



Office of the City Manager

PUBLIC HEARING
February 25, 2020

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Timothy Burroughs, Director, Planning & Development Department
 Subject: ZAB Appeal: 2422 Fifth Street, Use Permit #ZP2018-0108

RECOMMENDATION

Conduct a public hearing and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP2018-0108 to construct a three-story, 4,806-square-foot mixed-use building containing 967 square feet of medical office space and two dwelling units on the rear of a lot with an existing duplex, including a request to waive two residential parking spaces and establish two joint use commercial/residential spaces, and dismiss the appeal.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

On May 24, 2018, Devi Dutta Architecture submitted an application for Use Permit #ZP2018-0108 to convert the upper unit in the existing two-story duplex on the front of the lot at 2422 Fifth Street into medical offices (acupuncture), and construct a new duplex on the rear of the lot.

On December 7, 2018, based upon an advisory letter from the Rent Stabilization Board on the rental history of the property and the Rent Board's recommendations, staff advised the applicants that a Variance would be required to eliminate the rent-controlled dwelling unit through its conversion into a commercial unit (medical offices), and that the Variance would not be supported by staff.

On May 8, 2019, in response to staff's advisory, the applicant submitted a revised Use Permit application for a project that retained the rent-controlled, front duplex and would construct two dwelling units and medical offices in a new rear building, in order to avoid requesting a Variance.

On October 24, 2019, the ZAB conducted a public hearing for the Use Permit application. After hearing public comments and holding discussion, the ZAB approved the Use Permit by a vote of 9-0-0-0 (Yes: Clarke, Ching, Kim, Matthews, O'Keefe,

Selawsky, Sharenko, Simon-Weisberg, Tregub; No: None; Abstain: None; Absent: None).

On November 5, 2019, staff issued the ZAB Notice of Decision.

On November 19, 2019, Redwood Tree Studios HOA, a residential association composed of neighbors residing at 2430 Fifth Street (the property to the south of the project site), filed an appeal of the ZAB decision with the City Clerk.

On February 11, 2020, 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.

BACKGROUND

On May 8, 2019, the applicant submitted a revised project to avoid the elimination of a rent-controlled dwelling unit after staff advised the applicant that a Variance would be required for the project, and that the Variance would not be supported by staff. The original project proposed three dwelling units and a medical office, for which the district parking standard requires three commercial and three residential parking spaces on site (six total). To accommodate the parking requirement, the original project provided five parking spaces – three commercial spaces (two in tandem along the driveway, one ADA¹ space behind the existing duplex) and two residential spaces in the rear building. A permit to waive one of the three required residential parking spaces was requested.²

The *revised* project proposed four dwelling units and a medical office of similar size, for which the district parking standard requires three commercial and four residential parking spaces on site (seven total). The revised project would provide three parking spaces – three commercial spaces (including one ADA space), with two to be used jointly with two residential parking spaces. A permit to waive two of the four required residential parking spaces was requested.³ A permit was also required to allow the joint parking arrangement between the commercial and residential parking. See Figure 1 below for a summary of the parking for the original project versus the revised project.

¹ Americans with Disabilities Act (ADA).

² A waiver of one residential parking space requirement for each new dwelling proposed is allowed with a Use Permit (UP), per BMC Section 23E.84.080.F, if the findings can be made. The findings call for evidence that the evening parking supply is adequate and/or that other mitigating circumstances exist on the property. The originally proposed tandem layout would have also required approval by both the Traffic Engineer and the ZAB.

³ A waiver of two residential parking spaces is allowed with the Use Permit described in Footnote 2, and a joint parking agreement is allowed with an Administrative Use Permit (AUP) per BMC Section 23E.28.060.A, if the findings for each permit can be made.

Figure 1: Project Parking Summary

Original Project Parking	District Standard	Required	Provided	Permits Requested
Residential (3 dwelling units)	1 per du	3	2	UP to waive 1 parking space
Commercial (793 square feet)	1 per 300 sf	3	3	-
Total	-	6	5	-

Revised Project Parking	District Standard	Required	Provided	Permits Requested
Residential (4 dwelling units)	1 per du	4	2	UP to waive 2 parking spaces
Commercial (967 square feet)	1 per 300 sf	3	3	-
Total	-	7	3	AUP for joint use of 2 parking spaces

The applicant worked with Land Use division staff and the Traffic Engineer throughout the first application review process to develop the parking survey scope and submitted the first survey, dated October 25, 2018, to support the waiver of one parking space, as requested in the original project and as required by the use permit findings. When staff advised the applicant that it could not support the project because Variance findings could not be made, the applicant explored alternative proposals that would retain the existing rent-controlled, front duplex units while proposing to put the medical offices in a new rear building, along with additional new dwelling units. The applicant discussed several proposals with staff within the context of the City's Zoning Ordinance and submitted the revised project on May 8, 2019 – the project that was approved by the ZAB on October 24, 2019.

Because the project description changed in the revised submittal, staff advised that the applicant provide additional time periods in the parking survey to support the findings required to approve the two permits needed for the requested reduction in parking. In response, the applicant's consultant prepared and submitted the second parking survey, mistakenly dated March 21, 2018, instead of the correct date of March 21, 2019. The project description on the revised survey was also not updated accurately. The revised March 21, 2019 parking survey includes the data collected from the first survey (dated October 25, 2018) alongside the data for the additional times requested by staff, and replaced the first survey. The applicant has submitted a parking survey with the corrected date and project description for the Council to review as part of this appeal (see Attachment 3).

In response to Appeal Issue 1e, discussed later in this report, the applicant has also submitted a draft parking layout that is compliant with ADA parking standards. Staff has reviewed the draft revised site plan and confirms that it does not change the ZAB permit approvals. Please see Attachment 4, ADA-Compliant Parking Layout, and Issue 1e discussion below for more details.

For additional project background, please see Attachment 5, the ZAB staff report for this project.

ENVIRONMENTAL SUSTAINABILITY

The proposed project is in compliance with all state and local environmental requirements.

RATIONALE FOR RECOMMENDATION

The issues raised in the appellant's letter 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. Because of the complexity of the appeal point on Parking (Issue 1), the issue is separated into multiple sub-issues.

Issue 1: Parking Waiver and Joint Parking. The appellants assert that the approval of the waiver of two residential parking spaces is based on an invalid parking survey that is out of date and does not accurately assess the current parking demand or the impact of the proposed development in the neighborhood.

Issue 1a: The appellants assert that the approval of the waiver of two residential parking spaces is based on a parking survey that does not accurately assess the current parking demand. Furthermore, joint use of the on-site parking assumes that the residential parking will not be needed on the site during normal business hours. In West Berkeley, many residents use car-alternative means to commute and leave their cars at home, often on the street. Joint parking does not provide the amount of parking required by the zoning ordinance and would place additional demand on an already impacted parking situation on Fifth Street.

Response 1a: The parking survey supports the waiver of two residential parking spaces and the joint-use parking arrangement because the data indicate that there is a significant surplus of street parking near the project site during peak demand hours. The survey provides data for on-street parking occupancy/vacancies observed within a one-block radius of the site for one-hour time periods during peak times for commercial and residential parking⁴ – 1:30 p.m. on a Wednesday and Thursday; 5:30 p.m. on a Wednesday; 8 p.m. on a Thursday; 2:30 p.m. and 8 p.m. on a Saturday; and 1 p.m. and 6 p.m. on a Sunday (see Attachment 3, Parking Survey

⁴ There is no public off-street parking within the one-block radius of the site.

for complete results). The empirical data provided for observed parking demand in the vicinity of the site is believed to accurately assess the existing parking demand.

Figure 2: Parking Survey Results

Wednesday, October 17, 2018:

<u>10-17-18 (1:30 PM)</u>		<u>10-17-18 (5:30 PM)</u>	
Total Supply:	153	Total Supply:	153
Total Demand:	116	Total Demand:	86
Net Vacant Spaces:	37	Net Vacant Spaces:	67

Saturday March 16, 2019:

<u>3-16-19 (2:30 PM)</u>		<u>3-16-19 (8:00 PM)</u>	
Total Supply:	153	Total Supply:	153
Total Demand:	64	Total Demand:	54
Net Vacant Spaces:	89	Net Vacant Spaces:	99

Sunday March 17, 2019:

<u>3-17-19 (1:00 PM)</u>		<u>3-17-19 (6:00 PM)</u>	
Total Supply:	153	Total Supply:	153
Total Demand:	63	Total Demand:	53
Net Vacant Spaces:	90	Net Vacant Spaces:	100

Thursday March 21, 2019:

<u>3-21-19 (1:30 PM)</u>		<u>3-21-19 (8:00 PM)</u>	
Total Supply:	153	Total Supply:	153
Total Demand:	129	Total Demand:	97
Net Vacant Spaces:	24	Net Vacant Spaces:	56

The amount of parking required for the project by the MU-R zoning district is seven spaces – four residential and three commercial. The project would provide three parking spaces on site (including 1 ADA space). The project requested a Use Permit to waive two residential spaces for the two new dwellings proposed.⁵ In addition, the project requests an Administrative Use Permit to create a joint parking

⁵ Pursuant to BMC Section 23E.84.080.F, if the Board finds that existing evening parking supply is adequate and/or that other mitigating circumstances exist on the property, the requirement for an additional off-street parking space may be waived through a Use Permit when an additional residential unit is added to a property with one or more residential units.

agreement for sharing two of the three spaces on site between the three commercial and two residential parking spaces required after the waiver of two residential spaces with the first Use Permit.⁶ Both permits were approved by the ZAB because, based upon the data collected in the parking survey and staff's analysis, the findings for both were satisfied.

The permit for the residential parking waiver requires the finding that the "existing evening parking supply is adequate" to accommodate the waiver. The survey showed street parking vacancies ranging from 56 to 67 spaces during peak weekday evening times, and vacancies ranging from 89 to 100 spaces during peak weekend times. The threshold used by the City Traffic Engineer to determine if a parking reduction is supported is that there are at least two times the number of spaces available that are requested to be waived for at least two hours during parking demand times of the proposed use. The data showed a minimum of 56 spaces available during two weekday peak demand hours and four weekend peak demand hours, for the two residential spaces requested to be waived. Thus, the data confirmed that the parking availability met and exceeded this threshold, and that the findings for the parking waiver were met.

The primary finding for approval of the permit for joint parking between the commercial and residential parking is that "the times demanded for these parking spaces will not conflict substantially between the use offering the spaces and the use to be served".⁷ Because the medical office hours were proposed to be 8 a.m. to 4 p.m., during normal business hours (commonly accepted to be from 8 a.m. to 6 p.m. on weekdays), and the residential parking is anticipated to be mostly on night and weekends, the ZAB determined that this finding (as well as the other two findings) for this permit were satisfied. However, staff acknowledges that residents could potentially utilize alternative transport to work, and leave their vehicles near their homes during normal business hours. The survey data shows that there is enough street parking to accommodate the parking for all four dwellings – 24 to 37 available spaces during peak commercial parking times – should their residents choose to leave their cars near the site, while the three spaces

⁶ Pursuant to BMC Section 23E.28.060.A, the Board may approve permit to allow a Joint Use Parking Agreement to satisfy off-street parking space requirements, if all of the following findings are made:

1. The off-street parking spaces designated for joint use are located within 800 feet of the use to be served;
2. The times demanded for these parking spaces will not conflict substantially between the use offering the spaces and the use to be served; and
3. The off-street parking spaces designated for joint use are not otherwise committed to satisfying the parking requirements for some other use at similar times.

⁷ See Footnote 6.

on site are reserved for medical office parking. Thus, joint parking on the site would not adversely affect street parking in the area.

Finally, the significant surplus of parking availability documented in the survey results contradict the assertion that there is a dearth of parking in the vicinity of the project site, both during peak demand weekday hours and peak demand night and weekend hours.

Issue 1b: The appellants assert that the parking survey doesn't accurately anticipate the amount of parking needed for a medical office of this size (for employees and patients) and does not account for future expansion of the business. One to two non-ADA spaces is not enough.

Response 1b: Pursuant to the MU-R district ordinance, the parking ratio for medical offices is based upon the gross floor area of the office (one space per 300 square feet of office area). The project provides the required minimum of three commercial parking spaces for 967 square feet of office area. The project also proposes to share the three spaces with the two required residential spaces. As discussed in Response 1a, the findings for the joint parking permit are satisfied.

Furthermore, as discussed in the previous response, the parking survey results support the assumption that enough parking is available to accommodate additional parking demand beyond the district requirement for on-site parking, including the demand from cars that are parked in the neighborhood if residents use alternative transport for commuting to work (thus increasing local daytime parking demand). The amount of available parking during the weekdays surveyed in the report (a minimum of 24 vacancies within a one-block radius of the site) also appears to support the accommodation of occasional spikes in patronage or an increase in staff or patronage due to future expansion of the business.

One ADA parking space is required for the proposed commercial use, and the City counts ADA spaces toward satisfying overall commercial parking requirements for projects. Therefore, the project provides the minimum number of parking spaces required per the district standard.

Issue 1c: The appellants assert that the parking survey is invalid because it is based on an incorrect project description.

Response 1c: Staff acknowledges that the project description in the revised parking survey was not correctly updated to reflect the changes made in the project in the May 8, 2019 submittal. The project description has since been corrected and is included here as Attachment 3. However, the

parking survey is a compilation of empirical data, and is dependent upon the survey's scope (time periods and area radius), which is determined in consultation with Land Use staff and the Traffic Engineer. The applicant's traffic consultant does not provide analysis of the data or conclusions that are based upon the data or the project description. Rather, analysis and conclusions based upon the survey are provided by Land Use Staff and the Traffic Engineer to inform the ZAB's decision for approval. Thus, the failure to accurately update the project description in the report did not affect the validity of the data collected, because staff determined the survey scope based upon revised project, and the scope was carried out in the March 21, 2019 report. The survey is believed to provide accurate empirical data for the existing conditions on the site.

Issue 1d: The appellants assert that the parking survey is invalid because it doesn't account for new development projects that are under construction or that are in the approval pipeline. Parking is impacted because of inadequate off-street parking in neighborhood and delivery traffic to manufacturing and distribution businesses in the nearby blocks.

Response 1d: The purpose of the parking survey was to provide data on available street parking to satisfy the findings for the parking waiver and the joint parking arrangement permit approvals. No traffic study was required because the project did not reach the City's thresholds for triggering a traffic study.⁸ Thus, the traffic generated by the project is considered negligible.

Three projects were referenced by the appellant in the appeal letter as developments which contribute to a cumulative significant impact on parking in the area: 1) 739 Channing (ZP2017-0039) – construction of 10 dwelling units, four live/work units, and one office space; 2) 2431 Fifth Street (ZP2019-0134) – addition of one commercial tenant space and the establishment of a light manufacturing use and a wholesale trade use; 3) 2326 Fifth Street (ZP2016-0102) – establishment of a quick-service restaurant incidental to a pizza dough manufacturing use. All land use permit applications are subject to the same thresholds for requiring a traffic study. The 739 Channing project submitted a Traffic Impact Analysis (TIA), as required by the City submittal requirements, which found no significant traffic impacts and recommended no mitigations; also, the parking provided by the project exceeds the district requirement. For the 2431 Fifth Street project, no TIA was required and

⁸ The City's Zoning Project Submittal Requirements requires the submittal of a Traffic Impact Analysis for projects creating 10 or more dwelling units, 5,000 square feet of more of gross floor area, or 25 peak hour or more vehicle trips (based on ITE trip generation rates), or other projects as determined necessary by the project planner and traffic engineer.

an existing parking lot would provide parking that exceeds the amount required by the addition of the tenant space and the proposed uses. For the 2326 Fifth Street project, no TIA was required and existing on-site parking was deemed adequate for the new use. For all three projects, City staff found no indication that the projects would cause a significant impact on traffic or parking in the vicinity. Therefore, cumulative impacts were not considered in the analysis of the 2422 Fifth Street project. Based upon the submitted parking survey and staff's analysis, the ZAB determined that the findings to approve both requested permits for the reduction of parking requirements were adequately made.

In addition, the results of the survey indicate a significant surplus of on-street parking within a one-block radius of the site, and contradict the appellant's claim that parking is inadequate in the vicinity of the project site.

Issue 1e: The survey is invalid because it is out of date and contains insufficient data to assess the actual parking demand in the neighborhood, which has continued to increase rapidly in the 18 months since the original survey. The 1 to 2 p.m. time period surveyed is not representative of the daily parking demand because it falls during the typical lunch hour for the businesses in the area. Also, the ADA space does not comply with ADA code.

Response 1e: As discussed previously, the date on the revised parking survey submitted was initially incorrect and has since been corrected – the correct report date is March 21, 2019. The survey was submitted shortly after the report date, and includes data from March 16, 17, and 21 of 2019 (in addition to the October 17, 2018 data), in response to staff's request for additional survey data. The revised parking survey was nine months old at the time of the ZAB approval of the use permits (and included one data set which was 14 months old). According to the Traffic Engineer, traffic data is considered valid up to three years after the report date, unless a known significant increase of parking demand has occurred since the survey was conducted. Also, as discussed in Issue Response 1d, recently approved projects in the area are providing the required parking or exceeding the anticipated demand from those individual projects, and no cumulative effects on parking or traffic are expected in the vicinity of the project site that would warrant an update of the survey.

According to the Traffic Engineer, 1 to 2 p.m. is considered a peak hour for commercial parking demand, and is a time period that is typically included in the scope of parking surveys required by the City.

Staff acknowledges that the ADA parking shown in the approved site plan is not standard – the access aisle for the ADA space should be on the right side of the space and not the left. The applicant has submitted a draft parking layout according to the Traffic Engineer’s direction that is compliant with ADA parking standards (see Attachment 4). Staff confirms that this revised site plan does not change the ZAB permit approvals. The project will be required to meet all building and zoning codes prior to the issuance of any building permits.

Issue 2: Affordable Housing. The appellants assert that the project does not address the affordable housing crisis in the City as suggested in the application, and the applicant misrepresented this issue at the ZAB hearing. The project would yield two new market-rate units, and the existing units would reset to market rate when the new construction is complete.

Response 2: The project description was clearly stated in the staff report and the Finding and Conditions document in the ZAB hearing materials, and on all public hearing notices. The project maintains the two rent-controlled units on the front of the lot while proposing two additional dwelling units (total four dwelling units on the parcel) in the new rear building, along with new medical offices. There is no indication that the ZAB or the public were misled about the project description by any published hearing materials.

At the October 24, 2019 ZAB hearing, the applicant made statements that one ZAB member thought implied that the proposed project would help alleviate the “affordable housing crisis” by providing affordable units. The ZAB member immediately followed the statements with questions that clarified that the project is not a project that contains low-income (affordable) units. ZAB members were aware that the project did not provide affordable (below market rate) units when they approved it.

According to the property owner, the tenants in the existing duplex units wish to vacate prior to construction of the new project and would not return to the property. Under the Rent Stabilization Ordinance (BMC Chapter 13.76), rents for these units would be allowed to increase to the current market rate once vacated.

The project has proposed fewer than five new dwelling units, and is thus not subject to the City’s Affordable Housing Mitigation Fee to mitigate the effects of the construction of new market-rate rental units in the City. The project meets the approval criterion of General Plan consistency by adding two new dwelling units to the City’s housing stock, and helps the City meet its General Plan policy goal to “encourage adequate housing

production to meet City needs and the City's share of regional housing needs" (Policy H-33–Regional Housing Needs Assessment).

Issue 3: Project Changes. The appellants assert that the project approved by the ZAB is substantially different from the one originally proposed by the applicants, which proposed fewer units and more parking. Neighbors are concerned about the proximity, size and design (materials, colors, windows) of the new building proposed.

Response 3: As described in the Background section of this report, the project was revised in response to site constraints based on the existing dwelling units. The revised project proposed two new dwelling units instead of one in the original project, and three parking spaces instead of five in the original project.

Staff confirmed that immediate neighbors and the general public were properly notified of the change in the project description after the revised project was submitted on May 8, 2019. A new Pre-Application Poster with an updated project description was posted on the site, and a neighborhood meeting was held on June 18, 2019 to obtain feedback on the revised project from the neighbors. The applicants stated that after the June 18 meeting, they obtained the plans for the neighboring building to the south (appellants' residence) and redesigned the proposed south façade in order to offset the windows and sightlines between the neighbors and the new building, to address neighbor privacy concerns. The applicants provided evidence that multiple attempts were made to arrange additional meetings and discussions with the neighbors, and stated that two separate discussions occurred after the meeting on June 18. There was adequate opportunity to comment on the project prior to the project being deemed complete on September 6, 2019.

The project also underwent a staff-level design review concurrent with the zoning review, and received no comments during the comment period, October 16 to October 30, 2019. Staff notes that in the revised rear building design, the five-foot setback from the left (south) property line did not change from original design, and the 17-foot separation between the proposed building and the existing appellants' building to the south also did not change. Staff also notes that the revised rear building has a smaller footprint than the original building, and both have a similar height.

ALTERNATIVE ACTIONS CONSIDERED

Pursuant to BMC Section 23B.32.060.D, 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 23B.32.060.G, 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

Timothy Burroughs, Director, Planning & Development Department, (510) 981-7437
Steven Buckley, Land Use Planning Manager, (510) 981-7411
Sharon Gong, Project Planner, (510) 981-7429

Attachments:

1. Draft Resolution
 - Exhibit A: Findings and Conditions
 - Exhibit B: Project Plans, received September 6, 2019
2. Appeal Letter, dated received November 19, 2019
3. Parking Survey, dated March 21, 2019
4. ADA-Compliant Parking Layout
5. October 24, 2019 ZAB Hearing Staff Report
6. Index to Administrative Record
7. Administrative Record
8. Public Hearing Notice

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

AFFIRMING THE ZONING ADJUSTMENTS BOARD APPROVAL OF USE PERMIT #ZP2018-0108 TO CONSTRUCT A THREE-STORY, 4,806-SQUARE-FOOT MIXED-USE BUILDING CONTAINING 967 SQUARE FEET OF MEDICAL OFFICE SPACE AND TWO DWELLING UNITS ON THE REAR OF A LOT WITH AN EXISTING DUPLEX, INCLUDING A REQUEST TO WAIVE TWO RESIDENTIAL PARKING SPACES AND PROVIDE JOINT PARKING FOR THE COMMERCIAL AND RESIDENTIAL USES; AND DISMISSING THE APPEAL

WHEREAS, on May 24, 2018, Devi Dutta Architecture (“applicant”) filed an application for a Use Permit to convert the upper unit in the existing two-story duplex on the front of the lot at 2422 Fifth Street into medical offices and construct a new duplex on the rear of the lot (“project”); and

WHEREAS, on December 7, 2018, staff advised the applicants that a Variance would be required to eliminate the rent-controlled dwelling unit through its conversion into a commercial unit (medical offices), and that the Variance would not be supported by staff; and

WHEREAS, on May 8, 2019, the applicant submitted a revised project to retain the rent-controlled, front duplex units and construct two dwelling units and medical offices in a new rear building, and to reduce parking and provide joint parking between the uses; and

WHEREAS, on September 6, 2019, staff deemed this application complete and determined that the project is categorically exempt from the California Environmental Quality Act (“CEQA”) under Section 15332 of the CEQA Guidelines (“In-Fill Development Projects”); and

WHEREAS, on October 8, 2019, staff mailed and posted a Notice of Public Hearing for the project in accordance with BMC Section 23B.32.020; and

WHEREAS, on October 24, 2019, the ZAB held a public hearing in accordance with BMC Section 23B.32.030, and approved the project; and

WHEREAS, on November 5, 2019, staff issued the notice of the ZAB decision; and

WHEREAS, on November 19, 2019, Redwood Tree Studios HOA, a residential association for neighbors residing at 2430 Fifth Street, filed an appeal of the ZAB decision with the City Clerk; and

WHEREAS, on or before February 11, 2020, staff mailed and posted a Notice of Public Hearing for the project in accordance with BMC Section 23B.32.020; and

WHEREAS, on February 25, 2020, 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 City Council of the City of Berkeley that the City Council hereby adopts the findings made by the ZAB in Exhibit A to affirm the decision of the ZAB to approve Use Permit #ZP2018-0108, adopts the conditions of approval in Exhibit A, and adopts the project plans in Exhibit B, and dismisses the appeal.

Exhibits

A: Findings and Conditions

B: Project Plans, received September 6, 2019

ATTACHMENT 1, EXHIBIT A

FINDINGS AND CONDITIONS

FEBRUARY 25, 2020

2422 Fifth Street

Use Permit #ZP2018-0108 to construct a three-story, 4,806-square-foot mixed-use building containing 967 square feet of medical office space and two dwelling units on the rear of a lot with an existing duplex, including a request to waive two residential parking spaces and establish joint use of two parking spaces.

PERMITS REQUIRED

- Use Permit under BMC 23E.84.030.A to establish a mixed-use building;
- Administrative Use Permit under BMC 23E.84.030.A to establish a new medical office space that is 5,000 square feet or less;
- Administrative Use Permit under BMC 23E.84.030.A to create two new dwelling units;
- Use Permit under BMC 23E.84.080.F to waive two residential parking spaces; and
- Administrative Use Permit under BMC 23E.28.060 to allow a joint parking agreement to satisfy the off-street parking requirement.

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 15332 of the CEQA Guidelines (“In-Fill Development Projects”).
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. Although shadow conditions will increase on the aforementioned portions of neighboring dwellings, shadow impacts would be relatively short in duration, occurring only in the morning and midday or evening hours, and not both. Therefore, shading from proposed project is found to be typical of urban settings and not detrimental.
 - B. The siting of the proposed rear, mixed-use building satisfies all minimum setback requirements, and would provide adequate air space on the north, east and south sides of the building. The 4'-wide rear yard is provided between the project and the warehouse to the west, and is a buffer that will satisfy City Fire Department emergency egress requirements (44") in a zoning district (MU-R) that does not require any rear yard;

- C. The relatively flat topography of the project site, along with existing one-, two-, and three-story buildings in the vicinity, does not offer significant views of features such as Berkeley Hills or the Bay. Therefore, staff believes that this project will not be detrimental with respect to views; and
- D. The proposed project will not cause significant privacy impacts to the warehouse to the west and the dwelling on the property to the north. The dwelling on the property to the north is sited toward the front half of the lot, away from the proposed project on the rear of the project site, so that there would be no direct sightlines between them. In response to privacy concerns raised by residents in the live/work building to the south at the June 18, 2019 neighborhood meeting, the project's south elevation was redesigned so that all windows will be offset from the windows in the live/work building, and direct sightlines will be avoided. Thus, the privacy impacts from the project will be reasonable for this mixed-use district.

III. OTHER FINDINGS FOR APPROVAL

2. As required by Section 23E.84.090.B of the BMC, the Zoning Adjustments Board must make the following required findings to approve any Use Permit in the district. The proposed use or structure must:

A. *Be compatible with the purposes of the District;*

The project is consistent with the following purposes of the Mixed Use Residential District (MU-R):

- *Implement the West Berkeley Plan's designation of a Mixed Residential District.*
- *Support the continued development of a mixed use District which combines residential, live/work, light industrial, arts and crafts and other compatible uses.*
- *Strengthen residential concentrations which exist within the District.*

The project is a mixed-use building that will provide two residential units and 967 square feet of medical office space on the ground floor in a district planned for mixed-use development. The project would add two new dwellings to an area that is already developed with single-family dwellings, duplexes, live/work buildings, and other multi-family dwellings.

- *Provide a transitional district between the residential districts to the east of the MU-R and the industrial districts to the west of the MU-R.*

As a mixed-use building on the rear of a lot that has an existing duplex on the front, the project adds a compatible commercial use to the lot to help the MU-R neighborhood serve as a transition from the R-1A district to the east to the MU-LI district to the west.

- *Support the development of businesses of all types which contribute to the maintenance and improvement of the environment.*
- *To the extent feasible, protect industrial uses, particularly light industrial uses, from unreasonable intrusions on their ability to operate lawfully.*

The proposed mixed-use project with medical offices on the ground floor will bring a compatible commercial use into the area to diversify the existing commercial and industrial uses within the nearby MU-R District, which include warehouses, offices, and live/work spaces. The mixed-use project will be on a lot that is clustered with other mixed-use and residential-only developments within the district, which have coexisted with adjacent industrial uses for years.

- B. *Be consistent with the normal use and operation of surrounding uses and buildings, including residential and industrial buildings;*
- C. *Not be likely, under reasonably foreseeable circumstances, to either induce or contribute to a cumulative change of use in buildings away from residential; live/work; light industrial, or arts and crafts uses; and*
- D. *Be designed in such a manner to be supportive of the character and purposes of the District.*

The proposed mixed-use project with medical offices on the ground floor and two dwellings on the upper floors would add to the residential development already in the area, and would reinforce the existing mixed pattern of commercial/industrial/residential development in the neighborhood.

3. As required by Section 23E.84.080.F of the BMC, the Zoning Adjustments Board must find that existing evening parking supply is adequate and/or that there are other mitigating circumstances exist on the property to waive the requirement for an additional off-street parking space through a Use Permit when an additional residential unit is added to a property with one or more residential units.
 - A. To support the waiver of two residential parking spaces, the applicant submitted a parking survey prepared by the project transportation consultant, dated October 25, 2018 and revised on March 21, 2019. The parking survey was reviewed by the Transportation Division, which confirmed that the evening parking supply is adequate and that all other parking data supports the waiver of two residential parking spaces.
 - B. The approval of the permit to waive residential parking will be concurrent with the approval of the joint-use parking permit (see Finding #4 below).

