



Office of the City Manager

PUBLIC HEARING  
September 28, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

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

Subject: ZAB Appeal: 2943 Pine Avenue, Use Permit #ZP2020-0107

### RECOMMENDATION

Conduct a public hearing, and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP2020-0107 to construct a 729 square-foot, second-story addition to an existing one-story 1,822 square-foot single-family dwelling, with an average height of 23 feet 1 inch, add a fifth bedroom, and legalize an existing 10-foot fence at the rear and left side, on a lot that is existing non-conforming for lot coverage, and dismiss the appeal.

### FINANCIAL IMPLICATIONS

None.

### CURRENT SITUATION AND ITS EFFECTS

On October 16, 2020, J. Allen Sayles Architects (“Applicant”) submitted an application for a Use Permit (UP) to add a 729 square-foot second-story addition to the existing one-story single-family dwelling on the 4,320-square-foot lot located at 2943 Pine Avenue.

On November 2, 2020, due to the Health Officer order requiring residents to shelter in place, City staff sent postcards to the owners and occupants of surrounding residences to notify them of the project, in place of the standard requirement that applicants submit neighbors’ signatures. Staff also posted a poster in front of the dwelling to notify residents of the project.

On November 12, 2020, staff received an email from the neighbor at 2918 Elmwood Court, in which they expressed concerns about shadows from the addition during the late spring and summer on their backyard and on an oak tree which straddles their property line. The applicant responded to the neighbor’s concerns in the November 24, 2020 resubmittal packet. On January 7, 2021, the neighbor at 2918 Elmwood Court emailed in response to the applicant’s letter, and said the shadow study and oak tree placement within the study was inaccurate.

On March 10, 2021, after several rounds of incomplete application comments from staff, the application was deemed complete. Notices of a public hearing were sent according to standard protocol for public review of the project.

On April 8, 2021, the Zoning Adjustments Board (ZAB) held a public hearing for the Use Permit. After considering the staff report and administrative record, and hearing public comments and holding discussion, the ZAB added Conditions #11 and #26 requiring the second floor bathroom window on the eastern façade facing the rear yard to be comprised of translucent glass (as shown in the building permit plans, and at all times) and approved #ZP2020-0107 by an 8-0-0-1 vote (Yes: Tregub, Duffy, Gaffney, Thompson, Olson, O’Keefe, Kim, Hauser; No: None; Abstain: None; Absent: Kahn).

On April 13, 2021, staff issued the notice of the ZAB decision, and on April 26, 2021, the City received two appeals of the ZAB decision with the City Clerk: the first was filed by Rena Rickles, on behalf of Debra Levinsky, the neighbor residing at 2918 Elmwood Court; and the second was filed by the residents of 2916 Elmwood Court. The Clerk set the matter for review by the Council on September 28, 2021.

On or before September 14, 2021, staff posted the public hearing notice at the site and two nearby locations, and mailed notices to property owners and occupants within 300 feet of the project site, and to all registered neighborhood groups that cover this area. The Council must conduct a public hearing to resolve the appeal.

### PROJECT DESCRIPTION

The subject property is located on Pine Avenue, between Ashby Avenue and Webster Street, west of Claremont Avenue. The subject property is 4,320 square feet in lot area, with an existing 1,822 square foot one-story single-family dwelling on the property. The site is non-conforming for lot size (a minimum lot size of 5,000 square feet is required in the R-1 Residential District), and the left (north) side and front setbacks are non-conforming. The buildings on the lot result in coverage of 42% (where 40% is permitted). There is an existing curb cut and driveway along the southern (right) side of the parcel, which leads to a one-car garage. There is an existing fence along the rear/east and right/north side property lines that exceeds 10 feet in height (where 6 feet is allowed).

The proposed project is a 729 square-foot second-story addition to the existing one-story single-family dwelling. The proposed addition would increase the average height of the existing residential dwelling unit from 15 feet 1 inch to 23 feet 1 inch. Although the existing dwelling has non-conforming front and left side yard setbacks, the addition would be outside of all required setbacks: it would be setback 21 feet 10 inches from the front property line, and 11 feet from the left side property line. The first floor would largely remain the same, with no exterior changes, and on the second floor a new bedroom and a study would be added.

The proposed study meets the definition of a bedroom from BMC Section 13.42.020, and therefore counts as a fifth bedroom on the parcel. Two small balconies would also be added on the new second floor, one on the south side overlooking the right side yard, and the other on the east side overlooking the rear yard.

### BACKGROUND

At the April 8, 2021 ZAB hearing, neighbors shared concerns about the shadow study, the roof pitch, the oak tree at 2916 Elmwood Court, privacy for the neighbors who face the rear yard of 2943 Pine, and the lack of outreach to neighbors. The ZAB voiced concerns about possible trimming of the existing oak tree on a neighbor's property, the rear bathroom window, and whether the rear bathroom window should be translucent. In response to those concerns, the ZAB added Conditions of Approval #11 and #26. They read as follows:

*11. Second Floor Bathroom Window. The second floor bathroom window on the eastern façade facing the rear yard shall be comprised of translucent glass. The material shall be noted in the applicable floor plan and elevation of the Building Permit plan set.*

*26. Second Floor Bathroom Window. The second floor bathroom window on the eastern façade facing the rear yard shall be comprised of translucent glass.*

On April 20, 2021 staff received a letter from the occupants of 2916 Elmwood Court, expressing concerns about the shadow impacts of the proposed second story addition on their dwelling, and clarifying the limited effects of the existing oak tree on the light they receive in comparison to the shadow studies prepared by the applicant. Staff mailed a response letter on April 22, 2021, notifying the occupants that the project had been approved by ZAB, and outlining the appeal procedure.

The issues raised in the appellants' letters and staff's responses follow. For the sake of brevity, the appeal issues are not re-stated in their entirety. Please refer to the attached appeal letters (Attachment 2, parts 1 and 2) for the full text.

Appeal Letter 1, Rena Rickles for Debra Levinsky, 2918 Elmwood Court

### **Issue #1: Lower the roof by 2 feet 2 inches and reduce the roof pitch to reduce shading in yards and main rooms.**

Response: The appellant contends that the proposed second-story roof should be redesigned to be consistent with the nearby dwellings, and reduce shadow impacts on neighbors. The height dimensioned in the plans is the average height, which is defined in the BMC, Chapter 23F.04, *Height of Building, Average: The vertical distance from the average level of the highest and lowest point of that portion of the lot covered by the building (or, in the case of residential additions, that portion of the lot covered by the*

*addition) to: in the cases of sloped, hipped or gabled roofs, the average height of the roof between the ridge and where the eave meets the plate...*

Height is averaged for hipped and gabled roofs since a pitched roof blocks less than a straight wall. The highest point of the proposed roof is 26 feet 5 inches, not 28 feet as the appellant states. The appellant states that 60% of the summer sun will be blocked by the new roof, but there is no data to support that claim.

