



Office of the City Manager

PUBLIC HEARING

October 13, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jordan Klein, Interim Director, Planning & Development Department

Subject: ZAB Appeal: 1346 Ordway Street, Administrative Use Permit #ZP2018-0174

RECOMMENDATION

Conduct a public hearing and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board decision to approve Administrative Use Permit #ZP2018-0174 to: legalize an existing 128 sq. ft. accessory building in the southwest corner of the subject lot; legalize an existing 5 ft. x 21 ft., 9-ft. tall trellis located within the south setback; legalize an existing 11-ft. tall hedge in the north and south setbacks; establish a front yard off-street parking space to comply with the Federal Fair Housing Act, the Americans with Disabilities Act and the California Fair Employment and Housing Act, under BMC's Reasonable Accommodation Section; and dismiss the appeal.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

On September 7, 2018, Keki Burjorjee and Jennie Durant submitted an application for an Administrative Use Permit (#ZP2018-0174) to: 1) add a 3-ft. tall lattice over an existing 6-ft. tall boundary fence; and 2) legalize a 14 ft. tall hedge within north and south side setbacks. After the initial review, staff determined that additional AUPs were required to: 3) legalize the existing 128 sq. ft., 12 ft. 2 in. tall habitable accessory building within the required side and rear setbacks; 4) legalize the existing 9 ft. tall, 5 ft. X 21 ft. trellis located at 3 in. from the south property line; and 5) establish a front yard off-street parking space.

On December 3, 2019, after ten rounds of comments from staff, the application was deemed complete.

On February 25, 2020, a Notice of Administrative Decision approving the Administrative Use Permit (AUP) application was issued by the Zoning Officer, which established a 20-day appeal period.

On March 17, 2020, Larry Hickman, the neighbor at 1333 Hopkins Street, filed an appeal of the Zoning Officer's decision to legalize the accessory building, trellis and

hedge and to approve a front yard parking space to the Zoning Adjustments Board (ZAB).

On May 27, 2020, staff posted the public hearing notice near the site and mailed notices to property owners and occupants within 300 feet of the project site and to all registered neighborhood groups that cover this area.

On June 11, 2020, the ZAB conducted a public hearing for the appeal of the Zoning Officer's decision. After considering the staff report and administrative record, and hearing comments from the applicant and appellant, the ZAB added Condition of Approval # 12 limiting the maximum height of the hedge located to the north of the appellant's lot to a maximum of 11 ft. The ZAB then upheld the Zoning Officer's decision to approve the AUP with the condition (Motion: Clarke/Second: Kahn) and unanimous vote of 7-0-0-2 (Yes: Clarke, Kahn, Kim, O'Keefe, Sheahan, Selawskly, Tregub; No: None; Abstain: None; Absent: Olson, Pinkston).

On June 16, 2020, staff issued the notice of the ZAB decision, which established a 14-day appeal period.

On June 30, 2020, two appeals were filed, one by the neighbor at 1333 Hopkins Street (Larry Hickman) and one by the applicants (Keki Burjorjee and Jennie Durant).

On September 29, 2020, staff posted the public hearing notices near the site and mailed notices to property owners and occupants within 300 feet of the project site and to all registered neighborhood groups that cover this area. This public hearing is required to resolve the appeal.

BACKGROUND

On May 10, 2018, a Notice of Violation was issued by the City's Code Enforcement staff for the property at 1346 Ordway Street. This Notice of Violation was the result of a complaint that was made by the neighbor at 1333 Hopkins Street about an unpermitted hedge and fence over 6 ft. in height.

On September 7, 2018, an Administrative Use Permit (AUP) application was submitted by the 1346 Ordway Street owners, Keki Borjorjee and Jennie Durant, to legalize a fence and hedge over 6 ft. in height.

After initial review of the application, staff determined that in addition to permits required for a fence and hedge over 6 ft. in height, additional AUPs were required to legalize: the existing accessory building; the existing trellis; and a front yard off-street parking space. Staff initially determined that due to the narrow width and length of the existing non-conforming driveway, the subject property's legal off-street parking space could be abandoned. This "*no legal off-street parking*" status included a condition of approval to remove all parking-related surfaces and the curb cut. Alternatively, the applicants decided to apply for an AUP for a front yard off-street parking space and a Variance to waive the required 2 ft. landscaped strip. Eventually, due to the applicant's medical

condition, they requested a front yard off-street parking space under Reasonable Accommodations (BMC Section 23B.52.010).

Communications in objection to the project were received from the appellant between September 19, 2018 and June 1, 2020 and communications in support of the project were received from the neighborhood and the applicants' real estate agents between November 30, 2018 and May 23, 2020. All are included here as Attachment 4.

On February 25, 2020, the Zoning Officer approved AUP #2018-0174 at the subject property to legalize the existing accessory building, trellis, hedge and to establish a front yard parking space under Reasonable Accommodations for fair access to housing. The request to add a 3 ft. lattice over the existing 6 ft. tall boundary fence was denied, because the survey showed that the existing fence is located outside the applicant's lot boundaries, on the neighbor/appellant's lot.

On March 17, 2020, the appellant, who lives to the south of the subject lot, filed an appeal of the Zoning Officer's decision to the ZAB. As described in the June 11, 2020 ZAB Staff Report, the appeal listed four main appeal points regarding the front yard parking space, accessory building, trellis and hedge. Appeal point 1 (objection to the approval of the front yard parking space under BMC's Reasonable Accommodation Section) discussed concerns regarding safety, detriment to economic value of the appellant's property and insufficient proof of disability. This appeal point also inquired about "on-street parking" as an alternative to the front yard off-street parking space and the "no-legal-parking status" options that were initially presented to the applicants by staff in regards to the front yard parking space. Appeal point 2 (objection to the approval of the accessory building) discussed issues around detrimental shadow impacts, noise, lack of site visit by staff, and the detrimental impacts on the prospective economic value of the appellant's property due to an unpermitted accessory building on the neighboring lot. Appeal point 3 (objection to the approval of the trellis), discussed issues around the construction of trellis adjacent to the appellant's garage and expressed concern regarding future access to the appellant's garage for maintenance. Appeal point 4 discussed issues regarding the hedge, its height and fence maintenance issues in the future.

At the June 11, 2020 ZAB hearing Staff Report for the appeal, staff responded to all of the appeal points (see Attachment 4) and recommended that the ZAB dismiss these appeal points because: the Zoning Officer was able to make non-detriment findings for the accessory building, trellis, hedge and front yard parking space; and the appellant had not provided evidence to suggest that the Zoning Officer was incorrect in making those non-detriment findings.

At that hearing, ZAB members discussed the issues around the addition of the proposed 3 ft. tall lattice to the existing fence that was denied; the 6 ft. tall fence newly installed by the appellant; and the appeal points related to the approved AUPs including: 1) hedge 2) trellis 3) accessory building and 4) front yard off-street parking space.

For reference, the ZAB discussion was recorded¹ and the captioner's record is provided as Attachment 5 to this report.² The following is a summary of the ZAB's discussion on the fence and all the four appeal points:

- **Fence:** The ZAB asked a few clarifying questions regarding both the existing and the newly-installed fence. Staff clarified that the AUP application included a request to add a 3-ft. lattice above the existing 6 ft. tall boundary fence (resulting in a 9 ft. tall fence) and that this request had been denied by staff because the existing fence is located outside the applicants' lot boundaries. Additionally, staff's presentation included imagery and information about a second 6-ft. tall fence that had been recently installed by the appellant. Staff explained that this new fence, which is a horizontal extension of the existing 6-ft. tall boundary fence, separates the proposed front yard parking space on the applicant's lot from the appellant's lot in the front setback. The appellant argued that the new fence will make it difficult for a car in the applicant's driveway to see pedestrians while backing up and therefore makes the front yard parking space an unsafe condition. The ZAB determined that safety is not an issue for the front yard parking space despite the newly installed fence.
- **Hedge:** Regarding the hedge, a ZAB member asked the appellant to clarify the reasons for his objection to the hedge and noted that considering that the hedge is located to the north of the appellant's lot, it will not have shadow impacts on the appellant's lot. The appellant stated that the 14-ft. tall hedge is like a wall, creating a feeling of enclosure around his property. He also added that because the hedge is leaning over on the fence, it will be damaging his fence. The ZAB asked the applicant to explain why the hedge needs to be 14 ft. tall. The applicant answered that the hedge height is currently only 10 ft., but the 14 ft. maximum height leaves room for additional growth which also allows for some extra time to find a pruner during times such as the pandemic. In addition, the hedge provides privacy and screening of the neighbor's property, which they believe to be unattractive. During the ZAB hearing, the applicant expressed that she was willing to keep the hedge height closer to 10 ft. However, the applicants later decided to appeal the ZAB's determination to reduce the maximum height to 11 ft.

Two neighbors spoke in support of the project and testified about the under-maintained state of the appellant's property. They noted that, in contrast, the applicant has been improving their property and has not disturbed the peace of the neighborhood, rather they believe that these improvements have been beneficial to the neighborhood.

One ZAB member asked the ZAB secretary to explain how common it is to receive an application for a 14-ft. tall hedge or fence. The ZAB secretary responded by noting that he is aware of instances in the hills overlay, where there are grade differences or privacy concerns. The ZAB Secretary added that hedge tend to be

¹ June 11, 2020 ZAB recording, http://berkeley.granicus.com/MediaPlayer.php?publish_id=f43f2282-b02a-11ea-888f-0050569183fa

² Discussion in this report are paraphrased from the Captioner's Record, Attachment 5.

more acceptable since they are considered more of a green screen, whereas 12 to 14-ft. tall fences and walls would be less likely to be approved. Another ZAB member commented that since the applicant agreed that 10 ft. is adequate for screening purposes, he would support a 10 ft. to 12 ft. tall hedge with attempts to keep it to 10 ft. The ZAB Chair clarified that this condition can be included in the motion, however, a maximum height is required. Consequently, the ZAB member decided to choose 12 ft. as the maximum height. Ultimately, the ZAB determined that a 14 ft. height is too high for even a “green” fence and amended the Condition of Approval to limit the height to 11 ft. to allow for some growth above the existing conditions.

- **Trellis:** The ZAB asked clarifying questions from the staff regarding the trellis. The appellant expressed that he is objecting to the trellis built up against his garage because of a possible inability to access the side of the garage for maintenance. He added that plants have grown in that area all the way up to the garage roof that prevents access. One of the ZAB members noted that the pictures do not show any planting growing over the trellis, adjacent to the appellant’s garage. The applicant stated that the trellis’s posts are 22 inches away from the garage. It is only the trellis roof that is 3 inches away from the appellant garage’s roof. Eventually, the ZAB determined that the appellant’s garage is accessible for maintenance even with the trellis built adjacent to it.
- **Accessory building:** The ZAB asked the appellant if the accessory building is impacting the use of his property negatively. The appellant responded that the accessory building’s non-conformity impacts his property in a negative way because “it makes his property non-conforming.” The applicant noted that the accessory building is located at the south-west corner of the lot abutting the other neighbor’s lot at 1327 Hopkins Street and *not* the appellant’s lot at 1333 Hopkins Street. Furthermore, it cannot possibly cast shadows towards the south where the neighboring lots are located.
- **Front yard parking space:** The appellant expressed concern for visibility from the parking space especially with the newly-installed fence (by the appellant). He mentioned that the only evidence of a disability on the part of the applicant at 1346 Ordway is a temporary disability factor (not a permanent one).

In response to the appellant’s claim for lack of evidence for disability, the applicant responded that the appellant is not aware of the full nature of the disability and would like to preserve their privacy by not disclosing that information to the public; however, as part of the AUP application, they have provided sufficient proof of disability for staff. She added that her medical condition is degenerative and “*having to walk from a parking space whether from the curb or down the street carrying heavy bags of groceries and their 4-year-old daughter would be untenable.*” In response to the safety concerns brought up by the appellant, the applicant stated that they have not had any problems spotting pedestrians as they slowly pull out of

their driveway, and several other properties in the neighborhood have the same front yard parking condition as well.

One ZAB member commented that in cases where the driveway is too narrow, it makes sense to have the off-street parking space in the front yard and that the safety is not an issue since everyone backs out of their driveways. In response to appellant's comments about lack of proof for disability, another ZAB member noted that he is confident that there is basis for staff's decision in allowing for a front yard parking space under Reasonable Accommodations.

ZAB Action

A motion was made to approve the application with the hedge's maximum height set at 12 ft. A friendly amendment was suggested to limit the height to 10 ft. A compromise was reached to approve a maximum hedge height of 11 ft.

With the addition of this Condition of Approval, the ZAB was satisfied that the appellant's concerns were addressed.

ENVIRONMENTAL SUSTAINABILITY

The project approved by the ZAB is in compliance with all state and local environmental requirements.

RATIONALE FOR RECOMMENDATION

The issues raised in the appellant and applicants' letters, and staff's responses, are as follows. **For the sake of brevity, the appeal issues are not re-stated in their entirety.** Please refer to the attached appeal letter (Attachment #2: Appellant's Appeal Letter and Attachment #3: Applicant's Appeal Letter) for the full text.

Neighbor Appellant's Appeal Issues and Staff Response:

Issue 1: *Appellant alleges that there was no discussion on the legal authority, the evidence in the record; and appellant was denied any opportunity to respond to and/or rebut evidence. It was an unfair and biased process for the following reasons:*

- A. *There was no discussion as to why the Zoning Officer withheld the fact that tree and hedges are a fence;*
- B. *No attempt was made to confirm the true property line;*
- C. *No explanation as to why applicants were not required to follow Code Enforcement until the AUP application had been approved;*
- D. *No explanation as to why Zoning did not conduct a site visit; and*
- E. *The questions raised by the board members begs the question whether appellant's appeal point were fully read and considered.*

Staff Response to Item A: Staff stated that the Ordinance considers a hedge as a fence during the discussion at the ZAB hearing. The captioner's record including that information is provided as Attachment 5.

Staff Response to Item B: A survey was submitted as part of the AUP application and the City's GIS map do not show the south-west part of the applicant's lot abutting the appellant's lot.

Staff Response to Item C: If the applicant exhibits good faith in submitting for the required permits, the conditions can stay "as is" until after the AUP is finalized unless it is a health and safety issue. The applicants applied for the required AUPs; they are entitled to a fair chance to legalize unpermitted buildings and structures under a permit they are entitled to ask for.

Staff Response to Item D: As previously addressed in the June 11, 2020 ZAB Staff Report (Appeal Issue 2.C, Page 15), adequate documentations were provided in plans, elevations and photographs to determine the conditions on the property and the neighborhood.

Staff Response to Item E: The staff report including applicant's appeal points and staff responses were reviewed by the ZAB.

Issue 2: *Appellant alleges that the results reached by the ZAB constitutes denial of due process and is inconsistent with Berkeley Municipal Code for the following reasons:*

Appellant was denied an opportunity to be heard and to respond to the evidence and/or inconsistent statements presented against him. He was allowed to speak for five minutes and his phone line was muted when the five minutes expired.

Staff Response: The ZAB Public Hearing procedure allows the appellant and the appellant to speak for five minutes, after which members of the public may make comments. Following that, the ZAB closes the public hearing and commences board member comments.

Issue 3: *Appellant alleges that the hearing was an unfair and biased process for the following reasons:*

- A. The City's Zoning Officer was prejudiced toward the appellant and gave favor to the applicant. The Zoning Officer had multiple Ex Parte communications with the applicant;*
- B. The ZAB's ultimate decision was an extension of the Zoning Officer's [unfair and biased] recommendation to approve the AUP;*
- C. The Zoning Officer failed to fully inform the board that the non-conforming conditions being applied for were illegally constructed and*

*non-conforming conditions are affecting the appellant's property rights;
and*

D. The Zoning Officer failed to fully inform the Board of the City's Code Enforcement Unit's Notice of Violation and Administrative Warning issued to applicants.

Staff Response to Item A: Staff communicated with the applicants and the appellant via emails and phone calls as a regular way of communication, which is common practice with all AUP applications. Staff communications of this kind do not qualify as *ex parte*; only the ZAB members are limited in how they communicate with applicants and appellants.

Staff Response to Item B: The Zoning Officer's recommendation is based on the ability to make non-detriment finding per the Zoning Ordinance. The ZAB also conducted a neutral hearing and deliberated based on all of the evidence including the Staff Report, Appeal Letter, testimony and the findings.

Staff Response to Item C: The staff report and presentation clearly stated that the AUPs were required to legalize existing buildings and structures. The Zoning Ordinance allows for applicants to legalize unpermitted structures and buildings by going through the zoning application process, and it is the standard practice of the Planning Department to allow applicants to do so when the unpermitted use can be legalized. When a zoning application is submitted to legalize existing buildings and structures, staff reviews the application as if the unpermitted structures and buildings did not exist today. Staff evaluates the proposal to determine if the non-detriment findings can be made.

Staff Response to Item D: Staff noted that a Notice of Violation was issued in May 2018. (Refer to captioner's record page 29)

Issue 4: *Appellant alleges that there appears to be no internal separation between the Zoning Officer's advocacy and recommendation and the ZAB's decision. The ZAB's decision arises from the Zoning Officer's lack of neutrality.*

Staff Response: See Staff Response to Issues 3.A and 3.B.

Issue 5: *Appellant alleges that the City would be rewarding applicants for years of illegal conduct. On the other hand, the appellant, a law abiding citizen is ignored and left without remedy. The Zoning Officer failed to present any rational explanation for this unjust result.*

Staff Response: See Staff Response to Issue 3.C.

Furthermore, City Council Resolution No. 67,985-N.S. requires applicants to pay an additional fee for applications that are submitted as a result of a Notice of Violation (see June 11, 2020 ZAB Hearing Staff Report Page 14, item 1-I, within Attachment 4). The applicant has paid this fee.

Staff believes the ZAB decision was adequately supported. In considering the reasonableness of the project and the impact, the ZAB also considers how the project meets the Zoning Ordinance standards.

Applicant's Appeal Issues and Staff Response:

The Applicant has appealed ZAB's decision to limit the hedge height to 11 ft. because they believe that a 14 ft. hedge is necessary for safety, privacy, visual barrier, maintenance and cost. Furthermore, the applicants believe that a 14 ft. tall hedge is not a detriment to the neighbor's view.

The ZAB considered all of the information received from staff, the applicants, the appellant and the neighbors and determined that, while an 11 ft. tall hedge won't have detrimental sunlight, air and view impacts on the appellant's lot, it will be adequate to provide privacy for the applicants.

Staff believes that the ZAB considered and discussed the evidence presented at the hearing, and acted within its purview to approve the proposed project. Therefore, staff recommends that the City Council uphold the ZAB decision to approve the accessory building, the trellis, the front yard parking space and the hedge with conditions of approval related to the hedge 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

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Nilu Karimzadegan, Project Planner, (510) 981-7419

Attachments:

1. Draft Resolution
 - Exhibit A: Findings and Conditions
 - Exhibit B: Project Plans dated December 3, 2019
2. Appellant's Appeal Letter dated June 30, 2020
3. Applicant's Appeal Letter dated June 30, 2020
4. ZAB Packet dated June 11, 2020
5. Captioner's Record, ZAB Hearing June 11, 2020

6. Index to Administrative Record
7. Administrative Record
8. Public Hearing Notice

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

AFFIRMING THE ZONING ADJUSTMENTS BOARD'S APPROVAL OF ADMINISTRATIVE USE PERMIT #ZP2018-0174 TO LEGALIZE AN 11-FOOT TALL HEDGE WITHIN NORTH AND SOUTH SIDE SETBACKS; LEGALIZE A 128 SQUARE-FOOT, 12 FOOT 2 INCHES TALL HABITABLE ACCESSORY BUILDING WITHIN THE REQUIRED SIDE AND REAR SETBACKS; LEGALIZE AN APPROXIMATELY 9-FOOT TALL, 5 FOOT X 21 FOOT TRELLIS LOCATED 3 INCHES FROM THE SOUTH SIDE PROPERTY LINE; AND TO ESTABLISH AN OFF-STREET PARKING SPACE WITHIN THE FRONT SETBACK; AND DISMISSING THE APPEALS

WHEREAS, on April 23, 2018, Lawrence Hickman filed a complaint to the Code Enforcement Unit for an unpermitted 10 ft. to 15 ft. tall hedge planted within the side setbacks at 1346 Ordway Street; and

WHEREAS, on April 30, 2018, Lawrence Hickman called the Code Enforcement Unit to report that an unpermitted "arbor" has also been built against his garage on the property line at the property at 1346 Ordway Street; and

WHEREAS, on May 10, 2018, the Code Enforcement Unit inspected the site at 1346 Ordway Street and issued a Notice of Violation addressed to the property owners Keki Borjorjee and Jennie Durant for an unpermitted fence and hedge over 6 ft. in height within the setbacks; and

WHEREAS, on September 7, 2018, the owners Keki Borjorjee and Jennie Durant filed an AUP application to legalize a trellis within the setback and a fence and hedge over 6 ft. in height along the property line; and

WHEREAS, on December 3, 2019, staff deemed this application complete and determined that the project is categorically exempt from the California Environmental Quality Act ("CEQA") under Section 15301 of the CEQA Guidelines ("Existing Facilities"); and

WHEREAS, on February 25, 2020, staff posted the Notice of Administrative Decision near the site in three locations and mailed notices to property owners and occupants within 300 feet of the project site and to interested neighborhood organizations; and

WHEREAS, on March 17, 2020, Lawrence Hickman, the neighbor at 1333 Hopkins Street, filed an appeal of the Zoning Officer's decision to the Zoning Adjustments Board (ZAB); and

WHEREAS, on May 28, 2020, staff posted the ZAB Notice of Public Hearing near the site in three locations and mailed notices to property owners and occupants within 300 feet of the project site and to interested neighborhood organizations; and

WHEREAS, on June 11, 2020, the ZAB conducted the public hearing in accordance with BMC Section 23B.32.030 and approved the application with modified Conditions of Approval; and

WHEREAS, on June 16, 2020, staff issued the notice of the ZAB decision; and

WHEREAS, on June 30, 2020, Lawrence Hickman filed an appeal of the ZAB decision with the City Clerk; and

WHEREAS, on June 30, 2020, Keki Borjorjee and Jennie Durant filed an appeal of the ZAB decision with the City Clerk; and

WHEREAS, on or before September 29, 2020, staff posted the public hearing notice near the site in three locations and mailed notices to property owners and occupants within 300 feet of the project site and to interested neighborhood organizations; and

WHEREAS, on October 13, 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 #ZP2018-0174, adopts the conditions of approval in Exhibit A and the project plans in Exhibit B, and dismisses the appeals.

Exhibits

A: Findings and Conditions

B: Project Plans, dated December 3, 2019

Exhibit A**Findings and Conditions**

FEBRUARY 25, 2019

1346 Ordway Street

Administrative Use Permit #ZP2018-0174 for additions on an approximately 4,480 sq. ft. lot with an existing one-story approximately 1,152 sq. ft. single family dwelling. The scope of work includes: 1) legalize a 9 ft. tall wood fence and 14 ft. tall hedge within north and south side setbacks; 2) legalize a 128 sq. ft., 12 ft. 2 in. tall habitable accessory building within the required side and rear setbacks; 3) legalize an approximately 9 ft. tall, 5 ft. X 21 ft. trellis located at 3 in. from the south side property line; 4) locate the off-street parking space within the front yard; and 5) eliminate the required 2 ft. landscaped strip that separates the uncovered off-street parking space from the adjacent property line.

PERMITS APPROVED

- Administrative Use Permit, under Berkeley Municipal Code (BMC) Section 23B.52.010 for Reasonable Accommodation for Fair Access to Housing;
- Administrative Use Permit, under BMC Section 23D.08.005.A1 to construct a habitable accessory building;
- Administrative Use Permit, under BMC Section 23D.08.020.A to construct a habitable accessory building that is over 10 ft. in average height within 4 ft. of the property line;
- Administrative Use Permit, under BMC Section 23D.08.020.B to construct a habitable accessory building that is over 12 ft. in average height within 4 to 10 ft. of the property line; and
- Administrative Use Permits, under BMC Section 23D.08.060.A2 for construction of accessory structures.

PERMITS DENIED

- Administrative Use Permit, under BMC Section 23D.08.060.B legalize a boundary fence over 6 ft. in height.

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 CEQA Guidelines Section 153301 of the CEQA Guidelines (“Existing Facilities”).
2. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to

Government Code Section 65962.5, and (f) the project would not affect any historical resource.

II. FINDINGS FOR APPROVAL

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

A. The subject property is equal to or below the Single Family Residential District (R-1A) standards (BMC Section 23D.20.070) for density, height, setbacks, maximum lot coverage, usable open space (1 dwelling on a lot where 1 dwelling is allowed; 32% lot coverage where 40% maximum lot coverage is allowed; and the subject property preserves well beyond 400 sq. ft. of required usable open space). One off-street parking space within the front setback is allowed to comply with BMC Section 23B.52.010 for Reasonable Accommodation for Fair Access to Housing. The project would legalize construction of an accessory building in the rear and side yards which is consistent with the single-family use of the subject property, functions as an extension of the main dwelling, is accessory to the residential use, and is not used as a separate dwelling. The accessory building is located outside required front and north side setbacks. Despite the fact that the accessory building projects a few inches into rear and south side setbacks, it is not anticipated to create significant changes to the existing sunlight conditions in the immediate vicinity of the project due to its location and limited scale. The project would also legalize a 14 ft. tall hedge within the north and south side yards in addition to a 9 ft. tall, 21 ft. X 5 ft. trellis, located 3 in. from the south property line and 30 ft. from the rear property line. The proposed hedge and the trellis are small in scale and are not expected to create significant impact to sunlight, air and view for the surrounding neighborhood.

B. Privacy, sunlight, air & view:

- Accessory building: The 128 sq. ft. accessory building functions as an office, which is a quiet activity, and is subject to condition of approval #14 that requires that a "Notice of Limitation of Use" be placed on the deed to the property. This deed restriction prohibits the use or conversion of this habitable accessory building to a dwelling unit unless authorized by an applicable permit.

The accessory building preserves privacy for abutting residences because the entry point (located on the east elevation) faces the main dwelling and while windows are located on south and west elevations, they are small in size and the existing vegetation on the side and rear property lines screen the adjacent properties.

The accessory building is found to be consistent with the existing development and building-to-building separation pattern – or air – in this R-1A neighborhood. It is separated from the main building on the neighboring property at 1333 Hopkins Street (to the south) by approximately 50 ft. and from its detached accessory structure

(Garage) by approximately 17 ft. This accessory building is separated from the building on neighboring property at 1327 Hopkins (also to the south) by approximately 33 ft.; from the building on the neighboring property at 1341 Peralta Avenue (to the west) by approximately 56 ft.; from the building at neighboring property at 1344 Ordway Street (to the north) by approximately 17 ft.; and from the main dwelling on the subject lot by more than 40 ft.

The accessory building is located at approximately 8 ft. 6 in. from the side property line to the north; about 56 ft. from front property line to the east; 3 ft. 7 in. to 3 ft. 9 in. from side property line to the south; and 4 ft. 1 in. to 4 ft. 3 in. from the rear property line to the west. The accessory building is one story in a district that permits three story main buildings. It is not taller than the main dwelling on the subject lot nor adjacent properties. Due to location and scale, this accessory building does not create significant changes to existing sunlight conditions in the vicinity of the project.

The accessory building's maximum height is 12 ft. 2 in. which is lower than the main dwelling and all abutting buildings. This low roof height and the generally flat topography of the area will ensure that this building would not obstruct or significantly reduce any prominent views that may exist for surrounding neighbors, such as a view of Golden Gate or Bay Bridge, the Downtown San Francisco skyline, the bay, or Treasure Island as defined in BMC Chapter 23F.04.

- Trellis:

While the 105 sq. ft. 9 ft. tall trellis is located at 3 in. from the south side property line, it matches the neighbor's abutting garage in height and length. Additionally, this structure is designed with well-spaced members (1 ft. 9 in. between wood members) which allows for passage of air and light and hence is not expected to create light and air impacts to the nearest property at 1333 Hopkins Street.

- Hedge:

Since the hedge is more than 8 ft. from the nearest abutting property to the south and are light penetrable, it is not expected to significantly obstruct sunlight, air, and views for this neighborhood.

2. BMC Section 23B.52.010 for Reasonable Accommodations, provides that it is the policy of the City to comply with the Federal Fair Housing Act, the Americans with Disabilities Act and the California Fair Employment and Housing Act to provide reasonable accommodation by modifying the application of its zoning and subdivision regulations for persons with disabilities seeking fair access to housing. Therefore, the City will allow the establishment of a front yard off-street parking space 1 ft. 4 in. from the front property line where 20 ft. is required, and 8 in. from the side property line where 2 ft. is required because:
- A. The parking pad will provide fair access to the home of the applicant who has lived there for 4 years and needs an accessible off-street parking space due to a disability as defined by the Fair Employment and Housing Act of 1959, codified as Government Code §§12900 – 12996;
- B. The Berkeley Zoning Ordinance allows a person to request a reasonable accommodation in the form of modification in the application of a zoning law that acts as a barrier to fair housing access. According to Section 23D.12.080.B, no portion of an off-street parking space may be located in a required front yard unless such location is authorized by an AUP and approved by the Traffic Engineer. Additionally, Section 23D.12.080.E requires that all paved areas for off-street parking spaces and driveways be separated from any adjacent interior side lot line by a landscaped strip at least two feet wide. In this case the modification will apply to: 1) Section 23D.12.080.B in order to allow a new off-street parking space to be created within the required front yard setback; and to 2) Section 23D.12.080.E in order to allow elimination of the required two feet wide landscaped strip. Therefore, allowing a front yard parking space without a two feet landscaped strip is considered a modification in zoning policy for reasonable accommodation for fair housing access; and
- C. Due to the City's current practice of not permitting a front yard parking space without a two-foot wide landscaped strip, Condition #11 has been added to this permit requiring the restoration of the front yard and restoration of rear or side off-street parking space, if the property is sold, the tenant with medical condition moves out or the disability no longer prevents accessible access.

III. FINDINGS FOR DENIAL

As required by BMC Section 23D.08.060, no fence or other unenclosed accessory structure located on a property line or within the required yard area for a main building may exceed six feet in height at any point, unless so authorized by an AUP. The existing 6 ft. to 8 ft. tall wood fence (proposed to become a 8 ft. to 9 ft. tall. wood fence by adding a 2-3 ft. wood lattice above) separates the subject property from the neighbor's property to the south. Based on the property survey submitted by the applicant, it appears that the existing fence is located on the neighbor's property. Fences are usually a shared responsibility between neighbors. In this case, because the fence is located outside the subject property lot line and on the neighbor's property at 1333 Hopkins Street and the neighbor has objected, a recommendation for approval cannot be made by staff.

STANDARD CONDITIONS

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

1. Conditions Shall be Printed on Plans

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

2. Applicant Responsible for Compliance with Conditions

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

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

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

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

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

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

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

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

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

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

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

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

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

9. Indemnification Agreement

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

ADDITIONAL CONDITIONS IMPOSED BY THE ZONING OFFICER

Pursuant to BMC Section 23B.28.050.D, the Zoning Officer attaches the following additional conditions to this Permit:

Prior to Submittal of Any Building Permit:

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

Project Liaison

_____ Name

_____ Phone #

11. The parking pad must be removed, and the curb cut in filled if the property is sold, the tenant moves out or disability no longer prevents accessible access.
12. Hedge shall not exceed 14 ft. in height.
13. To legalize the construction of the accessory building and trellis, a building permit application must be submitted within 30-days after the AUP approval.

Prior to Issuance of Any Building Permit:

14. **Accessory Building:** All owners of record of the subject property shall sign and record with the Alameda County Clerk-Recorder a "Notice of Limitation on Use of Property" (available from Land Use Planning Division) and provide a recorded copy thereof to the project planner. This Notice of Limitation shall stipulate that no part of this Accessory Building shall be used or converted to use as a dwelling unit unless and until permission is requested of the City of Berkeley and authorized a Use Permit, Administrative Use Permit, or Zoning Certificate, whichever is applicable. This limitation shall include the explicit acknowledgment that a full bathroom and cooking facilities may be installed, as long as the cooking facilities do not constitute a Kitchen per BMC Chapter 23F.04. This limitation may not be revised or removed from this property without the prior written permission of the Zoning Officer of the City of Berkeley.

Standard Construction-related Conditions Applicable to all Projects:

15. **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.

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

17. 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.
18. Subject to approval of the Public Works Department, the applicant shall repair any damage to public streets and/or sidewalks by construction vehicles traveling to or from the project site.
19. All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter in thickness and secured to the ground.
20. All active construction areas shall be watered at least twice daily, and all piles of debris, soil, sand or other loose materials shall be watered or covered.
21. Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.
22. Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.
23. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way.
24. 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.
25. Any construction during the wet season shall require submittal of a soils report with appropriate measures to minimize erosion and landslides, and the developer shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.
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. 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.

28. Human Remains (Ongoing throughout demolition, grading, and/or construction). In the event that human skeletal remains are uncovered at the project site during ground-disturbing activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to CEQA Guidelines Section 15064.5 (e)(1) . If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to Health and Safety Code Section 7050.5(c), and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.

29. Paleontological Resources (Ongoing throughout demolition, grading, and/or construction). In the event of an unanticipated discovery of a paleontological resource during construction, excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified paleontologist (per Society of Vertebrate Paleontology standards [SVP 1995,1996]). The qualified paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the project on the qualities that make the

resource important, and such plan shall be implemented. The plan shall be submitted to the City for review and approval.

Prior to Issuance of Occupancy Permit or Final Inspection:

30. All construction at the subject property shall substantially conform to the approved Use Permit drawings or to modifications approved by the Zoning Officer.
31. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated December 3, 2019

At All Times (Operation):

32. All exterior lighting shall be energy efficient where feasible; and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
33. 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.



Prepared by: Nilu Karimzadegan, Assistant Planner
For Steven Buckley, Zoning Officer

PLAT OF SURVEY

LOT 44, BLOCK 6
KEY ROUTE TERRACE NO. 3 (21 M 59)
LOCATED AT 1346 ORDWAY STREET
BERKELEY, ALAMEDA COUNTY, CALIFORNIA

MARCH 14, 2019 SCALE: 1" = 8'



PLANS APPROVED by

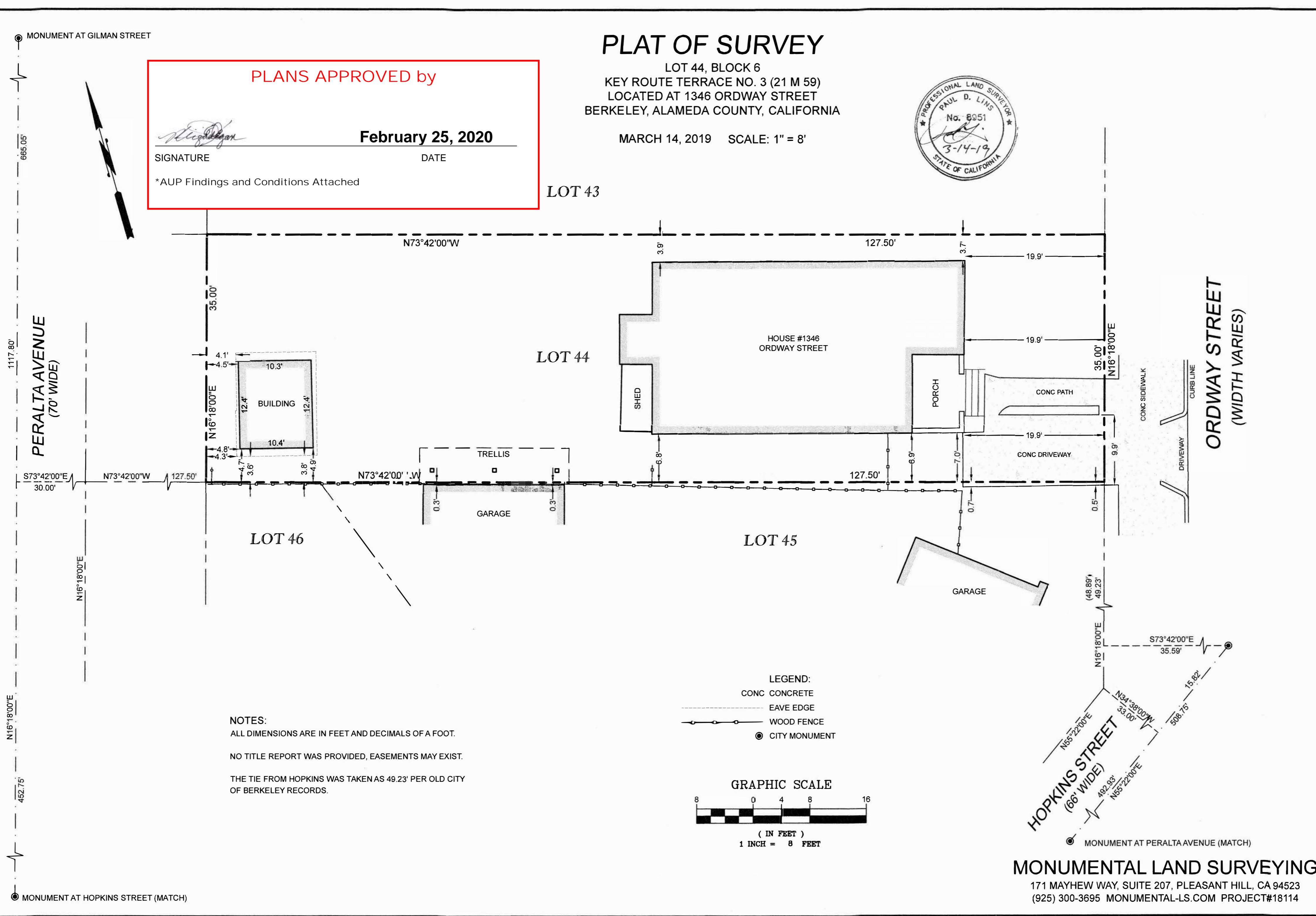
February 25, 2020

SIGNATURE

DATE

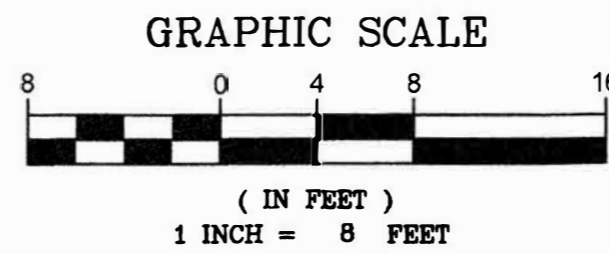
*AUP Findings and Conditions Attached

LOT 43



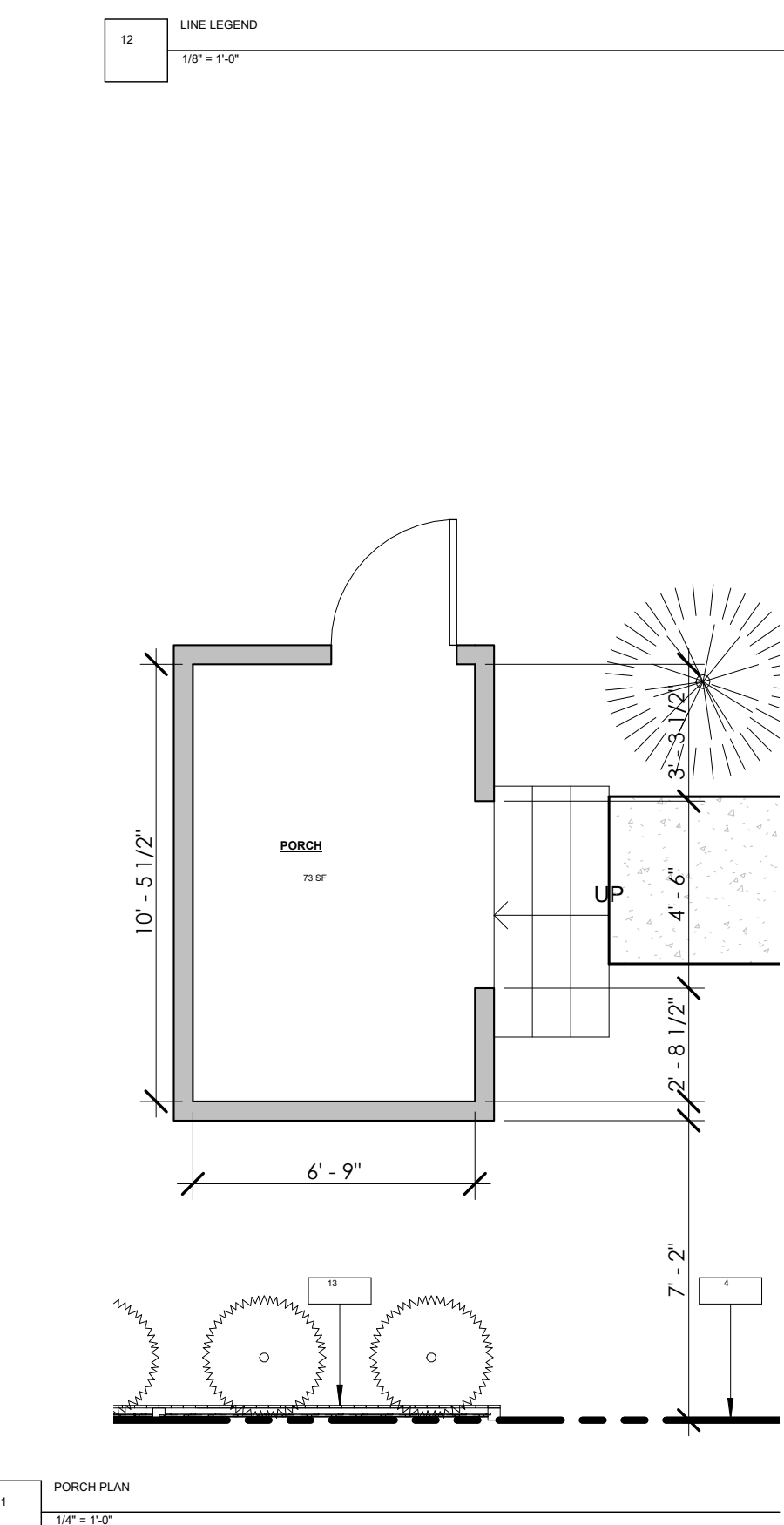
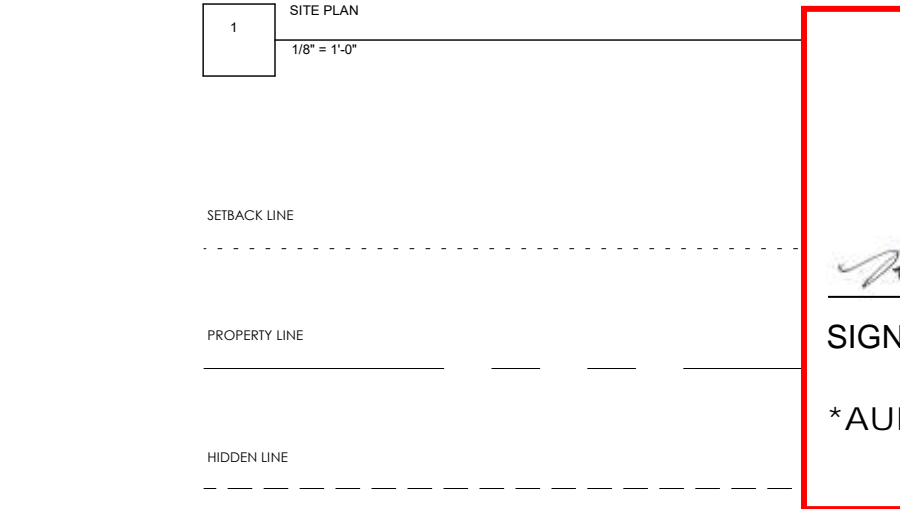
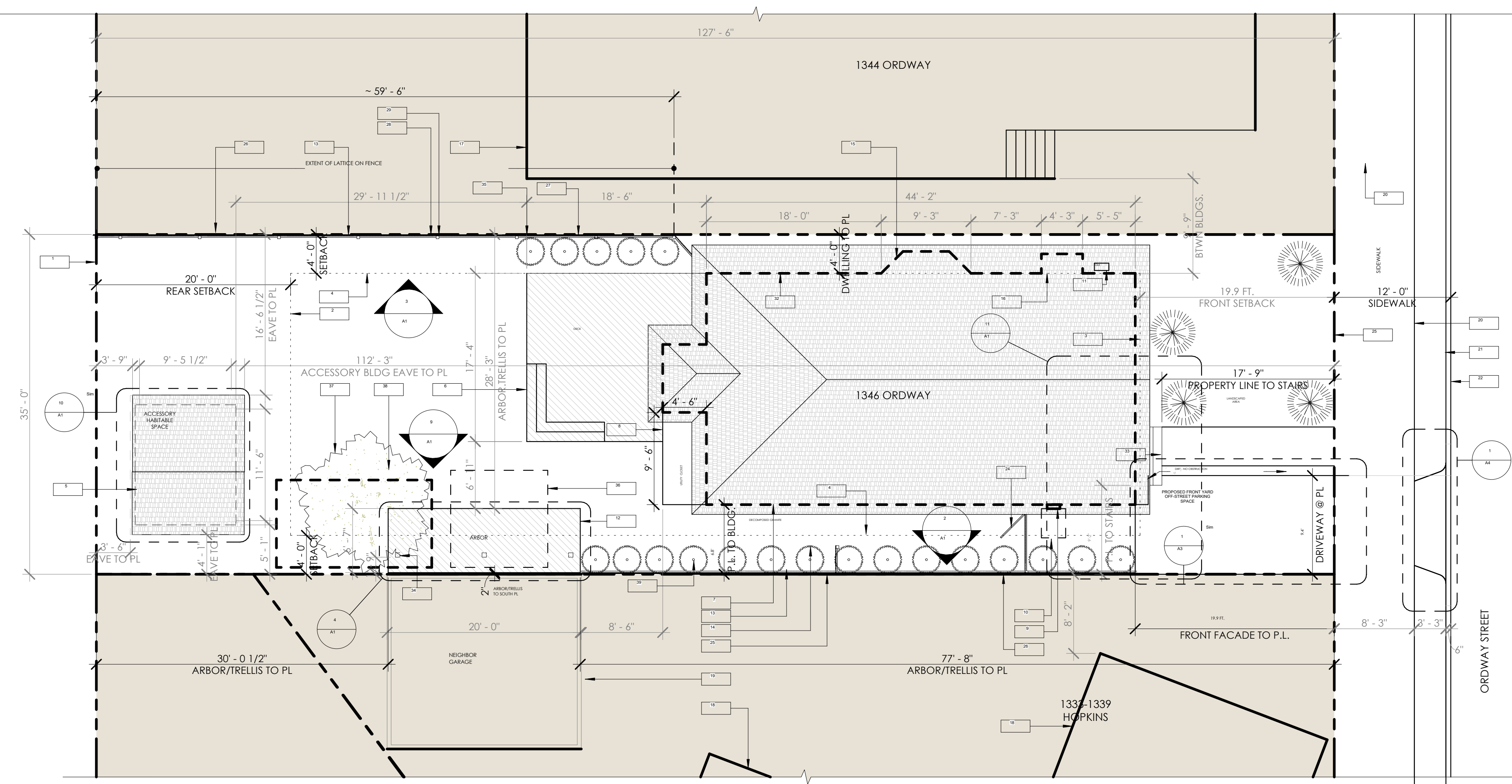
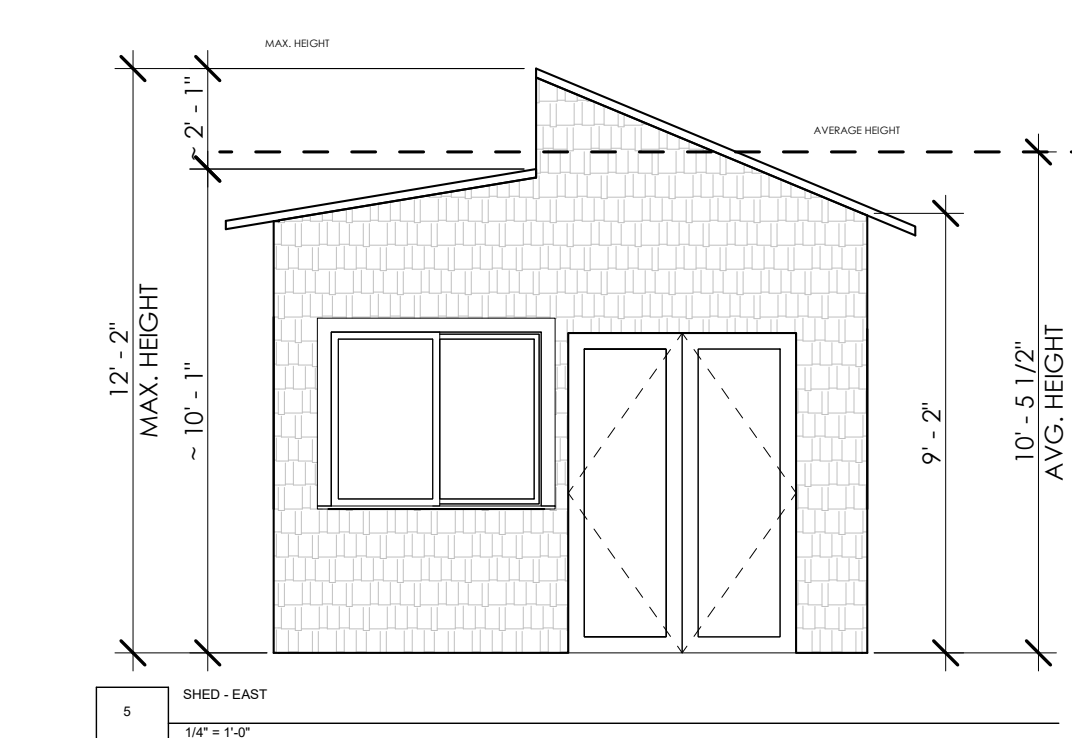
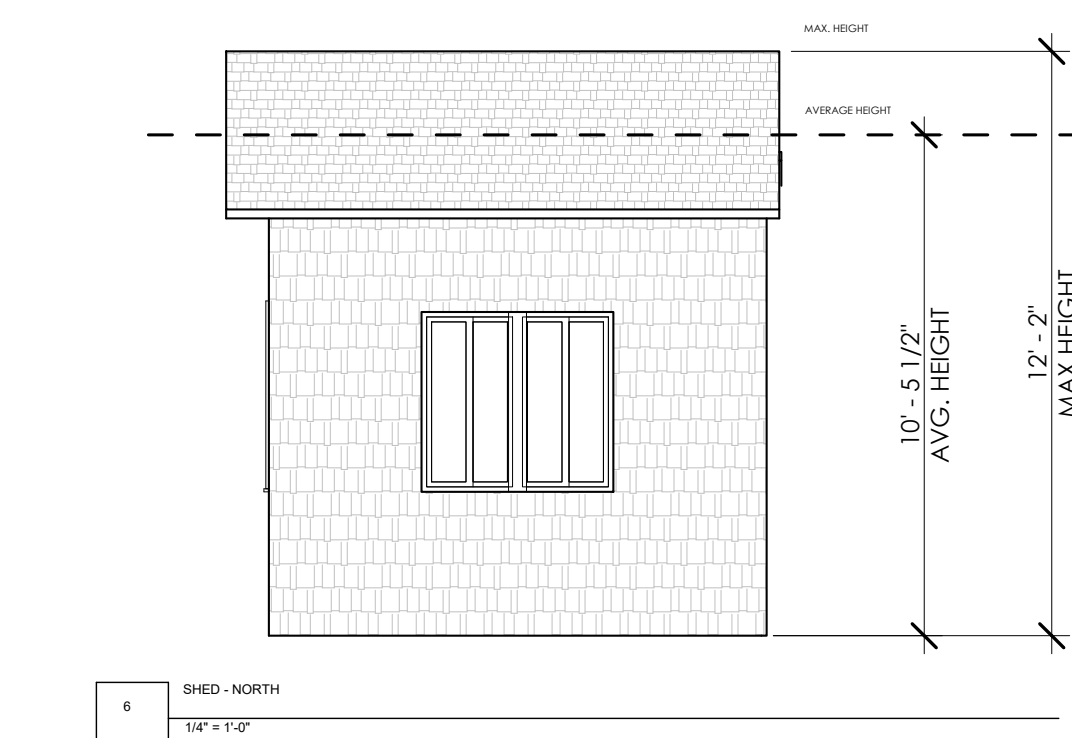
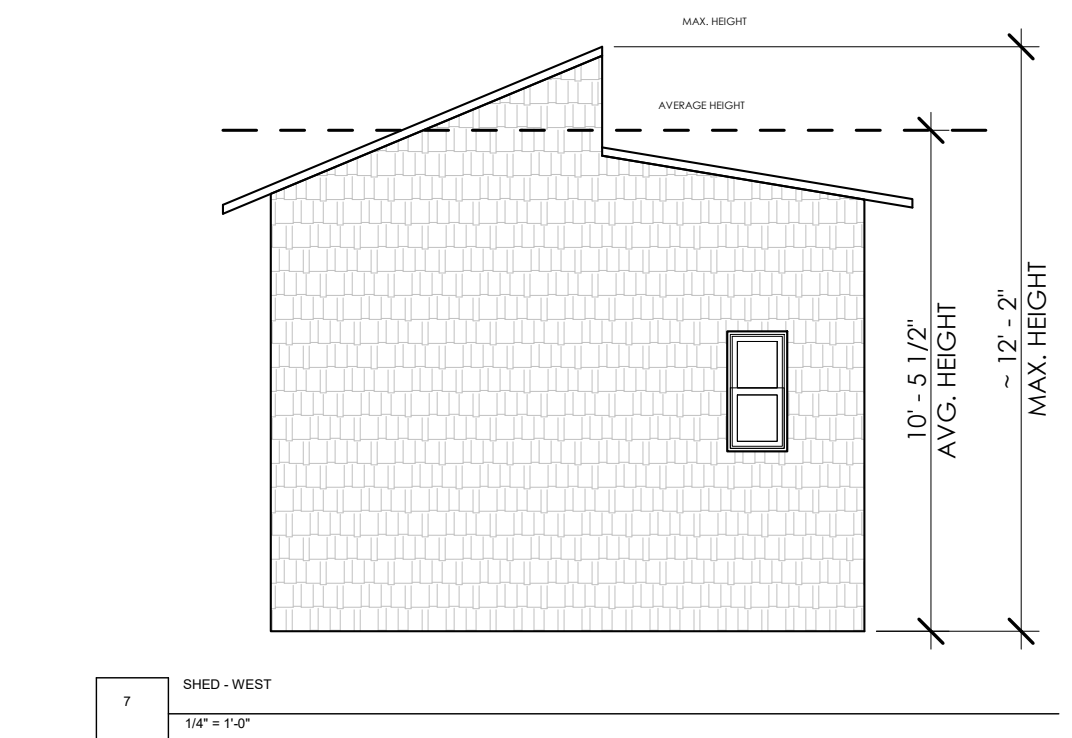
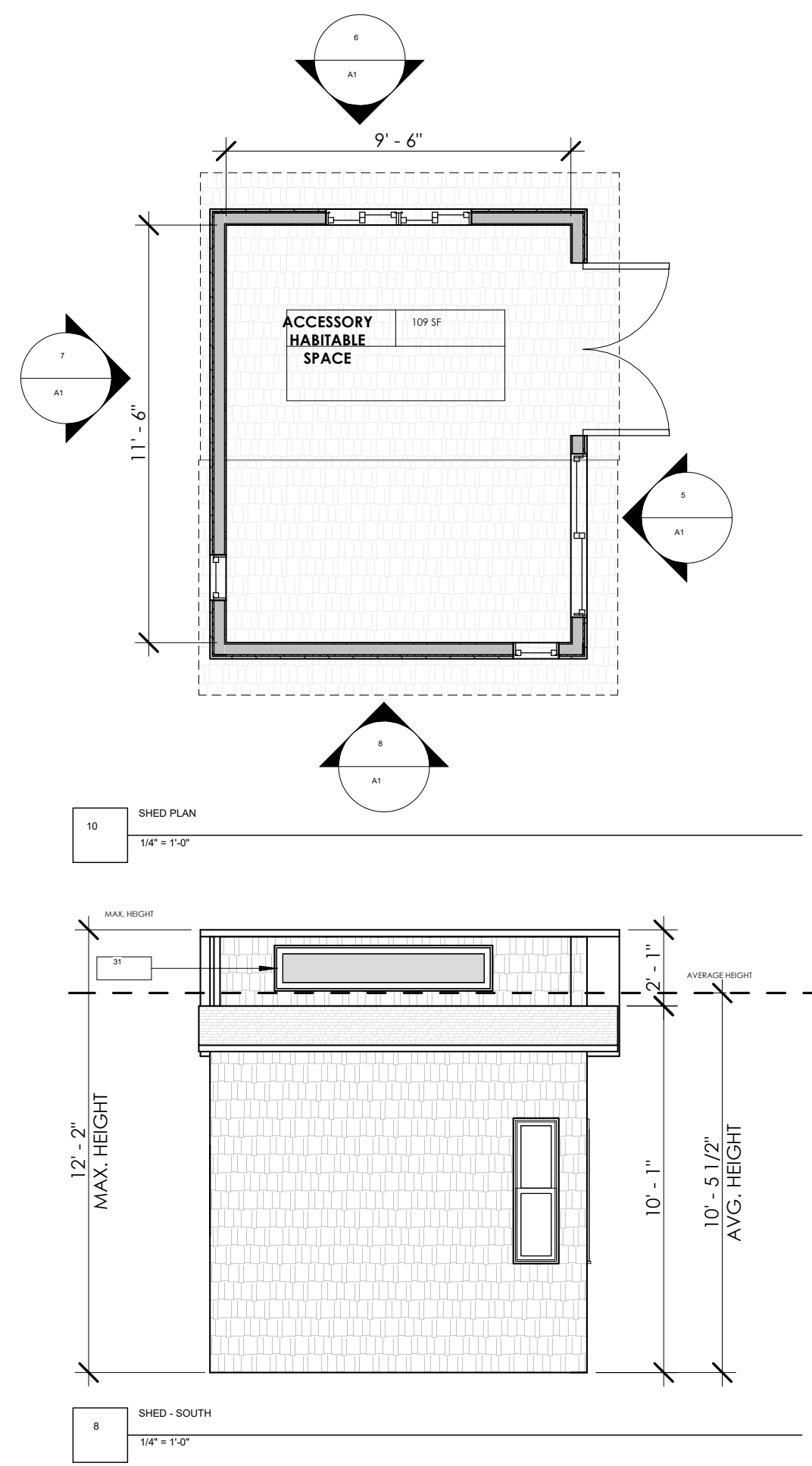
NOTES:
ALL DIMENSIONS ARE IN FEET AND DECIMALS OF A FOOT.
NO TITLE REPORT WAS PROVIDED, EASEMENTS MAY EXIST.
THE TIE FROM HOPKINS WAS TAKEN AS 49.23' PER OLD CITY OF BERKELEY RECORDS.