 4. As required by Section 23E.28.060.A of the BMC, the Zoning Adjustments Board may approve permit to allow a Joint Use Parking Agreement to satisfy off-street parking space requirements, if all of the following findings are made:
 - The off-street parking spaces designated for joint use are located within 800 feet of the use to be served;
 - The times demanded for these parking spaces will not conflict substantially between the use offering the spaces and the use to be served; and
 - The off-street parking spaces designated for joint use are not otherwise committed to satisfying the parking requirements for some other use at similar times.
 - A. The three joint-use parking spaces are located on the lot that they serve.
 - B. The residential and medical office uses will utilize the parking at different peak times. The medical office would be limited to a three to four weekday per week schedule, from 9:00 a.m. to 4:00 p.m., and the residences could utilize the spaces for the rest of the time – one to two week days during the day, after 4:00 p.m. on weekdays, and anytime on the weekends. This availability is general compatible with residential parking demand, which occurs mostly on weekday nights and weekends. The ADA parking space would always be reserved for accessible parking demands.
 - C. The three joint-use parking spaces are not committed to satisfy any other parking requirement.
 - D. The approval of the joint-use parking permit will be concurrent with the approval of the permit to waive residential parking (see Finding #3 above).
-

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 and 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.

12. Parking Management Plan. The applicant shall submit a Parking Management Plan for the joint use off-street parking spaces to Planning Staff and Transportation Staff for review and approval.
13. Address Assignment. The applicant shall file an "Address Assignment Request Application" with the Permit Service Center (1947 Center Street) for any address change or new address associated with this Use Permit. The new address(es) shall be assigned and entered into the City's database prior to the applicant's submittal of a building permit application.
14. Geotechnical Plan Review. The applicant's geotechnical consultant shall review and approve all geotechnical aspects of the final project building and grading plans (i.e., site preparation and grading, site drainage improvements and design parameters for foundations, retaining walls, and driveway) to ensure that their recommendations have been properly incorporated. The results of the plan review shall be summarized by the geotechnical consultant in a letter and submitted to the City Engineer for review and approval prior to issuance of building permits.
15. Construction Noise Reduction Program. The applicant shall develop a site specific noise reduction program prepared by a qualified acoustical consultant to reduce construction noise impacts to the maximum extent feasible, subject to review and approval of the Zoning Officer. The noise reduction program shall include the time limits for construction listed above, as measures needed to ensure that construction complies with BMC Section 13.40.070. The noise reduction program should include, but shall not be limited to, the following available controls to reduce construction noise levels as low as practical:
 - A. Construction equipment should be well maintained and used judiciously to be as quiet as practical.
 - B. Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.
 - C. Utilize "quiet" models of air compressors and other stationary noise sources where technology exists. Select hydraulically or electrically powered equipment and avoid pneumatically powered equipment where feasible.
 - D. Locate stationary noise-generating equipment as far as possible from sensitive receptors when adjoining construction sites. Construct temporary noise barriers or partial enclosures to acoustically shield such equipment where feasible.
 - E. Prohibit unnecessary idling of internal combustion engines.
 - F. If impact pile driving is required, pre-drill foundation pile holes to minimize the number of impacts required to seat the pile.
 - G. Construct solid plywood fences around construction sites adjacent to operational business, residences or other noise-sensitive land uses where the noise control plan analysis determines that a barrier would be effective at reducing noise.
 - H. Erect temporary noise control blanket barriers, if necessary, along building facades facing construction sites. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling. Noise control blanket barriers can be rented and quickly erected.
 - I. Route construction related traffic along major roadways and away from sensitive receptors where feasible.

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

16. Construction Noise Management - Public Notice Required. At least two weeks prior to initiating any construction activities at the site, the applicant shall provide notice to businesses and residents within **500 feet** of the project site. This notice shall at a minimum provide the following: (1) project

description, (2) description of construction activities, (3) daily construction schedule (i.e., time of day) and expected duration (number of months), (4) the name and phone number of the Project Liaison for the project that is responsible for responding to any local complaints, (5) commitment to notify neighbors at least four days in advance of authorized extended work hours and the reason for extended hours, and (6) that construction work is about to commence. The liaison would determine the cause of all construction-related complaints (e.g., starting too early, bad muffler, worker parking, etc.) and institute reasonable measures to correct the problem. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval.

17. Construction and Demolition. Applicant shall submit a Waste Diversion Form and Waste Diversion Plan that meet the diversion requirements of BMC Chapters 19.24 and 19.37.
18. Toxics. The applicant shall contact the Toxics Management Division (TMD) at 1947 Center Street or (510) 981-7470 to determine which of the following documents are required and timing for their submittal:
 - A. Environmental Site Assessments:
 - 1) Phase I & Phase II Environmental Site Assessments (latest ASTM 1527-13). A recent Phase I ESA (less than 6 months 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 6 months old, it will require a new site reconnaissance and interviews. If the facility was subject to regulation under Title 15 of the Berkeley Municipal Code since the last Phase I was conducted, a new records review must be performed.
 - B. Soil and Groundwater Management Plan:
 - 1) A Soil and Groundwater Management Plan (SGMP) shall be submitted to TMD for all non-residential projects, and residential or mixed-use projects with five or more dwelling units, that: (1) are in the Environmental Management Area (EMA) and (2) propose any excavations deeper than 5 feet below grade. The SGMP shall be site specific and identify procedures for soil and groundwater management including identification of pollutants and disposal methods. The SGMP will identify permits required and comply with all applicable local, state and regional requirements.
 - 2) The SGMP shall require notification to TMD of any hazardous materials found in soils and groundwater during development. The SGMP will provide guidance on managing odors during excavation. The SGMP will provide the name and phone number of the individual responsible for implementing the SGMP and post the name and phone number for the person responding to community questions and complaints.
 - 3) TMD may impose additional conditions as deemed necessary. All requirements of the approved SGMP shall be deemed conditions of approval of this Use Permit.
 - C. Building Materials Survey:

- 1) Prior to approving any permit for partial or complete demolition and renovation activities involving the removal of 20 square or lineal feet of interior or exterior walls, a building materials survey shall be conducted by a qualified professional. The survey shall include, but not be limited to, identification of any lead-based paint, asbestos, polychlorinated biphenyl (PBC) containing equipment, hydraulic fluids in elevators or lifts, refrigeration systems, treated wood and mercury containing devices (including fluorescent light bulbs and mercury switches). The Survey shall include plans on hazardous waste or hazardous materials removal, reuse or disposal procedures to be implemented that fully comply state hazardous waste generator requirements (22 California Code of Regulations 66260 et seq). The Survey becomes a condition of any building or demolition permit for the project. Documentation evidencing disposal of hazardous waste in compliance with the survey shall be submitted to TMD within 30 days of the completion of the demolition. If asbestos is identified, Bay Area Air Quality Management District Regulation 11-2-401.3 a notification must be made and the J number must be made available to the City of Berkeley Permit Service Center.

D. Hazardous Materials Business Plan:

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

Prior to Issuance of Any Building (Construction) Permit

19. Interior Noise Levels. Prior to issuance of a building permit, the applicant shall submit a report to the Building and Safety Division and the Zoning Officer by a qualified acoustic engineer certifying that the interior residential portions of the project will achieve interior noise levels of no more than 45 Ldn (Average Day-Night Levels). If the adopted Building Code imposes a more restrictive standard for interior noise levels, the report shall certify compliance with this standard.
20. Recycling and Organics Collection. Applicant shall provide recycling and organics collection areas for occupants, clearly marked on site plans, which comply with the Alameda County Mandatory Recycling Ordinance (ACWMA Ordinance 2012-01).
21. Water Efficient Landscaping. Applicant shall provide an updated Bay-Friendly Basics Landscape Checklist that includes detailed notes of any measures that will not be fully met at the project. Landscape improvements shall be consistent with the current versions of the State's Water Efficient Landscape Ordinance (WELo) and the East Bay Municipal Utility District's Section 31: Water Efficiency Requirements.
22. Public Works ADA. Plans submitted for building permit shall include replacement of sidewalk, curb, gutter, and other streetscape improvements, as necessary to comply with current City of Berkeley standards for accessibility.
23. Parking for Disabled Persons. Per BMC Section 23E.28.040.D of the Zoning Ordinance, "Notwithstanding any reduction in off-street parking spaces that may be granted for mixed-use projects in non-residential districts listed in Sub-title 23E, the requirement for off-street parking spaces for disabled persons in the project shall be calculated as if there had been no reduction in total parking spaces."

During Construction:

- 24. Construction Hours.** Construction activity shall be limited to between the hours of 7:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and 4:00 PM on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.
- 25. 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.

- 26. Halt Work/Unanticipated Discovery of Tribal Cultural Resources.** In the event that cultural resources of Native American origin are identified during construction, all work within 50 feet of the discovery shall be redirected. The project applicant and project construction contractor shall notify the City Planning Department within 24 hours. The City will again contact any tribes who have requested consultation under AB 52, as well as contact a qualified archaeologist, to evaluate the resources and situation and provide recommendations. If it is determined that the resource is a tribal cultural resource and thus significant under CEQA, a mitigation plan shall be prepared and implemented in accordance with State guidelines and in consultation with Native American groups. If the resource cannot be avoided, additional measures to avoid or reduce impacts to the resource and to address tribal concerns may be required.
- 27. 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.

- 28. Archaeological Resources (Ongoing throughout demolition, grading, and/or construction).** Pursuant to CEQA Guidelines section 15064.5(f), “provisions for historical or unique archaeological resources accidentally discovered during construction” should be instituted. Therefore:
- A. In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist, historian or paleontologist to assess the significance of the find.
 - B. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified professional would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Berkeley. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by the qualified professional according to current professional standards.
 - C. In considering any suggested measure proposed by the qualified professional, the project applicant shall determine whether avoidance is necessary or feasible in light of factors such as the uniqueness of the find, project design, costs, and other considerations.
 - D. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while mitigation measures for cultural resources is carried out.
 - E. If significant materials are recovered, the qualified professional shall prepare a report on the findings for submittal to the Northwest Information Center.
- 29. Human Remains (Ongoing throughout demolition, grading, and/or construction).** In the event that human skeletal remains are uncovered at the project site during ground-disturbing activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to 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.
- 30. Paleontological Resources (Ongoing throughout demolition, grading, and/or construction).** In the event of an unanticipated discovery of a paleontological resource during construction, excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified paleontologist (per Society of Vertebrate Paleontology standards [SVP 1995,1996]). The qualified paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find. The paleontologist shall notify the appropriate

agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the project on the qualities that make the resource important, and such plan shall be implemented. The plan shall be submitted to the City for review and approval.

31. Stormwater Requirements. The applicant shall demonstrate compliance with the requirements of the City's National Pollution Discharge Elimination System (NPDES) permit as described in BMC Section 17.20. The following conditions apply:
- A. The project plans shall identify and show site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants to the City's storm drainage system, regardless of season or weather conditions.
 - B. Trash enclosures and/or recycling area(s) shall be covered; no other area shall drain onto this area. Drains in any wash or process area shall not discharge to the storm drain system; these drains should connect to the sanitary sewer. Applicant shall contact the City of Berkeley and EBMUD for specific connection and discharge requirements. Discharges to the sanitary sewer are subject to the review, approval and conditions of the City of Berkeley and EBMUD.
 - C. Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to stormwater pollution. Where feasible, landscaping should be designed and operated to treat runoff. When and where possible, xeriscape and drought tolerant plants shall be incorporated into new development plans.
 - D. Design, location and maintenance requirements and schedules for any stormwater quality treatment structural controls shall be submitted to the Department of Public Works for review with respect to reasonable adequacy of the controls. The review does not relieve the property owner of the responsibility for complying with BMC Chapter 17.20 and future revisions to the City's overall stormwater quality ordinances. This review shall be conducted prior to the issuance of a Building Permit.
 - E. All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.
 - F. All on-site storm drain inlets/catch basins must be cleaned at least once a year immediately prior to the rainy season. The property owner shall be responsible for all costs associated with proper operation and maintenance of all storm drainage facilities (pipelines, inlets, catch basins, outlets, etc.) associated with the project, unless the City accepts such facilities by Council action. Additional cleaning may be required by City of Berkeley Public Works Engineering Dept.
 - G. All on-site storm drain inlets must be labeled "No Dumping – Drains to Bay" or equivalent using methods approved by the City.
 - H. Most washing and/or steam cleaning must be done at an appropriately equipped facility that drains to the sanitary sewer. Any outdoor washing or pressure washing must be managed in such a way that there is no discharge or soaps or other pollutants to the storm drain. Sanitary connections are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
 - I. Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry to the storm drain system. If any cleaning agent or degreaser is used, wash water shall not discharge to the storm drains; wash waters should be collected and discharged to the sanitary sewer. Discharges to the sanitary sewer are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.

- J. The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations, or a project stop work order.
- 32. 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.
- 33. 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.
- 34. 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.
- 35. 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.
- 36. 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.
- 37. 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.

- 38. 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:

- 39. 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.
- 40. 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 **October 15, 2019**, except as modified by conditions of approval.
- 41. Construction and Demolition Diversion.** A Waste Diversion Report, with receipts or weigh slips documenting debris disposal or recycling during all phases of the project, must be completed and submitted for approval to the City's Building and Safety Division. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement. A copy of the Waste Diversion Plan shall be available at all times at the construction site for review by City Staff.
- 42. Geotechnical Construction Inspections.** The geotechnical consultant shall inspect, test (as needed), and approve all geotechnical aspects of the project construction. The inspections shall include, but not necessarily be limited to: site preparation and grading, site surface and subsurface drainage improvements, and excavations for foundations and retaining walls prior to the placement of steel and concrete. The results of these inspections and the as-built conditions of the project shall be described by the geotechnical consultant in a letter and submitted to the City Engineer for review prior to final (granting of occupancy) project approval.

At All Times:

- 43. 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.
- 44. Rooftop Projections.** No additional rooftop or elevator equipment shall be added to exceed the approved maximum roof height without submission of an application for a Use Permit Modification, subject to Board review and approval.
- 45. Design Review.** Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to Design Review approval.
- 46. Drainage Patterns.** The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.
- 47. Electrical Meter.** Only one electrical meter fixture may be installed per dwelling unit.
- 48. Bike Parking.** Secure and on-site bike parking for at least 4 bicycles shall be provided for the life of the building.

49. Tenant rights shall continue to apply to occupants of rental units of the front-of-lot duplex as described in BMC Chapters 13.76, 13.79, and 13.84.
 50. Tenant Notification. The developer shall provide tenant notification, via a lease rider or deed covenant, that each dwelling unit is located in a mixed-use area that includes commercial, food service and entertainment uses, and that each occupant shall not seek to impede their lawful operation.
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5TH STREET TOWNHOMES AND WELLNESS OFFICES

2422 5TH STREET, BERKELEY, CA 94710



ARCHITECT/APPLICANT

DEVI DUTTA-CHOUDHURY, AIA
DEVI DUTTA ARCHITECTURE
928 CARLETON STREET
BERKELEY, CA 94710
510/705-1937
hello@devidutta.com

OWNER

ANNA & CARL GOLD
2422 5TH STREET
BERKELEY, CA 94710

LANDSCAPE

MANTLE LANDSCAPE
ARCHITECTURE
930 CARLETON STREET
BERKELEY, CA 94710
510-927-3202

TRAFFIC ENGINEER

ABRAMS ASSOCIATES
1875 OLYMPIC BOULEVARD,
SUITE 210
WALNUT CREEK, CA 94596
925-945-0201

PROJECT DESCRIPTION

CONSTRUCTION OF 2 NEW DWELLING UNITS AND 1 ACUPUNCTURE & WELLNESS OFFICE AT REAR YARD. EXISTING FRONT DUPLEX TO REMAIN.

SHEET LIST ARCHITECTURAL

- A0.0 COVER SHEET
- A0.1 PROJECT INFORMATION
- A0.2 AREA DIAGRAMS
- A0.3 SURVEY
- A0.4 STREET STRIP
- A0.5 VICINITY MAP
- A1.1 PROPOSED SITE PLAN
- A1.2 PROPOSED FIRST FLOOR PLAN
- A1.3 PROPOSED SECOND FLOOR PLAN
- A1.4 PROPOSED THIRD FLOOR PLAN
- A2.1 EAST & NORTH ELEVATIONS
- A2.2 WEST & SOUTH ELEVATIONS
- A3.1 PROPOSED BUILDING SECTIONS
- A3.2 PROPOSED BUILDING SECTIONS
- A5.1 OPEN SPACE DIAGRAM
- A6.1 DETAILS
- A7.1 NEIGHBORHOOD CONTEXT
- A7.2 PERSPECTIVE VIEWS

SHEET LIST LANDSCAPE

- L1.0 SCHEMATIC MATERIAL PLAN
- L2.0 SCHEMATIC PLANTING PLAN
- L2.1 PROPOSED PLANTING PALETTE



A0.0

COVER SHEET

SCALE:



2422 5TH STREET

Devi Dutta Architecture Inc.

Zoning Submittal

10.15.2019



PROJECT ADDRESS

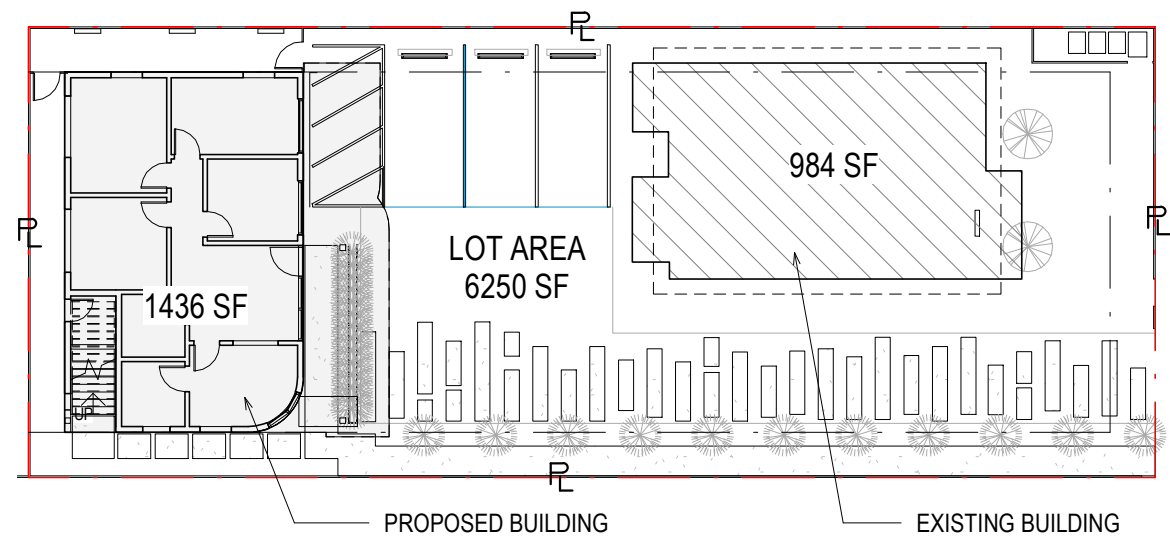
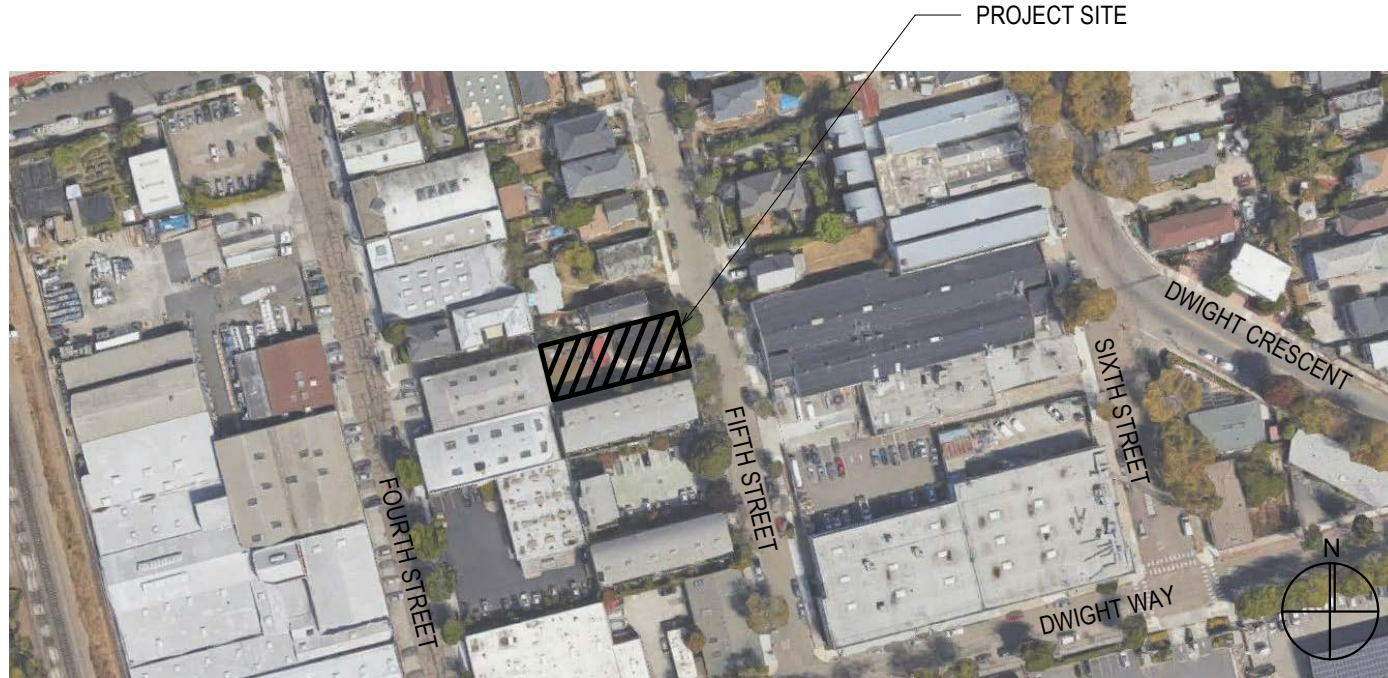
2422 5TH STREET, BERKELEY, CA 74710

ASSESSOR'S PARCEL #:

56-1944-11

ZONING INFORMATION

ZONING DISTRICT: MU-R
 FLOOD ZONE: NO
 FIRE ZONE: 1
 ENV. MGMT AREA: NO
 LANDMARKS STRUCTURE OF MERIT: NO



1 LOT COVERAGE DIAGRAM

3/64" = 1'-0"

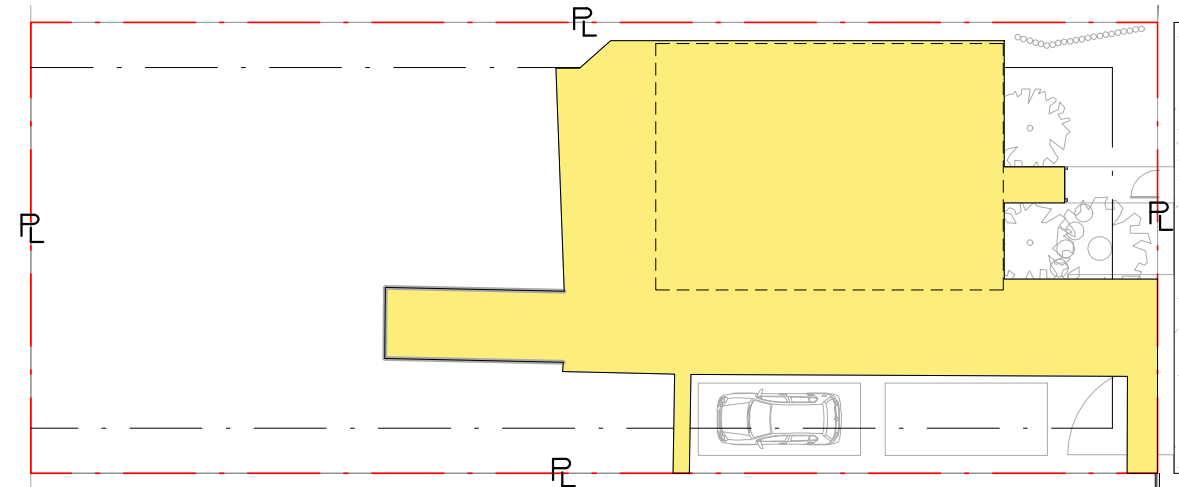
ZONING DEVELOPMENT STANDARDS

	<u>EXISTING</u>	<u>PROPOSED</u>	<u>REQUIRED/ PERMITTED</u>
NUMBER OF DWELLING UNITS	2	4	5 MAX
AREAS			
LOT SIZE	125' X 50' = 6250 SF	125' X 50' = 6250 SF	40' WIDTH MIN.
TOTAL GROSS FLOOR AREA	1670 SF	1670 SF + 3136 SF = 4806 SF	
NEW DUPLEX AREA		2170 SF	
UNIT 1		1070 SF	
UNIT 2		1100 SF	
MEDICAL OFFICES AREA		967 SF	
FAR	0.27	0.77	1.5
BUILDING FOOTPRINT	984 SF	984 SF + 1436 SF = 2420 SF	
LOT COVERAGE	15.7 %	38.7 %	40% MAX.
IMPERVIOUS SURFACE	2295 SF	2331 SF	
USEABLE OPEN SPACE	3297 SF	645 SF	600 SF MIN.
HEIGHT & STORIES			
AVERAGE	16'-3"	32' - 0"	35' - 0"
MAXIMUM	18' - 1/2"	35' - 0"	35' - 0"
STORIES	2	3	3
SETBACKS			
FRONT:	19'-0"	14' - 9 1/2"	5' - 0"
NORTH SIDE	4' - 0"	5' - 0"	5' - 0" (10% OF LOT WIDTH)
SOUTH SIDE	22' - 0"	5' - 0"	5' - 0" (10% OF LOT WIDTH)
REAR:	67' - 0"	4' - 0"	NONE (ADJACENT TO NON-RESIDENTIAL)
PARKING SPACES			
RESIDENTIAL*:	1 / UNIT = 2 TANDEM SPACES	(2) PROVIDED VIA JOINT USE PARKING PER BMC 23D.12.060	1 / UNIT = 4 REQUIRED
MEDICAL:	N/A	(3) PROVIDED	1 / 300 SF = 3 REQUIRED
BIKE PARKING:	1	(3) RESIDENTIAL, (1) COMMERCIAL	1 / 2000 SF NON-RES AREA = 1 REQ
		<i>*(2) PARKING WAIVER</i>	



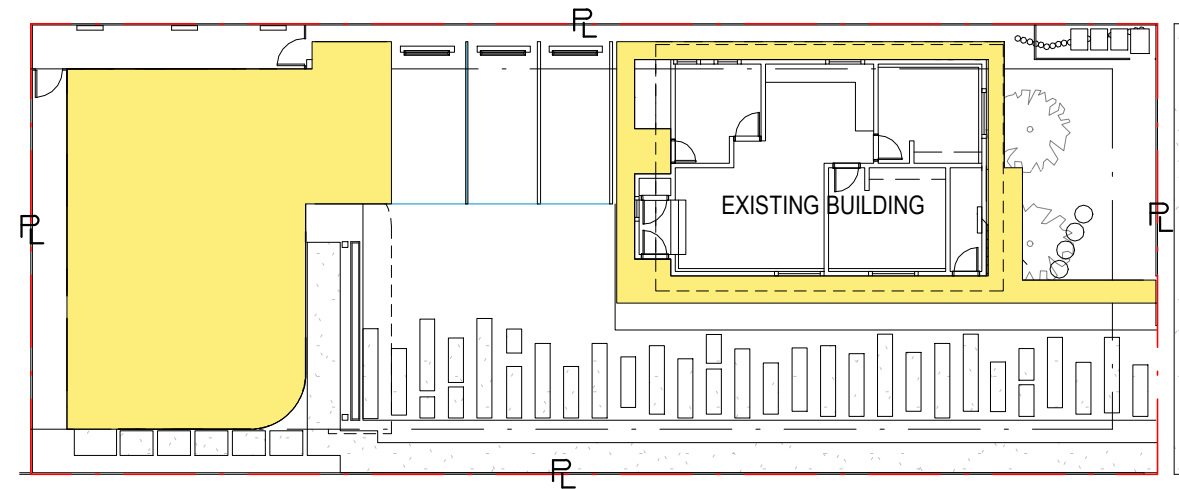
ABBREVIATIONS

A/C	AIR CONDITIONING	JAN.	JANITOR
ADJ.	ADJACENT	JT.	JOINT
A.F.F.	ABOVE FINISH FLOOR		
ALUM.	ALUMINUM	L.P.	LOW POINT
ALT.	ALTERNATE		
APPROX.	APPROXIMATELY	MAX	MAXIMUM
ARCH.	ARCHITECTURAL	M.C.	MEDICINE CABINET
A.C.T.	ACOUSTIC CEILING TILE	M.D.	MOTION DETECTOR
		MECH.	MECHANICAL
B.BD	TELEPHONE BACK BOARD	MFR	MANUFACTURER
BLDG.	BUILDING	MIN	MINIMUM
BLKG.	BLOCKING	MTD.	MOUNTED
BOT.	BOTTOM	MTL.	METAL
		(N)	NEW
CL	CENTER LINE	N.I.C.	NOT IN CONTRACT
CAB.	CABINET	NO.	NUMBER
C.G.	CORNER GUARD	N.T.S.	NOT TO SCALE
CHG.	CHANGE	O.C.	ON CENTER
CLG.	CEILING	OFF.	OFFICE
CLOS.	CLOSET	OPNG.	OPENING
CLR.	CLEAR	OPP.	OPPOSITE
C.M.U.	CONCRETE MASONRY UNIT	O.T.B.	OPEN TO BELOW
COL.	COLUMN		
CONC.	CONCRETE	PR.	PAIR
CONN.	CONNECTION	P-LAM.	PLASTIC LAMINATE
CONST.	CONSTRUCTION	PTD.	PAINTED
CORR.	CORRIDOR	PLWD.	PLYWOOD
C.T.	CERAMIC TILE	P.O.	PRIVATE OFFICE
CTR.	CENTER		
DET.	DETAIL	R	RISER
DIA/O	DIAMETER	R.C.P.	REFLECTED CEILING PLAN
DIM.	DIMENSION	R.D.	ROOF DRAIN
DN.	DOWN	REFR.	REFRIGERATOR
DWG.	DRAWING	REQ.	REQUIRED
DS.	DOWNSPOUT	RM.	ROOM
		R.O.	ROUGH OPENING
(E)	EXISTING	S.C.	SOLID CORE
EA.	EACH	S.D.	STORM DRAIN
EL.	ELEVATION	SAF	SELF-ADHERED FLASHING
ELEC.	ELECTRICAL	STOR.	STORAGE
ELEV.	ELEVATOR	SHT.	SHEET
EQ.	EQUAL	SIM.	SIMILAR
EQUIP.	EQUIPMENT	SCD	SEE CIVIL DRAWINGS
EXP.	EXPANSION	SED	SEE ELECTRICAL DRAWINGS
EXPOS.	EXPOSED	SLD	SEE LANDSCAPE DRAWINGS
EXT.	EXTERIOR	SMD	SEE MECHANICAL DRAWINGS
		SPD	SEE PLUMBING DRAWINGS
F.D.	FLOOR DRAIN	SSD	SEE STRUCTURAL DRAWINGS
FIN.	FINISH	STRL.	STRUCTURAL
FL.	FLOOR		
FLASH.	FLASHING	T	TREAD
FLUOR.	FLUORESCENT	T.B.D.	TO BE DETERMINED
F.O.F.	FACE OF FINISH	T&G	TONGUE AND GROOVE
F.O.S.	FACE OF STUD	TEL.	TELEPHONE
FPRFP.	FIREPROOF	T.O.	TOP OF
FSD	FIRE SEPARATION DISTANCE	TYP.	TYPICAL
FURR.	FURRING		
		U.O.N.	UNLESS OTHERWISE NOTED
GA.	GAGE	V.I.F.	VERIFY IN FIELD
GALV.	GALVANIZED		
G.C.	GENERAL CONTRACTOR	WD.	WOOD
GL.	GLASS	W.P.	WATERPROOF
GR.	GRADE		
GYP. BD.	GYPSUM BOARD	WRB	WEATHER RESISTANT BARRIER
H.B.	HOSE BIB		
HC	HANDICAPPED		
H.C.	HOLLOW CORE		
HDWR.	HARDWARE		
HGT.	HEIGHT		
H.M.	HOLLOW METAL		
HP	HIGH POINT		
HR.	HOUR		
H.W.	HOT WATER		
INSUL.	INSULATION/INSULATED		
INT.	INTERIOR		