Furthermore, the appellant states that the proposed roof pitch is inconsistent with the roof lines of other houses along Pine Avenue. However, Design Review does not apply to the R-1 Single-Family Residential District and there is no requirement in the BMC that a new roof be consistent with surrounding roofs. The design approved by ZAB has a stepped roof, which is consistent with the existing residence. Photos of neighboring dwellings submitted with revised plans on November 24, 2020 show similar stepped roof forms at nearby dwellings along Pine Avenue.

As described in the ZAB staff report dated April 8, 2021, the project conforms to the development standards of the R-1 District and the ZAB found that it meets the standards for non-detriment as described in the findings and conditions (Attachment 1 Exhibit A). Therefore, staff recommends the Council dismiss this appeal point.

**Issue #2: Privacy diminished by proposed second-story rear balcony. The “rear second-story balcony looms out over the rear yards of both 2918 and 2916 Elmwood Court.” The balcony should be removed or designed so it will not invade the privacy of 2918 and 2916 Elmwood Court.**

Response: The new rear second-floor balcony does not extend beyond the eaves of the new roof, therefore it would not be accurate to say that it looms over the rear yards of 2918 and 2916 Elmwood Court. Furthermore, the new second-floor terrace faces the neighbors at 2947 Pine Avenue.

The proposed rear balcony is outside of the 20-foot required rear setback. Furthermore, BMC Section 23D.04.030.A provides that balconies and decks may project 6 feet into the required rear yard. Therefore, staff recommends the Council dismiss this appeal point.

**Issue #3: Rear fence height. Appellant states that the rear fence is only 6 feet high on their side of the fence, and applicant states that the fence is 10 feet high, and thus they requested an Administrative Use Permit to legalize the existing fence. Appellant requests that the AUP language be amended to permit a fence “no higher than the existing fence.”**

Response: The appellant states that the fence is 6 feet high on their side, but they have not provided a survey or anything else to validate their claim on the fence height. The appellant requests the language of the AUP should be modified, but they have not

explained why the language of the AUP should be modified. Per BMC Section 23D.08.060.A.2: *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. The height of any such fence or structure shall be determined by measuring the vertical distance from the lowest existing grade point within a three foot radius of any point of such fence or structure, to the highest point of such structure.*

The survey provided by the applicant only indicates the elevation points at the base of structures such as the fence, garage, and house; the fence height is not described in the survey (Attachment 1 Exhibit B, page 14). The dimensions in the elevations provided by the applicant show that the height of the existing fence is 10 feet (Attachment 1 Exhibit B, pages 3, 8, 9). The ZAB found that the fence was acceptable for privacy and did not cause any detriment, and therefore approved it as part of the project. The project is required to comply with the approved plans, which show a 10-foot fence at the rear property line, approximately the same height as the detached garage. Therefore, staff recommends the Council dismiss this appeal point.

Appeal Letter 2, Julia Shen, 2916 Elmwood Court

**Issue #1: The addition at 2943 Pine Avenue blocks sunlight entering the dining area at 2916 Elmwood Court from the southeast in the early to later afternoons year-round.**

Response: Shadow studies submitted by the applicant and reviewed by staff and the ZAB document the addition's projected shadow angles and lengths at three times throughout the day during the summer and winter solstice. The project involves a new second floor, thus increased shadows would occur to the abutting properties to the rear (east) and left (north), and to the northwest across Pine Avenue. The studies show that the addition would create an incremental increase in shadows on two neighboring dwellings, 2932 Pine Avenue and 2939 Pine Avenue, as follows:

- Two hours after sunrise on the winter solstice, shadows on the east side of the dwelling at 2932 Pine Avenue would increase and cover a living room window.
- At noon on the winter solstice shadows on the south side of the dwelling at 2939 Pine Avenue would increase, and reach the bottom third of a bedroom window.
- Two hours before sunset on the winter solstice shadows on the south side of the dwelling at 2939 Pine Avenue would increase and cover the majority of a bedroom window, and would fully cover two office windows.

The appellant has not provided shadow studies that demonstrate their concerns. There is a small portion of new shading on the southwest corner of the rear yard of 2916 Elmwood Court two hours before sunset on the summer solstice, but existing and

proposed shadows from 2943 Pine Avenue are not cast onto the dwelling at 2916 Elmwood Court. Therefore, staff recommends the Council dismiss this appeal point.

**Issue #2: An arborist report is needed to define the Critical Root Zone and the “biological root zone” of the Coast Live Oak at 2918/2916 Elmwood Court. Story poles need to be installed. The shadow studies need to be validated.**

Response: The survey provided by the applicant (Attachment 1 Exhibit B, page 14) does not show the oak tree that straddles the property line between 2918 and 2916 Elmwood Court. The oak tree is shown in the shadow study (Attachment 1 Exhibit B, pages 3 and 6). In Debra Levinsky’s email to staff on January 7, 2021 she states that the oak tree is halfway between the outside of her home and her rear property line, just north of the side property line separating 2918 and 2916 Elmwood Court.

Per page 10 of [Zoning Project Application Submittal Requirements](#) an arborist report is required for construction activity within the drip line of a Coast Live Oak with a circumference of at least 18 inches at 4 feet above the ground (or at least 26 inches aggregate circumference for a multi-stemmed tree). The proposed second story addition does not expand the footprint of the existing dwelling, and the addition is outside of the 20-foot required rear setback. No evidence has been provided to indicate that construction of the proposed addition would be within the drip line of the oak tree at 2916 Elmwood Court, and thus an arborist report is not required.

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

The shadow studies prepared by the applicant comply with the City’s [instructions](#) (and are discussed under appeal issue #1 above). An arborist report, story poles, and additional shadow studies are not applicable. Therefore, staff recommends the Council dismiss this appeal point.

**ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS**

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

**RATIONALE FOR RECOMMENDATION**

The ZAB considered all of the information received from staff, the applicant, the appellants, and the neighbors, and determined that the project is consistent with the zoning ordinance and applicable policies of the General Plan, and would not result in

detrimental impacts to residents, adjacent properties, the surrounding area, or to the general welfare of the city.

Staff believes that the ZAB considered and discussed the evidence presented at the hearing, and acted within its purview to approve the proposed project. None of the issues raised on appeal are different from those raised at the ZAB hearing. Therefore, staff recommends that the City Council uphold the ZAB decision to approve the second-story addition with an average height of 23 feet 1 inch, fifth bedroom, and 10-foot fence at the rear and left side, on a lot that is existing non-conforming for lot coverage and certain setbacks, with the ZAB-approved conditions of approval related to the second-floor bathroom window.