- LEGEND:
- CONC CONCRETE
 - - - EAVE EDGE
 - WOOD FENCE
 - CITY MONUMENT

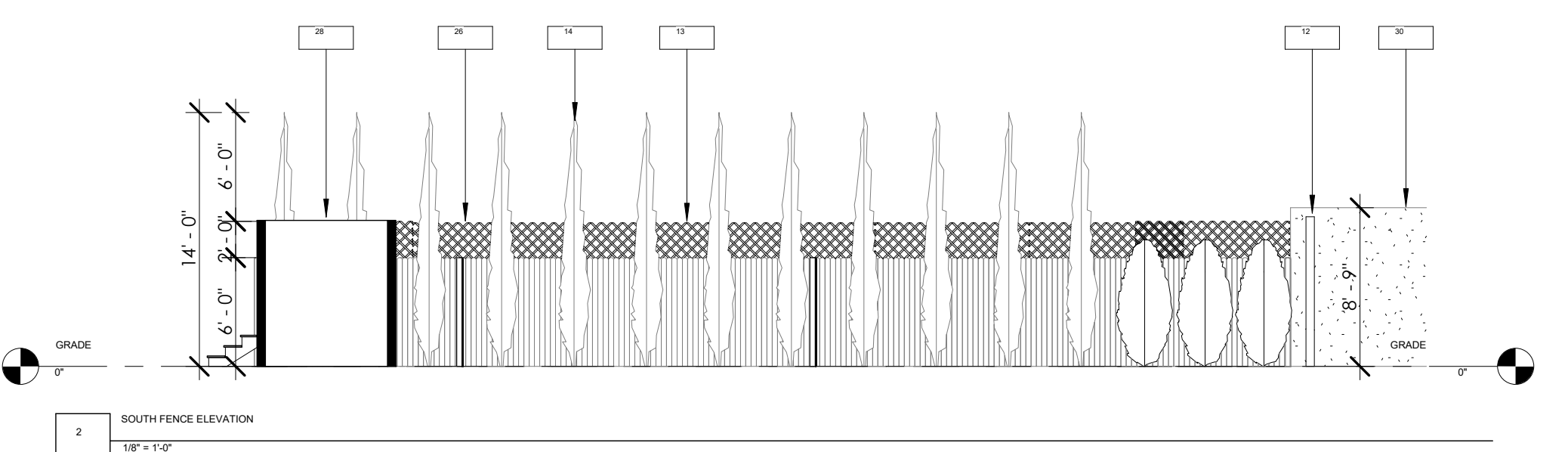
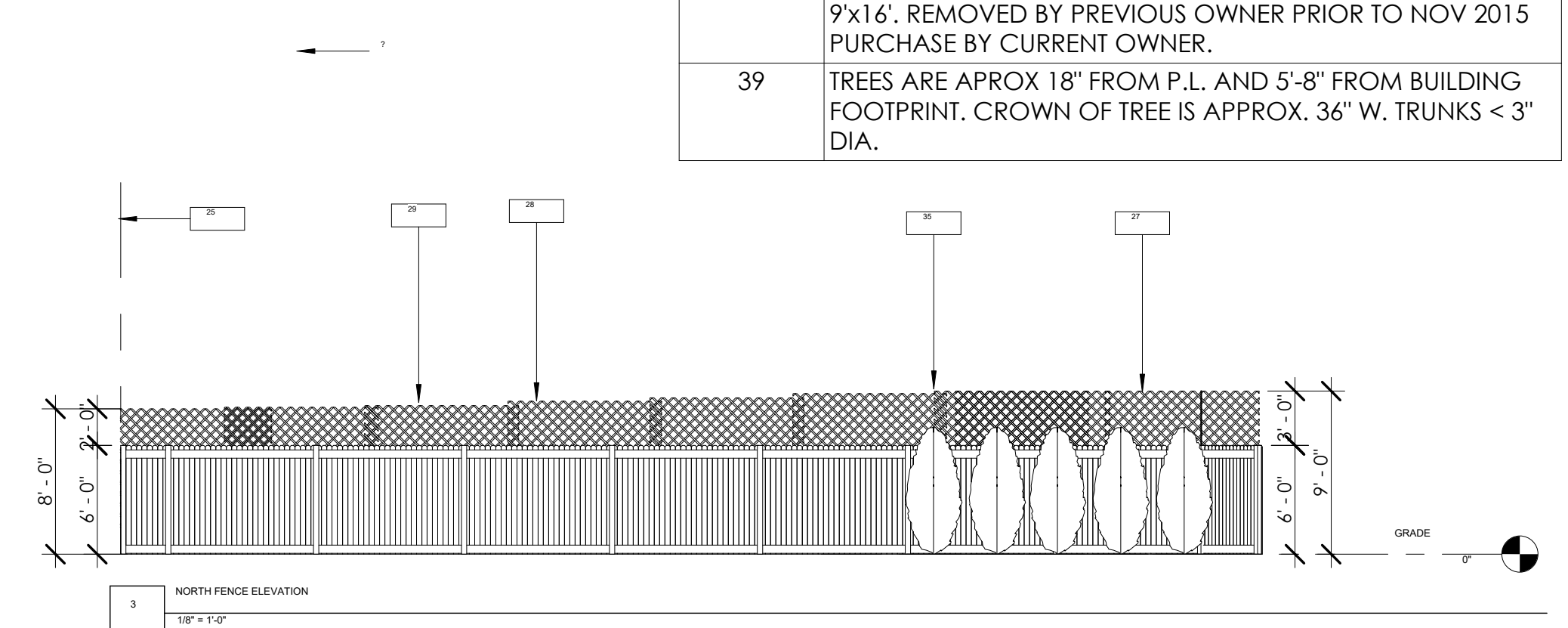
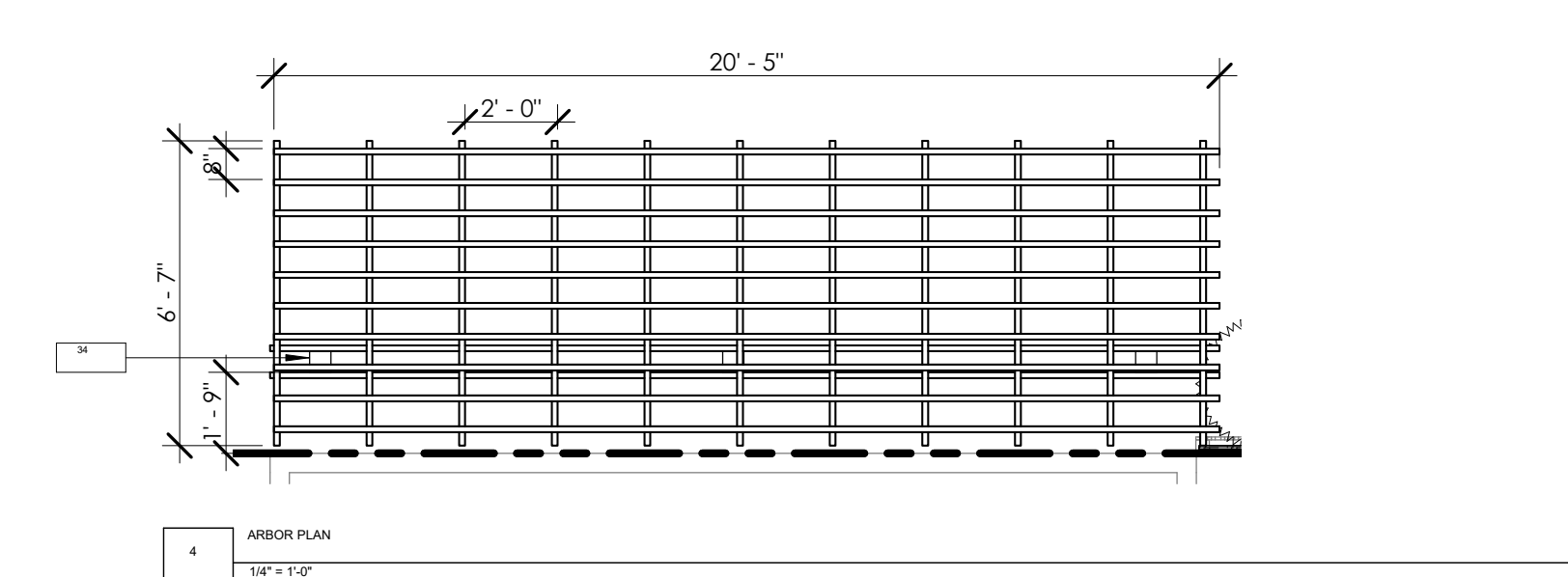
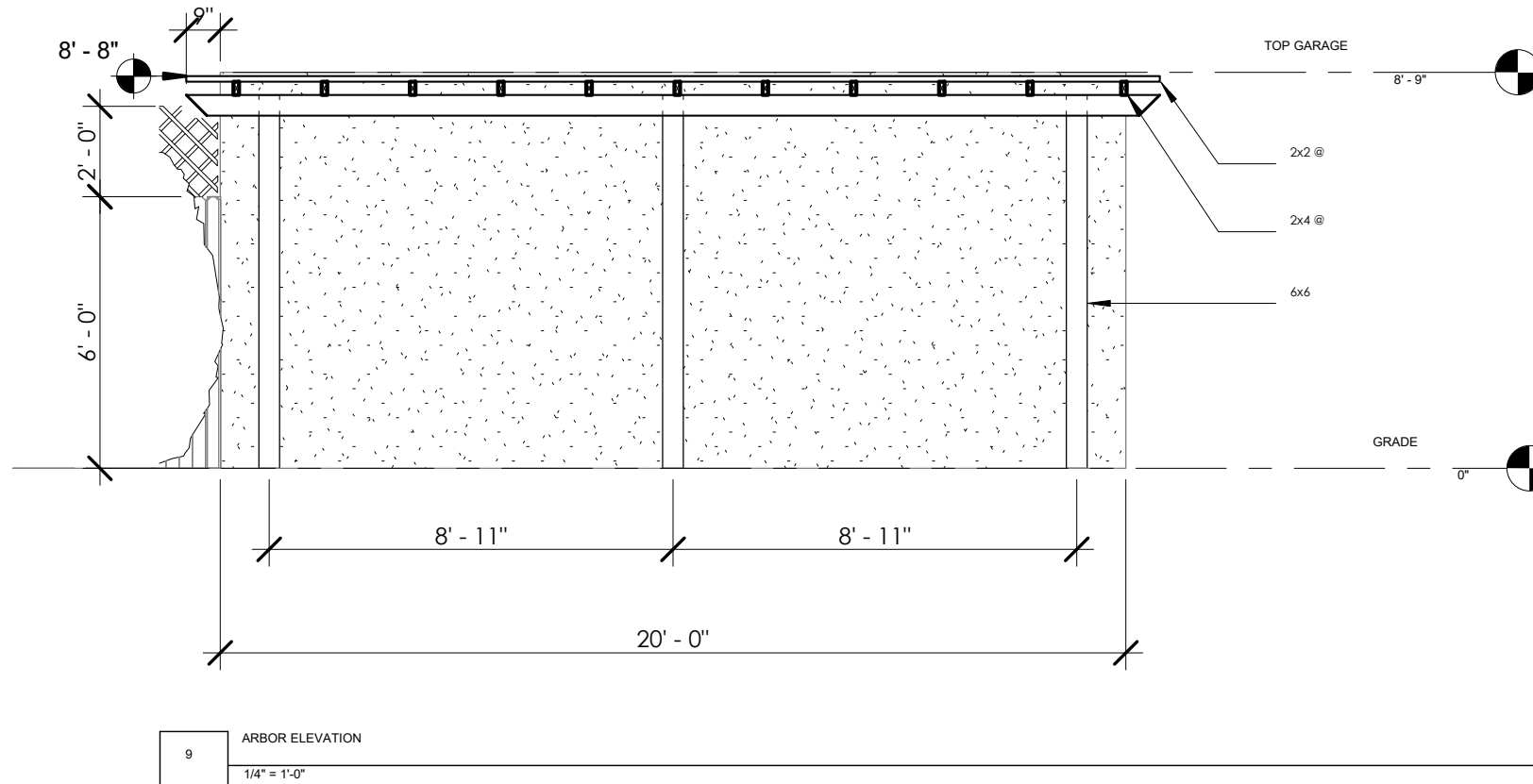
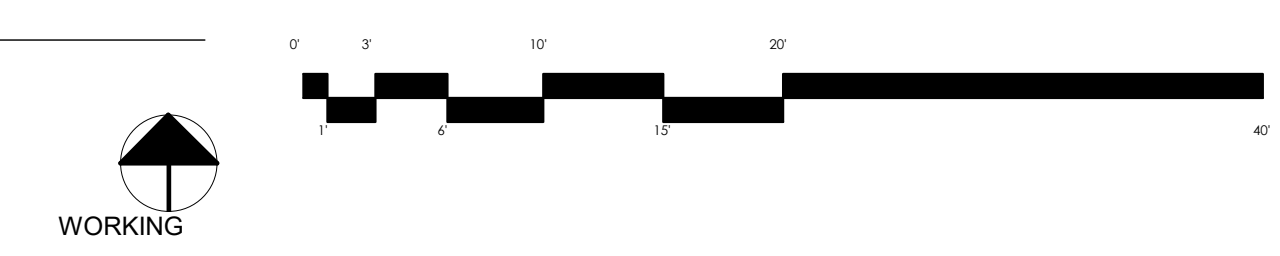


MONUMENTAL LAND SURVEYING
171 MAYHEW WAY, SUITE 207, PLEASANT HILL, CA 94523
(925) 300-3695 MONUMENTAL-LS.COM PROJECT#18114

THE IDEAL DESIGN PLANS, AND DETAILS INDICATED OR REPRESENTED BY THE DRAWING ARE OWNED BY, AND THE PROPERTY OF THE ARCHITECT AND ARE CREATED AND DEVELOPED FOR USE IN CONNECTION WITH THIS PROJECT ONLY. REUSE OF THE DRAWINGS FOR OTHER PURPOSES DOES NOT CONSTITUTE PUBLICATION. ANY DISCLOSURE, USE, OR REPRODUCTION OF THE IDEAL DESIGN PLANS, AND DETAILS INDICATED HEREIN IS NOT PERMITTED WITHOUT THE WRITTEN AUTHORIZATION OF THE ARCHITECT.



PLANS APPROVED by

February 25, 2020
 SIGNATURE DATE
 *AUP Findings and Conditions Attached



Sheet Number	Sheet Name	Sheet Issue Date
A1	SITE PLAN	12/03/2019
A3	ENLARGED PARKING PLAN	12/03/2019
A4	DETAILS & AREA CALCS	12/03/2019

SHEET NOTES	
Key Value	Keystone Text
1	48" TALL BAMBOO FENCE @ REAR PROPERTY LINE
2	REAR SETBACK LINE
3	FRONT SETBACK LINE
4	SIDE SETBACK LINE
5	SHED
6	REAR DECK
7	BLDG. FOOTPRINT BELOW
8	UTILITY CLOSET
9	ELECTRICAL PANEL
10	MAINTAIN 30" W X 36" D FOR CLEAR WORKING SPACE - N.E.C. 110.26(A)(2) REQUIREMENT.
11	GAS METER
12	ARBOR STRUCTURE
13	6'-0" TALL FENCE AT PROPERTY LINE
14	14' TALL LANDSCAPING/TREES
15	BAY WINDOW
16	FIREPLACE
17	1344 ODWAY RESIDENCE
18	1333-1339 HOPKINS STREET. MAIN STRUCTURE.
19	1333-1339 HOPKINS STREET. GARAGE STRUCTURE.
20	72" WIDE SIDEWALK
21	39" WIDE PLANTING STRIP
22	CURB AT STREET
24	GATE
25	PROPERTY LINE
26	24" LATTICE ATOP OF FENCE
27	36" LATTICE ATOP OF FENCE. INSTALLED TO REPLACE (E) 24" LATTICE AT THE TIME OF REMODEL/ADDITION AT 1344 ORDWAY. MUTALLY AGREED UPON WITH NEIGHBOR OF 1344.
28	FENCE AND LATTICE PATTERNS ARE SHOWN CONCEPTUALLY.
29	LATTICE "STEPS-DOWN" APPROX 1.5" EVERY 8'-0" LF TO REFLECT GRADE.
30	NEIGHBOR'S GARAGE STRUCTURE
31	CELESTORY WINDOW
32	BLDG. FOOTPRINT IS AT SETBACK LINE
33	FRONT ENTRY STEPS
34	CLOSEST FACE OF ARBOR POST IS 1'09" FROM PROPERTY LINE. SEE PLAN VIEW.
35	36" LATTICE ATOP OF FENCE EAST OF THIS POINT. 24" LATTICE ATOP FENCE WEST OF THIS POINT
36	APPROX. LOCATION OF PREVIOUS TOOLSHED. APPROX 10'X10'. REMOVED BY PREVIOUS OWNER PRIOR TO NOV 2015 PURCHASE BY CURRENT OWNER.
37	TREE - REMOVED BY PREVIOUS OWNER PRIOR TO NOV 2015 PURCHASE BY CURRENT OWNER.
38	APPROX. LOCATION OF PREVIOUS TRED SHED. APPROX 9'X16'. REMOVED BY PREVIOUS OWNER PRIOR TO NOV 2015 PURCHASE BY CURRENT OWNER.
39	TREES ARE APPROX 18" FROM P.L. AND 5'-8" FROM BUILDING FOOTPRINT. CROWN OF TREE IS APPROX. 36" W. TRUNKS < 3" DIA.

TRADE CRAFT

225 VISTA GRANDE, GREENBRAE, CA

ARCHITECT PROJECT #: 18-009

ARCHITECT CONTACT INFORMATION:
NICHOLAS LEONE
415.272.3541
NBL@TRADECRAFTARCH.COM

CONSULTANT:
Jerrisa Durand & Kelli Buijboom

CLIENT:
1346 ORDWAY STREET
BERKELEY, CA 94702

REVISION HISTORY	Number	Revision Description	Revision Date
1	AUP PERMIT		11/19/18
2	AUP REVISION 1		3/15/19

ALL DRAWINGS AND WRITTEN MATERIAL APPEARING HEREIN CONSTITUTE ORIGINAL AND UNPUBLISHED WORK OF THE ARCHITECT AND MAY NOT BE DUPLICATED, USED, OR DISCLOSED WITHOUT WRITTEN CONSENT OF THE ARCHITECT.

DRAWN BY: _____ CHECKED BY: _____

SCALE: _____ SHEET SIZE: 24 x 36"

PUBLISH DATE: 12/03/2019 6:44:19 PM


PRINT DATE/TIME: 12/3/2019 6:44:19 PM

SHEET NAME: SITE PLAN

SHEET NUMBER: **A1**

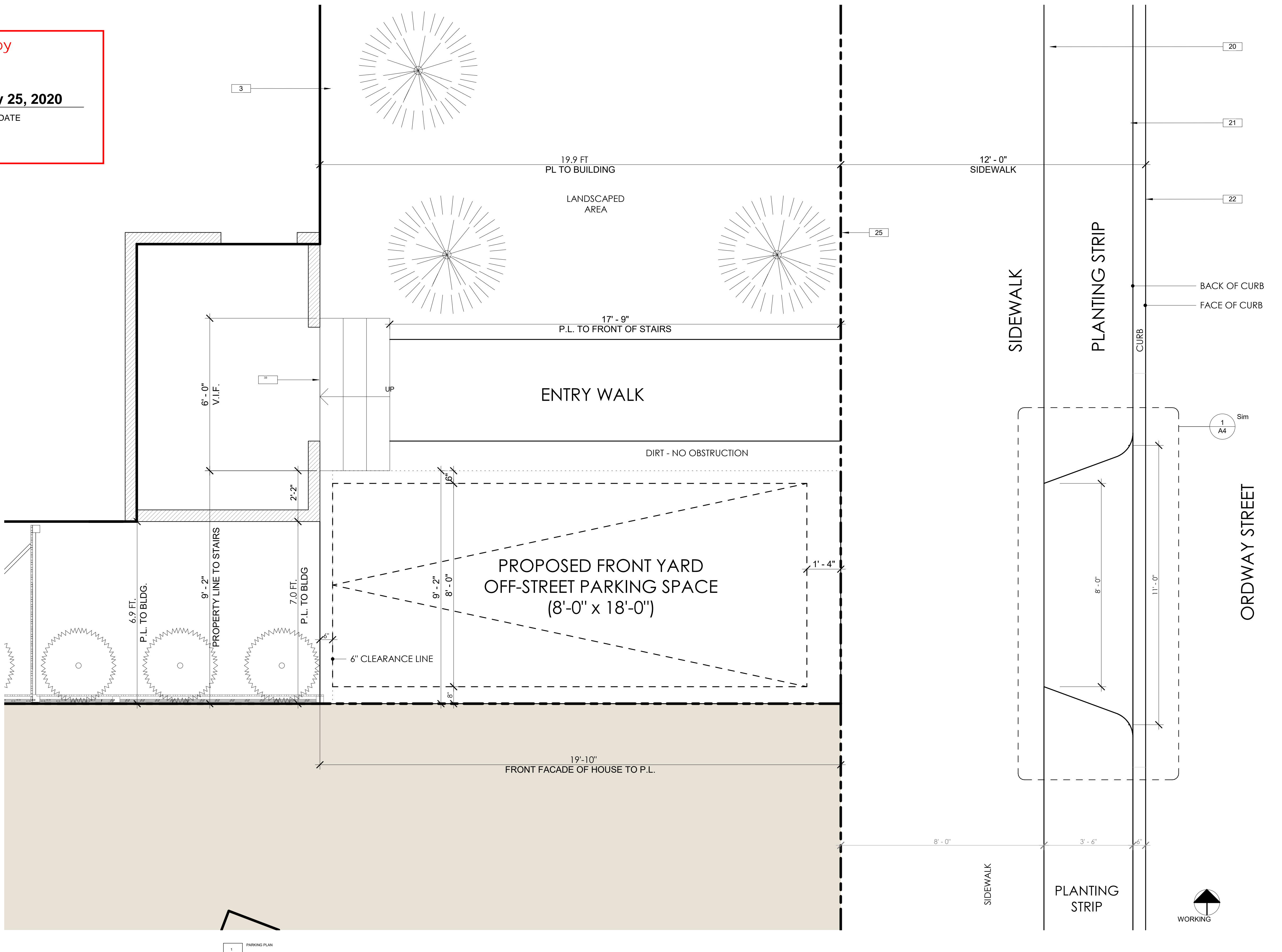
THE BASIC DESIGN PLANS, & DETAILS INDICATED OR REFERRED BY THIS DRAWING ARE OWNED BY & THE PROPERTY OF THE ARCHITECT AND ARE CREATED/DEVELOPED FOR USE IN CONNECTION WITH THE PROJECT ONLY. REUSE OF THE DRAWINGS FOR ANY OTHER PURPOSES IS NOT PERMITTED WITHOUT THE WRITTEN AUTHORIZATION OF THE ARCHITECT. PAPER SCALE: 1/2" = 1'-0"

PLANS APPROVED by


 SIGNATURE

February 25, 2020
 DATE

*AUP Findings and Conditions Attached



1 PARKING PLAN
1/2" = 1'-0"

Key Value	Keynote Text
3	FRONT SETBACK LINE
16	FIREPLACE
20	72" WIDE SIDEWALK
21	39" WIDE PLANTING STRIP
22	CURB AT STREET
25	PROPERTY LINE
33	FRONT ENTRY STEPS

TRADE CRAFT

TRADECRAFT
225 VISTA GRANDE, GREENBRAE, CA 94041

ARCHITECT PROJECT #: 18-009
ARCHITECT CONTACT INFORMATION:
NICHOLAS LEONE
415.272.3541
NBL@TRADECRAFTARCH.COM

CONSULTANT:

CLIENT:
Jennie Durant & Keki Burjorjee

1346 ORDWAY
1346 ORDWAY STREET
BERKELEY, CA 94702

REVISION HISTORY

Revision Number	Revision Description	Revision Date

STAMP:

ALL DRAWINGS AND WRITTEN MATERIAL APPEARING HEREIN CONSTITUTE ORIGINAL AND UNPUBLISHED WORK OF THE ARCHITECT AND MAY NOT BE DUPLICATED, USED, OR DISCLOSED WITHOUT WRITTEN CONSENT OF THE ARCHITECT. A SIGNATURE ON THE STAMP ABOVE CONSTITUTES THE ARCHITECT'S CONSENT FOR SUBMISSION OF PLANS FOR THE STATED PROJECT.

DRAWN BY: Author **CHECKED BY:** Checker
SCALE: 1/2" = 1'-0" **SHEET SIZE:** 24 x 36"
PUBLISH DATE: 12/03/2019
PRINT DATE/TIME: 12/3/2019 6:44:20 PM
SHEET NAME:

ENLARGED PARKING PLAN

A3

BUILDING FOOTPRINT: SEE "COVERAGE AREA"

COVERAGE AREA: ALL THE AREA OF A LOT, AS PROJECTED ON A HORIZONTAL PLANE, WHICH IS ENCLOSED BY THE EXTERIOR WALLS OF BUILDINGS OR ENCLOSED ACCESSORY STRUCTURES OR COVERED BY POLES, PORCHES, STAIRS AND/OR STAIRS, WHICH COVER AN ENCLOSED SPACE OR PAVED GROUND AREA. ALSO SEE SECTION 230.04(D).

230.04(M) LOT COVERAGE:
 A. THE CALCULATION OF AREA FOR LOT COVERAGE SHALL EXCLUDE UNCOVERED DECKS, PORCHES, LANDINGS AND STAIRS, EXCEPT THAT ANY DECK ON THE ROOF OF A BUILDING OR ACCESSORY STRUCTURE OR OVER ANY ENCLOSED SPACE OR PAVED GROUND AREA SHALL BE INCLUDED IN SUCH CALCULATION.
 B. THE AREA OF THE ROOF OF A GREENHOUSE STRUCTURE, WHEN SUCH STRUCTURE IS MORE THAN THREE FEET ABOVE FINISH GRADE, SHALL BE EXCLUDED FROM THE CALCULATION OF AREA FOR LOT COVERAGE.
 C. SOLAR ENERGY EQUIPMENT IN COMPLIANCE WITH THIS CHAPTER MAY EXCEED THE MAXIMUM COVERAGE AREA LIMIT.
 D. WHEELCHAIR RAMPS AND LIFTS IN COMPLIANCE WITH THIS CHAPTER MAY EXCEED THE MAXIMUM COVERAGE AREA LIMIT. (SEE NOTES 4 & 5 (PART) 1999)

FLOOR AREA GROSS: THE TOTAL GROSS HORIZONTAL AREAS OF ALL FLOORS OF A BUILDING OR ENCLOSED STRUCTURE, INCLUDING, BUT NOT LIMITED TO, USABLE BASEMENTS AND CELLARS, BELOW THE ROOF AND WHEN THE GROSS SURFACE OF THE MAIN WALLS OF PRINCIPAL OR ACCESSORY BUILDINGS OR THE CEILING OF PART OF WALLS SEPARATING SUCH BUILDINGS OR PORTIONS THEREOF OR WITHIN LIMIT DRAWN PARALLEL TO AND TWO (2) FEET WITHIN THE ROOF LINE OF ANY BUILDING OR PORTION THEREOF WHICH WALLS ARE MORE THAN IN THE CASE OF A MULTILEVEL BUILDING WHICH HAS COVERED OR ENCLOSED STAIRWELL, SHOWER, AND TOILET. SHALL BE INCLUDED. THE HORIZONTAL AREA OF SUCH FEATURES SHALL BE COUNTED ONLY ONCE AT THE FLOOR LEVEL OF THEIR GREATEST AREA OF FLOORING. PARKING AREAS SHALL BE EXCLUDED FROM SUCH FLOOR AREA. SHALL INCLUDE COVERED OR UNCOVERED AREAS USED FOR OFF-STREET PARKING SPACES OR LOADING SPACES AND DRIVEWAYS, RAMPS BETWEEN FLOORS OF A MULTILEVEL PARKING GARAGE AND WALKWAYS, AND AREAS RELATING THERETO, MECHANICAL, ELECTRICAL, AND TELEPHONE EQUIPMENT ROOMS BELOW FINISH GRADE, AND AREAS WHICH QUALIFY AS USABLE OPEN SPACE FOR NON-RESIDENTIAL USE. GROSS FLOOR AREA INCLUDES REAR ACCESSIBLE WALKWAYS OR CORRIDORS, OR INTERIOR COURTYARDS, WALKWAYS, PATIOS OR CORRIDORS COVERED BY A ROOF OR STRUCTURE BUT EXCLUDES ARCHWAYS, PORCHES AND SMALL OPEN AREAS WHICH ARE LOCATED AT OR NEAR STREET LEVEL, WHICH ARE ACCESSIBLE TO THE GENERAL PUBLIC AND WHICH ARE NOT DESIGNED OR USED AS SALES, DISPLAY, STORAGE, SERVICE OR PRODUCTION AREAS.

FLOOR AREA NET (FAR): THE QUOTIENT RESULTING FROM DIVISION OF THE GROSS FLOOR AREA OF ALL BUILDINGS ON A LOT BY THE AREA OF THE LOT. IN A SINGLE INTERESTED DEVELOPMENT OR CONVEYANCE, THE PERMITTED FLOOR AREA RATIO SHALL BE COMPUTED UPON THE BASIS OF THE TOTAL AREA OF ALL SUCH LOTS.

USABLE OPEN SPACE 230.04(O):
 THE AREA OF EACH LOT WHICH IS RESERVED FOR USABLE OPEN SPACE PURPOSES SHALL BE FOR ACTIVE OR PASSIVE RECREATION USE AND SHALL BE ACCESSIBLE TO THE OCCUPANTS OF THE BUILDING, UNLESS OTHERWISE SPECIFIED IN AN APPLICABLE ZONING ORDINANCE. ADDITIONAL SUCH AREAS SHALL MEET THE FOLLOWING CONDITIONS:
 A. NO AREA SHALL QUALIFY AS USABLE OPEN SPACE UNLESS IT HAS A MINIMUM WIDTH AND LENGTH OF TEN FEET, EXCEPT THAT NO BALCONY AREA MAY BE USED TO SATISFY A USABLE OPEN SPACE REQUIREMENT UNLESS IT HAS A MINIMUM WIDTH AND LENGTH OF SIX FEET AND HAS AT LEAST ONE EXTERIOR SIDE OPEN AND UNRESTRICTED EXCEPT FOR REQUIRED RAILINGS.
 B. NO MORE THAN TEN PERCENT OF THE TOTAL USABLE OPEN SPACE REQUIRED MAY BE SATISFIED BY BALCONIES.
 C. AN AREA WHICH IS ACCESSIBLE AND/OR USABLE ONLY BY THE OCCUPANTS OF A PARTICULAR DWELLING UNIT SHALL BE USED TO SATISFY THE USABLE OPEN SPACE REQUIREMENT ONLY FOR THAT PARTICULAR DWELLING UNIT.
 D. EXCEPT IN THE CASE OF BALCONIES, USABLE OPEN SPACE SHALL BE AT LEAST FIVE FEET OPEN TO THE SKY.
 E. NO AREA WHICH EXCEEDS SIX FEET SHALL QUALIFY AS USABLE OPEN SPACE.
 F. AT LEAST ONE PERCENT OF THE TOTAL AREA REQUIRED AS USABLE OPEN SPACE, EXCLUSIVE OF BALCONIES ABOVE THE FIRST FLOOR, SHALL BE A LANDSCAPED AREA FOR VISUALLY PENETRABLE USES, SUCH AS LANDSCAPED AREAS, SMALL RECREATION, AUTOMATIC IRRIGATION AND SHADING FACILITIES, ACCESSIBLE TO ASSURE HEALTHY GROWING CONDITIONS FOR PLANTS.
 G. ANY USABLE OPEN SPACE WHICH IS NOT PLANTED SHALL BE DEVELOPED TO ENCOURAGE OUTDOOR ACTIVE OR PASSIVE RECREATIONAL USE AND SHALL INCLUDE SUCH ELEMENTS AS DECKS, SPORTS COURTS, OUTDOOR SEATING, OR ORNAMENTAL PLANTING AND SHALL BE ACCESSIBLE TO THE OCCUPANTS OF THE BUILDING.
 H. AREAS OF THE LOT WHICH DO NOT QUALIFY AS USABLE OPEN SPACE AND WHICH ARE NOT DESIGNATED AS DRIVEWAYS, OFF-STREET PARKING SPACES OR REQUIRED WALKWAYS, SHALL BE REFINISHED AS LANDSCAPED AREAS.
 I. NO AREA DESIGNATED FOR OFF-STREET PARKING AND LOADING AREAS, SERVICE AREAS, DRIVEWAYS, REQUIRED WALKWAYS OR PORTIONS THEREOF OR AREAS WHICH ARE USED FOR REQUIRED ACCESS TO DWELLING UNITS, SHALL BE COUNTED AS SATISFYING ANY USABLE OPEN SPACE AREA REQUIREMENT. (ORD. 649 HAS A PART) 1999)

USABLE SPACE: ANY PORTION OF A BUILDING OR STRUCTURE WHICH IS DESIGNED TO BE OR CAN BE USED AS HABITABLE SPACE, WHICH HAS FINISHED WALLS (GYPSEUM BOARD OR PLASTER) AND CEILING HEATED WITH ANY FIXED FURNACE OR CENTRAL HEATING SYSTEM, INCLUDING BATHROOMS, HALLS, GARAGES AND HARBOR ROOMS. STORAGE AREAS WITH OVER SIX (6) FEET OF VERTICAL SPACE SHALL ALSO BE CONSIDERED USABLE SPACE.

PLANS APPROVED by

[Signature]
February 25, 2020

SIGNATURE DATE

*AUP Findings and Conditions Attached

DRIVEWAY WITH SEPARATED SIDEWALK
 W=DRIVEWAY WIDTH (SEPARATED SIDEWALK)

DRIVEWAY WITH MONOLITHIC SIDEWALK
 W=DRIVEWAY WIDTH (MONOLITHIC SIDEWALK)

TABLE OF DRIVEWAY DIMENSIONS

Dimension	Commercial & Industrial	Residential
Y	5' MIN	2' MIN
W	12' MIN	8' MIN

NOTES:
 1. REFER TO GENERAL NOTES FOR CONCRETE WORK.
 2. RESIDENTIAL DRIVEWAYS SHALL BE 6 INCHES THICK PORTLAND CEMENT CONCRETE (PCC). COMMERCIAL AND INDUSTRIAL DRIVEWAYS SHALL BE 6 INCHES THICK REINFORCED CONCRETE. REINFORCEMENT SHALL BE 6"x6" WELDED WIRE FABRIC, #10 GAUGE MESH OR #4 BARS AT 18 INCH O.C. EACH WAY. THE REQUIRED STRUCTURAL SECTION FOR ANY DRIVEWAY SHALL BE CONTINUOUS FROM THE CURB TO THE BACK OF SIDEWALK.
 3. DEPTH OF GUTTER FLOWS SHALL BE CALCULATED AND COMPARED TO PROPOSED SIDEWALK ELEVATIONS DURING DESIGN TO ENSURE GUTTER FLOWS ARE CONTAINED AND RUNOFF WITHIN THE PUBLIC RIGHT OF WAY DOES NOT DRAIN ONTO PRIVATE PROPERTY.
 4. RETAINING CURBS AND DRIVEWAY CONFORMS AS REQUIRED.
 5. FOR ADDITIONAL REQUIREMENTS, SEE PLAN B144, "CONCRETE WORK NOTES."

TRADE CRAFT
 225 VISTA GRANDE, GREENBRAE, CA 94904

ARCHITECT PROJECT #: 18-009

ARCHITECT CONTACT INFORMATION:
 NICHOLAS LEONE
 415.272.3541
 NBL@TRADECRAFTARCH.COM

CONSULTANT:
 Jerrine Durand & Kati Burdette

CLIENT:
 1346 ORDWAY
 1346 ORDWAY STREET
 BERKELEY, CA 94702

REVISION HISTORY

Revision Number	Revision Description	Revision Date

STAMP:

ALL DRAWINGS AND WRITTEN MATERIAL APPEARING HEREIN CONSTITUTE ORIGINAL AND UNPUBLISHED WORK OF THE ARCHITECT AND MAY NOT BE DUPLICATED, USED, OR DISCLOSED WITHOUT WRITTEN CONSENT OF THE ARCHITECT. A SIGNATURE ON THE STAMP ABOVE CONSTITUTES THE ARCHITECT'S CONSENT FOR SUBMISSION OF PLANS FOR THE STATED PROJECT.

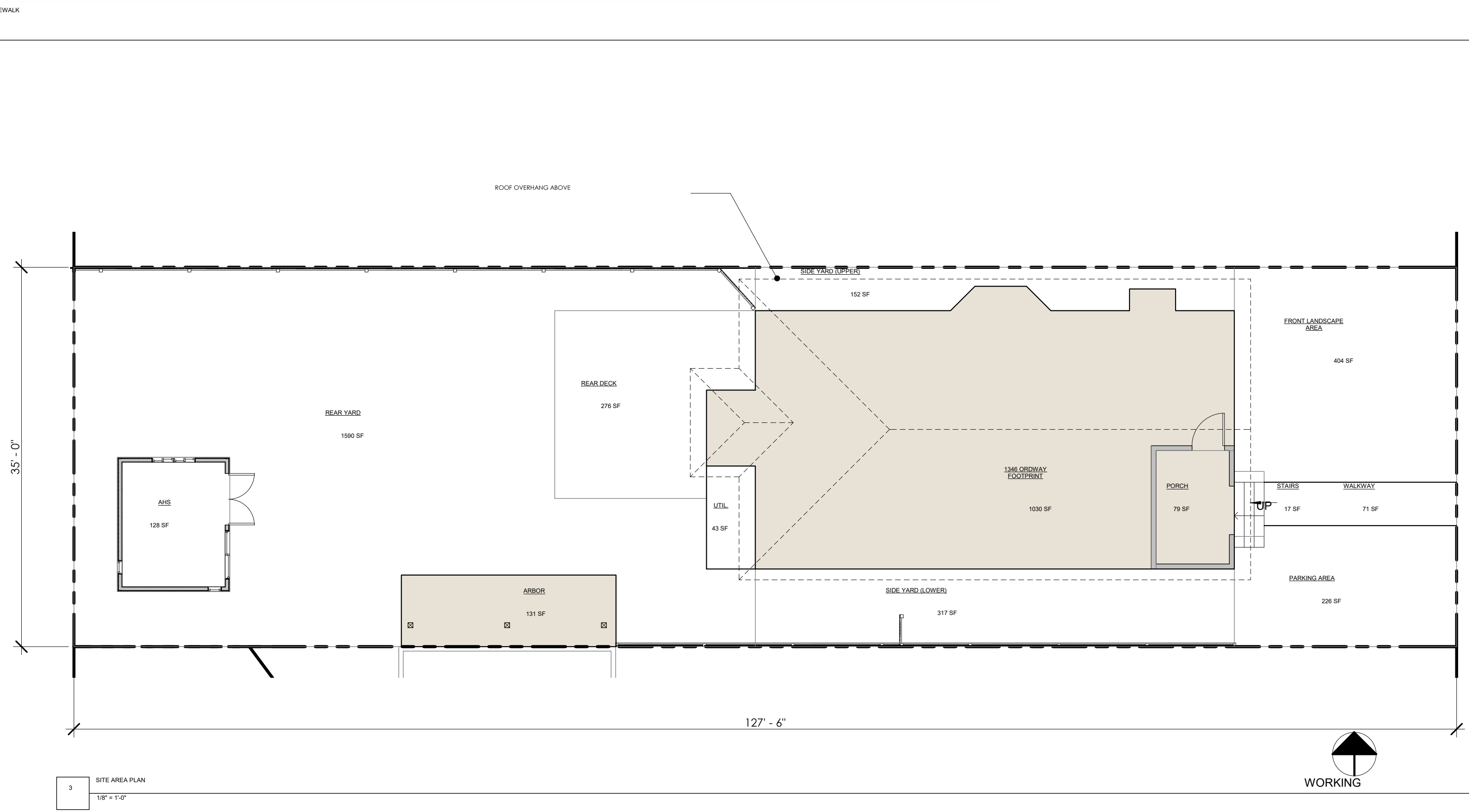
DRAWN BY: HEI **CHECKED BY:** MS
SCALE: N.T.S. **SHEET SIZE:** 24 x 36"
PUBLISH DATE: 01/26/17
PRINT DATE/TIME: 12/3/2019 6:44:21 PM
SHEET NAME: DETAILS & AREA CALCS
SHEET NUMBER: A4

1346 ORDWAY - AREA CALCULATIONS 11/27/2019

Lot Area (SF) **4,462.5**

Area Description	Area	(E) Gross Floor Area (GFA)	(P) Gross Floor Area (GFA)	(E) Building Footprint	(P) Building Footprint	(E) Lot Coverage	(P) Lot Coverage	Useable Open Space (UOS)	Landscaped UOS	FAR (GFA/Lot Area)
Accessory Habitable Space (Shed)	128		128		128		128			
Arbor/Trellis	131		NO		131		131			
Rear Deck	276							276		
Home Footprint (Exclude Porch)	1,030	1,030	1,030	1,030	1,030	1,030	1,030			
Porch	79	79	79	79	79	79	79			
Utility Closet	43	43		43		43	43			
Side Yard (Upper)	152								404	
Front Landscape Area	404								404	
Lower Side Yard	317									
Walkway	71									
Stairs	17									
Parking Area	226									
Rear Yard (Less Arbor & Deck & AHS)	1,590							1,590	1,590	
SUBTOTAL*	4,464	1,152	1,280	1,152	1,411	1,152	1,411	2,270	1,994	29%
Percentage		26%	29%	26%	32%	26%	32%	51%	88%	

May be subject to 1-2 SF discrepancy due to rounding.



Lawrence Hickman

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E-Mail: lpacificquest@aol.com

**LETTER OF APPEAL
TO
CITY COUNCIL OF BERKELEY, CALIFORNIA**

June 29, 2020

The City Clerk
City of Berkeley
2180 Milvia Street, 1st Floor
Berkeley, California 94704

RE: ZONING ADJUSTMENTS BOARD DECISION: AUP #ZP2018-0174 -1346 ORDWAY STREET

Dear Mayor and Council President Arreguin and Berkeley's Honorable Councilmembers

I, Lawrence Hickman ("Appellant"), do hereby Appeal Berkeley's Zoning Adjustments Board's decision on the above referenced Administrative Use Permit (AUP), in favor of Jennie and Keki Burjorjee ("Applicants").

This Appeal is filed on grounds the Zoning Adjustment Board's quasi-judicial hearing denied Appellant due process, in that there was no meaningful hearing. There was no discussion of the legal authority, the evidence in the record; and, Appellant was denied any opportunity to respond to and/or rebut evidence. In sum, the hearing was unfair and prejudicial. The result of the hearing is unjust, and totally untethered from the spirit of the City of Berkeley's Municipal Code or the fair administration of justice.

I. STATEMENT OF THE CASE

On February 25, 2020, Zoning Officer Nilourfar Karimzadegan noticed Appellant the above referenced Administrative Use Permit No. ZP20180174 is approved; information was provided setting forth appeal rights.

On March 17, 2020, Appeal was filed by Appellant.

On May 20, 2020, Appellant was noticed of the Hearing date for June, 11, 2020.

On June 11, 2020, the Zoning Adjustment Board conducted a hearing on the matter, and therein denied Appellant's Appeal.

II. STATEMENT OF FACTS

On June 11, 2020, the Zoning Adjustment Board denied Appellant's Appeal, which was filed on March 7, 2020. The facts which presented to the Zoning Adjustment Board are attached hereto as Exhibit A, and

incorporated by reference herein as though set forth at length. These facts should be considered in their entirety to prevent duplicity and wasting time.

The new facts giving rise to this Appeal come from the meaningless aforementioned hearing on June 11, 2020, wherein Appellant was confronted with an unfair and biased process, with testimony and comments not germane to the issues before the tribunal.

For example, there was no discussion as to why the zoning officer withheld the fact that tree and hedges are a fence; no attempt was made to confirm the true property line, on information and belief Appellant asserts that his property line extends further to the North than shown – thus **Applicants’ construction may actually be on Appellant’s property**; there was no discussion from zoning department as to why Applicant were not required to follow Code Enforcement’s instruction to take down the construction until the AUP application had been approved; no basis was given as to why Zoning did **NOT** conduct a site visit, since Appellant complained that Applicants’ trees, hedges, bushes were growing into the fence and vines from the trellis are growing over the top the garage. The questions raised, by the Board Members, beg the question whether Appellant’s Appeal was fully read and considered. Suffice the Zoning Adjustments Board did not carefully examine the applicable Municipal Codes and prevailing law to reach a correct and equitable result.

For the reasons that follow, Appellant submits that the result reached by the Zoning Adjustments Board constitutes a denial of due process and is inconsistent with Berkeley’s Municipal Code, and was **NOT** carefully tailored to achieve a manifestly just resolution in the context of the circumstances before the Zoning Adjustment Board. It should therefore be reversed or remanded.

III. STANDARD OF REVIEW

The sole question now before this Council is whether the Zoning Adjustments Board’s quasi-judicial proceeding constituted denial of due process, contrary to established law and the fair administration of justice

Quasi-judicial proceedings must follow basic standards of due process, including: 1) Proper notice of the hearing; 2) Providing everyone with an interest in the proceedings an opportunity to be heard and to hear what others have to say; 3) Full disclosure to everyone of the facts being considered by the decision-making body (i.e., no ex parte contacts); 4) An impartial decision-maker free from bias and conflicts of interest; 5) Decisions based on the facts of the case, not on political pressure or vocal opposition.

1. **Proper Notice of Hearing**

Proper notice is not at issue in this matter. Appellant admits to receiving adequate and timely notice.

2. **Opportunity To Be Heard And Hear What Other Have To Say**

A person facing possible deprivation of a recognized interest has a right to defend herself and present her side of the dispute to the body or hearing officer that will be making the decision. (The “fundamental requisite of due process of law is the opportunity to be heard.” *People v. Swink, supra*, 150 Cal.App.3d at 1080.) The

ability to bring evidence and to respond to evidence presented against her, are essential features of this comprehensive right.

Appellant was denied any opportunity to respond to the evidence and/or inconsistent statements presented against him. Appellant addressed the tribunal first via telephone over an internet Zoom Meeting platform. He was allowed to speak for five minutes and his phone line was muted when the five minutes expired. Several times Appellant wanted to respond to erroneous testimony or comment the true state of the property; however, his phone line was muted.

In conclusion, Appellant was denied a real opportunity to be heard; he was denied a right to respond.

3. A Fair Tribunal – Full Disclosure of The Facts Being Considered

“When ... an administrative agency conducts adjudicative proceedings, the constitutional guarantee of due process of law requires a fair tribunal.” *Morongo*, 45 Cal.4th at 737 citing *Withrow v. Larkin* (1975) 421 US 35, 46. “A fair tribunal is one in which the judge or other decision maker is free of bias for or against a party.” (*Id.*)

The hearing was an unfair and biased process. It appears the City’s zoning officer was prejudice toward the Appellant and she gave favor to Applicant. The zoning officer failed to inform the Appellant or the Board that she had multiple *Exparte* communication with the Applicant. The decision makers’ ultimate decision was an extension of the zoning officers’ recommendation to approve the AUP. The zoning officer failed to fully inform the Board that the non-conforming conditions being applied for were already illegally constructed and presently existing as non-conforming conditions affecting Appellant’s property rights.

Furthermore, the zoning officer failed to fully inform the Board of the City’s Code Enforcement Unit’s Notice of Violation and Administrative Warning issued to Applicants for failure to comply with their and order to reduce the size of the fence (trees) to six (6) feet; as a matter of fact, until prodded, the zoning officer did not disclose the fact, that the BMC, considers trees, hedges and bushes planted in a row to be a fence,

In conclusion, the adjudicative process conducted by the Zoning Adjustment Board was unfair and biased.

4. A Fair Decision - Free From Bias and Conflicts of Interest

“Procedural fairness requires internal separation between advocates and decision makers to preserve neutrality.” *Morongo*, 45 Cal.4th at 737. For a quasi-judicial decision to be fair, the hearing must be conducted by a fair decision making body. “A fair tribunal is one in which the judge or other decision maker is free of bias for or against a party.” *Withrow v. Larkin*, 421 US at 46.

As set forth in #3 above, and incorporated by reference herein as though set forth at length, there appears to be no internal separation between the zoning officer’s advocacy and recommendation and the Zoning Adjustments Board’s decision in support of that recommendation. However, the problem that is the Board’s decision arises from the zoning officer’s lack of neutrality.

In conclusion, the Board's decision not free from bias because of its zoning officer's apparent conflict of interest.

5. Decision Based On Facts Of The Case Not On Political Pressure Or Vocal Opposition

Findings must be relevant to adopted, applicable criteria in statutes or policies. See, e.g. *J.L. Thomas, Inc. v County of Los Angeles (1991) 232 Cal.App.3d 916* (finding adopted by planning commission to support denial of a use permit). Under CCP §1094.5, courts are generally deferential to agencies' decisions under the substantial evidence test; however, courts will invalidate an agency's decision if the agency fails to make required findings or fails to demonstrate the analytical route between the evidence and the action. *West Chandler Blvd. Neighborhood Ass'n v. City of Los Angeles (2011) 198 Cal.App.4th 1506*.

Here, Appellant filed a Notice of Opposition, complaining that Applicants have constructed non-conforming conditions at his property's edge, or on his property, causing diminution of value and quiet enjoyment. The City's Code Enforcement Unit conducted site visit and confirmed Appellant's complaint ... the non-conforming conditions have been illegally constructed and do exist on Applicants property in violation of the BMC. Applicant was issued Notice of Violation, Administrative Warning Citation, and Order to remove or correct the illegal non-conforming conditions

Yet, the City's zoning officer over the objection of its Code Enforcement Unit, or perhaps, in collaboration with, approves Applicant's AUP ... rewarding Applicants for years of illegal conduct. On the other hand, Appellant, a law abiding citizen, is ignored and left without remedy.

In this instant, the zoning officer, and by extension the Zoning Adjustments Board failed to present any rational explanation or demonstrate a rational basis for this unjust result.

IV. CONCLUSION

For the foregoing reasons, Appellant submits that the result reached by the Zoning Adjustments Board is contrary to laws governing due process and inconsistent with Berkeley's Municipal Code, and was **NOT** carefully tailored to achieve a manifestly just resolution in the context of the circumstances before the Zoning Adjustment Board. It should therefore be reversed or remanded.

Dated: June 29, 2020

Respectfully submitted,



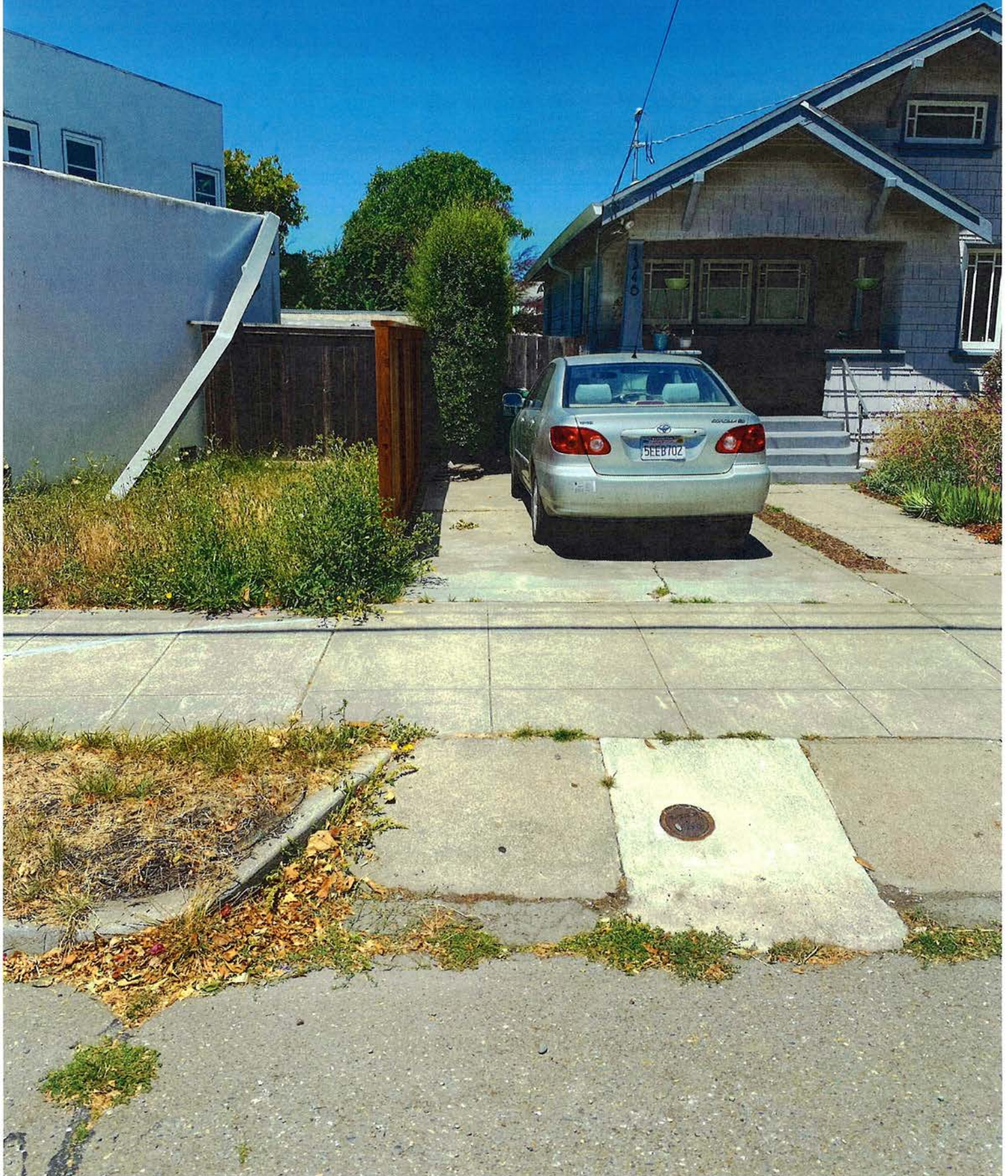
Lawrence Hickman

EXHIBIT A

EXHIBIT A
STATEMENT OF FACTS

EXHIBIT A





STATEMENT OF FACTS

Since 1990 Appellant has peacefully owned the property located at 1333 and 1346 Hopkins Street. In 2005, the Appellant consulted the City of Berkeley, and with the consent of the prior owner of the 1346 Ordway Street property, legally constructed a 6' fence along the property line of 1333 Hopkins Street.

In 2015, Applicants purchased the subject property at 1346 Ordway Street, Berkeley, California.

In, or around, 2017, Applicants approached Appellant attempting to discuss their (Applicants') intent to add a 4' lattice of top of Appellant's fence. Appellant informed Applicants that he (Appellant) had no interest in adding anything to the top of the fence.

About 2018, Applicants planted a row of tall tree along the entire South border of Appellant's property line, except the area where the garage sits on the property line – approximately 3" from Appellant's property line.

Next, Applicant (Keki Burjorjee) came onto Appellant's property, using profanity and in a threatening tone and manner, attempting to discuss adding the 4' lattice to the fence, or adding lattice to the tall 4 x 4s that had been placed in the ground. Appellant told Applicant that he had no interest in discussing his property improvements; and, advised him to direct his concerns to the City of Berkeley's Planning and Land Use Division.

The next day, Appellant noticed and approached a workman (carpenter) in the Applicants' yard, setting tall post up against his fence. Appellant approached the workman and inquired "do you have a permit to build a fence over 6' tall?" Workman came over into Appellant driveway and began to argue for consent to continue building. Appellant told the workman only the City of Berkeley can grant you a permit to build the fence over 6' tall.

Appellant told Applicants' workman, "Let's call the City's Code Enforcement Unit right now." Appellant, in fact, called Code Enforcement shortly thereafter.

On May 10, 2018, the City of Berkeley's Code Enforcement Inspector, Tim Kittor, conducted a brief site visit at the 1346 Ordway Street property. As a result of Inspector Kittor's finding, he issued a Notice of Violation (NOV) Case #397755 – both noticing and warning Applicants of unpermitted and non-conforming conditions on their property. As a matter of fact, Inspector Kittor instructed Applicants to reduce the size of the trees to 6' tall. (See Exhibit A – NOV)

On September 7, 2018, Applicants submitted an application for an Administrative Use Permit (AUP) ZP2018-0174 to: 1) install a two foot (2') lattice on top of Appellant's six feet (6') fence; and, 2) plant fifteen (15), approximately 14' trees alongside – the full length – of the subject fence and property line; the application was for conditions they had already created and constructed.

On September 19, 2018, the City of Berkeley's Planning Dept. Technician, Nilu Karimzadegan, via letter, acknowledged receipt of the aforementioned AUP application, and advised Applicants she would be processing the application in due course.

On September 20, 2018, Appellant filed a letter serving Notice of Opposition (NOO) to Applicants' proposed plans, as set forth in the AUP application under consideration by the Planning Department. It should be noted that Appellant's Letter of Opposition was not included in Applicants' application package. Equally important, Appellant's NOO letter informed the Planning Department of the fact the AUP application omitted the fact that the trees Applicants requested to plant were already planted without permit, along with other non-conforming conditions, e.g., the trees were planted 3" from the subject fence - within 2' of the property line. In short, it was Appellant's complaint to Code Enforcement that spurred Applicants' impetus to apply for the AUP – otherwise, the subject non-conforming unpermitted conditions would have likely continued unabated. This conclusion is reasonable in view of the fact that the architectural drawing submitted with the original application failed to show certain non-conforming and unpermitted conditions; conditions that would have gone unnoticed but for Appellant's bringing omitted matters to the attention of the City Planner. (See Exhibit B – NOO)

On October 5, 2018, the City's Planning Department issued a letter requesting and setting forth requirements necessary to proceed with the AUP application. The letter speaks to permit requests that were not mentioned in the initial AUP application. For example, the letter addresses 1) proposed parking space on site plan, trellis, tree trunks crowns, and sheds. It appears another AUP application, or an updated version, was submitted after the September 7, 2018 AUP application. These aforementioned matters appear to have been intentionally omitted in the original application.

However, on December 3, 2018, Applicants completed and submitted the City's required Tabulation Form (showing the property's existing status and what conditions were non-conforming/unpermitted and requiring permits), was submitted back to the Planning Department, evidencing that the required Southside yard setback is 7'-2" and a parking space requires a permit.

On February 8, 2019, the City responded to Applicants' revised AUP application materials. Therein the City requested additional information to complete Applicants' application requests.

Specifically, the letter noted that "because the application is a result of NOV and it also includes an unpermitted accessory building and an unpermitted trellis. Moreover, the letter appears to request information and details on non-conforming and unpermitted conditions omitted in the initial AUP application. (See Exhibit C – Re-submittal/Revised Application)

July 2, 2019, the City informed Applicants "after reviewing the submitted materials, staff has determined that the existing off-street parking space is not accessible and there is no other feasible location for parking on the parcel ... all paved areas for off-street parking spaces, driveway and any other vehicle-related paving must be removed as a condition of approval of this permit." Hence, revised plans were required showing the changes regarding parking were to be submitted to continue processing the AUP application. Applicants were invoiced an additional \$1600.00 additional AUP permits (AUP080). (See Exhibit D – No off-street parking determination)

On July 16, 2019, 2:02 p.m. Applicant (Jennie Durant) emailed Peter Chun, at the City's Transportation – Public Works Department regarding off-street parking. Applicant was seeking an answer as to whether she could apply for an AUP for her front yard parking space, with only a 6'-9" wide driveway – from house to property line. It was previously determined that Applicant has no legal parking space on the 1346 Ordway Street property. At 3:02 p.m., Nilu, the Applicants' City Planner emailed Peter, with a CC to Jennie stating "to clarify, after the review of this application with the zoning officer, it is determined that this [1346 Ordway Street] property has no legal [off-street] parking." Further Nilu stated "Jennie ... there is a Zoning determination as well and a Traffic Engineer review of the application. The off-street parking space in the front setback will not accommodate the 2' landscaping strip which requires a variance."

On July 17, 2019, at 10:22 a.m., Traffic Engineer, Peter Chun emailed Nilu, with a CC to Jennie, stating "my recommendation would be to restore the original parking space or remove the driveway and restore on street parking as Planning has recommended ... I generally support the setback requirements (or parking space restriction) and therefore favor the removal of driveways and restoration of the curb, sidewalk, and on street parking if you choose not to re-establish the rear parking. (See Exhibit E – Recommendation to remove driveway)

On July 17, 2019, at 12:09 p.m., Nilu emailed Applicant (Jennie), with CC to Peter Chun stating "I also discussed options regarding this project with the Zoning Officer this morning. It seems like you

have three options: 1) Restore site to its original state – remove all unpermitted accessory building, shed, trellis, hedge and fence; 2) Staff will recommend approval of AUP application, with Conditions of Approval (COA) – remove curb cut and parking; or, 3) You can apply for (a) an AUP for a front yard off-street parking space; and (b) a Variance – there is not enough space to provide the 2' landscaping strip.

On August 27, 2019, at 11:11 a.m., Nilu emailed Applicants, with CC to Code Enforcement Office, Wanda Drouillard. Therein, Nilu set forth: 1) Required Fees for AUP and penalties; 2) Required revisions on Site Plan; 3) Variance statement requirements – **“staff can recommend a Variance only if there are no other option available on the site ... in your case, there is the option of relocating the stairs to create room for the 2' landscaping strip.”** and, 4) Code Enforcement will follow up regarding deadlines.

September 10, 2019, the City's Code Enforcement Unit issued an Administrative Citation Warning (ACW), wherein Applicants were reminded the NOV, issued May 10, 2018 – requiring correction of violation on the subject property; the Citation Warning for outstanding violations the Berkeley Municipal Code (BMC), issued August 30, 2018. Pursuant to NOV and ACW, Applicant was required to reduce the height of the hedges that exceed 6', without a permit. Code Enforcement further reminded Applicant that their plans submitted on September 2018 for a Variance on the hedges were additionally unpermitted construction (accessory building and trellis – identified by the Planning Department and, as of Sept 9, 2019, the violations remain; and, Applicants have failed to comply with Planning Department's deadlines for submitting corrections regarding plan check requested via letter and email. (See Exhibit F – AWC)

Since the project is associated with a Code Enforcement case, specified deadlines are enforced and take precedent over any timelines related to the permit process. In sum, Applicant were Ordered to comply with certain deadlines, and were put on Notice that, **“in light of the history of non-compliance on the property,”** further failures to timely comply would, as of September 25, 2019, result in Citation penalties.

On September 17, 2019, Applicants submitted a Variance Statement, because City had determined the 1346 Ordway Street property does not have a legal parking space. Applicants acknowledge they have an option to achieve off-street parking – in the setback area of their front yard - other than being granted the requested Variance. Nevertheless, Applicants persist in asking the City to take the extraordinary step of granting a special exception Variance, although to do so

would violate the City's rules - present policy, practice and procedure - "staff can only recommend a Variance if there is no other option available on the site." Applicants' argument the City should make a special exception for them and waive or reduce the 2' landscaping requirement to accommodate their desire to save money - eliminate their cost/expense associated with adjusting their front steps and rebuilding the curb cut accordingly. Also, they claim Applicant (Jennie Durant) has a "temporary handicapped" placard, giving rise to the question of whether her temporary condition requires an exceptional Variance granting off-street parking on a property deemed to have no legal parking space.

In sum, Applicants responded to the City's requirement for Variance follows: 1) the need for exceptional or extraordinary circumstance is met because Jennie Durant has a "temporary handicapped" placard; 2) necessary for preservation and enjoyment of substantial property rights: here Applicant assert a parking space is necessary for the enjoyment and full use of home; 3) does the use materially impact health, safety, public welfare, injurious to property or improvement – generally benefit the City: answer is non-responsive –

Applicants merely states, "we are simply requesting that our current parking space be allowed to remain where it is." Granting the variance would reduce environmental waste associated with remodeling stairs and curb cuts.

On November 5, 2019, the Planning Departments Tabulation Form appears re-submitted, including sizes, dimension, existing and permitted required details, including: 1) Units, Parking spaces, and bedrooms; 2) yards, heights and setbacks; Areas – building, lot, usable space, etc.; 3) Arbor specifics – setbacks and area; 4) Accessory habitable space specifics; Area calculations; and, 5) Plat survey map.

On November 19, 2019, the City Planning Department communicated its need for clarity for the Zoning Office. Noted there is the fact that the application say 15 [trees] hedges, but the site plan only show twelve. Also, on November 19, 2020, Applicants submitted an update/revised Variance Request. Therein, Applicant set forth a quasi-promise, if the Variance is granted – "we would install/build a green, ecologically friendly and attractive parking spot."

On November 20, 2020, Applicant sent email to Nilu, with updated Tabulation Form and Updated Variance Request.

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The NOD reads as follows:

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

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- **Administrative Use Permit, under BMC Section 23D.08.020.A to construct a habitable accessory building that is over 10 ft. in average height within 4 ft. of the property line:**
- **Administrative Use Permit, under BMC Section 23D.08.020.B to construct a habitable accessory building that is over 12 ft. in average height within 4 to 10 ft. of the property line; and**
- **Administrative Use Permits, under BMC Section 23D.08.060.A2 for construction of accessory structures.**

BMC § 23B.52.010, in pertinent part, provides for reasonable accommodation by modifying the application of its zoning and subdivision regulations for persons with disabilities seeking fair access to housing, pursuant to the American with Disabilities Act and California Fair Housing and Employment Act. In determining whether a requested modification of zoning or subdivision regulations is reasonable, the City will consider, among other relevant factors, the extent to which the requested modification might be in conflict with the legitimate purposes of its existing zoning or subdivision regulations. The finding for Issuance, Denial and/or Conditions follows:

- A. The Zoning Officer may issue an AUP, either as submitted or as modified, only upon finding that establishment, maintenance or operation of the use, or the construction of a building, structure or addition thereto, under the circumstances of the particular case existing at the time at which the application is granted, will not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.
- B. Prior to issuing any AUP, the Zoning Officer must also make any other findings required by either the general or District regulations applicable to that particular AUP.
- C. The Zoning Officer shall deny an application for an AUP if he/she determines that he/she is unable to make any of the required findings, in which case he/she shall state the reasons for that determination.
- D. The Zoning Officer may attach such conditions to an AUP as he/she deems reasonable or necessary to achieve the purposes of this Ordinance, and which otherwise promote the municipal health, safety and welfare. (Ord. 6478-NS § 4 (part), 1999)

EXHIBIT B

EXHIBIT B
ZONING ADJUSTMENTS BOARD
APPEAL DOCUMENTS

EXHIBIT B

Lawrence Hickman

1333 Hopkins Street
Berkeley, CA 94702
Phone: (510) 467-4250
E-Mail: lpacificquest@aol.com

APPEAL LETTER

March 16, 2020

Igor Tregub, Chairperson
City of Berkeley
Land Use Planning Division
Attn: Zoning Adjustments Board Members
1947 Center Street
Berkeley, CA 94704

**RE: APPEAL- AUP #ZP2018-0174 FOR 1346 ORDWAY STREET; AND
REQUEST ZONING ADJUSTMENTS BOARD PUBLIC HEARING**

Dear Chair Tregub and Board Members:

I, Lawrence Hickman (“Appellant”), do hereby Appeal the City of Berkeley Zoning Officer’s Findings and Approvals of the above referenced Administrative Use Permit (AUP); and, I request a Public Hearing before the Zoning Adjustments Board on this matter. This Appeal is filed on the grounds the Zoning Officer’s Findings and Approvals are unsupported by evidence in the record and inconsistent with the administration of fair and equitable justice, as required by the City of Berkeley Municipal Code (BMC). Moreover, the Zoning Officer appears to ignore the need to recognize the importance of sustaining and maintaining harmony among longtime home owners. The proposed Conditions are inadequate to protect Appellant unreasonable diminution of property value.

INTRODUCTION

This matter arises out of a real property dispute between neighbors. For over twenty-nine years Appellant has owned the large parcel of real property located at the corners of Hopkins and Ordway Streets, also known as, 1333 Hopkins Street, Berkeley, California. For over twenty-five of those years, Appellant experienced quiet enjoyment of ownership with his previous neighbor, Ms. Taylor, owner of the smaller parcel next door at 1346 Ordway Street without incident. Shortly after Ms. Taylor’s death, her property was sold to Jennie Durant and Keki Burjorjee (“Applicants”) and they began engaging in illegal outdoor construction projects; projects that were unpermitted and non-conforming, all violations of the Berkeley Municipal Code (BMC). The illegal projects infringed upon Appellant’s property rights. Moreover, the Applicants continued to initiate and maintain unpermitted conditions even after being notified and warned about some of their illegal construction.