1 EXISTING IMPERVIOUS SURFACE - 2295 SF

3/64" = 1'-0"

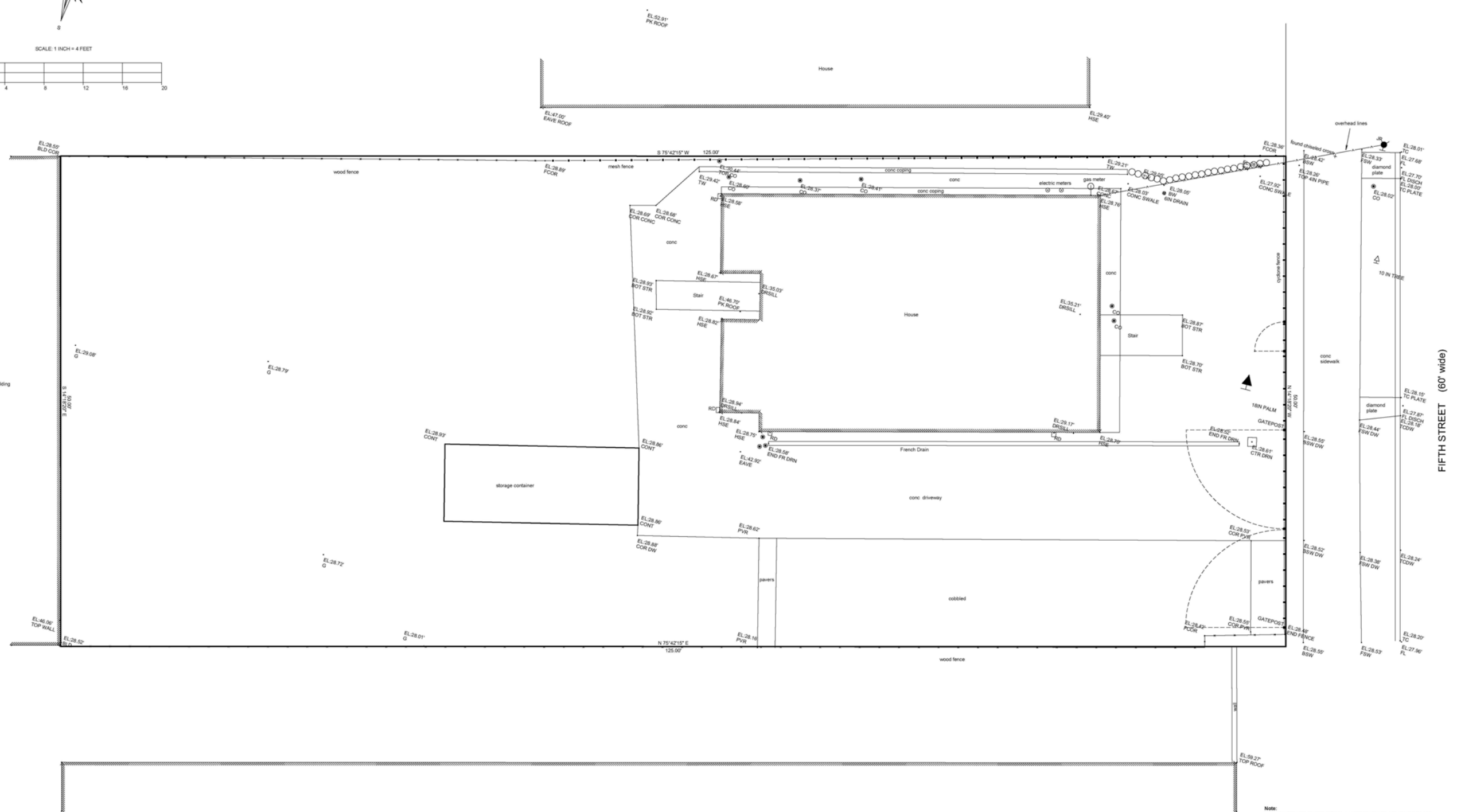
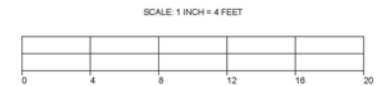


2 NEW OR REPLACED IMPERVIOUS SURFACE - 1622 SF

3/64" = 1'-0"

Page 32 of 91
2422 FIFTH STREET, BERKELEY, CA

LOTS 13 & 14, BLOCK 132, CORRECTED MAP OF THE AVERY TRACT
 FILED OCTOBER 9, 1890, MAP BOOK 9, PAGE 66,
 ALAMEDA COUNTY RECORDS
 APN. 56-1944-11 NOVEMBER, 2017



- LEGEND:
- TC top of curb
 - FL flowline
 - FSW front of sidewalk
 - BSW back of sidewalk
 - DW driveway
 - TW top of wall
 - BW bottom of wall
 - CO clean-out
 - DISCH curb discharge
 - RD roof drain
 - DRN drain
 - DRSILL doorsill
 - STR stair
 - BLD surface outside corner of building
 - HSE surface outside corner of house
 - PK peak
 - G ground
 - FCOR fence corner
 - PVR paver

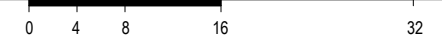
BENCHMARK:
 City of Berkeley monument B0363 at Fifth Street and Channing Way taken as Elev. 27.71 per City of Berkeley records.

Note:
 This drawing was created using PC Survey software, and translated into pdf format. No responsibility is taken by this office for the accuracy of the pdf drawing. Please refer to the hard copy.
 The data contained in this drawing remains the property of Paul O. Webb, Licensed Surveyor, and may only be used for its intended purpose.

Paul O. Webb, Licensed Surveyor
 2724 North Street, Suite B
 Berkeley, CA 94710

A0.3

SURVEY
 SCALE:



2422 5TH STREET

Devi Dutta Architecture Inc.

Zoning Submittal

10.15.2019



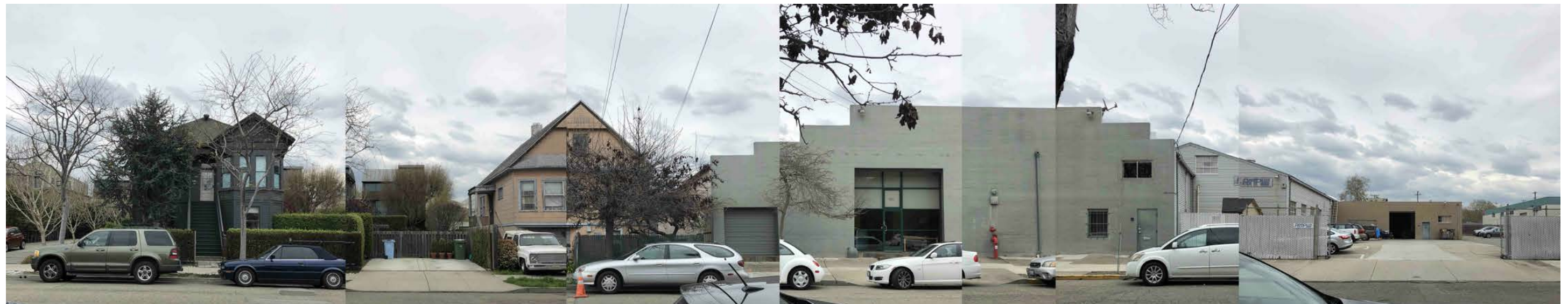
EXISTING WEST VIEW 2422 5TH STREET

SUBJECT PROPERTY

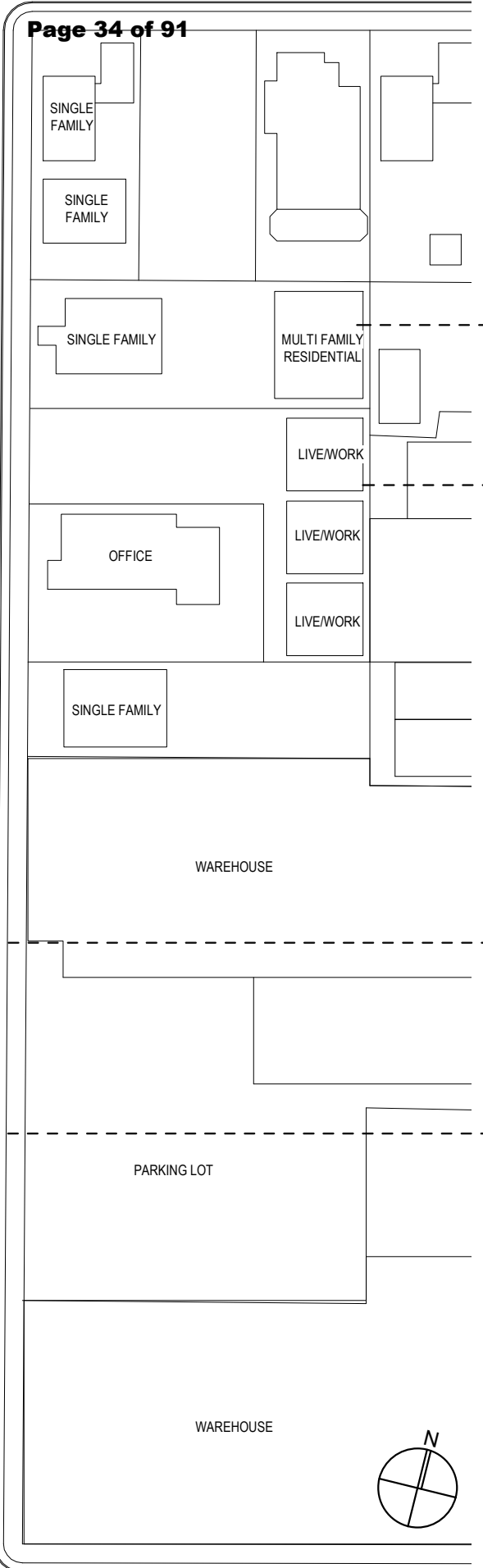
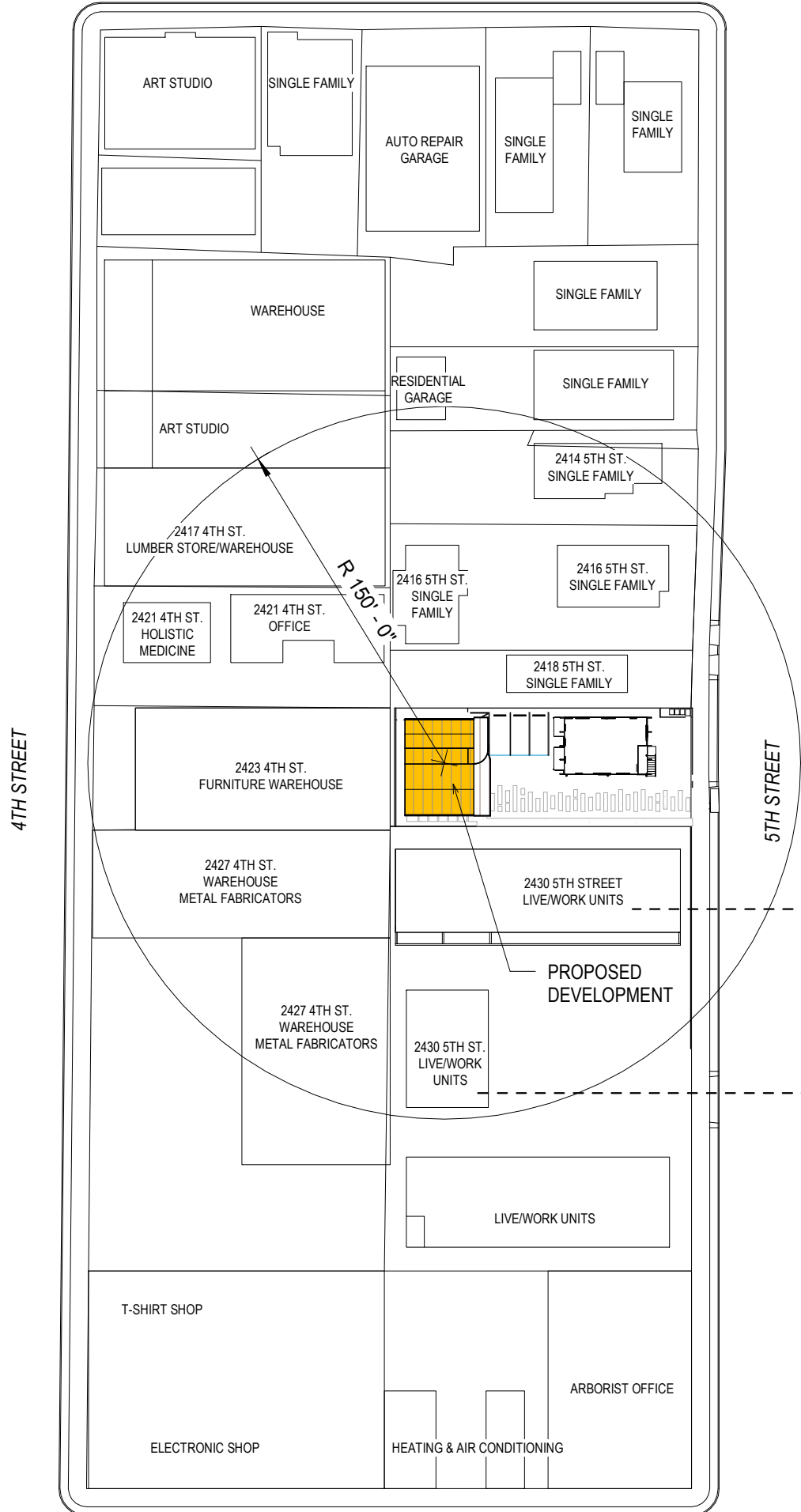


PROPOSED WEST VIEW 2422 5TH STREET

SUBJECT PROPERTY



EXISTING EAST VIEW 2422 5TH STREET





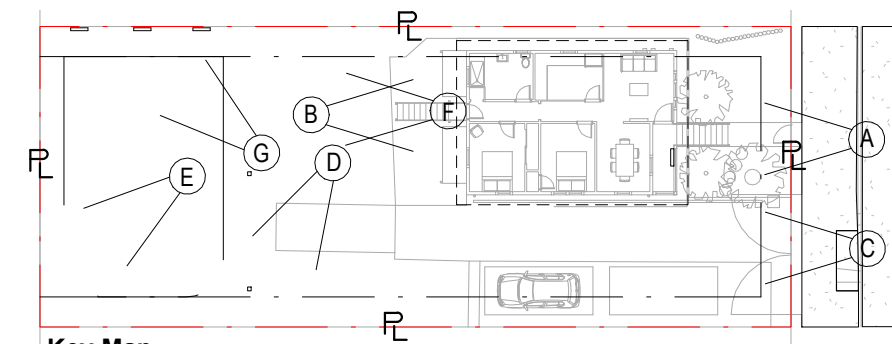
A - EXISTING FRONT OF HOUSE



B - EXISTING BACK OF HOUSE



C - EXISTING DRIVEWAY



1 Key Map
1/32" = 1'-0"



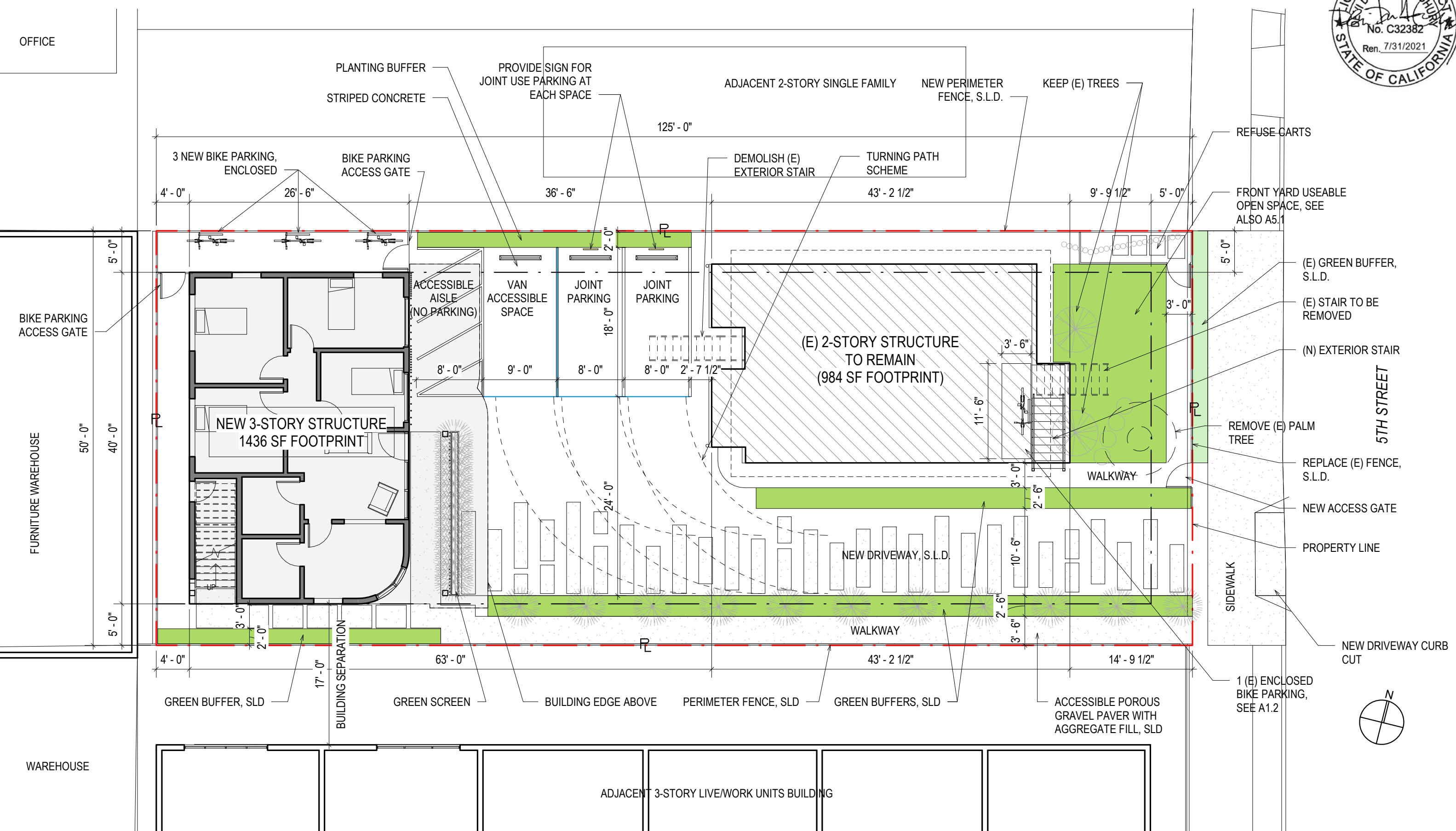
D, E - ADJACENT MULTI-FAMILY BUILDING



F - EXISTING REAR STAIR/YARD



G - REAR YARD NORTH SIDE



A1.1

PROPOSED SITE PLAN

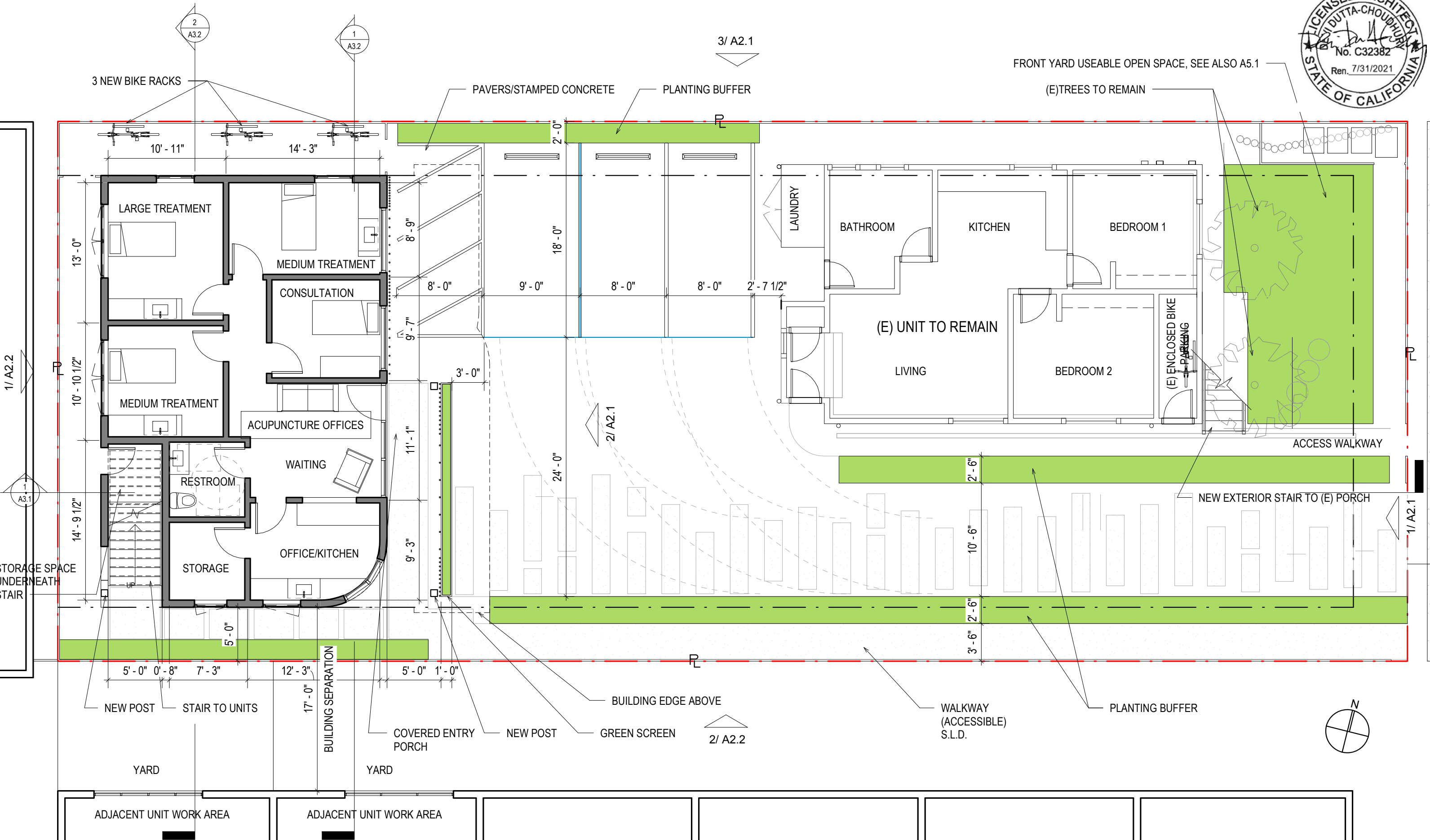
SCALE: 3/32" = 1'-0" 0 4 8 16 32

2422 5TH STREET

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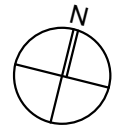
FRONT YARD USEABLE OPEN SPACE, SEE ALSO A5.1

(E) TREES TO REMAIN

(E) UNIT TO REMAIN

NEW EXTERIOR STAIR TO (E) PORCH

WALKWAY (ACCESSIBLE) S.L.D.



A1.2 PROPOSED FIRST FLOOR PLAN

SCALE: 1/8" = 1'-0" 0 4 8 16 32

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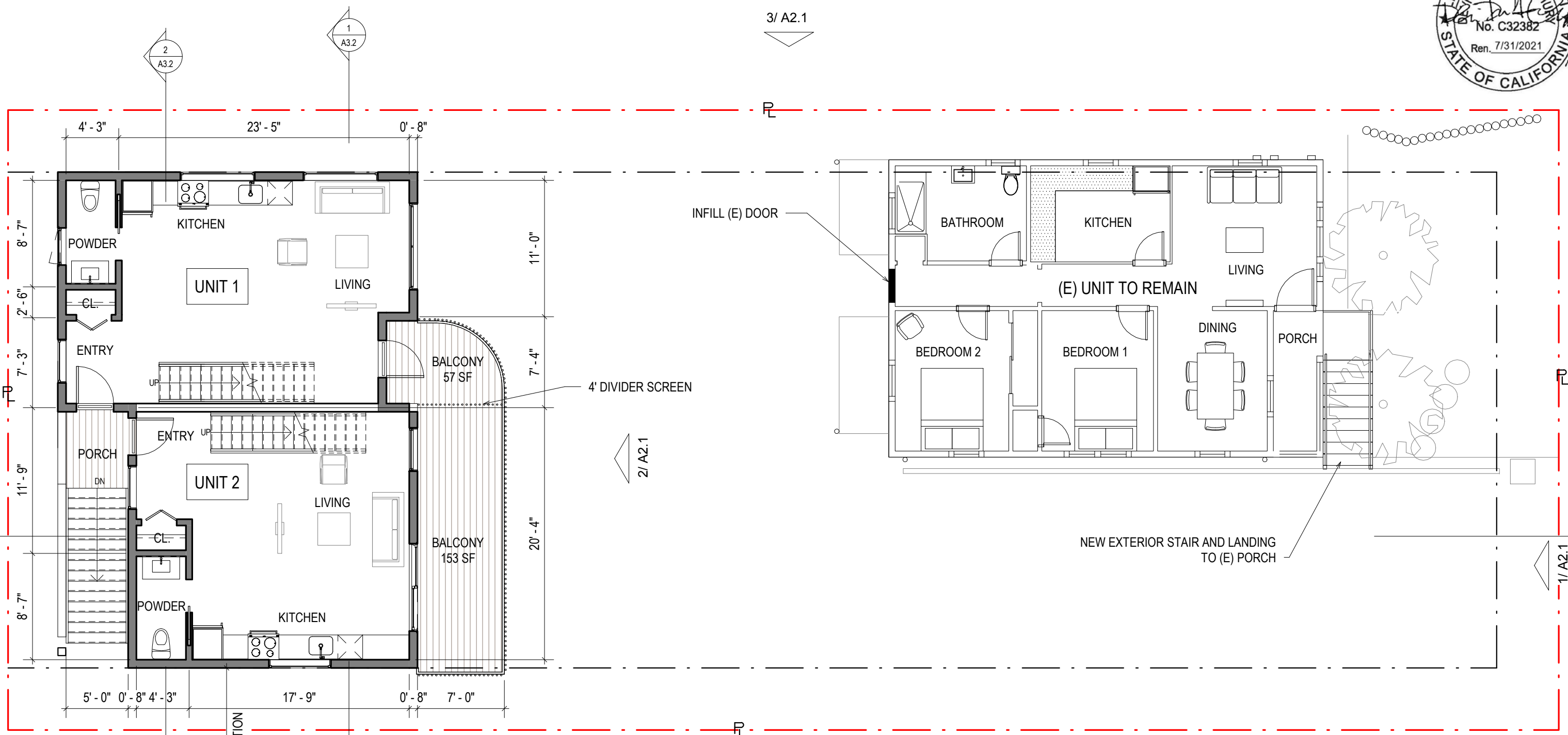
3/ A2.1



FL

2/ A2.1

2/ A2.2



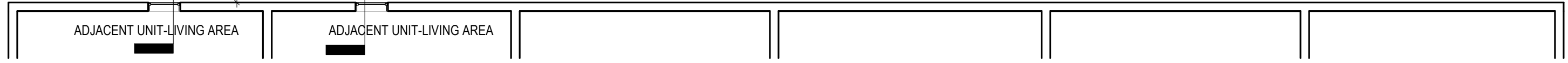
1/ A2.2

1/ A3.1

2/ A3.2

1/ A3.2

BUILDING SEPARATION
17'-0"



A1.3

PROPOSED SECOND FLOOR PLAN

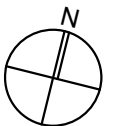
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2422 5TH STREET