#### 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

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

#### Attachments:

- 1: Resolution
  - Exhibit A: Findings and Conditions
  - Exhibit B: Project Plans, dated March 10, 2021
- 2: Appeal Letters, received April 26, 2021
- 3: ZAB Staff Report, dated April 8, 2021
- 4: Index to Administrative Record
- 5: Administrative Record
- 6: Public Hearing Notice

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

UPHOLD THE ZONING ADJUSTMENTS BOARD (ZAB) DECISION TO APPROVE USE PERMIT #ZP2020-0107 TO CONSTRUCT A 729 SQUARE-FOOT, SECOND-STORY ADDITION TO AN EXISTING ONE-STORY 1,822 SQUARE-FOOT SINGLE-FAMILY DWELLING, WITH AN AVERAGE HEIGHT OF 23 FEET 1 INCH, ADD A FIFTH BEDROOM, AND LEGALIZE AN EXISTING 10-FOOT FENCE AT THE REAR AND LEFT SIDE, ON A LOT THAT IS EXISTING NON-CONFORMING FOR LOT COVERAGE, AND DISMISS THE APPEAL

WHEREAS, on October 16, 2020, J. Allen Sayles Architects (“Applicant”) submitted an application for a Use Permit (UP) to add a 729 square-foot second-story addition to the existing one-story single-family dwelling on the 4,320-square-foot lot located at 2943 Pine Avenue; and

WHEREAS, on March 10, 2021, staff deemed this application complete and determined that the project is categorically exempt from the California Environmental Quality Act (“CEQA”) under Section 15301 (“Existing Facilities”) and Section 15303 (“New Construction or Conversion of Small Structures”) of the CEQA Guidelines; and

WHEREAS, on March 25, 2021 staff posted the ZAB Notice of Public Hearing at the site in three locations and mailed 82 notices to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations; and

WHEREAS, on April 8, 2021, the ZAB held a public hearing in accordance with BMC Section 23B.32.030, and approved the application with Conditions; and

WHEREAS, on April 13, 2021, staff issued the notice of the ZAB decision; and

WHEREAS, on April 26, 2021, Rena Rickles, on behalf of Debra Levinsky, and Julia Shen filed appeals of the ZAB decision with the City Clerk; and

WHEREAS, on or before September 14, 2021, staff posted the public hearing notice at 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 September 28, 2021, the Council held a public hearing to consider the ZAB’s decision, and, in the opinion of this Council, the facts stated in or ascertainable from the public record, including the staff report and comments made at the public hearing, warrant approving the project.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Council hereby adopts the findings for approval made by the ZAB in Exhibit A, affirms the decision of the ZAB to approve Use Permit #ZP2020-0107, and dismisses the appeal.



Exhibits

A: Findings and Conditions

B: Project Plans, dated March 10, 2021

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**FINDINGS AND CONDITIONS**

APRIL 8, 2021

**2943 Pine Avenue**

**Use Permit #ZP2020-0107 to construct a 729 sq. ft., second-story addition to an existing one-story 1,822 sq. ft. single-family dwelling, with an average height of 23 ft. 1 in., add a fifth bedroom, and legalize an existing 10 ft. fence at the rear and left side, on a lot that is existing non-conforming for lot coverage.**

**PERMITS REQUIRED**

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- Use Permit, under Berkeley Municipal Code (BMC) 23C.16.070.C, to construct an addition to a dwelling that is non-conforming by reason of violation of the maximum allowable lot coverage
- Administrative Use Permit, under BMC Section 23D.16.030, to construct a major residential addition
- Administrative Use Permit, under BMC Section 23D.16.050.A, to add a fifth bedroom
- Administrative Use Permit, under BMC Section 23D.16.070.C, to allow a residential addition which exceeds 14 feet in average height
- Administrative Use Permit pursuant to BMC Section 23D.08.060 for a fence within the required side and rear yards over six feet in height

**I. CEQA FINDINGS**

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

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1. As required by Section 23B.32.040.A of the BMC, the project, under the circumstances of this particular case existing at the time at which the application is granted, will 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 the proposed project will conform to the applicable provisions of the Berkeley Municipal Code including height, number of stories, setbacks, usable open space, and parking established in BMC Section 23D.16.070 (Development Standards). The proposed development is permissible because: (1) the proposed addition conforms to the R-1 District standards, including yard requirements, and average height, and does not worsen any non-conforming condition; (2) the proposed project recognizes and

adheres to an existing pattern of development by maintaining the single-family use of the property; and (3) protects adjacent neighbors from unreasonable obstructions of sunlight, air, and views, since the addition is outside of all required setbacks.

2. While the project increases the number of bedrooms on this parcel, as defined in BMC Section 13.24.020 (Definitions), from three to five, the addition of a fifth bedroom would provide more room for residents within the single-family residence and would not result in an increase in dwelling unit density.
3. The existing fence is 10 feet in height, along the north and rear property lines, and ends near the garage at the back of the lot. The portion of the fence in front of the house is less than 6 feet in height. The fence provides privacy and security for the residents.

### **III. OTHER FINDINGS FOR APPROVAL**

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1. As required by Section 23C.04.070 of the BMC, the Zoning Adjustments Board finds that the residential addition to a non-conforming structure on a lot that is non-conforming by reason of the lot coverage is permitted because the existing use of the property is conforming, the addition complies with all applicable laws (i.e. development standards), and will not increase the lot coverage or exceed the height limit. Specifically, the proposed addition is located over existing covered area, and therefore, does not increase the non-conforming lot coverage. Additionally, the addition will be below the average height limit of 28 feet, with an average height of 23 feet 1 inch.
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**IV. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS**

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

**1. Conditions Shall be Printed on Plans**

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

**2. Applicant Responsible for Compliance with Conditions**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**9. Indemnification Agreement**

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

**V. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD**

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

**Prior to Submittal of Any Building Permit:**

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

**Project Liaison** \_\_\_\_\_  
Name Phone #

**11. Second Floor Bathroom Window.** The second floor bathroom window on the eastern façade facing the rear yard shall be comprised of translucent glass. The material shall be noted in the applicable floor plan and elevation of the Building Permit plan set.

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

**12. 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.

- 13.** 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.
- 14.** 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.
- 15.** 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.
- 16.** 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.
- 17.** 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.
- 18.** Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.
- 19.** Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.
- 20.** The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way.

21. 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.
22. 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.

**Prior to Final Inspection or Issuance of Occupancy Permit:**

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23. Compliance with Conditions. The project shall conform to the plans and statements in the Use Permit. The developer is responsible for providing sufficient evidence to demonstrate compliance with the requirements throughout the implementation of this Use Permit.
24. Compliance with Approved Plan. The project shall conform to the plans and statements in the Use Permit. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated March 10, 2021, except as modified by conditions of approval.