So now, in the form of an application for an Administrative Use Permit, Applicants are seeking forgiveness, permissions, approvals and the legal right to keep and maintain all of the unpermitted, non-conforming and illegal construction projects. The forgiveness, permissions, approvals and legal rights being sought by these outlaws appear to be on the verge of being granted, despite Appellant's Notice of Opposition (NOO), City of Berkeley's Code Enforcement Notice of Violation (NOV), Administrative Citation Warning (ACW) and Order for non-compliance, and their continued infringement on the quiet enjoyment and health and safety of the community at large.

Based upon the foregoing, facts set forth herein, other documents and statements on file, and statements during oral arguments before the Board, Appellant ask this Board to uphold the BMC and affirm this Appeal.

STATEMENT OF FACTS

Since 1990 Appellant has peacefully owned the property located at 1333 and 1346 Hopkins Street. In 2005, the Appellant consulted the City of Berkeley, and with the consent of the prior owner of the 1346 Ordway Street property, legally constructed a 6' fence along the property line of 1333 Hopkins Street.

In 2015, Applicants purchased the subject property at 1346 Ordway Street, Berkeley, California.

In, or around, 2017, Applicants approached Appellant attempting to discuss their (Applicants') intent to add a 4' lattice of top of Appellant's fence. Appellant informed Applicants that he (Appellant) had no interest in adding anything to the top of the fence.

About 2018, Applicants planted a row of tall tree along the entire South border of Appellant's property line, except the area where the garage sits on the property line – approximately 3" from Appellant's property line.

Next, Applicant (Keki Burjorjee) came onto Appellant's property, using profanity and in a threatening tone and manner, attempting to discuss adding the 4' lattice to the fence, or adding lattice to the tall 4 x 4s that had been placed in the ground. Appellant told Applicant that he had no interest in discussing his property improvements; and, advised him to direct his concerns to the City of Berkeley's Planning and Land Use Division.

The next day, Appellant noticed and approached a workman (carpenter) in the Applicants' yard, setting tall post up against his fence. Appellant approached the workman and inquired "do you have a permit to build a fence over 6' tall?" Workman came over into Appellant driveway and began to argue for consent to continue building. Appellant told the workman only the City of Berkeley can grant you a permit to build the fence over 6' tall.

Appellant told Applicants' workman, "Let's call the City's Code Enforcement Unit right now." Appellant, in fact, called Code Enforcement shortly thereafter.

On May 10, 2018, the City of Berkeley's Code Enforcement Inspector, Tim Kittor, conducted a brief site visit at the 1346 Ordway Street property. As a result of Inspector Kittor's finding, he issued a Notice of Violation (NOV) Case #397755 – both noticing and warning Applicants of unpermitted and non-conforming conditions on their property. As a matter of fact, Inspector Kittor instructed Applicants to reduce the size of the trees to 6' tall. (See Exhibit A – NOV)

On September 7, 2018, Applicants submitted an application for an Administrative Use Permit (AUP) ZP2018-0174 to: 1) install a two foot (2') lattice on top of Appellant's six feet (6') fence; and, 2) plant fifteen (15), approximately 14' trees alongside – the full length – of the subject fence and property line; the application was for conditions they had already created and constructed.

On September 19, 2018, the City of Berkeley's Planning Dept. Technician, Nilu Karimzadegan, via letter, acknowledged receipt of the aforementioned AUP application, and advised Applicants she would be processing the application in due course.

On September 20, 2018, Appellant filed a letter serving Notice of Opposition (NOO) to Applicants' proposed plans, as set forth in the AUP application under consideration by the Planning Department. It should be noted that Appellant's Letter of Opposition was not included in Applicants' application package. Equally important, Appellant's NOO letter informed the Planning Department of the fact the AUP application omitted the fact that the trees Applicants requested to plant were already planted without permit, along with other non-conforming conditions, e.g., the trees were planted 3" from the subject fence - within 2' of the property line. In short, it was Appellant's complaint to Code Enforcement that spurred Applicants' impetus to apply for the AUP – otherwise, the subject non-conforming unpermitted conditions would have likely continued unabated. This conclusion is reasonable in view of the fact that the architectural drawing submitted with the original application failed to show certain non-conforming and unpermitted conditions; conditions that would have gone unnoticed but for Appellant's bringing omitted matters to the attention of the City Planner. (See Exhibit B – NOO) ,

On October 5, 2018, the City's Planning Department issued a letter requesting and setting forth requirements necessary to proceed with the AUP application. The letter speaks to permit requests that were not mentioned in the initial AUP application. For example, the letter addresses 1) proposed parking space on site plan, trellis, tree trunks crowns, and sheds. It appears another AUP application, or an updated version, was submitted after the September 7, 2018 AUP application. These aforementioned matters appear to have been intentionally omitted in the original application.

However, on December 3, 2018, Applicants completed and submitted the City's required Tabulation Form (showing the property's existing status and what conditions were non-conforming/unpermitted and requiring permits), was submitted back to the Planning Department, evidencing that the required Southside yard setback is 7'-2" and a parking space requires a permit.

On February 8, 2019, the City responded to Applicants' revised AUP application materials. Therein the City requested additional information to complete Applicants' application requests.

Specifically, the letter noted that "because the application is a result of NOV and it also includes an unpermitted accessory building and an unpermitted trellis. Moreover, the letter appears to request information and details on non-conforming and unpermitted conditions omitted in the initial AUP application. (See Exhibit C – Re-submittal/Revised Application)

July 2, 2019, the City informed Applicants "after reviewing the submitted materials, staff has determined that the existing off-street parking space is not accessible and there is no other feasible location for parking on the parcel ... all paved areas for off-street parking spaces, driveway and any other vehicle-related paving must be removed as a condition of approval of this permit." Hence, revised plans were required showing the changes regarding parking were to be submitted to continue processing the AUP application. Applicants were invoiced an additional \$1600.00 additional AUP permits (AUP080). (See Exhibit D – No off-street parking determination)

On July 16, 2019, 2:02 p.m. Applicant (Jennie Durant) emailed Peter Chun, at the City's Transportation – Public Works Department regarding off-street parking. Applicant was seeking an answer as to whether she could apply for an AUP for her front yard parking space, with only a 6'-9" wide driveway – from house to property line. It was previously determined that Applicant has no legal parking space on the 1346 Ordway Street property. At 3:02 p.m., Nilu, the Applicants' City Planner emailed Peter, with a CC to Jennie stating "to clarify, after the review of this application with the zoning officer, it is determined that this [1346 Ordway Street] property has no legal [off-street] parking." Further Nilu stated "Jennie ... there is a Zoning determination as well and a Traffic Engineer review of the application. The off-street parking space in the front setback will not accommodate the 2' landscaping strip which requires a variance."

On July 17, 2019, at 10:22 a.m., Traffic Engineer, Peter Chun emailed Nilu, with a CC to Jennie, stating "my recommendation would be to restore the original parking space or remove the driveway and restore on street parking as Planning has recommended ... I generally support the setback requirements (or parking space restriction) and therefore favor the removal of driveways and restoration of the curb, sidewalk, and on street parking if you choose not to re-establish the rear parking. (See Exhibit E – Recommendation to remove driveway)

On July 17, 2019, at 12:09 p.m., Nilu emailed Applicant (Jennie), with CC to Peter Chun stating "I also discussed options regarding this project with the Zoning Officer this morning. It seems like you have three options: 1) Restore site to its original state – remove all unpermitted accessory building, shed, trellis, hedge and fence; 2) Staff will recommend approval of AUP application, with Conditions of Approval (COA) – remove curb cut and parking; or, 3) You can apply for (a) an AUP for a front yard off-street parking space; and (b) a Variance – there is not enough space to provide the 2' landscaping strip.

On August 27, 2019, at 11:11 a.m., Nilu emailed Applicants, with CC to Code Enforcement Office, Wanda Drouillard. Therein, Nilu set forth: 1) Required Fees for AUP and penalties; 2) Required revisions on Site Plan; 3) Variance statement requirements – **“staff can recommend a Variance only if there are no other option available on the site ... in your case, there is the option of relocating the stairs to create room for the 2’ landscaping strip.”**; and, 4) Code Enforcement will follow up regarding deadlines.

September 10, 2019, the City’s Code Enforcement Unit issued an Administrative Citation Warning (ACW), wherein Applicants were reminded the NOV, issued May 10, 2018 – requiring correction of violation on the subject property; the Citation Warning for outstanding violations the Berkeley Municipal Code (BMC), issued August 30, 2018. Pursuant to NOV and ACW, Applicant was required to reduce the height of the hedges that exceed 6’, without a permit. Code Enforcement further reminded Applicant that their plans submitted on September 2018 for a Variance on the hedges were additionally unpermitted construction (accessory building and trellis – identified by the Planning Department and, as of Sept 9, 2019, the violations remain; and, Applicants have failed to comply with Planning Department’s deadlines for submitting corrections regarding plan check requested via letter and email. (See Exhibit F – AWC)

Since the project is associated with a Code Enforcement case, specified deadlines are enforced and take precedent over any timelines related to the permit process. In sum, Applicant were Ordered to comply with certain deadlines, and were put on Notice that, **“in light of the history of non-compliance on the property,”** further failures to timey comply would, as of September 25, 2019, result in Citation penalties.

On September 17, 2019, Applicants submitted a Variance Statement, because City had determined the 1346 Ordway Street property does not have a legal parking space. Applicants acknowledge they have an option to achieve off-street parking – in the setback area of their front yard - other than being granted the requested Variance. Nevertheless, Applicants persist in asking the City to take the extraordinary step of granting a special exception Variance, although to do so would violate the City’s rules - present policy, practice and procedure - **“staff can only recommend a Variance if there is no other option available on the site.”** Applicants’ argument the City should make a special exception for them and waive or reduce the 2’ landscaping requirement to accommodate their desire to save money - eliminate their cost/expense associated with adjusting their front steps and rebuilding the curb cut accordingly. Also, they claim Applicant (Jennie Durant) has a “temporary handicapped” placard, giving rise to the question of whether her temporary condition requires an exceptional Variance granting off-street parking on a property deemed to have no legal parking space.

In sum, Applicants responded to the City’s requirement for Variance follows: 1) the need for exceptional or extraordinary circumstance is met because Jennie Durant has a “temporary handicapped” placard; 2) necessary for preservation and enjoyment of substantial property rights: here Applicant assert a parking space is necessary for the enjoyment and full use of home; 3) does the use materially impact health, safety, public welfare, injurious to property or improvement – generally benefit the City: answer is non-responsive –

Applicants merely states, “we are simply requesting that our current parking space be allowed to remain where it is.” Granting the variance would reduce environmental waste associated with remodeling stairs and curb cuts.

On November 5, 2019, the Planning Departments Tabulation Form appears re-submitted, including sizes, dimension, existing and permitted required details, including: 1) Units, Parking spaces, and bedrooms; 2) yards, heights and setbacks; Areas – building, lot, usable space, etc.; 3) Arbor specifics – setbacks and area; 4) Accessory habitable space specifics; Area calculations; and, 5) Plat survey map.

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D. The Zoning Officer may attach such conditions to an AUP as he/she deems reasonable or necessary to achieve the purposes of this Ordinance, and which otherwise promote the municipal health, safety and welfare. (Ord. 6478-NS § 4 (part), 1999)

ISSUES ON APPEAL

I

APPROVAL OF AUP FOR REASONABLE ACCOMODATION FOR FAIR ACCESS TO HOUSING, UNDER, BMC § 23B.52.010

Finding 1: One off-street parking space, within setback, is allowed to comply with BMC § 23B.52.010 for Reasonable Accommodation for Fair Access to Housing.

Finding 2: The City also recognizes the importance of sustaining and enhancing neighborhoods.

Conditions: Pursuant to the above referenced AUP, Zoning Officer has attached the following conditions: The parking pad must be removed, and the curb cut in filled if: 1) the property is sold; 2) the tenant move moves out; or, 3) the disability no longer prevents accessible access.

Appellant Appeal the Findings and Approval on the grounds that legalizing off-street parking in the front yard setback creates a hazardous and unsafe condition and is detrimental and injurious to the economic value of neighboring property. Furthermore, the record is absent of sufficient proof to establish Applicants qualifies as disabled, pursuant to the provisions of the Americans with Disability and the California Fair Employment and Housing Acts.

Applicants' states "one of the owners, Jennie Durant, has a temporary handicapped placard for a spine condition and needs a parking [space] spot close to the front door." The claim of possessing a "temporary disability placard" is NOT dispositive proof of a need qualifying under the aforementioned Acts, such that a need for reasonable accommodation is necessary to access housing. Therefore, the need for off-street parking is not established.

In reviewing Applicants' application, the Zoning and Transportation departments determined that Applicants has no legal [off-street] parking space on the 1346 Ordway Street property. Furthermore, it was determined that the off-street parking space in the front setback will not accommodate the 2' landscaping strip required, which would require a Variance. Instead of applying for a Variance to circumvent the 2' landscaping requirement, here, it appears Applicants chose to apply for an AUP.

Except for Applicants claim of temporary disability placard, there is nothing more in the record to substantiate that claim, e.g., there is no copy of Applicants' application for the placard, nor is there any authorizing documentation signed by a qualifying medical professional, nor is there a copy of the placard.

Allowing a front yard parking space inside the required setbacks, especially since there is a newly installed 6' fence on the South property line, creates a public health hazard. The view of pedestrians and on-coming vehicles is obscured. Proper setbacks allow time for persons to see what is going on around them. Parking along the street appears to be a safer option for all involved. Applicants' health and well being is NOT jeopardized and/or compromised should they have to walk from the curb to the front porch; the difference in distance in walking from the car to the porch and walking from the curb to the porch is approximately minimal - 8' to 10'. Accessing the house from the curb appears not be too difficult, as Applicant is frequently seen walking throughout the neighborhood, cleaning her car, pushing a stroller and carrying groceries.

Detrimental/Injurious to Property and Improvements

Legalizing a parking space, with front yard setbacks, rewards Applicants for long-standing history of non-compliance. It creates a potentially economic injury to Appellant, situating because his property become situated next property with non-conforming uses.

Making other Findings

Here, the Zoning Officer appears to fail to make the finding that altering the BMC was not the only option for granting Applicants' reasonable and fair access to the property. Applicants, if truly eligible under the American with Disabilities and California Fair Housing and Employment Acts, could easily apply for the privilege to have a handicap parking space directly in front of the house.

No Tenants (only owners) and Health Condition Unconfirmed

The Zoning Officer's requirement that the concrete parking pad be removed effectively represents the spirit of the Ordinance. Additionally, the Applicants are not tenants and it is NOT clear that Applicants' temporary health condition prevents accessible access.

For the foregoing reasons, this Appeal must be affirmed, the AUP must be rescinded, and the parking pad removed.

II

APPROVAL OF AUP TO CONSTRUCT A HABITABLE ACCESSORY BUILDING OVER 10' AV HT. W/I "4" FT OF PROPERTY LINE, UNDER BMC § 23D.08.020 and APPROVAL OF AUP TO CONSTRUCT A HABITABLE ACCESSORY BUILDING UNDER, BMC § 23D.08.005.A1

Finding 1: The project would legalize construction building in the rear and side yards, which is consistent with the single-family use of the subject property function as an extension of the main dwelling is a accessory to the residential use, and is not used as a separate dwelling. The accessory building is located outside required front and north side setbacks. Despite the fact that the accessory building projects a few inches into rear and south side setbacks, it is not anticipated to create significant changes to the existing sunlight conditions in the immediate vicinity of the project due to its location and limited scales, under BMC §§ 23D.08.005.A and 23D.08.005.A1 to Construct a Habitable Accessory Building.

Conditions: To legalize the construction of the accessory building and trellis, a building permit application must be submitted within 30 days after the AUP approval.

Appellant Appeal the Findings and Approval on the grounds that the City failed to act responsibly when approving this AUP, because authorizing construction of a building that projects into the setbacks, diminishing the use, quiet enjoyment and economical value of neighboring property?

BMC § 23D.08.005 Addresses Permitted Uses in Accessory Buildings and Structures; BMC § 23D.08.005.A1 provides that no Accessory Building may be constructed unless authorized by an AUP. A Zoning Certificate shall be required for alteration of an existing Accessory Building.

Appellant argues that permitting an Accessory Structure to be constructed as planned ignores the fact that shadows will be created over the most usable area of the neighboring yard. Furthermore, the quiet enjoyment of the neighboring property will be interfered with and the neighbors (Appellant and Applicants) will complain about activity and noise when either of them do building and yard maintenance, office work, and/or entertain. Additionally, Appellant does anticipate significant change in sunlight and lighting generally; and, since there is no evidence any site visit was conducted on the subject, Appellant disagrees with Zoning Officer’s assumptions.

Moreover, the prospective economic value of the neighboring property is likely to be diminished; because, having a non-conforming condition on the property next door will create limits upon what a new owner could get approved should the Appellant choose to sell the Hopkins Street property.

For the foregoing reasons, the approval of this AUP must be rescinded and this Appeal affirmed.

III

APPROVAL OF AUP TO CONSTRUCT A HABITABLE ACCESSORY BUILDING THAT IS OVER 12 FT. IN AVERAGE HEIGHT, WITHIN 4 TO 10 FT. OF THE PROPERTY LINE, UNDER BMC 23D.08.020.B

Finding: AUP would legalize 9 ft. tall, 21 x 5 ft. trellis, located 3 inches from the South property line and 30 ft. from the rear property line.

Conditions: To legalize the construction of the accessory building and trellis, a building permit application must be submitted within 30 days after the AUP approval.

Appellant Appeal the Finding and Approval on the grounds that the Zoning Officer ignored the needs of the neighboring property owner, by permitting an illegally constructed trellis to remain in place right up against the neighbor’s garage. Appellant’s garage has legally existed on the property line since 1948. Approving this illegally constructed - 9’ tall, 21’ x 5’ - trellis to exist, only 3 inches from side of a neighbor’s garage, is obscured and negligence.

Furthermore, this approval interferes with neighbor’s quiet enjoyment and denies access to the garage for painting, maintenance and other improvements. In fact, Applicants are presently growing vines over the top of the trellis, which are already growing onto roof of the garage and fence.

Moreover, the property value is diminished by virtue of having illegally constructed conditions so close to the neighboring structure; and, as it relates to the Condition, please note that the trellis is already constructed.

Accordingly, this appeal should be affirmed, this AUP rescinded and the trellis ordered removed.

IV

APPROVAL OF AUP FOR CONSTRUCTION OF ACCESSORY STRUCTURES, UNDER BMC § 23D.08.060.A2

Finding: AUP legalizes a 14 ft. tall hedge within the South and North side yards.

Appellant Appeals the Finding and Approval on the grounds Zoning Officer misstate the non-conforming condition of Applicants' application. What the Zoning Officer is calling "a 14' tall hedge" is actually sixteen or more 14' tall, illegally planted trees – **NOT A HEDGE**. These trees were illegally planted within 3" of the property line, up against the existing fence. This condition is tantamount to creating a much taller fence than the 6' allowed. The trees were illegally planted along the entire length of the property line from front to back, except the space where the illegally constructed trellis was built. Furthermore, the trees are presently growing over the fence and into the fence. It's only a matter of time before the trees began to push against the fence, creating cost and an argument over maintenance – the disturbing the quiet enjoyment of the community.

Accordingly, this appeal should be affirmed, this AUP rescinded and the trellis ordered removed.

V

CONCLUSION

WHEREFORE, Appellant LAWRENCE HICKMAN herein prays for a RULING affirming this Appeal.

Respectfully submitted

By: 
Lawrence Hickman

EXHIBITS

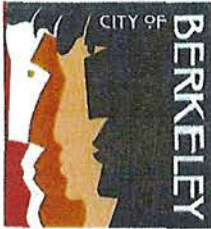
EXHIBITS

EXHIBITS

EXHIBIT A

EXHIBIT A

EXHIBIT A



Office of the City Manager
Code Enforcement Unit
2180 Milvia Street
Berkeley, California 94704
Tel 510.981.2489 Fax 510.981.2499

NOTICE OF VIOLATION

- First Notice
- Final Citation Warning

Date: 5/10/18 Time: 4:12pm Re-inspection Date: 5/24/18

Name of Person Contacted: KEKI BORJORJEE / JENNIE DURANT

The property at: 1346 ORDOVAY ST. BERKELEY, CA

was inspected because of concerns expressed to this office. The following code violation(s) were identified during this site visit:

- | | | |
|--|-------------------------|-------------------------|
| <input type="checkbox"/> Illegal Dumping | Berkeley Municipal Code | Chapter 12.40.080 |
| <input type="checkbox"/> Accumulation of Trash & Debris | Berkeley Municipal Code | Chapter 12.32.020 |
| <input type="checkbox"/> Graffiti Nuisance | Berkeley Municipal Code | Chapter 13.98.030 |
| <input type="checkbox"/> Blight Nuisance | Berkeley Municipal Code | Chapter 12.92.030 |
| <input checked="" type="checkbox"/> Zoning | Berkeley Municipal Code | Title 22 & Sub-Title 23 |
| <input type="checkbox"/> Building & Safety | Berkeley Municipal Code | Chapter 19.28 |
| <input type="checkbox"/> Obstruction of Streets or Sidewalks | Berkeley Municipal Code | Chapter 14.48.020 |
| <input type="checkbox"/> Signage | Berkeley Municipal Code | Chapter 20.16.010 |

Other (Code/Section/Title): BMC 23D.08.060 FENCES

(The entire Berkeley Municipal Code may be viewed or printed from the City's web site at www.cityofberkeley.info/Home, specifically www.codepublishing.com/CA/Berkeley).

Attached brochure(s) will give you more code information: _____

Please perform the following corrections before the re-inspection date to avoid citations, fees, and/or fines starting at \$100-500 per violation/per day:

- NO FENCE ON PROPERTY LINE MAY EXCEED 6 FEET IN HEIGHT.

PLEASE SEE ATTACHED DEFINITIONS.

* HEDGE MUST BE TRIMMED TO 6' - THANK YOU

It is our intent to work with property owners to encourage voluntary compliance. Your cooperation in correcting the violation(s) is greatly appreciated. If you have any questions, please contact the Enforcement Officer at 510.981. 2481.

Issued by: Tim Vetter Enforcement Officer Case #: 397755



EXHIBIT B

EXHIBIT B

EXHIBIT B

Lawrence Hickman

1333 Hopkins Street
Berkeley, CA 94702
Phone: (510) 467-4250
E-Mail: lpacificquest@aol.com

RECEIVED

SEP 19 2018

LAND USE PLANNING

September 19, 2018

Ms. Nilu Karimzadegan, Planner
City of Berkeley – Zoning/Planning
1947 Center Street, 3rd Floor
Berkeley, CA 94704

SUBJECT
1346 ORDWAY STREET APPLICATION

NOTICE OF OPPOSITION ZONING VARIANCE

Dear Ms. Karimzadegan:

As the adjacent property owner, this writing serves notice that I am opposed to any consideration of the subject application.

Here, the issue is whether ***BMC Ch. 23D.08.060 § A(2)*** is violated where a resident/neighbor created a fence-wall by planting fifteen (15) trees – in a row - each approximately fourteen (14) feet in height creating a wall, with trees planted less than two feet away from an existing legal community-fence and property line, then builds a 9 foot in height arbor 2" away from the side of my garage without a building permit.

BMC Ch. 23D.08.060 § A(2) provides any fence, hedge, gate, pergola, trellis, arbor or retaining wall when located on a lot in, or on the zoning boundary line of, any residential District is subject to the following ***"no fence or other unenclosed accessory structure located on a property line or within the required yard area for a main building set forth in each residential District's provisions may not exceed six feet in height at any point ... unless so authorized by an AUP"***

Here, it appears that the 1346 Ordway Street Resident Applicant (hereafter "Resident Applicant") has violated and continues in violation of the above referenced municipal code, because Resident Applicant has already planted fifteen (15) trees - in a row - each approximately fourteen (14) feet in height, supported by unpermitted construction method(s), using four-by-fours (4x4s) exceeding six feet in height. In addition, the trees were planted within two feet of the property line, also a violation. This violation(s) is further evidenced by the fact that, after my complaint to Code Enforcement, Resident Applicant received a citation, from the Code Enforcement Unit of the Mayor's Office. If I had not complained to Code Enforcement, resulting in the citation, Resident Applicant would not have applied for an AUP.

It should be noted that the subject application fails to mention that Resident Applicant has also already created the same and similar fence/wall condition on the opposite side of the property at the 1346 Ordway Street address. The application also fails to mention that Resident Applicant has constructed a 9 foot in height arbor 2" away from my garage without a building permit.

The present state of Resident Applicant current fence/wall configuration substantially interferes with my peaceful and quiet enjoyment of my property by eliminating my entitled air space, around the most useful part of my yard; making my yard small. Allowing the existing nonconforming conditions would diminish the value of my property. In addition, Resident Applicant's fence/wall height, proposed trellis, including the nine (9) foot high arbor – **two (2) inches from my garage** - prevents me from maintaining my property adequately.

I've owned my property at 1333 Hopkins Street for twenty-eight years, without incident. However, Resident Applicant recently approached me in my yard initiating an argument about the complaint I lodged with Code Enforcement. I believe Resident Applicant was attempting to intimidate me prior to filing this deceptive AUP application.

Furthermore, the subject application was only made after the aforementioned conditions were exposed, reported and cited. Moreover, the **Resident Applicant is seeking approval for conditions that already exists**, as if they are correctly planning to create a new condition.

On its face, this application should be denied because it's deceptive and lacks full disclosure. Even the Site Plan submitted is incomplete and lacks full disclosure. Additionally, the trellis description is ambiguous.

I oppose the subject application for the reasons stated herein. Accordingly, Resident Applicant's request for variance should be denied.

Also, The unauthorized 14 feet in height trees/fence, arbor that's 2" away from my garage, and the four-by-fours (4x4) posts taller than 6 feet need to be removed.

Respectfully Submitted,



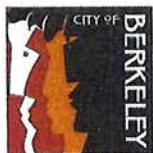
Lawrence Hickman

EXHIBIT C

EXHIBIT C

EXHIBIT C

UL / 770119 18
10/6/18 5/8/2019
10/5/18
5/8/19 (5)



Planning and Development Department
Land Use Planning Division

5/8/2019 Response Letter III

February 8, 2019

Sent via email:
jenniedurant@gmail.com

Jennie Durant and Keki Burjorjee
1346 Ordway Street
Berkeley, CA 94702

Re: Administrative Use Permit #ZP2018-0174 for 1346 Ordway Street

Dear Jennie,

This letter is in response to the resubmittal of revised application materials, submitted on January 09, 2019. To complete this application, please respond to the following:

1) A new invoice will be provided

1) Additional AUPs & Fees: At the time of project submittal, fees were assessed as \$970 for one Tier 3 AUP to construct an accessory structure over 6' within required setbacks. However, because the application is a result of a Notice of Violation and it also includes an unpermitted accessory building and an unpermitted trellis, additional AUPs will apply to the project resulting in a fee increase. We will issue an additional invoice upon the receipt of additional information (requested below).

- List of additional Fees
- 1) \$1970 for fence + hedge Nov
 - 2) Establish an accessory building
 - 3) Accessory building in rear + side setbacks (x2)
 - 4) Trellis

2) Dimensions on Site Plan do not match dimensions on survey

2) Survey:

A. Provide dimensions from the main dwelling and the front porch to the front and side property lines.

B. Provide the width of driveway on the front property line.

C. Include the accessory building's dimensions on the survey and exhibit the distance from its eave to the rear and side property lines.

5) Front yard parking (to be confirmed by the Traffic Eng. + zoning officer)

Survey	Site Plan
Driveway 9'-9"	Driveway 10'-2"
DU to front PL 19'-9"	DU to front PL 20'-6"
DU to side PL 6'-8"-7"	DU to side PL 7'-2" - 8'-2"

3) Any hot tubs yet?

3) Site Plan:

A. Accessory building: Please revise the accessory building's name to read as "Accessory Habitable Space" and not a "Shed" on Site Plan. Additionally, include the average and maximum height on the elevation.

B. Trellis: include trellis's coverage in the overall lot coverage on Tabulation Form.

C. Exhibit the front porch and its dimensions.

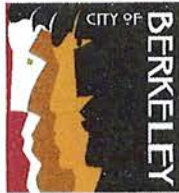
D. Include the shed (and its dimensions) that is shown on survey and is attached to the rear of the dwelling.

EXHIBIT D

EXHIBIT D

EXHIBIT D

9



Planning and Development Department
Land Use Planning Division

July 2, 2019

Sent via email:
jenniedurant@gmail.com

Jennie Durant and Keki Burjorjee
1346 Ordway Street
Berkeley, CA 94702

Re: Administrative Use Permit #ZP2018-0174 for 1346 Ordway Street

Dear Jennie,

Thank you for the electronic resubmittal of the revised Site Plan on June 5, 2019. After reviewing the submitted materials, staff has determined that the existing off-street parking space is not accessible and there is no other feasible location for parking on the parcel. Note that all paved areas for off-street parking spaces, driveway and any other vehicle-related paving must be removed as a condition of approval on this permit. (Additionally on Site Plan, remove the label "Existing Parking Space" within the front yard setback and include a note for the removal of parking related paved areas and curb cut.). To complete your application, submit revised plans that reflect these changes and submit the additional required payment (see attached invoice).

In your resubmittal, include a cover letter stating how you have addressed the incomplete items. **Any changes or corrections must be clouded, and accompanied by a number** to allow for easier identification. If new plans are submitted, please deliver two **(2) sets** of plans (at least one set to scale) and submit **both a paper and an electronic copy** of the resubmittals to the zoning counter during normal business hours (Monday thru Thursday 8:30 am – 4:00 pm). If you take no action to address the above items **within 30 days**, the application may be deemed withdrawn and returned to you. Please contact me if you have any questions at (510) 981-7419.

Sincerely,
Nilu Karimzadegan, Planning Technician
CC: Greg Powell, Principal Planner

EXHIBIT E

EXHIBIT E

EXHIBIT E

2. The granting of the application is necessary for the preservation and enjoyment of substantial property rights of the subject property's owner;
3. The establishment, maintenance or operation of the use or the construction of a building, structure or addition thereof, to be approved will not, under the circumstances of the particular case, materially affect adversely the health or safety of persons residing or working in the neighborhood of the property of the applicant and will not, under the circumstances of the particular case, be materially detrimental to the public welfare or injurious to property or improvements in said neighborhood; and that the granting of the Variance will promote the municipal health, welfare and safety and benefit the City as a whole;
4. Any other variance findings required by the Section of the Ordinance applicable to that particular Variance.

B. The Board shall deny an application for a Variance if it determines that it is unable to make any of the required findings, in which case it shall state the reasons for that determination. (Ord. 6478-NS § 4 (part), 1999)

Please consider your options and let me know which path you would like to take.

Thank you,

Nilu

From: Chun, Peter
Sent: Wednesday, July 17, 2019 10:22 AM
To: Karimzadegan, Niloufar <nkarimzadegan@cityofberkeley.info>
Cc: 'Jennie Durant' <jenniedurant@gmail.com>
Subject: RE: Parking spot AUP

Hi Jennie,

My recommendation would be to restore the original parking space or remove the driveway and restore on street parking as Planning has recommended. I was not aware of the 7 ft. threshold and the Planning Dept. document you provided. I have reviewed and approved many projects with 7 ft. driveways, even 6' – 6" as applicants have indicated their driveway is existing and they squeeze through. I generally support the setback requirement (or parking space restriction) and therefore favor the removal of driveways and restoration of the curb, sidewalk, and on street parking if you choose not to re-establish the rear parking.

Sorry I am sure this is not what you were hoping to hear from our office.

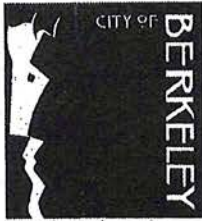
Sincerely,

Peter Chun, T.E.
Associate Traffic Engineer

EXHIBIT F

EXHIBIT F

EXHIBIT F



Office of the City Manager
Neighborhood Services-Enforcement Division

September 10, 2019

Jennie Durant/Keki Burjoree
1346 Ordway Street
Berkeley CA 94702-1124

Subject: **Administrative Citation Warning**

Dear Property Owner:

This letter is confirming that on May 10, 2018 the Code Enforcement Unit issued Notices of Violation requiring that you correct all violations at 1346 Ordway Street. On August 30, 2018 a Citation Warning for the outstanding violations of the Berkeley Municipal Code (BMC). Pursuant to the Notice of Violations and Administrative Citation Warning, you were required to reduce the height of your hedges that exceed 6 feet allowed without a permit.

On September 7, 2018, plans were submitted to the Planning Department for a variance on the hedges where additional unpermitted construction (accessory building & trellis) was identified by the planning department.

As of September 9, 2019, the violations remain and you have failed to comply with the Planning Department requirements and deadlines in submitting corrections to the plan check request by letters and email.

Since this project is associated with a Code Enforcement case specified deadlines are enforced and take precedence over any timelines specific to the permit process.

YOU ARE HEREBY ORDERED TO:

- Within fifteen (15) days of this Administrative Citation Warning respond to the Planning Department emails regarding the Plan check revisions;
- You must respond to any other plan checks comments issued by all reviewing agencies within fifteen (15) days of issuance of comments;
- Within thirty (30) days of the issuance of the required zoning permit, obtain all required building, electrical, plumbing and mechanical permits from the Building and Safety Division; and
- Upon issuance of building permits, complete all work within one hundred eighty (180) days.

Keki Borjorjee/Jennie Durant
1346 Ordway Street
Berkeley, CA 94702

Administrative Citation Warning
September 10, 2019
Page 2 of 2

Please note: Given the history on non-compliance on the property as described above, the City is putting you on notice that any future failure to comply completely will all City laws and regulations will result in daily administrative citations without further notice to you, which will increase as time passes until all violations are corrected. Part compliance or correction of any violation will be regarded as non-compliance.

Commencing September 25, 2019, if you have failed to comply in full with the May 10, 2018 Notice of Violation and the Plan Check corrections request by planning you may be issued administrative citations on a daily basis for each of the above violations without further notice to you. **Citation penalties will begin at a rate of one hundred dollars (\$100.00) per violation, per day and may increase with subsequent citations to two hundred dollars (\$200.00) per violation, per day and five hundred dollars (\$500.00) per violation, per day.**

If you have any questions regarding this Citation Warning Letter, you may contact me at (510) 981-2482 or e-mail me at wdrouillard@cityofberkeley.info.

Sincerely,



Wanda Drouillard
Code Enforcement Officer

cc: Planning Department
David Lopez, Deputy Building Official
Erin Steffen, Assistant to the City Manager

RECEIVED

June 30 ~~JUL 02~~ 2020 (TLB)

CITY OF BERKELEY
CITY CLERK DEPARTMENT

June 30, 2020

Dear Members of the Berkeley City Council,

We are writing to appeal the decision of the Zoning Adjustment Board (ZAB) on June 6, 2020 regarding the height of the hedge along the southern property line of our property at 1346 Ordway St. The Zoning Office had previously approved a maximum hedge height of 14 feet, along with several other AUP permits. Our neighbor at the property adjacent to us, Lawrence Hickman at 1333 Hopkins St., appealed the decision and we had a ZAB hearing as a result. During the hearing, ZAB approved all of the permits requested, including the permit for the hedge, but lowered the maximum hedge height from 14 feet to 11 feet.

We request that the City Council raise the maximum hedge height from 11 feet back to the 14 feet originally approved by the Zoning Office. We planted the hedge because of our need for safety and privacy, and to screen off Mr. Hickman's property, which has been under construction for the four and a half years we have lived in our home. We are requesting that the maximum hedge height be raised back to 14 feet because a maximum of 11 feet does not adequately address the three concerns mentioned above. Additionally, at a maximum height of 11 feet, the hedge would require frequent pruning, making it bushier and incurring significant maintenance costs. Finally, a hedge with a maximum height of 14 feet does not materially impact our neighbor's view, nor is it outside the norm of AUPs granted in the past. We provide further details below.

Safety

There is a documented history of arrests at Mr. Hickman's property, one involving domestic violence in 2019, and another more recently in April 2020 that involved six police cars. Mr. Hickman's property has been vacant for extended periods in the past, and we have seen homeless people sleeping on the back porch, which has a direct view of our daughter's bedroom. We believe that a tall hedge will act as a physical barrier between his property and ours.

Privacy

The windows of Mr. Hickman's two-story house have a direct view into the bathroom and bedrooms of our single-story home (including our daughter's bedroom). An 11-foot hedge only screens off our bedrooms and bathroom from only the first floor windows of Mr. Hickman's house, not the second floor windows (see Figure 1.). We seek privacy from the windows on the second floor as well.



Figure 1: View of Mr. Hickman's property from our bedroom windows. The height of the hedge in these photos exceeds 11 feet at its tallest point

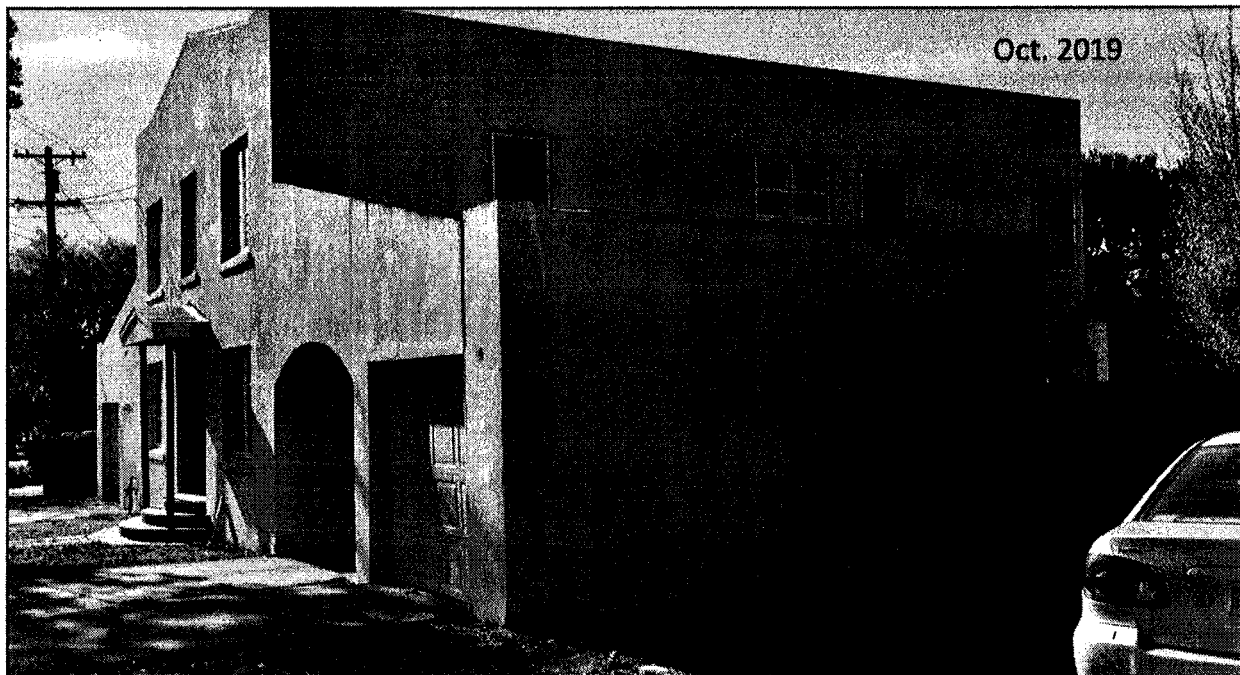


Figure 2: A gutter has been hanging off the side of Mr. Hickman's house since October of 2019

Screening off Mr. Hickman's property from view

Mr. Hickman's property has been under construction since we moved into our home in November 2015--and according to our neighbors and Google Map photos, for over a decade before that. The windows on his property that face our bedroom are unfinished and have had cement around the frames since we moved in. Additionally, a gutter has been hanging off the side of Mr. Hickman's property since October of 2019 (see Figure 2). Given the current and historic state of Mr. Hickman's property, we seek a visual barrier that entirely screens it off from view. At a maximum height of 11 feet (i.e. the current height of the trees in the photos in Figure 1) , the hedge would barely screen off the hanging gutter and first floor windows and leaves the unfinished second floor windows in plain view.

Affordability of hedge maintenance

Our hedge is made of 12 *Pittosporum tenuifolium* trees, a.k.a. 'Silver Sheen', fast growing shrubs that provide loose, airy screening and do not block much light. We prefer to keep the hedge thin and delicate so that light can shine through onto both properties. However, if we must keep the hedge at 11 feet, it would have to be pruned in a way that will cause it to become thick and dense. Our gardener had the following advice for us on this matter:

If keeping the shrubs lower is necessary then they will have to be pruned harder and more frequently, probably every couple of months, and they will become dense, and "hedge" like. This is not the best way for these shrubs to be used, and will result in much denser look as well as much more expensive upkeep. [Rest of the letter is attached]

Additionally, the shrub sends up thin shoots that tower above the rest, exceeding 11 feet while providing little privacy or visual screening. Adding 3 feet to the maximum height limit would allow for the growth of these shoots, keep our pruning costs down, and let us keep the hedge light and airy so it feels less like a wall to us and Mr. Hickman.

Hedge is not a detriment to our neighbor's view

We do not believe a 14-foot hedge would be a detriment to Mr. Hickman's view. The hedge is south of his property and the shadows from the hedge fall onto our house, not his property (see left photo in Figure 3). Additionally, his building is over 8 feet from the hedge, with a driveway in between (see right photo in Figure 3), and the only view of his that we block with the hedge is the one he would have into our daughter's and our bedroom windows.

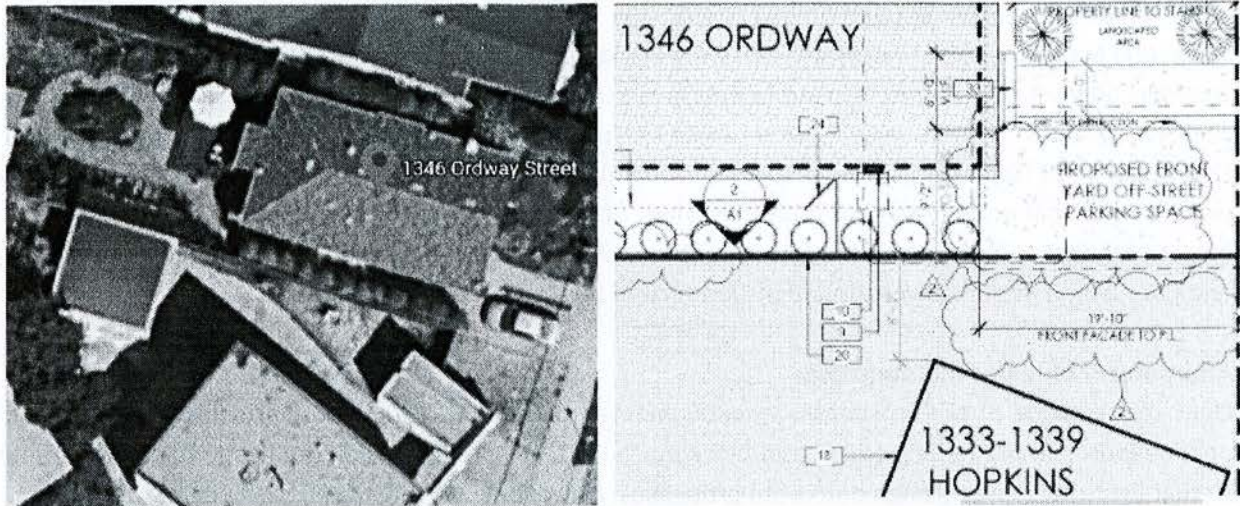


Figure 3: (Left photo) Shadows from the hedge fall onto our property, not Mr. Hickman's.
(Right photo) The site plan shows that Mr. Hickman's property is 8'2" from the hedge.

A maximum hedge height of 14 feet is not out of the ordinary

At around the 1hr 35 min mark of the [ZAB hearing on June 6, 2016](#), Land Use Planning Manager Steven Buckley said the following in response to a question from ZAB member Igor Tregub about the maximum fence/hedge height that can be granted in an AUP:

"The height of that is limited really by our accessory structure regulations which are pretty liberal. You can go up to say 12 or 24 or 35 feet with those depending on the permit. [...] And there isn't really a maximum. Certainly, 12 or 14 feet, that's normal."

So, according to Mr. Buckley, the maximum hedge height we are requesting (14 feet) falls within the normal range of hedge height requests.

In closing, we hope that City Council will raise the maximum hedge height back to the 14 feet we were initially granted to provide us with the safety, privacy, and visual barrier we seek for our family. We have enclosed a letter from our gardener about the *Pittosporum* and our letter to ZAB responding to our neighbor's appeal in case this is helpful.

Sincerely,

Two handwritten signatures in black ink. The first signature is on the left, and the second signature is on the right, written over a red line.

Jennie Durant and Keki Burjorjee
1346 Ordway Street
Berkeley, CA 94702



Jennie Durant <jenniedurant@gmail.com>

Information On Pittosporum tenuifolium 'Silver Sheen'

2 messages

Cecily Hunter <cecilyhunter@gmail.com>
To: Jennie Durant <jenniedurant@gmail.com>

Tue, Jun 23, 2020 at 7:10 PM

Hi Jennie,

Here is some information about the Pittosporum tenuifolium 'Silver Sheen' that we planted, and why I recommended that shrub.

The Pittosporum tenuifolium 'Silver Sheen' is a fast growing shrub that provides loose, airy screening and does not block light very much. The leaves are very small, and the habit is delicate. In addition, it is adaptable to both sun and shade, does not require much water at all once it is established, and is relatively easy to maintain. As a gardener I find it to be one of the most generally pleasing shrubs. It is not very messy (it drops some leaves a few times a year, but does not have berries, or large amounts of leaf drop, or branch drop), it is a very nice habitat for small songbirds, the flowers, which are small, and brief are attractive to beneficial insects. And, it is compatible with many other plants. I prefer to keep it loose and delicate, allowing light to come through, and allowing it to move gently in the breeze. This is done by pruning it gently in a natural fashion a couple times a year to control height to some extent, and some thinning to accentuate the natural habit, as we have been doing until more recently when we began controlling the height. If keeping the shrubs lower is necessary then they will have to be pruned harder and more frequently, probably every couple of months, and they will become dense, and "hedge" like. This is not the best way for these shrubs to be used, and will result in much denser look as well as much more expensive upkeep.

I hope this helps.

Best,

Cecily

Jennie Durant <jenniedurant@gmail.com>
To: Cecily Hunter <cecilyhunter@gmail.com>

Mon, Jun 29, 2020 at 10:16 PM

Thank you so much, Cecily! This is enormously helpful!!

Jennie

[Quoted text hidden]

May 25, 2020

Dear Members of the Zoning Adjustment Board,

Thank you for taking the time to read our materials for this appeal hearing. We would like to respond to the points made in the "Issues on Appeal" section starting on page 8 of the Appellant's (Lawrence Hickman's) appeal letter to ZAB. To keep this rejoinder letter to the point, we choose not to respond to the many falsehoods about our personal interactions with the Appellant in the "Statement of Facts" section and instead focus on the Appellant's "Issues on Appeal."

Regarding Point 1 of the "Issues on Appeal" section of the Appellant's letter: Approval of AUP for reasonable accommodation for Fair Access to Housing under §23B.52.010:

1. The Appellant is not aware of the full nature of the Applicant's handicap. This is by design, as the Applicant wishes to preserve her privacy on this matter. We have submitted documentation to the City Zoning office, including doctor's forms, photocopies of the placard application, and the final placard, all of which informed the Zoning Office's determination.
2. Regarding the "Health and Safety section": The newly installed 6' fence mentioned by the Appellant was installed *after* the Zoning Office's findings were posted (during the window of appeal). It's hard not to surmise that this fence was installed by the Appellant for the express purpose of making the argument that our "view of pedestrians and oncoming traffic is obscured." That said, oncoming traffic approaches us from the direction opposite to the location of the fence, so we can see it just fine. Secondly, we have not had any problems spotting pedestrians as we slowly pull out of our lot. Additionally, we have noted that several garages on Ordway street extend out to the sidewalk. The view of the street and sidewalk from inside these garages is more obscured than ours, but this does not seem to make them non-conforming.
3. As to the point that the "Applicant's health and well-being is NOT jeopardized and/or compromised should they have to walk from the curb": Again, the Appellant is unaware of the Applicant's physical condition. The Applicant's prognosis is degenerative and currently under evaluation. Carrying heavy items can cause excruciating pain. Having to walk from a parking space (whether from the curb, or from down the street) carrying heavy bags of groceries, our child, or an infant car seat should we expand our family, would be an untenable situation. This is why we have requested an AUP be granted for our front parking space.
4. Numerous residents on our street park in front of their houses. We have included several photos of this in our immediate neighborhood (Figure 1), so approving the AUP would not undermine the aesthetic of our neighborhood.



Figure 1. Cars parked in front parking spaces on the 1300 block of Ordway Street (our block), on our side of the street (right photo) and across the street (left photo). Orange arrows indicate parked cars.

5. Finally, we would like to point out that the Appellant and his tenant consistently park in a manner that blocks the sidewalk in front of the Appellant's property, forcing people with strollers or wheelchairs out into the street. Our neighbors frequently express their frustration with this to us. We have included examples below (Figure 2).

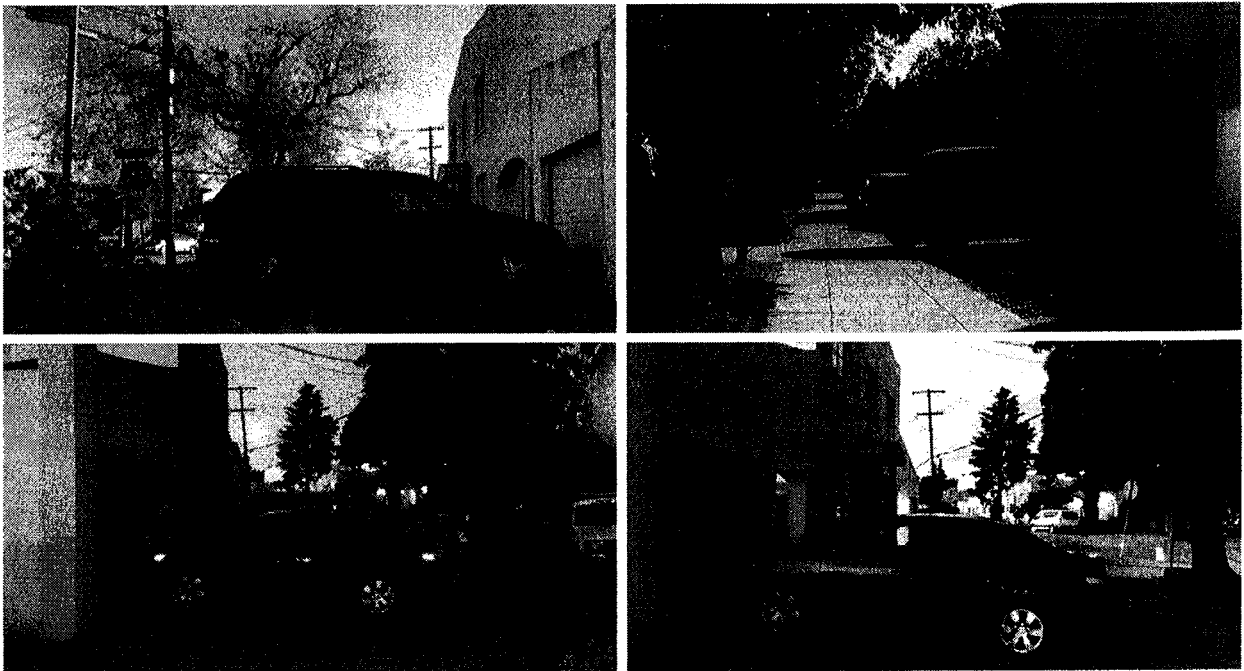


Figure 2. The upper left photo shows the Appellant's van blocking the sidewalk, a frequent occurrence. The other three photos are of a tenant or frequent visitor, who consistently parks in the sidewalk. These three photos were taken on May 18, 19, and 20, 2020.

Regarding Point II: Approval of AUP to construct a habitable accessory building over 10' AV HT. W/1 "4" FT of Property Line, under BMC §23D.08.020 and Approval of AUP to construct a habitable accessory building under BMC § 23D.08.005.A1

1. The accessory building casts no shadows on the Appellant's property because it is A) NOT adjacent to the Appellant's property (it is adjacent to Lot 46 on the Survey Plat Map in Fig. 3) and B) It is north-east of the Appellant's property and is therefore physically unable to cast shadows on the Appellant's property.
2. In fact, it is the Appellant's garage ("Garage" on Lot 45 in section of Survey Plat Map, Fig. 3), on our southern property line that casts a shadow onto *our* property from late morning onwards (Figure 3). A full Survey Plat Map with a compass is at the end of the letter and in our application.

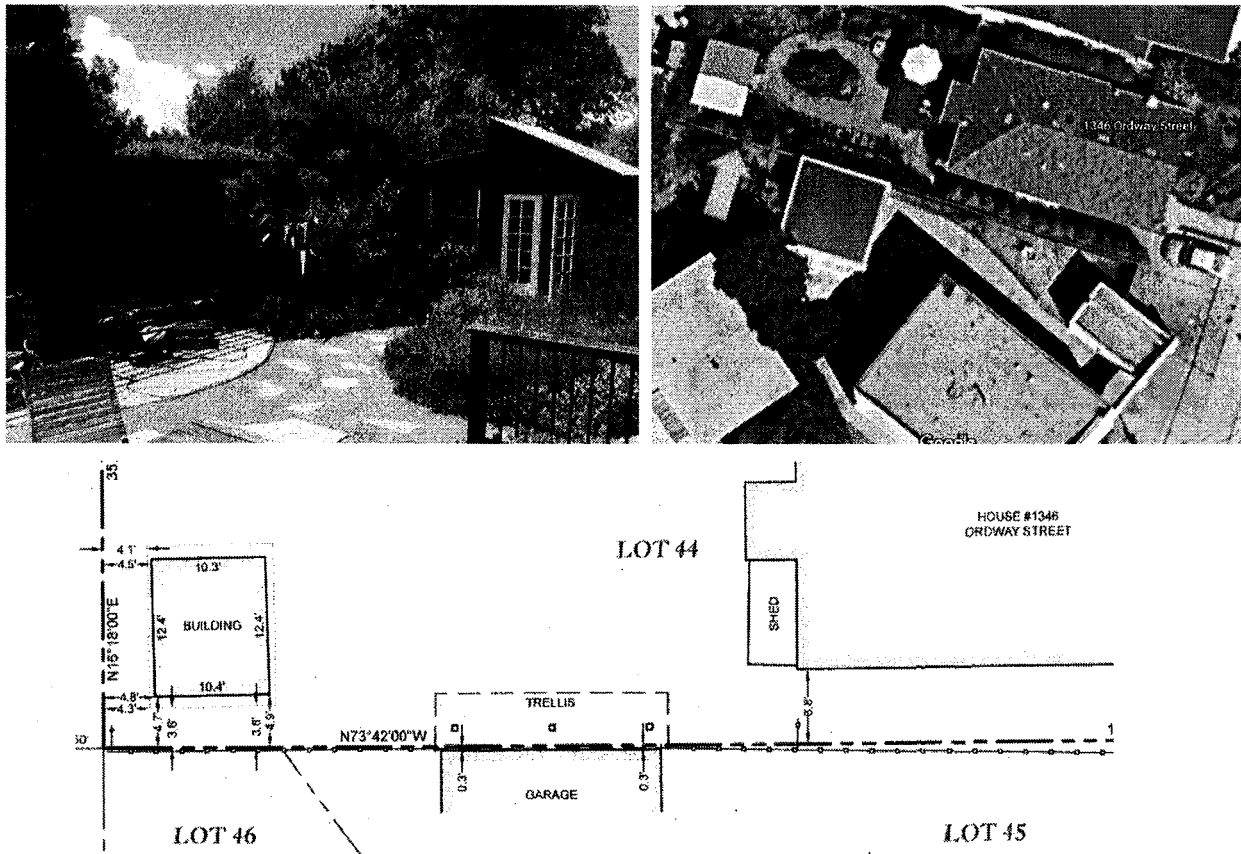


Figure 3. Upper left: Note the shadows cast by the Appellant's garage wall into our property. Upper right: Google map of the Appellant's property (bottom half of photo) and 1346 Ordway Street (yellow arrow notes approximate property line). Note how the shadows are cast towards our property, not the Appellant's as he has stated in his appeal. Bottom photo: Section of Plat Map showing that the Accessory Building is adjacent to Lot 46, and not the Appellant's property, Lot 45. A full Plat Map is available at the end of this letter and in our application.

Regarding Point III: The legalization of the 9' Trellis under BMC §23D.08.020.

1. As you can see from the photo of the Trellis below (Figure 4), we specifically constructed the Trellis in a way that allows the Appellant to access his garage for repairs if needed. Nothing prevents the Appellant from maintaining his garage wall.
2. That said, the Appellant's garage has been in a state of disrepair since we took ownership of the property in November 2015. The trellis was designed to improve the aesthetics of our property given that our neighbor's garage wall was on the property line and loomed over our property. We have included several photos below (Figure 5) of our neighbor's property to bring attention to the general state of disrepair that has frustrated not only us, but many members of our neighborhood for over a decade. We hope ZAB members will take into account this long history of dereliction when considering the Appellant's far-fetched point about wanting to maintain his property.

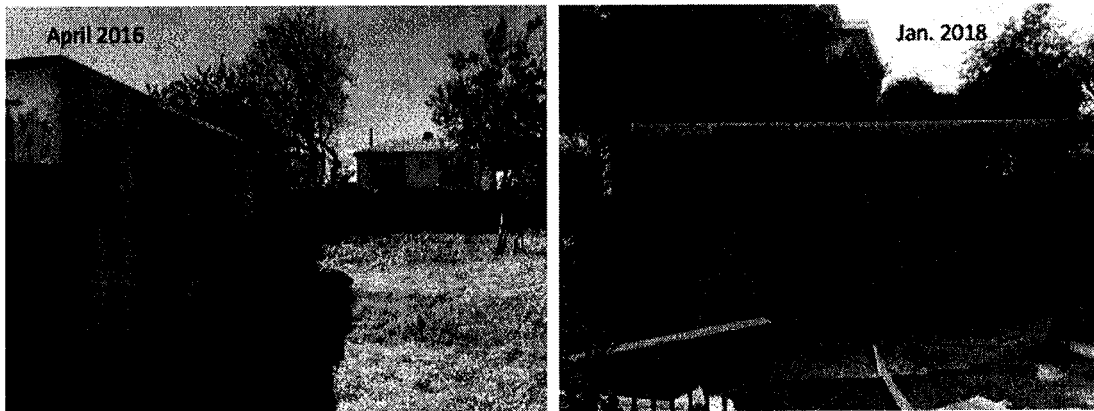


Figure 4. Left: Wall prior to painting and installation of trellis, April 2016. Right: Installed trellis, January 2018.

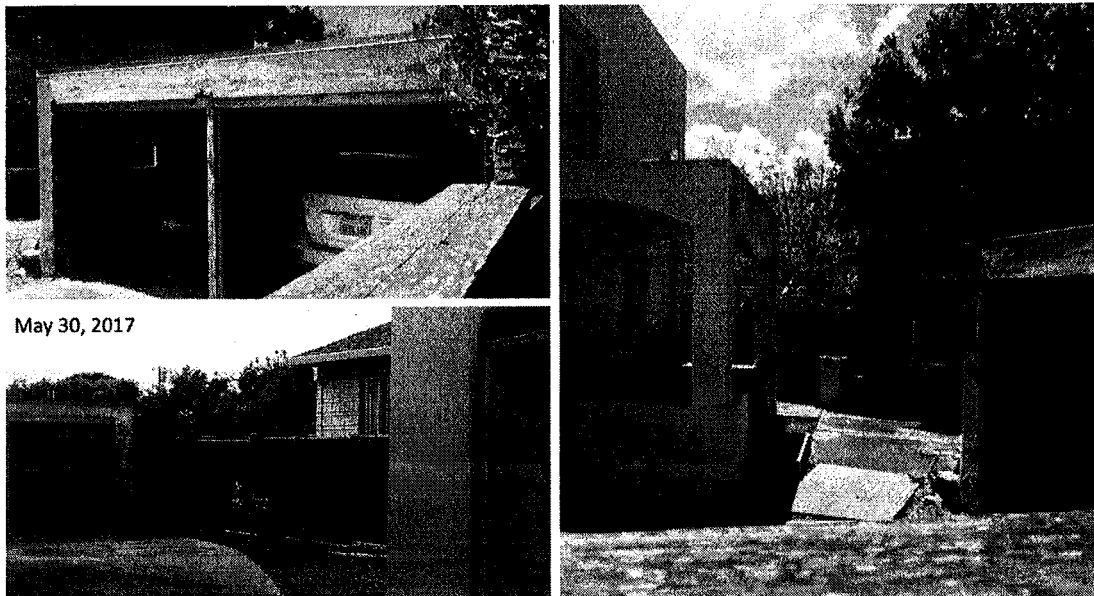


Figure 5. The upper left and right photo were taken May 18, 2020 and would be the views from our daughter's window if the hedge was not there. The lower left photo was taken May 30, 2017 (from the sidewalk), and demonstrate the disrepair of the Appellant's property that has existed since we moved in.

Regarding Point IV: Approval of AUP for construction of accessory structures, under BMC § 23D.08.060.A2

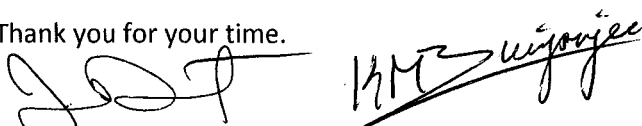
1. According to Berkeley Code, Title 23F.04¹ a hedge is defined as: Any line or row of plants, trees or shrubs planted in a continuous line to form a dense thicket or barrier. Additionally, for permitting purposes, a hedge is subject to the same permit requirements as a fence, and thus subject to the same restrictions as a fence.
2. As ZAB knows, fences are not allowed to be over 6' according to this code, unless authorized by an AUP², which we have applied for through the Zoning Office.
3. Regarding the Appellant's point about the tree branches growing onto his property: Our gardeners have asked the Appellant for permission to prune the trees on his side of the property (or to pick up branches that fall during pruning). The Appellant has consistently refused. This has made it challenging to prune the parts of the trees facing his side of the property, though we have now found a pruner who can do so from our side. We will, of course, keep the trees below the 14' requirement, and have consistently done so since the beginning of this application process.

Finally, we would like to apologize for not obtaining the necessary zoning permits prior to construction of the hedge and trellis. We were first-time homeowners when we took possession of our home one month before our daughter's birth. We simply had no idea we needed permits for the work we did since they are small projects that we have seen on numerous properties in our neighborhood. Given the stress of that time and the demands of our personal and work lives, we were so overwhelmed that we did not do the research we clearly should have done. Once cited for our violation of the City's ordinances we began the approval process. This process was complicated by the removal of a dilapidated garage on the property prior to our taking ownership.

Regarding the accessory building mentioned in Point III of the Appellant's appeal letter, we researched the square footage, height, and setbacks needed to build an accessory building without a zoning permit and acted accordingly. Unfortunately, we were not aware that the required setbacks are with respect to eaves of the accessory building, not the outside walls.

We have spent \$1380 to bring the accessory building into compliance and over \$10,000 (in permit fees and fines, as well as survey and architectural fees) to bring the overall property into compliance. The additions we made improve the value of our home and the value of our neighbors' properties as well. We have good relationships with many of our neighbors, which we hope is reflected by their letters of support. Additionally, our improvements—two attractive xeriscaped, low-water pollinator gardens, an office we can use to work from home during this pandemic; and finally, more trees, which help support the city's commitment to carbon neutrality—are aligned with the values of the city (Figure 6). We hope ZAB will see that our improvements do not pose any real detriment to the Appellant.

Thank you for your time.