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10.15.2019





3/ A2.1

FL

2/ A2.2

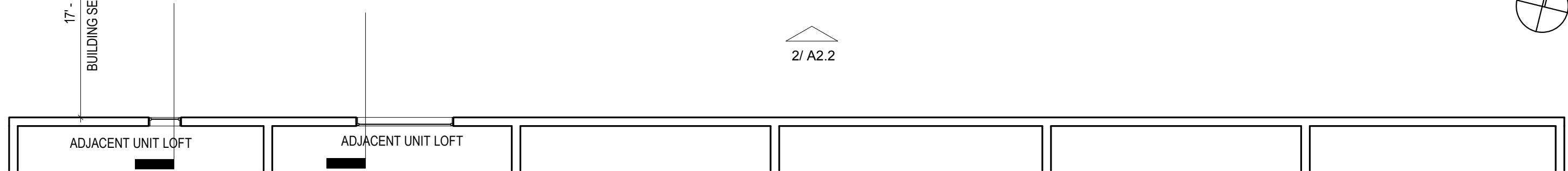
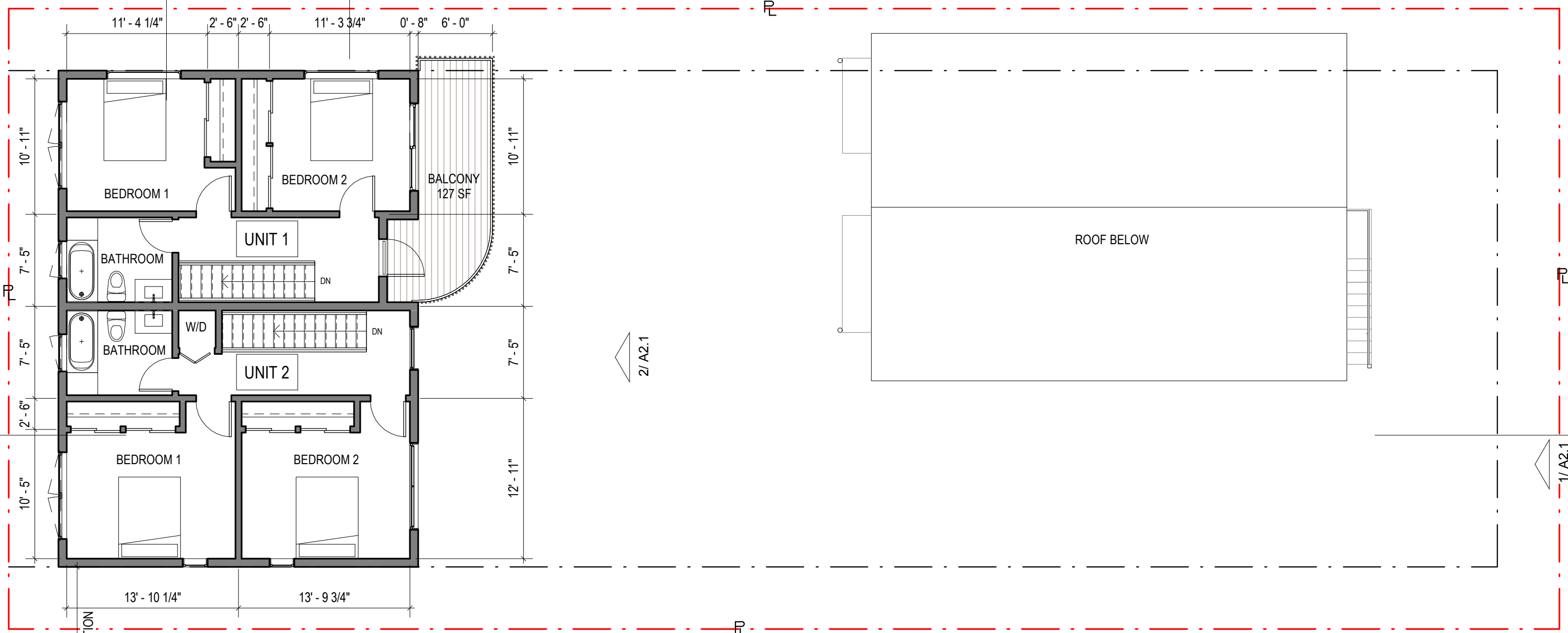
2/ A2.1

1/ A2.2

1/ A3.1

2/ A3.2

1/ A3.2



A1.4

PROPOSED THIRD FLOOR PLAN

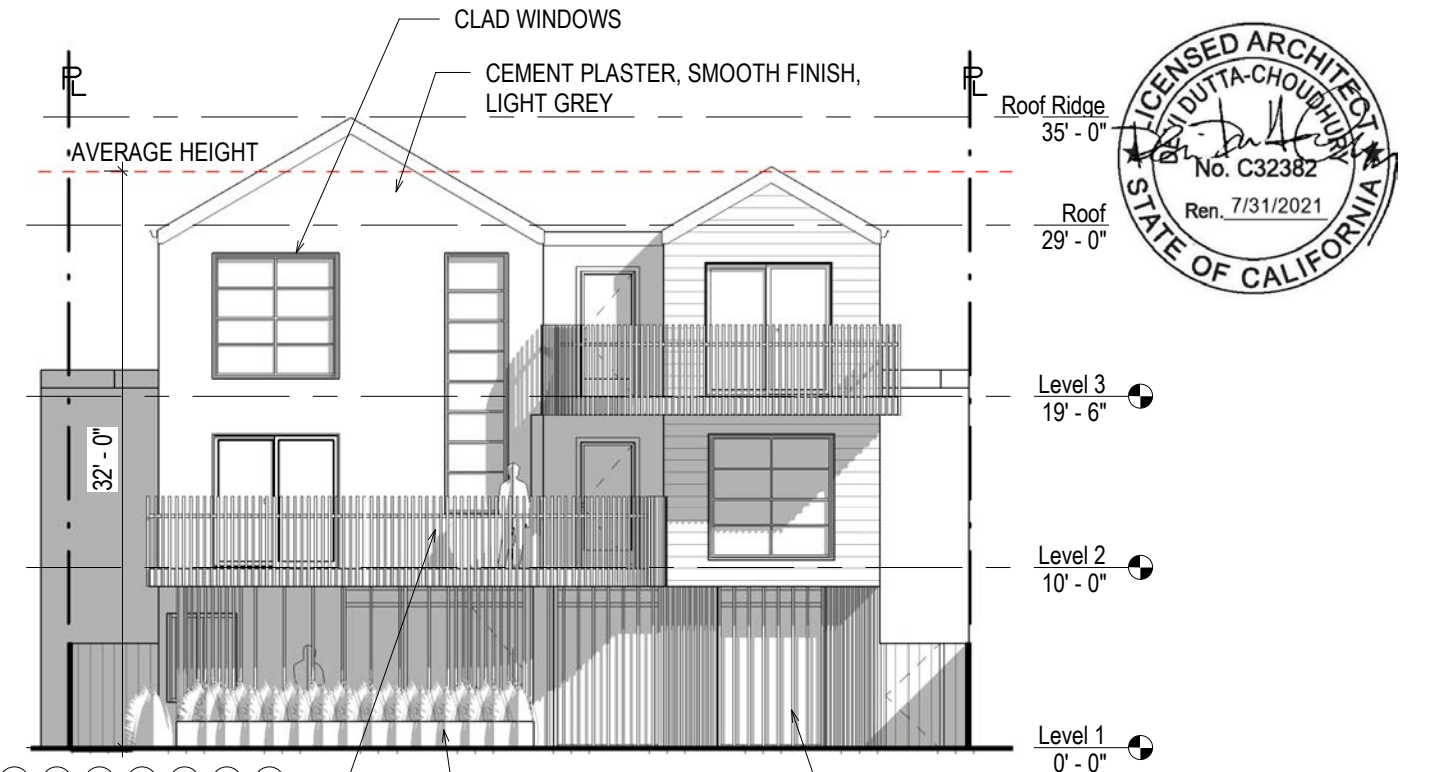
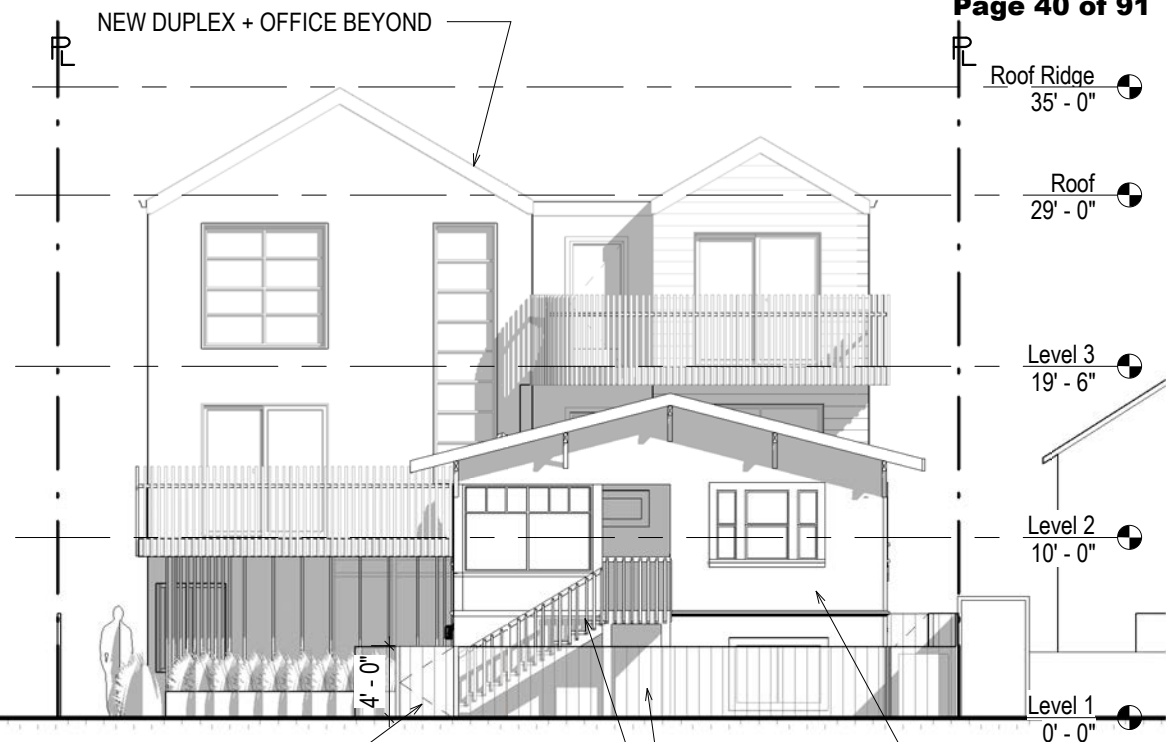
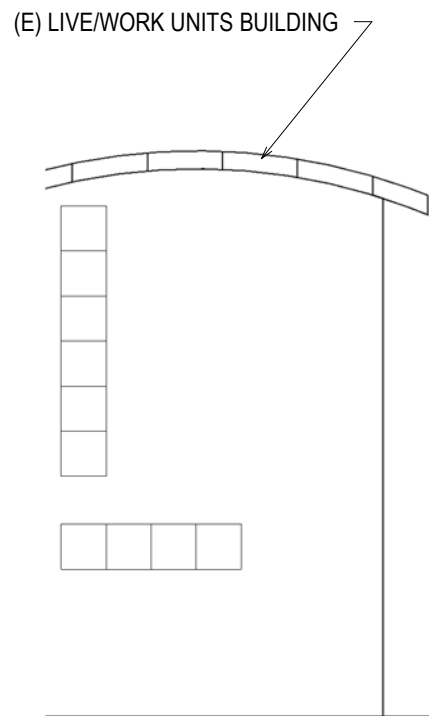
SCALE: 1/8" = 1'-0" 0 4 8 16 32

2422 5TH STREET

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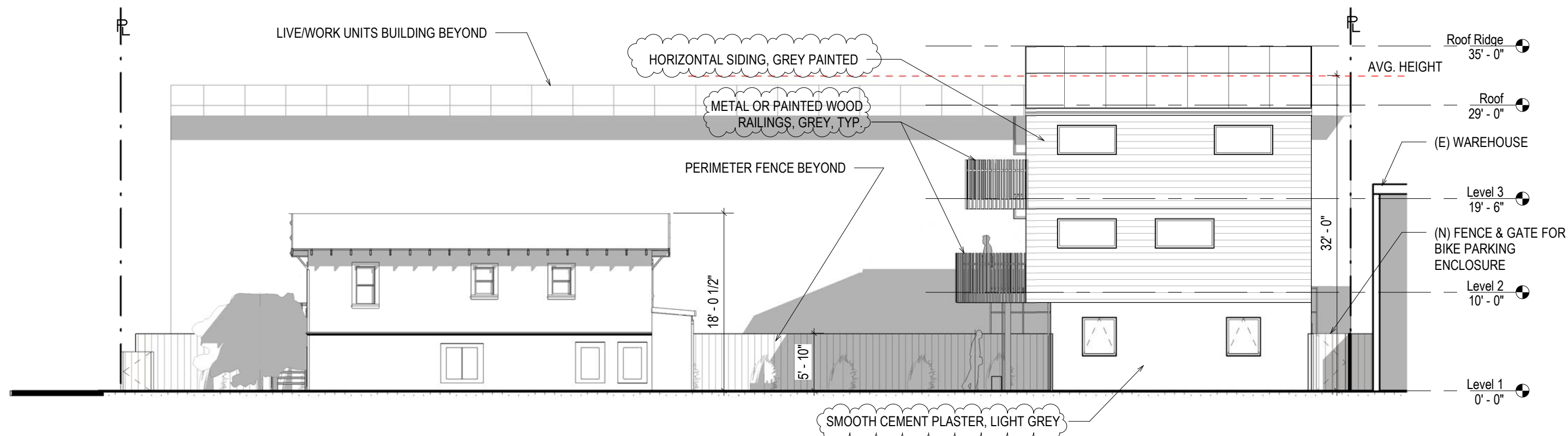


1 PROPOSED STREET ELEVATION (FRONT)

3/32" = 1'-0"

2 PROPOSED BUILDING EAST ELEVATION (FRONT)

3/32" = 1'-0"



3 PROPOSED NORTH ELEVATION (RIGHT SIDE)

3/32" = 1'-0"

A2.1

EAST & NORTH ELEVATIONS

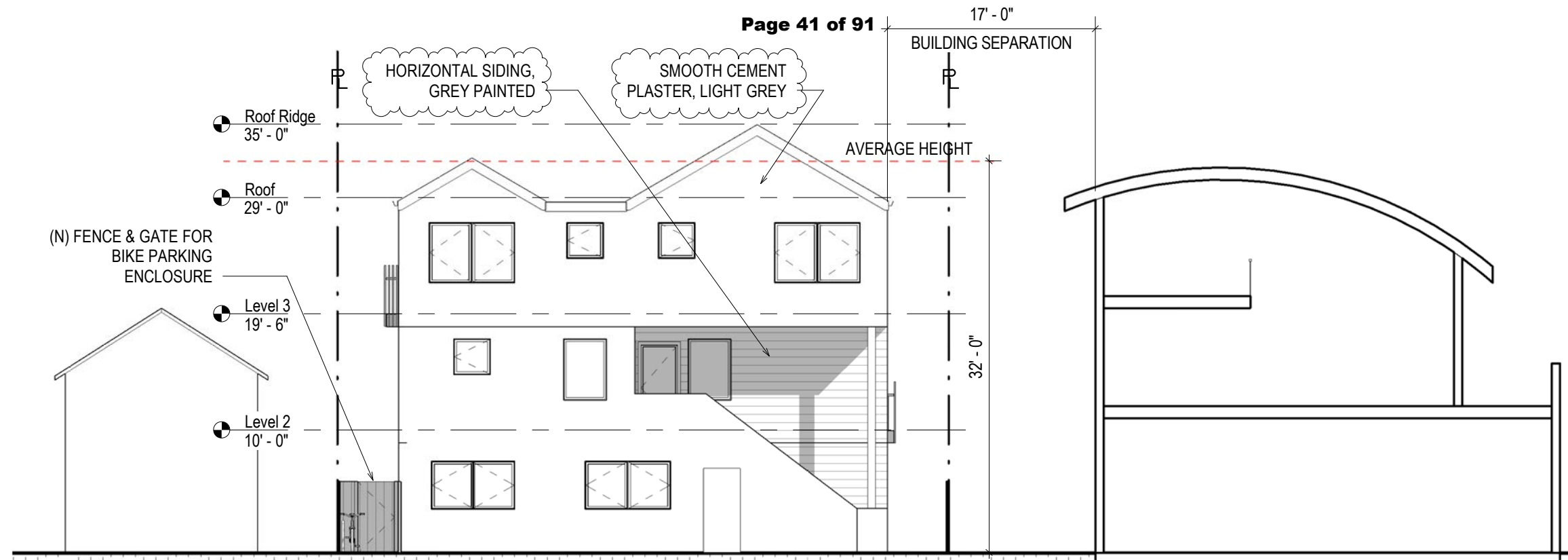
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2422 5TH STREET

Zoning Submittal

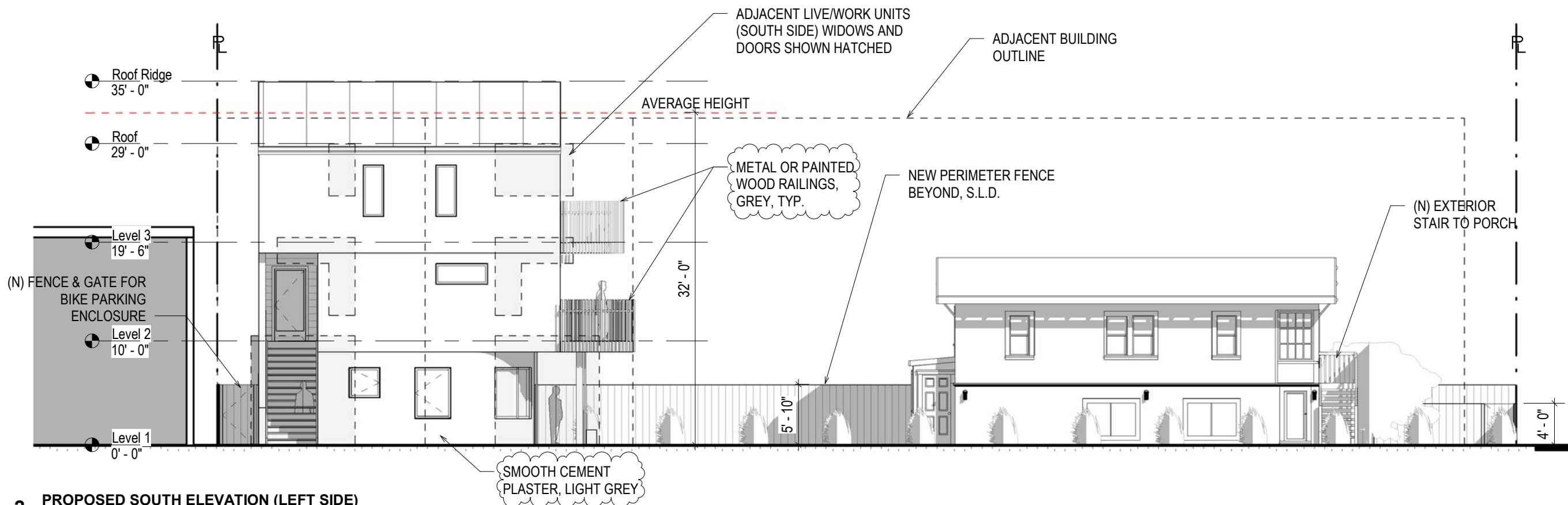
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10.15.2019



1 PROPOSED WEST ELEVATION (BACK)

3/32" = 1'-0"



2 PROPOSED SOUTH ELEVATION (LEFT SIDE)

3/32" = 1'-0"



WEST & SOUTH ELEVATIONS

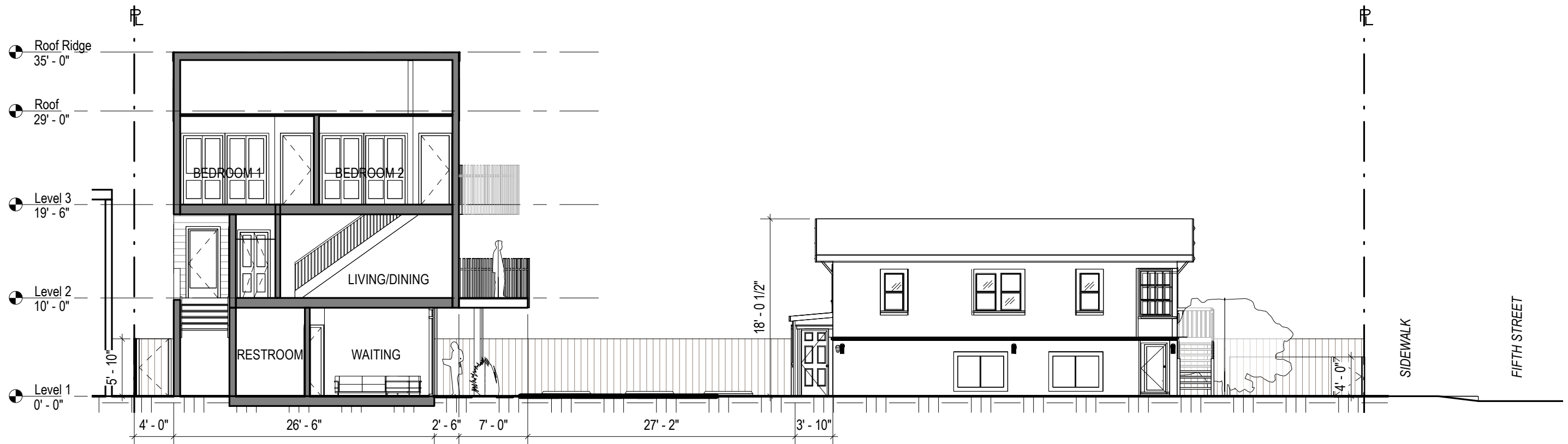
SCALE: 3/32" = 1'-0" 0 4 8 16 32

2422 5TH STREET

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1 PROPOSED NORTH SECTION

3/32" = 1'-0"

A3.1

PROPOSED BUILDING SECTIONS

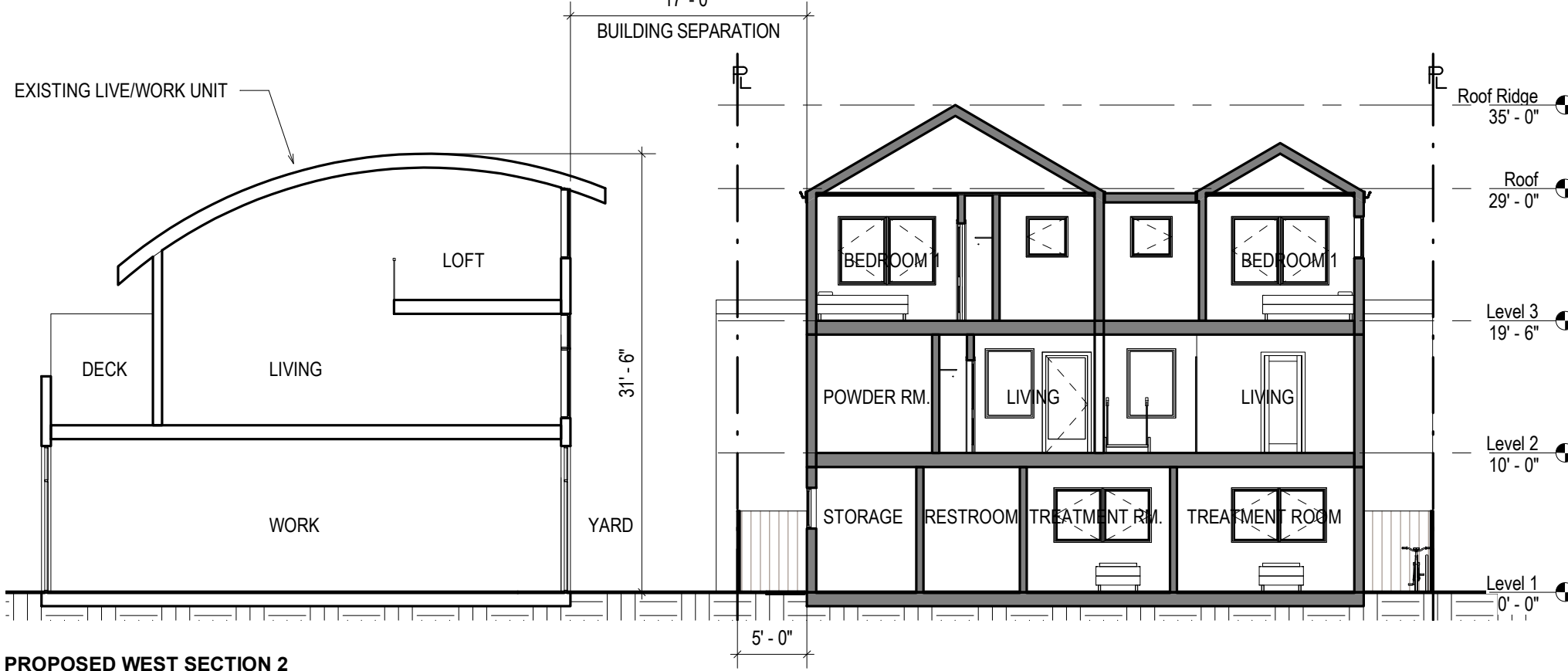
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2422 5TH STREET

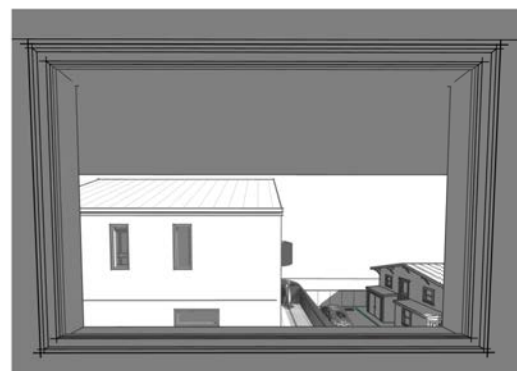
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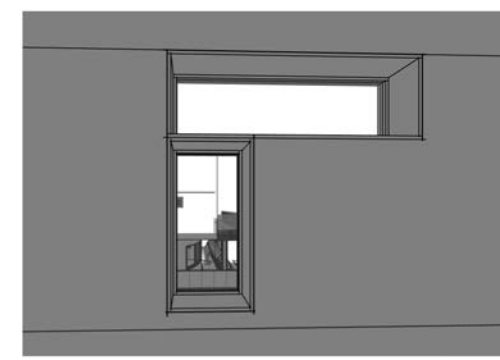
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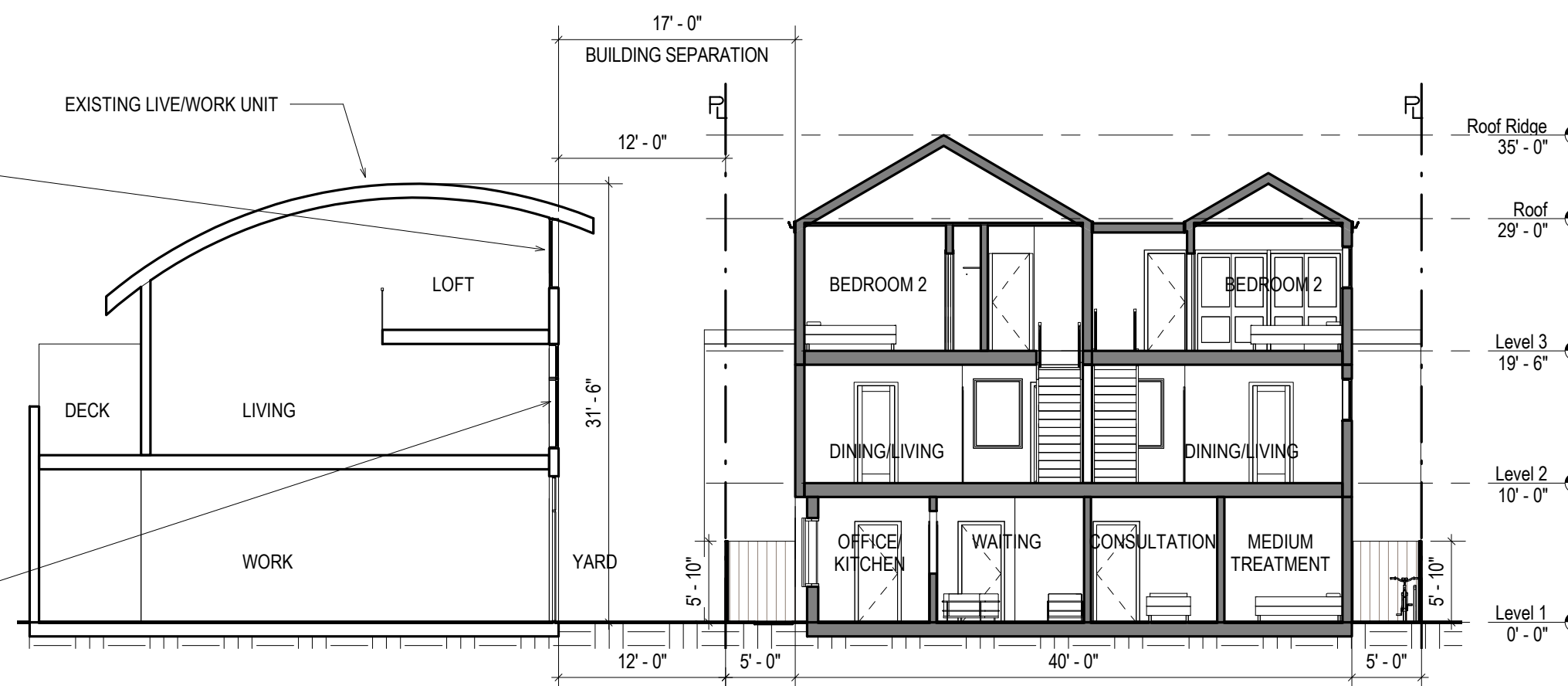
2 PROPOSED WEST SECTION 2
3/32" = 1'-0"



3 VIEW FROM ADJACENT UNIT - 3RD LEVEL



4 VIEW FROM ADJACENT BUILDING - 2ND LEVEL



1 PROPOSED WEST SECTION 1
3/32" = 1'-0"

A3.2

PROPOSED BUILDING SECTIONS

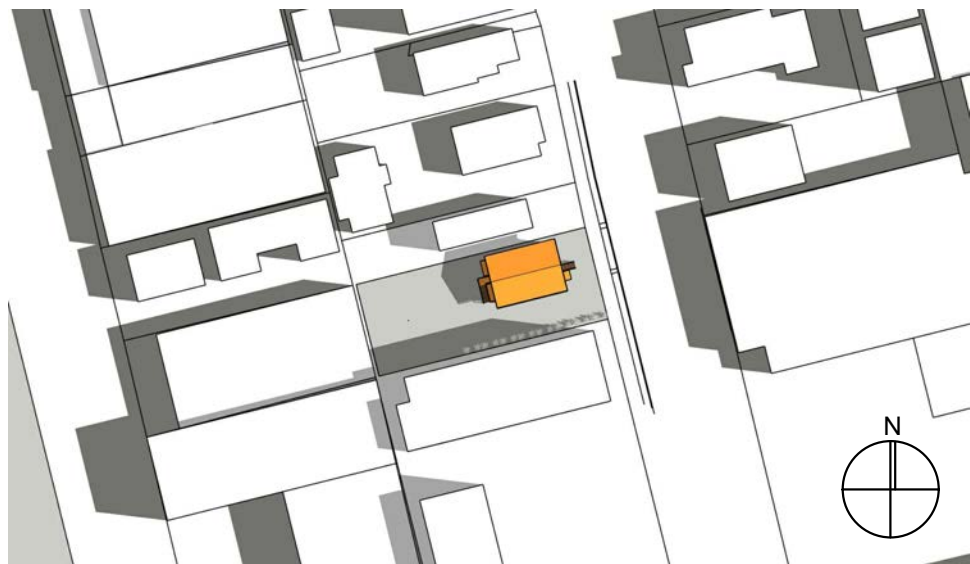
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2422 5TH STREET

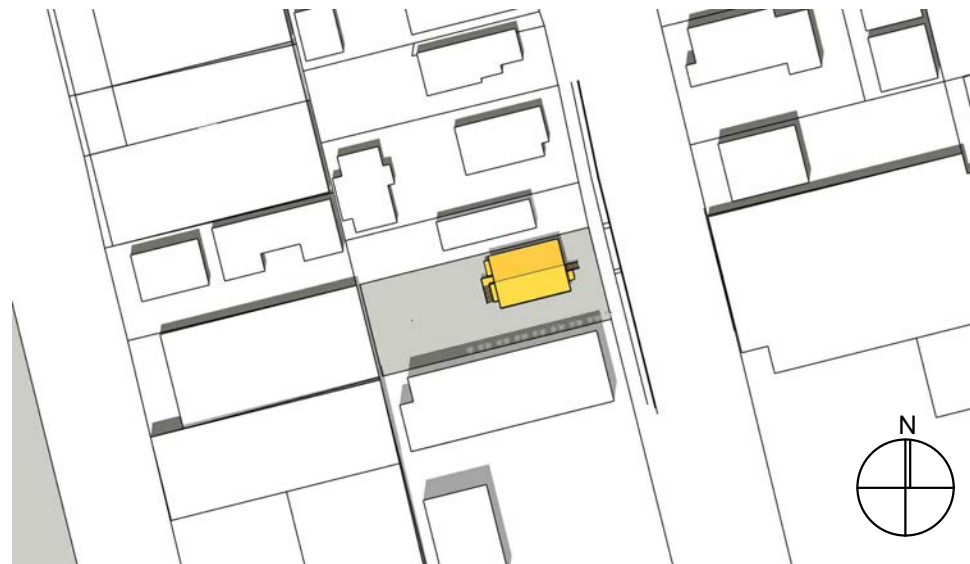
Devi Dutta Architecture Inc.