**At All Times:**

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25. Exterior Lighting. All exterior lighting shall be energy efficient where feasible; and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
  26. Second Floor Bathroom Window. The second floor bathroom window on the eastern façade facing the rear yard shall be comprised of translucent glass.
-

GENERAL NOTES

- 1. ALL WORK SHALL COMPLY WITH THE 2019 CALIFORNIA BUILDING CODE, 2019 CALIFORNIA RESIDENTIAL CODE, 2019 CALIFORNIA ENERGY CODE, 2019 CALIFORNIA PLUMBING CODE, 2019 CALIFORNIA MECHANICAL CODE, 2019 CALIFORNIA ELECTRICAL CODE, 2019 CALIFORNIA GREEN BUILDING STANDARDS CODE, AND ALL APPLICABLE STATE, COUNTY, AND CITY CODES.
2. CONTRACTOR SHALL FAMILIARIZE HERSELF/HIMSELF WITH THE ACTUAL SITE CONDITIONS PRIOR TO BIDDING, AND FOR ANY UNIQUE CIRCUMSTANCES OR DISCREPANCIES THAT MAY EXIST.
3. DIMENSIONS, UNLESS OTHERWISE SHOWN, ARE TO STUDLINE, ROUGH CONCRETE OR CONCRETE.
4. CONTRACTORS SHALL VERIFY ALL DIMENSIONS PRIOR TO THE FABRICATION OF ANY WORK. DO NOT SCALE DRAWINGS, ONLY WRITTEN DIMENSIONS ARE TO BE USED. ANY ERRORS AND/OR DISCREPANCIES SHALL BE BROUGHT TO THE ATTENTION OF THE ARCHITECT IN WRITING IMMEDIATELY. UNLESS REPORTED, CONTRACTOR SHALL BE RESPONSIBLE FOR ANY DIMENSIONAL INCONSISTENCIES AND PROBABLE REMEDIAL WORK.
5. IN THE EVENT THAT CERTAIN FEATURES OF THE CONSTRUCTION ARE NOT SHOWN, THEN THEIR CONSTRUCTION SHALL BE OF THE SAME CHARACTER AS FOR SIMILAR CONDITIONS WHICH ARE SHOWN OR CALLED FOR AS IN ADJACENT SPACES (I.E. CLOSETS MATCH THE SPACE SERVED ETC.).
6. CURBS AND CURB CUTS TO BE PER CITY STANDARDS. INSPECT, REPAIR & REPLACE DAMAGED CURBS & CURB CUT PER CITY REQUIREMENTS.
7. THE FINISHES FOR THIS BUILDING, INCLUDING BUT NOT LIMITED TO, FLOOR COVERINGS, PAINT, CABINET TREATMENT, LIGHT FIXTURES ETC., ARE THE RESPONSIBILITY OF THE CONTRACTOR.
8. SEPARATE PERMIT SHALL BE OBTAINED FOR ELECTRICAL, HEATING, PLUMBING, AND FIRE SPRINKLER INSTALLATIONS, ETC. CONTRACTOR SHALL PROVIDE DESIGN/SCHEMATICS AND PAY REQUIRED PERMITS. CONTRACTOR WILL BE COMPENSATED FOR GENERAL BUILDING PERMIT COSTS.
9. CONTRACTOR SHALL COORDINATE BETWEEN THE VARIOUS TRADES/SUBCONTRACTORS.
10. WHENEVER REQUIRED, CONTRACTOR SHALL OBTAIN OWNER'S APPROVAL, PRIOR TO INSTALLATION OF FIXTURES, HARDWARE, FINISHES, ETC. SUBMITTALS ARE REQUIRED FOR ALL EXPOSED FINISHES.
11. CONTRACTOR SHALL CONTACT USA (1-800-227-2600) PRIOR TO STARTING EXCAVATION, GRADING, OR TRENCHING. CONTRACTOR SHALL INFORM UTILITY, TELEPHONE COMPANIES, ETC. PRIOR TO COMMENCEMENT OF WORK. CONTRACTOR SHALL BE RESPONSIBLE FOR THE HOOK-UP AND START-UP OF ALL UTILITIES.
12. ALL MATERIALS TO BE REMOVED FROM THE SITE SHALL BE DISPOSED OF OR RECYCLED BY THE CONTRACTOR IN A LEGAL MANNER.
13. CONTRACTOR SHALL MAINTAIN COMPLETE STRUCTURAL INTEGRITY AT ALL TIMES AND SHALL PROVIDE ADEQUATE PRECAUTION FOR THE SAFETY OF PUBLIC LIFE AND PROPERTY.
14. INSTALL SMOKE DETECTORS, CARBON MONOXIDE DETECTORS, ALARMS, AND EXIT SIGNS AS REQUIRED PER CITY, COUNTY, AND FIRE MARSHALL STANDARDS.
15. SPARK ARRESTOR ON ALL WOOD BURNING FIREPLACES REQUIRED, INCLUDING EXISTING FIREPLACES IF REQUIRED BY ORDINANCE.
16. IF PROJECT IS IN A HOME OWNERS' ASSOCIATION, THEN CONTRACTOR IS TO FAMILIARIZE HERSELF OR HIMSELF WITH ITS REQUIREMENTS.



PROJECT INFORMATION

Table with project details: PROJECT ADDRESS (2943 PINE AVENUE, BERKELEY, CA 94705), APN (052-1565-080), OCCUPANCY (R-3), CONSTRUCTION TYPE (VB), ZONING (R-1), SCOPE (PROPOSED SECOND STORY ADDITION OF 729 SQ. FT. TO INCLUDE NEW MASTER SUITE, LAUNDRY, AND STUDY).

PROJECT DIRECTORY

Table listing project roles: OWNER (ROBERT & ANNE NACHTWEY), ARCHITECT (J. ALLEN SAYLES ARCHITECTS), CIVIL (DEBOLT CIVIL ENGINEERING), CONTRACTOR (TBD).

ABBREVIATIONS

Table of abbreviations and their meanings, such as A.D. AREA DRAIN, ADJ. ADJUSTABLE, ADU ACCESSORY DWELLING UNIT, etc.