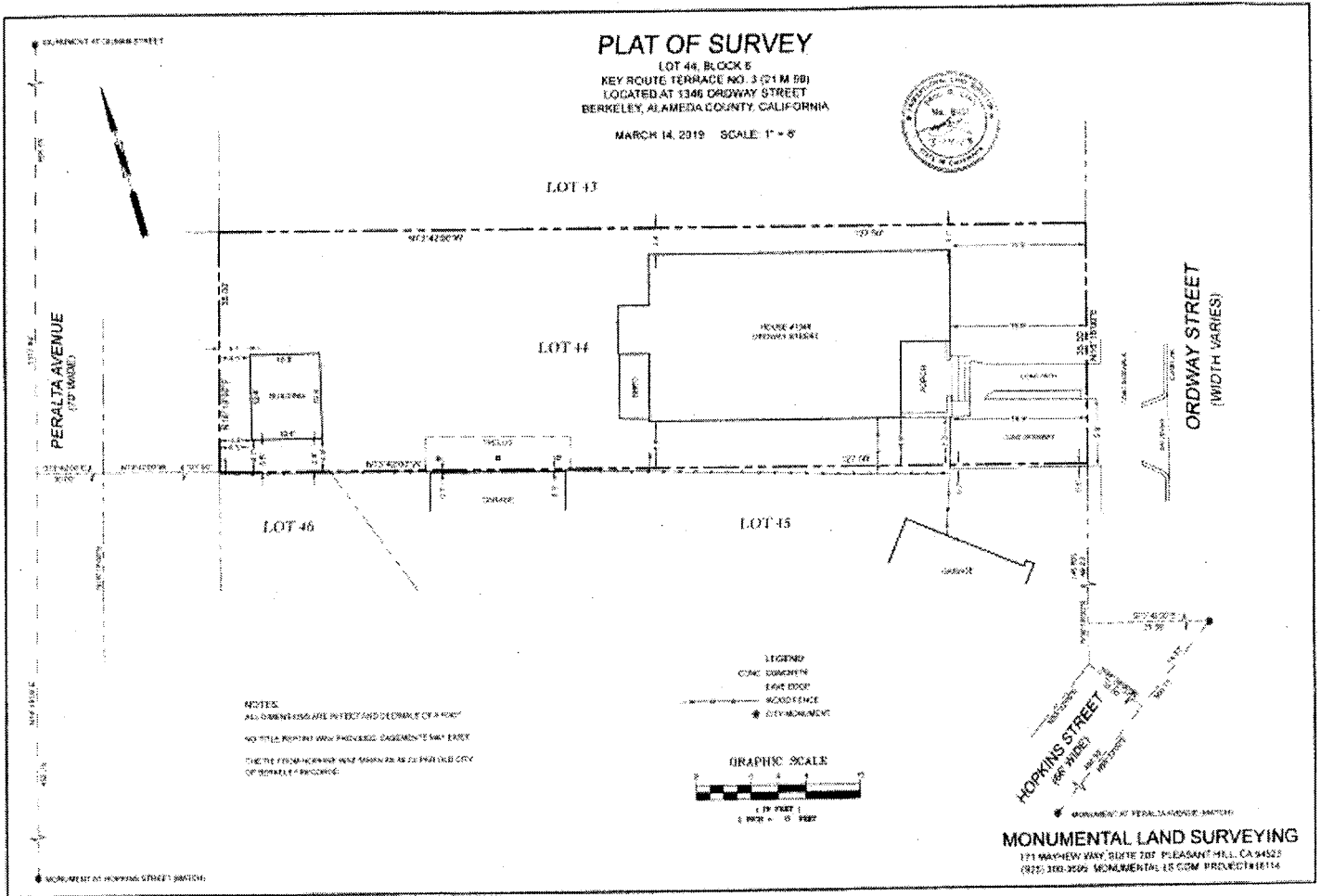
Jennie Durant and Keki Burjorjee

¹ https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_BMC/BMC-Part2--032508.pdf

² <https://www.codepublishing.com/CA/Berkeley/html/Berkeley23D/Berkeley23D08/Berkeley23D08060.html>



Figure 6. Improvements made in the backyard. Left: Photo of backyard upon purchase in November 2015. Right: Photo of backyard, taken May 15, 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
JUNE 11, 2020

1346 Ordway Street

Appeal of Zoning Officer's decision to approve Administrative Use Permit #ZP2018-0174 to legalize additions on an approximately 4,480 sq. ft. lot with an existing one-story approximately 1,152 sq. ft. single family dwelling. The scope of work includes: 1) legalize a 9 ft. tall wood fence and 14 ft. tall hedge within north and south side setbacks; 2) legalize a 128 sq. ft., 12 ft. 2 in. tall habitable accessory building within the required side and rear setbacks; 3) legalize an approximately 9 ft. tall, 5 ft. X 21 ft. trellis located at 3 in. from the south side property line; and 4) locate front yard off-street parking space by modifying AUP and Variance requirements in order to provide reasonable accommodation for fair access to housing.

I. Background

A. Land Use Designations:

- General Plan: LMDR – Low Medium Density Residential
- Zoning: R-1A – Limited Two-Family Residential District

B. Zoning Permits Approved:

- Reasonable Accommodation for Fair Access to Housing, under Berkeley Municipal Code (BMC) Section 23B.52.010, for a front yard off-street parking space;
- Administrative Use Permit, under BMC Section 23D.08.005.A1, to legalize a habitable accessory building;
- Administrative Use Permit, under BMC Section 23D.08.020.A, to legalize a habitable accessory building that is over 10 ft. in average height within 4 ft. of the property line;
- Administrative Use Permit, under BMC Section 23D.08.020.B, to legalize a habitable accessory building that is over 12 ft. in average height within 4 to 10 ft. of the property line;
- Administrative Use Permits, under BMC Section 23D.08.060.A2, to legalize hedge over 6 ft. in height; and
- Administrative Use Permit, under BMC Section 23D.08.060.B, to legalize an unenclosed accessory structure (trellis).

C. Zoning Permits Waived (Under BMC Section 23B.52.010 for Reasonable Accommodation):

- Variance under BMC 23B.44.030 to eliminate the 2 ft. landscaped strip that separates the paved parking area from the side lot line; and
- Administrative Use Permit, under BMC Section 23D.12.080.B, for locating an off-street parking space within the required front yard.

D. Zoning Permits Denied:

- Administrative Use Permits, under BMC Section 23D.08.060.A2, to legalize boundary fence over 6 ft. in height.

E. CEQA Determination: Categorically exempt pursuant to Section 15301 of the CEQA Guidelines (“Existing Facilities”).

F. Parties Involved:

- Applicant/owner: Jennie Durant & Keki Burjorjee, 1346 Ordway Street, Berkeley, CA 94702
- Appellant Lawrence Hickman, 1333 Hopkins Street, Berkeley, CA 94702

Figure 1: Aerial View

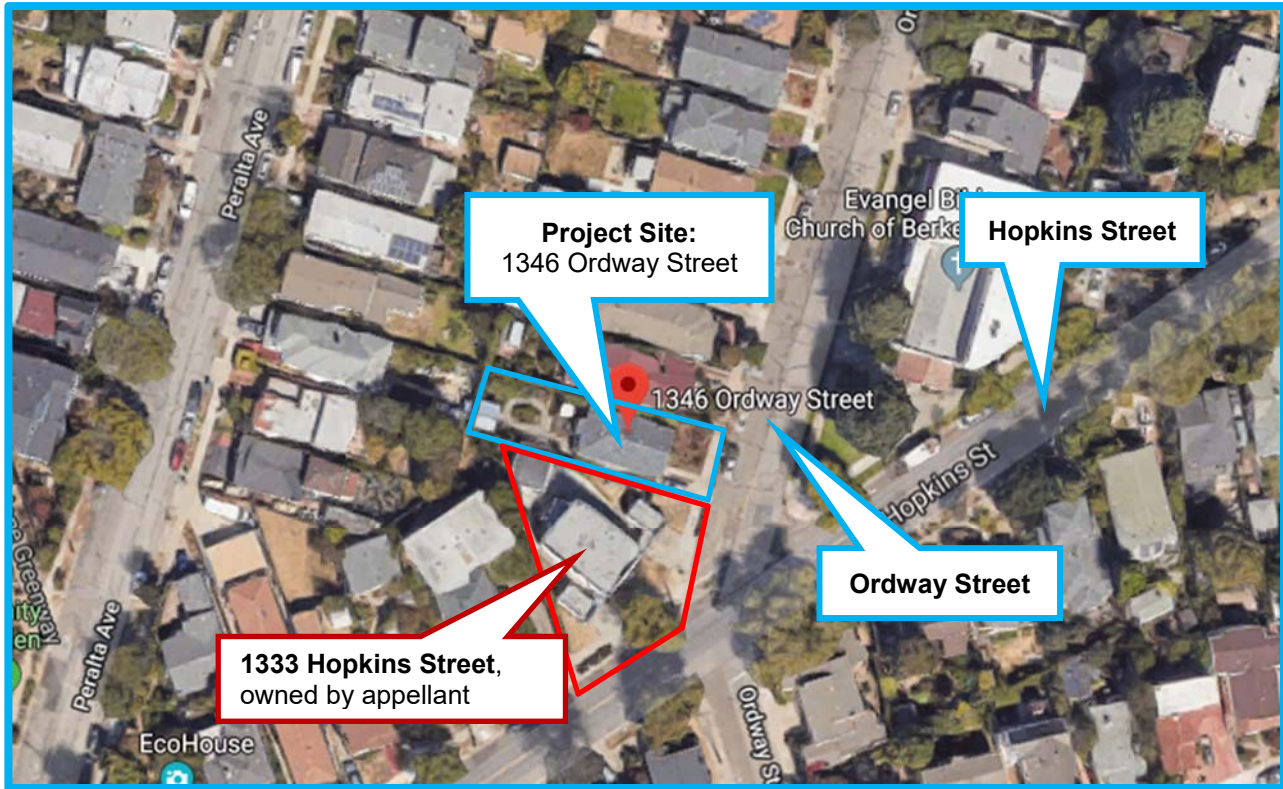


Figure 2: Birds-eye View

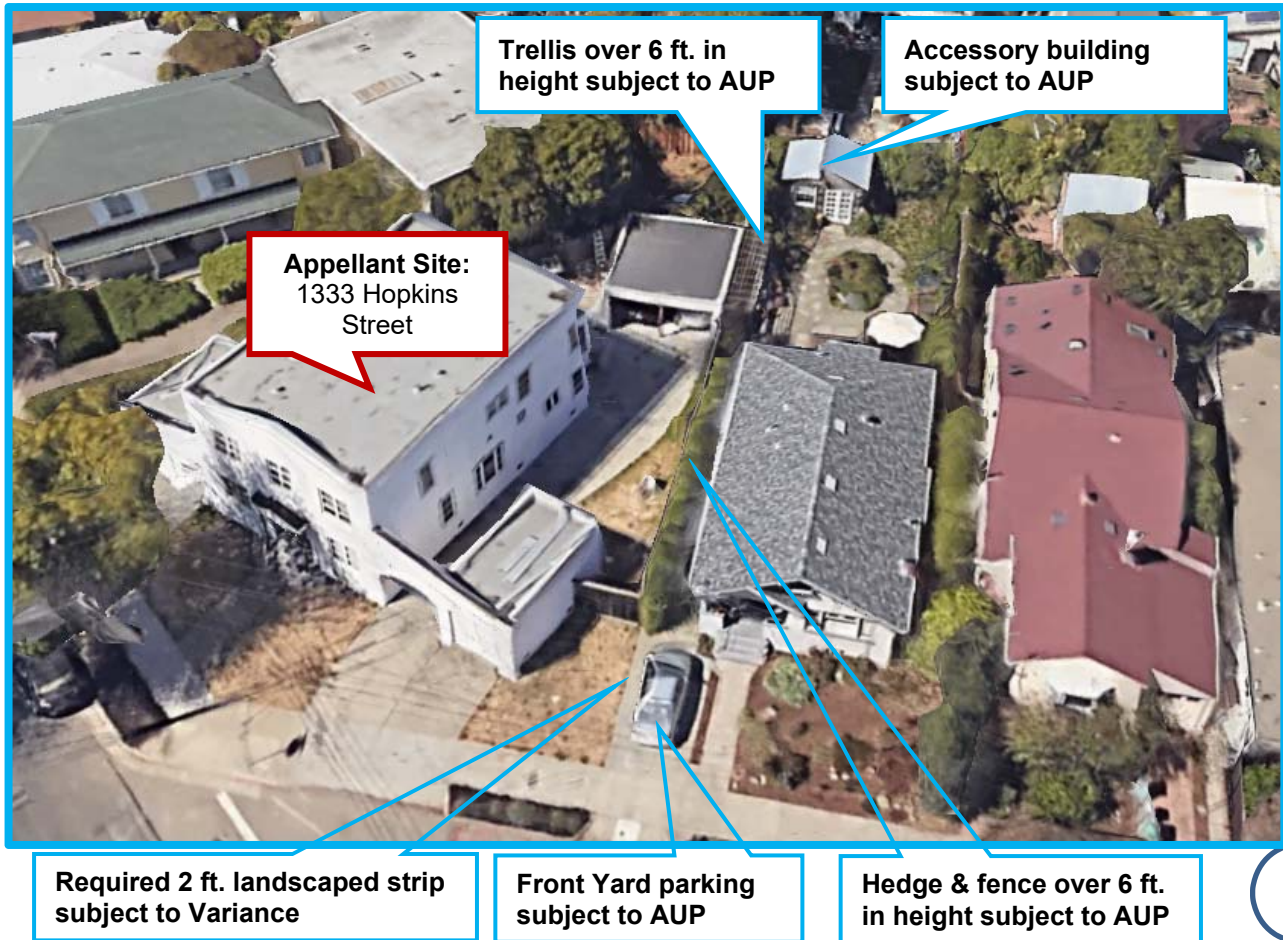


Figure 3: Parcel Map



R-1A: Limited Two-Family Residential District
R-2: Restricted Two-Family Residential District



Figure 4: Site Survey

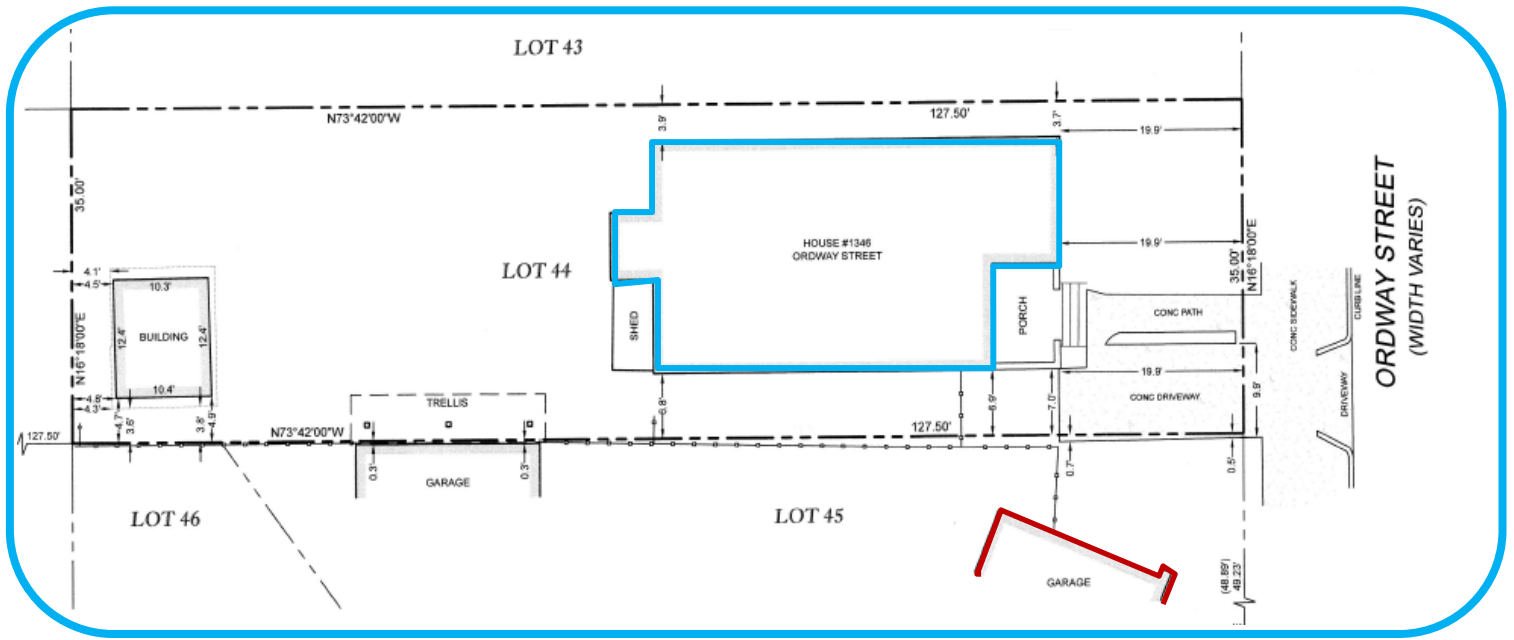


Figure 5: Site Plan

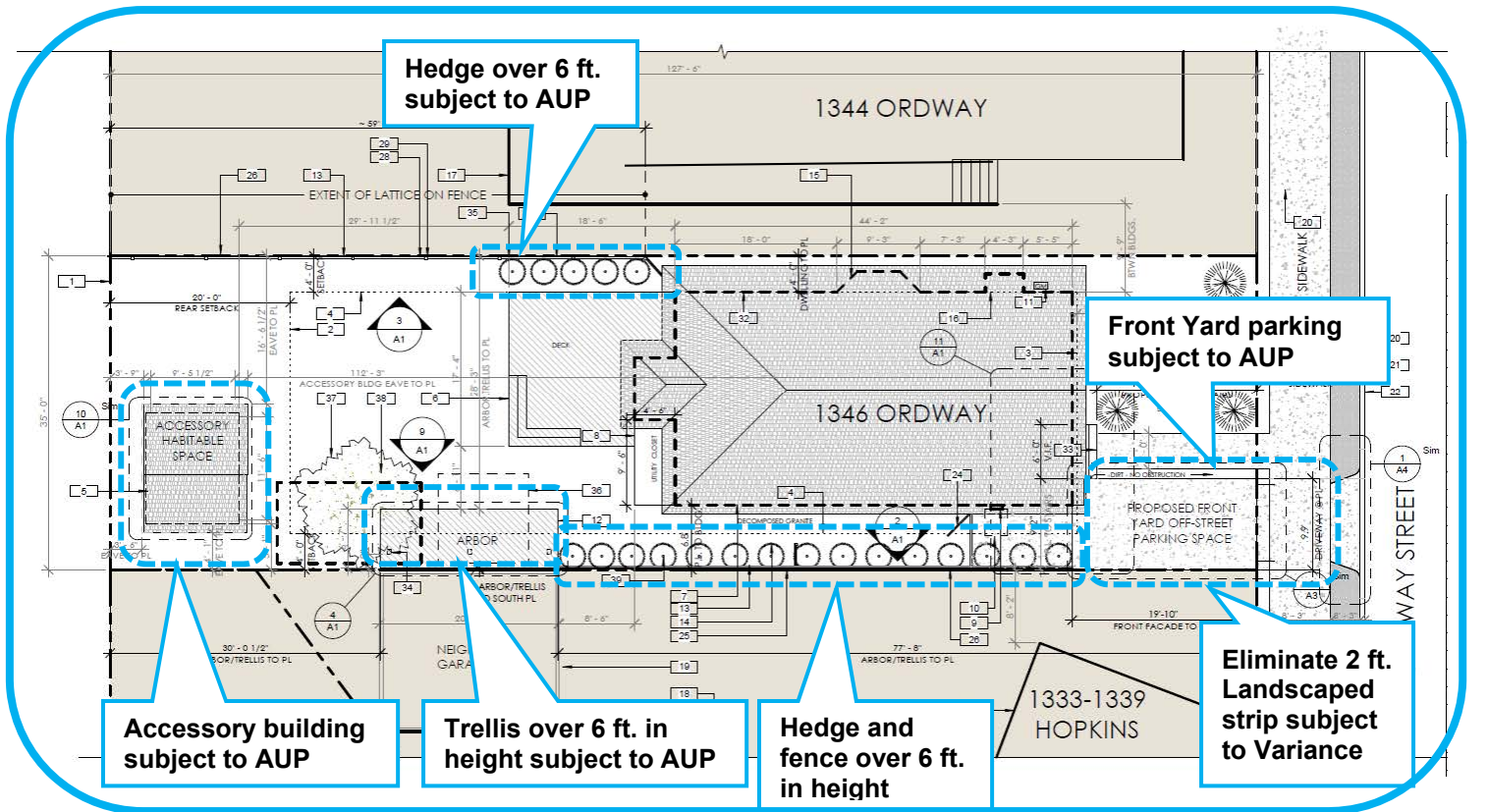


Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		One-story single family residence	Limited Two-Family Residential District (R-1A)	Low Medium Density Residential (LMDR)
Surrounding Properties	North	One-story building with 1 dwelling units (1344 Ordway Street)	Limited Two-Family Residential District (R-1A)	
	South	Two-story multi-family dwelling (1333 Hopkins Street/Appellant) & two-story multi-family dwelling (1327 Hopkins Street)	Restricted Two-Family Residential (R-2) & Limited Two-Family Residential (R-1A)	
	East	Three-story Evangel Bible Church of Berkeley (1343 Hopkins Street)	Restricted Two-Family Residential (R-2)	
	West	Two-story single family residence (1341 Peralta Avenue)	Limited Two-Family Residential District (R-1A)	

Table 2: Special Characteristics

Characteristic	Applies to Project?	Explanation
Affordable Child Care Fee for qualifying non-residential projects (Per Resolution 66,618-N.S.)	No	These fees apply to projects with more than 7,500 square feet of new non-residential gross floor area. This project is not subject to these resolutions because no new non-residential space is proposed.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)	No	
Creeks	No	No open creek or culvert exists within 40 ft. of the site.
Housing Accountability Act (Gov't Code Section 65589.5)	No	The proposed project is not a "Housing Development Project" ¹ as defined by Government Code because it does not propose to add dwelling units.
Oak Trees	No	There are no oak trees on the site.
Rent Controlled Units	No	No rent controlled units are at this site.
Residential Preferred Parking (RPP)	No	The site is not within a Residential Preferred Parking Area.
Seismic Hazards Mapping Act (Liquefaction, Fault-rupture, Landslide)	No	The site is not located within an area susceptible to liquefaction, Fault-rupture or Landslide as shown on the State Seismic Hazard Zones map.
Soil/Groundwater Contamination	No	The site is not located on a hazardous waste site pursuant to Government Code Section 65962.5
Transit	No	There is a bus stop near the project site along Gilman Street that provides access to an AC Transit bus routes (12).

¹ Per Government Code Section 65589.5(h)(2) "Housing development project" means a use consisting of any of the following: (A) Residential units only; (B) Mixed-use developments consisting of residential and nonresidential uses in which nonresidential uses with at least two-thirds of the square footage designated for residential use; and (C) Transitional housing or supportive housing.

Table 3: Project Chronology

Date	Action
September 7, 2018	Application submitted
September 19, 2019	Application deemed complete
May 28 2020	Public hearing notices mailed/posted
June 11, 2020	ZAB hearing

Table 4: Development Standards

Standards per BMC Sections 23D.28.070		Existing	Proposed	Permitted/ Required
Lot Area (sq. ft.)		4,480	No Change	5,000 min.
Gross Floor Area (sq. ft.)		1,152	No Change	N/A
Bedrooms		2	No Change	4 max. (without AUP or UPPH)
Dwelling Units	Total	1	No Change	1 max (for a lot of this size)
Building Height	Average	13 ft. 2 in.	No Change	28 ft. max.
	Stories	1	No Change	3 max.
Building Setbacks	Front	19 ft. 9 in.	No Change	20 ft. min.
	Rear	58 ft. 4 in.	No Change	20 ft. min.
	Left Side (south)	6 ft. 9 in.	No Change	4 ft. min.
	Right Side (north)	3 ft. 8 in.	No Change	4 ft. min.
Lot Coverage (%)		30	32	40 max.
Usable Open Space (sq. ft.)		Greater than min. 400	Greater than min. 400	400 min.
Parking Automobile		0	1	1

II. Project Setting

A. Neighborhood/Area Description: The subject site is located in a generally flat residential neighborhood that consists primarily of one and two-story residential properties which range in density to include single-family dwellings, duplexes, and multi-family dwellings with conforming and non-conforming setbacks and densities. While the majority of the surrounding uses are residential, Evangel Bible Church of Berkeley confronts the subject site to the east.

B. Site Conditions:

The project site is located at north-west of Hopkins and Ordway Streets intersection (to the east of Peralta Avenue), confronting the Evangel Bible Church of Berkeley. The nearest abutting neighbor's residence at 1344 Ordway Street is located approximately 8 ft. to the north of the subject property. The appellant's property (at 1333 Hopkins Street) is located at the west corner of the noted intersection to the south of the subject property and its closest accessory structures (two of its garages) are separated from the main dwelling on the subject property by approximately 14 ft.

The subject lot is flat and the site is occupied by a single-story single family dwelling; an accessory building; twenty (15 on the south and 5 on the north), 14 ft. tall hedges; a 5' X 21', 9 ft. tall trellis; and a 9'-6" X 4'-6" storage shed. The existing non-conforming driveway located on the south side yard, ranges in width from approximately 6'-9" to 6'-10" in width and is over 90 ft. long. It previously led to a now-demolished 9'X16' single-space garage. The north side yard ranges from approximately 3'-8" to 3'-10" in

width. The rear setback is approximately 58 ft. and the front setback is 19'-9". The property complies with the R-1A District requirements for height, lot coverage and usable open space and is legal non-conforming for density and front setback. Furthermore, the project involves a request for a front yard off-street parking space under the City's Reasonable Accommodation provisions and permits to legalize an existing accessory building, trellis, hedge and fence.

An application was submitted on September 7, 2018 to legalize the unpermitted fence and hedge over 6 ft. in height within required setbacks. After the review of submitted application by staff, it was determined that the existing accessory building over 12 ft. in maximum height within required side and rear setbacks, the existing trellis over 6 ft. within the south side yard and the front off-street parking space requires additional Administrative Use Permits. Due to narrow width and length of the existing non-conforming driveway, staff initially determined that the subject property's legal off-street parking space can be abandoned (*No legal off-street parking status*) or a request for an AUP for a front yard off-street parking space and Variance to waive the required landscaped strip must be made. However due to applicant's medical condition, a front yard off-street parking space was requested under Reasonable Accommodations (BMC Section 23B.52.010).

Figure 6: Street View, looking west

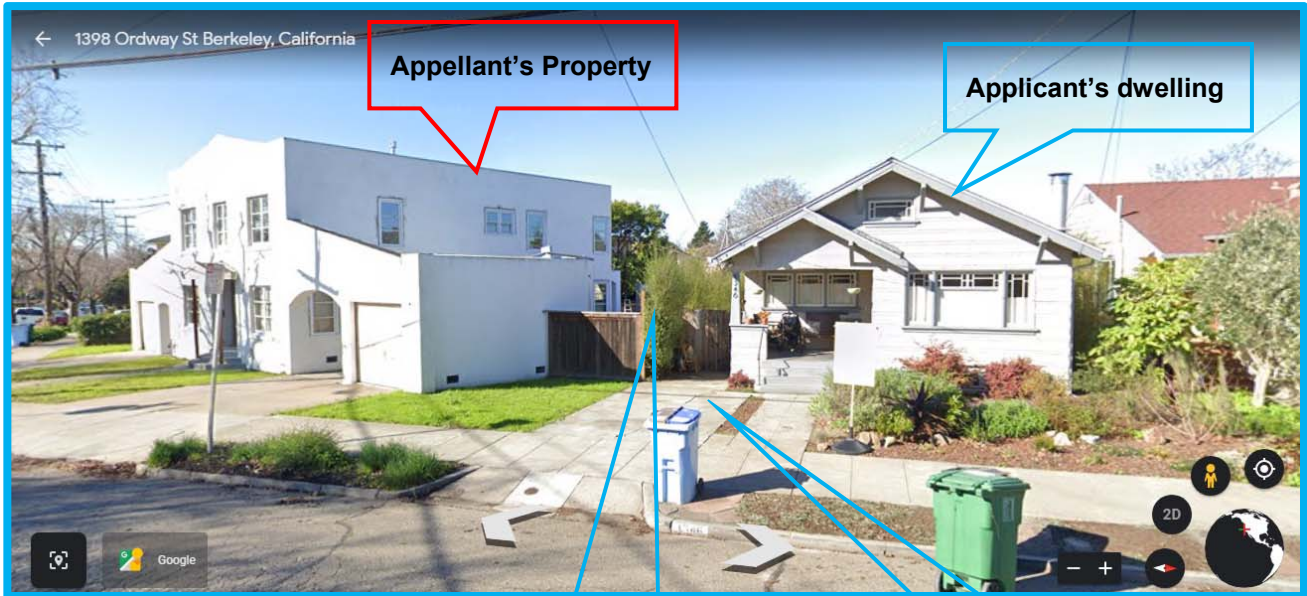


Figure 7: Looking west

Hedge & fence over 6 ft.
in height subject to AUP

Front Yard parking
subject to AUP



Figure 8: Looking south

Appellant's garage behind trellis



Figure 9: Looking southwest

Trellis subject to AUP

Trellis located within south setback

Appellant's garage



III. Approved Project

The project approved by the Zoning Officer would involve the legalization of an existing 128 sq. ft. accessory building in the southwest corner of the subject lot, an existing 5' x 21', 9 ft. tall trellis located in the south setback and existing 14 ft. tall hedge in north and south setbacks. Additionally, to comply with the Federal Fair Housing Act, the Americans with Disabilities Act and the California Fair Employment and Housing Act, it would allow for a front yard off-street parking space under BMC's Reasonable Accommodation Section. A recommendation for the approval of the fence over 6 ft. in height cannot be made by staff because the fence is located outside the subject property lot line and on the appellant's property at 1333 Hopkins Street.

IV. Community Discussion

- A. Neighbor/Community Concerns:** Prior to submitting the application to the City, a pre-application poster was erected by the applicant. Staff posted the Notice of Decision on February 25, 2020, at the site and 3 nearby locations and sent notices to abutting and confronting property owners and occupants and to interested neighborhood groups.
- B. Zoning Officer's Decision to Approve:** The Zoning Officer determined that the non-detriment finding could be made because the site would continue to comply with the R-1A-district standards for density, height, maximum lot coverage and usable open space. The conditions of approval would ensure that the accessory building functions as an office, which is a quiet activity, and requires that a "Notice of Limitation of Use" be placed on the deed to the property. Additionally, The Conditions included in this permit requires that the maximum hedge height be limited to 14 ft. and side or rear yard parking space be restored in the case that the property is sold, the tenant with medical condition moves out or the disability no longer prevents accessible access.
- C. Public Notice:** On May 28, 2020 the City sent out public hearing notices to all adjacent property owners and occupants within 300 feet of the subject property, and to interested neighborhood organizations. Staff also posted the Notice of Public Hearing at three locations within the immediate vicinity of the subject site. Aside from what was submitted by the appellant (See Attachment 2), staff has received correspondence from neighbors at 1334 Ordway Street, 1340 Hopkins Street, 1336 Ordway Street, 1349 Ada Street, 1342 Hopkins Street, 1344 Ordway Street and Listing Agents Norman Gee and Priscilla Rice from Better Homes and Gardens in support of project and the applicants (See Attachment 5).

V. Appeal Issues and Analysis

1. **Appeal Issue 1 – Appellant appeals the Zoning Officer’s decision to modify the AUP (for front yard off-street parking space) and Variance (for not providing the 2 ft. landscaped strip) requirements under Reasonable Accommodations Section (23B.52.010) to allow for Fair Housing Access.**

Appellant notes that: “Appellant appeals the Findings and Approval on the grounds that legalizing off-street parking in the front yard setback:

- A. Creates a hazardous and unsafe condition.”

Staff Response: This is not a commercial district with high volumes of traffic and hence a front yard off-street parking space is not expected to create hazardous or unsafe conditions.

- B. “Is detrimental and injurious to the economic value of neighboring property.”

Staff Response: The BMC Section 23D.12.080.B allows for a front yard off-street parking space with an AUP and the BMC’s Section 23B.52.050.B (Factors considered in making a determination regarding the reasonableness of any application under Reasonable Accommodation Chapter) if applicable, allows for modifications to this requirement. Furthermore, front yard off-street parking space is a common practice in the subject property’s immediate neighborhood. Since the appellant has not provided evidence to suggest that the Zoning Officer was incorrect in determining the reasonableness of this application to modify the AUP and Variance requirements for a front yard off-street parking space to comply with Fair Housing Access, staff recommends that the ZAB dismiss this appeal point.

- C. “The record is absent of sufficient proof to establish applicant qualifies as disabled pursuant to the provisions of the Americans with Disability and the California Fair Employment and Housing Acts.”

Staff Response: Proof of a medical condition including a copy of applicants' application for the placard, authorizing documentation signed by a qualifying medical professional and a copy of the placard have been submitted to staff but not disclosed to protect applicant’s privacy. Because the appellant’s claim regarding lack of evidence is not accurate, staff recommends that the ZAB dismiss this appeal point.

- D. “The claim of possessing a "temporary disability placard" is NOT dispositive proof of a need qualifying under the aforementioned Acts.”

Staff Response: The applicant has requested reasonable accommodation in the form of modification in the application of a zoning law due to a medical condition. The Zoning Officer has considered all factors required in making a determination regarding the reasonableness of this application under the Reasonable Accommodation Chapter (BMC 23B.52.050.B item 1 through 6). Since the appellant has not provided evidence to show that the Zoning Officer has failed to consider all factors required in making a determination, staff recommends that the ZAB dismiss this appeal point.

- E. “The Zoning and Transportation departments determined that applicants has no legal [off-street] parking space on the 1346 Ordway Street property.”

Staff Response: Considering the driveway’s narrow width, the property could be considered non-conforming and be recognized as having no required parking on site. However, the Applicant chose to pursue the AUP option for a front yard off-street parking space and Reasonable Accommodation.

- F. “Except for applicants’ claim of temporary disability placard, there is nothing more in the record to substantiate that claim.”

Staff Response: See response to item 1-C and 1-D above.

- G. “Allowing a front yard parking space inside the required setbacks, especially since there is a newly installed 6 ft. fence on the South property line, creates a public health hazard.”

Staff Response: Staff is aware of the recently-installed fence, which extends to the front property line of the appellant’s property and along the south side of the applicant’s driveway and front yard.

Figure 10: Looking west toward both properties



This fence is conforming to the zoning regulations and is similar to other commonly found conditions in the neighborhood and throughout the City. The driveway would continue to accommodate one personal vehicle, which would not create a hazard for pedestrians under normal operating conditions.

- H. “Parking along the street appears to be a safer option for all involved (view of pedestrians and on-coming vehicles is obscured. Proper setbacks allow time for persons to see what is going on around them)”

Staff Response: An on-street handicapped parking space is not an equivalent alternative to an off-street parking space for the residence as it does not guarantee a parking space for the applicants.

- I. “Detrimental/Injurious to Property and Improvements: Legalizing a parking space, with front yard setbacks, rewards applicants for long-standing history of non-compliance. It creates a potential economic injury to appellant, because his property would become situated next to property with non-conforming uses.”

Staff Response: Berkeley Zoning Ordinance allows for applicants to legalize unpermitted structures and buildings by going through the zoning application process. Furthermore, City Council Resolution No. 67, 985-N.S. requires applicants to pay a penalty for applications that are submitted as a result of a Notice of Violation. When a zoning application is submitted to legalize existing buildings and structures, staff reviews the application as if the unpermitted structures and buildings did not exist today. Staff evaluates the proposal to determine if the non-detriment findings can be made. Since the Zoning Ordinance has gone through several revisions, legal non-conforming conditions are very common for most properties in this neighborhood as well other neighborhoods in Berkeley. Because the appellant has not provided evidence to suggest that the Zoning Officer was incorrect in determining the reasonableness of this application, staff recommends that the ZAB dismiss this appeal point.

- J. “Making other findings: Here, the Zoning Officer appears to fail to make the finding that altering the BMC was not the only option for granting applicants' reasonable and fair access to the property. Applicants, if truly eligible under the American with Disabilities and California Fair Housing and Employment Acts, could easily apply for the privilege to have a handicap parking space directly in front of the house.”

Staff Response: Having an on-street handicapped parking space is not a guaranteed parking space for the applicant. Because the appellant has not provided evidence to suggest that the Zoning Officer was incorrect in making a determination regarding the reasonableness of this application under the Reasonable Accommodation Chapter, and the appeal does not provide evidence to suggest that the non-detriment finding made by the Zoning Officer was in error, staff does not recommend relocating the parking space to an on-street space. Thus, staff suggests that the ZAB dismiss the appeal as to this point.

- K. “No Tenants (only owners) and Health Condition Unconfirmed: the applicants are not tenants and it is NOT clear that applicants' temporary health condition prevents accessible access.”

Staff Response: staff's use of the word "tenant" was a misstatement. This property is occupied by its owners. However, this does not affect the Zoning Officer's decision and as stated above, the request for reasonable accommodation is adequately supported.

In conclusion, because the appellant has not provided evidence to suggest that the Zoning Officer was incorrect in making a determination regarding the reasonableness of this application under the Reasonable Accommodation Chapter, or that the conditions of approval were inadequate to make this determination, staff recommends that the ZAB dismiss this appeal point.

2. Appeal Issue 2: Appellant appeals the Zoning Officer's decision to approve the AUP to legalize habitable accessory building:

Appellant states that: "appellant appeal the Findings and Approval on the grounds that the City failed to act responsibly when approving this AUP, because authorizing construction of a building that projects into the setbacks, diminishes the use, quiet enjoyment and economical value of neighboring property". Appeal points regarding this item include:

- A. "Permitting an accessory structure to be constructed as planned ignores the fact that shadows will be created over the most usable area of the neighboring yard."

Staff Response: This one-story, approximately 12 ft. tall, 128 sq. ft. accessory building is situated at the southwest corner of the lot that abuts the neighbor at 1327 Hopkins Street and not the appellant's lot (1333 Hopkins Street). Since the accessory building is situated to the north of appellant's lot, it is unlikely that it cast shadows to the neighboring yards to the south. Furthermore, existing vegetation that separates the subject lot from the south abutting properties is taller than the accessory building, blocking any potential shadows caused by the accessory building. Since this appeal point does not provide evidence to suggest that the non-detriment finding made by the Zoning Officer was in error staff suggests that the ZAB dismiss the appeal as to this point.

- B. "The quiet enjoyment of the neighboring property will be interfered with and the neighbors (appellant and applicants) will complain about activity and noise when either of them do building and yard maintenance, office work, and/ or entertain."

Staff Response: The BMC regulates the construction of an accessory building, but does not regulate the activity and behavior of those using the accessory building. The accessory building is used as an office and is separated from the main building on the neighboring property at 1333 Hopkins Street by approximately 50 ft. and from its detached accessory structure (Garage) by approximately 17 ft. Because the appellant has not provided evidence to suggest that the Zoning Officer was incorrect in making the non-detriment finding regarding the legalization of an accessory building, or that the conditions of approval were inadequate to make the non-detriment finding, staff recommends that the ZAB dismiss this appeal point.

- C. "There is no evidence any site visit was conducted on the subject, appellant disagrees with Zoning Officer's assumptions."

Staff Response: Adequate documentations were provided in plans, elevations and photographs to determine the conditions on the property and the neighborhood.

- D. “The prospective economic value of the neighboring property is likely to be diminished; because, having a non-conforming condition on the property next door will create limits upon what a new owner could get approved should the appellant choose to sell the Hopkins Street property.”

Staff Response: See response to item 1-I (Above).

In conclusion, because the appellant has not provided evidence to suggest that the Zoning Officer was incorrect in making non-detriment finding or that the conditions of approval were inadequate to make this determination, staff recommends that the ZAB dismiss this appeal point.

3. Appeal Issue 3: Appellant appeals the Zoning Officer’s decision to approve the AUP to legalize unenclosed accessory structure (Trellis):

Appellant notes that: “Appellant Appeal the Finding and Approval on the grounds that the Zoning Officer ignored the needs of the neighboring property owner, by permitting an illegally constructed trellis to remain in place right up against the neighbor's garage.” Appeal points regarding this item include:

- A. “Appellant's garage has legally existed on the property line since 1948. Approving this illegally constructed – 9 ft. tall, 5' x 21' - trellis to exist, only 3 inches from side of a neighbor's garage, is obscured and negligence.”

Staff Response: Since this trellis is the same height and length as the appellant’s garage, it is not expected to create detrimental impacts for the appellant’s property. Furthermore, the BMC does not reward or penalize residents based on seniority of their buildings or structures. All residents are entitled to apply for building and structures according to zoning development standards of their district and Staff evaluates proposals to determine if the non-detriment findings can be made. Staff recommends that the ZAB dismiss this appeal point.

- B. “This approval interferes with neighbor's quiet enjoyment and denies access to the garage for painting, maintenance and other improvements.”

Staff Response: As mentioned earlier, City of Berkeley has a process in place to legalize unpermitted buildings and structures. A trellis adjacent to garage and with the same height and length is not expected to create detrimental sunlight, air and view impacts. Furthermore, Agreements for maintenance of adjacent buildings and structures are civil matters and not a zoning concern and cannot be a factor for the City to consider in making the non-detriment finding. Because the appeal does not provide evidence that the Zoning Officer made an error in making the non-detriment finding, staff recommends that the ZAB dismiss the appeal as to this point.

In conclusion, because the appellant has not provided evidence to suggest that the Zoning Officer was incorrect in making non-detriment finding or that the conditions of approval were inadequate to make this determination, staff recommends that the ZAB dismiss this appeal point.

4. Appeal Issue 4: Appellant appeals the Zoning Officer's decision to approve the AUP to legalize accessory structure (Hedge):

Appellant states that: "Appellant Appeals the Finding and Approval on the grounds Zoning Officer misstate the non-conforming condition of applicants' application." Other appeal points regarding this item include:

- A. "What the Zoning Officer is calling "a 14 ft. tall hedge" is actually sixteen or more 14 ft. tall, illegally planted trees -NOT A HEDGE"

Staff Response: City of Berkeley Zoning Ordinance defines a hedge as "any line or row of plants, trees or shrubs planted in a continuous line to form a dense thicket or barrier which is designed to delineate, screen or enclose a lot" (BMC Section 23F.04.10).

- B. "This condition is tantamount to creating a much taller fence than the 6 ft. allowed."

Staff Response: The Zoning Ordinance allows for a fence, a tree or a hedge to be taller than 6 ft. with an AUP, if the necessary findings can be supported. The Zoning Officer made those findings subject to Condition of Approval and staff recommends that the ZAB dismiss the appeal point.

- C. "It's only a matter of time before the trees began to push against the fence, creating cost and an argument over maintenance - the disturbing the quiet enjoyment of the community."

Staff Response: A condition of approval on this permit, allows for a maximum height of 14 ft. for the proposed hedge. Maintenance of the fence must be handled by the Good Neighbor Law and is not a zoning matter.

In conclusion, because the appellant has not provided evidence to suggest that the Zoning Officer was incorrect in making non-detriment finding or that the conditions of approval were inadequate to make this determination, staff recommends that the ZAB dismiss this appeal point.

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** Administrative Use Permit #ZP2018-0174 pursuant to Section 23B.28.060.C.1 and subject to the attached Findings and Conditions (see Attachment 1) and **DISMISS** the Appeal.

Attachments:

1. Findings, Conditions and approved plans, February 25, 2020
2. Letter of Appeal, received March 17, 2020.
3. Notice of Public Hearing.
4. Applicant's Response to Appeal, received May 25, 2020.
5. Neighbors support letters, received May 23, 2020, May 22, 2020, May 21, 2020, November 22, 2019, November 2, 2019, December 1, 2018 (X2), and November 30, 2018.
6. Communications received from the appellant between Septembers 19, 2018 to June 1, 2020.

Staff Planner: Nilu Karimzadegan, nkarimzadegan@cityofberkeley.info, (510) 981-7419

Attachment 1

Findings and Conditions

FEBRUARY 25, 2019

1346 Ordway Street

Administrative Use Permit #ZP2018-0174 for additions on an approximately 4,480 sq. ft. lot with an existing one-story approximately 1,152 sq. ft. single family dwelling. The scope of work includes: 1) legalize a 9 ft. tall wood fence and 14 ft. tall hedge within north and south side setbacks; 2) legalize a 128 sq. ft., 12 ft. 2 in. tall habitable accessory building within the required side and rear setbacks; 3) legalize an approximately 9 ft. tall, 5 ft. X 21 ft. trellis located at 3 in. from the south side property line; 4) locate the off-street parking space within the front yard; and 5) eliminate the required 2 ft. landscaped strip that separates the uncovered off-street parking space from the adjacent property line.

PERMITS APPROVED

- Administrative Use Permit, under Berkeley Municipal Code (BMC) Section 23B.52.010 for Reasonable Accommodation for Fair Access to Housing;
- Administrative Use Permit, under BMC Section 23D.08.005.A1 to construct a habitable accessory building;
- Administrative Use Permit, under BMC Section 23D.08.020.A to construct a habitable accessory building that is over 10 ft. in average height within 4 ft. of the property line;
- Administrative Use Permit, under BMC Section 23D.08.020.B to construct a habitable accessory building that is over 12 ft. in average height within 4 to 10 ft. of the property line; and
- Administrative Use Permits, under BMC Section 23D.08.060.A2 for construction of accessory structures.

PERMITS DENIED

- Administrative Use Permit, under BMC Section 23D.08.060.B legalize a boundary fence over 6 ft. in height.

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 CEQA Guidelines Section 153301 of the CEQA Guidelines ("Existing Facilities").
2. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to

Government Code Section 65962.5, and (f) the project would not affect any historical resource.

II. FINDINGS FOR APPROVAL

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

A. The subject property is equal to or below the Single Family Residential District (R-1A) standards (BMC Section 23D.20.070) for density, height, setbacks, maximum lot coverage, usable open space (1 dwelling on a lot where 1 dwelling is allowed; 32% lot coverage where 40% maximum lot coverage is allowed; and the subject property preserves well beyond 400 sq. ft. of required usable open space). One off-street parking space within the front setback is allowed to comply with BMC Section 23B.52.010 for Reasonable Accommodation for Fair Access to Housing. The project would legalize construction of an accessory building in the rear and side yards which is consistent with the single-family use of the subject property, functions as an extension of the main dwelling, is accessory to the residential use, and is not used as a separate dwelling. The accessory building is located outside required front and north side setbacks. Despite the fact that the accessory building projects a few inches into rear and south side setbacks, it is not anticipated to create significant changes to the existing sunlight conditions in the immediate vicinity of the project due to its location and limited scale. The project would also legalize a 14 ft. tall hedge within the north and south side yards in addition to a 9 ft. tall, 21 ft. X 5 ft. trellis, located 3 in. from the south property line and 30 ft. from the rear property line. The proposed, hedge and the trellis are small in scale and are not expected to create significant impact to sunlight, air and view for the surrounding neighborhood.

B. Privacy, sunlight, air & view:

- Accessory building: The 128 sq. ft. accessory building functions as an office, which is a quiet activity, and is subject to condition of approval #14 that requires that a "Notice of Limitation of Use" be placed on the deed to the property. This deed restriction prohibits the use or conversion of this habitable accessory building to a dwelling unit unless authorized by an applicable permit.

The accessory building preserves privacy for abutting residences because the entry point (located on the east elevation) faces the main dwelling and while windows are located on south and west elevations, they are small in size and the existing vegetation on the side and rear property lines screen the adjacent properties.

The accessory building is found to be consistent with the existing development and building-to-building separation pattern – or air – in this R-1A neighborhood. It is separated from the main building on the neighboring property at 1333 Hopkins Street (to the south) by approximately 50 ft. and from its detached accessory structure

(Garage) by approximately 17 ft. This accessory building is separated from the building on neighboring property at 1327 Hopkins (also to the south) by approximately 33 ft.; from the building on the neighboring property at 1341 Peralta Avenue (to the west) by approximately 56 ft.; from the building at neighboring property at 1344 Ordway Street (to the north) by approximately 17 ft.; and from the main dwelling on the subject lot by more than 40 ft.

The accessory building is located at approximately 8 ft. 6 in. from the side property line to the north; about 56 ft. from front property line to the east; 3 ft. 7 in. to 3 ft. 9 in. from side property line to the south; and 4 ft. 1 in. to 4 ft. 3 in. from the rear property line to the west. The accessory building is one story in a district that permits three story main buildings. It is not taller than the main dwelling on the subject lot nor adjacent properties. Due to location and scale, this accessory building does not create significant changes to existing sunlight conditions in the vicinity of the project.

The accessory building's maximum height is 12 ft. 2 in. which is lower than the main dwelling and all abutting buildings. This low roof height and the generally flat topography of the area will ensure that this building would not obstruct or significantly reduce any prominent views that may exist for surrounding neighbors, such as a view of Golden Gate or Bay Bridge, the Downtown San Francisco skyline, the bay, or Treasure Island as defined in BMC Chapter 23F.04.

- Trellis:
While the 105 sq. ft. 9 ft. tall trellis is located at 3 in. from the south side property line, it matches the neighbor's abutting garage in height and length. Additionally, this structure is designed with well-spaced members (1 ft. 9 in. between wood members) which allows for passage of air and light and hence is not expected to create light and air impacts to the nearest property at 1333 Hopkins Street.
- Hedge:
Since the hedge is more than 8 ft. from the nearest abutting property to the south and are light penetrable, it is not expected to significantly obstruct sunlight, air, and views for this neighborhood.

2. BMC Section 23B.52.010 for Reasonable Accommodations, provides that it is the policy of the City to comply with the Federal Fair Housing Act, the Americans with Disabilities Act and the California Fair Employment and Housing Act to provide reasonable accommodation by modifying the application of its zoning and subdivision regulations for persons with disabilities seeking fair access to housing. Therefore, the City will allow the establishment of a front yard off-street parking space 1 ft. 4 in. from the front property line where 20 ft. is required, and 8 in. from the side property line where 2 ft. is required because:
 - A. The parking pad will provide fair access to the home of the applicant who has lived there for 4 years and needs an accessible off-street parking space due to a disability as defined by the Fair Employment and Housing Act of 1959, codified as Government Code §§12900 – 12996;
 - B. The Berkeley Zoning Ordinance allows a person to request a reasonable accommodation in the form of modification in the application of a zoning law that acts as a barrier to fair housing access. According to Section 23D.12.080.B, no portion of an off-street parking space may be located in a required front yard unless such location is authorized by an AUP and approved by the Traffic Engineer. Additionally, Section 23D.12.080.E requires that all paved areas for off-street parking spaces and driveways be separated from any adjacent interior side lot line by a landscaped strip at least two feet wide. In this case the modification will apply to: 1) Section 23D.12.080.B in order to allow a new off-street parking space to be created within the required front yard setback; and to 2) Section 23D.12.080.E in order to allow elimination of the required two feet wide landscaped strip. Therefore, allowing a front yard parking space without a two feet landscaped strip is considered a modification in zoning policy for reasonable accommodation for fair housing access; and
 - C. Due to the City's current practice of not permitting a front yard parking space without a two-foot wide landscaped strip, Condition #11 has been added to this permit requiring the restoration of the front yard and restoration of rear or side off-street parking space, if the property is sold, the tenant with medical condition moves out or the disability no longer prevents accessible access.

III. FINDINGS FOR DENIAL

As required by BMC Section 23D.08.060, no fence or other unenclosed accessory structure located on a property line or within the required yard area for a main building may exceed six feet in height at any point, unless so authorized by an AUP. The existing 6 ft. to 8 ft. tall wood fence (proposed to become a 8 ft. to 9 ft. tall. wood fence by adding a 2-3 ft. wood lattice above) separates the subject property from the neighbor's property to the south. Based on the property survey submitted by the applicant, it appears that the existing fence is located on the neighbor's property. Fences are usually a shared responsibility between neighbors. In this case, because the fence is located outside the subject property lot line and on the neighbor's property at 1333 Hopkins Street and the neighbor has objected, a recommendation for approval cannot be made by staff.

STANDARD CONDITIONS

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

1. Conditions Shall be Printed on Plans

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

2. Applicant Responsible for Compliance with Conditions

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

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

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

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

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

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

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

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

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

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

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

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

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

9. Indemnification Agreement

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

ADDITIONAL CONDITIONS IMPOSED BY THE ZONING OFFICER

Pursuant to BMC Section 23B.28.050.D, the Zoning Officer attaches the following additional conditions to this Permit:

Prior to Submittal of Any Building Permit:

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

Project Liaison

_____ Name

_____ Phone #

11. The parking pad must be removed, and the curb cut in filled if the property is sold, the tenant moves out or disability no longer prevents accessible access.
12. Hedge shall not exceed 14 ft. in height.
13. To legalize the construction of the accessory building and trellis, a building permit application must be submitted within 30-days after the AUP approval.

Prior to Issuance of Any Building Permit:

14. **Accessory Building:** All owners of record of the subject property shall sign and record with the Alameda County Clerk-Recorder a "Notice of Limitation on Use of Property" (available from Land Use Planning Division) and provide a recorded copy thereof to the project planner. This Notice of Limitation shall stipulate that no part of this Accessory Building shall be used or converted to use as a dwelling unit unless and until permission is requested of the City of Berkeley and authorized a Use Permit, Administrative Use Permit, or Zoning Certificate, whichever is applicable. This limitation shall include the explicit acknowledgment that a full bathroom and cooking facilities may be installed, as long as the cooking facilities do not constitute a Kitchen per BMC Chapter 23F.04. This limitation may not be revised or removed from this property without the prior written permission of the Zoning Officer of the City of Berkeley.

Standard Construction-related Conditions Applicable to all Projects:

15. **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.

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

17. 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.
18. Subject to approval of the Public Works Department, the applicant shall repair any damage to public streets and/or sidewalks by construction vehicles traveling to or from the project site.
19. All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter in thickness and secured to the ground.
20. All active construction areas shall be watered at least twice daily, and all piles of debris, soil, sand or other loose materials shall be watered or covered.
21. Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.
22. Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.
23. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way.
24. 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.
25. Any construction during the wet season shall require submittal of a soils report with appropriate measures to minimize erosion and landslides, and the developer shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.
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. 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.

28. Human Remains (Ongoing throughout demolition, grading, and/or construction). In the event that human skeletal remains are uncovered at the project site during ground-disturbing activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to CEQA Guidelines Section 15064.5 (e)(1) . If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to Health and Safety Code Section 7050.5(c), and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.

29. 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

1346 ORDWAY STREET
Page 10 of 10

NOTICE OF ADMINISTRATIVE DECISION - Findings and Conditions
Administrative Use Permit #ZP2018-0174

resource important, and such plan shall be implemented. The plan shall be submitted to the City for review and approval.

Prior to Issuance of Occupancy Permit or Final Inspection:

- 30. All construction at the subject property shall substantially conform to the approved Use Permit drawings or to modifications approved by the Zoning Officer.
- 31. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated December 3, 2019

At All Times (Operation):

- 32. All exterior lighting shall be energy efficient where feasible; and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
- 33. 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.



Prepared by: Nilu Karimzadegan, Assistant Planner
For Steven Buckley, Zoning Officer

PLAT OF SURVEY

LOT 44, BLOCK 6
KEY ROUTE TERRACE NO. 3 (21 M 59)
LOCATED AT 1346 ORDWAY STREET
BERKELEY, ALAMEDA COUNTY, CALIFORNIA

MARCH 14, 2019 SCALE: 1" = 8'



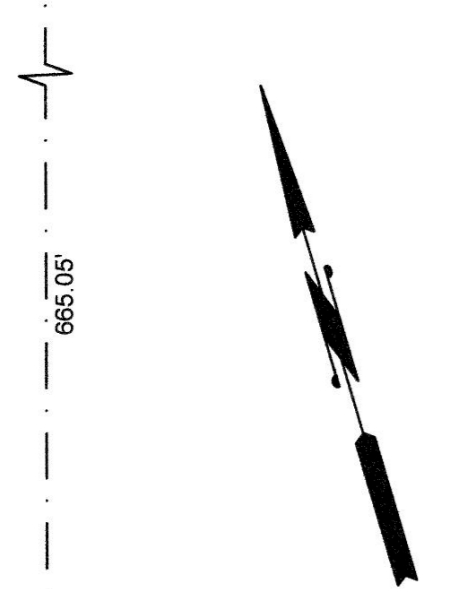
PLANS APPROVED by

Signature
SIGNATURE

February 25, 2020
DATE

*AUP Findings and Conditions Attached

MONUMENT AT GILMAN STREET



PERALTA AVENUE
(70' WIDE)

S73°42'00"E
30.00'

N16°18'00"E

N16°18'00"E

452.75'

MONUMENT AT HOPKINS STREET (MATCH)

LOT 43

N73°42'00"W

35.00'

4.1'

4.5'

10.3'

12.4'

10.4'

4.4'

3.6'

4.7'

3.8'

4.9'

LOT 46

LOT 44

HOUSE #1346
ORDWAY STREET

SHED

PORCH

CONC PATH

CONC DRIVEWAY

TRELLIS

GARAGE

LOT 45

GARAGE

127.50'

127.50'

3.7'

19.9'

19.9'

19.9'

9.9'

35.00'

48.89'

49.23'

CONC SIDEWALK

DRIVEWAY

ORDWAY STREET
(WIDTH VARIES)

N16°18'00"E

N65°22'00"E

N32°38'00"W

492.93'

N55°22'00"E

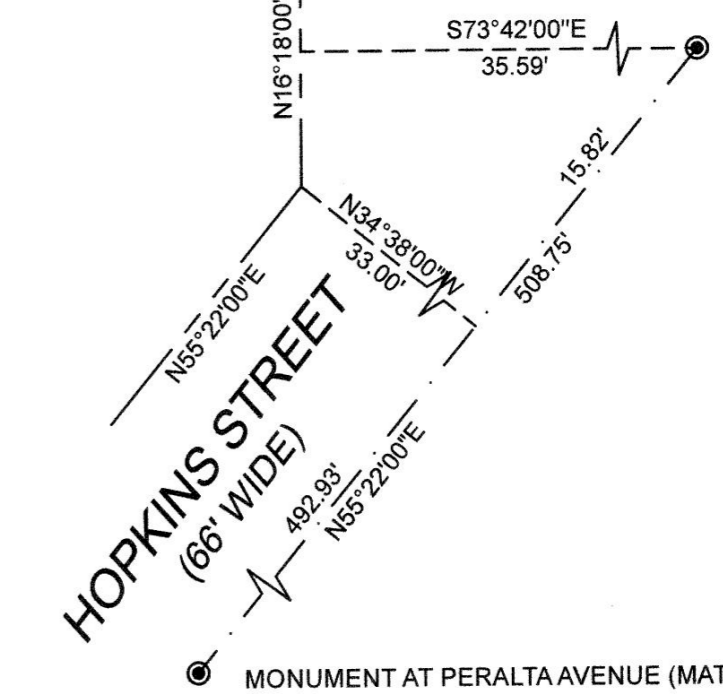
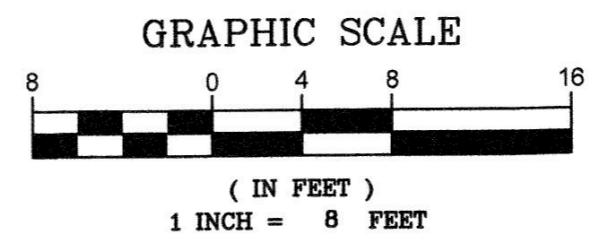
MONUMENT AT PERALTA AVENUE (MATCH)

NOTES:
ALL DIMENSIONS ARE IN FEET AND DECIMALS OF A FOOT.

NO TITLE REPORT WAS PROVIDED, EASEMENTS MAY EXIST.

