft to ~2700 sq ft.
 - As of 10am on 12/8/2021, the day before the ZAB hearing, the Staff Report was still not posted for public access. At that time, we were the ones who had to reach out to the city planner to get the report from him and make sure it was posted. Thus, there was also insufficient advance time for review and consideration of that report.
- The ZAB Hearing
 - In general, with the need to conduct public hearings on zoom rather than in person, those hearings should be conducted with video and chat channels enabled for all participants so that affected parties can communicate easily. Having chat channels, microphones and videos all disabled, as was the case in this hearing, is not appropriate. The zoom December 9 ZAB meeting did not even allow participants to communicate by

raising a hand to be called on (except during the very limited public comment section). This is extremely problematic, as evidenced by one person who was trying to participate but had no way to communicate with the ZAB to let the ZAB know she for sure wanted to speak. ZAB members themselves found themselves needing to call each other via cellphone rather than being able to interact on chat.

- During the ZAB hearing on 12/9/2021 the city planner reviewed the project and made the same statements described above. The ZAB then had a discussion, and several members raised concerns about the large impact to the neighbor's light and privacy. After this the project proponents spoke, followed by several neighbors who mostly opposed particularly the upper floor addition.
- A discussion by ZAB members ensued. It was at the end of this conversation that the ZAB Chairman referenced a letter he had from the City's Attorney from October supposedly stating that for projects where the HAA applies, the ZAB cannot reduce the square footage of the project, in effect saying that all ZAB members had to vote to approve (at this point in the Zoom hearing we 'raised our hand' to comment but were not called on)
- Finally, the chairman called for a vote and got the unanimous approval that he had already stated was required.
 - The fact that this critical piece of information from the City Attorney was (i) counter to what the City Planner states in the Staff Report and to us directly, and (ii) was presumably known but not shared by the ZAB Chairman until after all public participation was complete, in effect took away the public's ability to submit comments that were meaningful in the context of this critical information.
 - Rather, the important information about how the HAA will be applied should be shared prior to the hearing. As stated above, if we had known about this supposed restriction our comment letter to the ZAB would have been different. Similarly, if we had heard this from the ZAB chairman during the ZABs initial discussions, our verbal comments would have been different.
 - We have since asked the ZAB and the City Planner for a copy of this memo from the City Attorney (and access to the ZAB hearing recording) three times, with neither party even replying to our request.
- Appeal process
 - On December 14th, a few days after the ZAB hearing, we sent an email to the ZAB and to the City Planner requesting to be informed when the 'approval' would be posted and how the 14 days from then would be counted (calendar vs. work days, and considering which holidays?). We received no response from either. We also wrote a longer letter to the ZAB and City Planner and requested this information again on December 27th.
 - Having received no information from the ZAB or the City planner, we reached out to the City Webmaster on 12/17/2021 and were at that time referred to the 'Approved Zoning Applications' site, and the 'Guidelines for Filing an Appeal' site. We checked the 'Approved Zoning Applications' site immediately and then regularly thereafter and never saw the project appear.

- On January 4th, we received information from the City Planner that we would be required to appeal, but no further information as to what the timing would be. Since we were not seeing any postings on the site to which we had been referred, we assumed the clock was not yet running.
- Even so, we reached out to the City Clerk's office by email on January 7th. They immediately responded and told us that the decision had been posted to the 'Zoning Applications in Appeal Period' site on the 27th of December (the same day we last asked the ZAB and the City Planner for this information, and during a holiday break), and that we had three days until January 10th to file our appeal.

There are clearly numerous fronts on which public participation in zoning decisions needs to be improved.

- 1) The city must provide clear and easily understandable information as to how and when the HAA will be applied.
- 2) Posting of information about projects and story poles should be required and enforced.
- 3) The zoom logistics for hearings should be improved to promote meaningful participation in times of virtual meetings. (Unruly participants could always be muted, but excluding or preventing participation should not be the default.)
- 4) Berkeley should more clearly and proactively make available information about the appeals process to everyone who participates in a public hearing.

Thank you for your consideration and action on these matters,



Anna Cederstav



Adam Safir



Kay Bristol

Owners of properties adjacent to 1643-47 California.