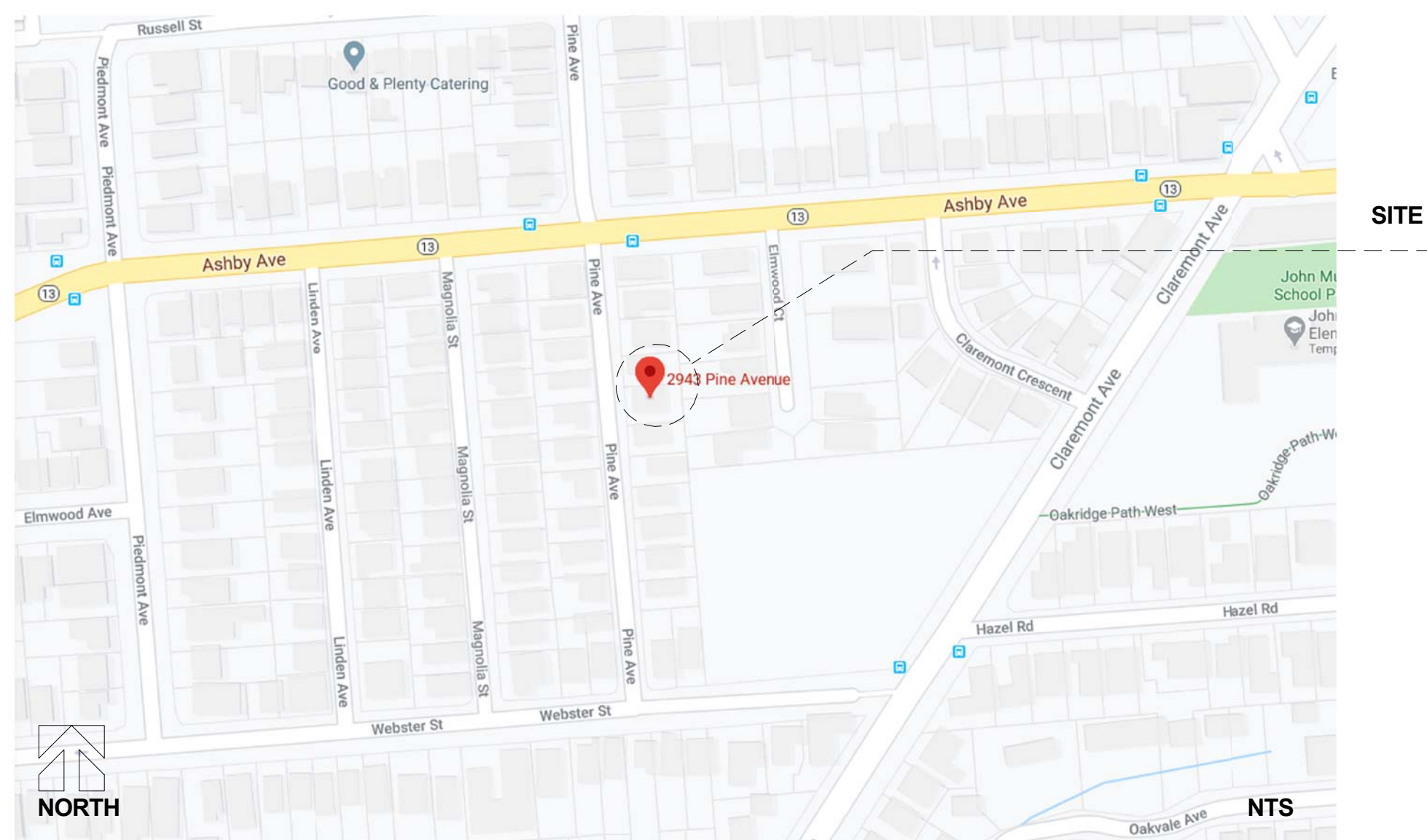
SYMBOLS

Table of symbols and their meanings, such as a circle with a dot for SWITCH, a circle with a square for DIMMER SWITCH, etc.

ZONING DATA

Table comparing existing and proposed zoning data for lot size, coverage, setbacks, parking, and floor area calculations.

VICINITY MAP



SHEET INDEX

Table showing sheet index: A-1.0 TITLE SHEET, A-1.1 PROPOSED SITE PLAN, A-1.2 SHADOW STUDIES PART 1, etc.

REVISIONS table with columns for #, Description, and Date.

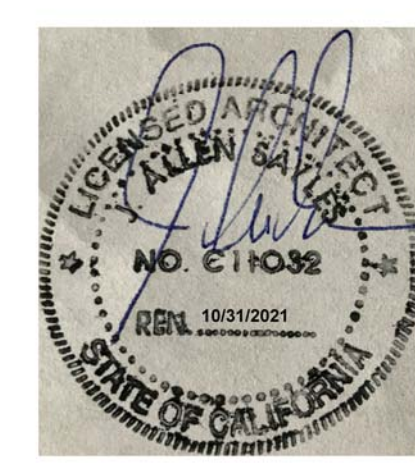
J. Allen Sayles Architects, 3249 Mt. Diablo Ct, Suite 202, Lafayette, CA 94549, allen@jasarch.com, 925-837-3986.

TITLE SHEET

ADDITION & REMODEL FOR: ROB & ANNE NACHTWEY, 2943 PINE AVENUE, BERKELEY, CA 94705, (925) 818-7739.

Table with drawing status: DRAWN YB, CHECKED JAS, DATE 03/10/21, SCALE AS NOTED, JOB NO 1912, SHEET.

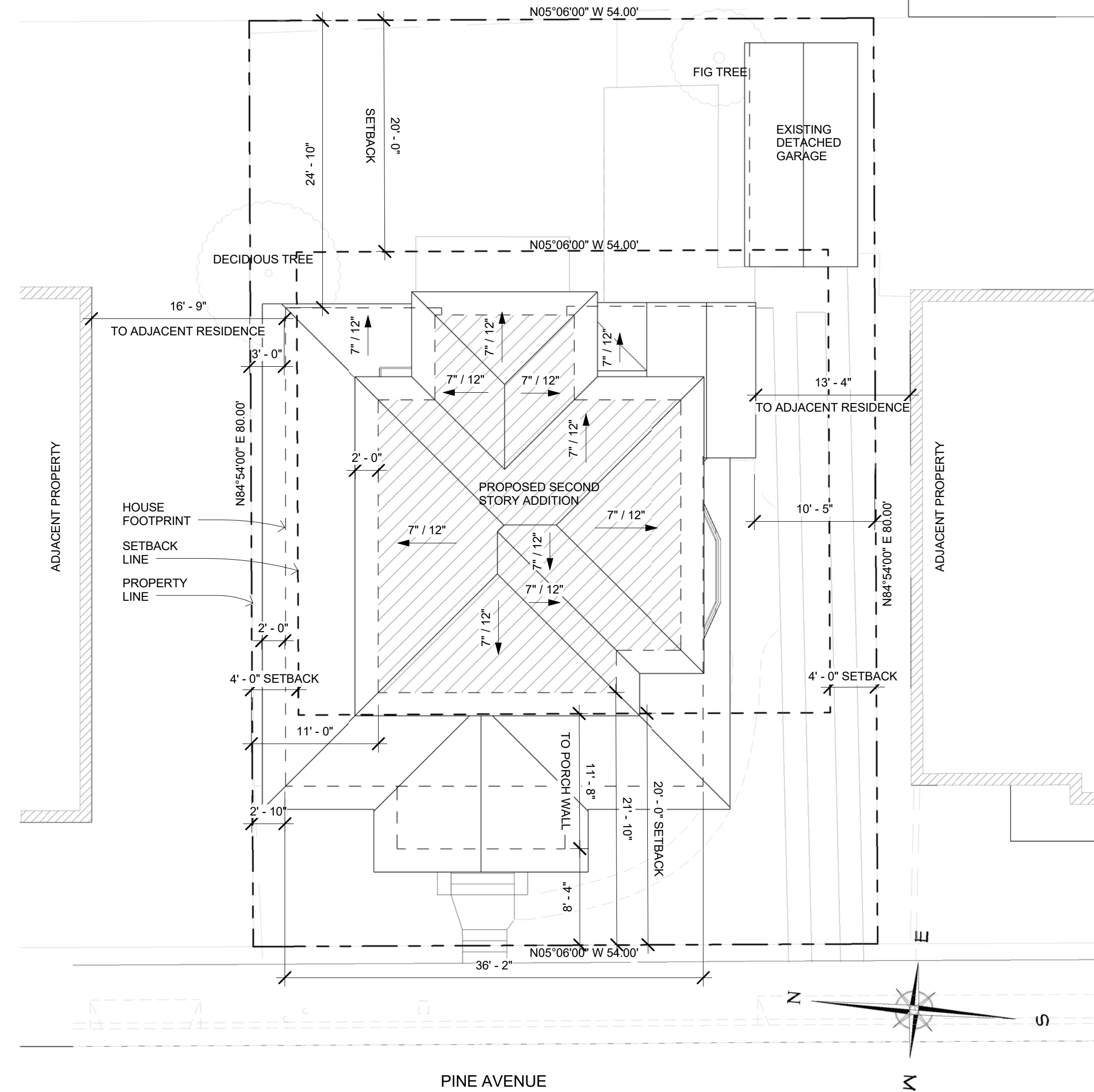
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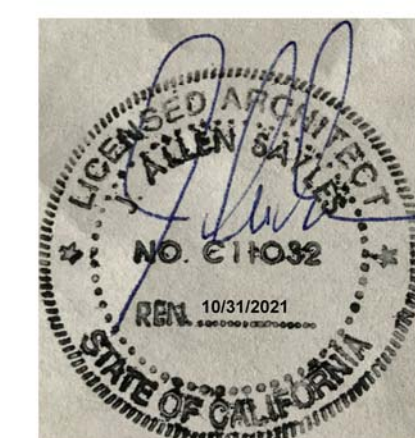
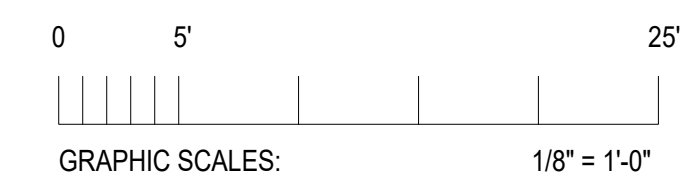