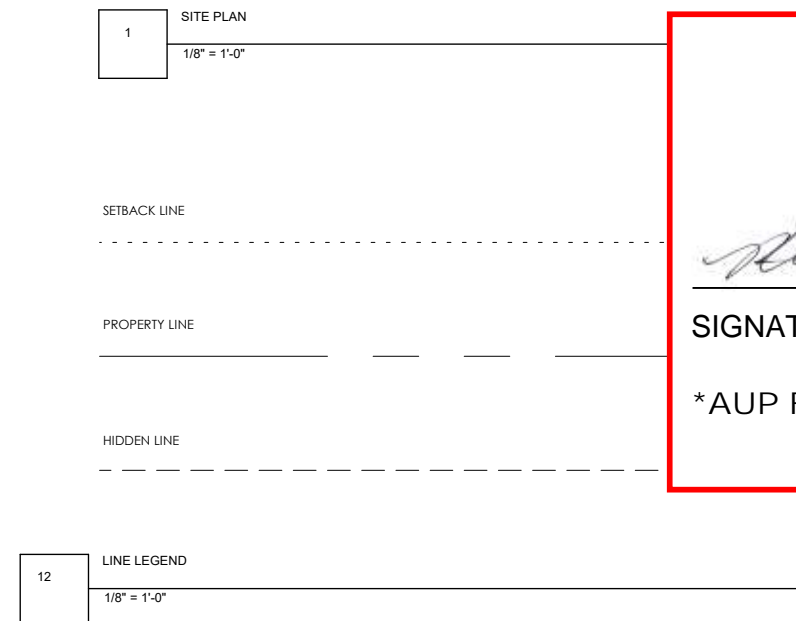
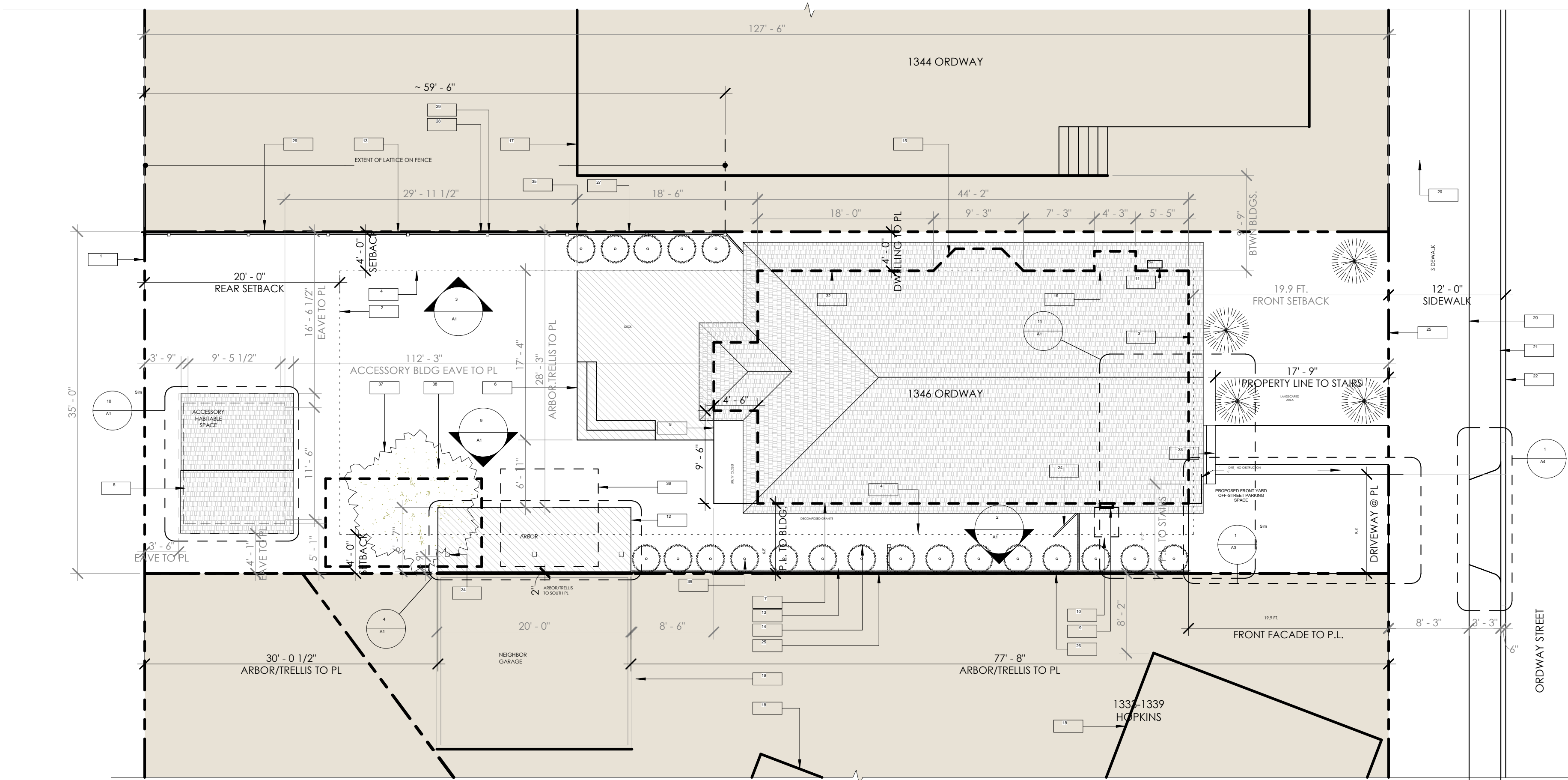
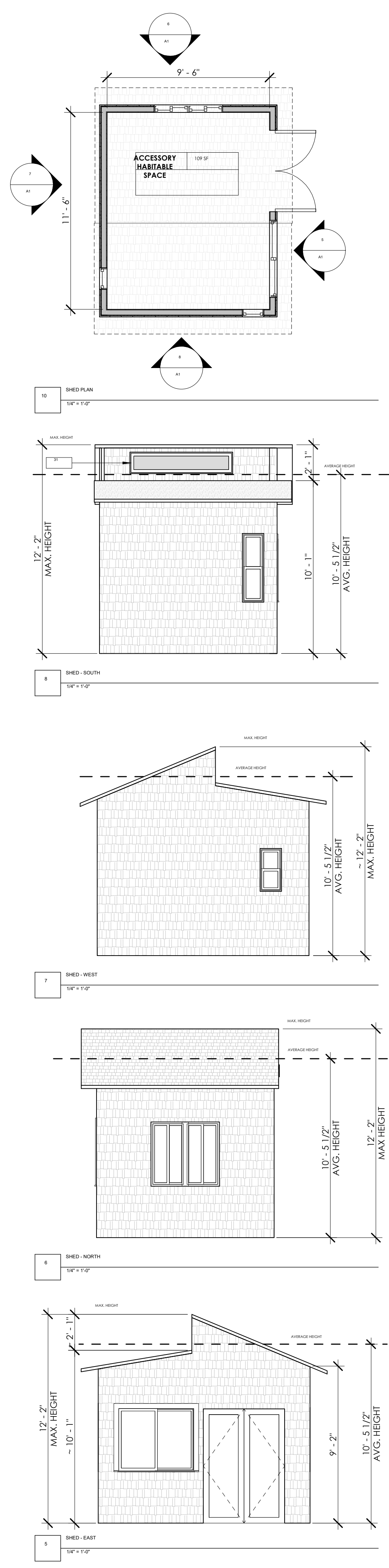
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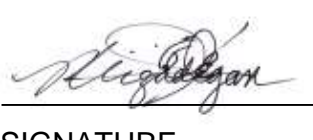
- LEGEND:
- CONC CONCRETE
 - EAVE EDGE
 - WOOD FENCE
 - CITY MONUMENT

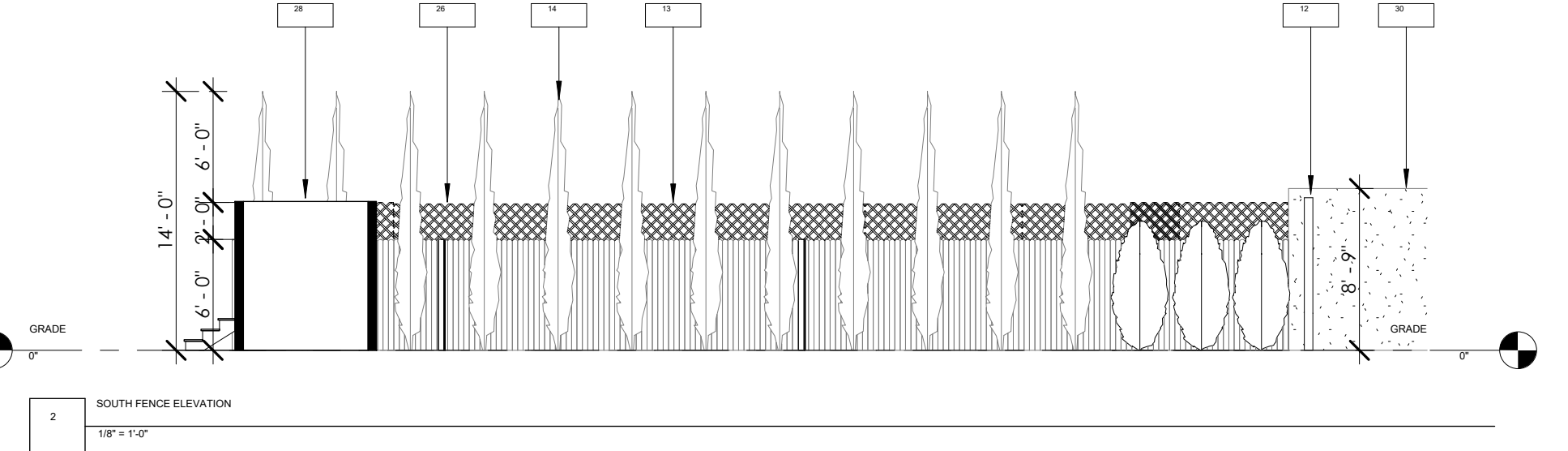
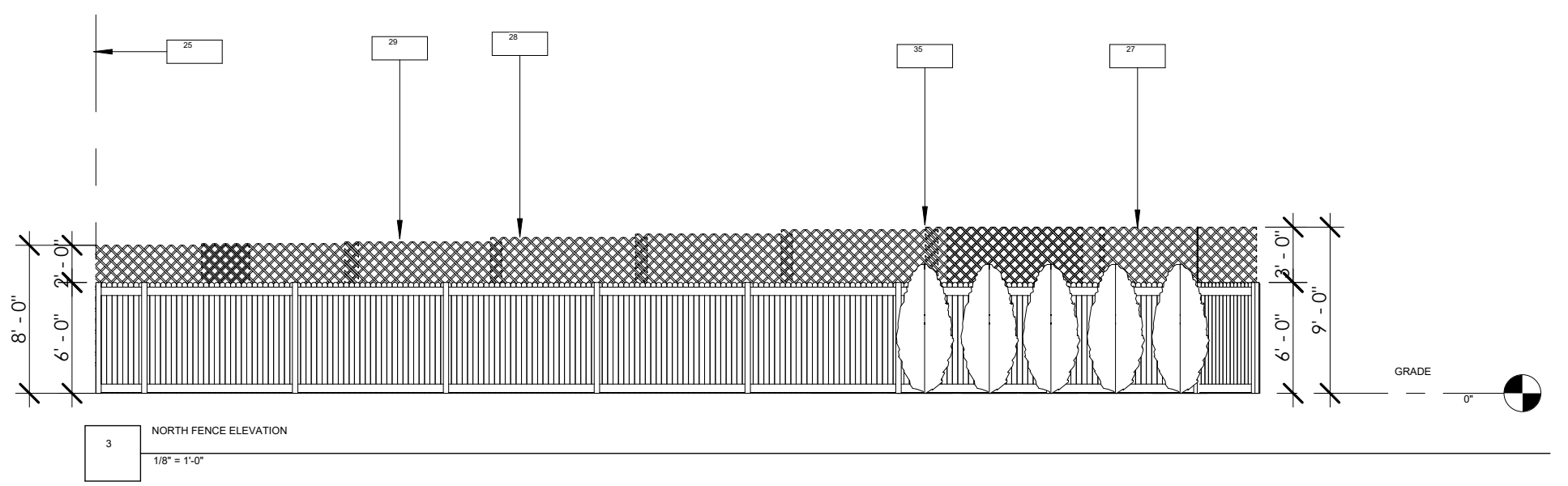
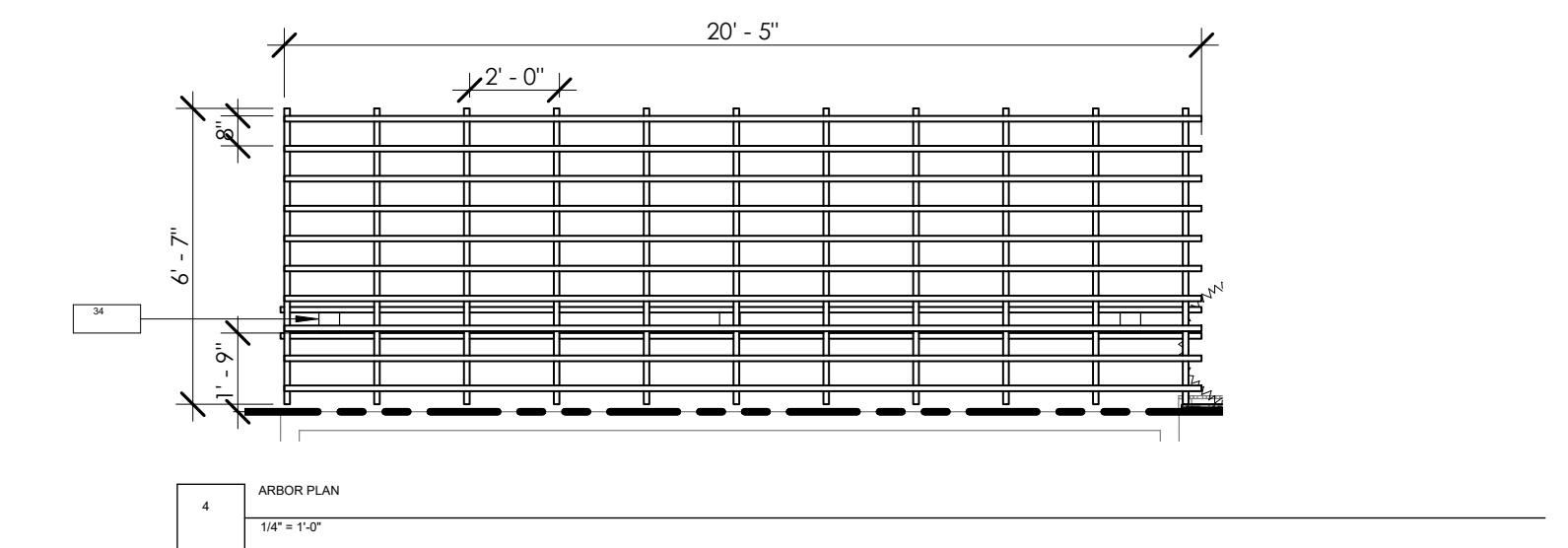
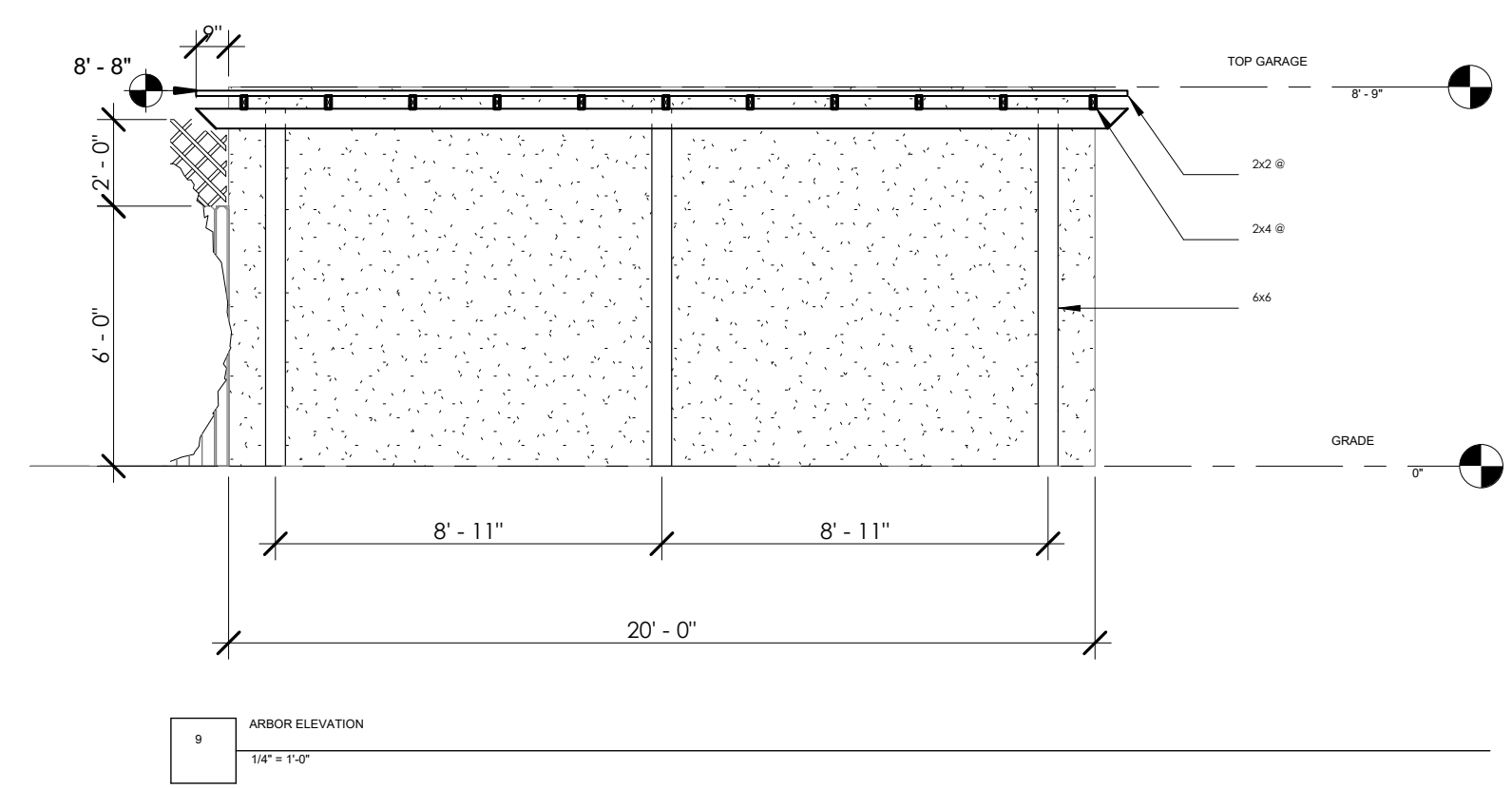
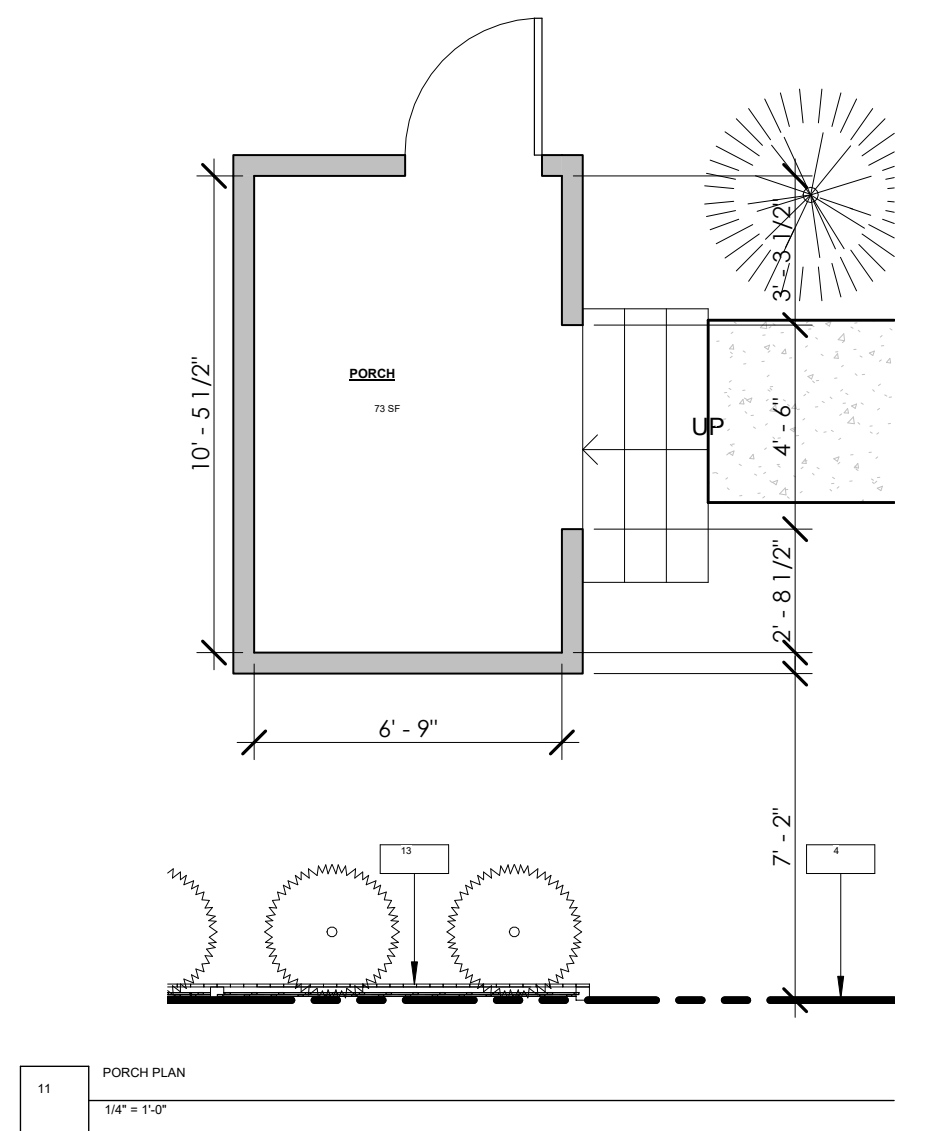
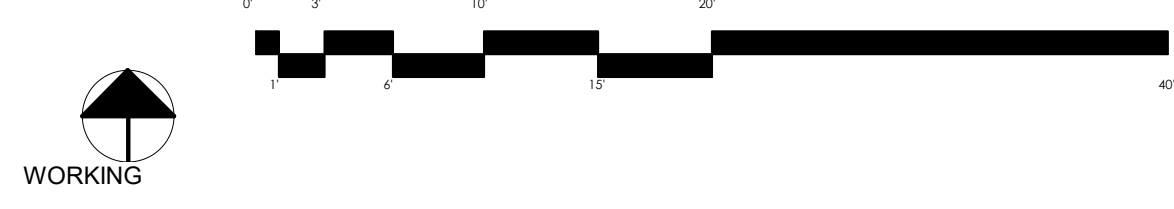


MONUMENTAL LAND SURVEYING
171 MAYHEW WAY, SUITE 207, PLEASANT HILL, CA 94523
(925) 300-3695 MONUMENTAL-LS.COM PROJECT#18114

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PLANS APPROVED by

February 25, 2020
 SIGNATURE DATE
 *AUP Findings and Conditions Attached



SHEET INDEX

Sheet Number	Sheet Name	Sheet Issue Date
A1	SITE PLAN	12/03/2019
A3	ENLARGED PARKING PLAN	12/03/2019
A4	DETAILS & AREA CALCS	12/03/2019

SHEET NOTES

Key Value	Keynote Text
1	48" TALL BAMBOO FENCE @ REAR PROPERTY LINE
2	REAR SETBACK LINE
3	FRONT SETBACK LINE
4	SIDE SETBACK LINE
5	SHED
6	REAR DECK
7	BLDG. FOOTPRINT BELOW
8	UTILITY CLOSET
9	ELECTRICAL PANEL
10	MAINTAIN 30'w X 36'D FOR CLEAR WORKING SPACE - N.E.C. 110.26(A)(2) REQUIREMENT.
11	GAS METER
12	ARBOR STRUCTURE
13	6'-0" TALL FENCE AT PROPERTY LINE
14	14' TALL LANDSCAPING/TREES
15	BAY WINDOW
16	FIREPLACE
17	1344 ODWAY RESIDENCE
18	1333-1339 HOPKINS STREET, MAIN STRUCTURE.
19	1333-1339 HOPKINS STREET, GARAGE STRUCTURE.
20	72" WIDE SIDEWALK
21	39" WIDE PLANTING STRIP
22	CURB AT STREET
24	GATE
25	PROPERTY LINE
26	24" LATTICE ATOP OF FENCE
27	36" LATTICE ATOP OF FENCE, INSTALLED TO REPLACE (E) 24" LATTICE AT THE TIME OF REMODEL/ADDITION AT 1344 ORDWAY, MUTUALLY AGREED UPON WITH NEIGHBOR OF 1344.
28	FENCE AND LATTICE PATTERNS ARE SHOWN CONCEPTUALLY.
29	LATTICE "STEPS-DOWN" APPROX 1.5" EVERY 8'-0" LF TO REFLECT GRADE.
30	NEIGHBOR'S GARAGE STRUCTURE
31	CELESTORY WINDOW
32	BLDG. FOOTPRINT IS AT SETBACK LINE
33	FRONT ENTRY STEPS
34	CLOSEST FACE OF ARBOR POST IS 1'09" FROM PROPERTY LINE. SEE PLAN VIEW.
35	36" LATTICE ATOP OF FENCE EAST OF THIS POINT. 24" LATTICE ATOP FENCE WEST OF THIS POINT
36	APPROX. LOCATION OF PREVIOUS TOOLSHED. APPROX 10'x10'. REMOVED BY PREVIOUS OWNER PRIOR TO NOV 2015 PURCHASE BY CURRENT OWNER.
37	TREE - REMOVED BY PREVIOUS OWNER PRIOR TO NOV 2015 PURCHASE BY CURRENT OWNER.
38	APPROX. LOCATION OF PREVIOUS TRED SHED. APPROX 9'x16'. REMOVED BY PREVIOUS OWNER PRIOR TO NOV 2015 PURCHASE BY CURRENT OWNER.
39	TREES ARE APPROX 18" FROM P.L. AND 5'-8" FROM BUILDING FOOTPRINT. CROWN OF TREE IS APPROX. 36" W. TRUNKS < 3" DIA.

TRADE CRAFT

225 VISTA GRANDE, GREENBRAE, CA

ARCHITECT PROJECT #: 18034

ARCHITECT CONTACT INFORMATION:
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CONSULTANT:

CLIENT:
Annelle Dupont & Kate Sublette

1346 ORDWAY
1346 ORDWAY STREET
BERKELEY, CA 94702

REVISION HISTORY	REVISION DESCRIPTION	REVISION DATE
1	AUP PERMIT	11/19/18
2	AUP REVISION	3/15/19
1		

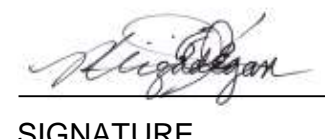
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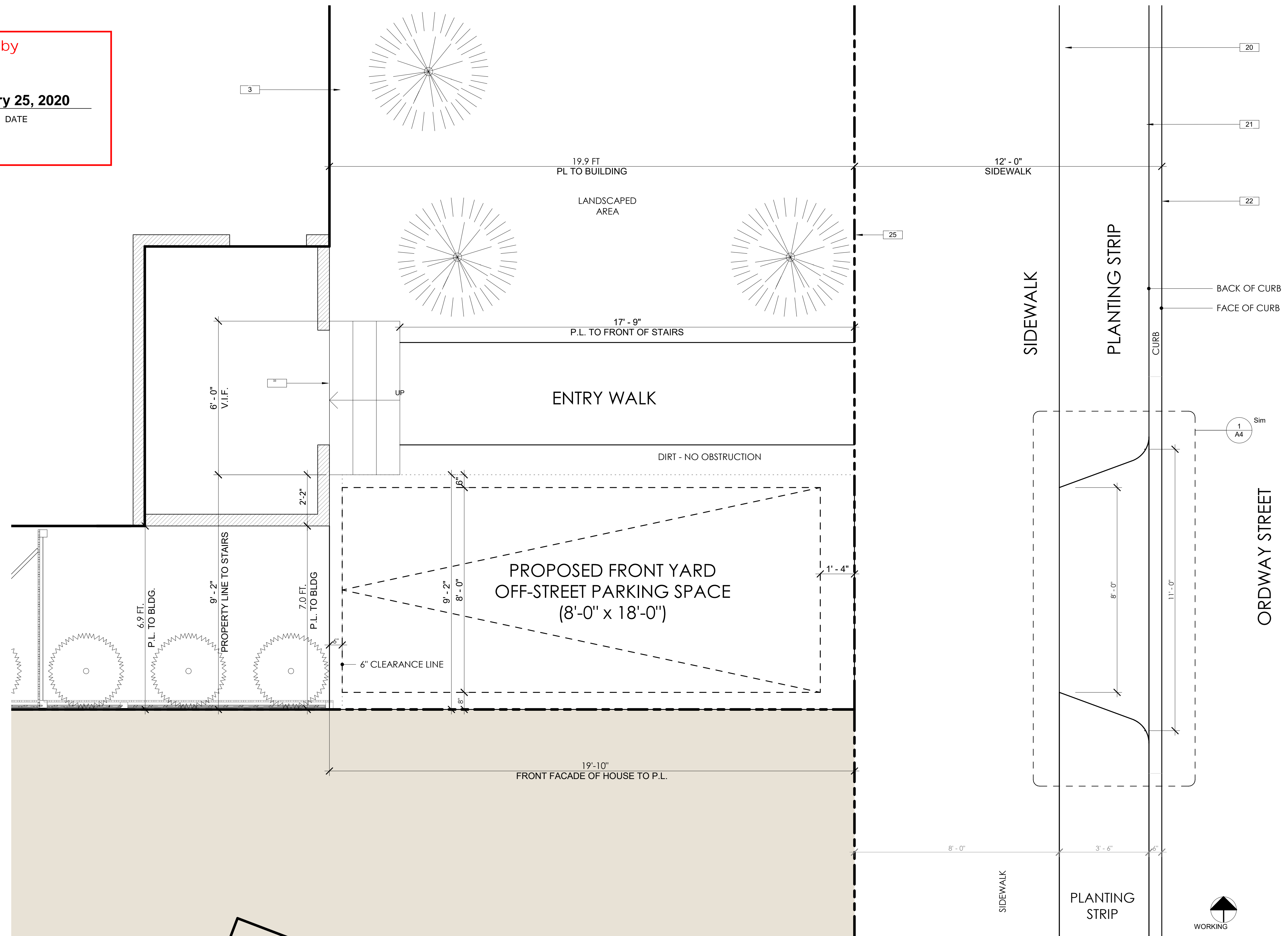
DRAWN BY: _____ CHECKED BY: _____
SCALE: _____ SHEET SIZE: 24 x 36"
PUBLISH DATE: 12/03/2019
PRINT DATE/TIME: 12/3/2019 6:44:19 PM
SHEET NAME: SITE PLAN

SHEET NUMBER:
A1

PLANS APPROVED by


 SIGNATURE February 25, 2020
 DATE

*AUP Findings and Conditions Attached



1 PARKING PLAN
1/2" = 1'-0"

SHEET NOTES	
Key Value	Keynote Text
3	FRONT SETBACK LINE
16	FIREPLACE
20	72" WIDE SIDEWALK
21	39" WIDE PLANTING STRIP
22	CURB AT STREET
25	PROPERTY LINE
33	FRONT ENTRY STEPS

TRADE CRAFT

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CLIENT:
Jennie Durant & Keki Burjorjee

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BERKELEY, CA 94702

REVISION HISTORY

Revision Number	Revision Description	Revision Date
1	A4	Sim

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PUBLISH DATE: 12/03/2019
PRINT DATE/TIME: 12/3/2019 6:44:20 PM

SHEET NAME:
ENLARGED PARKING PLAN
SHEET NUMBER:
A3

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PAPER SCALE → 1" = 10'

BUILDING FOOTPRINT: SEE "COVERAGE AREA"

COVERAGE AREA: ALL THE AREA OF A LOT, AS PROJECTED ON A HORIZONTAL PLANE, WHICH IS ENCLOSED BY THE EXTERIOR WALLS OR BUILDINGS OR ENCLOSED ACCESSORY STRUCTURES OR COVERED BY DECKS, PORCHES, STAIRS AND/OR LANDINGS WHICH COVER AN ENCLOSED SPACE OR PAVED GROUND AREA. ALSO SEE SECTION 230.04.040.

230.04.040 LOT COVERAGE:

- THE CALCULATION OF AREA FOR LOT COVERAGE SHALL EXCLUDE UNCOVERED DECKS, PORCHES, LANDINGS AND STAIRS, EXCEPT THAT ANY DECK ON THE ROOF OF A BUILDING OR ACCESSORY STRUCTURE OR COVER BY ENCLOSED SPACE OR PAVED GROUND AREA SHALL BE INCLUDED IN SUCH CALCULATION.
- THE AREA OF THE ROOF OF A SUBSTANTIAL STRUCTURE WITH A FLAT OR GENTLY SLOPED ROOF SHALL BE INCLUDED IN THE CALCULATION OF AREA FOR LOT COVERAGE.
- STRUCTURED EQUIPMENT IN COMPLIANCE WITH THIS CHAPTER MAY EXCEED THE MAXIMUM COVERAGE AREA LIMIT.
- WHEELCHAIR RAMPS AND LIFTS IN COMPLIANCE WITH THIS CHAPTER MAY EXCEED THE MAXIMUM COVERAGE AREA LIMIT. (ORD. 467940 § 4 (PART), 1999)

ROOF AREA: GROSS: THE TOTAL GROSS HORIZONTAL AREA OF ALL FLOORS OF A BUILDING OR ENCLOSED STRUCTURE, INCLUDING BUT NOT LIMITED TO, STAIRS, BALCONIES AND COLLARS, BELOW THE ROOF AND WHEN THE COVER SPACE OF THE MAIN WALLS OF PRINCIPAL OR ACCESSORY BUILDINGS OR THE CENTER LINE OF PARTY WALLS SEPARATING SUCH BUILDINGS OR PORTION THEREOF OR WHEN LINES DRAWN PARALLEL TO AND TWO FEET FROM THE ROOF OF ANY BUILDING OR PORTION THEREOF OR WHEN WALLS EXCEPT FOR THE CASE OF A MULTISTORY BUILDING WHICH HAS COVERED OR ENCLOSED STAIRWAYS, LIFTS AND ELEVATOR SHAFTS, THE HORIZONTAL AREA OF SUCH PARTS SHALL BE COUNTED ONLY ONCE AS THE FLOOR AREA OF THE GREATEST AREA OF FLOORING. AREA THAT SHALL BE EXCLUDED FROM GROSS FLOOR AREA INCLUDES COVERED OR UNCOVERED AREAS USED FOR OFF-STREET PARKING SPACES OR LOADING SPACES AND DRIVEWAYS, RAMPS BETWEEN FLOORS OF A MULTISTORY PARKING GARAGE AND HANDICAPPED ACCESSWAYS TO THE GARAGE, MECHANICAL, ELECTRICAL AND TELEPHONE EQUIPMENT ROOMS BELOW FRESH GRADE, AND AREAS WHICH QUALIFY AS USABLE OPEN SPACE FOR NONRESIDENTIAL USES. GROSS AREA INCLUDES PREFERRED ACCESS INTERIOR WALKWAYS OR CORRIDORS, OR INTERIOR COURTYARDS, WALKWAYS, PATIOS OR CORRIDORS COVERED BY A ROOF OR STRUCTURE, BUT EXCLUDES ARCHES, PORTICOES AND SIMILAR OPEN AREAS WHICH ARE LOCATED AT OR NEAR STREET LEVEL, WHICH ARE ACCESSIBLE TO THE GENERAL PUBLIC, AND WHICH ARE NOT DESIGNED OR USED AS SALES, DISPLAY, STORAGE, SERVICE OR PRODUCTION AREAS.

ROOF AREA NET (RAN): THE GROSS FLOOR AREA FROM DIVISION OF THE GROSS FLOOR AREA OF ALL BUILDINGS ON A LOT BY THE AREA OF THE LOT, BY A SINGLE INTEGRATED DEVELOPMENT OR CONCORDANCE WITH THE PERMITTED FLOOR AREA RATIO SHALL BE COMPLETED UPON THE BASIS OF THE TOTAL AREA OF ALL SUCH LOTS.

USABLE OPEN SPACE: 230.04.050:


THE AREA OF EACH LOT WHICH IS RESERVED FOR USABLE OPEN SPACE PURPOSES SHALL BE FOR ACTIVE OR PASSIVE RECREATION USE AND SHALL BE ACCESSIBLE TO THE OCCUPANTS OF THE BUILDING, UNLESS OTHERWISE SPECIFIED IN INDIVIDUAL DISTRICT STANDARDS. IN ADDITION, SUCH AREAS SHALL SATISFY THE FOLLOWING CONDITIONS:

- NO AREA SHALL QUALIFY AS USABLE OPEN SPACE UNLESS IT HAS A MINIMUM WIDTH AND LENGTH OF TEN FEET.
- EXCEPT FOR NONRESIDENTIAL AREAS, USABLE OPEN SPACE REQUIREMENT SHALL BE AT LEAST A MINIMUM WIDTH AND LENGTH OF SIX FEET AND HAS AT LEAST ONE EXTERIOR SIDE OPEN AND UNOBSTRUCTED EXCEPT FOR WINDSCREENS.
- NO MORE THAN ONE OF THE TOTAL USABLE OPEN SPACE REQUIRED MAY BE SATISFIED BY BALCONIES.
- NO AREA WHICH IS ACCESSIBLE AND/OR USABLE ONLY BY THE OCCUPANTS OF A PARTICULAR DWELLING UNIT SHALL BE USED TO SATISFY THE USABLE OPEN SPACE AREA REQUIREMENTS OF ONLY THAT PARTICULAR DWELLING UNIT.
- IN AREAS WHERE BALCONIES USABLE OPEN SPACE SHALL BE AS OPEN TO THE SKY.
- NO AREA WHICH IS ACCESSIBLE AND/OR USABLE ONLY BY THE OCCUPANTS OF A PARTICULAR DWELLING UNIT SHALL BE USED TO SATISFY THE USABLE OPEN SPACE AREA REQUIREMENTS OF ONLY THAT PARTICULAR DWELLING UNIT.
- AT LEAST ONE OF THE TOTAL AREA REQUIRED AS USABLE OPEN SPACE, EXCLUSIVE OF BALCONIES ABOVE THE FIRST FLOOR, SHALL BE A LANDSCAPED AREA FOR MULTIPLE DWELLING UNITS, SUCH AS COURTYARDS, AREAS SHALL ACCORDINGLY PROVIDE ADEQUATE IRRIGATION AND DRAINAGE FACILITIES ADEQUATE TO ASSURE HEALTHY GROWING CONDITIONS FOR PLANTS.
- ANY USABLE OPEN SPACE WHICH IS NOT PLANTED SHALL BE DEVELOPED TO ENCOURAGE OUTDOOR ACTIVE OR PASSIVE RECREATION USE AND SHALL INCLUDE SUCH ELEMENTS AS SEATING, SPORTS COURTS, OUTDOOR SWIMMING, DECORATIVE FOUNTAINS AND WALKWAYS WHICH DO NOT SERVE AS SERVICE WALKWAYS.
- AREAS OF THE LOT WHICH DO NOT QUALIFY AS USABLE OPEN SPACE AND WHICH ARE NOT DESIGNATED AS DRIVEWAYS, OFF-STREET PARKING SPACES OR LOADING AREAS SHALL BE RETAINED AS LANDSCAPED AREAS.
- NO AREA DESIGNATED FOR OFF-STREET PARKING AND LOADING AREAS, SERVICE AREAS, DRIVEWAYS, REQUIRED WALKWAYS OR PORTICOES THEREOF OR ANY FEATURES THAT ARE USED FOR REQUIRED ACCESS TO DWELLING UNITS SHALL BE COVERED AS SATISFYING ANY USABLE OPEN SPACE AREA REQUIREMENT. (ORD. 467940 § 4 (PART), 1999)

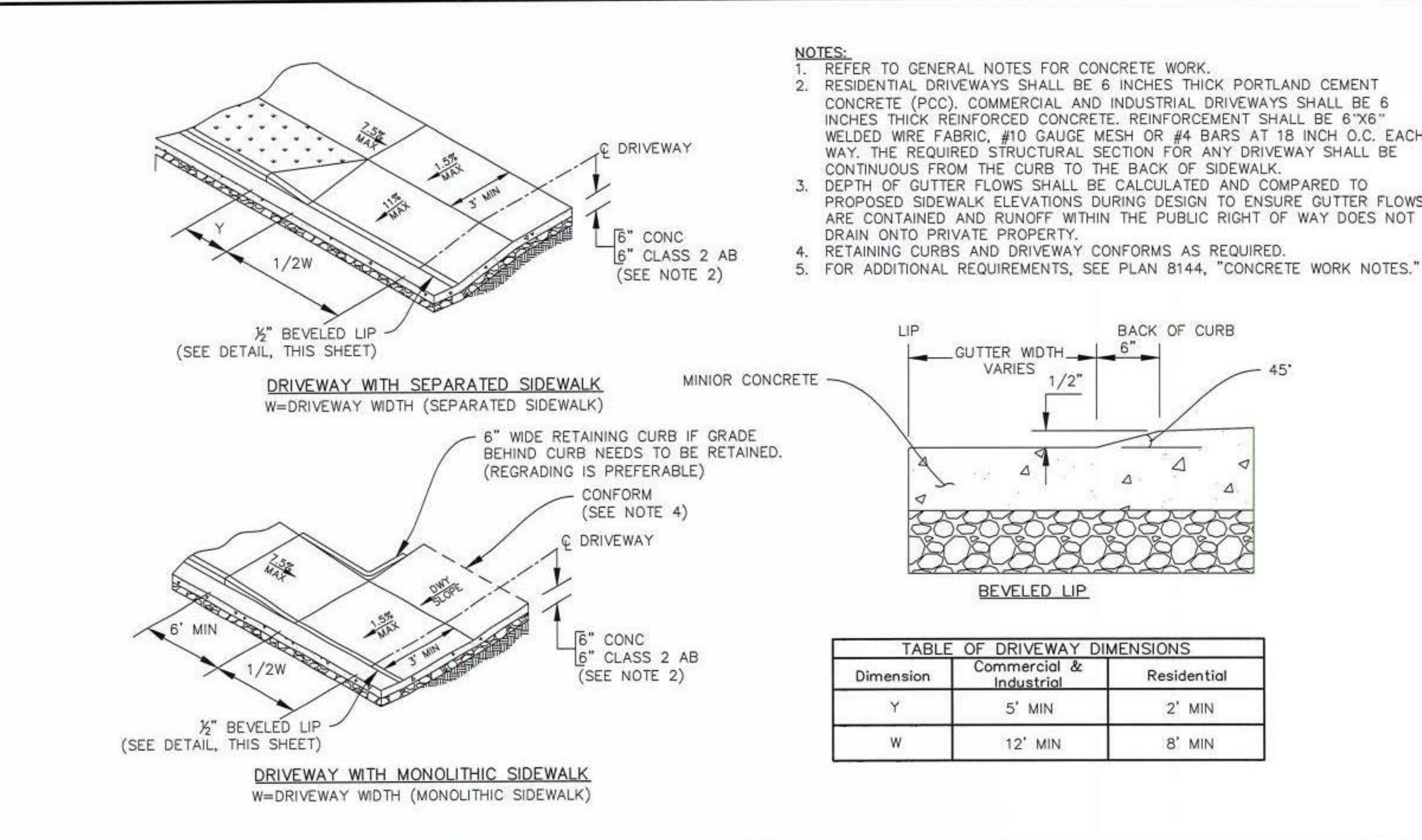
SEMI-PRIVATE: ANY PORTION OF A BUILDING OR STRUCTURE WHICH IS DESIGNED TO BE OR CAN BE USED AS HABITABLE SPACE, WHICH HAS FINISHED WALLS (SHEATHING OR PLASTER) AND/OR IS HEATED OR HEATED WITH ANY FIXED FINISHES OF CEILING, FLOORING INCLUDING CARPETING, WALL, CEILING AND JANITORY ROOMS, STORAGE AREAS WITH OVER SIX (6) FEET OF VERTICAL SPACE SHALL ALSO BE CONSIDERED USABLE SPACE.

PLANS APPROVED by

February 25, 2020

SIGNATURE:  DATE: _____

*AUP Findings and Conditions Attached



DRIVEWAY WITH SEPARATED SIDEWALK
W=DRIVEWAY WIDTH (SEPARATED SIDEWALK)

DRIVEWAY WITH MONOLITHIC SIDEWALK
W=DRIVEWAY WIDTH (MONOLITHIC SIDEWALK)

TABLE OF DRIVEWAY DIMENSIONS

Dimension	Commercial & Industrial	Residential
Y	5' MIN	2' MIN
W	12' MIN	8' MIN

NOTES:

- REFER TO GENERAL NOTES FOR CONCRETE WORK.
- RESIDENTIAL DRIVEWAYS SHALL BE 6 INCHES THICK PORTLAND CEMENT CONCRETE (PCC). COMMERCIAL AND INDUSTRIAL DRIVEWAYS SHALL BE 6 INCHES THICK REINFORCED CONCRETE. REINFORCEMENT SHALL BE 6"x6" WELDED WIRE FABRIC, #10 GAUGE MESH OR #4 BARS AT 18 INCH O.C. EACH WAY. THE REQUIRED STRUCTURAL SECTION FOR ANY DRIVEWAY SHALL BE CONTINUOUS FROM THE CURB TO THE BACK OF SIDEWALK.
- DEPTH OF GUTTER FLOWS SHALL BE CALCULATED AND COMPARED TO PROPOSED SIDEWALK ELEVATIONS DURING DESIGN TO ENSURE GUTTER FLOWS ARE CONTAINED AND RUNOFF WITHIN THE PUBLIC RIGHT OF WAY DOES NOT DRAIN ONTO PRIVATE PROPERTY.
- RETAINING CURBS AND DRIVEWAY CONFORMS AS REQUIRED.
- FOR ADDITIONAL REQUIREMENTS, SEE PLAN B144, "CONCRETE WORK NOTES."

STANDARD DETAIL DRIVEWAY

SUBMITTED: Don Z... DATE: 2/27/17
SUPERVISING CIVIL ENGINEER R.C.E. 64582

APPROVED: P-L-O DATE: 2/28/17
MANAGER OF ENGINEERING R.C.E. 66014

CITY OF BERKELEY
DEPARTMENT OF PUBLIC WORKS

DESIGN: HEI DATE: 01/26/17 PLAN: 8151
DRAWN: HEI SCALE: N.T.S. FILE: 20B-163
CHECK: MS BOOK: SHEET: 1 OF 1

TRADE CRAFT

TRADECRAFT
225 VISTA GRANDE, GREENBRAE, CA 94034
ARCHITECT PROJECT #: 18-071
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CONSULTANT:
CLIENT:
Jerrisa Dupont & Kelli Sublette

1346 ORDWAY
1346 ORDWAY STREET
BERKELEY, CA 94702

REVISION HISTORY

Revision Number	Revision Description	Revision Date

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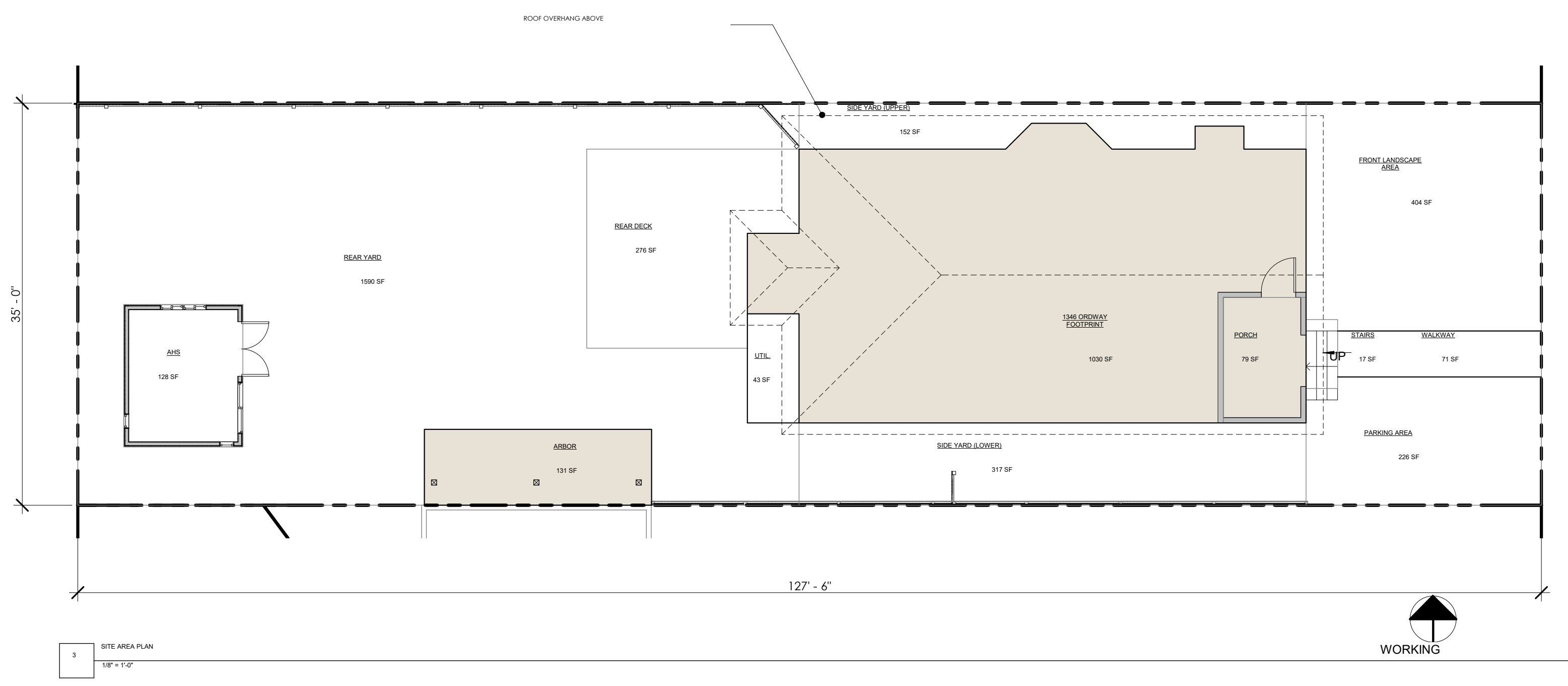
DRAWN BY: _____ CHECKED BY: _____
SCALE: _____ SHEET SIZE: 24 x 36"
PUBLISH DATE: 1/20/2019
PRINT DATE/TIME: 12/3/2019 6:44:21 PM
SHEET NAME: DETAILS & AREA CALC
SHEET NUMBER: **A4**

1346 ORDWAY - AREA CALCULATIONS

11/27/2019

Area Description	Area	(E) Gross Floor Area (GFA)	(P) Gross Floor Area (GFA)	(E) Building Footprint	(P) Building Footprint	(E) Lot Coverage	(P) Lot Coverage	Useable Open Space (UOS)	Landscaped UOS	FAR (GFA/Lot Area)
Accessory Habitable Space (Sheel)	128			128	128			128		
Arbor/Trellis	131		NO		131			131		
Rear Deck	276							276		
Home Footprint (Exclude Porch)	1,030	1,030	1,030	1,030	1,030	1,030	1,030			
Porch	79	79	79	79	79	79	79			
Utility Closet	43	43	43	43	43	43	43			
Side Yard (Upper)	152									
Front Landscape Area	404							404	404	
Lower Side Yard	317									
Walkway	71									
Stairs	17									
Parking Area	226									
Rear Yard (Less Arbor & Deck & AHS)	1,590							1,590	1,590	
SUBTOTAL*	4,464	1,152	1,280	1,152	1,411	1,152	1,411	2,270	1,994	29%
Percentage		26%	29%	26%	32%	26%	32%	51%	88%	

May be subject to 1-2 SF discrepancy due to rounding.



3 SITE AREA PLAN
1" = 10'

Lawrence Hickman

1333 Hopkins Street
Berkeley, CA 94702
Phone: (510) 467-4250
E-Mail: lpacificquest@aol.com

APPEAL LETTER

March 16, 2020

Igor Tregub, Chairperson
City of Berkeley
Land Use Planning Division
Attn: Zoning Adjustments Board Members
1947 Center Street
Berkeley, CA 94704

**RE: APPEAL- AUP #ZP2018-0174 FOR 1346 ORDWAY STREET; AND
REQUEST ZONING ADJUSTMENTS BOARD PUBLIC HEARING**

Dear Chair Tregub and Board Members:

I, Lawrence Hickman ("Appellant"), do hereby Appeal the City of Berkeley Zoning Officer's Findings and Approvals of the above referenced Administrative Use Permit (AUP); and, I request a Public Hearing before the Zoning Adjustments Board on this matter. This Appeal is filed on the grounds the Zoning Officer's Findings and Approvals are unsupported by evidence in the record and inconsistent with the administration of fair and equitable justice, as required by the City of Berkeley Municipal Code (BMC). Moreover, the Zoning Officer appears to ignore the need to recognize the importance of sustaining and maintaining harmony among longtime home owners. The proposed Conditions are inadequate to protect Appellant unreasonable diminution of property value.

INTRODUCTION

This matter arises out of a real property dispute between neighbors. For over twenty-nine years Appellant has owned the large parcel of real property located at the corners of Hopkins and Ordway Streets, also known as, 1333 Hopkins Street, Berkeley, California. For over twenty-five of those years, Appellant experienced quiet enjoyment of ownership with his previous neighbor, Ms. Taylor, owner of the smaller parcel next door at 1346 Ordway Street without incident. Shortly after Ms. Taylor's death, her property was sold to Jennie Durant and Keki Burjorjee ("Applicants") and they began engaging in illegal outdoor construction projects; projects that were unpermitted and non-conforming, all violations of the Berkeley Municipal Code (BMC). The illegal projects infringed upon Appellant's property rights. Moreover, the Applicants continued to initiate and maintain unpermitted conditions even after being notified and warned about some of their illegal construction.

So now, in the form of an application for an Administrative Use Permit, Applicants are seeking forgiveness, permissions, approvals and the legal right to keep and maintain all of the unpermitted, non-conforming and illegal construction projects. The forgiveness, permissions, approvals and legal rights being sought by these outlaws appear to be on the verge of being granted, despite Appellant's Notice of Opposition (NOO), City of Berkeley's Code Enforcement Notice of Violation (NOV), Administrative Citation Warning (ACW) and Order for non-compliance, and their continued infringement on the quiet enjoyment and health and safety of the community at large.

Based upon the foregoing, facts set forth herein, other documents and statements on file, and statements during oral arguments before the Board, Appellant ask this Board to uphold the BMC and affirm this Appeal.

STATEMENT OF FACTS

Since 1990 Appellant has peacefully owned the property located at 1333 and 1346 Hopkins Street. In 2005, the Appellant consulted the City of Berkeley, and with the consent of the prior owner of the 1346 Ordway Street property, legally constructed a 6' fence along the property line of 1333 Hopkins Street.

In 2015, Applicants purchased the subject property at 1346 Ordway Street, Berkeley, California.

In, or around, 2017, Applicants approached Appellant attempting to discuss their (Applicants') intent to add a 4' lattice of top of Appellant's fence. Appellant informed Applicants that he (Appellant) had no interest in adding anything to the top of the fence.

About 2018, Applicants planted a row of tall tree along the entire South border of Appellant's property line, except the area where the garage sits on the property line – approximately 3" from Appellant's property line.

Next, Applicant (Keki Burjorjee) came onto Appellant's property, using profanity and in a threatening tone and manner, attempting to discuss adding the 4' lattice to the fence, or adding lattice to the tall 4 x 4s that had been placed in the ground. Appellant told Applicant that he had no interest in discussing his property improvements; and, advised him to direct his concerns to the City of Berkeley's Planning and Land Use Division.

The next day, Appellant noticed and approached a workman (carpenter) in the Applicants' yard, setting tall post up against his fence. Appellant approached the workman and inquired "do you have a permit to build a fence over 6' tall?" Workman came over into Appellant driveway and began to argue for consent to continue building. Appellant told the workman only the City of Berkeley can grant you a permit to build the fence over 6' tall.

Appellant told Applicants' workman, "Let's call the City's Code Enforcement Unit right now." Appellant, in fact, called Code Enforcement shortly thereafter.

On May 10, 2018, the City of Berkeley's Code Enforcement Inspector, Tim Kittor, conducted a brief site visit at the 1346 Ordway Street property. As a result of Inspector Kittor's finding, he issued a Notice of Violation (NOV) Case #397755 – both noticing and warning Applicants of unpermitted and non-conforming conditions on their property. As a matter of fact, Inspector Kittor instructed Applicants to reduce the size of the trees to 6' tall. (See Exhibit A – NOV)

On September 7, 2018, Applicants submitted an application for an Administrative Use Permit (AUP) ZP2018-0174 to: 1) install a two foot (2') lattice on top of Appellant's six feet (6') fence; and, 2) plant fifteen (15), approximately 14' trees alongside – the full length – of the subject fence and property line; the application was for conditions they had already created and constructed.

On September 19, 2018, the City of Berkeley's Planning Dept. Technician, Nilu Karimzadegan, via letter, acknowledged receipt of the aforementioned AUP application, and advised Applicants she would be processing the application in due course.

On September 20, 2018, Appellant filed a letter serving Notice of Opposition (NOO) to Applicants' proposed plans, as set forth in the AUP application under consideration by the Planning Department. It should be noted that Appellant's Letter of Opposition was not included in Applicants' application package. Equally important, Appellant's NOO letter informed the Planning Department of the fact the AUP application omitted the fact that the trees Applicants requested to plant were already planted without permit, along with other non-conforming conditions, e.g., the trees were planted 3" from the subject fence - within 2' of the property line. In short, it was Appellant's complaint to Code Enforcement that spurred Applicants' impetus to apply for the AUP – otherwise, the subject non-conforming unpermitted conditions would have likely continued unabated. This conclusion is reasonable in view of the fact that the architectural drawing submitted with the original application failed to show certain non-conforming and unpermitted conditions; conditions that would have gone unnoticed but for Appellant's bringing omitted matters to the attention of the City Planner. (See Exhibit B – NOO) ,

On October 5, 2018, the City's Planning Department issued a letter requesting and setting forth requirements necessary to proceed with the AUP application. The letter speaks to permit requests that were not mentioned in the initial AUP application. For example, the letter addresses 1) proposed parking space on site plan, trellis, tree trunks crowns, and sheds. It appears another AUP application, or an updated version, was submitted after the September 7, 2018 AUP application. These aforementioned matters appear to have been intentionally omitted in the original application.

However, on December 3, 2018, Applicants completed and submitted the City's required Tabulation Form (showing the property's existing status and what conditions were non-conforming/unpermitted and requiring permits), was submitted back to the Planning Department, evidencing that the required Southside yard setback is 7'-2" and a parking space requires a permit.

On February 8, 2019, the City responded to Applicants' revised AUP application materials. Therein the City requested additional information to complete Applicants' application requests.

Specifically, the letter noted that "because the application is a result of NOV and it also includes an unpermitted accessory building and an unpermitted trellis. Moreover, the letter appears to request information and details on non-conforming and unpermitted conditions omitted in the initial AUP application. (See Exhibit C – Re-submittal/Revised Application)

July 2, 2019, the City informed Applicants "after reviewing the submitted materials, staff has determined that the existing off-street parking space is not accessible and there is no other feasible location for parking on the parcel ... all paved areas for off-street parking spaces, driveway and any other vehicle-related paving must be removed as a condition of approval of this permit." Hence, revised plans were required showing the changes regarding parking were to be submitted to continue processing the AUP application. Applicants were invoiced an additional \$1600.00 additional AUP permits (AUP080). (See Exhibit D – No off-street parking determination)

On July 16, 2019, 2:02 p.m. Applicant (Jennie Durant) emailed Peter Chun, at the City's Transportation – Public Works Department regarding off-street parking. Applicant was seeking an answer as to whether she could apply for an AUP for her front yard parking space, with only a 6'-9" wide driveway – from house to property line. It was previously determined that Applicant has no legal parking space on the 1346 Ordway Street property. At 3:02 p.m., Nilu, the Applicants' City Planner emailed Peter, with a CC to Jennie stating "to clarify, after the review of this application with the zoning officer, it is determined that this [1346 Ordway Street] property has no legal [off-street] parking." Further Nilu stated "Jennie ... there is a Zoning determination as well and a Traffic Engineer review of the application. The off-street parking space in the front setback will not accommodate the 2' landscaping strip which requires a variance."

On July 17, 2019, at 10:22 a.m., Traffic Engineer, Peter Chun emailed Nilu, with a CC to Jennie, stating "my recommendation would be to restore the original parking space or remove the driveway and restore on street parking as Planning has recommended ... I generally support the setback requirements (or parking space restriction) and therefore favor the removal of driveways and restoration of the curb, sidewalk, and on street parking if you choose not to re-establish the rear parking. (See Exhibit E – Recommendation to remove driveway)

On July 17, 2019, at 12:09 p.m., Nilu emailed Applicant (Jennie), with CC to Peter Chun stating "I also discussed options regarding this project with the Zoning Officer this morning. It seems like you have three options: 1) Restore site to its original state – remove all unpermitted accessory building, shed, trellis, hedge and fence; 2) Staff will recommend approval of AUP application, with Conditions of Approval (COA) – remove curb cut and parking; or, 3) You can apply for (a) an AUP for a front yard off-street parking space; and (b) a Variance – there is not enough space to provide the 2' landscaping strip.

On August 27, 2019, at 11:11 a.m., Nilu emailed Applicants, with CC to Code Enforcement Office, Wanda Drouillard. Therein, Nilu set forth: 1) Required Fees for AUP and penalties; 2) Required revisions on Site Plan; 3) Variance statement requirements – **“staff can recommend a Variance only if there are no other option available on the site...** in your case, **there is the option of relocating the stairs to create room for the 2' landscaping strip.**”; and, 4) Code Enforcement will follow up regarding deadlines.

September 10, 2019, the City’s Code Enforcement Unit issued an Administrative Citation Warning (ACW), wherein Applicants were reminded the NOV, issued May 10, 2018 – requiring correction of violation on the subject property; the Citation Warning for outstanding violations the Berkeley Municipal Code (BMC), issued August 30, 2018. Pursuant to NOV and ACW, Applicant was required to reduce the height of the hedges that exceed 6’, without a permit. Code Enforcement further reminded Applicant that their plans submitted on September 2018 for a Variance on the hedges were additionally unpermitted construction (accessory building and trellis – identified by the Planning Department and, as of Sept 9, 2019, the violations remain; and, Applicants have failed to comply with Planning Department’s deadlines for submitting corrections regarding plan check requested via letter and email. (See Exhibit F – AWC)

Since the project is associated with a Code Enforcement case, specified deadlines are enforced and take precedent over any timelines related to the permit process. In sum, Applicant were Ordered to comply with certain deadlines, and were put on Notice that, **“in light of the history of non-compliance on the property,”** further failures to timely comply would, as of September 25, 2019, result in Citation penalties.

On September 17, 2019, Applicants submitted a Variance Statement, because City had determined the 1346 Ordway Street property does not have a legal parking space. Applicants acknowledge they have an option to achieve off-street parking – in the setback area of their front yard - other than being granted the requested Variance. Nevertheless, Applicants persist in asking the City to take the extraordinary step of granting a special exception Variance, although to do so would violate the City’s rules - present policy, practice and procedure - **“staff can only recommend a Variance if there is no other option available on the site.”** Applicants’ argument the City should make a special exception for them and waive or reduce the 2’ landscaping requirement to accommodate their desire to save money - eliminate their cost/expense associated with adjusting their front steps and rebuilding the curb cut accordingly. Also, they claim Applicant (Jennie Durant) has a “temporary handicapped” placard, giving rise to the question of whether her temporary condition requires an exceptional Variance granting off-street parking on a property deemed to have no legal parking space.

In sum, Applicants responded to the City’s requirement for Variance follows: 1) the need for exceptional or extraordinary circumstance is met because Jennie Durant has a “temporary handicapped” placard; 2) necessary for preservation and enjoyment of substantial property rights: here Applicant assert a parking space is necessary for the enjoyment and full use of home; 3) does the use materially impact health, safety, public welfare, injurious to property or improvement – generally benefit the City: answer is non-responsive –

Applicants merely states, “we are simply requesting that our current parking space be allowed to remain where it is.” Granting the variance would reduce environmental waste associated with remodeling stairs and curb cuts.

On November 5, 2019, the Planning Departments Tabulation Form appears re-submitted, including sizes, dimension, existing and permitted required details, including: 1) Units, Parking spaces, and bedrooms; 2) yards, heights and setbacks; Areas – building, lot, usable space, etc.; 3) Arbor specifics – setbacks and area; 4) Accessory habitable space specifics; Area calculations; and, 5) Plat survey map.

On November 19, 2019, the City Planning Department communicated its need for clarity for the Zoning Office. Noted there is the fact that the application say 15 [trees] hedges, but the site plan only show twelve. Also, on November 19, 2020, Applicants submitted an update/revised Variance Request. Therein, Applicant set forth a quasi-promise, if the Variance is granted – “we would install/build a green, ecologically friendly and attractive parking spot.”

On November 20, 2020, Applicant sent email to Nilu, with updated Tabulation Form and Updated Variance Request.

On November 25, 2020, Nilu emailed Applicant (Jennie Durant) and advised that she needed certain corrections on the Tabulation Form A.S.A.P.

On November 26, 2019, Jennie forwarded Nilu’s email of November 25 to her architect, Nick Leone, regarding the Tabulation Form revisions/correction requested.

On November 27, 2019, at 10:59 a.m., Nick Leone emailed Nilu, requesting a telephone conversation to review her comments regarding the 1346 Ordway Street project. At 3:14 p.m., on November 27, 2019, Nick Leone emailed Nilu, sending her, in an attachment, the aforementioned revisions requested pursuant to their telephone conversation.

On December 3, 2019, Nilu emailed Nick, with CC to Applicant (Jennie Durant), advising that “Enlarged site plan submitted on 11-20-19 does not show accurate dimensions ... this needs to be corrected.” Nilu further advised that the “enlarged plan for parking is very confusing and busy. Please look at what I drew and draw something simple and clear ... the Variance Statement should reflect the correct dimension for the remaining landscape area as well (8”) ...”

On December 4, 2020, Applicant (Jennie Durant) sent another (3rd) Variance Statement. Again, restating their willingness to remove the existing concrete and install permeable paver parking strips, a dymondia lawn to act as a 1” landscaping barrier.

On December 19, 2019, the City provided a list of addresses of community members to which Notices of the 1346 Ordway Street project could be mailed – 126 names and addresses.

On February 13, 2020, Applicant submitted a request for fee adjustment or refund, claiming that a change of permit type qualifies Applicants for an adjustment and/or refund.

On February 25, 2020, the City Approved AUP #ZP-2018-0174 and sent post card Notice of Decision (NOD) to 1346 Ordway Street neighborhood residents – 36 names and addresses.