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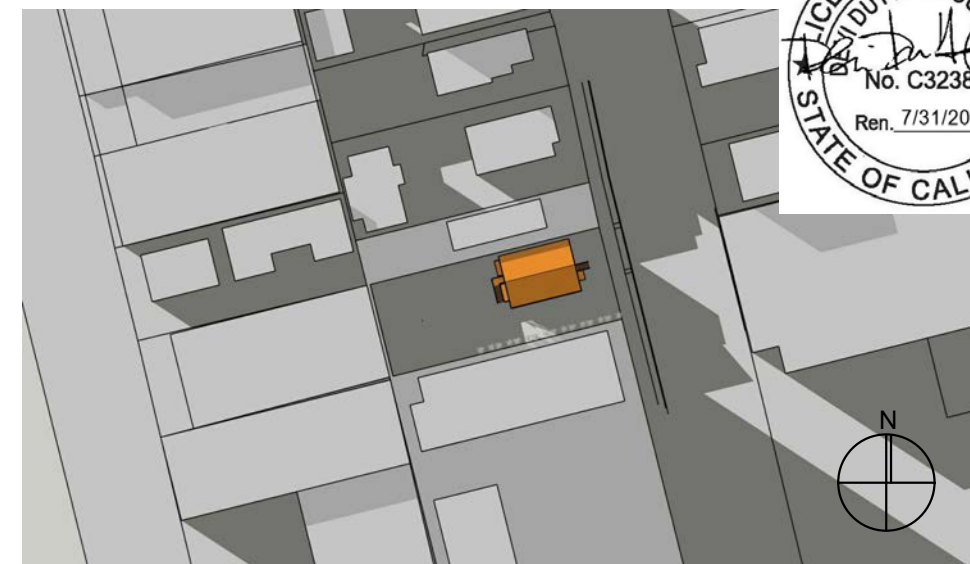
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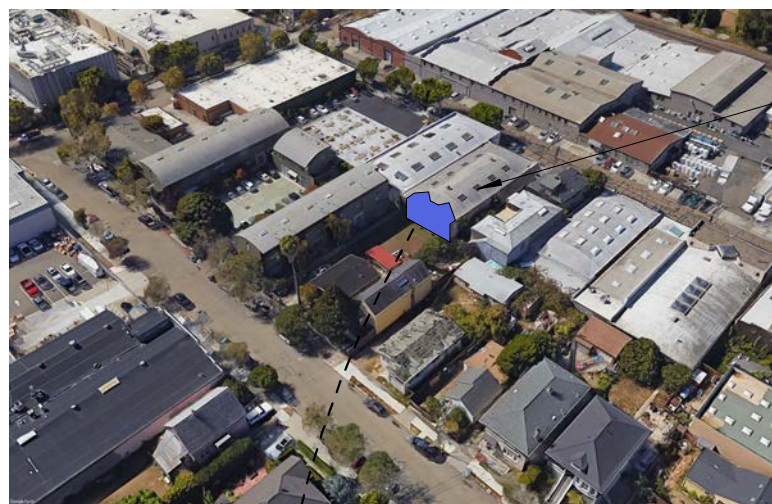
1 EXISTING-JUNE 21 - 2 HR AFTER SUNRISE



2 EXISTING - JUNE 21 - 12.00 PM



3 EXISTING - JUNE 21 - 2 HR BEFORE SUNSET

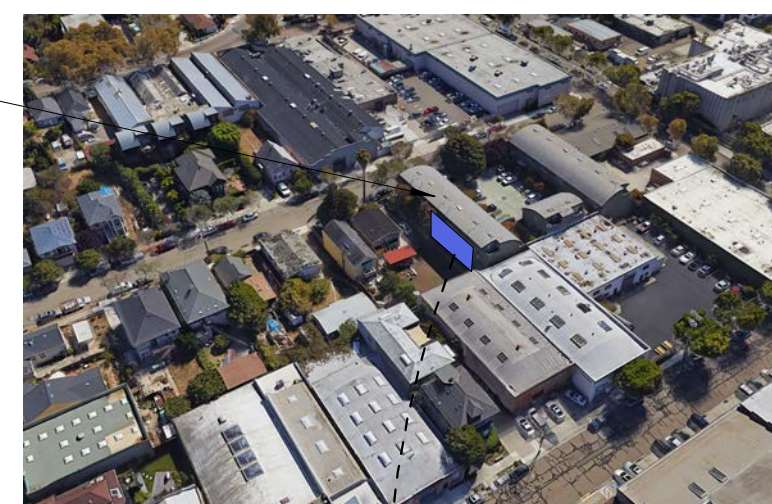


2423 4TH STREET - WAREHOUSE

2430 4TH STREET - 3 STORY MULTI-FAMILY BATHROOM & LIVING (ASSUMED)

SHADOWS LEGEND

- EXISTING SHADOW
- NEW SHADOW CAST FROM PROPOSED PROJECT



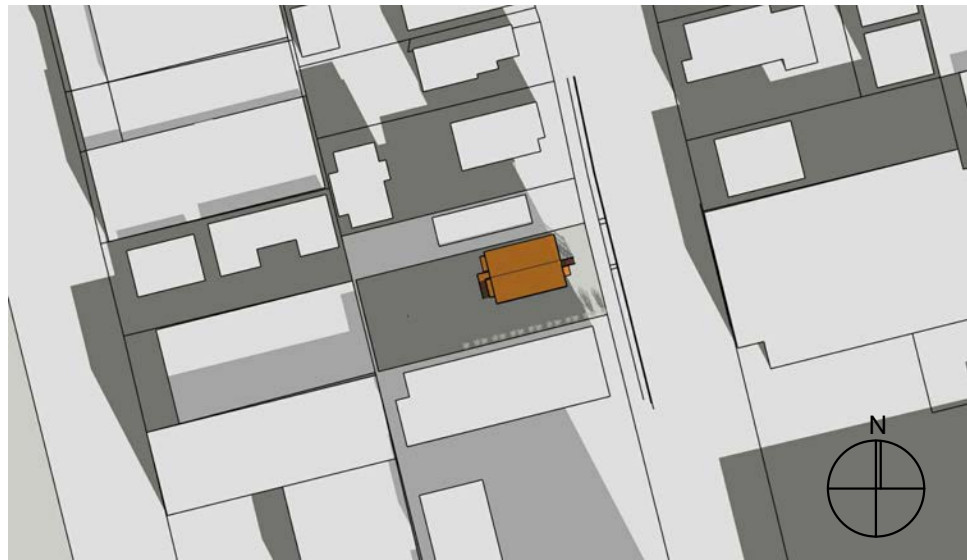
4 PROPOSED - JUNE 21 - 2 HOUR AFTER SUNRISE



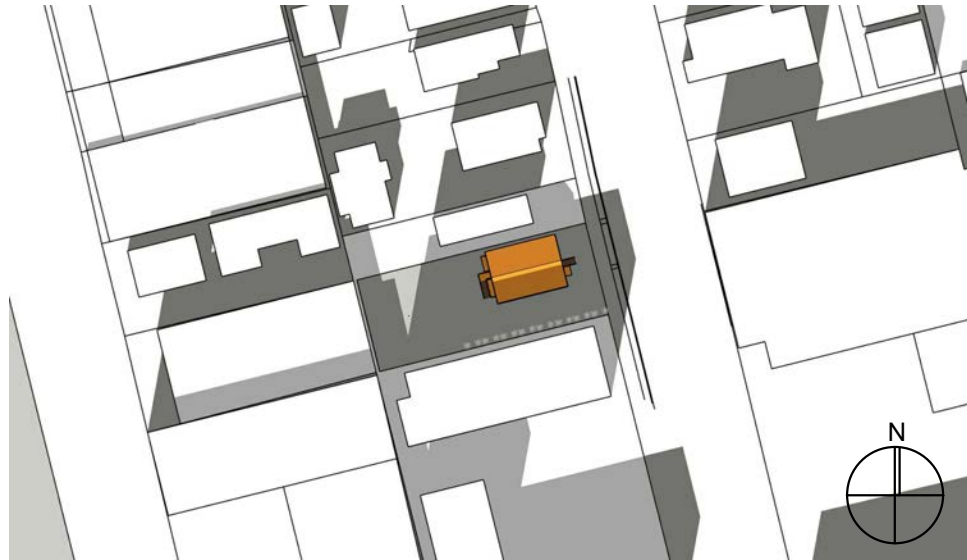
5 PROPOSED - JUNE 21 - 12.00 PM



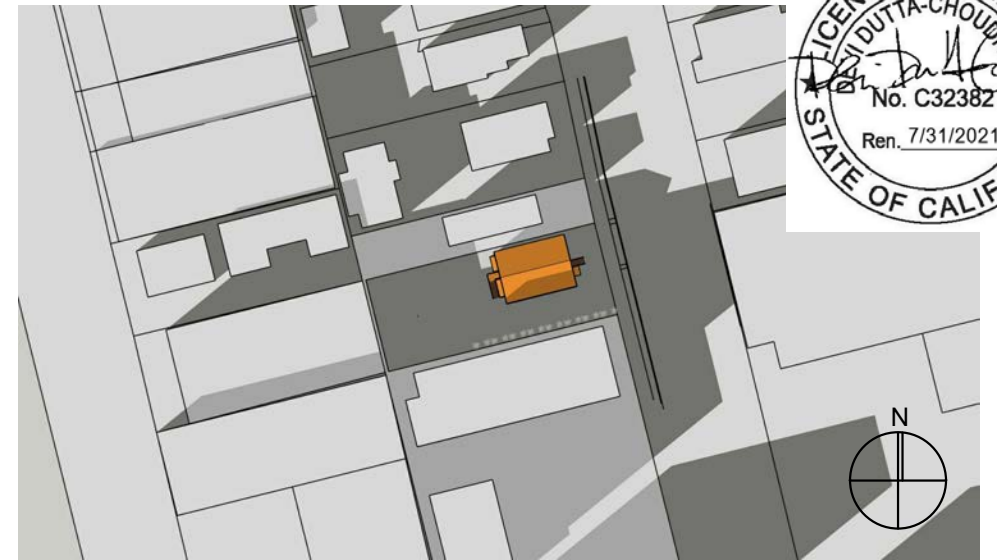
6 PROPOSED - JUNE 21 - 2 HR BEFORE SUNSET



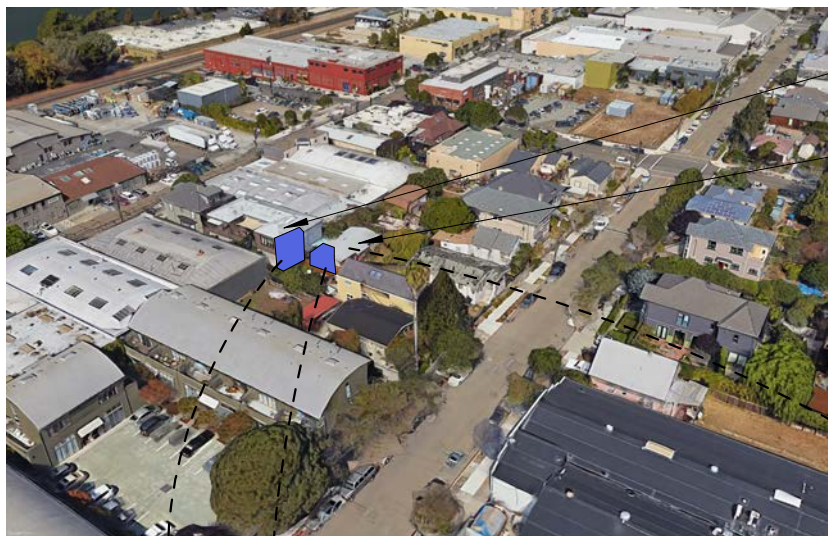
1 EXISTING - DECEMBER 21 - 2 HR AFTER SUNRISE



2 EXISTING - DECEMBER 21 - 12.00 PM



3 EXISTING - DECEMBER 21 - 2 HR BEFORE SUNSET



2421 4TH STREET - OFFICE BUILDING

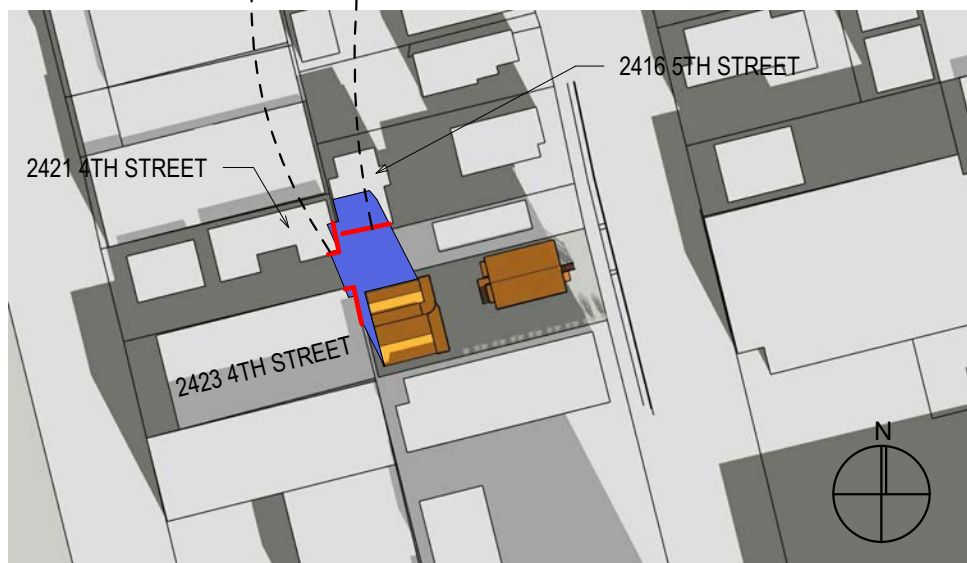
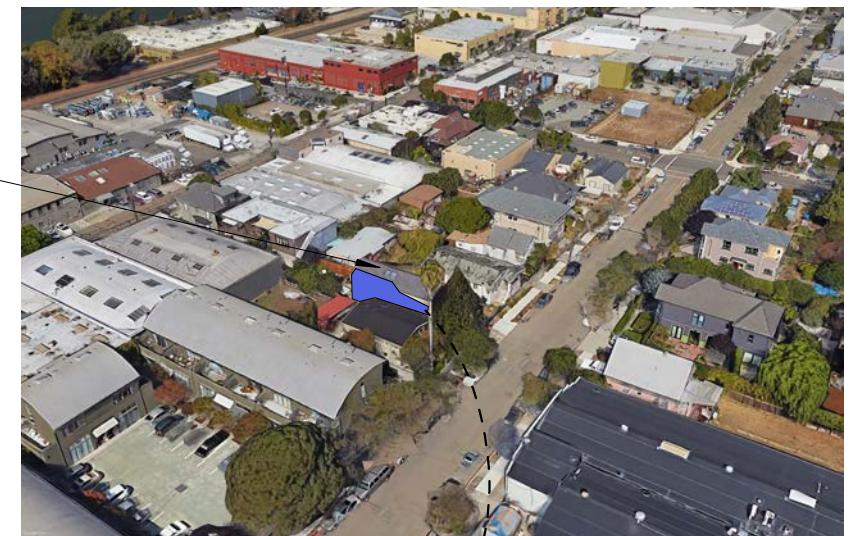
2416 5TH STREET - 1 STORY SINGLE FAMILY

2418 5TH STREET
2 STORY SINGLE FAMILY -
LIVING ROOM (ASSUMED)

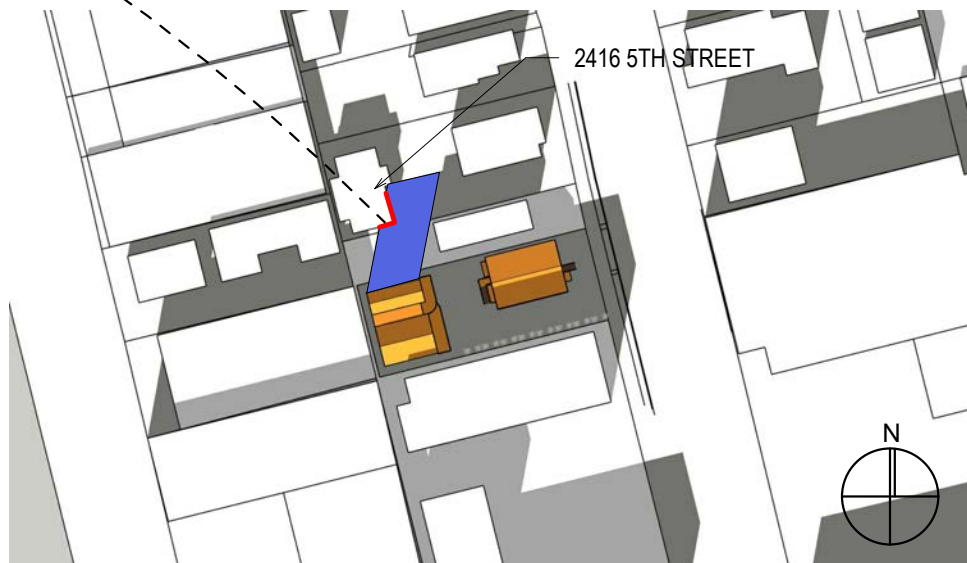
SHADOWS LEGEND

EXISTING SHADOW

NEW SHADOW CAST FROM PROPOSED PROJECT



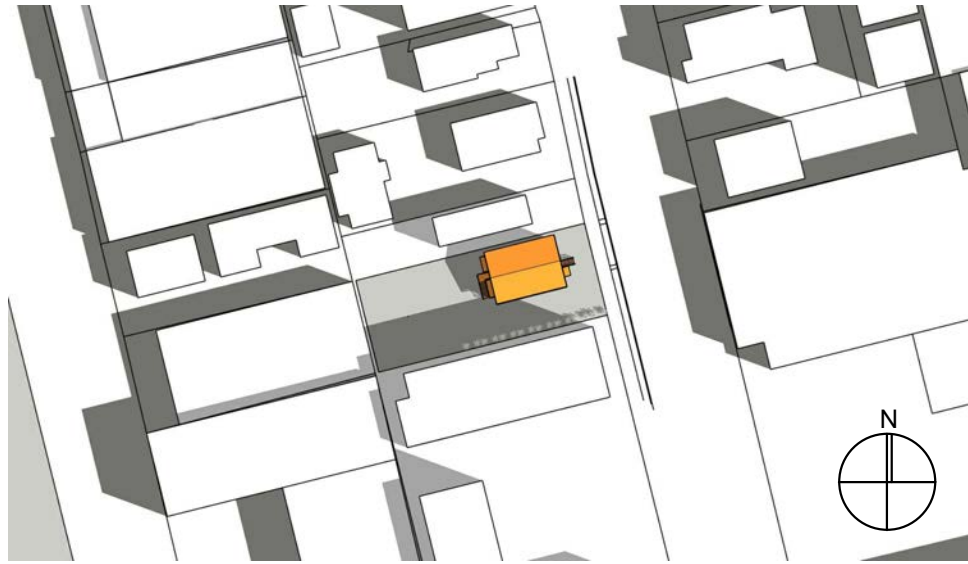
4 PROPOSED - DECEMBER 21 - 2 HR AFTER SUNRISE



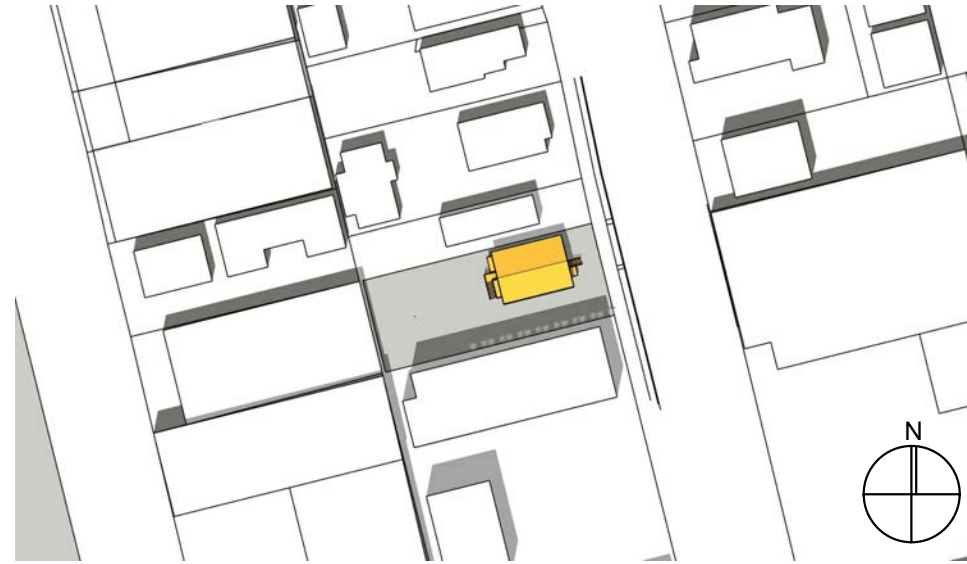
5 PROPOSED - DECEMBER 21 - 12.00 PM



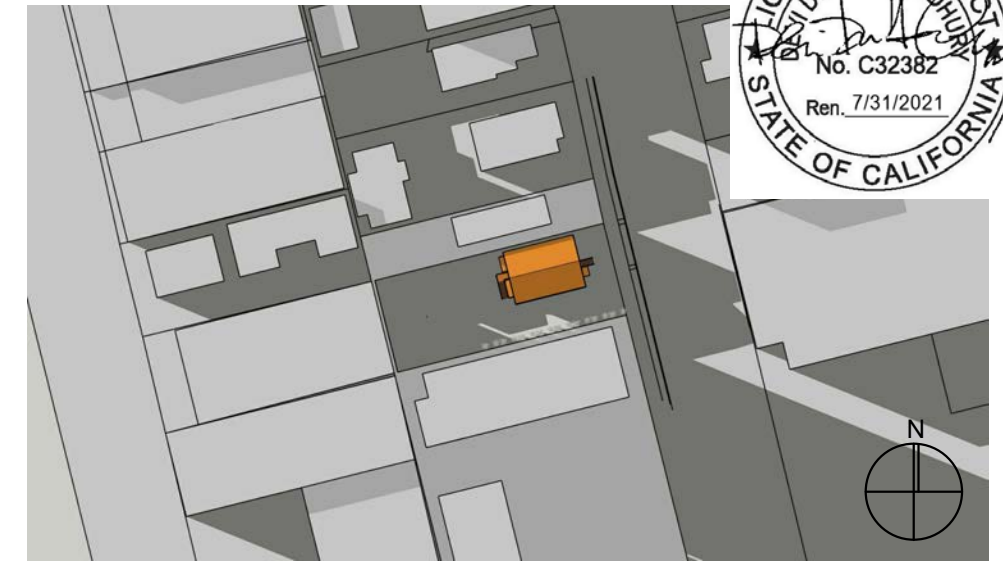
6 PROPOSED - DECEMBER 21 - 2 HR BEFORE SUNSET



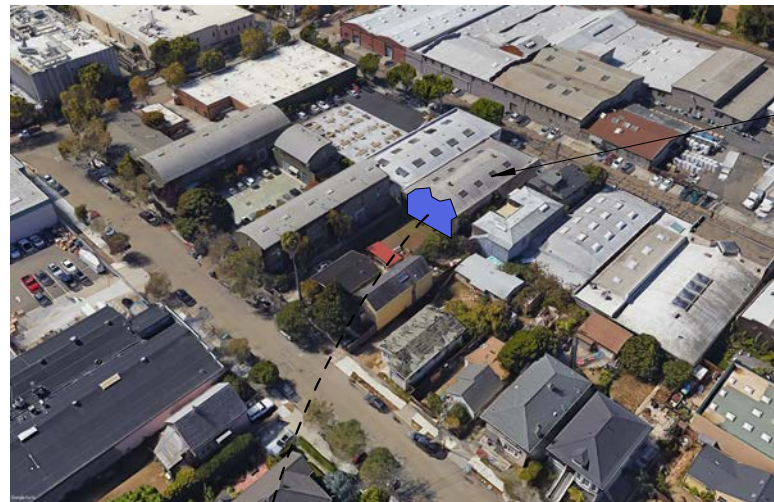
1 EXISTING - MAY 1 - 8.13 AM



2 EXISTING - MAY 1 - 12.00 PM



3 EXISTING - MAY 1 - 6.00 PM

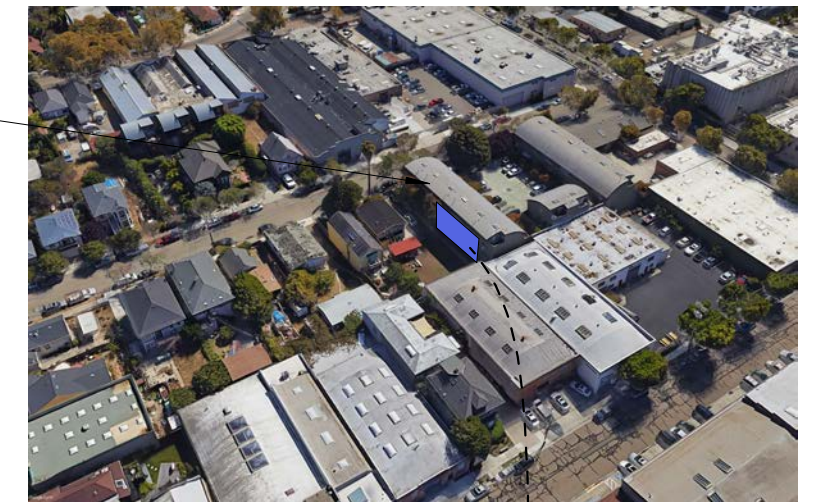


2423 4TH STREET - WAREHOUSE

2430 5th STREET
3-STORY MULTI FAMILY -
BATH & LIVING (ASSUMED)