**NEIGHBOR SIGNATURES**

I HAVE REVIEWED THE PLANS FOR THE 23' HIGH, SECOND STORY RESIDENTIAL ADDITION OF 729 SQ. FT. LOCATED AT 2943 PINE AVENUE.

| NAME (PRINT)    | SIGNATURE | ADDRESS | DATE | RENTER OR OWNER | HAVE NO OBJECTIONS | HAVE OBJECTIONS (PLEASE STATE BRIEFLY) | HAVE NO COMMENT |
|-----------------|-----------|---------|------|-----------------|--------------------|--|-----------------|
| <b>DEFERRED</b> |           |         |      |                 |                    |  |                 |

"THESE SIGNATURES TELL THE CITY THAT THE APPLICANT HAS INFORMED THEIR NEIGHBORS OF THE PROPOSED PROJECT - IT IN NO WAY IMPLIES THAT A NEIGHBOR "APPROVES" OF A PROJECT, UNLESS THE NEIGHBOR CHECKS THE COLUMN HEADED, "HAVE NO OBJECTIONS. THE SIGNATURES DO NOT ENSURE APPROVAL OR DENIAL OF A PROJECT, BUT THEY MUST BE SUBMITTED WITH THE APPLICATION. SIGNATURES SHOULD BE GATHERED FROM OWNERS AND OCCUPANTS OF A PROPERTY. IF A NEIGHBOR CANNOT BE REACHED OR REFUSES TO SIGN THE PLANS FOR WHATEVER REASON, PLEASE PROVIDE EVIDENCE THAT YOU ATTEMPTED TO CONTACT THE INDIVIDUAL AND HAVE AT LEAST PROVIDED THE NEIGHBOR WITH A COPY OF THE PLANS." - CITY OF BERKELEY PLANNING FORM 1.D. NEIGHBORHOOD SIGNATURES"



| # | REVISIONS Description | Date |
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**J. Allen Sayles Architects**  
3249 Mt. Diablo Ct  
Suite 202  
Lafayette, CA 94549  
allen@jasarch.com  
925.837.3986  
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**PROPOSED SITE PLAN**

ADDITION & REMODEL FOR:  
**ROB & ANNE NACHTWEY**  
2943 PINE AVENUE, BERKELEY, CA 94705  
(925) 818-7739

|         |          |
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| DATE    | 03/10/21 |
| SCALE   | AS NOTED |
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**A-1.1**  
OF SHEETS

