The NOD reads as follows:

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

- **Administrative Use Permit, under Berkeley Municipal Code (BMC) Section 23B.52 010 for Reasonable Accommodation for Fair Access to Housing;**
- **Administrative Use Permit, under BMC Section 23D.08.005.A1 to construct a habitable accessory building;**
- **Administrative Use Permit, under BMC Section 23D.08.020.A to construct a habitable accessory building that is over 10 ft. in average height within 4 ft. of the property line;**
- **Administrative Use Permit. under BMC Section 23D.08.020.B to construct a habitable accessory building that is over 12 ft. in average height within 4 to 10 ft. of the property line; and**
- **Administrative Use Permits, under BMC Section 23D.08.060.A2 for construction of accessory structures.**

BMC § 23B.52.010, in pertinent part, provides for reasonable accommodation by modifying the application of its zoning and subdivision regulations for persons with disabilities seeking fair access to housing, pursuant to the American with Disabilities Act and California Fair Housing and Employment Act. In determining whether a requested modification of zoning or subdivision regulations is reasonable, the City will consider, among other relevant factors, the extent to which the requested modification might be in conflict with the legitimate purposes of its existing zoning or subdivision regulations. The finding for Issuance, Denial and/or Conditions follows:

- A. The Zoning Officer may issue an AUP, either as submitted or as modified, only upon finding that establishment, maintenance or operation of the use, or the construction of a building, structure or addition thereto, under the circumstances of the particular case existing at the time at which the application is granted, will not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City.
- B. Prior to issuing any AUP, the Zoning Officer must also make any other findings required by either the general or District regulations applicable to that particular AUP.
- C. The Zoning Officer shall deny an application for an AUP if he/she determines that he/she is unable to make any of the required findings, in which case he/she shall state the reasons for that determination.

D. The Zoning Officer may attach such conditions to an AUP as he/she deems reasonable or necessary to achieve the purposes of this Ordinance, and which otherwise promote the municipal health, safety and welfare. (Ord. 6478-NS § 4 (part), 1999)

ISSUES ON APPEAL

I

APPROVAL OF AUP FOR REASONABLE ACCOMODATION FOR FAIR ACCESS TO HOUSING, UNDER, BMC § 23B.52.010

Finding 1: One off-street parking space, within setback, is allowed to comply with BMC § 23B.52.010 for Reasonable Accommodation for Fair Access to Housing.

Finding 2: The City also recognizes the importance of sustaining and enhancing neighborhoods.

Conditions: Pursuant to the above referenced AUP, Zoning Officer has attached the following conditions: The parking pad must be removed, and the curb cut in filled if: 1) the property is sold; 2) the tenant move moves out; or, 3) the disability no longer prevents accessible access.

Appellant Appeal the Findings and Approval on the grounds that legalizing off-street parking in the front yard setback creates a hazardous and unsafe condition and is detrimental and injurious to the economic value of neighboring property. Furthermore, the record is absent of sufficient proof to establish Applicants qualifies as disabled, pursuant to the provisions of the Americans with Disability and the California Fair Employment and Housing Acts.

Applicants' states "one of the owners, Jennie Durant, has a temporary handicapped placard for a spine condition and needs a parking [space] spot close to the front door." The claim of possessing a "temporary disability placard" is NOT dispositive proof of a need qualifying under the aforementioned Acts, such that a need for reasonable accommodation is necessary to access housing. Therefore, the need for off-street parking is not established.

In reviewing Applicants' application, the Zoning and Transportation departments determined that Applicants has no legal [off-street] parking space on the 1346 Ordway Street property. Furthermore, it was determined that the off-street parking space in the front setback will not accommodate the 2' landscaping strip required, which would require a Variance. Instead of applying for a Variance to circumvent the 2' landscaping requirement, here, it appears Applicants chose to apply for an AUP.

Except for Applicants claim of temporary disability placard, there is nothing more in the record to substantiate that claim, e.g., there is no copy of Applicants' application for the placard, nor is there any authorizing documentation signed by a qualifying medical professional, nor is there a copy of the placard.

Health and Safety

Allowing a front yard parking space inside the required setbacks, especially since there is a newly installed 6' fence on the South property line, creates a public health hazard. The view of pedestrians and on-coming vehicles is obscured. Proper setbacks allow time for persons to see what is going on around them. Parking along the street appears to be a safer option for all involved. Applicants' health and well being is NOT jeopardized and/or compromised should they have to walk from the curb to the front porch; the difference in distance in walking from the car to the porch and walking from the curb to the porch is approximately minimal - 8' to 10'. Accessing the house from the curb appears not be too difficult, as Applicant is frequently seen walking throughout the neighborhood, cleaning her car, pushing a stroller and carrying groceries.

Detrimental/Injurious to Property and Improvements

Legalizing a parking space, with front yard setbacks, rewards Applicants for long-standing history of non-compliance. It creates a potentially economic injury to Appellant, situating because his property become situated next property with non-conforming uses.

Making other Findings

Here, the Zoning Officer appears to fail to make the finding that altering the BMC was not the only option for granting Applicants' reasonable and fair access to the property. Applicants, if truly eligible under the American with Disabilities and California Fair Housing and Employment Acts, could easily apply for the privilege to have a handicap parking space directly in front of the house.

No Tenants (only owners) and Health Condition Unconfirmed

The Zoning Officer's requirement that the concrete parking pad be removed effectively represents the spirit of the Ordinance. Additionally, the Applicants are not tenants and it is NOT clear that Applicants' temporary health condition prevents accessible access.

For the foregoing reasons, this Appeal must be affirmed, the AUP must be rescinded, and the parking pad removed.

II

APPROVAL OF AUP TO CONSTRUCT A HABITABLE ACCESSORY BUILDING OVER 10' AV HT. W/I "4" FT OF PROPERTY LINE, UNDER BMC § 23D.08.020 and APPROVAL OF AUP TO CONSTRUCT A HABITABLE ACCESSORY BUILDING UNDER, BMC § 23D.08.005.A1

Finding 1: The project would legalize construction building in the rear and side yards, which is consistent with the single-family use of the subject property function as an extension of the main dwelling is a accessory to the residential use, and is not used as a separate dwelling. The accessory building is located outside required front and north side setbacks. Despite the fact that the accessory building projects a few inches into rear and south side setbacks, it is not anticipated to create significant changes to the existing sunlight conditions in the immediate vicinity of the project due to its location and limited scales, under BMC §§ 23D.08.005.A and 23D.08.005.A1 to Construct a Habitable Accessory Building.

Conditions: To legalize the construction of the accessory building and trellis, a building permit application must be submitted within 30 days after the AUP approval.

Appellant Appeal the Findings and Approval on the grounds that the City failed to act responsibly when approving this AUP, because authorizing construction of a building that projects into the setbacks, diminishing the use, quiet enjoyment and economical value of neighboring property?

BMC § 23D.08.005 Addresses Permitted Uses in Accessory Buildings and Structures; BMC § 23D.08.005.A1 provides that no Accessory Building may be constructed unless authorized by an AUP. A Zoning Certificate shall be required for alteration of an existing Accessory Building.

Appellant argues that permitting an Accessory Structure to be constructed as planned ignores the fact that shadows will be created over the most usable area of the neighboring yard. Furthermore, the quiet enjoyment of the neighboring property will be interfered with and the neighbors (Appellant and Applicants) will complain about activity and noise when either of them do building and yard maintenance, office work, and/or entertain. Additionally, Appellant does anticipate significant change in sunlight and lighting generally; and, since there is no evidence any site visit was conducted on the subject, Appellant disagrees with Zoning Officer's assumptions.

Moreover, the prospective economic value of the neighboring property is likely to be diminished; because, having a non-conforming condition on the property next door will create limits upon what a new owner could get approved should the Appellant choose to sell the Hopkins Street property.

For the foregoing reasons, the approval of this AUP must be rescinded and this Appeal affirmed.

III

APPROVAL OF AUP TO CONSTRUCT A HABITABLE ACCESSORY BUILDING THAT IS OVER 12 FT. IN AVERAGE HEIGHT, WITHIN 4 TO 10 FT. OF THE PROPERTY LINE, UNDER BMC 23D.08.020.B

Finding: AUP would legalize 9 ft. tall, 21 x 5 ft. trellis, located 3 inches from the South property line and 30 ft. from the rear property line.

Conditions: To legalize the construction of the accessory building and trellis, a building permit application must be submitted within 30 days after the AUP approval.

Appellant Appeal the Finding and Approval on the grounds that the Zoning Officer ignored the needs of the neighboring property owner, by permitting an illegally constructed trellis to remain in place right up against the neighbor's garage. Appellant's garage has legally existed on the property line since 1948. Approving this illegally constructed - 9' tall, 21' x 5' - trellis to exist, only 3 inches from side of a neighbor's garage, is obscured and negligence.

Furthermore, this approval interferes with neighbor's quiet enjoyment and denies access to the garage for painting, maintenance and other improvements. In fact, Applicants are presently growing vines over the top of the trellis, which are already growing onto roof of the garage and fence.

Moreover, the property value is diminished by virtue of having illegally constructed conditions so close to the neighboring structure; and, as it relates to the Condition, please note that the trellis is already constructed.

Accordingly, this appeal should be affirmed, this AUP rescinded and the trellis ordered removed.

IV

APPROVAL OF AUP FOR CONSTRUCTION OF ACCESSORY STRUCTURES, UNDER BMC § 23D.08.060.A2

Finding: AUP legalizes a 14 ft. tall hedge within the South and North side yards.

Appellant Appeals the Finding and Approval on the grounds Zoning Officer misstate the non-conforming condition of Applicants' application. What the Zoning Officer is calling "a 14' tall hedge" is actually sixteen or more 14' tall, illegally planted trees – **NOT A HEDGE**. These trees were illegally planted within 3" of the property line, up against the existing fence. This condition is tantamount to creating a much taller fence than the 6' allowed. The trees were illegally planted along the entire length of the property line from front to back, except the space where the illegally constructed trellis was built. Furthermore, the trees are presently growing over the fence and into the fence. It's only a matter of time before the trees began to push against the fence, creating cost and an argument over maintenance – the disturbing the quiet enjoyment of the community.

Accordingly, this appeal should be affirmed, this AUP rescinded and the trellis ordered removed.

V

CONCLUSION

WHEREFORE, Appellant LAWRENCE HICKMAN herein prays for a RULING affirming this Appeal.

Respectfully submitted

By: 
Lawrence Hickman

EXHIBITS

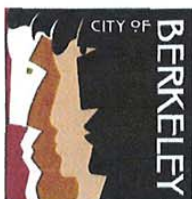
EXHIBITS

EXHIBITS

EXHIBIT A

EXHIBIT A

EXHIBIT A



Office of the City Manager
Code Enforcement Unit
2180 Milvia Street
Berkeley, California 94704
Tel 510.981.2489 Fax 510.981.2499

NOTICE OF VIOLATION

- First Notice
- Final Citation Warning

Date: 5/10/18 Time: 4:12 PM Re-inspection Date: 5/24/18

Name of Person Contacted: KEKI BORJORJEE / JENNIFER DURANT

The property at: 1346 ORDUAY ST. BERKELEY, CA
was inspected because of concerns expressed to this office. The following code violation(s) were identified during this site visit:

- | | | |
|--|-------------------------|-------------------------|
| <input type="checkbox"/> Illegal Dumping | Berkeley Municipal Code | Chapter 12.40.080 |
| <input type="checkbox"/> Accumulation of Trash & Debris | Berkeley Municipal Code | Chapter 12.32.020 |
| <input type="checkbox"/> Graffiti Nuisance | Berkeley Municipal Code | Chapter 13.98.030 |
| <input type="checkbox"/> Blight Nuisance | Berkeley Municipal Code | Chapter 12.92.030 |
| <input checked="" type="checkbox"/> Zoning | Berkeley Municipal Code | Title 22 & Sub-Title 23 |
| <input type="checkbox"/> Building & Safety | Berkeley Municipal Code | Chapter 19.28 |
| <input type="checkbox"/> Obstruction of Streets or Sidewalks | Berkeley Municipal Code | Chapter 14.48.020 |
| <input type="checkbox"/> Signage | Berkeley Municipal Code | Chapter 20.16.010 |

Other (Code/Section/Title): BMC 23D.08.060 FENCES

(The entire Berkeley Municipal Code may be viewed or printed from the City's web site at www.cityofberkeley.info/Home, specifically www.codepublishing.com/CA/Berkeley).

Attached brochure(s) will give you more code information: _____

Please perform the following corrections before the re-inspection date to avoid citations, fees, and/or fines starting at \$100-500 per violation/per day:

- NO FENCE ON PROPERTY LINE MAY EXCEED 6 FEET IN HEIGHT.

PLEASE SEE ATTACHED DEFINITIONS.

* HEDGE MUST BE TRIMMED TO 6' - THANK YOU

It is our intent to work with property owners to encourage voluntary compliance. Your cooperation in correcting the violation(s) is greatly appreciated. If you have any questions, please contact the Enforcement Officer at 510.981. 2481.

Issued by: Tim Vetter
Enforcement Officer

Case #: 397755

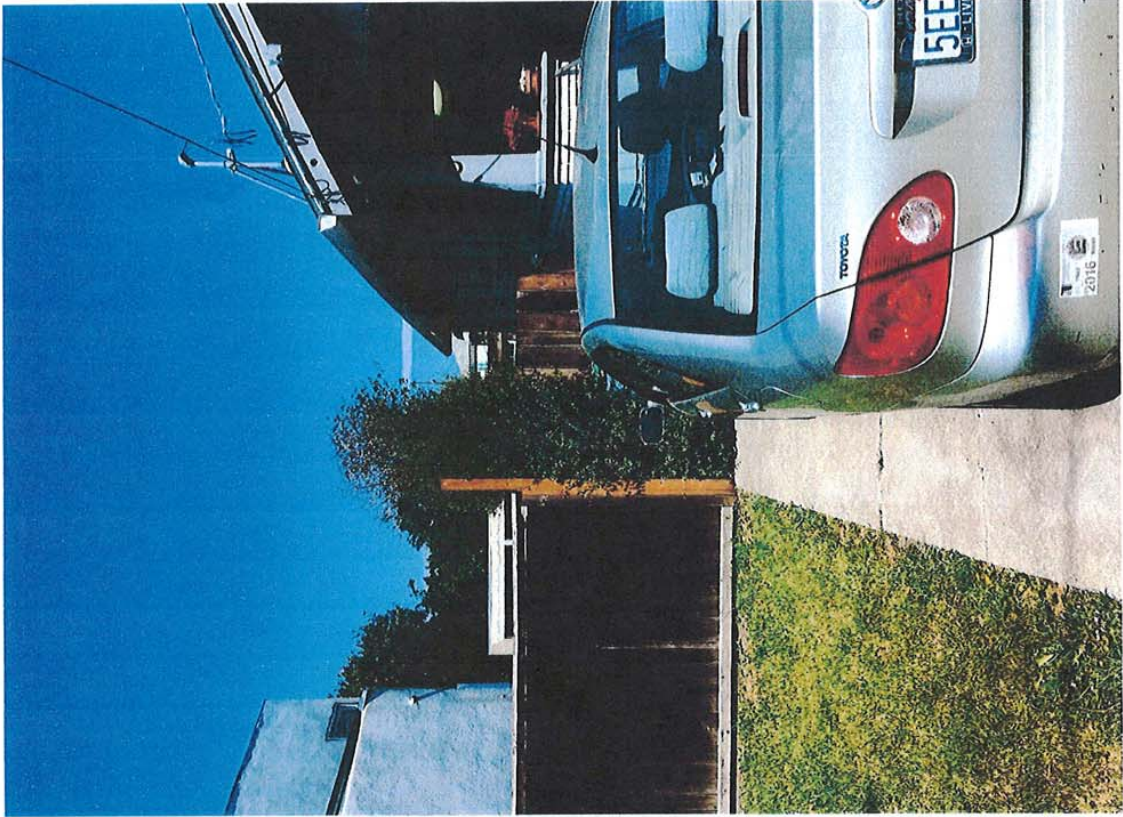


EXHIBIT B

EXHIBIT B

EXHIBIT B

Lawrence Hickman

1333 Hopkins Street
Berkeley, CA 94702
Phone: (510) 467-4250
E-Mail: lpacificquest@aol.com

RECEIVED

SEP 19 2018

LAND USE PLANNING

September 19, 2018

Ms. Nilu Karimzadegan, Planner
City of Berkeley – Zoning/Planning
1947 Center Street, 3rd Floor
Berkeley, CA 94704**SUBJECT**
1346 ORDWAY STREET APPLICATION**NOTICE OF OPPOSITION ZONING VARIANCE**

Dear Ms. Karimzadegan:

As the adjacent property owner, this writing serves notice that I am opposed to any consideration of the subject application.

Here, the issue is whether ***BMC Ch. 23D.08.060 § A(2)*** is violated where a resident/neighbor created a fence-wall by planting fifteen (15) trees – in a row - each approximately fourteen (14) feet in height creating a wall, with trees planted less than two feet away from an existing legal community-fence and property line, then builds a 9 foot in height arbor 2" away from the side of my garage without a building permit.

BMC Ch. 23D.08.060 § A(2) provides any fence, hedge, gate, pergola, trellis, arbor or retaining wall when located on a lot in, or on the zoning boundary line of, any residential District is subject to the following "***no fence or other unenclosed accessory structure located on a property line or within the required yard area for a main building set forth in each residential District's provisions may not exceed six feet in height at any point ... unless so authorized by an AUP ...***"

Here, it appears that the 1346 Ordway Street Resident Applicant (hereafter "Resident Applicant") has violated and continues in violation of the above referenced municipal code, because Resident Applicant has already planted fifteen (15) trees - in a row - each approximately fourteen (14) feet in height, supported by unpermitted construction method(s), using four-by-fours (4x4s) exceeding six feet in height. In addition, the trees were planted within two feet of the property line, also a violation. This violation(s) is further evidenced by the fact that, after my complaint to Code Enforcement, Resident Applicant received a citation, from the Code Enforcement Unit of the Mayor's Office. If I had not complained to Code Enforcement, resulting in the citation, Resident Applicant would not have applied for an AUP.

It should be noted that the subject application fails to mention that Resident Applicant has also already created the same and similar fence/wall condition on the opposite side of the property at the 1346 Ordway Street address. The application also fails to mention that Resident Applicant has constructed a 9 foot in height arbor 2" away from my garage without a building permit.

The present state of Resident Applicant current fence/wall configuration substantially interferes with my peaceful and quiet enjoyment of my property by eliminating my entitled air space, around the most useful part of my yard; making my yard small. Allowing the existing nonconforming conditions would diminish the value of my property. In addition, Resident Applicant's fence/wall height, proposed trellis, including the nine (9) foot high arbor – **two (2) inches from my garage** - prevents me from maintaining my property adequately.

I've owned my property at 1333 Hopkins Street for twenty-eight years, without incident. However, Resident Applicant recently approached me in my yard initiating an argument about the complaint I lodged with Code Enforcement. I believe Resident Applicant was attempting to intimidate me prior to filing this deceptive AUP application.

Furthermore, the subject application was only made after the aforementioned conditions were exposed, reported and cited. Moreover, the **Resident Applicant is seeking approval for conditions that already exists**, as if they are correctly planning to create a new condition.

On its face, this application should be denied because it's deceptive and lacks full disclosure. Even the Site Plan submitted is incomplete and lacks full disclosure. Additionally, the trellis description is ambiguous.

I oppose the subject application for the reasons stated herein. Accordingly, Resident Applicant's request for variance should be denied.

Also, The unauthorized 14 feet in height trees/fence, arbor that's 2" away from my garage, and the four-by-fours (4x4) posts taller than 6 feet need to be removed.

Respectfully Submitted,



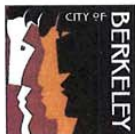
Lawrence Hickman

EXHIBIT C

EXHIBIT C

EXHIBIT C

UL / 4/8/19 18
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10/5/18
5/8/19 (5)



Planning and Development Department
Land Use Planning Division

5/8/2019 Response Letter III

February 8, 2019

Sent via email:
jenniedurant@gmail.com

Jennie Durant and Keki Burjorjee
1346 Ordway Street
Berkeley, CA 94702

Re: Administrative Use Permit #ZP2018-0174 for 1346 Ordway Street

Dear Jennie,

This letter is in response to the resubmittal of revised application materials, submitted on January 09, 2019. To complete this application, please respond to the following:

1) A New invoice will be provided

1) **Additional AUPs & Fees:** At the time of project submittal, fees were assessed as \$970 for one Tier 3 AUP to construct an accessory structure over 6' within required setbacks. However, because the application is a result of a Notice of Violation and it also includes an unpermitted accessory building and an unpermitted trellis, additional AUPs will apply to the project resulting in a fee increase. We will issue an additional invoice upon the receipt of additional information (requested below).

- List of additional Fees
- 1) \$970 for fence + hedge NOV
 - 2) Establish an accessory building
 - 3) Accessory building in rear + side setback (x2)
 - 4) Trellis

2) Dimensions on site plan do not match dimensions on survey

2) **Survey:**

- A. Provide dimensions from the main dwelling and the front porch to the front and side property lines.
- B. Provide the width of driveway on the front property line.
- C. Include the accessory building's dimensions on the survey and exhibit the distance from its eave to the rear and side property lines.

5) Front yard parking (to be confirmed by the Traffic Eng. + zoning officer)

Survey	Site Plan
Driveway 7'-9"	Driveway 10'-2"
DU to Front PL 10'-9"	DU to Front PL 20'-6"
DU to side PL 6'-8"-7"	DU to side PL 7'-2" - 8'-2"

3) **Site Plan:**

- A. **Accessory building:** Please revise the accessory building's name to read as "Accessory Habitable Space" and not a "Shed" on Site Plan. Additionally, include the average and maximum height on the elevation.
- B. **Trellis:** include trellis's coverage in the overall lot coverage on Tabulation Form.
- C. Exhibit the front porch and its dimensions.
- D. Include the shed (and its dimensions) that is shown on survey and is attached to the rear of the dwelling.

3) Any hot tubs yet?

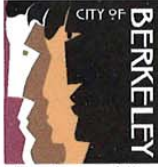
EXHIBIT D

EXHIBIT D

EXHIBIT D

8 9

9



Planning and Development Department
Land Use Planning Division

July 2, 2019

Sent via email:
jenniedurant@gmail.com

Jennie Durant and Keki Burjorjee
1346 Ordway Street
Berkeley, CA 94702

Re: Administrative Use Permit #ZP2018-0174 for 1346 Ordway Street

Dear Jennie,

Thank you for the electronic resubmittal of the revised Site Plan on June 5, 2019. After reviewing the submitted materials, staff has determined that the existing off-street parking space is not accessible and there is no other feasible location for parking on the parcel. Note that all paved areas for off-street parking spaces, driveway and any other vehicle-related paving must be removed as a condition of approval on this permit. (Additionally on Site Plan, remove the label "Existing Parking Space" within the front yard setback and include a note for the removal of parking related paved areas and curb cut.) To complete your application, submit revised plans that reflect these changes and submit the additional required payment (see attached invoice).

In your resubmittal, include a cover letter stating how you have addressed the incomplete items. **Any changes or corrections must be clouded, and accompanied by a number** to allow for easier identification. If new plans are submitted, please deliver two **(2) sets** of plans (at least one set to scale) and submit **both a paper and an electronic copy** of the resubmittals to the zoning counter during normal business hours (Monday thru Thursday 8:30 am – 4:00 pm). If you take no action to address the above items **within 30 days**, the application may be deemed withdrawn and returned to you. Please contact me if you have any questions at (510) 981-7419.

Sincerely,
Nilu Karimzadegan, Planning Technician
CC: Greg Powell, Principal Planner

EXHIBIT E

EXHIBIT E

EXHIBIT E

2. The granting of the application is necessary for the preservation and enjoyment of substantial property rights of the subject property's owner;
3. The establishment, maintenance or operation of the use or the construction of a building, structure or addition thereof, to be approved will not, under the circumstances of the particular case, materially affect adversely the health or safety of persons residing or working in the neighborhood of the property of the applicant and will not, under the circumstances of the particular case, be materially detrimental to the public welfare or injurious to property or improvements in said neighborhood; and that the granting of the Variance will promote the municipal health, welfare and safety and benefit the City as a whole;
4. Any other variance findings required by the Section of the Ordinance applicable to that particular Variance.

B. The Board shall deny an application for a Variance if it determines that it is unable to make any of the required findings, in which case it shall state the reasons for that determination. (Ord. 6478-NS § 4 (part), 1999)

Please consider your options and let me know which path you would like to take.

Thank you,

Nilu

From: Chun, Peter
Sent: Wednesday, July 17, 2019 10:22 AM
To: Karimzadegan, Niloufar <nkarimzadegan@cityofberkeley.info>
Cc: 'Jennie Durant' <jenniedurant@gmail.com>
Subject: RE: Parking spot AUP

Hi Jennie,

My recommendation would be to restore the original parking space or remove the driveway and restore on street parking as Planning has recommended. I was not aware of the 7 ft. threshold and the Planning Dept. document you provided. I have reviewed and approved many projects with 7 ft. driveways, even 6' – 6" as applicants have indicated their driveway is existing and they squeeze through. I generally support the setback requirement (or parking space restriction) and therefore favor the removal of driveways and restoration of the curb, sidewalk, and on street parking if you choose not to re-establish the rear parking.

Sorry I am sure this is not what you were hoping to hear from our office.

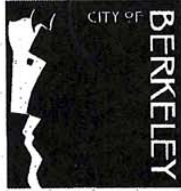
Sincerely,

Peter Chun, T.E.
Associate Traffic Engineer

EXHIBIT F

EXHIBIT F

EXHIBIT F



Office of the City Manager
Neighborhood Services-Enforcement Division

September 10, 2019

Jennie Durant/Keki Burjoree
1346 Ordway Street
Berkeley CA 94702-1124

Subject: **Administrative Citation Warning**

Dear Property Owner:

This letter is confirming that on May 10, 2018 the Code Enforcement Unit issued Notices of Violation requiring that you correct all violations at 1346 Ordway Street. On August 30, 2018 a Citation Warning for the outstanding violations of the Berkeley Municipal Code (BMC). Pursuant to the Notice of Violations and Administrative Citation Warning, you were required to reduce the height of your hedges that exceed 6 feet allowed without a permit.

On September 7, 2018, plans were submitted to the Planning Department for a variance on the hedges where additional unpermitted construction (accessory building & trellis) was identified by the planning department.

As of September 9, 2019, the violations remain and you have failed to comply with the Planning Department requirements and deadlines in submitting corrections to the plan check request by letters and email.

Since this project is associated with a Code Enforcement case specified deadlines are enforced and take precedence over any timelines specific to the permit process.

YOU ARE HEREBY ORDERED TO:

- Within fifteen (15) days of this Administrative Citation Warning respond to the Planning Department emails regarding the Plan check revisions;
- You must respond to any other plan checks comments issued by all reviewing agencies within fifteen (15) days of issuance of comments;
- Within thirty (30) days of the issuance of the required zoning permit, obtain all required building, electrical, plumbing and mechanical permits from the Building and Safety Division; and
- Upon issuance of building permits, complete all work within one hundred eighty (180) days.

Keki Borjorjee/Jennie Durant
1346 Ordway Street
Berkeley, CA 94702

Administrative Citation Warning
September 10, 2019
Page 2 of 2

Please note: Given the history on non-compliance on the property as described above, the City is putting you on notice that any future failure to comply completely with all City laws and regulations will result in daily administrative citations without further notice to you, which will increase as time passes until all violations are corrected. Part compliance or correction of any violation will be regarded as non-compliance.

Commencing September 25, 2019, if you have failed to comply in full with the May 10, 2018 Notice of Violation and the Plan Check corrections request by planning you may be issued administrative citations on a daily basis for each of the above violations without further notice to you. **Citation penalties will begin at a rate of one hundred dollars (\$100.00) per violation, per day and may increase with subsequent citations to two hundred dollars (\$200.00) per violation, per day and five hundred dollars (\$500.00) per violation, per day.**

If you have any questions regarding this Citation Warning Letter, you may contact me at (510) 981-2482 or e-mail me at wdrouillard@cityofberkeley.info.

Sincerely,



Wanda Drouillard
Code Enforcement Officer

cc: Planning Department
David Lopez, Deputy Building Official
Erin Steffen, Assistant to the City Manager



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

NOTICE OF PUBLIC HEARING

1346 Ordway Street

Appeal of Zoning Officer's decision to approve Administrative Use Permit #ZP2018-0174 to legalize additions on an approximately 4,480 sq. ft. lot with an existing one-story approximately 1,152 sq. ft. single family dwelling. The scope of work includes: 1) legalize a 9 ft. tall wood fence and 14 ft. tall hedge within north and south side setbacks; 2) legalize a 128 sq. ft., 12 ft. 2 in. tall habitable accessory building within the required side and rear setbacks; 3) legalize an approximately 9 ft. tall, 5 ft. X 21 ft. trellis located at 3 in. from the south side property line; and 4) Reasonable Accommodation for Fair Access to Housing to modify AUP and Variance requirements to allow for a front yard off-street parking space.

The Zoning Adjustments Board of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 23B.32.020, on **June 11, 2020, conducted via Zoom, see the Agenda for details, which can be found here: https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_ZAB/2020-06-11%20Draft_ZAB_Agenda.pdf**. The meeting starts at 7:00 p.m.

PUBLIC ADVISORY: This meeting will be conducted exclusively through videoconference and teleconference. Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

A. Land Use Designations:

- General Plan: LMDR – Low Medium Density Residential
- Zoning: R-1A – Limited Two-Family Residential District

B. Zoning Permits Required:

- Administrative Use Permit, under Berkeley Municipal Code (BMC) Section 23D.08.005.A1, to legalize a habitable accessory building;
- Administrative Use Permit, under BMC Section 23D.08.020.A, to legalize a habitable accessory building that is over 10 ft. in average height within 4 ft. of the property line;
- Administrative Use Permit, under BMC Section 23D.08.020.B, to legalize a habitable accessory building that is over 12 ft. in average height within 4 to 10 ft. of the property line;
- Administrative Use Permits, under BMC Section 23D.08.060.A2, to legalize a boundary fence and hedge over 6 ft. in height;

1346 ORDWAY STREET
Page 2 of 4

NOTICE OF PUBLIC HEARING
Posted MAY 27, 2020

- Administrative Use Permit, under BMC Section 23D.08.060.B, to legalize an unenclosed accessory structure; and
- Administrative Use Permit, under BMC Section 23D.12.080.B, for locating an off-street parking space within the required front yard.
- Variance under BMC 23B.44.030 to eliminate the 2 ft. landscaped strip that separates the paved parking area from the side lot line.
- Accommodation for Fair Access to Housing, under BMC Section 23B.52.010, for Administrative Use Permit and Variance for the front yard parking and waiver of the landscape strip requirement.

C. Preliminary CEQA Determination: Categorically exempt pursuant to Section 15301 of the CEQA Guidelines (“Existing Facilities”).

D. Parties Involved:

- Applicant/Owner : Jennie Durant & Keki Burjorjee, 1346 Ordway Street, Berkeley, CA 94702
- Appellant: Lawrence Hickman, 1333 Hopkins Street, Berkeley, CA 94702

Further Information:

All application materials are available online at: <http://www.cityofberkeley.info/zoningapplications>. The Zoning Adjustments Board final agenda and staff reports will be available online 6 days prior to this meeting at: <http://www.cityofberkeley.info/zoningadjustmentsboard>.

Questions about the project should be directed to the project planner, Niloufar Karimzadegan, at (510) 981-7419 or NKarimzadegan@cityofberkeley.info.

Written comments or a request for a Notice of Decision should be directed to the Zoning Adjustments Board Secretary at zab@cityofberkeley.info.

Communication Disclaimer:

Communications to Berkeley boards, commissions or committees 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 a City board, commission or committee, 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 secretary of the relevant board, commission or committee. 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 secretary to the relevant board, commission or committee for further information.

Communications and Reports:

Written comments must be directed to the ZAB Secretary at the Land Use Planning Division (Attn: ZAB Secretary), or via e-mail to: zab@cityofberkeley.info. All materials will be made available via the Zoning Adjustments Board Agenda page online at this address: <https://www.cityofberkeley.info/zoningadjustmentboard/>.

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

Correspondence received by 5:00 PM, eight days before this public hearing, will be provided with the agenda materials provided to the Board. Note that if you submit a hard copy document of more than 10 pages, or in color, or with photos, you must provide 15 copies. Correspondence received after this deadline will be conveyed to the Board in the following manner:

- **Correspondence received by 5:00 PM two days before** this public hearing, will be conveyed to the Board in a Supplemental Communications and Reports, which is released around noon one day before the public hearing; or
- **Correspondence received after 5:00 PM two days before** this public hearing will be saved in the project administrative record.

It will not be possible to submit written comments at the meeting.

**Accessibility Information / ADA Disclaimer:**

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date.

SB 343 Disclaimer:

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available to the public. Please contact the Land Use Planning Division (zab@cityofberkeley.info) to request hard-copies or electronic copies.

Notice Concerning Your Legal Rights:

If you object to a decision by the Zoning Adjustments Board regarding a land use permit project, the following requirements and restrictions apply:

1. If you challenge the decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice.
2. You must appeal to the City Council within fourteen (14) days after the Notice of Decision of the action of the Zoning Adjustments Board is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.
3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of

Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.

4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.
5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, the following requirements apply:
 - A. That this belief is a basis of your appeal.
 - B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
 - C. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above.

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

May 25, 2020

Dear Members of the Zoning Adjustment Board,

Thank you for taking the time to read our materials for this appeal hearing. We would like to respond to the points made in the "Issues on Appeal" section starting on page 8 of the Appellant's (Lawrence Hickman's) appeal letter to ZAB. To keep this rejoinder letter to the point, we choose not to respond to the many falsehoods about our personal interactions with the Appellant in the "Statement of Facts" section and instead focus on the Appellant's "Issues on Appeal."

Regarding Point 1 of the "Issues on Appeal" section of the Appellant's letter: Approval of AUP for reasonable accommodation for Fair Access to Housing under §23B.52.010:

1. The Appellant is not aware of the full nature of the Applicant's handicap. This is by design, as the Applicant wishes to preserve her privacy on this matter. We have submitted documentation to the City Zoning office, including doctor's forms, photocopies of the placard application, and the final placard, all of which informed the Zoning Office's determination.
2. Regarding the "Health and Safety section": The newly installed 6' fence mentioned by the Appellant was installed *after* the Zoning Office's findings were posted (during the window of appeal). It's hard not to surmise that this fence was installed by the Appellant for the express purpose of making the argument that our "view of pedestrians and oncoming traffic is obscured." That said, oncoming traffic approaches us from the direction opposite to the location of the fence, so we can see it just fine. Secondly, we have not had any problems spotting pedestrians as we slowly pull out of our lot. Additionally, we have noted that several garages on Ordway street extend out to the sidewalk. The view of the street and sidewalk from inside these garages is more obscured than ours, but this does not seem to make them non-conforming.
3. As to the point that the "Applicant's health and well-being is NOT jeopardized and/or compromised should they have to walk from the curb": Again, the Appellant is unaware of the Applicant's physical condition. The Applicant's prognosis is degenerative and currently under evaluation. Carrying heavy items can cause excruciating pain. Having to walk from a parking space (whether from the curb, or from down the street) carrying heavy bags of groceries, our child, or an infant car seat should we expand our family, would be an untenable situation. This is why we have requested an AUP be granted for our front parking space.
4. Numerous residents on our street park in front of their houses. We have included several photos of this in our immediate neighborhood (Figure 1), so approving the AUP would not undermine the aesthetic of our neighborhood.



Figure 1. Cars parked in front parking spaces on the 1300 block of Ordway Street (our block), on our side of the street (right photo) and across the street (left photo). Orange arrows indicate parked cars.

5. Finally, we would like to point out that the Appellant and his tenant consistently park in a manner that blocks the sidewalk in front of the Appellant's property, forcing people with strollers or wheelchairs out into the street. Our neighbors frequently express their frustration with this to us. We have included examples below (Figure 2).



Figure 2. The upper left photo shows the Appellant's van blocking the sidewalk, a frequent occurrence. The other three photos are of a tenant or frequent visitor, who consistently parks in the sidewalk. These three photos were taken on May 18, 19, and 20, 2020.

Regarding Point II: Approval of AUP to construct a habitable accessory building over 10' AV HT. W/I "4" FT of Property Line, under BMC §23D.08.020 and Approval of AUP to construct a habitable accessory building under BMC § 23D.08.005.A1

1. The accessory building casts no shadows on the Appellant's property because it is A) NOT adjacent to the Appellant's property (it is adjacent to Lot 46 on the Survey Plat Map in Fig. 3) and B) It is north-east of the Appellant's property and is therefore physically unable to cast shadows on the Appellant's property.
2. In fact, it is the Appellant's garage ("Garage" on Lot 45 in section of Survey Plat Map, Fig. 3), on our southern property line that casts a shadow onto *our* property from late morning onwards (Figure 3). A full Survey Plat Map with a compass is at the end of the letter and in our application.



Figure 3. Upper left: Note the shadows cast by the Appellant's garage wall into our property. Upper right: Google map of the Appellant's property (bottom half of photo) and 1346 Ordway Street (yellow arrow notes approximate property line). Note how the shadows are cast towards our property, not the Appellant's as he has stated in his appeal. Bottom photo: Section of Plat Map showing that the Accessory Building is adjacent to Lot 46, and not the Appellant's property, Lot 45. A full Plat Map is available at the end of this letter and in our application.

Regarding Point III: The legalization of the 9' Trellis under BMC §23D.08.020.

1. As you can see from the photo of the Trellis below (Figure 4), we specifically constructed the Trellis in a way that allows the Appellant to access his garage for repairs if needed. Nothing prevents the Appellant from maintaining his garage wall.
2. That said, the Appellant's garage has been in a state of disrepair since we took ownership of the property in November 2015. The trellis was designed to improve the aesthetics of our property given that our neighbor's garage wall was on the property line and loomed over our property. We have included several photos below (Figure 5) of our neighbor's property to bring attention to the general state of disrepair that has frustrated not only us, but many members of our neighborhood for over a decade. We hope ZAB members will take into account this long history of dereliction when considering the Appellant's far-fetched point about wanting to maintain his property.



Figure 4. Left: Wall prior to painting and installation of trellis, April 2016. Right: Installed trellis, January 2018.



Figure 5. The upper left and right photo were taken May 18, 2020 and would be the views from our daughter's window if the hedge was not there. The lower left photo was taken May 30, 2017 (from the sidewalk), and demonstrate the disrepair of the Appellant's property that has existed since we moved in.

Regarding Point IV: Approval of AUP for construction of accessory structures, under BMC § 23D.08.060.A2

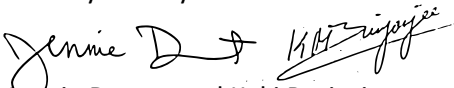
1. According to Berkeley Code, Title 23F.04¹ a hedge is defined as: Any line or row of plants, trees or shrubs planted in a continuous line to form a dense thicket or barrier. Additionally, for permitting purposes, a hedge is subject to the same permit requirements as a fence, and thus subject to the same restrictions as a fence.
2. As ZAB knows, fences are not allowed to be over 6' according to this code, unless authorized by an AUP², which we have applied for through the Zoning Office.
3. Regarding the Appellant's point about the tree branches growing onto his property: Our gardeners have asked the Appellant for permission to prune the trees on his side of the property (or to pick up branches that fall during pruning). The Appellant has consistently refused. This has made it challenging to prune the parts of the trees facing his side of the property, though we have now found a pruner who can do so from our side. We will, of course, keep the trees below the 14' requirement, and have consistently done so since the beginning of this application process.

Finally, we would like to apologize for not obtaining the necessary zoning permits prior to construction of the hedge and trellis. We were first-time homeowners when we took possession of our home one month before our daughter's birth. We simply had no idea we needed permits for the work we did since they are small projects that we have seen on numerous properties in our neighborhood. Given the stress of that time and the demands of our personal and work lives, we were so overwhelmed that we did not do the research we clearly should have done. Once cited for our violation of the City's ordinances we began the approval process. This process was complicated by the removal of a dilapidated garage on the property prior to our taking ownership.

Regarding the accessory building mentioned in Point III of the Appellant's appeal letter, we researched the square footage, height, and setbacks needed to build an accessory building without a zoning permit and acted accordingly. Unfortunately, we were not aware that the required setbacks are with respect to eaves of the accessory building, not the outside walls.

We have spent \$1380 to bring the accessory building into compliance and over \$10,000 (in permit fees and fines, as well as survey and architectural fees) to bring the overall property into compliance. The additions we made improve the value of our home and the value of our neighbors' properties as well. We have good relationships with many of our neighbors, which we hope is reflected by their letters of support. Additionally, our improvements—two attractive xeriscaped, low-water pollinator gardens, an office we can use to work from home during this pandemic; and finally, more trees, which help support the city's commitment to carbon neutrality—are aligned with the values of the city (Figure 6). We hope ZAB will see that our improvements do not pose any real detriment to the Appellant.

Thank you for your time.

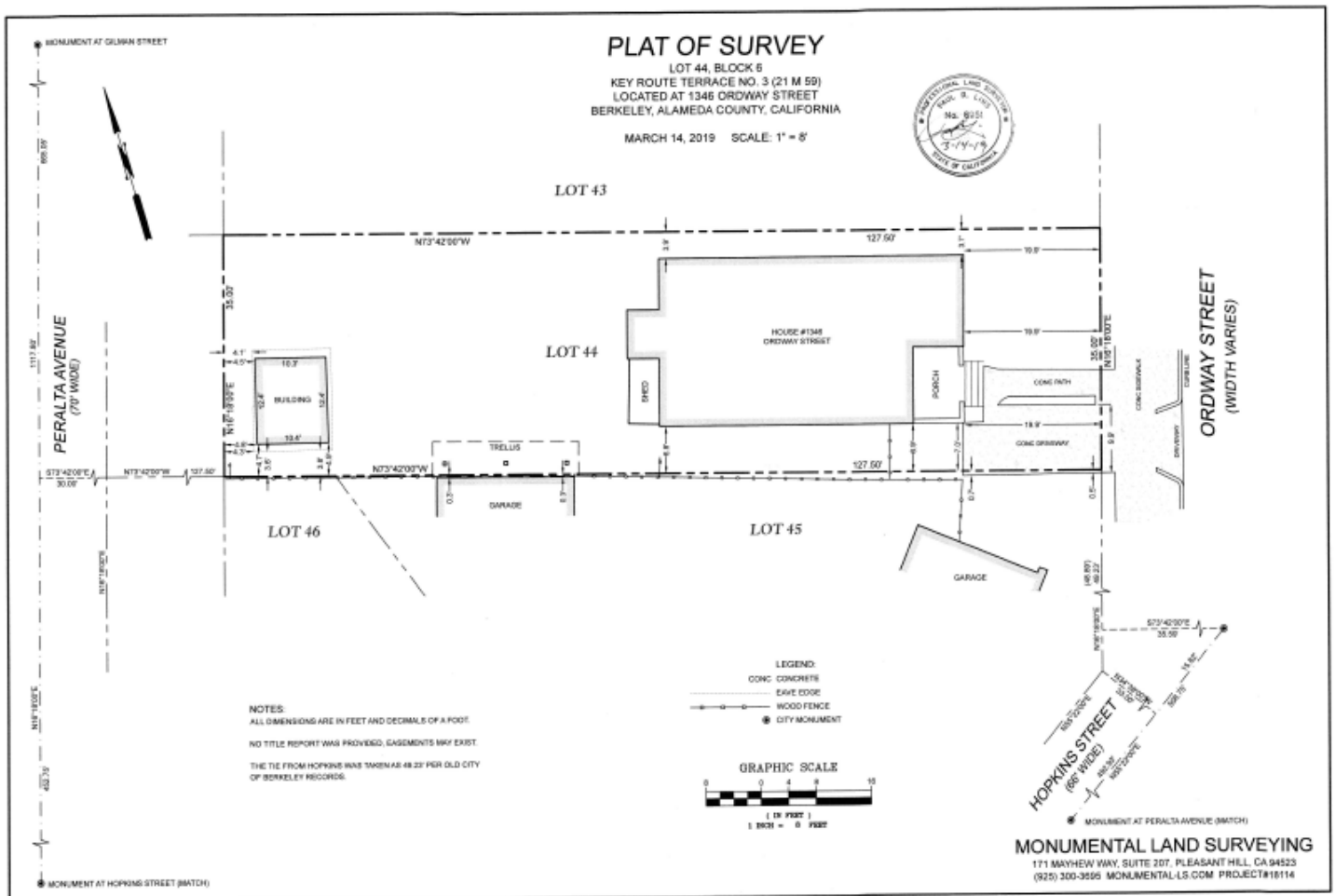

Jennie Durant and Keki Burjorjee

¹ https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_BMC/BMC-Part2--032508.pdf

² <https://www.codepublishing.com/CA/Berkeley/html/Berkeley23D/Berkeley23D08/Berkeley23D08060.html>



Figure 6. Improvements made in the backyard. Left: Photo of backyard upon purchase in November 2015. Right: Photo of backyard, taken May 15, 2020.



Karimzadegan, Niloufar

From: John Whaley <johnw@goodwinsimon.com>
Sent: Saturday, May 23, 2020 11:31 AM
To: Karimzadegan, Niloufar
Cc: jmlw@me.com
Subject: RE: 1346 Ordway St. zoning requests
Attachments: IMG_2117.jpg; IMG_2118.jpg; IMG_2121.jpg; IMG_2122.jpg; IMG_2123.jpg; IMG_2124.jpg; IMG_2125.jpg; IMG_2126.jpg

Attached please find pictures of 1333 Hopkins related to the email below.

Thank you,
John Whaley

From: John Whaley <johnw@goodwinsimon.com>
Sent: Saturday, May 23, 2020 11:28 AM
To: 'nkarimzadegan@cityofberkeley.info' <nkarimzadegan@cityofberkeley.info>
Cc: 'jmlw@me.com' <jmlw@me.com>
Subject: 1346 Ordway St. zoning requests

Good day Ms. Karimzadegan,

My name is John Whaley and I live at 1334 Ordway Street along with my wife, Jennifer Lynn-Whaley. We moved into this house in January 2007, and have raised both of our children here (one is @ King Middle and the other @ BAM).

I'm am writing in support of our neighbors Jennie Durant and Keki Burjorjee and their zoning efforts related to erecting a hedge and parking at 1346 Ordway St. Jennie and Keki have been a fantastic addition to our neighborhood, and we especially love visiting with them during their nightly post-dinner walks with their young daughter Asha. Their property is beautifully landscaped and maintained, and at only 5 houses away, we pass it frequently.

In contrast, the property next door to them at 1333 Hopkins has been a continual detriment to the neighborhood. For the 13 years we've lived here, that building has been under sporadic construction and has remained an eyesore. It has never been clear to me if anyone resides there, nor what the owner intends to do with the property in the long term. For example, Berkeley Fire Department was recently deployed to remove a squatter from the property due to its apparent vacancy and neglect.

I am not surprised in the least that our neighbors Jennie and Keki would want to construct a hedge between their property and 1333 Hopkins in order to shield themselves from that poorly-maintained building (and yard). I will email you separately pictures taken on May 1, 2020 depicting the building's poor condition, including a broken rain gutter lying against the side of the house as well as the dense, prickly weeds that fill the yard. Another picture also depicts how car is frequently parked in the driveway in such a way that blocks the sidewalk. In short, if we were in their shoes, we would make the same request to block from view as much of the property as possible.

Please feel free to contact me with any questions or concerns.

Sincerely,
John Whaley

John D. Whaley, PhD
Senior Research Director
Goodwin Simon Strategic Research
m: 510-393-2673
o: 510-428-9995

















Karimzadegan, Niloufar

From: andrea.traber@gmail.com
Sent: Friday, May 22, 2020 3:37 PM
To: Karimzadegan, Niloufar
Subject: 1346 Ordway AUP Hearing 5/25
Attachments: view from corner.jpg; looking toward corner from 1346.jpg; xxxx Hopkins.jpg

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Ms. Karimzadegan,

I am writing you today in reference to the upcoming Administrative Use Permit hearing regarding 1346 Ordway Street submitted by Jennie Durant and Keki Burjorjee. My name is Andrea Traber, I am a neighbor residing in the duplex at 1340 Hopkins Street, and I have lived here for two years.

As I understand it, the AUP seeks approval of the following:

- An existing 8'8" tall x 20' wide arbor
- An existing 24" x 36" lattice along the north fence
- A proposed 24" lattice along the southern fence
- An existing row of 15 silver sheen trees of maximum 14' in height along the southern fence
- An existing shed of under 120 sq. ft. and 12 feet in height

I understand that the neighbor, Larry Hickman at xxxx Hopkins St (no address is visible on his structure) has raised complaints.

As a neighbor in have no concerns or complaints about the existing or proposed uses as described above. In fact, I think they will improve and have improved this corner given the disrepair and unsightly nature of Mr. Hickman's property. They will certainly improve Jennie and Keki's experience of their home and yard. Please see attached for current photos of the properties.

Specifically:

- I support all of the permit approvals in the AUP
- I have no reservation about using the driveway as a parking spot. This is common in Berkeley and in fact helps the neighborhood experience as a respite from on street parking. In my opinion it does not ruin the esthetic of the block or the neighborhood.
- I fully support the hedge between the properties. If I owned 1346 Ordway, I would not want to look at the adjacent property given it's state of disrepair and generally unappealing architectural style. It also seems out of scale in this neighborhood, so shielding its view from multiple vantage points is a benefit. The hedge most certainly does not impact my enjoyment of the neighborhood, in fact it improves it as a lush bit of green and a visual screen.

This neighborhood is well cared for by almost all residents, with the exception of Larry's property. As you can see in pictures the exterior is unfinished, there is a constant stream of construction and "repairs" at the structure, the windows are papered over or covered and it is generally unsightly. It is an eyesore in this neighborhood.

I have no reservations whatsoever about the approval of this AUP. Jennie and Keki's plans do no do anything that would detract from my enjoyment of the neighborhood, in fact, it would improve the visual quality of this corner and our neighborhood. I support the City approving this AUP in its entirety as submitted.

Sincerely,

Andrea Traber
1340 Hopkins Street
Berkeley, CA 94702

Karimzadegan, Niloufar

From: Huiying Jin <jinhy1007@gmail.com>
Sent: Thursday, May 21, 2020 11:53 AM
To: Karimzadegan, Niloufar
Subject: Writing in support of 1346 Ordway's permit request - from 1336 Ordway

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Mr. Karimzadegan,

My name is Huiying Jin, I'm writing to share my support for our 1346 Ordway neighbor - Jennie Durant's multiple permit approvals. My husband Orion Richardson and I have lived at 1336 Ordway since 2017.

Jennie Durant and her family has always been a super considerate and caring neighbor. Jennie also maintains one of the most beautiful front yards in our neighborhood, which greatly increases the property value of the block.

After reading the content of her permit application, I have no doubt that the projects will further beautify the neighborhood and make it a more family-friendly environment.

We're shocked to see the appeal letter against such reasonable development from her next-door neighbor Larry, whose property has always been the eyesore on the block, and he's occasionally mean to some other neighbors kids. We've seen his tenants using recreational drugs in front of his property and making lots of noise and smoke. I think Jennie's idea of planting a beautiful hedge to protect the young family's privacy is very reasonable considering the presence of such not-so-kids-friendly neighbor.

We also fully support the various other permit requests Jennie has made. We'd be happy to answer any questions by phone or in-person if necessary for making her case. Please feel free to reach out. Thank you very much for your consideration. =)

Warm regards,
Huiying Jin and Orion Richardson
Residents of 1336 Ordway Street
Tel: 224-619-2186

November 22, 2019

Dear Nilu,

My name is Elizabeth Hubbell and I live at 1349 Ada Street - I am the neighbor of Jennie Durant & Keki Burjorjee at 1346 Ordway. I am writing in support of Jennie & Keki - case number: 1346 Ordway/ZP2018-0174

1.
to have a front parking spot (authorized use permit).

AND

2.
to create privacy/visual barrier and beautify their yard by planting a pittosporum hedge between their home and their next-door neighbor, Larry Hickman (1333 Hopkins Street).

I've lived here for 23 years and love our neighborhood -- a real community. For much of the time I've lived here, the building at 1333 Hopkins Street has been in a state of "construction" - with windows installed and removed countless times, "construction" vans coming and going at all hours of the day/night. In the course of the past 15 years I've seen the door & window trim sanded & painted I don't know how many times. Simply put, the building is an eyesore. Apparently it's a duplex, though I'm not sure who's actually living there. I don't understand why Larry would have issues with a pittosporum hedge planted between the properties - as added screen/privacy - his property is in a seeming constant state of upheaval.

Thank you for considering my support.

Elizabeth Hubbell

Karimzadegan, Niloufar

From: Susie Wallenstein <berkeleysusie@gmail.com>
Sent: Saturday, November 2, 2019 3:28 PM
To: Karimzadegan, Niloufar
Cc: Susie Wallenstein
Subject: 1346 Ordway neighbor support

Dear Nilu,

My name is Susie Wallenstein and I am the across-the-street neighbor of Jennie Durant and Keki Burjorjee at 1346 Ordway. I live at 1342 Hopkins, just across the street. My husband, Eduardo Pineda and I built our home on a vacant lot in 1986 and have lived there since, raising our children there and actively participating in the neighborhood activities. We love our neighborhood and our very friendly neighbors.

We are writing with a couple of issues in mind:

First, we want to support Jennie and Keki in their request for a use permit for a front parking spot. Theirs is an older house, as most in our neighborhood are, and has a curb cut with a parking pad in the front of their house. They use the parking pad to park their only car. The curb cut and parking pad have been there as long as we can remember. They have informed us of their city case number which is 1346 Ordway/ZP2018-0174

Most of our neighbors park their cars either on the street or in the driveway parking pad in front of their homes. In our neighborhood of smaller homes, most of those who have enclosed garages seem to use them for purposes other than storing their cars. The authorization of a parking spot for Jennie and Keki is completely in line with the rest of the neighborhood.

Secondly, we want to express both our support for them having a tall hedge between their house and their next-door neighbor, at the corner of Hopkins and Ordway, and to register our concern regarding that property. That building has been vacant and a neighborhood eyesore for about 15 years. The well maintained hedge provides visual screening between their home and the hulking eyesore next door..

The current owner of the nextdoor building, Larry Hickman, got rid of the tenants in the previously 4-unit building, took down all the interior walls, and has left it vacant since he purchased it about 15 years ago. He has installed and REMOVED windows on all sides of the building REPEATEDLY; I would estimate at least 5 times in the last 15 years, although there has been no other visible work or improvement on the property. There is no landscaping, although he does keep the weeds down. The windows are covered with paper or crooked blinds and there are no lights. Cars park there overnight, and others come and go, but there are no inhabitants. There seems to be an open building permit for the property,(we have met with the inspector, by chance) but there has been no visible progress made on whatever project they are doing, other than constant window replacement.

No one appears to live there, although I have personally witnessed a fist fight and shouting matches in front of the building. Just a few weeks ago, there was a lot of shouting and police come and took someone away in handcuffs.

Visual screening between Jennie and Keki's home and Mr. Hickman's building is important for Jennie and Keki's feeling of safety and security in our otherwise delightful neighborhood.

Thank you for considering my support for Jennie and Keki's parking space and hedge.

Susie Wallenstein and Eduardo Pineda

December 1, 2018

Dear Nilu Karimzadegan and Greg Powell,

This is a letter of support for Jennie Durant and Keki Burjorjee's AUP for the lattice on the northern fence of 1346 Ordway Street, as well as to support them as my neighbors more broadly.

The home was previously occupied by a 99-year-old woman, Coesther Taylor, who passed away before her family trust put the home on the market. When Jennie and Keki moved in, they expended a lot of effort to landscape the yard from weeds and grass to the lovely garden it is now. My kitchen window looks out onto their yard, and so I could see all the changes they were making.

In 2017, Jennie and Keki asked if they could replace the lattice between our properties with one slightly higher since the lattice had degraded from some vines and then they could also have more privacy in their yard since our kitchen and dining room looked right onto their back yard. We agreed, and they had a custom-built lattice installed which we think looks nice, and which gives us greater privacy as well.

In addition, I just want to attest that Jennie and Keki are good neighbors. We watch their daughter (a toddler) from time to time; we have shared meals, traded home ideas, and regularly chat and help each other out. In short, we have a great relationship with them and are so happy to have them next door.

We just wanted to share our perspective and hope it is helpful. Feel free to reach out to me at tamarg08@yahoo.com with any questions.

Best,



Tamar Gershon
1344 Ordway Street,
Berkeley CA 94702

PRISCILLA RICE
Realtor Associate



MASON-McDUFFIE

priscilla@priscillarice.com

510.304.5124 Cell
510.868.1550 Office
510.540.9957 Fax
2095 Rose Street
Berkeley, California 94709
www.priscillarice.com
BRE #01816796

December 1, 2018

Dear Nilu Karimzadegan and Greg Powell,

I am writing on behalf of Jennie Durant and Keki Burjorjee, my clients who purchased 1346 Ordway Street on November 9th, 2015. I am writing to address two points. The first is to support the statement that the listing agent, Norman Gee, made in his letter, which is that the garage was removed before Jennie and Keki moved in because it was structurally unsound and unsafe. The structure had been removed entirely by the time Jennie and Keki closed on the property.

Secondly, I want to affirm the efforts they have made to improve the beauty of the property, the first home they have owned. The house was previously owned by a 99-year-old woman who passed away while living there. The place had not been updated since she purchased the unit in the 1970's and Keki and Jennie have improved the beauty and value of the home tremendously since they took ownership. The yard and office are lovely and not only increase the value of their property, but the value of their neighbors' properties by extension. I just wanted to add my perspective as a real estate agent that they are good neighbors and kind people. I do hope that you'll consider granting them the permit they are asking for to have extra privacy and an added safety measure from the vacant property next door.

Please feel free to contact me with any questions.

Best,

A handwritten signature in cursive script that reads "Priscilla Rice".

Priscilla Rice
Realtor at Better Homes and Gardens
2095 Rose Street #101
Berkeley, CA 94709



MASON-McDUFFIE

November 30, 2018

Dear Sir / Madame,

I represented the Taylor Family trust in 2015 for the sale of 1346 Ordway St. in Berkeley following the passing of their long time family matriarch. Prior to the sale of the property the remnants of the detached garage were removed from the premises. The garage itself had essentially collapsed and had a large tree growing through the center of it which held up what little remained of the slumping dilapidated structure.

Best Regards,

Norman Gee

Better Homes & Gardens | Reliance Partners
2095 Rose St. Suite 100
Berkeley CA 94709
Ph: 510-868-1400
Dir: 510-552-0878

Karimzadegan, Niloufar

From: Larry Hickman <Lpacificquest@aol.com>
Sent: Monday, June 1, 2020 8:25 PM
To: Karimzadegan, Niloufar
Subject: Tree within Required Setback

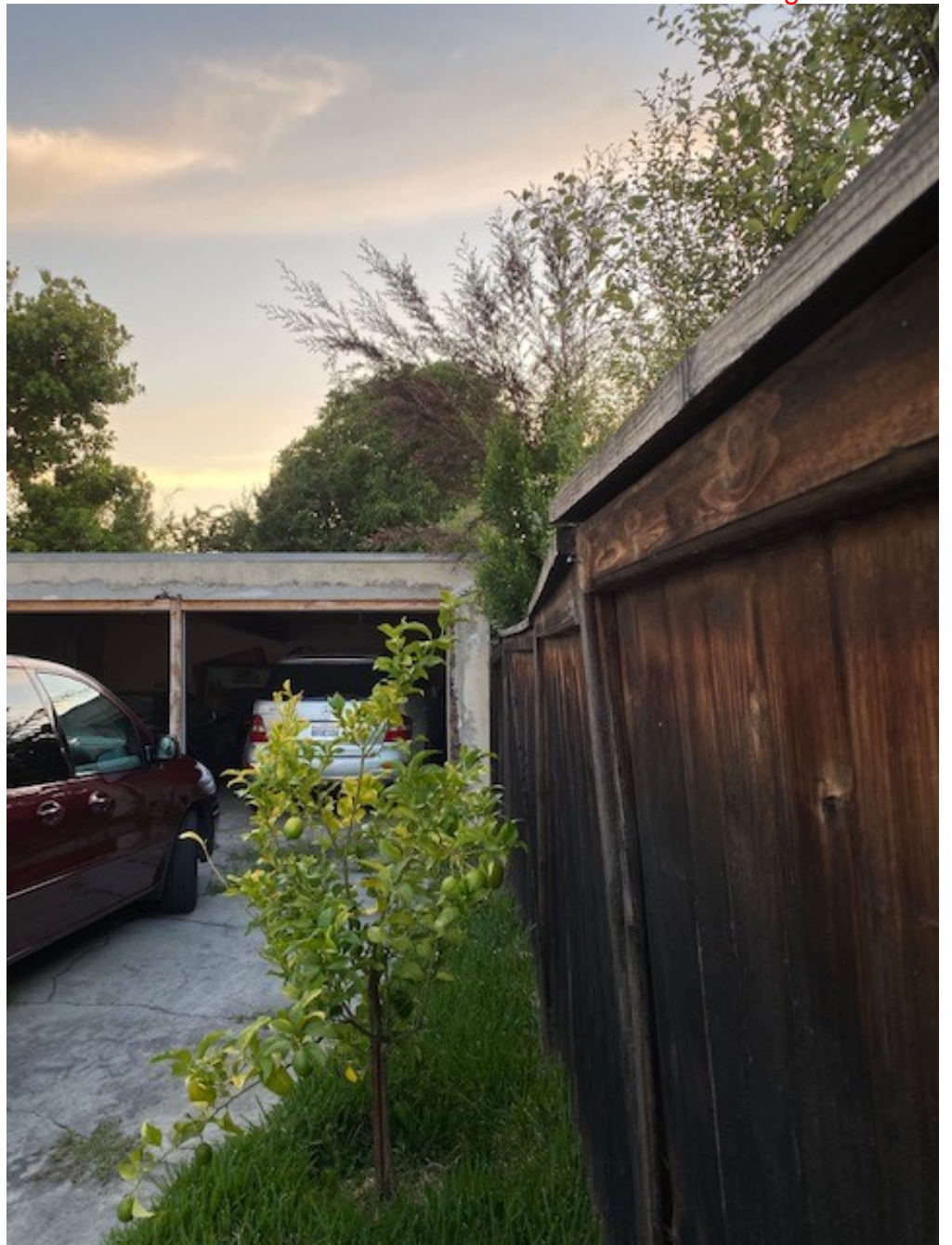
Nilu,

Attached are two better pictures illustrating how the trees planted within the required setback are growing over the property line and invading my space. Please include these pictures and email as part of my appeal regarding 1346 Ordway Street. To permit these trees, planted without a permit, creates an ongoing issue for me and and future owners of my property.

Thank you,

Larry Hickman
1333 Hopkins Street
Berkeley, CA 94702
(510) 467-4250





Sent from my iPhone

Karimzadegan, Niloufar

From: Larry Hickman <Lpacificquest@aol.com>
Sent: Tuesday, April 7, 2020 8:58 AM
To: Karimzadegan, Niloufar
Subject: 1346 Ordway Street

Follow Up Flag: Flag for follow up
Flag Status: Flagged

Good morning Nilu,

Please include these additional photos with my appeal. The trees will soon smother my Lemon Tree and are a nuisance. I think any reasonable person will agree.

Thank you,

Larry Hickman
1333 Hopkins Street
Berkeley, CA 94702
(510) 467-4250









Karimzadegan, Niloufar

From: Larry Hickman <Lpacificquest@aol.com>
Sent: Saturday, April 4, 2020 5:49 PM
To: Karimzadegan, Niloufar
Subject: Appeal 1346 Ordway

Follow Up Flag: Flag for follow up
Flag Status: Flagged

Hello Nilu,

Please add this photo to my appeal. As you can see the neighbors 14-15ft tall trees are growing into my yard and will eventually cover up my Lemon tree and fence; pushing the fence over. This is an inappropriate condition.