SHADOWS LEGEND

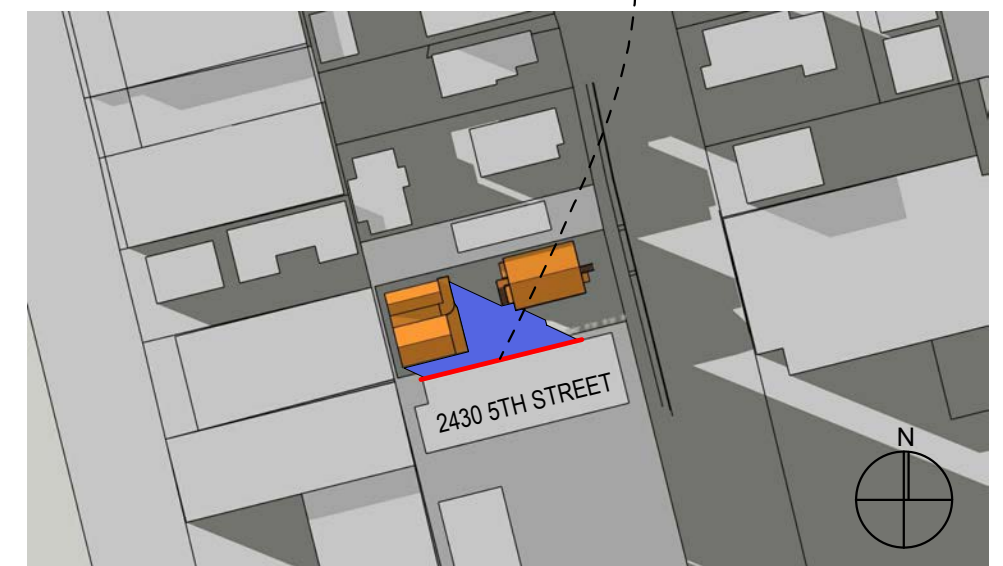
- EXISTING SHADOW
- NEW SHADOW CAST FROM PROPOSED PROJECT



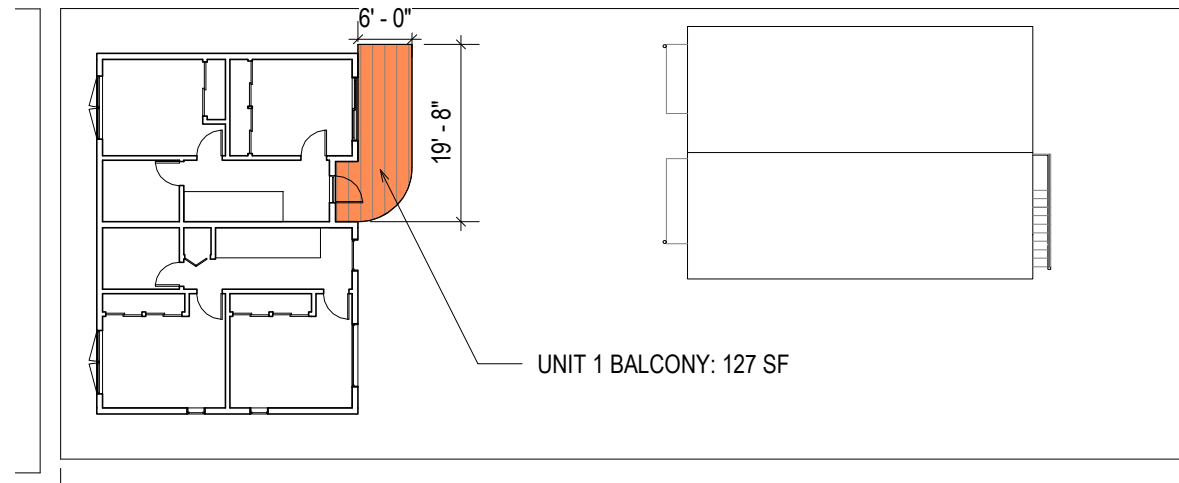
4 PROPOSED - MAY1 - 8.13 AM



5 PROPOSED - MAY 1 - 12.00 PM

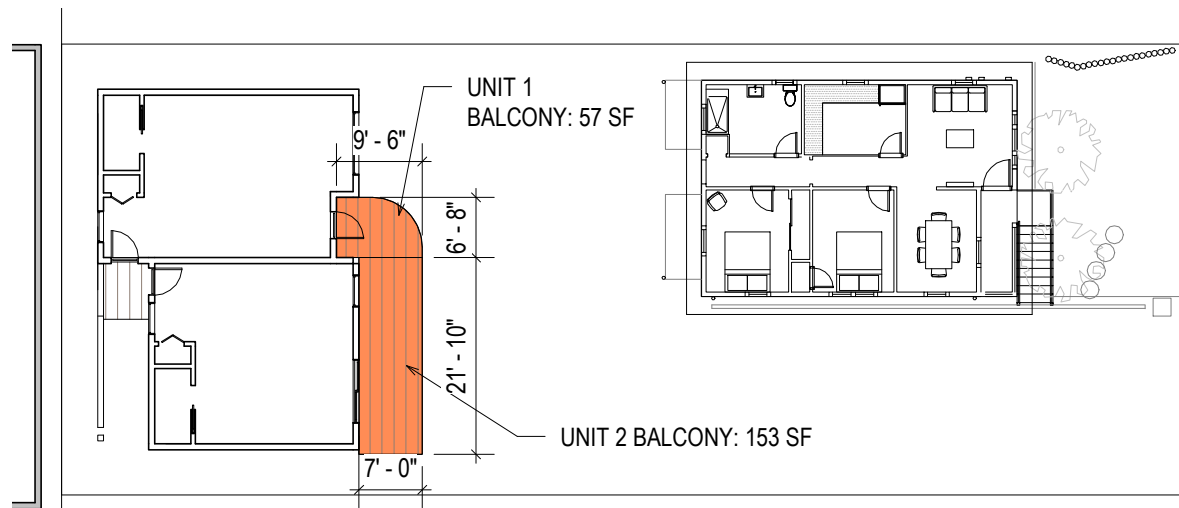


6 PROPOSED - MAY1 - 6.00 PM



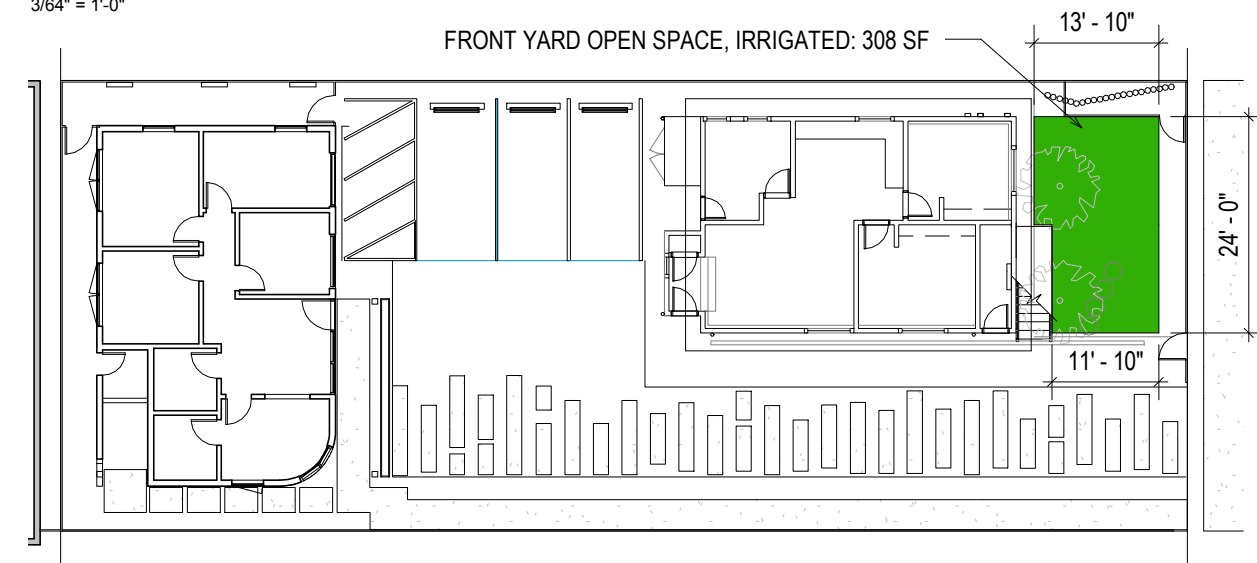
3 Level 3 - Open Space

3/64" = 1'-0"



2 Level 2 - Open Space

3/64" = 1'-0"



1 Level 1 - Open Space

3/64" = 1'-0"

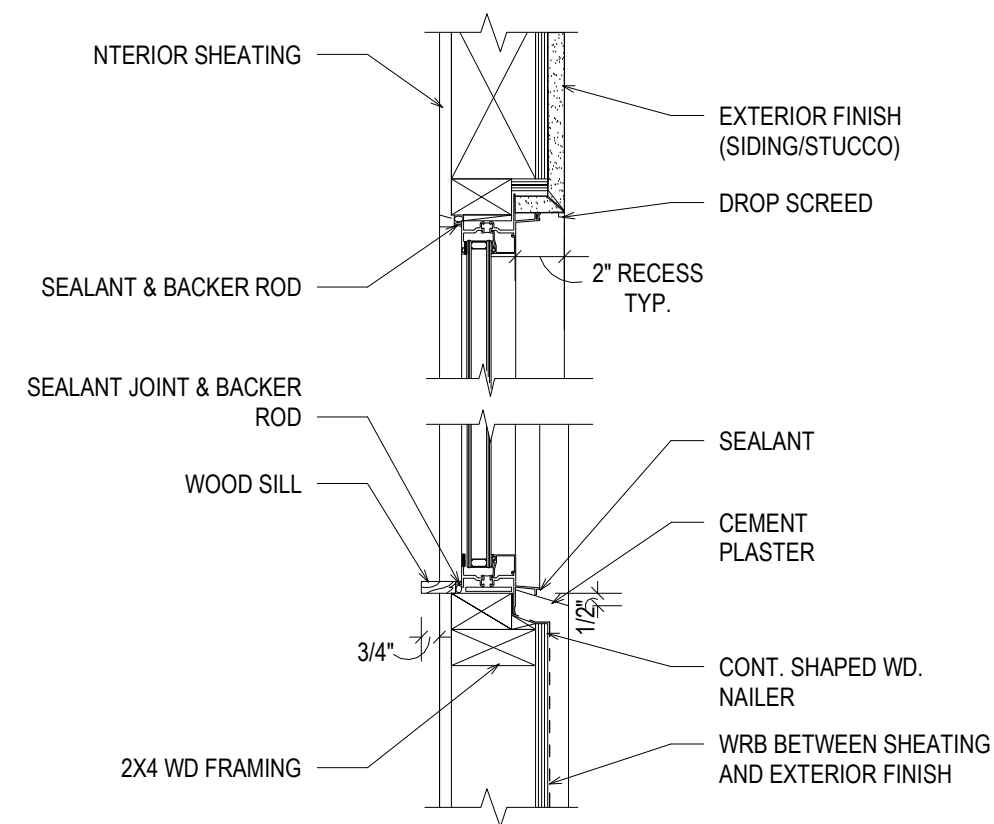
- Ground Floor open space
- Balcony

OPEN SPACE AREAS	
Level	Area
Level 1	308 SF
Level 2	210 SF
Level 3	127 SF
TOTAL	645 SF

A5.1

OPEN SPACE DIAGRAM

SCALE: 3/64" = 1'-0" 0 4 8 16 32



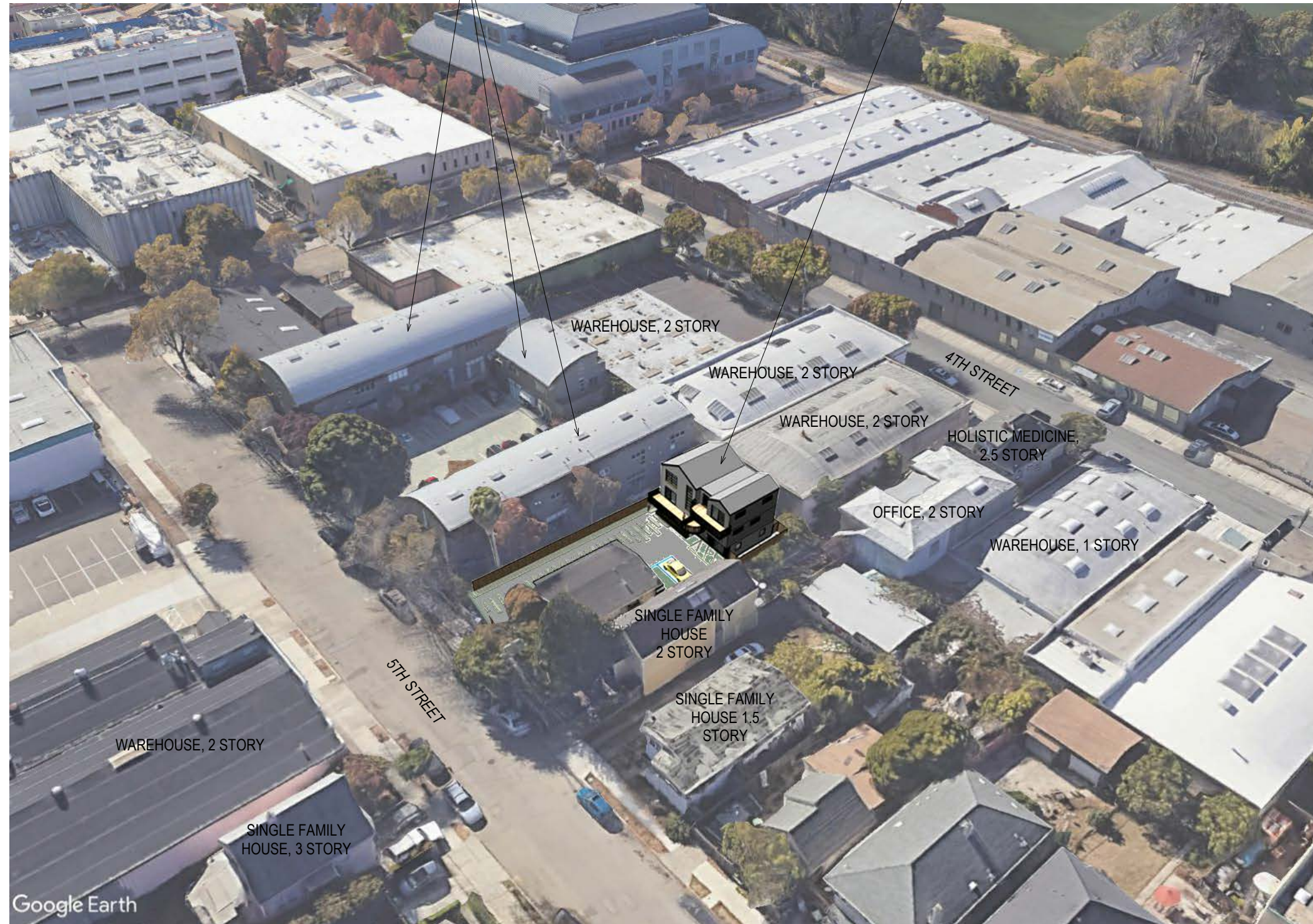
1 TYPICAL NEW WINDOW DETAIL

1 1/2" = 1'-0"



MULTI FAMILY, 3 STORY BUILDING

PROPOSED PROJECT





5 SOUTH-WEST PERSPECTIVE



3 ENTRY PERSPECTIVE - LEFT CORNER



2 ENTRY PERSPECTIVE - RIGHT CORNER



4 EAST PERSPECTIVE



1 EAST ELEVATION

A7.2

PERSPECTIVE VIEWS

SCALE:

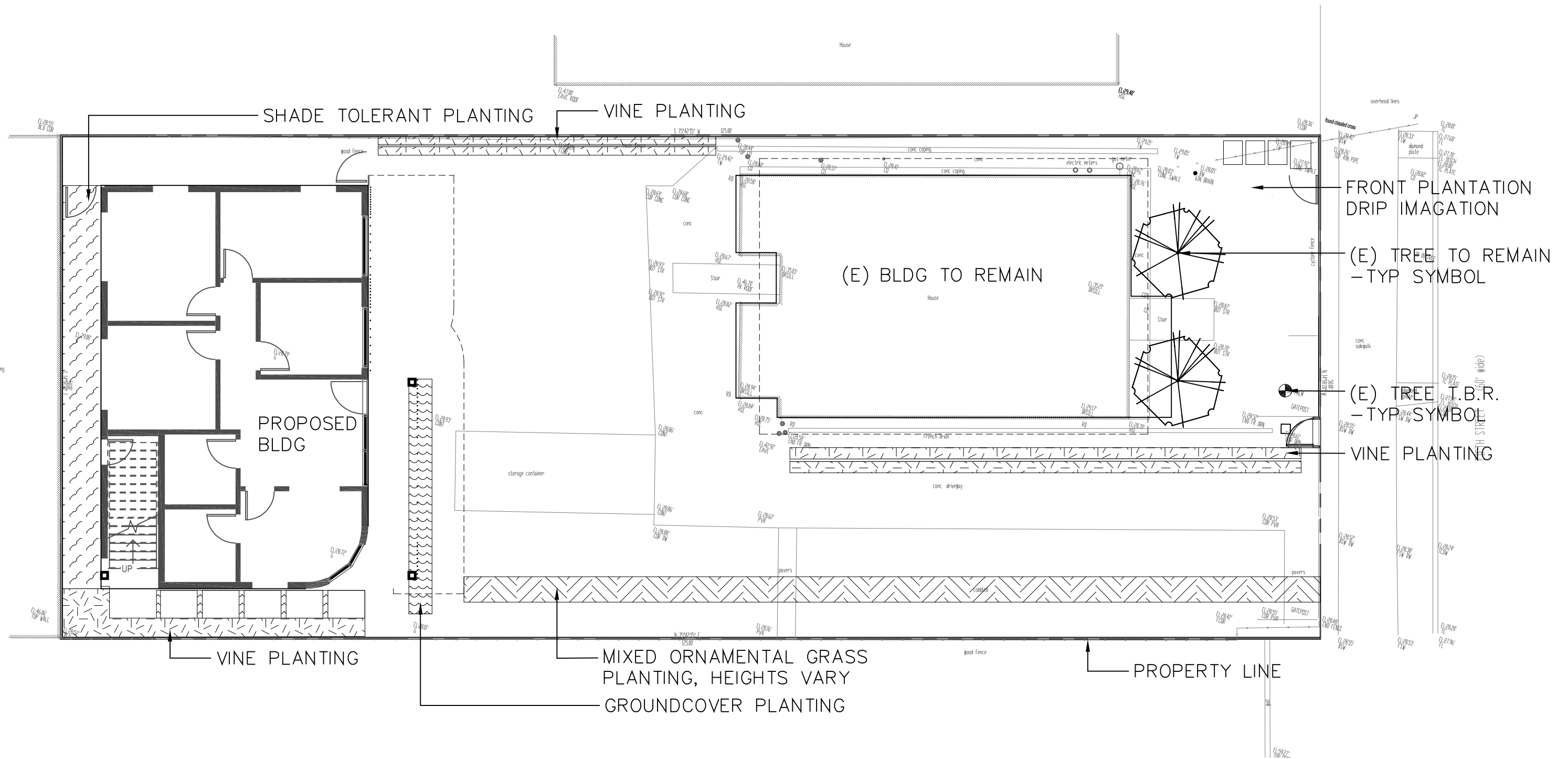


2422 5TH STREET

Devi Dutta Architecture Inc.

Zoning Submittal

10.15.2019



SCHEMATIC PLANTING PLAN

L2.0

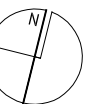
SCALE: 1"=10'-0"

2422 5TH STREET

MANTLE LANDSCAPE ARCHITECTURE

ZONING PROGRESS

10.10.2019





GRASS PLANTING

Carex divulsa + Pennisetum alopecuroides

SHADE TOLERANT

Carex dolichostachya, Mahonia 'Soft Caress', Montia perfoliata, Polystichum munitum



VINE PLANTING



GROUNDCOVER



PROPOSED PLANTING PALETTE

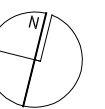
L2.1

2422 5TH STREET

MANTLE LANDSCAPE ARCHITECTURE

ZONING PROGRESS

06.19.2019



CITY OF BERKELEY
CITY CLERK DEPT

2019 NOV 19 PM 3:33

Berkeley City Council
Attn: City Clerk
2180 Milvia Street, 1st Floor
Berkeley, CA. 94704

November 19, 2019

Dear City Council Members,

The Redwood Tree Condominium Association (HOA) is appealing the decision made by the Zoning Adjustment Board (ZAB) on October 24th approving Use Permit, # ZP2018-0108 (2422 Fifth Street, West Berkeley). We are appealing for the reasons stated below, and are suggesting solutions in order to generate neighborhood support for the project.

Basis of Appeal:

1. The approval and waiver of 2 required residential parking spaces is based on an invalid parking survey that is out of date and does not accurately assess the current parking demand, or the impact of the proposed development, in the neighborhood.
2. The project does NOT address the affordable housing crisis in Berkeley as suggested in the application and misrepresented by the Applicants at the hearing. The project will produce two new MARKET-RATE residential units, and the vacated existing units will most likely reset to market rate when new construction is complete.
3. The project approved by ZAB is substantially different from the project originally proposed by the Applicants.

Detailed discussion of Appeal points:

1. WAIVER:
 - The proposed project adds 2 market-rate rental apartments and an 840 sf medical office with four treatment rooms to an existing two-unit residential duplex. Under existing zoning codes, the proposed project is required to provide 4 residential parking spaces and 3 parking spaces for the medical office, for a total of 7 parking spaces, including one HC Van Accessible parking space.
 - The project as approved provides only three parking spaces in total, shared between the residential and medical office uses.
 - The approved site plan and layout of the required Handicapped Van Accessible parking space does not comply with current Accessibility codes and the approved site plan is therefore invalid.
 - The Applicants propose a daytime joint (“shared”) parking agreement between the residential and medical office uses and ask the City to waive a requirement for two residential spaces based on the parking survey conclusions that there is adequate available street parking capacity.

- The proposed joint parking agreement assumes that all residential parking spaces will be vacant during normal business hours. This is NOT a valid assumption in West Berkeley where many residents walk, bike or commute to work by public transportation, leaving their cars at home during the day, often on the street.
- Even with the proposed joint parking agreement, the project as approved does not provide the code required residential parking at a ratio of one space per residential unit, and will therefore create additional residential parking demand on an already crowded Fifth St.
- The conclusions of Abrams Associates parking survey and the ZAB staff approval of same are invalid because they do not address the proposed project correctly.
 - The proposed medical office indicates three treatment rooms and a “consultation” room.
 - We have consulted with a practicing medical doctor who has advised us regarding the reasonably anticipated patient/traffic flow associated with the proposed medical office.
 - We have been advised that a medical practice with 4 treatment/consultation rooms will typically see 4-7 patients per hour. Including patients waiting for appointments, it is reasonable to anticipate that the parking demand created by the proposed medical facility will be 3-5 vehicles per hour, forcing 2-4 vehicles onto Fifth Street at any given time. Fifth St. is already severely impacted by lack of parking for existing businesses and residents.
 - We are advised that in a facility with 4 treatment/consultation rooms as proposed it would not be uncommon to have one staff assistant and/or an additional practitioner in addition to the primary physician, creating additional parking demand.
 - Of the 3 provided joint spaces indicated on the site plan, one space is a dedicated Handicapped Van Accessible space (24 hours). The Applicant acknowledges that she will generally utilize one on-site parking space when on the premises, leaving only ONE off-street parking space remaining for daytime use by patients, medical staff, and residential tenants (This assumes no additional staff at the medical office). Any residents who need daytime parking, as well as a significant portion of the anticipated patient load, will be forced onto the street during business hours.
 - Since Dr. Gold plans to maintain her existing medical practice in San Francisco, it is reasonable to assume that the Applicant may add another practitioner to expand her practice, or perhaps rent space to an independent practitioner for his/her own similar practice, leading to an even greater parking shortage. It is conceivable that 4 patients, 2 practitioners, and 4 residential tenants (a total of 10 persons) could be vying for two parking spaces (one space if Dr. Gold is also parked on the premises).
 - It is therefore likely that, in practice, there will be 0-1 parking spaces (not including the designated HC Van Accessible space) available on-site during business hours, forcing a minimum of 2-4 vehicles onto the street at any given time. The Abrams parking study does not correctly account for the reasonably anticipated medical office use.

- The conclusions of Abrams Associates parking survey are invalid as they are based on an incorrect description of the project.
 - The Abrams Associates letter dated October 2018 states that the project adds two new residential units to one existing residential unit (total residential units = 3). There are in fact two existing residential units on site and the proposed project adds two additional residential units, resulting in a total of 4 residential units on the completed site.
- The conclusions of Abrams Associates parking survey are invalid because they do not account for new development projects currently under construction or in the pipeline.
 - Street parking is already severely impacted on Fifth St. and is generally at or over capacity due to business employee and customer vehicles, overflow residential parking due to inadequate on-site residential parking in the neighborhood, and commercial/delivery traffic (large vans and semi-tractor trailers) associated with manufacturing and distribution businesses on the surrounding blocks.
 - Fifth St. will continue to become increasingly congested in the future due to development projects already in the pipeline. These include the 14-unit live/work residential building currently under construction at the corner of 5th and Channing, a reconfiguration of the existing industrial/distribution building at the corner of Dwight Way and Fifth St. (2431/2424 Fifth), to multi-tenant use (light manufacturing and wholesale cannabis distribution), a new restaurant at 2326 Fifth, and several other proposed developments anticipated or already in the pipeline along Fifth Street.
- The parking survey prepared by Abrams Associates in March 2018 (updated in October 2018) is out of date and consists of insufficient data to properly assess the actual parking demand in the neighborhood, which has continued to increase rapidly in the 18 months since the original survey was prepared.
 - The survey and its conclusions are based on only four periods of observation over two days (October 17-18, 2018), made during the periods of 1-2pm and 5-6pm. The 1-2pm period is not representative of actual daily parking demand in the area as it falls within the typical lunch "hour" for businesses in the area.
 - The survey does not address the significant commercial parking demand in the immediate area during business hours. Fifth Street between Dwight and Bancroft is often clogged with double parked commercial vehicles due to severe lack of existing off-street parking capacity relative to existing parking demand.
- SOLUTIONS:
 - Redesign the project so that it can accommodate the its own code required off-street parking requirements within the site.
 - Lease additional parking spaces from an adjacent business use with excess or underutilized parking through a LEGITMATE (contractual) shared parking agreement with a nearby business. This should be a condition of approval for any proposed development project that cannot accommodate its own parking requirements on-site.

4. AFFORDABLE HOUSING:

- The four rental units proposed for this project are NOT AFFORDABLE housing units and will not contribute to affordable housing stock in Berkeley.
 - Only one of the units in the duplex on site is currently rented, and the applicants indicated at the hearing that the remaining tenants will vacate when construction begins. The rent on that unit, therefore, will likely reset to market rate, as will the rent on the second existing unit in the duplex when it is rented (currently vacant and being used by the Applicants for storage).
 - The two new units being constructed, while subject to future rent control, will most likely be rented at current market rate, between \$3,500 and \$4,000 per month.
- The Applicants stated at the hearing that by building additional housing units they are contributing to addressing the Berkeley housing availability and affordability issues, implying (and apparently convincing some ZAB commissioners) that they were providing affordable housing units. This is not the case! The newly constructed residential units (and probably the existing units) will be MARKET-RATE rental units, NOT "Affordable" units as defined by law.

5. PROPOSED PROJECT:

- The proposed project is substantially different than the project originally proposed.
- The project has an additional residential unit (total 4 units) and has less on-site parking than proposed in the original application.
- Adjacent neighbors have valid concerns related to the proximity and size of the proposed new building, particularly to the design (materials, colors, windows, etc.) south elevation which is in close proximity to existing Redwood Tree Studio units.
- SOLUTIONS:
 - Approval should be conditioned on the Applicants working with the neighbors to address and mitigate material, color, and privacy concerns associated with the proximity of the new building to adjacent buildings immediately to the south and north of the proposed project.

Conclusions:


A quick survey of the 4th and 5th street neighborhood north of Dwight Way and south of Channing Street yielded 28 signatures from concerned residents, business owners, and tenants who believe that the parking situation is already untenable. [See attached signature pages.] This neighborhood is changing very, very rapidly and ignoring or understating the concerns of its residents and business operators would, we respectfully submit, be unfair.

We welcome the Golds as neighbors and are happy to have Dr. Gold's practice, as well as new residential units, added to the neighborhood. However, we believe that there is additional work to be done in order to create the best possible project for the Applicants and the neighborhood.

We urge the Council to acknowledge the concerns of the surrounding neighborhood by overturning the ZAB approval and sending the proposed project back into the planning process the concerns expressed above and create a more compatible project.

Respectfully submitted:

Redwood Tree Studios HOA



HOA president

I live within 300 feet of the proposed building project at 2422 Fifth Street in Berkeley, California. I support the appeal filed by the Redwood Tree Homeowner's Association.