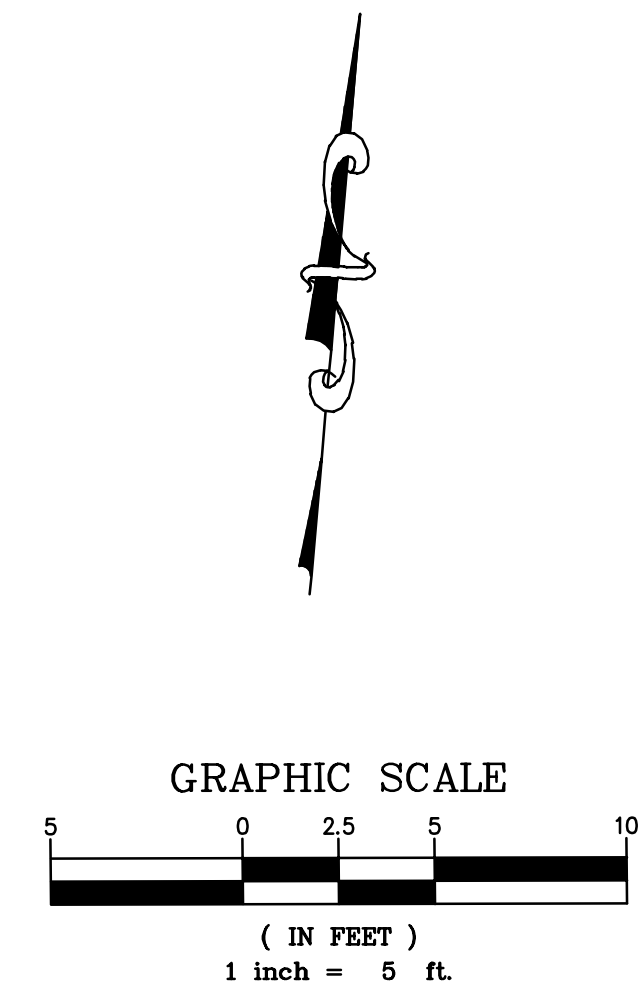
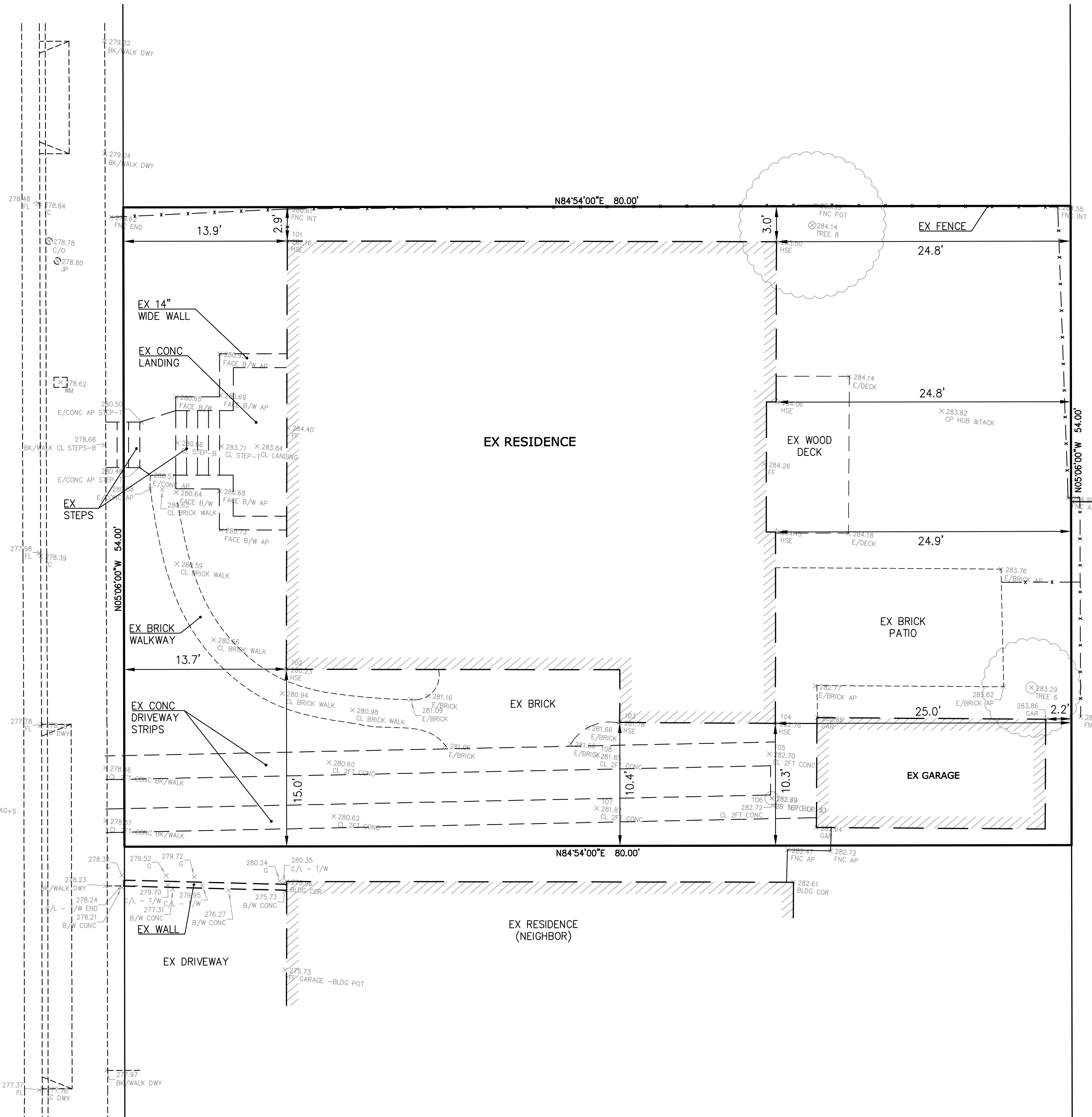








PINE AVENUE



ALL PLANS ARE PRELIMINARY AND NOT FOR CONSTRUCTION UNLESS SIGNED AND STAMPED BY THE ENGINEER AND REVIEWING AGENCY.

TOPOGRAPHIC SURVEY

2943 PINE AVENUE

BERKELEY

ALAMEDA COUNTY

CALIFORNIA

JAMES E. DIGGINS - R.C.E. 27818  
RENEWAL DATE: 03/31/22

| # | REVISIONS | DATE |
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**45+**  
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 DANVILLE, CALIFORNIA 94526  
 (925) 837-3780 | DEBOLTCIVIL.COM

Date: 8/06/2020  
 Scale: 1" = 5'  
 By: JD/BJ  
 Job No.: 20226

RENA RICKLES  
*Attorney at Law*

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1970 BROADWAY, SUITE 1200  
OAKLAND, CA 94612  
TEL: (510) 452-1600 - FAX: (510) 451-4115  
EMAIL: rena@rickleslaw.com

April 25, 2021

Mayor Jesse Arreguin  
Berkeley Councilmembers  
C/O City Clerk Department  
2180 Milvia Street  
Berkeley, CA 94704

**VIA Email and U.S Mail**

Re: 2943 Pine Avenue: Appeal of Zoning Adjustments Board ("ZAB") Decision  
April 8, 2021

Dear Mayor Arreguin and Councilmembers:

This appeal is on behalf of Debra Levinsky<sup>1</sup> who, with her late husband, moved to 2918 Elmwood Court 36 years ago. The addition to 2943 Pine Avenue, as now designed, will deprive her of half of her western sun and all of her rear-yard privacy.

Her request, to reduce the roof's pitch, should be deemed reasonable, as it will result in a design that retains the approved square footage while simultaneously reducing the detriments imposed by the project to the immediate neighbors. Under the facts and circumstances of this appeal, it should be granted.

General Grounds for Appeal

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

Statement of Facts

Applicant's proposal to add a second story to create more room for their family is reasonable. Unfortunately, because of Covid restrictions, Applicants were not required to circulate their plans to their abutting and confronting neighbors to

---

<sup>1</sup> Debra Levinsky, a recently retired OB-GYN, has over her career delivered over 6,000 new babies in Berkeley.

obtain their input.<sup>2</sup> Instead post cards were ostensibly<sup>3</sup> sent to all homes within 300' of the project; the post cards did not include the specifics of the project; some neighbors never saw the plans. The result: a design that renders the project's impacts to be unreasonably detrimental.

Had there been the previously required outreach, or had applicants exceeded the minimal outreach requirements by delivering the plans to their immediate neighbors, many of the issues raised at the ZAB meeting and this appeal could have been addressed and resolved: 1) the steep slope of the roof on top of the new 2<sup>nd</sup> story; 2) the accuracy of the shadow study--- questioned by all the opposing neighbors; 3) the utter failure to consider the loss of light, and increased shading on yards and main living areas as a detriment to the eastern neighbors; and 4) story poles<sup>4</sup>—would have allowed the neighbors and the ZAB could accurately assess the impacts of the expansion as designed.