Thank you,

Larry Hickman
1333 Hopkins Street
Berkeley, CA 94702
(510) 467-4250



Karimzadegan, Niloufar

From: Larry Hickman <Lpacificquest@aol.com>
Sent: Wednesday, June 12, 2019 10:29 AM
To: Karimzadegan, Niloufar
Subject: 1346 Ordway
Attachments: IMG_0508.jpg; ATT00001.txt

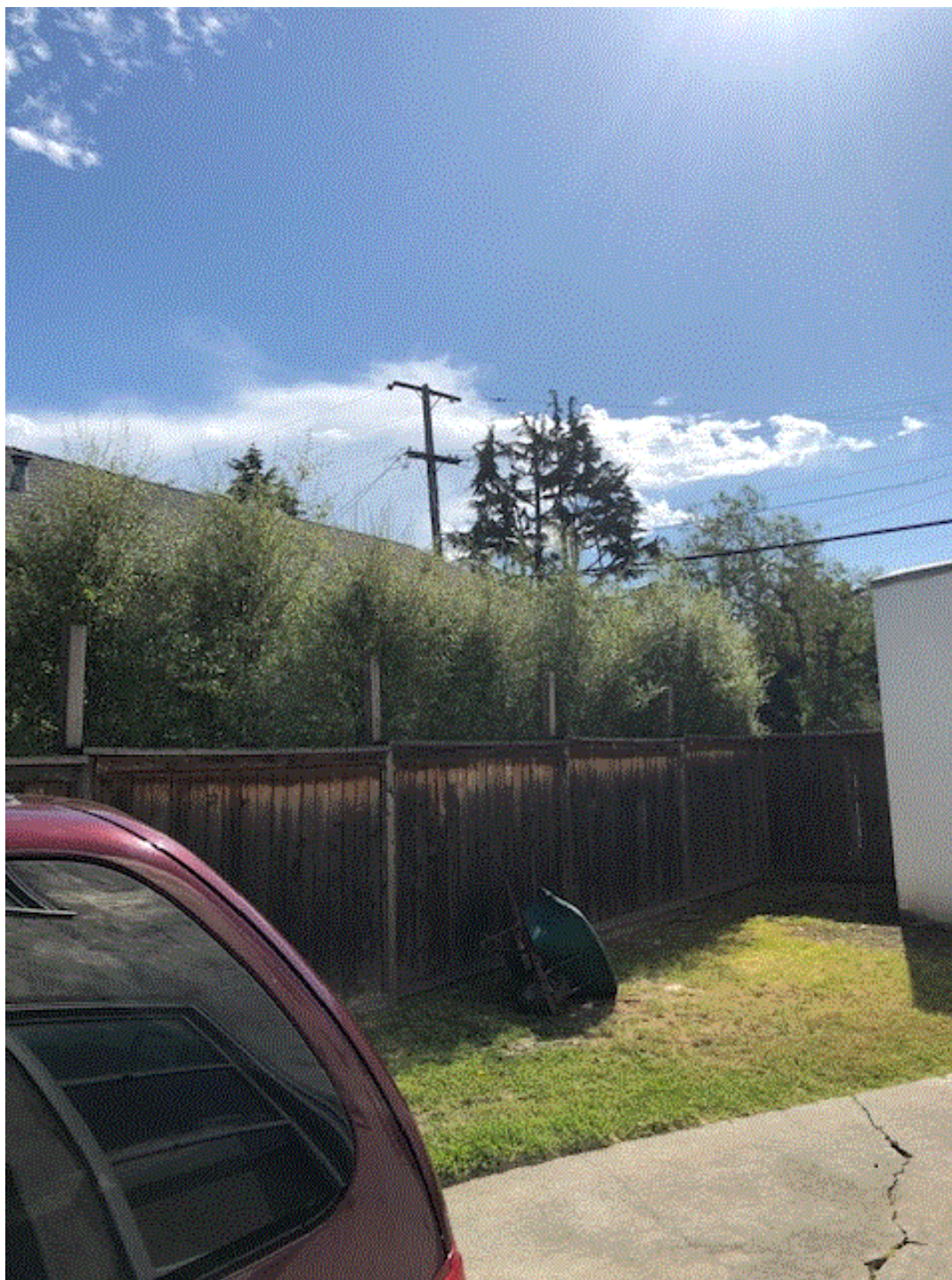
Follow Up Flag: Follow up
Flag Status: Flagged

Good morning Nilou,

I'm curious about the status of my neighbors application. The non permitted fence is continuing to grow taller, despite the citation already issued by the City of Berkeley. Please see the attached photo. I'm just wondering if the City intends to enforce the citation(s) related to my neighbors growing a fence greater than 6' tall.

Thank you,

Larry Hickman
1333 Hopkins Street
Berkeley, CA 94702
(510) 467-4250



Karimzadegan, Niloufar

From: Larry Hickman <Lpacificquest@aol.com>
Sent: Thursday, January 10, 2019 11:18 AM
To: Karimzadegan, Niloufar
Subject: No Sign
Attachments: IMG_0371.jpg; ATT00001.txt

Thanks Nilu,

There's no sign in front of 1346 Ordway and there has been for a approximately 2 months. The applicants letter stated they would place a sign in from of their property in early December, however, that has not yet occurred.

Thanks again,

Larry Hickman
1333 Hopkins Street
Berkeley, CA 94702
510 467-4250



Lawrence Hickman	1333 Hopkins Street Berkeley, CA 94702 Phone: (510) 467-4250 E-Mail: lpacificquest@aol.com
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RECEIVED

SEP 20 2018

LAND USE PLANNING S.G.

September 20, 2018

Ms. Nilu Karimzadegan, Planner
City of Berkeley – Zoning/Planning
1947 Center Street, 3rd Floor
Berkeley, CA 94704

SUBJECT
1346 ORDWAY STREET APPLICATION

NOTICE OF OPPOSITION ZONING VARIANCE
REVISED

Dear Ms. Karimzadegan:

As the adjacent property owner, this writing serves notice that I am opposed to any consideration of the subject application.

Here, the issue is whether **BMC Ch. 23D.08.060 § A(2)** is violated where a resident/neighbor created a fence-wall by planting fifteen (15) trees – in a row - each approximately fourteen (14) feet in height creating a wall, with trees planted less than two feet away from an existing legal community-fence and property line, then builds a 9 foot in height arbor 2" away from the side of my garage without a building permit.

BMC Ch. 23D.08.060 § A(2) provides any fence, hedge, gate, pergola, trellis, arbor or retaining wall when located on a lot in, or on the zoning boundary line of, any residential District is subject to the following **"no fence or other unenclosed accessory structure located on a property line or within the required yard area for a main building set forth in each residential District's provisions may exceed six feet in height at any point ... unless so authorized by an AUP"**

Here, it appears that the 1346 Ordway Street Resident Applicant (hereafter "Resident Applicant") has violated and continues in violation of the above referenced municipal code, because Resident Applicant has already planted fifteen (15) trees - in a row - each approximately fourteen (14) feet in height, supported by unpermitted construction method(s), using four-by-fours (4x4s) exceeding six feet in height. In addition, the trees were planted within two feet of the property line, also a violation. This violation(s) is further evidenced by the fact that, after my complaint to Code Enforcement, Resident Applicant received a citation, from the Code Enforcement Unit of the Mayor's Office. If I had not complained to Code Enforcement, resulting in the citation, Resident Applicant would not have applied for an AUP.

It should be noted that the subject application fails to mention that Resident Applicant has also already created the same and similar fence/wall condition on the opposite side of the property at the 1346 Ordway Street address. The application also fails to mention that Resident Applicant has constructed a 9 foot in height arbor 2" away from my garage without a building permit.

The present state of Resident Applicant current fence/wall configuration substantially interferes with my peaceful and quiet enjoyment of my property by eliminating my entitled air space, around the most useful part of my yard; making my yard small. Even the proposed **two (2) feet in height lattice** that Resident Applicant wants to install, creating an eight (8) feet in height fence, is nonconforming and negatively impacts my site line and air space. Allowing these nonconforming conditions would diminish the value of my property. In addition, Resident Applicant's fence/wall height, proposed trellis, including the nine (9) foot high arbor – **two (2) inches from my garage** -, and proposed lattice prevents me from maintaining my property adequately.

I've owned my property at 1333 Hopkins Street for twenty-eight years, without incident. However, Resident Applicant recently approached me in my yard initiating an argument about the complaint I lodged with Code Enforcement. I believe Resident Applicant was attempting to intimidate me prior to filing this deceptive AUP application.

Furthermore, the subject application was only made after the aforementioned conditions were exposed, reported and cited. Moreover, the **Resident Applicant is seeking approval for conditions that already exists**, as if they are correctly planning to create a new condition.

On its face, this application should be denied because it's deceptive and lacks full disclosure. Even the Site Plan submitted is incomplete and lacks full disclosure. Additionally, the trellis description is ambiguous.

I oppose the subject application for the reasons stated herein. Accordingly, Resident Applicant's request for variance should be denied.

Also, The unauthorized 14 feet in height trees/fence, arbor that's 2" away from my garage, and the four-by-fours (4x4) posts taller than 6 feet need to be removed.

Respectfully Submitted,



Lawrence Hickman

Lawrence Hickman	1333 Hopkins Street Berkeley, CA 94702 Phone: (510) 467-4250 E-Mail: lpacificquest@aol.com
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September 19, 2018

RECEIVED

SEP 19 2018

LAND USE PLANNING

ZP2018-0174 (LN)

Ms. Nilu Karimzadegan, Planner
City of Berkeley – Zoning/Planning
1947 Center Street, 3rd Floor
Berkeley, CA 94704

SUBJECT
1346 ORDWAY STREET APPLICATION

NOTICE OF OPPOSITION ZONING VARIANCE

Dear Ms. Karimzadegan:

As the adjacent property owner, this writing serves notice that I am opposed to any consideration of the subject application.

Here, the issue is whether **BMC Ch. 23D.08.060 § A(2)** is violated where a resident/neighbor created a fence-wall by planting fifteen (15) trees – in a row - each approximately fourteen (14) feet in height creating a wall, with trees planted less than two feet away from an existing legal community-fence and property line, then builds a 9 foot in height arbor 2" away from the side of my garage without a building permit.

BMC Ch. 23D.08.060 § A(2) provides any fence, hedge, gate, pergola, trellis, arbor or retaining wall when located on a lot in, or on the zoning boundary line of, any residential District is subject to the following **"no fence or other unenclosed accessory structure located on a property line or within the required yard area for a main building set forth in each residential District's provisions may not exceed six feet in height at any point ... unless so authorized by an AUP ..."**

Here, it appears that the 1346 Ordway Street Resident Applicant (hereafter "Resident Applicant") has violated and continues in violation of the above referenced municipal code, because Resident Applicant has already planted fifteen (15) trees - in a row - each approximately fourteen (14) feet in height, supported by unpermitted construction method(s), using four-by-fours (4x4s) exceeding six feet in height. In addition, the trees were planted within two feet of the property line, also a violation. This violation(s) is further evidenced by the fact that, after my complaint to Code Enforcement, Resident Applicant received a citation, from the Code Enforcement Unit of the Mayor's Office. If I had not complained to Code Enforcement, resulting in the citation, Resident Applicant would not have applied for an AUP.

It should be noted that the subject application fails to mention that Resident Applicant has also already created the same and similar fence/wall condition on the opposite side of the property at the 1346 Ordway Street address. The application also fails to mention that Resident Applicant has constructed a 9 foot in height arbor 2" away from my garage without a building permit.

The present state of Resident Applicant current fence/wall configuration substantially interferes with my peaceful and quiet enjoyment of my property by eliminating my entitled air space, around the most useful part of my yard; making my yard small. Allowing the existing nonconforming conditions would diminish the value of my property. In addition, Resident Applicant's fence/wall height, proposed trellis, including the nine (9) foot high arbor – **two (2) inches from my garage** - prevents me from maintaining my property adequately.

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On its face, this application should be denied because it's deceptive and lacks full disclosure. Even the Site Plan submitted is incomplete and lacks full disclosure. Additionally, the trellis description is ambiguous.

I oppose the subject application for the reasons stated herein. Accordingly, Resident Applicant's request for variance should be denied.

Also, The unauthorized 14 feet in height trees/fence, arbor that's 2" away from my garage, and the four-by-fours (4x4) posts taller than 6 feet need to be removed.

Respectfully Submitted,



Lawrence Hickman

ROUGHLY EDITED COPY

BERKELEY ZAB MEETING
REMOTE BROADCAST CAPTIONING
THURSDAY, JUNE 11, 2020

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Communication Access Realtime Translation (CART) is provided in
order to facilitate communication accessibility and **may not be
totally verbatim record of the proceedings.**

* * * * *

>> S. O'KEEFE: MEMBERS OF THE PUBLIC WHO ARE HERE, WE'LL START, I PROMISE. BUT WE ONLY HAVE THREE -- IS THAT RIGHT? FOUR NOW. SO WE ALMOST HAVE A QUORUM, BUT I'M TOLD THAT WE HAVE A BIT OF AN AUDIO PROBLEM. UNTIL JOE TELLS ME IT'S RESOLVED, WE CAN'T START. WE'LL START SOON WE GET THE GREEN LIGHT AND WE HAVE A QUORUM. IT'S COMING UP, YOU'RE GOOD.

>> S. O'KEEFE: SO THE AUDIO IS WORKING?

>> I GUESS MY VOICE DID IT.

>> IT WAS WEIRD AND NOW IT'S NORMAL. GREAT. SO WE GOT THE GREEN LIGHT FROM TECH TO GO. HOW MANY BOARD MEMBERS ARE HERE? WE HAVE PATRICK, ME, CHARLES, JOHN, IGOR, DOHEE, TERESA, THAT'S A QUORUM. WHO ARE WE MISSING? DENISE AND CAREY --

>> THAT WOULD BE EVERYBODY.

>> S. O'KEEFE: SO I DON'T KNOW -- LET'S WAIT ANOTHER MINUTE. IT'S SUMMER, I DON'T DO THE MATH. STEVE BUCKLEY WILL BE OUR ZAB SECRETARY THIS WEEK.

>> WELCOME! WELCOME!

>> GOOD TO BE WITH YOU.

>> S. O'KEEFE: STEVE OR STEVEN?

>> S. BUCKLEY: STEVE IS GOOD. SHANNON AND I ARE CO-SECRETARIES TO THE ZAB. GIVEN THE PANDEMIC SHUT DOWN, IT'S BEEN ON HOLD BUT I'LL BE PICKING UP EVERY OTHER MEETING FROM NOW ON.

>> WELCOME.

>> S. BUCKLEY: THANK YOU.

>> S. O'KEEFE: I THINK WE SHOULD GET STARTED. THEY CAN BE LATE OR -- BUT WE HAVE A QUORUM. WE CAN BRING THE MEETING TO ORDER. I HAVE A THING I'M SUPPOSED TO READ. GIVE ME A MINUTE TO FIND THE SCRIPT. HOLD ON. SORRY. OKAY PURSUANT TO SECTION 3 OF EXECUTIVE ORDER N-29-20 ISSUED BY GOVERNOR NEWSOM ON MARCH 17, 2020, THIS MEETING OF THE ZONING ADJUSTMENTS BOARD WILL BE CONDUCTED EXCLUSIVELY THROUGH TELECONFERENCE AND ZOOM VIDEOCONFERENCE. PLEASE BE ADVISED THAT PURSUANT TO THE EXECUTIVE ORDER AND THE SHELTER-IN-PLACE ORDER AND EXECUTIVE ORDER AND TO ENSURE THE HEALTH AND SAFETY OF THE PUBLIC BY LIMITING HUMAN CONTACT BY LIMITING HUMAN CONTACT THAT COULD SPREAD THE COVID-19 VIRUS, THERE WILL NOT BE A PHYSICAL MEETING AVAILABLE. PEOPLE IN THIS MEETING WILL HAVE DISPLAYED NAMES. IF YOU WISH TO BE ANONYMOUS, PLEASE CLICK ON THE DROPDOWN BUTTON AND HIT "RENAME." I BELIEVE THERE ARE THREE DOTS NEXT TO YOUR NAME. FOR COMMISSIONERS WISHING TO SPEAK DURING DELIBERATIONS, PLEASE USE THE RAISED HAND ICON AND WAIT TO BE CALLED UPON BY THE CHAIR. MEMBERS OF THE PUBLIC ON ITEMS SHOULD USE THE RAISED HAND ICON AT THE BOTTOM OF THE SCREEN. IF YOU'RE PARTICIPATING BY PHONE AND WISH TO COMMENT PRESS STAR 9 AND WAIT TO BE RECOGNIZED BY THE CHAIR PLEASE BE MINDFUL ALL RULES OF PROCEDURE AND DECORUM APPLY. FOR VIDEO MEETINGS, IT IS PARTICULARLY IMPORTANT TO GIVE EACH SPEAKER THE CHANCE TO COMPLETE THEIR

REMARKS BEFORE THE NEXT SPEAKER STARTS. ALL RIGHT AND WITH THAT, WE WILL BEGIN. SO CAN WE DO A ROLL CALL AND EX-PARTE DISCLOSURES.

>> GOOD EVENING. ROLL CALL. COMMISSIONER TREGUB.

>> PRESENT, NO EX-PARTE.

>> COMMISSIONER CLARKE.

>> PRESENT NO EX PARTE.

>> COMMISSIONER SHEAHAN.

>> PRESENT NO EX-PARTE.

>> COMMISSIONER SELAWSKY.

>> PRESENT NO EX PARTE.

>> COMMISSIONER OLSON -- NOT PRESENT. COMMISSIONER KAHN.

>> C. KAHN: PRESENT, I'LL BE RECUSING MYSELF FROM THE CONSENT CALENDAR FOR 2338 TELEGRAPH AVENUE AS I'M THE ARCHITECT.

>> S. BUCKLEY: OKAY. COMMISSIONER KIM.

>> PRESENT NO EX-PARTE.

>> COMMISSIONER PINKSTON.

>> SHE'S NOT HERE.

>> S. BUCKLEY: NOT HERE. CHAIR O'KEEFE.

>> S. O'KEEFE: PRESENT NO EX-PARTE. GREAT, WE HAVE A QUORUM. THANK YOU FOR THAT. WE'RE NOW GOING TO HAVE PUBLIC COMMENT FOR ANY ITEM THAT IS NOT ON THE AGENDA. SO ONCE AGAIN, IF YOU ARE A MEMBER OF THE PUBLIC, I CAN SEE THE LIST, IF YOU WOULD LIKE TO SPEAK ON ANY ONE OF THE ITEMS LISTED, PLEASE RAISE

YOUR HAND RIGHT NOW. IF YOU'RE JOINING US BY PHONE PRESS STAR 9 AND THAT WILL DO THE SAME AS RAISING YOUR HAND. I'LL GIVE YOU A MOMENT IN CASE ANYONE IS HAVING TECHNICAL ISSUES. THE RAISED HAND BUTTON CAN BE FOUND WHERE? REMIND US.

>> IF YOU CONTROL YOUR MOUSE ACROSS BOTTOM OF THE SCREEN, HE'LL SEE AN ICON FOR RAISING YOUR HAND.

>> OKAY. I HOPE EVERYONE IS ABLE TO DO THAT.

>> IF YOU'RE USING AN IPAD, THE MENU IS AT THE TOP OF THE SCREEN. SOME DEVICES SEEM TO BE BACKWARDS.

>> THANK YOU, JOHN. SOMEWHERE ON YOUR SCREEN IS A RAISED HAND ICON. THIS IS YOUR MOMENT TO LET US KNOW IF YOU HAVE ANYTHING TO TALK ABOUT THAT IS NOT ON THE AGENDA. SEEING NONE, I SEE NO HANDED. WE'LL MOVE ON TO THE AGENDA CHANGES. SO WE CURRENTLY HAVE THREE ITEMS ON CONSENT. THREE HEARING ITEMS ON CONSENT AND THE MINUTES. AND WE HAVE ONE ITEM ON ACTION. ARE THERE ANY COMMENTS BILLION THE AGENDA -- ABOUT THE AGENDA? I'LL SWITCH OVER TO PANELISTS. PATRICK.

>> P. SHEAHAN: I WOULD LIKE TO TAKE 2023 SHATTUCK OFF CONSENT.

>> S. O'KEEFE: OKAY. WE HAVE MOVE THAT TO ACTION. ANYONE ELSE? OKAY. SO WE HAVE -- OUR CURRENT SITUATION IS WE HAVE THE MINUTES, 1635 TACOMA AND 1728 TELEGRAPH REMAIN ON CONSENT. ANY MOTIONS? IGOR.

>> I. TREGUB: BEFORE I MAKE A MOTION, I WANTED TO ASK, DID

WE RECEIVE ANY COMMENTS FROM THE PUBLIC?

>> S. O'KEEFE: THANK YOU. I'M SORRY, NORMALLY WE DON'T HAVE TO DO THIS, BUT WE ABSOLUTELY DO. I'M GOING TO DO A LITTLE THING WHERE I FIND OUT IF ANYONE FROM THE PUBLIC WANT TO SPEAK ON ANY OF THAT. I'M GOING THROUGH THE ITEMS, THERE ARE ONLY TWO REMAINING ON THE CONSENT CALENDAR. IF YOU'RE HERE TO SPEAK ABOUT SHATTUCK, I'LL HAVE A CHANCE TO SPEAK WHEN WE HEAR IT. IF YOU ARE HERE, MEMBERS OF THE PUBLIC TO SPEAK ABOUT 1635 TACOMA, PLEASE RAISE YOUR HAND AND I'LL GIVE ABOUT 30 SECONDS IN CASE ANYONE IS HAVING ANY TECHNICAL PROBLEMS. AND IT'S STAR 9 IF YOU'RE JOINING US BY PHONE. RAISE YOUR HAND IF YOU'RE SPEAKING ABOUT 1635 TACOMA WHICH IS CURRENTLY ON CONSENT. AND IT WILL BE VOTED ON SOON UNLESS SOMEONE IS HERE TO SPEAK IN OPPOSITION TO IT. OKAY. I SEE THE APPLICANT IS HERE. I'M ASSUMING YOU DON'T WANT TO SPEAK AGAINST IT. THANKS FOR RAISING YOUR HAND THOUGH. OKAY. SEEING NONE, SO TACOMA APPLICANT, PUT YOUR HAND DOWN BECAUSE WE'RE GOING TO VOTE ON IT IN A MOMENT. 2338 TELEGRAPH IS. IS ANYONE HERE TO SPEAK ABOUT 2338 TELEGRAPH? PRESS STAR 9 IF JOINING US BY PHONE OTHERWISE PRESS THE RAISED HAND ICON AND LET US KNOW. OKAY. SEEING NONE. SO IT APPEARS THAT NOBODY FROM THE PUBLIC IS HERE TO SPEAK AGAINST EITHER OF THE ITEMS. THANK YOU. JOHN, YOUR HAND IS UP.

>> J. SELAWSKY: I WAS GOING TO SECOND IGOR'S MOTION BUT HE DIDN'T MAKE A MOTION. I'LL MAKE THE MOTION TO APPROVE CONSENT

CALENDAR WHICH INCLUDES THE ACTION MINUTES FROM MAY 28TH, 2020,
AND NUMBER THREE, 1635 TACOMA AVENUE AND NUMBER 4, 2338
TELEGRAPH AVENUE. THOSE ARE ALL ON CONSENT.

>> S. O'KEEFE: THERE IS A MOTION. IS THERE A SECOND TO THE
MOTION?

>> I. TREGUB: SECOND.

>> S. O'KEEFE: MOTION AND A SECOND. IS THERE ANY FURTHER
DISCUSSION CHARLES, COVER YOUR EARS. YOU'RE NOT PART OF THIS.
SEEING NONE, CAN WE TAKE A ROLL CALL VOTE. STEVE.

>> S. BUCKLEY: THE MOTION FOR APPROVING THE MINUTES AS WELL
AS ITEMS 3 AND 4 MOTION BY COMMISSIONER -- BOARD MEMBER SELAWSKY
SECONDED BY BOARD MEMBER TREGUB. BOARD MEMBER TREGUB.

>> I. TREGUB: YES.

>> CLARKE.

>> YES.

>> BOARD MEMBER SHEAHAN.

>> YES.

>> S. BUCKLEY: BOARD MEMBER SELAWSKY.

>> YES.

>> BOARD MEMBER OLSON IS ABSENT. BOARD MEMBER KAHN
ABSTAINS.

>> C. KAHN: I'LL SAY YES ON THE ITEMS IN WHICH I CAN VOTE.

>> S. BUCKLEY: YOU'RE ABSTAINING TO 2338 TELEGRAPH.

>> C. KAHN: CORRECT.

>> S. BUCKLEY: BOARD MEMBER KIM.

>> YES.

>> S. BUCKLEY: BOARD MEMBER PINKSTON IS ABSENT. AND CHAIR O'KEEFE.

>> S. O'KEEFE: YES. SO CONSENT CALENDAR MOTION PASSES. THE MINUTES ARE APPROVED AND 1635 TACOMA AND 2338 TELEGRAPH, YOU ARE YOUR USE PERMIT. THEY ARE APPEALABLE TO THE CITY COUNCIL. THANK YOU FOR COMING. WE'LL MOVE ON TO 2023 THROUGH 2025 SHATTUCK AVENUE. WE'LL BEGIN WITH A STAFF REPORT.

>> STAFF: AM I ABLE TO -- WE'LL SAVE THE PRESENTATION FOR THE APPLICANT. GOOD EVENING, MEMBERS OF THE ZAB. THE PROJECT BEFORE YOU IS AS NOTED 2023 THROUGH 2025 SHATTUCK AVENUE. THIS PROJECT IS LOCATED IN THE C-DMU CORE AREA. PREVIOUSLY THE ZAB HAD SEEN THIS PROJECT AT A PREVIEW IN OCTOBER OF 2019. AND JUST TO REVIEW THE PROJECT DESCRIPTION, IT IS A REQUEST TO CONSTRUCT AN 7-STOREY 73 FEET 5 INCHES TALL MIXED USE BUILDING WITH 48 DWELLING UNITS AND FOUR UNITS AVAILABLE TO LOW-INCOME HOUSEHOLDS. THAT IS A DENSITY BONUS PROJECT AND CONSISTS OF -- THERE IS NO VEHICLE PARKING AS THIS IS A REQUEST OF A CONCESSION. IT WOULD PROVIDE STORAGE FOR 34 BICYCLES. THAT IS A DENSITY BONUS PROJECT AND THE WAIVERS AND CONCESSIONS INCLUDE A WAIVER FOR A HEIGHT MODIFICATION TO EXCEED THE 60-FOOT HEIGHT LIMIT TO PERMIT A 73-FOOT HIGH BUILDING. THERE ARE SETBACKS FROM WHAT WOULD NORMALLY REQUIRED OF 5 FEET TO ZERO FEET TO

ACCOMMODATE THE DENSITY BONUS UNITS. A CONCESSION TO REDUCE THE OFF-STREET PARKING AND A CONCESSION TO REDUCE THE HEIGHT REQUIREMENT TO 1300 SQUARE FEET. AS NOTED, THIS PROJECT IS LOCATED IN THE DOWNTOWN AREA AND INCLUDES GROUND FLOOR COMMERCIAL. THE GROUND FLOOR ALSO INCLUDES A BOBBY AND CIRCULATION AREA. THERE WOULD BE 48 STUDIO APARTMENTS ON FLOORS TWO THROUGH SEVEN AND THERE WOULD BE A ROOF DECK FOR OPEN SPACE. FOLLOWING THE ZAB PREVIEW IN OCTOBER, THERE WAS ALSO A DESIGN REVIEW COMMITTEE PREVIEW AND PROJECT FOR DESIGN REVIEW IN MAY. THERE WERE RECOMMENDATIONS GIVEN BY THE DRC WHICH INCLUDED FOR THE APPLICANT TO CONSIDER MORE PLACE MAKING IN THE LOBBY AND PROVIDE SEATING TO LOOK AT SIDE ELEVATIONS AND CONSIDER EXTENDING THE MATERIAL FROM THE FRONT ELEVATION OR PROVIDE FURTHER ARTICULATION WHEN POSSIBLE AND IF POSSIBLE INCREASE THE GREEN BUILDING MEASURES. THEREIN CONDITIONS INCLUDING COLOR, ELEVATIONS AND AWNING DETAILS AS WELL AS DETAILS FOR RAILING, LIGHTING AND ROOF DECKS. AS NOTED, THIS PROJECT IS A DENSITY BONUS PROJECT AND HAS FOUR QUALIFYING UNITS. SO THE BASE PROJECT -- ADDITION TO THE BASE PROJECT, THE DENSITY BONUS UNITS ALLOW FOR THE PROJECT ARE 13. TO BE A TOTAL OF 48. THE APPLICANT IS AVAILABLE WITH A PRESENTATION AND TO ANSWER ANY OTHER QUESTIONS. STAFF RECOMMENDS APPROVAL. THIS CONCLUDES MY PRESENTATION.

>> S. O'KEEFE: ARE THERE ANY QUESTIONS FOR STAFF? PATRICK.

>> P. SHEAHAN: YES. HELLO. REGARDING THE BASE CALCULATION, I NOTICE THERE ARE 7 UNITS PER FLOOR AND THE PROPOSED IS 8 UNITS. I FAIL TO SEE WHY 8 UNITS PER FLOOR COULD NOT BE DEVELOPED IN A SIMILAR FASHION.

>> STAFF: THE AVERAGE UNIT SIZE THAT IS PROPOSED IS PRETTY MUCH EQUAL BETWEEN THE BASE PROJECT AND THE DENSITY BONUS PROJECT THAT IS PROPOSED. HOWEVER, I BELIEVE THE ARCHITECT CAN PROVIDE MORE INFORMATION REGARDING YOUR QUESTION.

>> P. SHEAHAN: THAT WOULD BE GOOD. WHAT ARE THE REQUIREMENTS FOR NUMBER OF ACCESSIBLE UNITS IN THIS PROJECT?

>> STAFF: ACCESSIBLE UNITS ARE REQUIRED THROUGH THE BUILDING CODE AND THE PLAN CHECK PROCESS. THERE ARE NO UNITS ON THE GROUND FLOOR, SO THE ARCHITECT CAN ALSO PROVIDE INFORMATION REGARDING HOW MANY WE REQUIRED AS A PERCENTAGE OF THE TOTAL.

>> P. SHEAHAN: THAT MAKES ME CURIOUS BECAUSE THERE IS AN ELEVATOR. THERE IS NO INDICATION OF ANY ACCESSIBLE UNITS ON ANY OF THE PLANS. SO WHY WOULDN'T STAFF BE CONCERNED ABOUT PROVIDING THE ACCESSIBLE UNITS?

>> STAFF: STAFF WOULD REVIEW FOR OTHER UNITS WHEN THE BUILDING IS APPROVED. THERE ARE NO IN THE ZONING CODE. THAT'S PRIMARILY IN THE BUILDING CODE. IT'S IN THE BUILDING CODE, I'M SORRY FOR THAT.

>> P. SHEAHAN: I FIND THAT RATHER -- I FIND THAT BORESOME. THE ISSUE OF ACCESSIBILITY IS NOT ADDRESSED IN PLANNING REVIEW

DOCUMENTS. BUT PERHAPS THE ARCHITECT COMPANY FURTHER ELUCIDATE ON THAT. THAT'S ALL. THANK YOU.

>> S. O'KEEFE: I THINK WE HAVE A HAND UP. TERESA HAS HER HAND UP.

>> S. O'KEEFE: SOMEBODY ELSE HAD THEIR HAND UP AS WELL FROM THE BOARD. I'M NOT SURE WHAT HAPPENED. TERESA ARE YOU USING AN IPAD OR MAC OR PC?

>> I'M USING THE SAME AS USUAL. I'M SHOWING AS A PARTICIPATE. SOMEONE WHOEVER IS IN CHARGE.

>> S. O'KEEFE: NO YOU'RE AT THE RIGHT LEVEL.

>> I DON'T SEE A RAISED HAND.

>> CLICK ON PARTICIPANTS AND THEN PANELISTS. AND DO YOU SEE YOUR NAME?

>> OKAY.

>> S. O'KEEFE: SO WE ARE A GOOD.

>> DO I CLICK UNDER PANELIST AND THEN MORE?

>> ON YOUR NAME, YOU CAN CLICK RAISED HAND.

>> I DON'T HAVE THAT. THAT IS FUNNY, IT'S NOT WORKING. LAST TIME IT WAS DOING FINE.

>> I. TREGUB: IT WILL BE BELOW --

>> THERE IT IS. GREAT.

>> S. O'KEEFE: TERESA, WHAT DO YOU WANT TO SAY?

>> YEAH, IN TERMS OF ACCESSIBLE UNITS, ALL THE UNITS ARE REQUIRED TO BE ADAPTABLE BY CODE. AND I THINK THAT WAS WITH -- I

THINK THAT'S WHAT PATRICK WAS QUESTIONING. EVERY UNIT HAS TO BE ADAPTABLE MEANING THE DOORWAYS AND EVERYTHING LIKE THAT HAS TO BE WIDE ENOUGH AND SIMPLE TOOLS CAN ONLY BE USED TO CREATE ADAPTABILITY. THAT'S IN THE BUILDING CODE. ANY OF THE UNITS COULD BE MODIFIED. WITH SIMPLE TOOLS TO BE ACCESSIBLE AND GRAB BARS COULD BE ADDED TO THE BATHROOM TO MAKE THAT ACCESSIBLE AS WELL BECAUSE THERE IS BACKING THAT IS REQUIRED AT THE TOILETS AND AT THE SHOWER ENCLOSURES.

>> S. O'KEEFE: THANK YOU. CHARLES.

>> C. KAHN: WHEN THERE ARE IS NO ELEVATOR, AND THERE IS A GROUND FLOOR UNIT, THAT GROUND FLOOR UNIT HAS TO BE ADAPTABLE AS AN ACCESSIBLE UNIT. BUT WHEN THERE IS AN ELEVATOR PROVIDED AS IN THIS PROJECT, ALL OF THE UNITS HAVE TO BE ADAPTABLE. THAT IS EXPERIENTIALLY, WE DID A RECENT CODE REVIEW, THAT'S HOW IT WORKS.

>> S. O'KEEFE: THANK YOU. ARE THERE ANY MORE QUESTIONS FOR STAFF? IGOR.

>> I. TREGUB: YEAH. I DON'T KNOW IF THIS IS FOR STAFF OR THE APPLICANT, BUT I WAS CURIOUS, I KNOW IT HAS GROUND FLOOR COMMERCIAL. HAS IT BEEN PROGRAMMED YET? THE REASON I ASKED IS BECAUSE I DIDN'T SAY CONDITIONS FOR FOOD OR ALCOHOL SERVICE.

>> STAFF: I DON'T BELIEVE IT'S BEEN PROGRAM YET. THEY DID NOT APPLY FOR ANY SORT OF FOOD OR BEVERAGE THAT WOULD BE REQUIRED. THAT WOULD BE DONE AT A LATER DATE UNLESS THEY WERE

GOING FOR SOMETHING THAT WILL NOT FOOD-RELATED. THE APPLICANT CAN PROVIDE MORE INFORMATION OWN THAT.

>> I. TREGUB: THANK YOU.

>> S. O'KEEFE: FURTHER QUESTIONS FOR STAFF. PATRICK.

>> P. SHEAHAN: THANKS TO CHARLES AND TERESA FOR THE INFORMATION ABOUT ACCESSIBLE UNITS. HOWEVER, ON THE PLANS, BATHTUBS ARE INDICATED. THAT OBVIOUSLY IS NOT -- NOT AN EASILY ADAPTABLE ITEM FOR AN ACCESSIBLE SHOWER. DOES STAFF HAVE ANY INFORMATION ON HOW THAT IS ADDRESSED?

>> STAFF: I WOULD DEFER TO THE APPLICANT ON THAT MATTER.

>> P. SHEAHAN: THANK YOU.

>> S. O'KEEFE: PATRICK YOUR HAND IS STILL UP.

>> P. SHEAHAN: I LOWERED IT.

>> S. O'KEEFE: OKAY. LET'S HAVE THE PROTOCOL BE I'LL LOWER YOUR HAND AFTER YOU'RE RECOGNIZED AND YOU DON'T HAVE TO WORRY ABOUT IT. PATRICK, YOUR HAND IS UP.

>> P. SHEAHAN: IT SHOWS LOWER, NOW RAISED, NOW LOWER. I'M TRYING TO LOWER IT. OKAY. DID THAT WORK?

>> S. O'KEEFE: NO, I'LL LOWER IT FOR YOU. IF ALL FAILS, I CAN SEE YOU. LET'S MOVE ON. THE APPLICANT IS WAIT BEING PATIENTLY. MR. TRACHTENBERG, ARE YOU SPEAKING FOR THE APPLICANT?

>> I AM.

>> S. O'KEEFE: YOU'RE ON. YOU HAVE FIVE MINUTES.

>> NICE TO SEE EVERYBODY. THANKS FOR COMING OUT OF YOUR

CAGE TONIGHT. I'M GOING TO SHOW MY SCREEN, IF I CAN. YOU SEE THE SCREEN?

>> S. O'KEEFE: YES, WE'RE GOOD.

>> GOOD. SO THIS IS THE SITE. YOU GUYS ARE FAMILIAR WITH THE SITE. THIS IS THE BASE OF THE BUILDING. I WANT TO START BY ADDRESS PATRICK'S QUESTION ON WHY THE BASE BUILDING ISN'T SHOW WAIT IDENTICAL UNITS BECAUSE WE HAVE A REAR SETBACK WHICH WOULD HAVE BEEN TAKEN A WAIVER TO REDUCE THAT. DOES THAT ANSWER YOUR QUESTION, PATRICK?

>> P. SHEAHAN: WELL, UNDER THE CONCESSIONS WAIVERS, I DO NOT SEE A SETBACK MODIFICATION FOR THE REAR SETBACK.

>> S. O'KEEFE: LET'S SAVE THIS DISCUSSION UNTIL AFTER AND LET MR. TRACHTENBERG FINISH.

>> THIS IS THE CONTEXT AS WAS LAID OUT. I'LL GET TO THE HIGH POINT HERE. THIS IS THE STATE DENSITY BONUS PROJECT. I THOUGHT THIS WAS A GOOD CONTEXT SHOT WHICH SHOWS HOW IT'S GOING TO BE RESTRIPE WITH THIS BACK DIAGONAL PARKING. THIS IS THE EXISTING SITE. A SITE WITH A BURNED OUT RESTAURANT AND WHAT IS PROPOSED. IT'S A COMPACT BUILDING. 45 IDENTICAL UNITS. THE SECTION IS AS SHOWN HERE. AND WE HAVE ADDRESSED THE QUESTION THAT CAME UP LAST WEEK AND SHOWED THE FURNITURE IN THE LOBBY AND I THINK IT'S PRETTY CONVINCING. WITH RESPECT TO THE QUESTION THAT WE MAKE AN EXIT TO LINK UP TO THE [INDISCERNIBLE] PLACE. IN THE FUTURE IF THAT BECOMES A LIVELY PLACE, WE WILL HAVE IS TO

ADDRESS IT. BUT IT'S NOT GOING TO BE EASY GIVEN HOW -- THIS IS 4200 SQUARE FEET. THESE UNITS ARE ACCESSIBLE. WE BUILT THE UNITS EXACTLY AS THE SAME UNITS IN SAN FRANCISCO AND THEY ARE ALL ACCESSIBLE. HERE IS THE ROOF DECK. IT HAS SEPARATE BUT EQUAL SPACES WITH THE GREEN SPACES IN BETWEEN. MECHANICAL TOWARDS THE REAR. THE UNITS ARE INDEED COMPACT BUT IT'S LIVABLE. YOU MENTIONED BATHTUBS. THERE SHOULD BE SHOWERS. WE COULD DO BATHTUBS -- SOME BATHTUBS ON THE LOWER FLOOR TWO AND THREE WHERE WE HAVE THE CONCRETE SLAB BUT IN THE UPPER FLOORS, WE'LL HAVE SHOWERS. SO LET'S LOOK AT HOW THE UNITS WORK. THIS IS A PROJECT TO BE BUILT -- IT'S A FIRST PREFAB PROJECT. WE HAVES THEY BENCHES WHICH BECOME TABLES. WE HAVE PULL DOWN TABLES WHICH FLIP UP AND THE BEDS FLIP DOWN. THIS IS WELL THOUGHT OUT. IN TERMS OF THE EXTERIOR OF THE BUILDING. THERE ARE HIGH QUALITY MATERIALS. WE TRIED TO CREATE A CIVIC SCALE AT THE GROUND FLOOR. LOOKING CLOSER AT THAT, THE LOBBY ENTRANCE IS HERE. AND THE RESTAURANT ENTRANCE IS HERE. HOPEFULLY A RESTAURANT WITH SLIDING WINDOWS THAT ALLOW FOR CONNECTIVITY TO THE STREET AND POTENTIALLY IF WE'RE STILL IN THE AGE OF COVID, PASS-THROUGH WINDOWS. WE HAVE WOOD ON THE OUTSIDE AND STEEL DETAILING. WE'LL MOVE UP THE BUILDING. GOING TO THE TOP, THERE WILL IS THE ROOF DECK. THIS IS INTERESTING BECAUSE IT STEPS BACK AND GETS HIGHER AS IT MOVES FORWARD. THE TOP HELPS TO SHED THE RAIN. THERE IS THE ROOF GARDEN AND ROOF OF THE WHOLE BUILDING IN TEXT. I LOOK FORWARD TO

YOUR QUESTIONS.

>> S. O'KEEFE: GREAT. THANK YOU. OKAY, SO ARE THERE QUESTIONS FOR THE APPLICANT. PATRICK, I'LL GET YOU GO FIRST IF YOU WANT TO CONTINUE YOUR CONVERSATION ON ACCESSIBILITY.

>> P. SHEAHAN: THANK YOU. HELLO, DAVID. GOOD TO SEE YOU AND GOOD-LOOKING PROJECT.

>> THANK YOU.

>> P. SHEAHAN: COULD THAT BE DONE THROUGH BIKE STORAGE, IF I WERE RIDING A BIKE, I WOULD PROBABLY COME BY WAY OF TERMINAL.

>> I THINK IT WOULD BE. I THINK THAT WHAT STEVE WAS SUGGESTING THIS COULD BECOME A BELT IN PLACE. IN WHICH CASE THERE WOULD BE SOME CONNECTION. I THINK IF YOU HAVE A BIKE ROUTE, YOU'LL NOT HAVE THE PUBLIC GOING THROUGH THE BIKE ROOM. THE OTHER ISSUE IS THAT THE CITY DOESN'T LIKE US TO HAVE EXTERIOR DOORS FROM THE OUTSIDE DIRECTLY INTO BIKE ROOMS BECAUSE THAT IS AN EASY PATH TO STEAL BIKES. I WOULDN'T ENDORSE THAT IDEA AND I DON'T THINK THE CITY WOULD EITHER.

>> P. SHEAHAN: OKAY. SO THE BASE UNIT QUESTION BECAUSE I DID NOTICE THAT THE BASE PROJECT PLAN SHOWED A REAR SETBACK, HOWEVER, THERE IS NO CONCESSION WAIVER FOR ADDRESSING THE REAR SETBACK.

>> STAFF: IF YOU DON'T MIND. DAVID, I WOULD LIKE TO NOTE BECAUSE OF TERMINAL PLACE, THERE IS ACTUALLY NO REAR SETBACK, THERE ARE TWO FRONTS. BEING THERE ARE TWO FRONTS THEY ARE

ALLOWED TO HAVE A ZERO SETBACK LONG TERMINAL PLACE. IT'S A THROUGH LOT. THE LOT IS A THROUGH LOT.

>> S. O'KEEFE: OKAY. ALL RIGHT. ARE THERE ANY OTHER QUESTIONS FOR THE APPLICANT?

>> P. SHEAHAN: YES.

>> S. O'KEEFE: PATRICK.

>> P. SHEAHAN: I WASN'T --

>> S. O'KEEFE: GO AHEAD.

>> P. SHEAHAN: BASED ON THAT INFORMATION, IT APPEARS TO ME THAT EIGHT UNITS PER FLOOR CAN BE ACCOMMODATED IN THE BASE PROJECT THAT WOULD CHANGE THE DENSITY BONUS CALCULATION. BUT I'LL CARRY ON WITH THE OTHER COMMENTS. I ASSUME THE ARCHITECTURAL ELEMENTS ABOVE HIGH LIMIT ARE PRINCIPALLY THE CANOPY OVER THE ROOF DECK AREA?

>> ASK THAT AGAIN, PLEASE.

>> I ASSUME THE ARCHITECTURAL ELEMENTS ABOVE HEIGHT LIMIT IS THE CANOPY OVER THE ROOF DECK AREA.

>> YES. WELL, IT'S ALL THESE FEATURES. IT'S ELEVATOR OVERRUN AND EVERYTHING ON THIS FLOOR. IT'S A STAIR ELEVATOR OVERRUNS. THAT LITTLE ROOF THAT IS DONE OVER THAT SECTION.

>> P. SHEAHAN: OKAY. AND ALONG WITH THE ACCESSIBLE BATHS ISSUE, I WOULD LIKE SOME ADDRESSED OVER THAT. YOU MENTIONED THE TUB SHOULD BE SHOWERS. IF ALL UNITS ARE REQUIRED TO BE -- WHAT IS THE TERM THERE --

>> S. O'KEEFE: ADAPTABLE.

>> P. SHEAHAN: WOULDN'T THAT DICTATE THAT ALL SHOULD BE SHOWERED?

>> STAFF: NO,S THAT -- BATHS ARE ADAPTABLE. YOU HAVE A HAND-HELD SHOWER AND A SEAT. SOME PEOPLE DON'T WANT THE SHOWER AND SOME WANT THE BATHTUB BECAUSE THEY NEED TO SOAK. IT'S GOOD TO HAVE BOTH IN MY EXPERIENCE, ESPECIALLY -- YEAH.

>> DOES THE APPLICANT WANT TO RESPOND TO THAT?

>> I'M GETTING TEXTED FROM MY OFFICE MY COLLEAGUES SAYING ALL OPPORTUNITIES MAY HAVE BATHTUBS AND STILL BE ACCESSIBLE. WE HAVE A MIX -- THE LOWER FLOORS HAVE BATHTUBS AND UPPER FLOORS HAVE SHOWERS. I'M BACKWARDS ON THAT.

>> IT'S THE OPPOSITE. YOU WANT THE SHOWERS ON THE CONCRETE.

>> S. O'KEEFE: MR. TRACHTENBERG, IS THAT REFLECTED IN THE PLANS?

>> THIS WILL SHOWS THE BATHTUBS ARE ADAPTABLE. FOR THE NEED FOR ADA. ALL OF OUR UNITS WE BUILT HAVE ALL BATHTUBS IN THEM AND THEY ARE ACCESSIBLE. TO DATE, I DON'T THINK WE BUILT THE UNIT OF THE 500 WE'VE DONE IN THE LAST THREE YEARS THAT HAS A SHOWER. THEY'RE ALL CONSIDERED TO BE ADAPTABLE FOR ACCESSIBILITY. WITH GRAB BARS AND SO ON.

>> S. O'KEEFE: OKAY, THANK YOU. I SEE CHARLES HAS HIS HAND UP. PATRICK, ARE YOU FINISHED?

>> P. SHEAHAN: NO, I HAVE SEVERAL ITEMS. SO THE SLIDING

DOOR IN THE BATHROOM, IS THAT -- I'M NOT FAMILIAR, IS THAT ALLOWED IN AN ACCESSIBLE UNIT?

>> IT IS. AND, AGAIN, IF YOU LOOK AT OUR WEBSITE IN THIS PROJECT IN SAN FRANCISCO BUILT FIVE YEARS AGO, IT HAS THE SLIDING DOORS. SLIDING DOORS, THEY'RE TRICKY BECAUSE YOU HAVE TO HAVE PART OF THAT DOOR BE OUTSIDE OF THE POCKET. IN ORDER TO GRAB IT.

>> P. SHEAHAN: RIGHT. OKAY. AND THE PROPERTY LINE WINDOWS, THIS MAY BE A QUESTION FOR STAFF. I NOTICE THEY'RE PROVIDED ON ALL PLAN LEVELS. IT APPEARS THAT IN SOME OF THOSE UNITS ARE UP AGAINST ADJACENT BUILDINGS.

>> NO. NO UNITS ARE UP AGAINST ADJACENT BUILDINGS. THERE ARE NO BUILDINGS ADJACENT -- YOU'RE TALKING ABOUT ON THE SECOND FLOOR. THAT IS CORRECT. THESE WINDOWS ON THESE SECOND FLOOR THEY WOULD NOT OCCUR. THEY WOULD SURVIVE WITHOUT THEM. THEY'RE THERE FOR ESTHETIC REASONS. THEY'RE NOT REQUIRED.

>> P. SHEAHAN: IF THE BUILDING IS BUILT ADJACENT IN THE FUTURE --

>> THEY GET COVERED.

>> P. SHEAHAN: OR THEY SEE YOU FROM THE ADJACENT BUILDING. ARE THERE ANY REQUIREMENTS FOR THE CONSTRUCTION TO ADDRESS THAT?

>> THEY'RE FIRE RATE -- THEY'RE SEALED AND INOPERABLE. THEY'RE NOT INEXPENSIVE BUT THEY ADD RICHNESS TO THE BUILDING. THE OLD STUDIO BUILDING DOWN THE STREET HAS NO PROPERTY LINE

WINDOWS. THAT'S TYPICAL IN THE LOT LINE CONSTRUCTION.

>> P. SHEAHAN: YES. OKAY. AND REGARDING THE ROOF DECK, I REALIZE THAT'S NOT REQUIRED, BUT A COUPLE OF THINGS. IT WOULD BE A TERRIFIC IDEA TO PROVIDE A TOILET ON THE ROOF DECK.

>> WE CAN'T DO THAT IN THIS CASE. I THINK THIS WAS MENTIONED IN THE PAST. UNFORTUNATELY WE'D LIKE TO PUT A TOILET UP THERE, BUT IF WE DO THAT, THAT BECOMES A HABITABLE FLOOR AND WE EXCEED THE 75 FEET RULE.

>> P. SHEAHAN: HABITABLE BY PLANNING? OR BY --

>> BUILDING CODE.

>> P. SHEAHAN: SO IT'S A BUILDING CODE ISSUE. IT SOUNDS LIKE YOU'RE FAMILIAR WITH THE ISSUE. HOW WOULD YOU ADDRESS THAT IN THE BUILDING CODE?

>> ON LARGER BUILDINGS, VERY OFTEN ON THESE BUILDINGS WHICH GO THIS HEIGHT WHERE WE HAVE A DECK UNDER 75 FEET, WE HAVE OTHER UNITS ON THAT FLOOR WHERE YOU CAN PUT A COMMON BATHROOM ON THAT FLOOR WITH OTHER UNITS. FOR THIS, THERE ARE OTHER UNITS ON THE FLOOR BECAUSE WE CAN'T HAVE HABITABLE [INDISCERNIBLE] THOSE ROOF DECKS -- THIS IS THE WAY THAT I'M AWARE OF THAT YOU CAN DO A BATHROOM UP ON THIS LEVEL AND HAVE TO MEET THE BUILDING CODE.

>> P. SHEAHAN: THAT LEADS ME TO ANOTHER COMMENT TO SUGGEST THAT, AGAIN, I UNDERSTAND THERE IS NO REQUIREMENT, BUT A SUGGESTION THAT YOU EXTEND THE PLANTERS ALONG SHATTUCK FULL LENGTH. THEY'RE SHOWN DIFFERENTLY IN DIFFERENT RENDERINGS.

>> NUMBER 2 PLANTER ACROSS THE FRONT?

>> P. SHEAHAN: YES, THAT WAY SOMEBODY WHO IS GOING TO TAKE A PEE CAN PEE IN THE PLANTER INSTEAD OF OVER THE EDGE OF THE BUILDING.

>> THAT IS THOUGHTFUL OF YOU.

>> P. SHEAHAN: IT HAPPENS.

>> WE COULD DO THAT.

>> I THINK THERE WAS SOMETHING ABOUT PEOPLE SEEING THE VIEW FROM THERE. I THOUGHT YOU BROUGHT THAT UP.

>> THERE WERE CONCERNS OF HAVING MORE OF A VIEW. YEAH.

>> P. SHEAHAN: AND ONE MORE ITEM. THIS IS ONLY A SUGGESTION FOR THOUGHT. CERTAINLY THE WEST IS CONSIDERED THE PRIME VIEW. BUT HOWEVER HAVING LIVED IN A THIRD-FLOOR UNIT AND WEST BERKELEY WITH A WEST DECK, I FOUND BY EXPERIENCE THAT IT WAS OFTEN UNUSABLE DUE TO INTENSE SUN OR FOG, WIND, ET CETERA. AND THAT I CAME TO THE CONCLUSION THAT AN EASTWARD FACING DECK COULD BE MORE AGREEABLE AS A PLACE TO ACTUALLY HANG OUT. AND ANYWAY, JUST A SUGGESTION FOR THOUGHT. TRADING LIVABILITY FOR VIEW MIGHT BE WORTH CONSIDERING.

>> THAT IS AN INTERESTING POINT. THIS IS ONE FACTOR IN THAT DECISION. THIS IS IN THE CORRIDOR.

>> P. SHEAHAN: THAT'S ALL OF MY COMMENTS.

>> S. O'KEEFE: THANK YOU PATRICK. CHARLES.

>> C. KAHN: SO IT WILL MAY NOT BE INTUITIVELY OBVIOUS, BUT

PEOPLE WHO HAVE DISABILITIES ALSO LIKE TO TAKE BATHS. BUT THERE ARE RESTRICTIONS. FOR EXAMPLE, THEY HAVE TO HAVE ACCESS TO THE TAPS. WHICH IN THIS DESIGN THEY DO. YOU CAN'T HAVE A TOILET NEXT TO THE TAPS AND THEN THERE HAS TO BE REINFORCEMENT OF THE WALLS SO THAT BARS CAN BE ADDED FOR SAFETY. WE'VE BEEN DEALING WITH THIS IN SOME OF OUR STUFF, PATRICK, AND A GOOD QUESTION.

BATHTUBS ARE NOT ACCESSIBLE -- NO, THEY ARE, THEY JUST HAVE TO COMPLY. THE SLIDING DOOR THING IS RELATIVELY NEW. IT HAS TO DO WITH THE AMOUNT OF FORCE IT TAKES TO OPEN IT. AS LONG AS IT MEETS THE GUIDELINES, IT'S NOW OKAY. IN TERMS OF THE SIZE, I HAVE A QUESTION FOR YOU, DAVID. AND POSSIBLY LAYAL. IT APPEARS THAT YOU MAY HAVE THOUGHT THAT YOU HAD TO HAVE THE SETBACK, BUT APPARENTLY YOU DON'T. IF THE BASE BUILDING COULD BE CHARGER, THE DENSITY BONUS WOULD BE GREATER. SO MY SENSE IS THAT WHAT TIME YOU HAVE ASKED IS ENTIRELY WITHIN WHAT IS ALLOWED BY CODE.

LAYAL, THIS IS MORE A QUESTION FOR YOU, THE WAY THAT BERKELEY CALCULATES DENSITY BONUS, CONTRARY TO MOST CITIES IS NOT BY NUMBER OF UNITS BUT BY SQUARE FOOTAGE ALLOCATED FOR RESIDENTIAL LIVING. IT DOESN'T MATTER HOW YOU DICE IT OR SLICE IT. WHATEVER YOU HAVE IN YOUR BASE BUILDING IF IT'S PROVIDING 23% OR WHATEVER THE PERCENTAGE YOU'RE REQUESTING, YOU ARE YOU MEETING THE CODE.

>> WE BASE IT ON THE RESIDENTIAL FLOOR AREA. WE DO REQUIRE THERE ARE SUBSTANTIAL SIMILARITIES BETWEEN BASE PROJECT AND THE DENSITY BONUS PROJECT. ONE BEING THE ANKLE UNIT SIZE. IN THIS

CASE THEY'RE ALL STUDIO SO THE AVERAGE UNIT SIZE IS BASICALLY THE SAME.

>> C. KAHN: THANKS. I THOUGHT IT WAS A GOOD POINT THAT PATRICK BROUGHT IT UP AND I THOUGHT IT SHOULD BE PROPERLY ANSWERED.

>> S. BUCKLEY: I LOOK BACK THROUGH THE WAIVERS AND CONCESSIONS AND IT'S RELATED MORE TO THE SIDE YARDS THAN THE REAR YARD. THERE IS A FIVE FOOT SIDE YARD REQUIRED OVER 20 FEET. THAT WOULD HAVE IMPLICATIONS FOR UPPER STORIES. I THINK IT'S MORE OF A SIDE TO SIDE THAN A FRONT TO BACK.

>> C. KAHN: THANK YOU FOR CLARIFYING THAT.

>> S. O'KEEFE: OKAY. I CAN'T REMEMBER WHO WAS TALKING. I'M GOING TO RECOGNIZE TERESA.

>> I WAS GOING TO MENTION THAT IT'S THE SIDE SETBACKS THAT REDUCE THE NUMBER OF UNITS ON THE FLOOR PLATE. I WOULD LIKE TO MOVE THIS ALONG IF WE COULD AND I THINK THIS IS A REALLY NICE PROJECT. NICE DESIGN, VERY EFFICIENT UNITS. THOSE UNITS IN SAN FRANCISCO LOOK LOVELY.

>> S. O'KEEFE: THIS IS STILL QUESTIONS FOR THE APPLICANT. SOUNDS LIKE YOU'RE COMMENTING.

>> WOULD I LIKE TO MOVE IT ALONG. THAT'S ALL I WANT TO SAY.

>> S. O'KEEFE: I SAW A HAND UP. PATRICK.

>> P. SHEAHAN: WELL, I DON'T KNOW IF IT'S APPROPRIATE TO CARRY ON WITH THIS DISCUSSION ABOUT THE DENSITY BONUS, BUT IT

SEEMS LIKE IT. WHAT I'VE HEARD IN THE DIAGRAM FOR THE BASE UNIT, THE PLAN DOES SHOW FOUR UNIT CROSS ON THE SHATTUCK ELEVATION AND THREE UNITS ACROSS ON THE TERMINAL SIDE OF THE BUILDING. IT APPEARS IT WAS CONSIDERED FEASIBLE TO DO FOUR UNITS ACROSS. AND WITHOUT THE ASSUMED REAR YARD SET BECOME, IT APPEARS THAT FOUR UNITS COULD BE DONE ACROSS ON THE TERMINAL SIDE OF THE BUILDING. I DO MAINTAIN THAT EVERYTHING I'VE HEARD LEADS ME TO BELIEVE THAT THE AFFORDABLE HOUSING SHOULD BE RECALCULATED BASED ON EIGHT UNITS PER FLOOR.

>> CAN YOU SHOW WHERE YOU'RE TALKING ABOUT?

>> I DON'T HAVE ACCESS TO EVERY SHEET.

>> WHAT ARE YOU LOOKING AT PATRICK, SO YOU COULD LET US KNOW.

>> P. SHEAHAN: IT WAS THE DIAGRAM THAT DAVID SHOWED.

>> I DIDN'T SHOW THE STATE BONUS DENSITY DIAGRAM BUT IT'S IN YOUR SET.

>> WHAT PAGE ARE YOU REFERRING TO?

>> A0.3.

>> I DON'T SEE A PLAN.

>> THE BASE PROJECT ON THE RIGHT. PLAN LEVELS 2 THROUGH 6 SHOWS FOUR UNITS ON THE SHATTUCK SIDE AND THREE UNITS ON THE TERMINAL SIDE.

>> ON THE TERMINAL SIDE, IT'S NARROWER, BECAUSE THE SETBACK GETS INCREASED.

>> IT'S NOT INDICATED AS NARROWER.

>> THE DIAGRAM DOESN'T APPEAR TO BE SHOWING THE SETBACK THAT IS REQUIRED.

>> P. SHEAHAN: I BELIEVE IT DOES BUT --

>> YOU HAVE THE FOUR UNITS --

>> THE SIDE YARD REQUIREMENT DOESN'T START UNTIL 65 FEET BACK FROM THE FRONT OF THE STREET.

>> P. SHEAHAN: THAT'S THE NOTCH AT THE TERMINAL SIDE.

>> THAT'S WHY WE ASKED FOR THE WAIVER.

>> P. SHEAHAN: IT APPEARS TO ME YOU COULD STILL GET FOUR. THEY'RE SOMEWHAT COMPROMISED BY THE NOTCH. THE SIDE YARD AND -- OKAY.

>> CLERK: AS YOU GO UP HIGHER.

>> P. SHEAHAN: I CAN'T SAY MORE WITHOUT WORKING IT OUT. IT APPEARS TO ME THERE IS SQUARE FOOTAGE THAT WOULD WORK.

>> STAFF, CAN YOU SHOW HOW YOU MADE THE CALCULATION? LAYAL?

>> STAFF: SO IN THE STAFF REPORT ON PAGE 10 OF 13, THERE IS A DISCUSSION OF THE GROWTH FLOOR AREA ON THE PROJECT FLOORS. YOU WILL SEE THAT THE BASE PROJECT FLOORS 2 THROUGH 6 ARE LESS THAN 3,000. 2,988. AND THE DENSITY BONUS FLOORS ARE APPROXIMATELY 500 SQUARE FEET MORE WHICH IS ACCOMMODATE THAT EIGHTH UNIT ON EACH FLOOR.

>> OKAY.

>> S. O'KEEFE: ANY MORE PATRICK?

>> THAT'S ALL FOR THE MOMENT.

>> S. O'KEEFE: THANK YOU SO MUCH FOR CLARIFYING THAT. MORE QUESTIONS FOR STAFF. OR THE APPLICANT. SEEING NONE, WOULD ANYONE FROM THE PUBLIC LIKE TO COMMENT ON THIS PROJECT? NOW IS THE TIME IF YOU'RE A MEMBER OF THE PUBLIC AND WANT TO MAKE A COMMENT, RAISE YOUR HAND NOW OR PRESS STAR 9 IF YOU'RE JOINING US BY PHONE. SEEING NONE, WE CAN BRING IT BACK FOR BOARD DISCUSSION.

>> IF I CAN -- YES. ONE OF MY PARTNERS TEXTED ME TO POINT OUT AN IMPORTANT FACT FOR PATRICK. IF WE WERE TO GO TO FOUR ACROSS ON THE TERMINAL SIDE, THAT THOSE UNITS WOULD NOT MEET THE MINIMUM FLOOR REQUIREMENTS -- FLOOR AREA REQUIREMENT FOR THE BUILDING CODE FOR RESIDENTIAL DWELLING UNIT.

>> P. SHEAHAN: THANK YOU.

>> IT'S LIKE 850 SQUARE FEET. IF THEY'RE TWO FEET SMALLER, THEY'RE NOT GOING TO MEET THE MINIMUM STANDARD.

>> P. SHEAHAN: THANKS FOR THAT.

>> S. O'KEEFE: THAT'S ALL YOU WANT TO ADD? WE CAN CLOSE THE PUBLIC HEARING NOW MR. TRACHTENBERG?

>> YES, PLEASE.

>> S. O'KEEFE: IGOR.

>> I. TREGUB: I'D LIKE TO MOVE THE ITEM.

>> S. O'KEEFE: MOVE TO APPROVE. IS THERE A SECOND? OR COMMENTS? OKAY.

>> T. CLARKE: I'D LIKE TO SECOND THAT.

>> A MOTION AND A SECOND. JOHN. YOU WANT TO MAKE A COMMENT?

>> J. SELAWSKY: I WAS GOING TO SECOND.

>> S. O'KEEFE: WE HAVE A MOTION AND A SECOND. ANY DISCUSSION? LET'S HAVE A ROLL CALL VOTE.

>> ON THE MOTION FOR APPROVING THE PROJECT AT 2023 AND 2025 SHATTUCK AVENUE ZP2019-0041, AS PRESENTED BY STAFF RECOMMEND BY THE DRC IS A MOTION BY BOARD MEMBER TREGUB AND A SECOND BY BOARD MEMBER CLARKE. I'LL CALL THE ROLL. BOARD MEMBER TREGUB.

>> I. TREGUB: AYE.

>> S. BUCKLEY: BOARD MEMBER CLARKE.

>> T. CLARKE: YES.

>> BOARD MEMBER SHEAHAN.