1. Carol A. Moon

2. Ann [unclear]

3. [unclear]

4. Thru [unclear]

5. Ellen Fullman

6. Barbara Allen

7. Louisa M. Carlson

8. Yanqa Roland

9. Anthony [unclear]

10. Hollan Chen

11. Sonja Nassuba.


12. Fiona [unclear]

13. Cyndy Lee

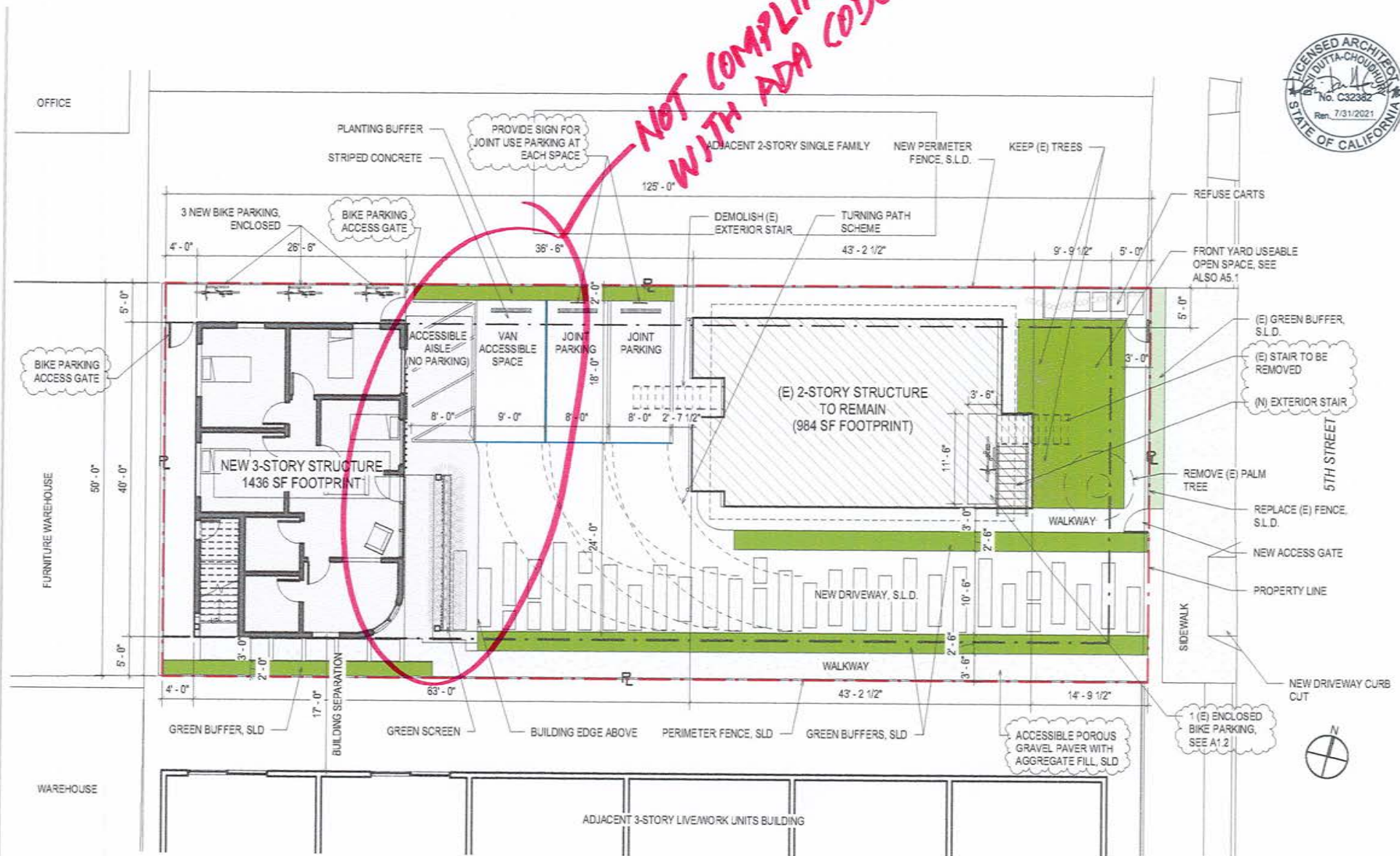
14. He-Sook Lee

15. ESTELLE BAINE

I live within 300 feet of the proposed building project at 2422 Fifth Street in Berkeley, California. I support the appeal filed by the Redwood Tree Homeowner's Association.

1. Edward Dean
2. Tanya Hirsinsky Cohen
3. ~~Jane~~
4. Glen Alvin
5. Grace Blair
6. Dunde Stett
7. Clark Stull
8. Dominic Stull
9. Dorian Stull
10. Tustin Avon
11. Kath Gray
12. Kot Higgins
13.  Eric Mason
- 14.
- 15.

NOT COMPLIANT WITH ADA CODES.



A1.1

PROPOSED SITE PLAN

SCALE: 3/32" = 1'-0"

2422 5TH STREET

Zoning Submittal

Devi Dutta Architecture Inc.

09.06.2019

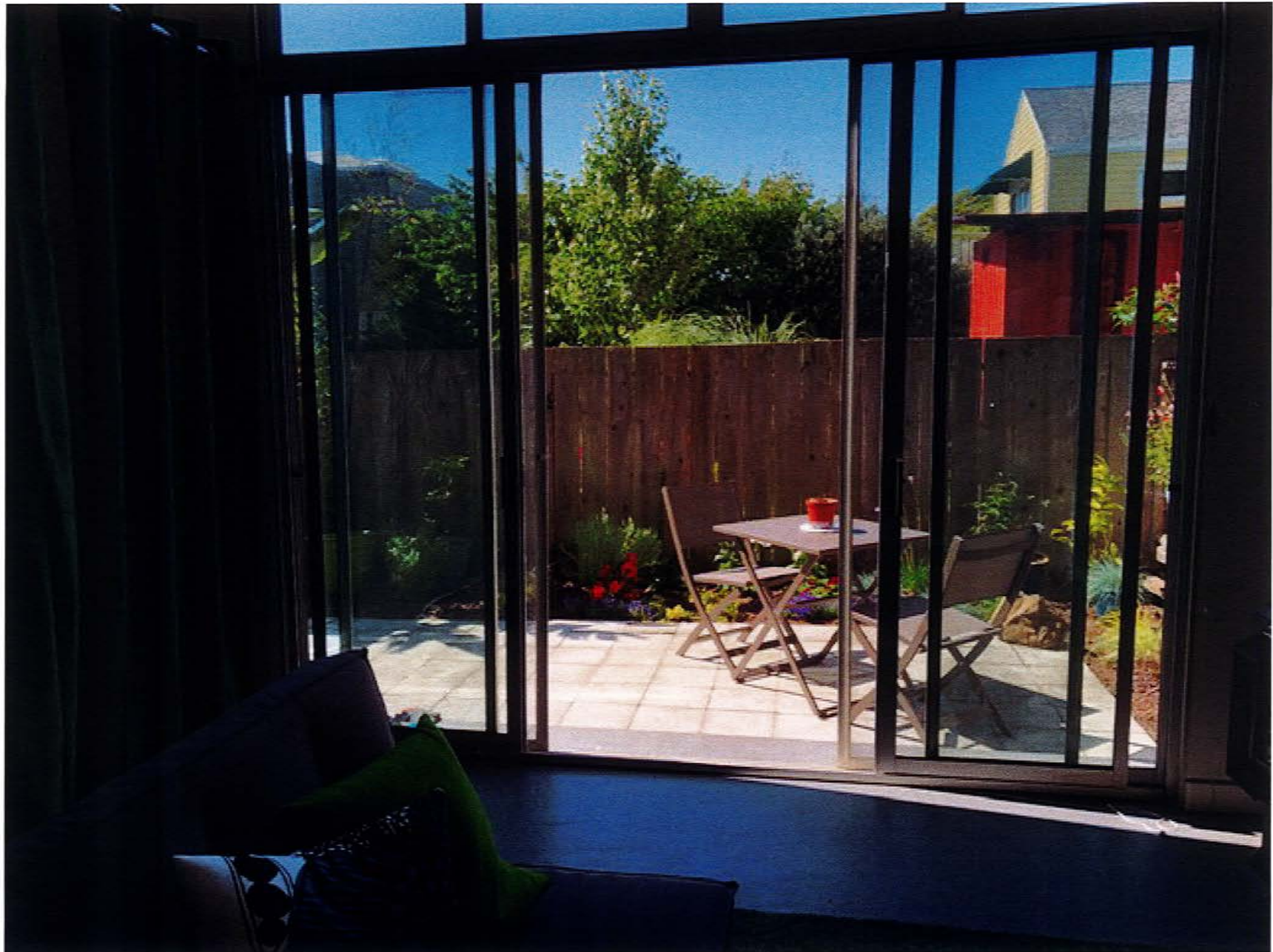


2430-5th Street, Suite E

Page 63 of 91

Ground Floor Patio
facing North

Page 2 of 7







Page 4 of 7



2430- 5th Street, Suite E

Page 67 of 91

3rd Floor Bedroom Window
Facing North



Page 6 of 7

2430 - 5th Street, Suite E

Page 68 of 91

3rd Floor Bedroom Window
Facing North



Page 7 of 7

**March 21, 2019**

Devi Dutta-Choudhury
Devi Dutta Architecture, Inc.
928 Carleton Street
Berkeley, CA 94710

Re: On-Street Parking Occupancy Surveys for the Proposed Project at 2455 5th Street in the City of Berkeley

This report summarizes the results of the parking surveys for the proposed development to be located at 2422 Fifth Street in the City of Berkeley. The proposed project involves constructing two additional apartments on the site along with 929 square feet of medical office space. The residential area would include 2,170 square feet resulting in a total of 3,099 square feet for the building. The purpose of this report is to support a request to waive the requirement for 2 additional residential parking spaces as per Section 23E.84.080.F of the Berkeley Municipal Code which states the following: *"If the Zoning Officer or Board finds that existing evening parking supply is adequate and/or that other mitigating circumstances exist on the property, the requirement for an additional off-street parking space may be waived through a Use Permit when an additional residential unit is added to a property with one or more residential units."* The project is also requesting to joint park 3 commercial and 2 residential parking spaces under an amended use permit as per Section 23E.28.060 of the Berkeley Municipal Code.

On-Street Parking Surveys - In order to evaluate the local parking situation on-street parking occupancy surveys were conducted based on the standard guidelines specified by the City of Berkeley. This survey included a detailed inventory of all on-street and public off-street parking within one block of the project site. The study involved a block-by-block survey of the number and types of spaces and the current parking occupancy conditions on weekday afternoons and weekday evenings.

The surveys were conducted on Wednesday October 17, 2018, Saturday, March 16, 2019, Sunday March 17, 2019, and Thursday March 21, 2019. The surveys indicated there are approximately 153 on-street parking spaces located within about one block of the project site. The weekday surveys found the highest occupancy levels on a Thursday during the afternoon between 1:00 and 2:00 PM. At this time there were about 129 spaces (84%) that were occupied, and about 24 spaces available. During the early evening between 5:00 and 6:00 PM, about 86 of the 153 on-street parking spaces were occupied, which is an occupancy rate of 56%, with about 67 available on-street spaces. During the late evening between 8:00 and 9:00 PM, about 97 of the 153 on-street parking spaces were occupied, which is an occupancy rate of 63%, with about 56 available on-street spaces. The Saturday and Sunday surveys were very

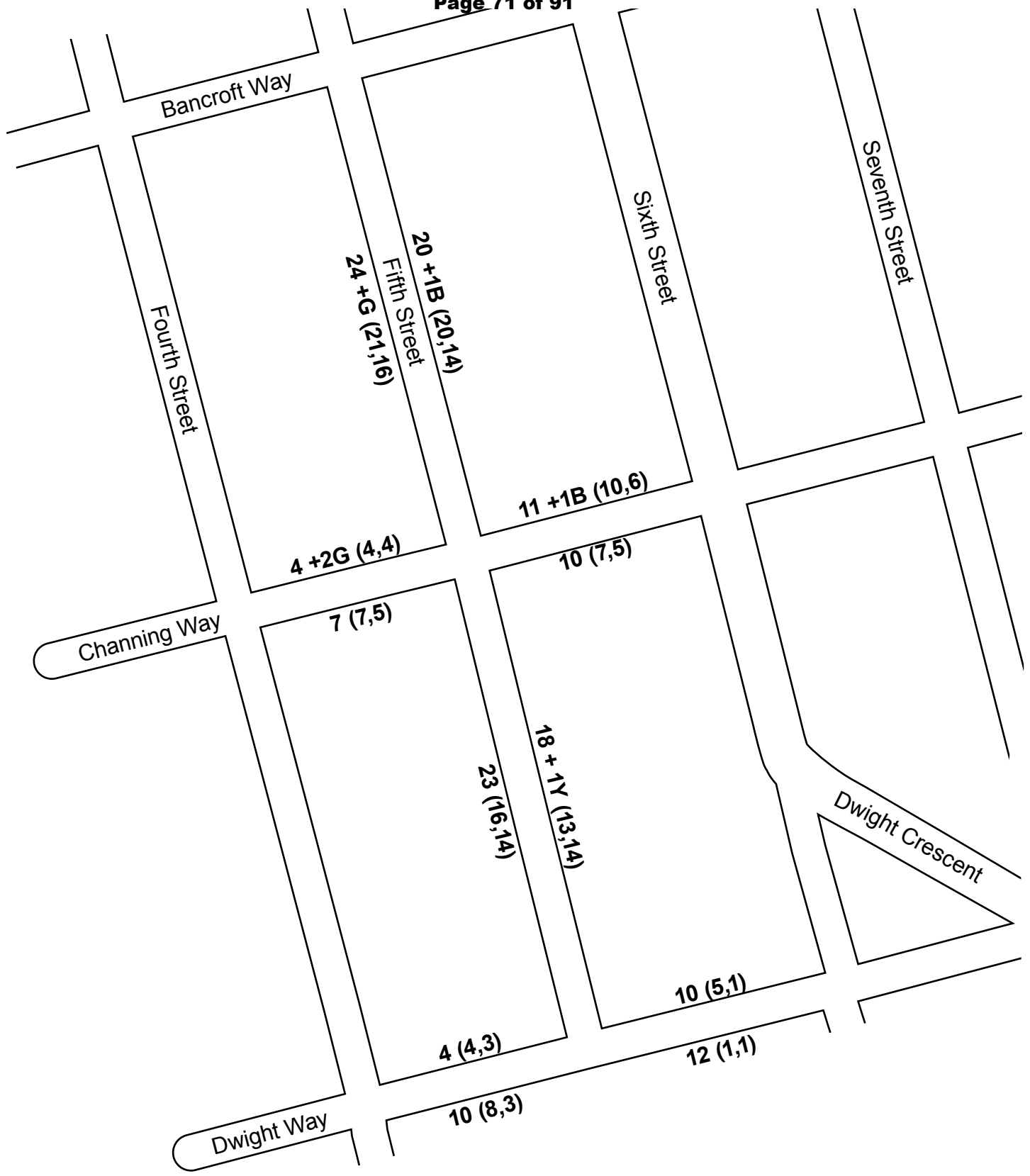
similar to each other and had lower occupancy levels than the weekday surveys. Those surveys found the highest weekend occupancy levels were during the afternoon on Saturday between 1:00 and 2:00 PM when there were about 64 spaces (42%) that were occupied, and about 89 spaces available. During the evening between 5:00 and 6:00 PM, about 54 of the 153 on-street parking spaces were occupied, which is an occupancy rate of 35%, with about 99 available on-street spaces. The detailed survey results are attached to this report.

Please don't hesitate to contact me if you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink that reads "Stephen Abrams". The signature is written in a cursive, flowing style.

Stephen C. Abrams
President, Abrams Associates
T.E. License No. 1852

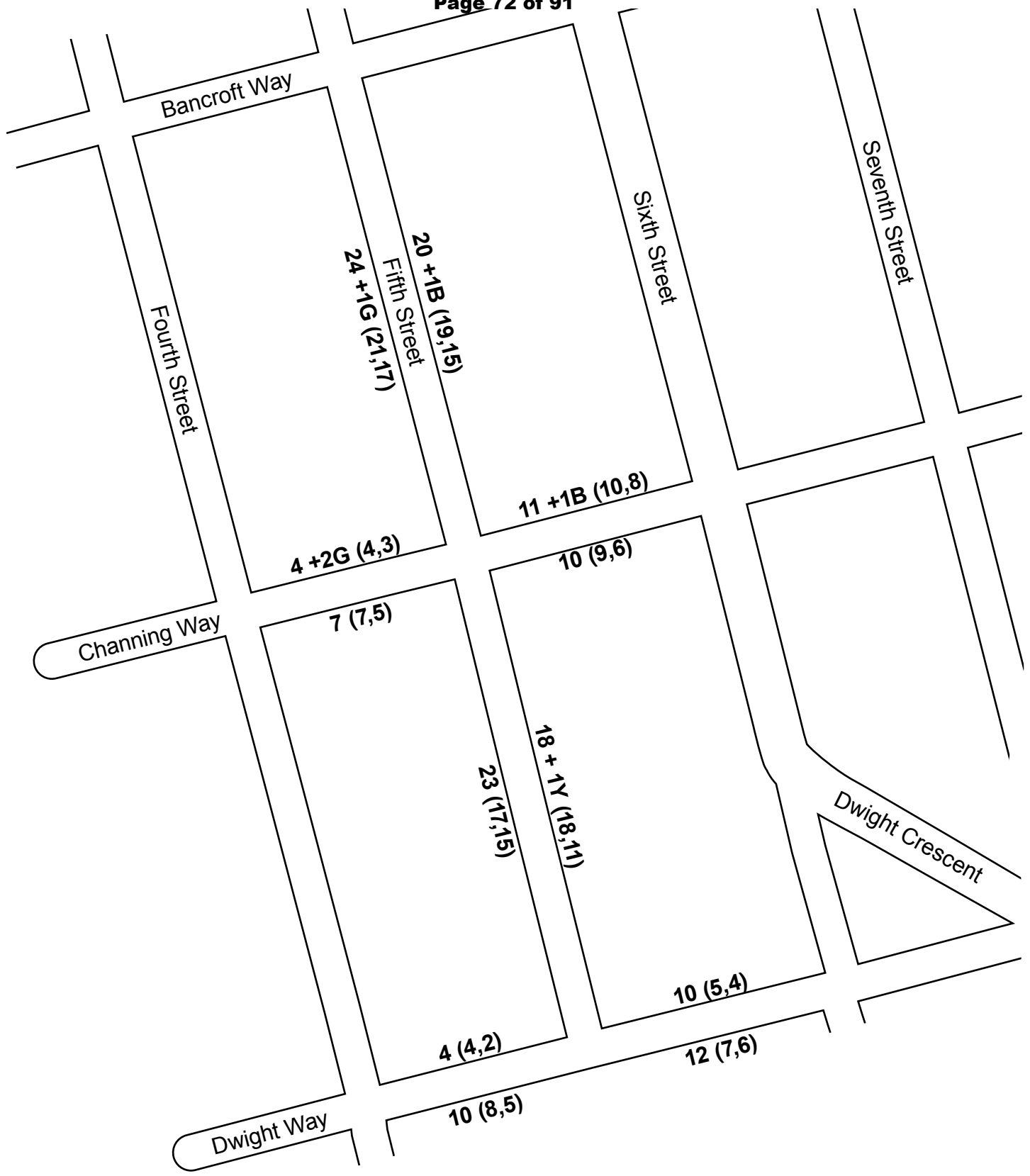


Legend

- M - Meters
- B - Handicapped
- Y - Loading Zone
- W- Passenger Loading
- G - Green Zone
- P - Permit Parking
- NP - No Parking
- XX (YY, ZZ) - Supply (Occupancy on Weds Oct 17th: 1:30PM, 5:30PM)

10-17-18 (1:30 PM)		10-17-18 (5:30 PM)	
Total Supply:	153	Total Supply:	153
Total Demand:	116	Total Demand:	86
Net Vacant Spaces:	37	Net Vacant Spaces:	67

City of Berkeley	
On-Street Parking Occupancy	
OCT 2018	Prepared by: Abrams Associates



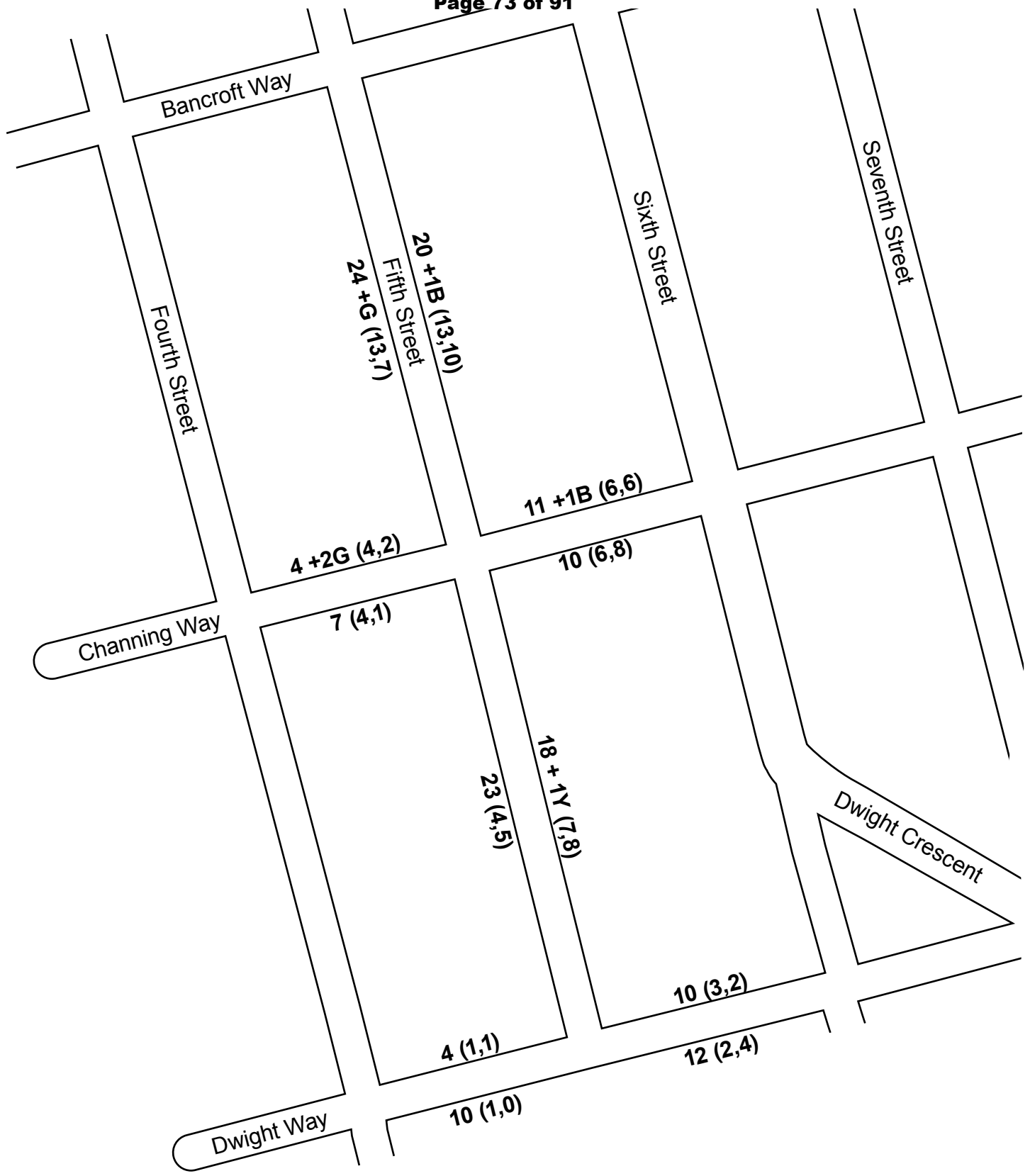
- Legend**
 M - Meters
 B - Handicapped
 Y - Loading Zone
 W- Passenger Loading
 G - Green Zone
 P - Permit Parking
 NP - No Parking
 XX (YY, ZZ) - Supply (Occupancy on Tues Mar 21th: 1:30PM, 8:00PM)

3-21-19 (1:30 PM)		3-21-19 (8:00 PM)	
Total Supply:	153	Total Supply:	153
Total Demand:	129	Total Demand:	97
Net Vacant Spaces:	24	Net Vacant Spaces:	56

City of Berkeley

On-Street Parking Occupancy

MAR 2019 Prepared by: Abrams Associates



Legend

- M - Meters
- B - Handicapped
- Y - Loading Zone
- W- Passenger Loading
- G - Green Zone
- P - Permit Parking
- NP - No Parking
- XX (YY, ZZ) - Supply (Occupancy on Sat Mar 16th: 2:30PM, 8:00PM)

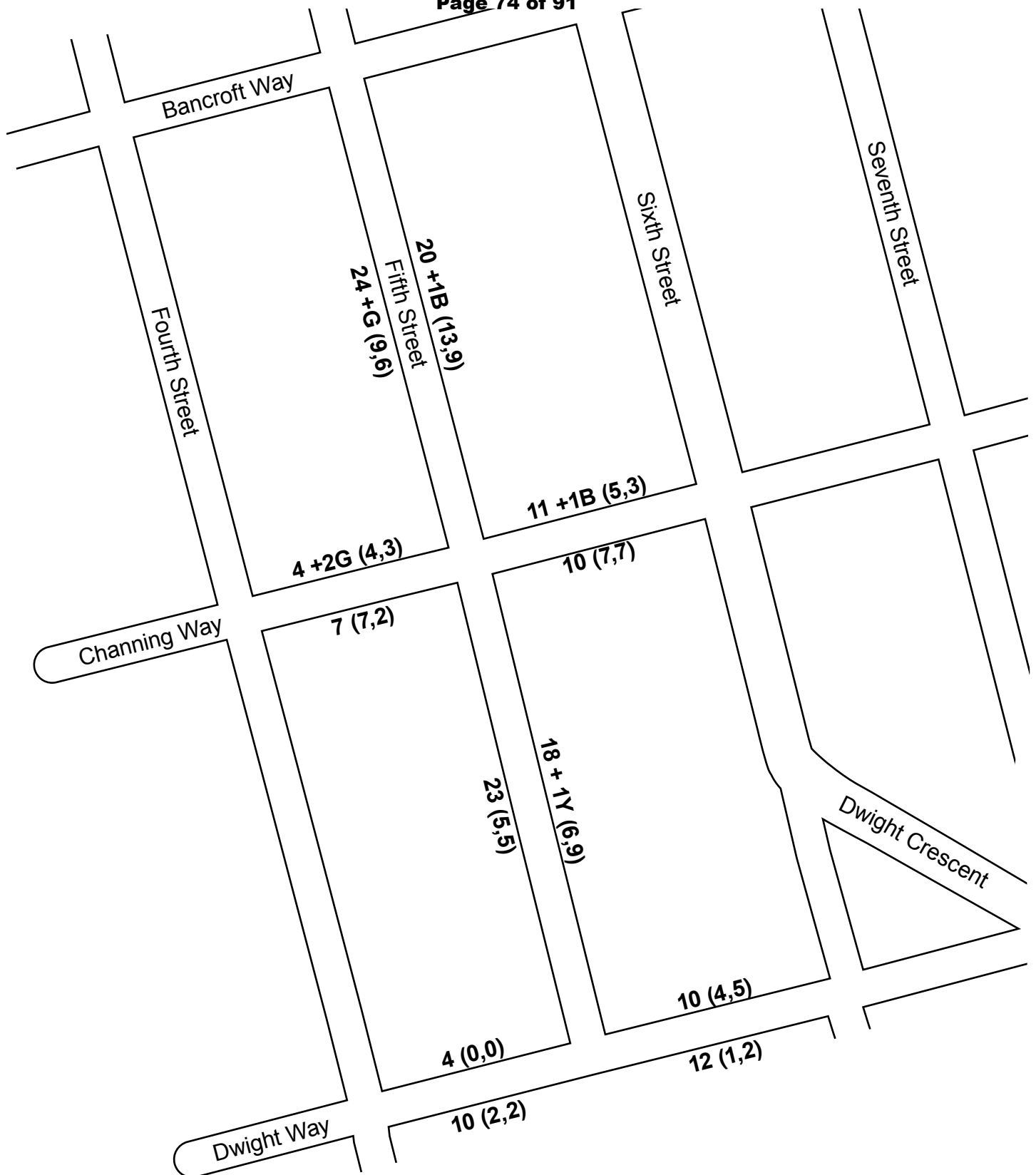
3-16-19 (2:30 PM)		3-16-19 (8:00 PM)	
Total Supply:	153	Total Supply:	153
Total Demand:	64	Total Demand:	54
Net Vacant Spaces:	89	Net Vacant Spaces:	99

City of Berkeley

On-Street Parking Occupancy

MAR 2019

Prepared by: Abrams Associates



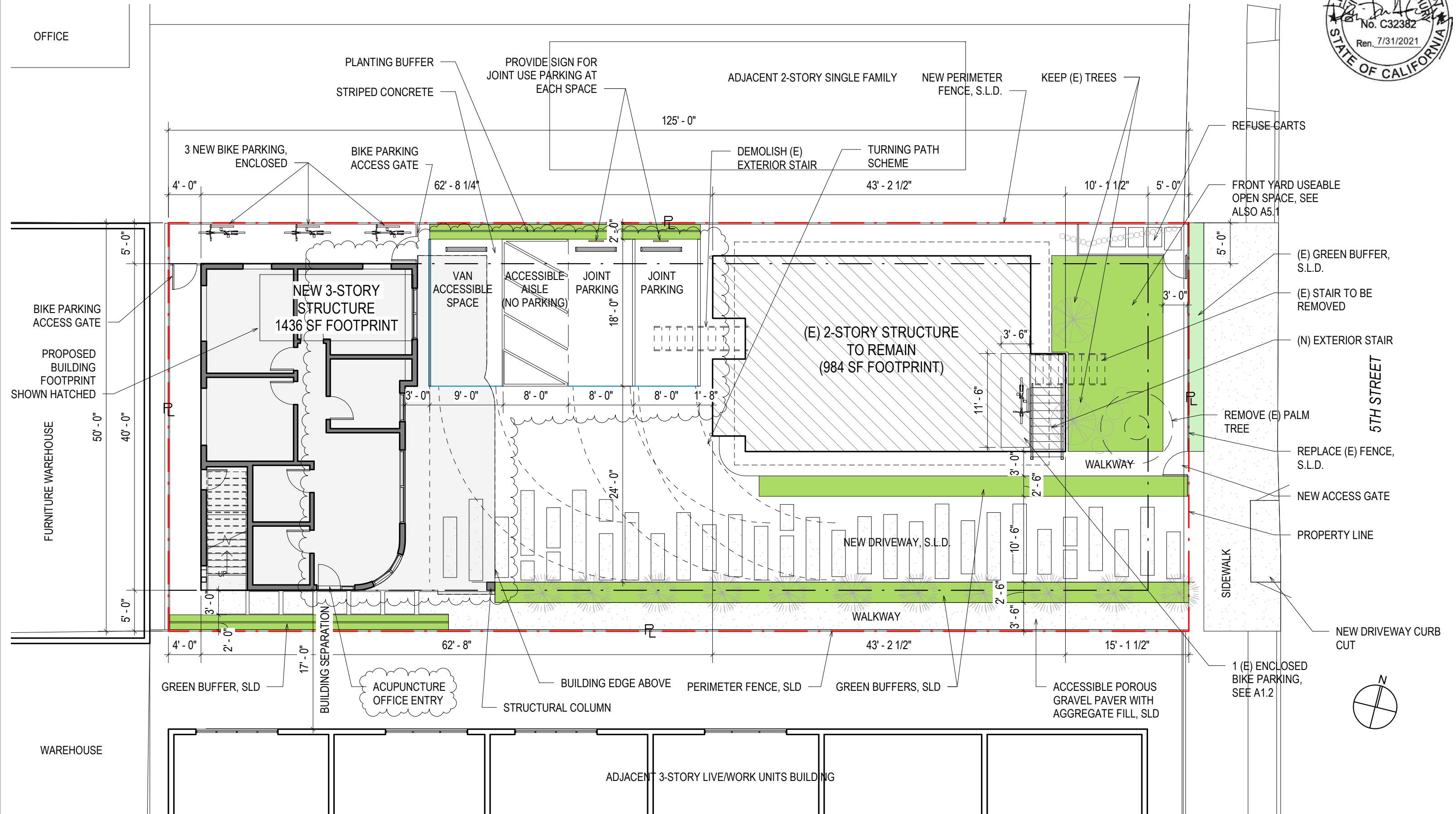
Legend

- M - Meters
- B - Handicapped
- Y - Loading Zone
- W- Passenger Loading
- G - Green Zone
- P - Permit Parking
- NP - No Parking
- XX (YY, ZZ) - Supply (Occupancy on Sun Mar 17th: 1:00PM, 6:00PM)

3-17-19 (1:00 PM)		3-17-19 (6:00 PM)	
Total Supply:	153	Total Supply:	153
Total Demand:	63	Total Demand:	53
Net Vacant Spaces:	90	Net Vacant Spaces:	100

City of Berkeley

On-Street Parking Occupancy



A1.1

PROPOSED SITE PLAN

SCALE: 3/32" = 1'-0" 0 4 8 16 32

2422 5TH STREET TOWNHOMES AND WELLNESS OFFICES

Devi Dutta Architecture Inc.