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

FOR BOARD ACTION
DECEMBER 9, 2021

1643 & 1647 California Street

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

I. Background

A. Land Use Designations:

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

B. Zoning Permits Required:

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

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

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

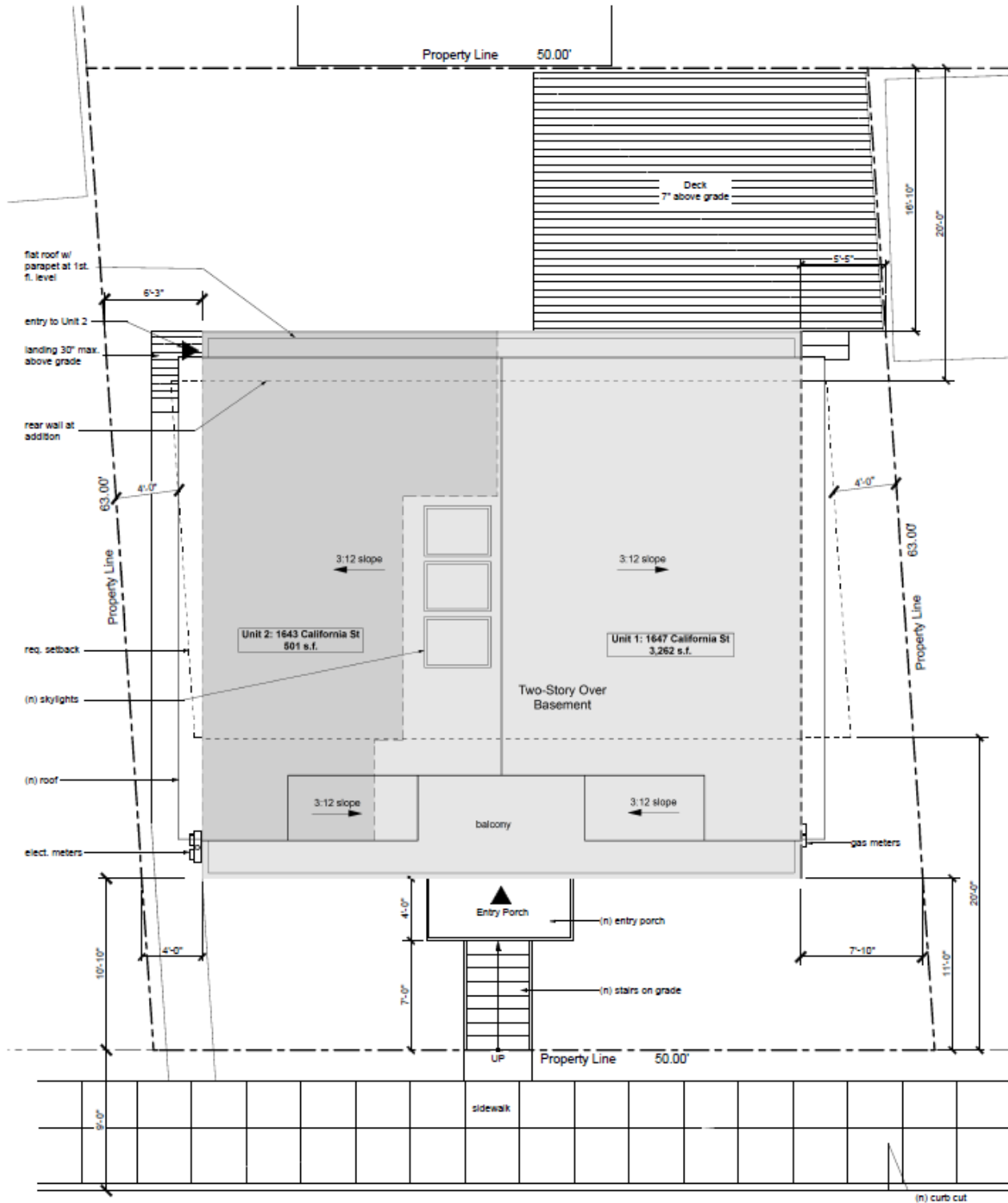
D. Parties Involved:

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

Figure 1: Vicinity Map



Figure 2: Site Plan



2 Proposed Site Plan

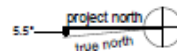
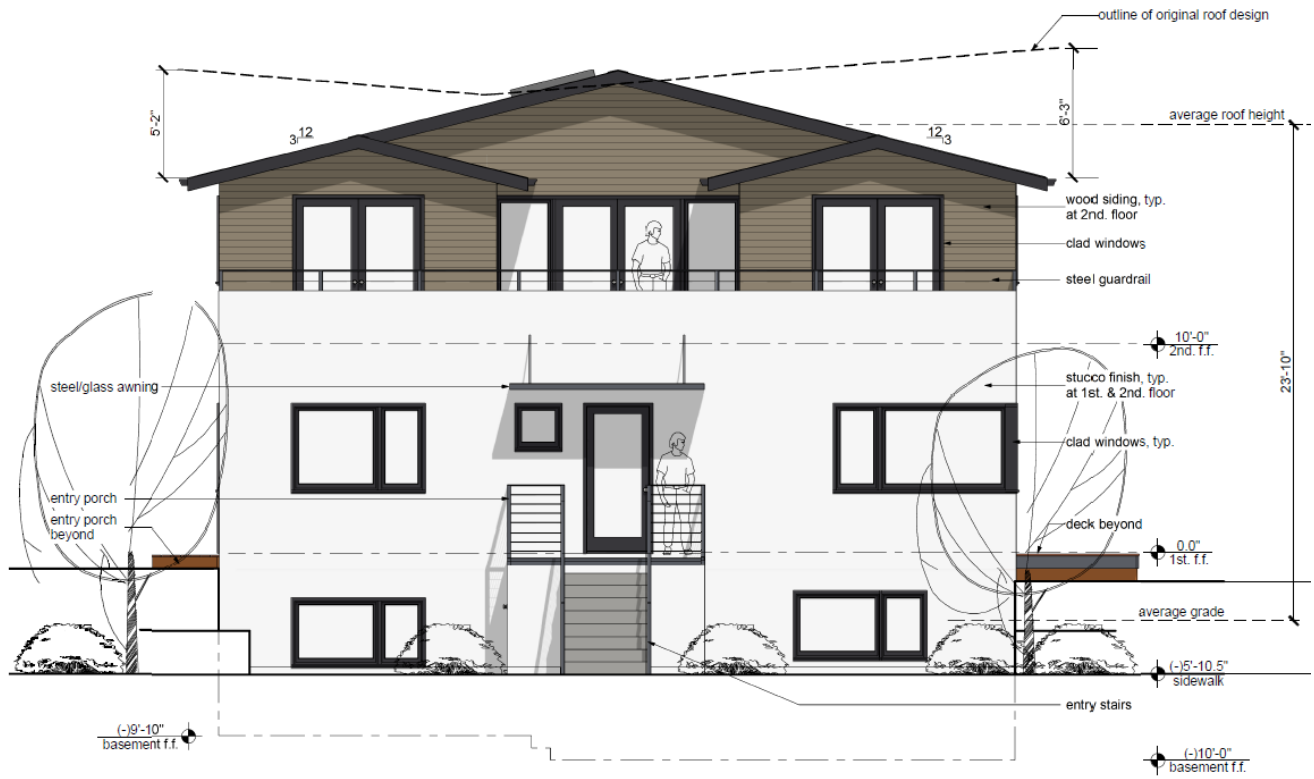


Figure 3: Front Elevation



1 Proposed West Elevation - Front
Current Proposal

Figure 4: Rear Elevation



Table 1: Land Use Information

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

Table 2: Special Characteristics

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

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

Table 3: Project Chronology

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

Table 4: Development Standards

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

II. Project Setting

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

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

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

III. Project Description

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

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

IV. Community Discussion

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

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

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

Concerns raised include:

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

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

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

Support of the application includes:

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

V. Issues and Analysis

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

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

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

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

The project site is not a historic site.

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

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

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

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

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

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

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

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

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

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

- iv. The neighborhood is a mix of residential uses, including apartments and single-family and multi-family homes. Existing structures in the immediate neighborhood vary in height from one to two stories.
- v. In addition, the project approval is subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, thereby ensuring the project will not be detrimental.

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

1. Policy LU-3 – Infill Development: Encourage infill development that is architecturally and environmentally sensitive, embodies principles of sustainable planning and construction, and is compatible with neighboring land uses and architectural design and scale.
2. Policy H-33 – Regional Housing Needs: Encourage housing production adequate to meet City needs and the City's share of regional housing needs.
3. Policy LU-7 – Neighborhood Quality of Life, Action A: Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area.
4. Policy UD-17 – Design Elements: In relating a new design to the surrounding area, the factors to consider should include height, massing, materials, color, and detailing or ornament.
5. Policy UD-24 – Area Character: Regulate new construction and alterations to ensure that they are truly compatible with and, where feasible, reinforce the desirable design characteristics of the particular area they are in.
6. Policy H-12 – Transit-Oriented New Construction: Encourage construction of new medium- and high-density housing on major transit corridors and in proximity to transit stations consistent with zoning, applicable area plans, design review guidelines, and the Climate Action Plan.

VI. Recommendation

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

- A. APPROVE ZP2021-0001 pursuant to Section 23B.32.030 and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

1. Findings and Conditions
2. Project Plans, dated August 26, 2021
3. Notice of Public Hearing
4. Correspondence Received

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



Index &
Administrative Record
ZAB Appeal:
1643-1647 California
Street

These attachments are on file and available for review upon request from the City Clerk Department, or can be accessed from the City Council Website.

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

or from:

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

**NOTICE OF PUBLIC HEARING – BERKELEY CITY COUNCIL
PUBLIC PARTICIPATION BY REMOTE VIDEO ONLY**

ZAB APPEAL: 1643-1647 CALIFORNIA STREET, USE PERMIT #ZP2021-0001

Notice is hereby given by the City Council of the City of Berkeley that on **TUESDAY, APRIL 26, 2022 at 6:00 P.M.** a public hearing will be conducted to consider an appeal of the decision by the Zoning Adjustments Board to approve Zoning Permit #ZP2021-0001 to: 1) create a new lower basement level, 2) construct a new second story, and 3) modify the existing duplex layout resulting in a 3,763 square foot duplex on an existing property.

A copy of the agenda material for this hearing will be available on the City's website at www.CityofBerkeley.info as of **April 14, 2022**. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology.**

For further information, please contact Allison Riemer, Project Planner, (510) 981-7433, or ariemer@cityofberkeley.info. Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

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

Mark Numainville, City Clerk

Mailed: April 12, 2022

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

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

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