>> P. SHEAHAN: I WANT TO MAKE A BRIEF COMMENT REGARDING THE DENSITY BONUS ISSUE ALTHOUGH I AM VOTING YES. TO THE EFFECT THAT MY ONLY INTEREST IN PURSUING THIS LINE OF QUESTION IS TO GET MORE AFFORDABLE UNITS. THAT WILL THE CITY MAY BE ENTITLED TO. THAT IS THE FULL PURPOSE. THIS IS A FINE PROJECT.

>> S. O'KEEFE: THAT WAS CLEAR, PATRICK, I APPRECIATE YOU ON THAT. PATRICK VOTES YES.

>> S. BUCKLEY: BOARD MEMBER SELAWSKY.

>> J. SELAWSKY: YES. WITH THE COMMENT THAT I APPRECIATE PATRICK'S PUSHING AS HARD AS HE COULD ON THAT. THANK YOU.

>> S. BUCKLEY: BOARD MEMBER OLSON. ABSENT. BOARD MEMBER KAHN.

>> C. KAHN: YES AND A SUPPORT OF PATRICK'S PUSHING IT AS WELL.

>> S. BUCKLEY: BOARD MEMBER KIM.

>> D. KIM: YES.

>> S. BUCKLEY: BOARD MEMBER PINKSTON. ABSENT. AND CHAIR O'KEEFE.

>> S. O'KEEFE: YES. SO I BELIEVE THE MOTION PASSES.

>> S. BUCKLEY: YES.

>> S. O'KEEFE: MR. TRACHTENBERG, YOU HAVE YOUR USE PERMIT APPEALABLE TO THE CITY COUNCIL.

>> THANK YOU. THANK YOU SO MUCH.

>> S. O'KEEFE: GO BACK TO YOUR CAGE. ALL RIGHT. SO WE'LL TAKE A MINUTE -- OKAY, WE'RE GOING TO MOVE ON TO 1346 ORDWAY STREET WHICH IS AN APPEAL OF AN AUP. WITH APPEALS, JUST SO EVERYONE ON THE BOARD AND THE PUBLIC KNOWS THE APPEALS HAVE A SLIGHTLY DIFFERENT ORDER. WE BEGIN WITH THE STAFF REPORT AS ALWAYS. THEN WE'RE GOING TO HAVE THE APPELLANT GO FIRST AND APPELLANT, YOU'RE GOING TO BE GIVEN FIVE MINUTES TO SPEAK, THEN WE'LL LET THE ORIGINAL APPLICANT SPEAK FOR FIVE MINUTES. AND AFTER THAT, WE'RE GOING TO HAVE OPEN IT UP FOR MEMBERS OF THE PUBLIC TO MAKE COMMENTS IF THEY WISH. AFTER THAT, WE'RE GOING TO CLOSE THE PUBLIC HEARING AND BRING BACK FOR BOARD COMMENTS. THAT'S THE PROCEDURE. I BELIEVE WE HAVE THE APPLICANT AND APPELLANT HAVE BEEN ELEVATED TO PANELISTS. IS THAT CORRECT? I

THINK SO. WE'LL BEGIN WITH THE STAFF REPORT.

>> GOOD EVENING. I'M NILU KARIMZADEGAN. THIS IS TO APPROVE ADMINISTRATIVE UNIT ZP-2018-0174 TO LEGALIZE A HABITABLE BUILDING, TRELIS, FENCE AND HEDGE FOR A SINGLE-FAMILY DWELLING. THIS INCLUDES LOCATING AN OFF-STREET PARKING SPACE BY MODIFYING REQUIREMENTS ON THE REASONABLE ACCOMMODATION 23B.52. THE PROJECT SITE IS LOCATED IN THE R-1A DISTRICT OF THE NORTHWEST SIDE OF THE INTERSECTION ON HOPKINS AND ORDWAY AND EAST TO PEARL AVENUE. THE NEAREST ABUTTING NEIGHBORS' RESIDENT AT 1344 ORDWAY STREET IS LOCATED APPROXIMATELY EIGHT FEET TO THE NORTH OF SUBJECT PROPERTY. THE APPELLANT'S PROPERTY AT 1333 HOPKINS IS LOCATED 209 NORTH OF THE INTERSECTION AND SOUTH OF THE PROPERTY AND CLOSEST BUILDINGS ARE SEPARATED FROM THE MAIN DWELLING ON THE SUBJECT PROPERTY BY APPROXIMATELY 14 FEET. IN NOTICE OF VIOLATION WAS ISSUED IN MAY 2018 FOR A HEDGE OVER 6 FEET IN HEIGHT WITH REQUIRED SETBACKS. A ZONING APPLICATION WAS SUBMITTED IN SEPTEMBER 2018 TO LEGALIZE THE FENCE ON THE HEDGE. AFTER REVIEW OF THE APPLICATION, STAFF DETERMINED THAT ADDITIONAL AUPS ARE REQUIRED TO LEGALIZE AN EXISTING ACCESSORY BUILDING, A TRELIS AND FRONT YARD PARKING SPACE. AFTER AN OFFICIAL SURVEY WAS SUBMITTED, THE APPLICANT WAS PRESENTED WITH THE FOLLOWING THREE OPTIONS. ONE, TO RESTORE SITE TO THE ORIGINAL CONDITION INCLUDING USE OF THE LEGAL NONCONFORMING DRIVEWAY WITH A REAR PARKING SPACE. TWO TO ACCEPT THE

LEGAL -- APPROVAL TO REMOVE ALL PARKING-RELATED SURFACES INCLUDING REMOVAL OF THE CAR PAD AND TO APPLY FOR AN AUP VARIANCE FOR THE FRONT YARD PARKING SPACE AND WAIVER OF THE REQUIRED LANDSCAPE STRIP. THE APPLICATION WAS DEEMED COMPLETE IN DECEMBER 2019. AND WAS TENTATIVELY SCHEDULED FOR A ZAB HEARING IN JANUARY 2020. HOWEVER, APPLICANTS INCLUDED A STATEMENT FOR A MEDICAL CONDITION AND NEED FOR A FRONT YARD PARKING SPACE. STAFF REPORTS THAT DOCUMENTATION FOR EVALUATION IN ORDER FOR APPROVAL OF PARKING. AFTER RECEIVING A COPY -- A COPY OF THE APPLICATION FOR TEMPORARY DISABILITY AND MEDICAL REPORT AND CONSIDERING FACTORS REGARDING REASONABLENESS OF THE APPLICATION ON THEIR REASONABLE ACCOMMODATE CHAPTER, THE ZONING OFFICER DETERMINED THAT AUP REQUIREMENTS CAN BE WAIVED TO ALLOW FOR A FRONT STREET PARKING SPACE. NOTICE OF APPROVAL WAS SENT OUT ON FEBRUARY 25TH, 2020. THIS RECOMMENDATION INCLUDED APPROVAL TO LEGALIZE ACCESSORY BUILDING, TRELIS, HEDGE AND FRONT YARD OFF-STREET PARKING SPACE. HOWEVER, THE REQUEST TO LEGALIZE FENCE OVER 6 FEET IF HEIGHT WAS DENIED SINCE THE SURVEY SHOWED THAT THE FENCE IS LOCATED OUTSIDE THE APPLICANT'S PROPERTY LINE AND APPELLANT LOT. APPEAL OF THE AUP WAS SUBMITTED ON MARCH 17TH, 2020. INCLUDES SEVERAL POINTS IN MY STAFF REPORT. BECAUSE OF THE PROJECT CONSISTENCY WITH THE ZONING ORDINANCE AND GENERAL PLAN AND MINIMAL IMPACT ON THE SURROUNDING PROFITS STAFF RECOMMENDED APPROVAL. I HAVE SOME ADDITIONAL IMAGES IN THIS SLIDE YOU CAN

SEE THAT -- YOU CAN SEE THE HEDGE AND LOCATION FOR FRONT YARD PARKING SPACE BEFORE A NEWLY-INSTALLED FENCE WAS INSTALLED BY APPELLANT. THIS THE APPELLANT'S NEW FENCE. IN THIS IMAGE, YOU CAN SEE THE ACCESSORY BUILDING IN THE SOUTHWEST CORNER OF THE SUBJECT REPORT. THIS IS THE TRELIS WITHIN THE SOUTH SETBACK. AS YOU CAN SEE, IT HAS THE SAME HEIGHT AND LENGTH AS THE APPELLANT'S GARAGE. AND WITH THAT, I END MY PRESENTATION. PLEASE LET ME KNOW IF YOU HAVE ANY QUESTIONS.

>> S. O'KEEFE: GREAT, THANK YOU VERY MUCH. ARE THERE QUESTIONS FOR STAFF? WAIT. ONE SECOND. TERESA HAS HER HAND UP PATRICK IN THE PROPER WAY.

>> T. CLARKE: YOU SAID THAT THERE WAS A VARIANCE. WAS THAT JUST YOU'RE SAYING -- WAS THERE A VARIANCE? IN THE PRESENTATION YOU MENTIONED "VARIANCE." I DON'T SEE ONE ON HERE.

>> THE VARIANCE REQUIREMENT FOR NOT PROVIDING THE TWO FEET LANDSCAPE STRIP IS WAIVE UNDER REASONABLE ACCOMMODATION.

>> T. CLARKE: OKAY. AND THE OTHER QUESTION I HAD WAS YOU'RE SAYING APPELLANT BUILT A FENCE OVER 6 FEET?

>> STAFF: IT'S NOT OVER 6 FEET, HE BUILT IT AFTER WE SENT OUT THE NOTICES.

>> T. CLARKE: SO THE FENCE OVER 6 FEET IS NOW IN COMPLIANCE.

>> STAFF: THE WAY IT WORKED WAS WE GOT A NOTICE OF VIOLATION FOR HAVING A FENCE AND HEDGE OVER 6 FEET WITHIN THE

SIDE SETBACK. BUT AFTER THE SURVEY WAS SUBMITTED, WE REALIZED THAT THE FENCE IS NOT EVEN ON APPLICANT'S LOT, IT'S ON THE APPELLANT'S LOT SO WE DENIED. THERE IS NO FENCE OVER 6 FEET.

>> T. CLARKE: OKAY SO IS THE PERSON AT 1333 HOPKINS HAS THE FENCE OVER 6 FEET?

>> STAFF: NO.

>> T. CLARKE: WHOSE PROPERTY IS OFF?

>> STAFF: IT'S ON THE APPELLANT'S LOT AND IS NOT OVER 6 FEET.

>> T. CLARKE: OK.

>> S. O'KEEFE: THERE WAS A FENCE OVER 6 FEET BUT WAS NOT APPROVED AND IT'S GONE.

>> STAFF: THEY WANTED TO ADD TWO TO THREE FEET OVER THE 6 FEET TO MAKE IT HIGHER.

>> T. CLARKE: THEN THE TRELIS IS THERE, IT'S ON THE GARAGE, SO THAT'S WHAT THEY WANTED TO ADD FARTHER DOWN WHICH WASN'T ALLOWED, BUT YOU LEFT THE TRELIS OVER BY THE GARAGE.

>> STAFF: YES.

>> T. CLARKE: THANK YOU.

>> S. O'KEEFE: IGOR.

>> I. TREGUB: I THINK I HAD A SIMILAR QUESTIONS. SORRY TO BE DENSE. AT WHAT POINT WAS PART OF THE FENCE DENIED? WAS IT WHEN THEY SUBMITTED THE APPLICATION TO LEGALIZE IT? AND WAS IT BECAUSE IT'S ACTUALLY ON THE --

>> STAFF: THE AUP WAS DENIED, THE NOTICES, THE ZONING OFFICER DENIED THE FENCE OVER 6 FEET AND WE SENT NOTICES OUT. EVERYTHING ELSE WAS APPROVED IN FEBRUARY EXCEPT FROM THE FENCE.

>> I. TREGUB: BECAUSE THE FENCE WAS ACTUALLY PROPOSED TO BE -- THE APPELLANT'S LOT LINE?

>> STAFF: YES. IT WAS OUTSIDE THE APPLICANT'S LOT.

>> T. CLARKE: YOU'RE LETTING THEM HAVE THE HEDGE.

>> STAFF: YES THERE IS A CONDITION OF APPROVAL TO KEEP IT AT 14 FEET.

>> I. TREGUB: GOT IT. THANK YOU.

>> S. O'KEEFE: QUESTIONS FOR STAFF. PATRICK.

>> P. SHEAHAN: SO THE QUESTION FOR STAFF, SO IS THE TRELLIS OVER 6 FEET, IS THAT ATTACHED TO THE NEIGHBOR'S GARAGE?

>> STAFF: IT'S THREE INCHES FROM THE COMMON PROPERTY LINE.

>> P. SHEAHAN: SO IT IS WITHIN THE PROPERTY.

>> STAFF: YES.

>> P. SHEAHAN: AND THERE IS NO CONNECTION.

>> STAFF: NOT AS FAR AS THE SURVEY SHOWS.

>> P. SHEAHAN: OKAY. I'M NOT SURE OF THE ANSWER, BUT THAT MAY BE PROHIBITED BY BUILDING CODE HAVING A FLAMMABLE STRUCTURE ADJACENT TO THE PROPERTY LINE. BUT IT COULD BE A BUILDING CODE ISSUE.

>> STAFF: OKAY.

>> S. O'KEEFE: ALL RIGHT. THANK YOU, PATRICK. ANY MORE

QUESTIONS FOR STAFF BEFORE WE HEAR FROM THE APPELLANT? SEEING NONE. OKAY. APPELLANT. I BELIEVE IT'S MR. HICKMAN. I'M GOING TO GIVE YOU FIVE MINUTES TO MAKE YOUR PRESENTATION.

>> CAN YOU HEAR ME?

>> S. O'KEEFE: YES, GO AHEAD. SIR, ONE SECOND YOUR TIME HASN'T STARTED YET. CAN YOU SEE US RIGHT NOW?

>> I'M USING MY CELL PHONE.

>> S. O'KEEFE: BECAUSE WE HAVE A VISUAL INDICATOR OF TIME. HOW ABOUT I'M GOING TO GO AHEAD AND LET YOU KNOW WHEN YOU HAVE A MINUTE LEFT.

>> I MAY NOT NEED FIVE MINUTES TO EXPLAIN HOW RIDICULOUS ALL OF THIS IS.

>> S. O'KEEFE: LET'S HEAR IT. GO FOR IT.

>> THIS APPLICATION ON THE PART OF THE NEIGHBORS AND THE REASON FOR MY APPEAL IS IT'S SO RIDICULOUS. THE BERKELEY MUNICIPAL CODE INDICATES THAT GROWING, YOU KNOW, A ROW OF TREES ON THE PROPERTY LINE OR WITHIN TWO FEET OF THE PROPER LINE TO CREATE A HELEN IS CONSIDERED A FENCE. ALTHOUGH THE PLANNER CONTINUES TO SEPARATE FROM THE FENCE ISSUE, IT'S CONSIDERED A FENCE ACCORDING TO THE BERKELEY MUNICIPAL CODE. ALL I'M ASKING FOR IS FOR THE BOARD TO UP HOLD THE BERKELEY MUNICIPAL CODE WHERE THIS IS CONCERNED. HAVING A 14-FOOT FENCE MADE OF TREES OR ANY OTHER MATERIAL AROUND THE MOST DESIRABLE PART OF MY YARD IS RIDICULOUS! I MEAN JUST AS RIDICULOUS AS IF THEY HAD ASKED TO

PUT UP A CYCLONE FENCE. THE ORIGINAL DECISION MENTIONED THE PLANNER MENTIONED THAT HE WAS APPROVING IT BECAUSE THERE IS SOME FILTERED LIGHT THAT, YOU KNOW, POTENTIALLY COULD PASS THROUGH THE HEDGES. BUT YOU KNOW, LIGHT CAN PASS THROUGH A CYCLONE FENCE. THOSE HEDGES ARE A FENCE. THAT'S WHAT THEY ARE ACCORDING TO THE BERKELEY MUNICIPAL CODE AND ACCORDING TO CODE ENFORCEMENT. CODE ENFORCEMENT CAME OUT AND WROTE A REPORT AND SAID IT WAS ILLEGAL AND ISSUED A WARNING AND CITATION. I'LL MOVE ON TO ADDRESS THE TRELIS ISSUE. THAT'S THREE INCHES AWAY FROM MY GARAGE. I NOTICED THAT THE PLANNER IN HER EXPLANATION KEEPS SAYING THAT THE TRELIS IS NEAR THE PROPERTY LINE. SHE SAID THAT NUMEROUS TIMES. BUT SHE FAILED TO SAY THAT IN 1948 THE SIDE OF MY GARAGE WAS CONSTRUCTED ON THAT PROPERTY LINE. AND TO ALLOW SOME SORT OF ILLEGAL ACCESSORY STRUCTURE TO BE BUILT THREE INCHES AWAY FROM MY PROPERTY LINE MEANS THAT I WILL NEVER BE ABLE TO MAINTAIN MY GARAGE. HOW WILL I EVER PAINT MY GARAGE? WHAT WILL IF THERE IS DRY ROT. WHAT -- WHAT IF I NEVER HAVE ACCESS TO IT AGAIN. I BELIEVE THE MUNICIPAL CODE SPECIFIES STRUCTURES SHOULD BE FOUR FEET AWAY FROM THE PROPERTY LINE. THERE ARE SETBACKS REQUIRED. ALSO, WHERE PARKING IS CONCERNED, THERE IS VERY LOW VISIBILITY FROM THAT PARKING SPACE ESPECIALLY WITH A FENCE THERE. A CHILD COULD GET HURT WITH A CAR BACKING OUT OF THAT SPACE. IT'S JUST -- THERE IS A LOT OF NONCONFORMING STUFF GOING ON NEXT DOOR TO ME WHICH IF APPROVED, MAKES MY

PROPERTY NOT CONFORMING BECAUSE ALL OF THIS STUFF IS GOING ON ON MY PROPERTY LINE. SOME OF THE TREES PLANTED NEAR THE REAR OF MY PROPERTY BEHIND MY REAR GARAGE ARE WELL OVER 14 FEET TALL. THEY'RE PROBABLY OVER 20 FEET TALL. I GUESS THE NEIGHBORS DIDN'T REALIZE THAT'S PART OF MY PROPERTY BACK THERE AS WELL BEHIND MY GARAGE. ALL OF THIS IS YOU KNOW LIKE RIDICULOUS!

>> S. O'KEEFE: SIR, YOU HAVE ONE MINUTE LEFT.

>> I WOULD LIKE TO MENTION THAT ONLY EVIDENCE WE HAVE OF A DISABILITY ON THE PART OF THE APPLICANT AT 1346 ORDWAY IS A TEMPORARY DISABILITY FACTOR. NOT EVEN A PERMANENT DISABILITY. WHY WOULD SOMEBODY BE ALLOWED TO CONSTRUCT SOMETHING BASED ON A DISABILITY WHEN ALL THEY'VE PRESENTED TO THE CITY IS A TEMPORARY. TO END MY STATEMENT, I'LL SAY THAT EVERYTHING CONSTRUCTED THERE WAS CONSTRUCTED ILLEGALLY.

>> S. O'KEEFE: OKAY. YOUR TIME IS UP.

>> THEY'VE DONE NOTHING LEGAL.

>> S. O'KEEFE: OKAY. THANK YOU SO MUCH FOR STICKING TO YOUR TIME. WE CERTAINLY APPRECIATE YOU COMING TO TELL US WHAT IS GOING ON. WE HAVE A COUPLE OF QUESTIONS. JOHN HAS A QUESTION FOR THE APPELLANT.

>> J. SELAWSKY: NOT -- YES, I DO, BUT LET ME POINT OUT --

>> S. O'KEEFE: JUST QUESTIONS, JOHN.

>> J. SELAWSKY: THE ICON THAT SHOWS UP FOR THE APPELLANT SAYS 1346 ORDWAY -- I SEE THAT'S NOT HIS ADDRESS.

>> S. O'KEEFE: THAT'S THE PROJECT.

>> J. SELAWSKY: PROJECT ADDRESS. OKAY. OKAY. I'M CURIOUS ABOUT THE 14-FOOT -- THE LINE OF TREES WHICH YOU CONTEND IS LEGALLY A FENCE. AND I'M NOT SURE -- HOW DID YOU ASCERTAIN THAT?

>> I LOOKED ON LINE AT THE BERKELEY MUNICIPAL CODE REGARDING ALLOWABLE FENCE HEIGHT. AND THE CODE IS VERY SPECIFIC, IT STATES AT THAT A FENCE SHALL NOT BE CONSTRUCTED -- I'M PARAPHRASING -- OVER 6 FEET TALL WITHOUT A PERMIT NOR HAVE TREES OR HEDGES BE USED TO TRY TO CIRCUMVENT THE LAW BY CREATING A FENCE WALL MADE OF HEDGES OR TREES. AND IT SHOULD NOT BE DONE WITHOUT A PERMIT. THEY TOOK IT UPON THEMSELVES TO INSTALL THIS ANYWAY. WE WOULDN'T BE HERE RIGHT NOW DISCUSSING THIS HAD I NOT REPORTED THIS TO CODE ENFORCEMENT. CODE ENFORCEMENT EVENTUALLY CAME OUT, WARNED HIM THAT WHAT THEY HAD CONSTRUCTED THERE IS ILLEGAL. AND THAT'S WHAT INITIATED ALL OF THIS. THEN THEY CONTINUED AFTER THEY LEARNED THAT CERTAIN CONSTRUCTION WAS ILLEGAL, THEY CONTINUED TO BUILD MORE AND MORE ILLEGAL THINGS.

>> S. O'KEEFE: OKAY. JOHN, DID YOU GET AN ANSWER TO YOUR QUESTION?

>> J. SELAWSKY: YES, THANK YOU FOR THE RESPONSE.

>> S. O'KEEFE: THANKS. TERESA. DO YOU HAVE A QUESTION FOR APPELLANT?

>> T. CLARKE: YES. SO BASICALLY THE HEDGE THAT YOU ARE OBJECTING TO IS THE ONE ON YOUR PROPERTY LINE. THEY HAVE ANOTHER

HEDGE ON THE OTHER SIDE, IT SOUNDS LIKE.

>> T. CLARKE: YOUR PROPERTY IS TO THE SOUTH OF THE PROPERTY, IS THAT CORRECT?

>> THAT'S CORRECT.

>> T. CLARKE: YOU'RE NOT GOING TO BE GETTING SHADING FROM THOSE HEDGES, ARE YOU? NOT MUCH. ARE YOU OBJECTING TO IT BECAUSE OF THE -- IS THERE AN OBJECTION BASED ON SHADING OR SOMETHING LIKE THAT? THE HEDGE.

>> I OBJECT TO IT BECAUSE I FEEL ENCLOSED, IT INTERFERES WITH MY AIRSPACE AND THE OPEN FEELING THAT I'VE ALWAYS HAD. I OWNED MY PROPERTY FOR 30 YEARS. WE CLOSED UP FROM MAY 1ST, 1990 ON THIS PROPERTY. AND I'VE --

>> T. CLARKE: SO YOU HAVE THE FEELING OF ENCLOSURE AT THE EDGE.

>> YES. HOW WOULD YOU LIKE IT IF SOMEBODY BUILT A 14-FOOT WALL AROUND YOUR YARD.

>> S. O'KEEFE: TERESA, SAY AGAIN.

>> T. CLARKE: HE'S OBJECT BE TO THE HEDGE BEING -- CLOSING IN HIS VIEWS.

>> I HAVE A WALL AROUND ME.

>> S. O'KEEFE: TERESA HAS ANOTHER QUESTION.

>> AND -- IT WAS PLANTED WITHIN THE SETBACK, THOSE HEDGES ARE ACTUALLY CAUSING MY FENCE TO LEAN OVER.

>> T. CLARKE: THAT'S WHAT I WANTED. IT'S NOT SHADING BUT

IT'S A TALL ELEMENT NEXT TO THE PROPERTY LINE AND DAMAGING YOUR FENCE.

>> YES.

>> T. CLARKE: IS YOUR OBJECTION TO THE TRELLIS? JUST FOR MAINTENANCE. THAT TRELLIS, YOU CAN STILL MAINTAIN YOUR GARAGE EVEN THOUGH THE TRELLIS IS THERE, CAN YOU NOT?

>> I CANNOT. HOW WOULD I? THEY'VE GOT PLANT MATERIAL GROWING IN THAT AREA ALL OVER THE SIDE OF MY GARAGE. SOME OF IT GROWING UP ON TO THE ROOF.

>> T. CLARKE: THE PICTURES WE SAW DID NOT SHOW ANY VEGETATION. IT JUST SHOWED A TRELLIS. AND THEN THE OTHER --

>> IT PREVENTS ME FROM MAINTAINING MY GARAGE.

>> S. O'KEEFE: SIR, THANK YOU SO MUCH.

>> T. CLARKE: OKAY, THEN THE NEXT ONE IS THE ACCESSORY STRUCTURE. IS THAT IMPACTING YOU?

>> WHICH ACCESSORY STRUCTURE.

>> T. CLARKE: YOU SAID THAT THE BUILD --

>> S. O'KEEFE: THE BUILDING IN THE BACK.

>> T. CLARKE: THE BUILDING IN THE BACK.

>> THAT IMPACTING ME?

>> T. CLARKE: IS THAT NEGATIVELY AFFECTING YOUR PROPERTY IN SOME WAY?

>> IT'S NONCONFORMING.

>> T. CLARKE: BUT IS IT AFFECTING THE USE OF YOUR PROPERTY

IN SOME WAY?

>> I DON'T KNOW. BECAUSE I DON'T KNOW WHAT THEY PLAN TO DO WITH IT. THEY'VE APPLIED TO MAKE IT HABITABLE. THEY HAVE A LOT OF NONCONFORMING STUFF GOING ON. THAT RENDERS MY PROPERTY NONCONFORMING BECAUSE MY PROPERTY IS ADJACENT TO THEIRS. CAN.

>> T. CLARKE: THANK YOU, SIR.

>> C. KAHN: I HAVE A QUESTION. YOU SAY AT THAT TIME HEDGE IS PUSHING YOUR FENCE OVER, BUT OUR RECORDS INDICATE THAT IS A NEWLY INSTALLED FENCE. AM I CORRECT?

>> NO. NOT THAT PORTION. THERE IS A NEWLY INSTALLED PORTION NEAR THE FRONT -- NEAR THE SIDE WALL NEAR THE FRONT OF BOTH PROPERTIES.

>> C. KAHN: THANK YOU FOR THE CLARIFICATION.

>> S. O'KEEFE: ANY OTHER QUESTIONS FOR THE APPELLANT? OKAY. THANK YOU SO MUCH SIR, WE APPRECIATE YOU COMING. I'M GOING TO GO AHEAD AND MUTE YOU AND WE'LL HEAR FROM THE APPLICANT. ALL RIGHT. APPLICANT. YOU HAVE FIVE MINUTES.

>> I HAVE TO SHARE MY SCREEN.

>> S. O'KEEFE: AND IF YOU COULD RESPOND TO SOME OF THE THINGS SAID BY THE APPELLANT, THAT WOULD BE HELPFUL.

>> CAN EVERYONE SEE MY SCREEN?

>> NO, I CAN'T.

>> NOW WE CAN SEE IT.

>> ALL RIGHT. GOOD EVENING, I'M JENNIE DURANT TO ADDRESS

OUR NEIGHBORS APPEALS AGAINST OUR ZONING APPROVALS. EACH FOUR POINTS OF APPEAL CORRESPOND TO OUR UNIT. WE HAVE AN ARBOR WE BUILT NEAR HIS GARAGE AND HEDGE. HERE IS A PHOTO OF THE FRONT OF OUR HOUSE AND THE PARKING SPACE FOR WHICH WE RECEIVED AN AUP. THE APPELLANT SAID I'M NOT HANDICAPPED ENOUGH TO QUALIFY FOR THE AUP. HOWEVER THE APPELLANT IS NOT AWARE OF THE FULL NATURE OF MY DISABILITY. THIS IS BY DESIGN BECAUSE I WISH TO PRESERVE MY PRIVACY BUT WE SUBMITTED DOCUMENTATION AND PHOTO COPIES AND THE FINAL PLACARD ALL OF WHICH INFORM THE ZONING OFFICE'S DETERMINATION. MY CONDITION IS DEGENERATIVE. HAVING TO WALK FROM A PARKING SPACE WHETHER FROM THE CURB OR DOWN THE STREET CARRYING HEAVY BAGS OF GROCERIES, OUR 4-YEAR-OLD DAUGHTER WOULD BE UNTENABLE. THIS IS WHY WE HAVE REQUESTED AN AUP FOR OUR FRONT PARKING SPACE. THE APPELLANT MENTIONS A NEWLY INSTALLED 6-FOOT FENCE AFTER THE FINDS WERE POSTED. HE PRESCRIPTIONS CONCERN THAT OUR PARKING SPACE IS NOW UNSAFE BECAUSE OF THE FENCE AND OUR VIEW OF PEDESTRIANS AND ON COMING TRAFFIC IS OBSCURED BUT THIS IS NOT A CONCERN. SECONDLY WAVE' NOT HAD ANY PROBLEMS SPOTTING PEDESTRIANS AS WE SLOWLY PULL OUT OF OUR LOT. WE NOTED THAT SEVERAL GARAGES EXTEND OUT TO THE SIDEWALK ON ORDWAY LIKE THESE. THE VIEW IS MORE OBSCURED FROM OURS BUT IT DOESN'T MAKE IT NONCONFORMING. THIS SLIDE SHOWS FOUR CARS PARKED IN FRONT SO IT'S NOT DETRIMENTAL TO THE ESTHETIC OF OUR NEIGHBORHOOD. SECOND ISSUE IS THE HABITABLE ACCESSORY BUILDING. HE CLAIMS IT WILL

CAST SHADOWS ON HIS PROPERTY IS NOT POSSIBLE. IN THE BOTTOM IMAGE YOU CAN SEE THE ACCESSORY BUILDING IS ADJACENT TO LOT 46 WHILE OUR NEIGHBORS PROPERTY IS LOT 45. I'VE INCLUDED A COMPASS IN THE SURVEY. YOU CAN SEE THE SHADOWS ARE CAST TOWARDS OUR PROPERTY. THE PHOTO IN THE UPPER LEFT SHOWS THE SHADOWS CAST BY HIS GARAGE ON OUR YARD AND THIS OCCURS YEAR AROUND. ISSUE THREE IS THE TRELIS ADJACENT TO THE APPELLANT'S GARAGE WALL. COMPLAINED HE WILL NOT BE ABLE TO ACCESS IT FOR REPAIRS. ONLY THE TOP IS THREE INCHES FROM HIS GARAGE. THE POSTS ARE 22-INCHES FROM THE WALL. WE'D LIKE TO PUT HIS COMMENTS ABOUT MAINTENANCE AND RADIO PAIR IN CONTEXT. HERE ARE SEVERAL PHOTOS OF THE DERELICT STATE OF THE APPELLANT'S GARAGE AND THE BACK OF HIS PROPERTY WHICH OUR DAUGHTER'S ROOM LOOKS ON TO. THIS IS ONE REASON WE PLANTED A HELEN SO WE DON'T HAVE TO LOOK AT HIS PROPERTY. ON THE LOWER LEFT IS A PHOTO FROM MAY 2017 WITH. ACCORDING TO OUR NEIGHBORS AND GOOGLE EARTH, HIS PROPERTY HAS BEEN IN A STATE OF DISREPAIR FOR OVER A DECADE. LASTLY WE APPEALED FOR THE HEDGE STATING IT'S NOT NON-CONFORMING AND DISTURBS THE PEACE AND ENJOYMENT OF OUR NEIGHBORHOOD. ONCE THE PERMITS ARE GRANTED, IT WILL BE CONFORMING. AS FOR DISTURBING THE PEACE AND ENJOYMENT OF THE NEIGHBOR I WANT TO SHOW THE NEIGHBORS. PEOPLE WITH WHEELCHAIRS AND STROLLERS MUST WALK IN THE STREET TO PASS. THIS WAS A PHOTO OF THIS PROPERTY IN DECEMBER. THE WINDOWS ARE CONSTANTLY BEING REPLACE AND REMAIN

UNFINISHED TO DATE. THE GUTTER PICTURE HERE HAS OPINION HANGING LIKE THIS SINCE OCTOBER AND IS CURRENTLY STILL THERE.

ADDITIONALLY, THE UNIT ON THE SIDE OF HIS BUILDING FACING US ARE VACANT WHICH MAKES IT DIFFICULT TO ACCEPT HIS CLAIMS ABOUT THE SPACE ABOUT THE HEDGE. ADDITIONALLY THE FRONT DOOR HAS BEEN UNFINISHED FOR FOUR YEARS AND CARDBOARD AND PAPER ON THE WINDOWS. IT APPEAR ABANDONED. THIS IS THE MAIN REASON WE LIKE THE HEDGE AS A VISUAL BARRIER. AND WE PUT CEMENT REINFORCEMENT. WE INVESTED IN OUR HOME TO MAKE IT ATTRACTIVE AND WE HOPE THAT THE ZONING BOARD WILL SEE THE IMPROVEMENTS ARE NOT DETRIMENTAL TO THE NEIGHBORS AND ARE BENEFICIAL FOR THE NEIGHBORHOOD.

>> S. O'KEEFE: ANY QUESTIONS FOR THE APPLICANT? TERESA.

>> T. CLARKE: SO WHAT IS YOUR NAME?

>> JENNIE.

>> SO ON THE HEDGE, WHY DOES IT NEED TO BE 14 IS FEET HIGH? IT SEEMS EXCESSIVE.

>> IT'S CURRENTLY 10 FEET.

>> T. CLARKE: I WONDER WHY YOU NEED IT TO BE THAT HIGH.

>> IN THE PHOTO I POSTED HERE, IT'S CURRENTLY 10 FEET. SOMETIMES SOME OF THE BRANCHES WILL KIND OF EXTEND UP A LITTLE BIT. WE'RE FINE KEEPING IT CLOSER TO THE 10 FEET THAT IT CURRENTLY IS. BUT WE WANTED TO HAVE A LITTLE EXTRA ROOM IN CASE THIS GROWS UP OR DURING THE PANDEMIC, IT WAS HARD TO FIEND A PRUNER TO COME. IT GAVE US SOME LEEWAY.

>> T. CLARKE: THAT WAS MY MAIN CONCERN ABOUT THAT. I THINK THAT WAS MY ONLY QUESTION WAS THAT. DID SEEMS LIKE THE OTHER THINGS ARE SELF-EXPLANATORY. THANK YOU.

>> S. O'KEEFE: CHARLES.

>> C. KAHN: I APPRECIATE THAT QUESTION. I THINK THAT'S A WORTHWHILE SOLUTION. TO THE -- A RECOMMENDATION THAT YOU LOOK UP ASSEMBLY BILL 68 WHICH ADDRESSES ADUS. WHATEVER ACTION WE TAKE TONIGHT, THAT CAN BE LEGALIZED UNDER THE STATE ASSEMBLY BILL 68 AS I UNDERSTAND IT COULD BE LARGER THAN YOU HAVE THERE. FOR RESIDENTIAL PURPOSES.

>> S. O'KEEFE: DO YOU HAVE A QUESTION FOR THE APPLICANT?

>> C. KAHN: THAT WAS A BIT OF ADVICE, NO QUESTION.

>> S. O'KEEFE: IGOR.

>> I. TREGUB: I'M GOING TO ASK STAFF. SO NO QUESTIONS FOR THE APPLICANT.

>> S. O'KEEFE: OKAY. ANY OTHER QUESTIONS? I HAVE A QUESTION. MISS DURANT. HELP ME UNDERSTAND WHAT ALL THESE PICTURES AND INFORMATION ABOUT YOUR NEIGHBOR'S STATE OF THE REPAIR OF HIS HOUSE HAS TO DO WITH THE APPEAL WHICH ABOUT YOUR PROPERTY? I DON'T UNDERSTAND HOW IT'S RELEVANT. IF YOU COULD BRIEFLY ANSWER BECAUSE I'M CONFUSED.

>> WE WANT A VISUAL BARRIER, WE'RE TRYING TO EXPLAIN WHY WE PLANTED THE HEDGE IN THE FIRST PLACE BECAUSE HIS PROPERTY IS UNATTRACTIVE AND OUR BEDROOM WINDOWS LOOK OUT ON TO HIS

PROPERTY.

>> S. O'KEEFE: OKAY. YOU DON'T NEED A REASON -- YOU DON'T NEED A GOOD REASON TO DO SOMETHING. YOU'RE ENTITLED TO IT OR NOT UNDER ZONING CODE. OKAY SO WE'RE GOING TO OPEN IT UP TO MEMBERS OF THE PUBLIC WHO WOULD LIKE TO SPEAK. THERE IS -- STAFF HELP ME OUT. THERE IS ONE PERSON WITH THEIR HAND UP FOR A WHILE. I THINK IT'S THE APPELLANT. HE'S SPOKEN.

>> STAFF: YES CAN.

>> S. O'KEEFE: ANYWAY, I WANTED TO MAKE SURE I WASN'T MISSING SOMETHING. THERE IS JILL JIN IS HERE.

>> T. CLARKE: DOESN'T THE APPELLANT GET TO SPEAK AGAIN?

>> T. CLARKE: NO, WE DON'T DO THAT WITH APPEAL. WE DO ONE OR THE OTHER AND THEN THE PUBLIC. SO JILL JIN, I'M GOING TO ALLOW YOU TO TALK AND YOU'LL HAVE TWO MINUTES TO SPEAK.

>> CAN YOU HEAR ME? I AM A NEIGHBOR ON ORDWAY STREET AND WE'VE BEEN HERE TWO YEARS CLOSE TO THREE NOW. FIRST OF ALL, I WANT TO EXPRESS THAT WE 100 PERCENT ARE IN SUPPORT OF THE APPLICANT'S APPLICATION FOR ALL THOSE PERMITS. I THINK AFTER HEARING BOTH SIDES, I THINK IT IS TOTALLY REASONABLE AND IT'S JUST NECESSARY FOR HER TO CREATE A VISUAL BARRIER AGAINST THE UNDER MAINTENANCE OF HER NEXT DOOR NEIGHBOR. AND ALSO, AS A NEIGHBOR, I WALK THE DOG PAST THIS AREA ALL THE TIME. I'VE SEEN TENANTS OF HER NEIGHBOR HAVING LIKE RECREATION DRUG USE IN FRONT OF THE PARKING LOT AND ANOTHER DAY THERE WAS A POLICE CAR TAKING

SOMEONE AWAY IN HANDCUFFS. IT'S NOT VERY CHILD FRIENDLY ENVIRONMENT. SO I THINK IT'S TOTALLY REASONABLE TO TRY TO BUILD SOME BARRIER AGAINST ALL THAT CHAOS. AND THE PICTURES THEMSELVES SPEAK LOUDLY LIKE THE APPELLANT'S CONCERN ABOUT MAINTENANCE DOESN'T SEEM TO BE VERY VALID BECAUSE IT SEEMS LIKE AFTER ALL THESE YEARS LIVING HERE, HE DOESN'T MAKE ANY MAINTENANCE. FROM THE PICTURES THAT I SEE, IT WILL ACTUALLY TOTALLY IS AVAILABLE FOR MAINTAINING HIS GARAGE. YES, I JUST WANT TO EXPRESS MY SUPPORT TO ALL THE PERMITS JENNIE HAS APPLIED FOR.

>> S. O'KEEFE: THANK YOU VERY MUCH. OKAY. AND NOW I'M GOING TO RECOGNIZE ELIANA AND TAMAR. LET'S UNMUTE YOU. YOU HAVE -- CAN YOU SEE US?

>> WE CAN -- I CAN SEE YOU NOW.

>> S. O'KEEFE: SO THERE SHOULD BE, IF YOU LOOK -- I'LL TELL YOU WHEN YOUR TIME IS UP BUT IT SAYS COB STAFF ALLISON, THAT'S YOUR TIMER.

>> I DON'T SEE IT, BUT YOU CAN TELL US.

>> S. O'KEEFE: YOU HAVE TWO MINUTES.

>> GOOD EVENING WE'RE AT 1334 AND WE'D LIKE TO SHOW OUR SUPPORT FOR OUR NEIGHBORS AT 1336 ORDWAY. NOTHING TO IMPROVE THEIR HOME HAS DISTURBED THE PEACE OF OUR NEIGHBORHOOD RATHER WE BELIEVE IT HAS BEEN BENEFICIAL. THEY'VE BEEN GOOD AND REASONABLE NEIGHBORS AND WE WORKED WITH THEM TO TRIM THE TREES BETWEEN OUR TWO PROPERTIES AND EVERYTHING THEY'VE DONE HAS BEAUTIFIED THEIR

PROPERTY. IT WAS QUITE DESOLATE BEFORE WHEN THEY MOVED IN. AND WE JUST ENJOY BEING THEIR NEIGHBORS AND WE SUPPORT EVERYTHING THAT THEY'RE DOING. THEY'RE CONSIDERATE AND POLITE AND THOUGHTFUL AND I THINK THAT IS ALL WE'D LIKE TO SAY. WE SUPPORT EVERYTHING THAT THEY'RE TRYING TO DO WITH THIS.

>> S. O'KEEFE: OKAY. THANK YOU VERY MUCH. THANKS FOR COMING.

>> T. CLARKE: WHAT ADDRESS ARE YOU AT AGAIN? ELIANA AND TAMAR, WHAT ADDRESS ARE YOU AT? I THINK WE LOST THEM.

>> WE'RE BACK. WE'RE AT 1344 SO WE'RE RIGHT ON OTHER SIDE OF JENNIE. AND KEKI.

>> S. O'KEEFE: ALL RIGHT. ANYONE ELSE FROM THE PUBLIC WISH TO SPEAK? SEEING NONE, WE'LL BRING IT BACK TO THE BOARD FOR COMMENTS. CLOSING THE PUBLIC HEARING. I DON'T THINK ANYTHING MAGIC HAPPENS WHEN I SAY THAT BUT THE PUBLIC HEARING IS CLOSED. JOHN.

>> J. SELAWSKY: THANK YOU. I THOUGHT THAT WAS A MAGICAL MOMENT. COULD I ASK STAFF A QUESTION?

>> S. O'KEEFE: YES. SURE, ANYTHING GOES NOW.

>> J. SELAWSKY: THERE IS SOME CONFUSION WITH THE APPELLANT AND THE APPLICANT ABOUT THE HEDGE. SO STAFF, IS THE HEDGE, THE LINE OF TREES LEGALLY CONSIDERED A FENCE?

>> STAFF: ZONING ORDINANCE CHAPTER 23F DEFINES A HEDGE THE SAME AS A FENCE. SO YEAH, WE CONSIDER IT IN OUR REVIEW. WE

CONSIDER IT LIKE A FENCE. BUT A FENCE OVER 6 FEET WITHIN SETBACK IS ALLOWED WITH AN AUP. THAT'S THE APPLICANT IS APPLYING FOR.

>> J. SELAWSKY: RIGHT. BUT IT IS LEGAL HE.

>> STAFF: WE TREAT IT LIKE A FENCE.

>> J. SELAWSKY: THANK YOU.

>> S. O'KEEFE: IGOR.

>> I. TREGUB: I HAD A COUPLE OF QUESTIONS FOR STAFF AS WELL. WITH A FENCE, PLEASE REMIND ME, IS THERE A MAXIMUM LIMIT -- I MEAN YOU CAN DO OVER 6 FEET FOR A FENCE WITH AN AUP, BUT IS THERE AN ABSOLUTE HEIGHT LIMIT FOR A FENCE IN WHICH YOU HAVE TO GET A VARIANCE?

>> S. O'KEEFE: STEVE, GO AHEAD.

>> S. BUCKLEY: I'M SHARING MY SCREEN WHICH SHOWS THE FENCE AND HEDGE DESIGN. I'M NOT SURE IF EVERYONE CAN SEE THAT.

>> S. O'KEEFE: YOU'RE NOT -- YES YOU'RE SHARING IT.

>> S. BUCKLEY: I WANTED TO CLARIFY ALSO THERE IS THE TRELIS WHICH WE'VE DISCUSSED ALONG THE SIDE OF THE GARAGE WHICH IS ON POSTS AND A TRELIS ABOVE. THIS IS THE LATTICE. MAYBE THAT'S A BETTER TERM. THE LATTICE ON TOP OF THE FENCE IS WHAT WAS REQUESTED TO GO ABOVE 6 FEET. SO THERE IS THE EXISTING BOARD FENCE WHICH IS 6 FEET WHICH AS NILU MENTIONED IS SURVEYED AS BEING ACROSS THE PROPERTY LINE. THE LATTICE WAS GOING TO BE ABOVE AND THAT HAS NOT BEEN INSTALLED AND HAS BEEN DENIED AS PART OF THE PERMIT. THE HEDGE IS THE TALL TREES THAT ARE SHOWN

BESIDE THE FENCE. SO A FENCE, A WALL, A HEDGE IF IT'S DENSE ENOUGH, YOU CAN'T PASS THROUGH IT, THEN IT'S CONSIDERED A FENCE. IT'S CONSIDERED THE SAME AS A FENCE. THE HEIGHT OF THAT IS LIMITED REALLY BY OUR ACCESSORY STRUCTURE REGULATIONS WHICH ARE PRETTY LIBERAL. YOU CAN GO UP TO SAY 12 OR 24 OR 35 FEET WITH THOSE DEPENDING ON WHAT KIND OF PERMIT. THIS PERMIT IS TO NOT EXCEED 6 FEET. THERE IS -- CERTAINLY AT 12 OR 14 FEET, THAT IS NORMAL.

>> I. TREGUB: THANK YOU, THAT VISUAL IS REALLY HELPFUL, BUT I'M STILL A LITTLE BIT UNCLEAR LOOKING AT THE HEIGHT DIAGRAMS HERE. IS THIS SUPPOSED TO BE FOR ILLUSTRATIVE PURPOSES? I SEE, SO THE HEDGE WOULD BE AT THE BOTTOM, NOT THE TOP OF THE PICTURE. IS THAT THE SIX PLUS TWO PLUS SIX, THE 14 FEET?

>> S. BUCKLEY: THAT'S CORRECT. THEY'RE PROPOSING A MAXIMUM OF 14 FEET FOR HOWEVER TALL MIGHT GROW AND THEN IT WOULD GET TRIMMED BACK AND GROW SOME MORE.

>> I. TREGUB: MY LAST QUESTION THEN IS THEY'RE PROPOSING A MAXIMUM. SO EVEN WITH AN AUP, IS IT WITHIN OUR POWER TO PUT AN ABSOLUTE HEIGHT LIMIT AND IF SO, HOW COMMON IS IT TO GET AN APPLICATION FOR A 14-FOOT HEDGE OR FENCE OR OTHER KIND OF ACCESSORY STRUCTURE OF THAT NATURE?

>> S. BUCKLEY: I'VE SEEN A FEW. AS TALL AS 12 OR 14 FEET. THE CIRCUMSTANCES ARE OFTEN ON HILLSIDES WHERE IS THERE IS A GRADE DIFFERENTIAL OR A PRIVACY CONCERN. FENCES AND WALLS WOULD

BE LESS LIKELY TO BE APPROVED WHERE AS HEDGES TEND TO BE MORE ACCEPTABLE. THEY'RE MORE OF A GREEN SCREEN. I CAN THINK OF TWO THAT WE'RE CURRENTLY CONSIDERING AS A PRIVACY MEASURE.

>> I. TREGUB: OKAY. THANK YOU.

>> S. O'KEEFE: TERESA.

>> T. CLARKE: I THINK 14 FEET IS A LITTLE HIGH FOR MY COMFORT. I MEAN I THINK A HEDGE IS DEFINITELY BETTER THAN A FENCE. I AGREE THAT THE FENCE SHOULD ONLY BE SIX FEET. BUT 14 FEET SEEMS A LITTLE BIT HIGH. I'D BE MORE AMENABLE TO 10 OR 12 FEET. I WANTED TO HEAR FROM OTHER PEOPLE. IT'S NOT SHADING THE NEIGHBOR. AND THE OTHER NEIGHBOR IS FINE APPARENTLY WITH THAT BECAUSE THEY SPOKE. THAT NEIGHBOR COULD MOVE. BUT I THINK A HEDGE IS JUST NOT AS IMPOSING THAT MUCH. IT'S GREEN AND LIVE. I DON'T WANT A FENCE THERE OF 12 FEET, BUT I THINK A HEDGE I CAN LIVE WITH. I THINK 14 IS A LITTLE HIGH. BECAUSE IT'S SO SOLID. THOSE THINGS GROW SOLID. THEY CREATE A HEDGE. AND THEY'RE VERY DENSE. SO IT IS ALMOST LIKE A GREEN WALL WHICH IS NOT THAT BAD. SO I WOULD LIKE TO MAKE A MOTION THAT WE PROVE THE PROJECT. I THINK THE PARKING SPOT IS ACCEPTABLE TO ME. EVEN IF THE RESIDENT GETS BETTER OR WHATEVER, I THINK THE PARKING SPOT WE MAY ALREADY WANT TO APPROVE THAT. ANYWAY, WE'VE DONE THAT BEFORE WHERE THE SITUATION WHERE THE DRIVEWAY HAS BEEN SO NARROW IS TRYING TO GET IT IN THE SIDE YARD DOESN'T MAKE ANY SENSE. IF THEY DON'T NEED IT IN THE FUTURE, THEY WON'T PARK IN IT. I DON'T THINK THE

SAFETY ISSUE IS A PROBLEM BECAUSE EVERYBODY BACKS OUT OF THEIR DRIVEWAYS. SO AND I THINK THE ACCESSORY BUILDING IS FINE. I DON'T SEE ANY ISSUES WITH THAT. I DO BELIEVE THAT THE GARAGE CAN BE MAINTAINED WITH THAT TRELIS THERE. AS A GOOD NEIGHBOR, THEY DON'T HAVE TO ALLOW HIM TO MAINTAIN IT, IT'S NOT -- BUT I THINK IT DOES ALLOW FOR MAINTENANCE OF THE PAINTING. IT LOOKS LIKE THEY DID PAINT IT IN THE 2017 PICTURE. I WOULD LIKE TO HEAR ANYBODY ELSE HE -- WHAT DID I SAY 10 OR 12 FEET?

>> S. O'KEEFE: DO YOU WANT 10 OR 12.

>> T. CLARKE: I THINK 12 IS OKAY. SO I WOULD LIKE TO MAKE A MOTION TO APPROVE EVERYTHING EXCEPT INSTEAD OF 14 FEET, GO FOR 12 FEET ON THAT.

>> S. O'KEEFE: CHARLES.

>> C. KAHN: I WOULD LIKE TO SECOND HER MOTION. I WOULD LIKE TO STATE IT AS A 10 TO 12 FEET EDGE THE UNDERSTANDING THAT THE APPLICANT WOULD ATTEMPT TO KEEP IT TO 10 FEET AS THEY STATED WOULD BE ADEQUATE FOR THEIR NEEDS FOR SCREENING PURPOSES, BUT IT MIGHT GROW A FOOT OR TWO BEFORE THEY GET AROUND TO CUTTING IT AGAIN. SO 10 TO 12.

>> S. O'KEEFE: YOU CAN PUT THAT IN THE MOTION IF YOU WANT, BUT IT'S ONLY ENFORCEABLE -- YOU HAVE TO HAVE A MAXIMUM.

>> C. KAHN: I SECOND THE 12 FEET. SHOSHANA, YOU'RE RIGHT.

>> S. O'KEEFE: SO THERE IS A MOTION AND A SECOND FOR 12-FOOT MAXIMUM ON THE FENCE HEDGE. DOHEE.

>> I WANTED TO SUPPORT THE MOTION. I APPRECIATED SHOSHANA'S QUESTION FOCUSING ON THE AREA AT HAND AND THE ISSUES AT HAND AND SEEING THE PARKING FOR -- TO ACCOMMODATE DISABILITIES AND THE AUP IS NOT BEING RELATIVELY AS BIG AS OTHER AUPS COULD BE. ALSO CONSIDERING THAT THE APPLICANT WAS WILLING TO TRIM THE HEDGE TO AROUND 10 TO 12 FEET MAXIMUM. I WOULD LIKE TO SPORT MOTION.

>> S. O'KEEFE: PATRICK.

>> P. SHEAHAN: I WOULD LIKE TO MAKE A FRIENDLY AMENDMENT TO LIMIT THE HEDGE GROWTH TO 10 FEET. MY REASONING IS FIRST OF ALL IT WOULD BE GREAT TO SEE SOME LEVEL OF [INDISCERNIBLE] BETWEEN THE NEIGHBORS. I THINK TO OBSERVE A 10-FOOT LIMIT TO THE HEDGE MAY SIMPLY HELP AND THE APPLICANT HAS INDICATED THAT THEY'RE SATISFIED WITH A 10-FOOT HEIGHT FOR THEIR PURPOSES. SO I WOULD LIKE TO ADD THAT AS A FRIENDLY AMENDMENT.

>> S. O'KEEFE: TERESA, WHAT DO YOU THINK ABOUT THAT?

>> T. CLARKE: I'M OKAY WITH THAT. I THINK TESTIMONY DOES GO TOWARD THE NEIGHBOR AND GIVES THE NEIGHBOR -- THAT'S A COMPROMISE. I THINK THAT THAT'S ACCEPTABLE.

>> S. O'KEEFE: CHARLES.

>> C. KAHN: I'D LIKE TO SPLIT THE BABY AND SAY 11 FEET. YOU CAN'T CUT IT EVERY DAY. TO ACHIEVE 10 FEET, I THINK ALLOWING IT TO GROW TO 11 FEET AND CUT IT BACK TO 10 FEET. IS THAT OKAY, PATRICK?

>> P. SHEAHAN: I THINK IT RELIES ON A GOOD FAITH EFFORT AND

GOOD FAITH UNDERSTANDING. AND YES, PLANT GROW AND MAYBE YOU TRIM IT ONCE I YEAR, THAT'S A REASONABLE EXPECTATION.

>> S. O'KEEFE: SO WE'LL COMPROMISE AT 11. GREAT. JOHN.

>> T. CLARKE: I LIKE THE ROUND NUMBER OF 12.

>> S. O'KEEFE: 11 IS PRIME.

>> S. O'KEEFE: 11 FEET IT IS. I RECOGNIZE JOHN.

>> J. SELAWSKY: HOW ABOUT 10.95. I DIDN'T KNOW ANY TENSION OR ANIMOSITY -- NEVER MINE. THANK YOU FOR YOUR COMMENTS EARLIER SHOSHANA ABOUT RELEVANCY OF TESTIMONY. I THINK WE HAVE TO DISMISS ALL THE APPEAL POINTS TO BE LEGAL ON THIS. THERE WERE FOUR APPEAL POINT.

>> S. O'KEEFE: I THINK WE CAN DENT APPEAL.

>> J. SELAWSKY: NOBODY SAID THAT. THEY ARE A MOVING FORWARD WITHOUT DENIAL OF THE APPEAL. THEY'RE MOVING THE PROJECT WITHOUT DENYING THE APPEAL. BUT THERE ARE TECHNICALLY THERE ARE FOUR APPEAL POINT.

>> S. O'KEEFE: WE WILL HE RESTATE THE MOTION WITH THE CORRECT LANGUAGE.

>> J. SELAWSKY: WONDERFUL. SO WE'RE AT 11 FEET?

>> S. O'KEEFE: YES.

>> S. O'KEEFE: I WANT TO MAKE A COMMENT, A FOLLOW-UP TO MY QUESTION BEFORE. I JUST -- FOR ALL MEMBERS OF THE PUBLIC, THE APPELLANT. APPLICANT AND ANYONE ELSE LISTENING, I JUST WANT TO MAKE IT CLEAR THAT AT ZAB WHEN WE MAKE THE DECISIONS WE MAKE

THEM ON WHAT PEOPLE ARE ENTITLED TO OR NOT UNDER THE LAW. WE OBVIOUSLY HAVE SOME DISCRETION, BUT WE'RE DECIDING IS THE APPLICANT ENTITLED TO THIS? YES OR NO. IT'S OBJECTIVE. THERE IS NO "DO YOU HAVE A GOOD REASON" ELEMENT TO IT. THERE IS NO, ARE YOU A GOOD PERSON? OR GOOD NEIGHBOR? THOSE ARE NOT PARTS OF OUR DECISION-MAKING PROCESS. MORE IMPORTANTLY IS WHEN YOU ARE APPEALING SOMETHING THAT'S ADJACENT TO YOUR PROPERTY, YOU HAVE A LEGAL RIGHT TO DO THAT. THERE IS NO BOX ON THE APPEAL FORM THAT SAYS "DO YOU HAVE A NICE HOUSE," "DO YOU MAINTAIN YOUR STUFF?" A PERSON THAT HAS PROPERTY IN DISARRAY HAS A LEGAL RIGHT TO MAKE AN APPEAL AS SOMEONE WHOSE PROPERTY IS WELL KEPT. I THINK THAT -- I DON'T THINK THE APPEAL HAS MERIT AND I THINK STAFF HAS DONE A GOOD JOB GOING THROUGH THE POINTS POINT BY POINT. I WANT TO MAKE IT CLEAR THAT'S WHY I'M SUPPORTING IT IS ON A LEGAL BASIS AND HAS NOTHING TO DO HOW THE PEOPLE MAINTAIN THEIR PROPERTY. THAT IS IRRELEVANT TO THE PROCESS. STEVE, I SAW YOU DO THIS.

>> S. BUCKLEY: THE FINDINGS ARE IS THERE A DETRIMENT REGARDING SUNLIGHT AIR VIEWS AND COMMUNITY CHARACTER. I THINK THOSE ARE FACTORS WHEN WE EVALUATE THESE AND LOOK AT THE HEIGHTS AND LOCATIONS OF THE PHYSICAL STRUCTURE AND THE PARKING.

>> S. O'KEEFE: THAT'S OF THE PROJECT BEING PROPOSED, NOT THE NEIGHBORING PROPERTIES.

>> CORRECT.

>> S. O'KEEFE: I WANTED TO SAY THAT. THANK YOU FOR LISTENING AND INDULGING ME. IGOR HAS HIS HAND UP.

>> I. TREGUB: THANK YOU SO MUCH SHOSHANA SO FOR ELOQUENTLY STATING THE WAY THE ZAB OPERATES. I COULD NOT AGREE MORE. I WILL ADD BECAUSE THIS IS A PRETTY UNIQUE SITUATION IN THE SENSE THAT I DON'T THINK THAT ALL MY YEARS ON ZAB I'VE SEEN ONE WHERE A REASONABLE ACCOMMODATION IS GRANTED. I WANTED TO BE CLEAR. BECAUSE THE PROCESS OF REQUESTING A REASONABLE ACCOMMODATION CAN PUT AN APPLICANT IN A REALLY CHALLENGING POSITION. THEY HAVE TO PROVIDE A LOT OF RECORDS THAT ARE PRIVATE. AND I JUST WANT TO GO ON RECORD AND SAY THAT I BELIEVE STAFF 100% WHETHER THEY SAID THEY WENT THROUGH A PROCESS TO ENSURE THAT A BASIS EXISTS FOR A REASONABLE ACCOMMODATION TO BE GRANTED. SO THANK YOU.

>> S. O'KEEFE: ANY OTHER COMMENTS BEFORE WE VOTE?

>> SO JUST TO SAY THAT WE'RE -- IN MY MOTION I MEANT TO SAY WE WERE AGREEING WITH STAFF'S RECOMMENDATION TO DENY THE APPEAL, EXCEPT FOR ONE THAT THE HEDGE BE NO TALLER THAN 11 FEET.

>> S. O'KEEFE: OKAY. THE WORDING OF OUR RECOMMENDATION IS APPROVE ADU AND DISMISS THE APPEAL. THEN WITH THE MODIFICATION OF 11-FOOT MAXIMUM ON THE HEDGE. ARE WE READY TO TAKE A ROLL CALL VOTE? LOOKS LIKE IT. LET'S DO IT.

>> S. BUCKLEY: ON THE MATTER OF OF 1346 ORDWAY STREET, THE APPEAL RELATED TO ZONING PERMIT 2018-0174, MOTION BY BOARD MEMBER CLARKE AND SECONDED BY BOARD MEMBER KAHN TO DENY THE

APPEAL AND APPROVE THE PROJECT WITH THE MODIFICATION AT 11 FEET FOR THE HEDGE. BOARD MEMBER TREGUB.

>> AYE.

>> CLARKE.

>> YES.

>> BOARD MEMBER SHEAHAN.

>> [INDISCERNIBLE]

>> BOARD MEMBER SELAWSKY.

>> YES.

>> BOARD MEMBER OLSON IS ABSENT. BOARD MEMBER KAHN.

>> YES.

>> BOARD MEMBER KIM.

>> YES.

>> BOARD MEMBER PINKSTON IS ABSENT. CHAIR O'KEEFE.

>> S. O'KEEFE: YES. SO THE MOTION PASSES. MOTION CARRIES.

SO ORDWAY STREET, YOU HAVE YOUR PERMIT AND IT IS APPEALABLE TO THE CITY COUNCIL. THANK YOU EVERYONE FOR COMING. SO MEETING IS ALMOST OVER, BUT NOT QUITE. DON'T GO ANYWHERE, FRIENDS. WE HAVE SUBCOMMITTEE REPORTS. YOU DIDN'T MEET, RIGHT, IGOR?

>> I. TREGUB: I WAS DEMOTED AND PROMOTED AGAIN. WE HAVE NOT MET.

>> S. O'KEEFE: JULY WHAT, IGOR?

>> I. TREGUB: OH, MY GOODNESS.

>> S. O'KEEFE: IT DOESN'T MATTER. AND DRC, YOU MET, RIGHT?

>> WE HAVEN'T MET SINCE OUR LAST ZAB MEETING. WE'LL MEET
NEXT THURSDAY.

>> S. O'KEEFE: OKAY, THEN I GUESS WE CAN ADJOURN.

>> I. TREGUB: JULY 22ND.

>> S. O'KEEFE: GREAT. COOL. OKAY. WELL, GREAT TO SEE
EVERYBODY.

>> T. CLARKE: NICE TO SEE EVERYBODY.

>> I. TREGUB: DO WE NEED A MOTION TO ADJOURN?

>> S. O'KEEFE: WE'VE NEVER NEEDED IT.

>> MOTION TO ADJOURN.

>> I. TREGUB: SECOND.


>> SHOSHANA, NICE JOB. BYE, EVERYBODY, SEE YOU IN TWO
WEEKS.

>> GOOD-BYE.

>> BYE.

>> GOOD-BYE.

>> I'M HERE TO LET PEOPLE CASUALLY LEAVE AND THEN I HIT
END.



Administrative Record
ZAB Appeal:
1346 Ordway Street
Administrative
Use Permit #ZP2018-0174

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
BERKELEY UNIFIED SCHOOL DISTRICT BOARD ROOM,
1231 ADDISON STREET
PUBLIC PARTICIPATION BY REMOTE VIDEO ONLY**

ZAB APPEAL: ADMINISTRATIVE USE PERMIT #ZP2018-0174, 1346 ORDWAY STREET

Notice is hereby given by the City Council of the City of Berkeley that on **TUESDAY OCTOBER 13, 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 uphold the Zoning Officer's decision to approve Administrative Use Permit #2018-0174, to legalize an existing 128 sq. ft. accessory building in the southwest corner of the subject lot; legalize an existing 5 ft. x 21 ft., 9-ft. tall trellis located within the south setback; legalize an existing 11-ft. tall hedge in the north and south setbacks; and establish a front yard off-street parking space to comply with the Federal Fair Housing Act, the Americans with Disabilities Act and the California Fair Employment and Housing Act, under BMC's Reasonable Accommodation Section.

A copy of the agenda material for this hearing will be available on the City's website at www.CityofBerkeley.info as of **October 1, 2020**. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology.**

For further information, please contact Nilu Karimzadegan, Project Planner at (510) 981-7419. 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: September 29, 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)(5)) an appeal, the following requirements and restrictions apply: 1) Pursuant to Code of Civil Procedure Section 1094.6, no lawsuit challenging a City decision to deny or approve a Zoning Adjustments Board decision may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a Zoning Adjustments Board decision, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing*

or prior to the close of the last public hearing on the project.

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