Zoning Submittal-Revised sheets

01.10.2020



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
OCTOBER 24, 2019

2422 Fifth Street

Use Permit #ZP2018-0108 to construct a three-story, 4,806-square-foot mixed-use building containing 967 square feet of medical office space and two dwelling units on the rear of a lot with an existing duplex, including a request to waive two residential parking spaces.

I. Background

A. Land Use Designations:

- General Plan: MU – Mixed Use
- Zoning: MU-R – Mixed Use Residential District

B. Zoning Permits Required:

- Administrative Use Permit under BMC 23E.28.060 to allow a joint parking agreement to satisfy the off-street parking requirement;
- Administrative Use Permit under BMC 23E.84.030.A to establish a new medical office space that is 5,000 square feet or less;
- Use Permit under BMC 23E.84.030.A to establish a mixed-use building;
- Administrative Use Permit under BMC 23E.84.030.A to create two new dwelling units; and,
- Use Permit under BMC 23E.84.080.F to waive two residential parking spaces.

C. CEQA Determination: Categorically exempt pursuant to Sections 15303 (New Construction or Conversion of Small Structures) and 15332 (In-Fill Development Projects) of the CEQA Guidelines.

D. Parties Involved:

- Applicant: Devi Dutta Architecture, 928 Carleton Street, Berkeley, CA 94710
- Owner: Anna and Carl Gold, 2422 Fifth Street, Berkeley, CA 94710

Figure 3: Proposed Site Plan

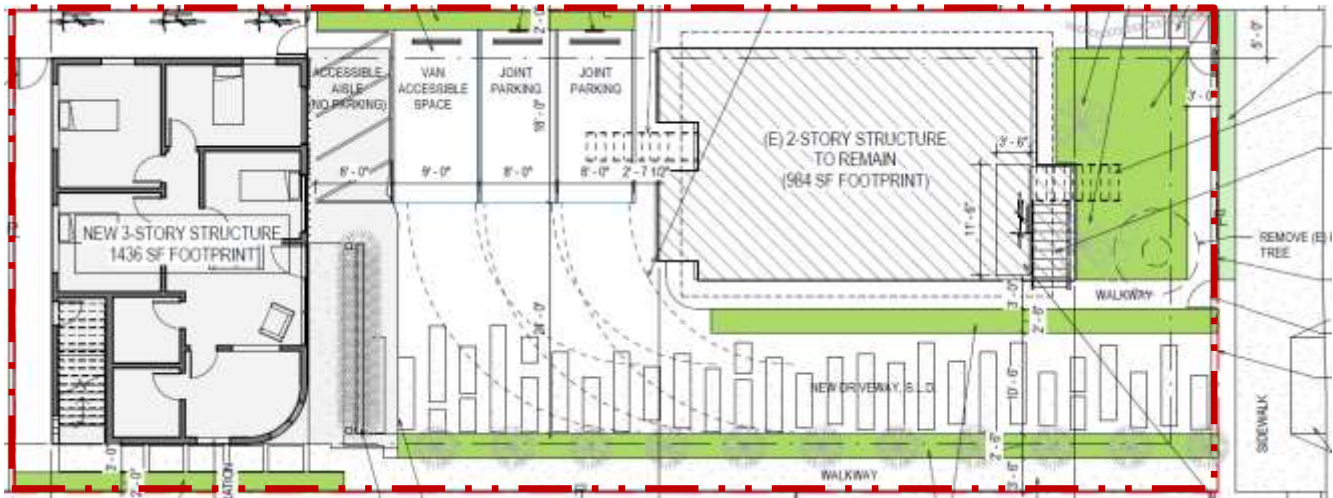


Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Duplex	MU-R	Mixed Use (MU)
Surrounding Properties	North	Single-Family Dwelling		
	East	Single-Family Dwelling/Warehouse		
	South	Live/Work		
	West	Warehouse		

Table 2: Special Characteristics

Characteristic	Applies to Project?	Explanation
Coast Live Oaks	No	There are no oak trees on the project site.
Creeks	No	The project site is not within a creek buffer.
Green Building Score	Yes	The applicant submitted a GreenPoint Rated checklist for the project. The minimum score required is 50 points, and the checklist indicates a score of 66 out of a possible total of 374 points for the dwelling.
Historic Resources	No	The project does not propose the demolition or substantial alteration of a main building.
Housing Accountability Act (Govt. Code 65589.5(j))	No	The project is a "housing development project" consisting of residential units only, but requests modifications to development standards. Therefore, the HAA findings <i>do not</i> apply to this project. See Section V.B for discussion.
Rent Controlled Units	Yes	According to the Rent Stabilization Board (RSB), the two existing dwelling units (front duplex) are subject to BMC Chapter 13.76 (Rent Stabilization and Eviction for Good Cause Program). These two dwelling units are proposed to remain.

Seismic Hazards (SHMA)	Yes	The project site is located in an area susceptible to liquefaction, as defined by the State Seismic Hazards Mapping Act (SHMA). A geotechnical report dated July 23, 2018, was submitted for the project, and was determined to be in compliance with the SHMA. The report was peer reviewed by the City Geotechnical Consultant, who made conditions of approval recommendations for geotechnical plan review and construction inspections to be performed by the geotechnical consultant prior to final occupancy. These recommendations have been included as conditions of approval #13 and #41.
Soil/Groundwater Contamination	No	The project site is located within the City's Environmental Management Area. A Phase I Environmental Assessment dated June 14, 2018, was submitted. The report was reviewed by the City Toxics Management Division, and no further study was required. Standard Conditions for toxics are applicable to the project.

Table 3: Project Chronology

Date	Action
May 24, 2018	Application submitted
June 22, 2018	Application deemed incomplete
July 24, 2018	Revised application submitted
August 10, 2018	Application deemed incomplete
November 7, 2018	Revised application submitted
December 7, 2018	Application deemed incomplete
May 8, 2019	Revised application submitted
June 4, 2019	Application deemed incomplete
July 19, 2019	Revised application submitted
July 29, 2019	Application deemed incomplete
August 22, 2019	Revised application submitted
September 6, 2019	Application deemed complete
October 8, 2019	Public hearing notices mailed/posted
October 24, 2019	ZAB hearing

Table 4: Development Standards

MU-R Standards BMC Sections 23E.84.070-080		Existing Conditions (Front Duplex)	Proposed Rear Building	Proposed Total for Parcel	Permitted/ Required Total for Parcel
Lot Area (sq. ft.)		6,250	n/a	6,250	n/a
Gross Floor Area (sq. ft.)	Residential	1,670	2,170	3,840	9,375
	Commercial (Medical Office)	0	967	967	n/a
FAR		0.27	n/a	0.77	1.5 max. ¹
Dwelling Units		2	2	4	5 max. (1,250 sf min./du)
Building Height	Average	16'-3"	32'-0"	32'-0"	n/a
	Maximum	18'-1"	35'-0"	35'-0"	35' max.
	Stories	2	3	3	3 max.
Building Setbacks	Front	19'-0"	n/a	19'-0"	5' min.
	Building Separation	n/a	36'-6"	36'-6"	12' min.
	Rear	67'-0"	4'-0"	4'-0"	0' min.
	Left Side	22'-0"	5'-0"	5'-0"	0' min.
	Right Side	4'-0"	5'-0"	4'-0"	5' min. (10% of 50' width) ²
Lot Coverage (%)		16	23	39	n/a
Usable Open Space (sq. ft.)		> 3,000	Unit 1: 184 Unit 2: 153 Total: 337	Fr. Duplex: 308 Unit 1: 184 Unit 2: 153 Total: 645	600 min. (150 per du)
Parking	Residential	2	0	2	4 min. (1 per du)
	Commercial	0	3	3	3 min. (1 per 300 sf)
	Total	2	3	5 (3 spaces w/ joint parking)	7 min.
<p>¹ Buildings in which at least 50% of the floor area is used for residential space and/or for live/work space may have a FAR not to exceed 1.5.</p> <p>² If the side or rear of a lot abuts or confronts either a property with one or more dwelling units or a property situated in an R District, the side or rear yard shall be either ten feet, or 10%, whichever is less, of the respective width or depth of the lot.</p> <p>■ = UP to waive 2 residential parking and AUP to establish joint parking on 3 parking spaces for 3 commercial and 2 residential parking.</p>					

II. Project Setting

A. Neighborhood/Area Description: The subject site is located on the west side of Fifth Street, in a mixed-use neighborhood that consists of a mixture of warehouses, offices, live/work, and single-family and multiple-family dwellings. Parcels in the immediate neighborhood are primarily developed with one- and two-story buildings, with three-story, live/work developments immediately adjacent and south of the site and northeast of the site on Fifth Street. (See Figure 2: Surrounding Uses.)

The site is 4-1/2 blocks south of the University Avenue commercial corridor and 6 blocks west of the San Pablo Avenue commercial corridor (both areas in the C-W District). Both University Avenue and San Pablo Avenue are well served by transit bus lines. The site is approximately 2.1 miles from both the Downtown and Ashby BART stations.

B. Site Conditions: The subject lot is rectangular, with a 50' front along Fifth Street and 125' depth, and is generally flat. The lot is currently occupied by a two-story, 1,670-square-foot, duplex on the front half of the parcel, and a shipping container used for storage.¹ A use permit (#A1627) was approved in 1989 to convert the single-family dwelling that was constructed 1920, into a duplex. Both units in the existing duplex have been determined by the Rent Stabilization Board (RSB) to be subject to rent control. The duplex units would remain. The entry stair to the upper unit would be rebuilt to open to the south. (See Figure 3: Existing Site Plan.)

III. Project Description

The applicant proposes to remove the shipping container and construct a 3,137-square-foot, three-story, 35'-0"-tall (maximum height), mixed-use building on the rear of the parcel. The building would contain 967 square feet of medical office space on the ground floor and two, side-by-side, two-level dwelling units (Unit 1 – 1,070 square feet, Unit 2 – 1,100 square feet) on the second and third floors. The proposal requests a reduction in the residential parking requirement from four to two spaces, and would provide three off-street parking spaces with a joint use agreement between the medical office (three spaces required) and residential uses (two spaces required after reduction).² The duplex would remain as-is, except that the entry stair to the upper unit would be rebuilt to open to the south in order to meet usable open space requirements. (See Figure 3: Proposed Site Plan; see Attachment 1 for the full set Project Plans.)

¹ The shipping container is an unpermitted, illegal structure which must be removed or legalized, regardless of whether this use permit is approved.

² The original application proposal involved the conversion of the upper unit in the existing duplex into medical offices, and the construction of a new duplex on the lot rear. The applicants were advised that a Variance would have been required to eliminate a rent-controlled dwelling unit through conversion into a commercial unit. In response, the applicant revised the proposal to the current configuration to avoid requesting a Variance. A new poster with the new project description was installed at the site, and a neighborhood meeting was held on June 18, 2019 to discuss the revised project.

IV. Community Discussion

A. Neighbor/Community Concerns: Prior to submitting the application to the City on May 24, 2018, a pre-application poster was installed by the applicant at the project site. Later, after the applicant revised the project to avoid requesting a Variance, a new poster was installed with the revised project description and photo documentation was submitted on July 19, 2019.

On June 18, 2019, a neighborhood meeting was held to review the project and discuss concerns, and was attended by seven members of the public. One resident of 2430 Fifth Street, the live/work building adjacent and south of the site, expressed concerns over impacts to views from her unit, which would have windows facing the proposed building. Another resident at 2430 Fifth Street suggested re-orienting the project to face the north, away from their building. In response, the applicants rearranged the windows on the south façade in the proposal to avoid direct sightlines between the buildings.

On October 8, 2019, the City mailed public hearing notices to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations, and the City posted notices within the neighborhood in three locations. No further communications regarding the project were received as of the writing of this staff report.

B. Committee Review: This project is not subject to advisory committee review.

C. Staff-Level Design Review: As with all exterior improvements proposed in a non-residential district, this project was subject to Design Review. On October 10, 2019, Staff Level Design Review was completed in accordance with BMC Section 23E.12.040.C. The Design Review Committee Chair concurred with Staff's recommendation for Staff Level Design Review, instead of the Design Review Committee, as the project is well-scaled for its adjacent neighborhood. The appeal and comment period for the favorable Staff-level decision will end at 4:00 p.m. on October 30, 2019.

V. Issues and Analysis

A. Housing Accountability Act: The Housing Accountability Act §65589.5(j) requires that when a proposed housing development complies with 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 density³; and

³ As used in the Act, a "specific, adverse impact" means a "significant, quantifiable, direct and unavoidable impact, based on objective, identified written public health or safety standards, polices, or conditions as they existed on the date the application was complete.

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 project has proposed elements that do not comply with applicable, objective general plan and zoning standards in the zoning ordinance, including:

- A waiver of the residential parking requirement for the two new units; and
- An allowance for the joint use of three parking spaces between the commercial (three required) and residential uses (two required after the reduction).

Therefore, §65589.5(j) **does not apply** to this project, as proposed.

B. Findings for Use Permits and Administrative Use Permits. Pursuant to BMC Section 23E.84.090.A, in order to approve any Use Permit in the district, the Board must make the non-detriment finding. The project 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 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. Staff believes that this finding can be made.

A discussion of the project's impact on sunlight/shadows, air, privacy, and views as they relate to potential detriment follows:

1. **Sunlight/shadow:** According to the shadow studies submitted by the applicant (see Attachment 1, Sheets A4.1 through A4.3 for Shadow Studies), new shadows would be cast by the proposed dwelling onto:
 - 2430 Fifth Street (live/work building, adjacent, south) – on the bathroom and living room windows of multiple units during the few hours before sunset in the summer;
 - 2422 Fifth Street (duplex, front of subject property) – on living room and bedroom windows during the few hours before sunset in the winter;
 - 2418 Fifth Street (single-family dwelling, adjacent, one lot north) – on living room windows during the few hours before sunset in the winter; and
 - 2416 Fifth Street (single-family dwelling on rear of lot, two lots north) – on living area windows during the few hours after sunrise and around noon in the winter.

Although shadow conditions would increase as listed above on neighboring dwellings, shadow impacts would be relatively short in duration, occurring only in the morning and midday or evening hours, and not both. Therefore, shading from proposed project is found to be typical of urban settings and not detrimental.

2. **Air:** The proposed rear dwelling would be 36'-6" from the existing (front) dwelling, 17' from the live/work building to the south (2430 Fifth Street); 4' from the warehouse to the west (2423 Fourth Street); approximately 35' from the single-family dwelling directly north, two lots away (2416 Fifth Street); and approximately

20' from the single-family dwelling to the northwest on the adjacent lot (2418 Fifth Street). Thus, the siting of the proposed rear, mixed-use building satisfies all minimum setback requirements, and would provide adequate air space on the north, east and south sides of the building. A 4'-wide rear yard would be provided between the project and the warehouse to the west, and is a buffer that would satisfy City Fire Department emergency egress requirements (44") in a zoning district (MU-R) that does not require any rear yard. (The warehouse is built on the property line, and is in the MU-LI District, where no yards are required.)

3. **Views:** The relatively flat topography of the project site, along with existing one-, two-, and three-story buildings in the vicinity, does not offer significant views of features such as Berkeley Hills or the Bay. Therefore, staff believes that this project would not be substantially detrimental with respect to views.
4. **Privacy:** The proposed dwelling would not cause significant privacy impacts to the warehouse to the west, as it is a non-residential building and also has no windows on the façade closest to the project site. The dwelling on the property to the north is sited toward the front half of the lot, away from the proposed project on the rear of the project site, so that there would be no direct sightlines between them. The live/work building to the south is 17' away, which is a reasonable buffer between dwellings, given that in residential zoning districts the minimum buffer at the side property line is eight feet. Nevertheless, in response to privacy concerns raised by residents in the live/work building at the June 18, 2019 neighborhood meeting, the applicants obtained the window layout of the live/work building and redesigned the project's south elevation so that all the windows would be offset from the neighboring building windows, and direct sightlines would be avoided. With these revisions to the window layout, the privacy impacts from the project would be reasonable for this mixed-use district.

C. Findings for Use Permit in MU-R District: Pursuant to BMC Section 23E.84.090.B, in order to approve any Use Permit in the district, the Board must make the following required findings. The proposed use or structure must:

1. *Be compatible with the purposes of the District;*

The project is consistent with the following purposes of the Mixed Use Residential District (MU-R):

- *Implement the West Berkeley Plan's designation of a Mixed Residential District.*
- *Support the continued development of a mixed use District which combines residential, live/work, light industrial, arts and crafts and other compatible uses.*
- *Strengthen residential concentrations which exist within the District.*

Staff Analysis: The project is a mixed-use building that would provide two residential units and 967 square feet of medical office space on the ground floor in a district planned for mixed-use development. The project would add two new dwellings to an area that is already developed with single-family dwellings, duplexes, live/work buildings, and other multi-family dwellings. (See Figure 2: Surrounding Uses.)

- *Provide a transitional district between the residential districts to the east of the MU-R and the industrial districts to the west of the MU-R.*

Staff Analysis: As a mixed-use building on the rear of a lot that has an existing duplex on the front, the project adds a compatible commercial use to the lot to help the MU-R neighborhood serve as a transition from the R-1A district to the east to the MU-LI district to the west.

- *Support the development of businesses of all types which contribute to the maintenance and improvement of the environment.*
- *To the extent feasible, protect industrial uses, particularly light industrial uses, from unreasonable intrusions on their ability to operate lawfully.*

Staff Analysis: The proposed mixed-use project with medical offices on the ground floor would bring a compatible commercial use into the area to diversify the existing commercial and industrial uses within the nearby MU-R District, which include warehouses, offices, and live/work spaces. The mixed-use project would be on a lot that is clustered with other mixed-use and residential-only developments within the district, which have coexisted with adjacent industrial uses for years.

2. *Be consistent with the normal use and operation of surrounding uses and buildings, including residential and industrial buildings;*
3. *Not be likely, under reasonably foreseeable circumstances, to either induce or contribute to a cumulative change of use in buildings away from residential; live/work; light industrial, or arts and crafts uses; and*
4. *Be designed in such a manner to be supportive of the character and purposes of the District.*

Staff Analysis: The proposed mixed-use project with medical offices on the ground floor and dwellings on the upper floors would add to the residential development already in the area, and would reinforce the existing mixed pattern of commercial/industrial/residential development in the neighborhood.

- D. Findings for Use Permit to Waive Residential Parking.** Pursuant to BMC Section 23E.84.080.F, if the Board finds that existing evening parking supply is adequate and/or that other mitigating circumstances exist on the property, the requirement for an additional off-street parking space may be waived through a Use Permit when an additional residential unit is added to a property with one or more residential units.

The project proposes to waive two parking spaces under this provision (one per dwelling unit required, for two proposed dwelling units). The remaining parking requirement if this waiver is granted would be three commercial parking (medical offices) and two residential parking (front duplex). To support the waiver of two residential parking spaces, the applicant submitted a parking survey prepared by the project transportation consultant, dated October 25, 2018. The parking survey was reviewed by the Transportation Division, which confirmed that the evening parking supply is adequate and that all other parking data supports the waiver of two residential parking spaces. Thus, staff recommends that the parking waiver be approved concurrently with the joint parking request discussed in V.E below.

E. Findings for Administrative Use Permit to Allow Joint Parking: Pursuant to BMC Section 23E.28.060.A, the Board may approve permit to allow a Joint Use Parking Agreement to satisfy off-street parking space requirements, if all of the following findings are made:

1. The off-street parking spaces designated for joint use are located within 800 feet of the use to be served;
2. The times demanded for these parking spaces will not conflict substantially between the use offering the spaces and the use to be served; and
3. The off-street parking spaces designated for joint use are not otherwise committed to satisfying the parking requirements for some other use at similar times.

Staff believes that these three findings can be made. The three joint parking spaces are located on the lot that they serve. Further, as stated by the applicant, the residential and medical office uses would utilize the parking at different peak times. The medical office would be limited to a three to four weekday per week schedule, from 9:00 a.m. to 4:00 p.m., and the residences could utilize the spaces for the rest of the time – one to two weekdays during the day, after 4:00 p.m. on all weekdays, and anytime on the weekend. This availability is general compatible with residential parking demand, which occurs mostly on weekday nights and weekends. The ADA parking space would always be reserved for accessible parking demands. Finally, the three joint parking spaces are not committed to satisfy any other parking requirement. Thus, staff recommends the approval of the permit for joint parking in conjunction with the approval of the permit to waive two residential parking spaces. Staff recommends that these two permits be approved or denied together, because the denial of either would cause non-compliance with the district parking standard.

F. General Plan Consistency: Based on the foregoing project description and analysis, staff concludes that the project will comply with the following 2002 General Plan goals and policies:

1. Policy LU-3–Infill Development: Encourage infill development that is architecturally and environmentally sensitive, embodies principles of sustainable planning and construction, and is compatible with neighboring land uses and architectural design and scale.
2. Policy LU-7–Neighborhood Quality of Life, Action A: Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area.
3. Policy LU-23–Transit-Oriented Development: Encourage and maintain zoning that allows greater commercial and residential density and reduced residential parking requirements in areas with above-average transit service such as Downtown Berkeley.
4. Policy UD-16–Context: The design and scale of new or remodeled buildings should respect the built environment in the area, particularly where the character of the built environment is largely defined by an aggregation of historically and architecturally significant buildings.

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.

Staff Analysis: The project would add two new dwelling units to a residential property located in a mixed-use district, in close proximity to transit. The proposed building height is consistent with the character of the neighborhood and the project will meet all of the zoning standards for the MU-R District, except the parking standard, for which staff believes the findings for the exceptions are adequately made (see sections V.D and V.E). The project is compatible with the existing uses in the neighborhood, which consists of a blend of mixed-use, residential-only, commercial, and industrial developments. Design Review staff has reviewed the project, and has found it to be architecturally compatible with the surrounding developments.

6. Policy UD-32–Shadows: New buildings should be designed to minimize impacts on solar access and minimize detrimental shadows.

Staff Analysis: As discussed in section V.B.1 above, shadow impacts resulting from the proposal would be short in duration and not substantially detrimental. Thus, impact to solar access and detrimental shadows are minimized.

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

Staff Analysis: The project would add two new dwelling units to the City’s housing stock, furthering this Housing Element policy to expand the City’s existing housing supply.

8. Policy EM-5–“Green” Buildings: Promote and encourage compliance with “green” building standards. (Also see Policies EM-8, EM-26, EM-35, EM-36, and UD-6.)
9. Policy UD-33–Sustainable Design: Promote environmentally sensitive and sustainable design in new buildings.

Staff Analysis: The GreenPoint Rated checklist for the project shows a rating of 66, demonstrating that the project would exceed the minimum rating of 50.

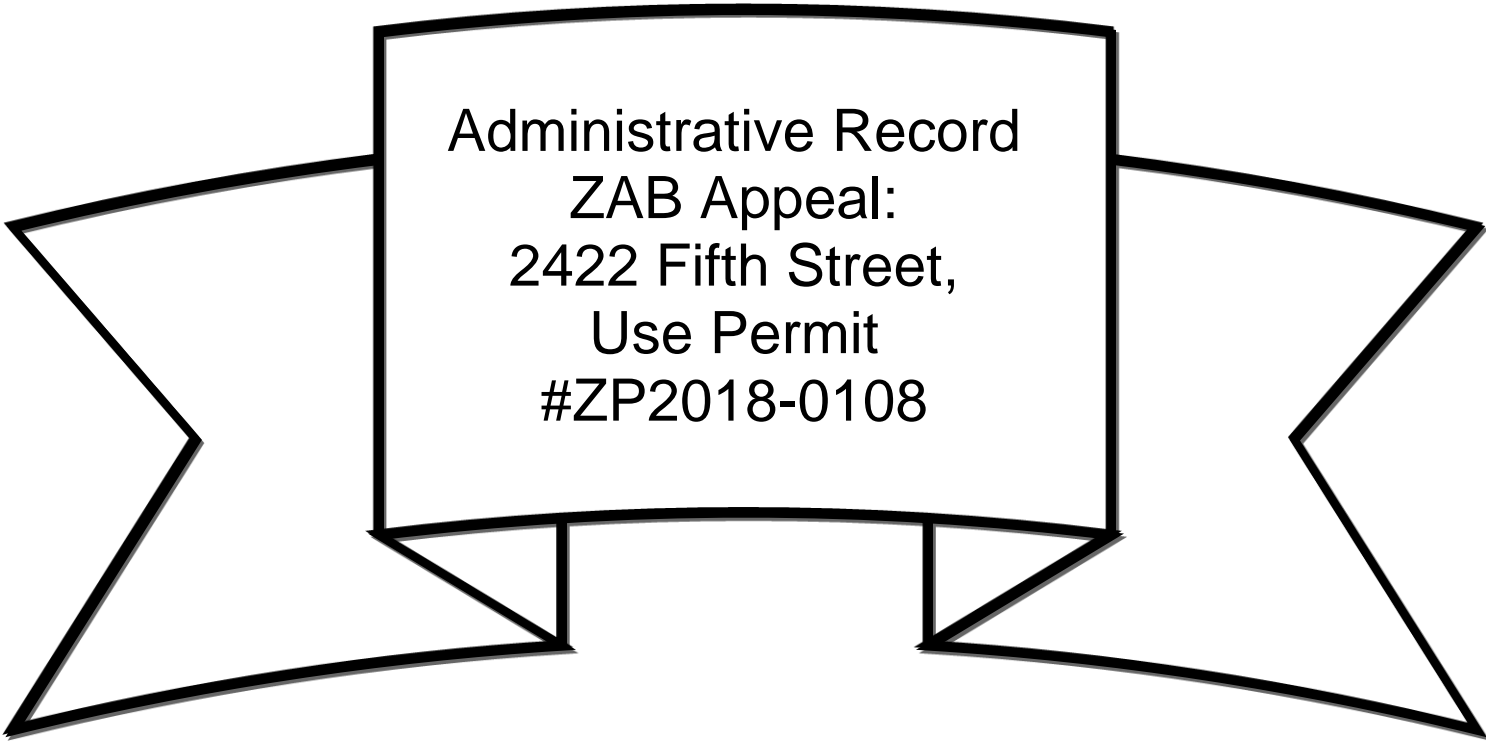
VI. Recommendation

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: **APPROVE** Use Permit #ZP2018-0108 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, received September 6, 2019
3. Notice of Public Hearing

Staff Planner: Sharon Gong, sgong@cityofberkeley.info, (510) 981-7429



Administrative Record
ZAB Appeal:
2422 Fifth Street,
Use Permit
#ZP2018-0108

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

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

or from:

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

**NOTICE OF PUBLIC HEARING-BERKELEY CITY COUNCIL
SCHOOL DISTRICT BOARD ROOM, 1231 ADDISON STREET**

ZAB APPEAL: USE PERMIT #ZP2018-0108, 2422 FIFTH STREET

Notice is hereby given by the City Council of the City of Berkeley that on **TUESDAY, FEBRUARY 25, 2020 at 6:00 P.M.** a public hearing will be conducted to consider an appeal of a decision by the Zoning Adjustments Board to approve Use Permit #ZP2018-0108, to construct a three-story, 4,806-square-foot mixed-use building containing 967 square feet of medical office space and two dwelling units on the rear of a lot with an existing duplex, including a request to waive two residential parking spaces and establish two joint use commercial/residential spaces.

A copy of the agenda material for this hearing will be available on the City's website at www.CityofBerkeley.info as of **February 13, 2020**.

For further information, please contact Sharon Gong, Project Planner at (510) 981-7429. 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: February 11, 2020

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)) a project, 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 of the decision of the City Council. 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 at the City Clerk Department and posted on the City of Berkeley webpage at least 10 days prior to the public hearing.