The single biggest detriment caused by this lack of notice and communication revolves around the roof design: The roof is described as 23'1", but that is an average height, from the lowest point to the 28' apex. And it is the 28' apex that is causing the blockage of light and shading gardens in the summer. For Debra, the loss will be 60% of her summer sun.

**Debra's Request is Modest: Reducing the Steep Pitch of the Roof Resulting in an Improved Project for Applicant, the Neighborhood; and a Significant Reduction in Detriment for Appellants (Drawing attached)**

By reducing the pitch of the roof, as now designed, to a pitch more in keeping with streetscape on Pine Avenue, most of the loss of light, and increased shading in yards and main rooms will be significantly diminished. Consistent streetscape is important everywhere, but especially in quasi-historic districts. The approved roof pitch is inconsistent with the roof lines on this section of Pine Avenue. The proposed redesigned roof, respects neighboring roofs. It does not result in any loss of the approved square feet. And it significantly reduces the negative impacts of the project upon its neighbors.

**Privacy Considerations:** The rear-second-story balcony looms out over the rear yards of both 2918 and 2916 Elmwood Court. While the balcony is not so large to contain large groups (Staff's argument for non-detriment), it still impacts the privacy of Debra, and her neighbors the Shen's at 2916 Elmwood Court. We request that

<sup>2</sup> Applicants and their architect showed the plans to only one neighbor, at 2939 Pine Avenue; that neighbor's requests for modifications were incorporated into the design.

<sup>3</sup> Several neighbors within the 300' radius state they did not receive the postcards.

<sup>4</sup> Since this project is not in an H District, Story Poles would not have been mandated but would have been under the circumstances of this case, helpful.

the balcony be removed or designed in a way that will not invade appellant's or her neighbor's privacy.

**Permit for the Non-Conforming Rear Fence.** Request for minor revision in the language. It is described as a 10' fence (which technically it is under Zoning Definitions, it is). But it is 6' on Debra's side. We request that the language be amended to "no higher than the existing fence".

## **CONCLUSION**

Covid restrictions led to many changes in the requirements for notice and opportunity for immediate neighbors to observe and comment on the impacts of new projects. However, the consequences should not be that impacted neighbors lose their opportunity to learn of a project's negative impacts to their enjoyment of their homes and effectively communicate those impacts to the decisionmakers.

Here, Debra faces the real possibility of staring at a dark wall where she previously enjoyed the western sun. The same is true for many of her neighbors. Fortunately, there is a design solution that is a positive for everyone. We ask, that unless the roof pitch is reduced to result in a roof height no higher than the proposed design that you UPHOLD this appeal and DENY the application.

To preserve Debra's privacy, we ask that this Council require that the rear balcony be removed or redesigned.

Finally we ask that the language approving the non-conforming fence be modified to clarify that what is approved is no higher than the existing fence.

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

Very truly yours,



RENA RICKLES

Attachments:

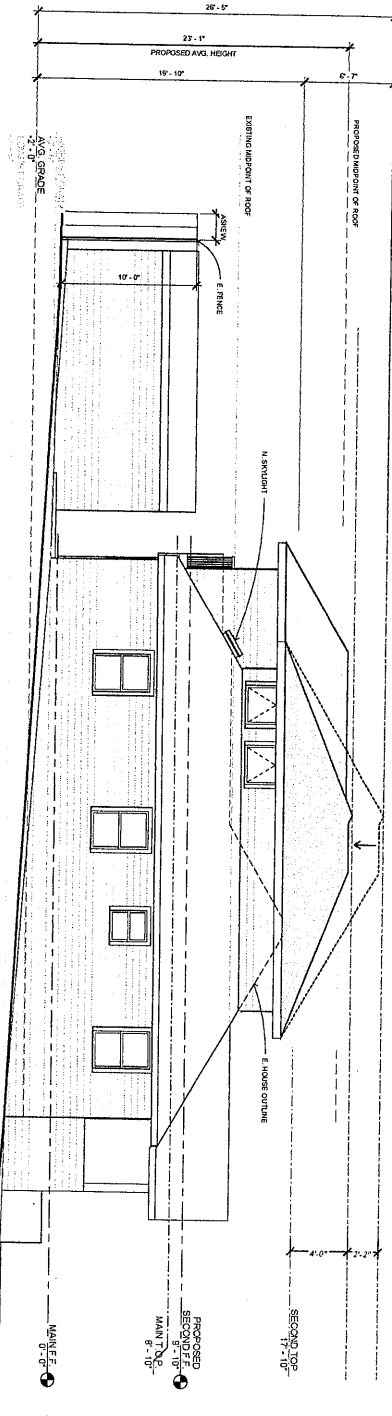
drawings-3 pages



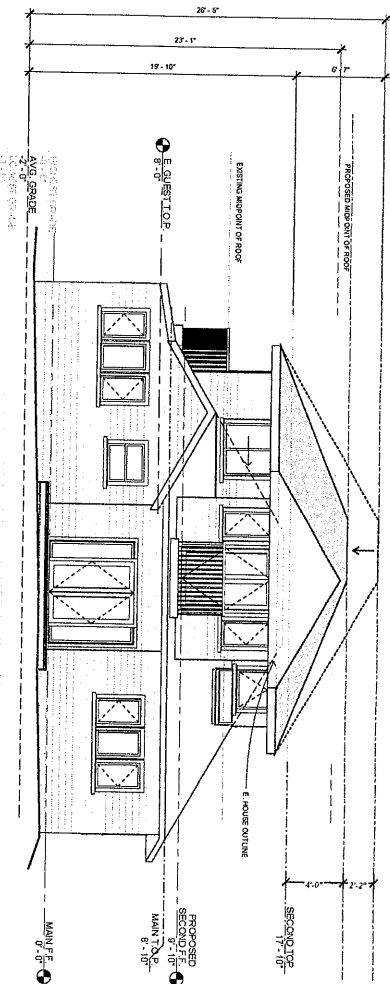


ROOF SHAPE TO REMAIN THE SAME.  
HEIGHT OF ROOF REDUCED APPROXIMATELY 2'-2".  
NEW SLOPE APPROXIMATELY 5:12.

ROOF SHAPE TO REMAIN THE SAME.  
HEIGHT OF ROOF REDUCED APPROXIMATELY 2'-2".  
NEW SLOPE APPROXIMATELY 5:12.



PROPOSED NORTH  
1/4" = 1'-0"



PROPOSED EAST  
1/4" = 1'-0"



ADDITION & REMODEL FOR:  
**ROB & ANNE NACHTWEY**  
2943 PINE AVENUE, BERKELEY, CA 94705

(925) 818-7738

PROPOSED  
ELEVATIONS

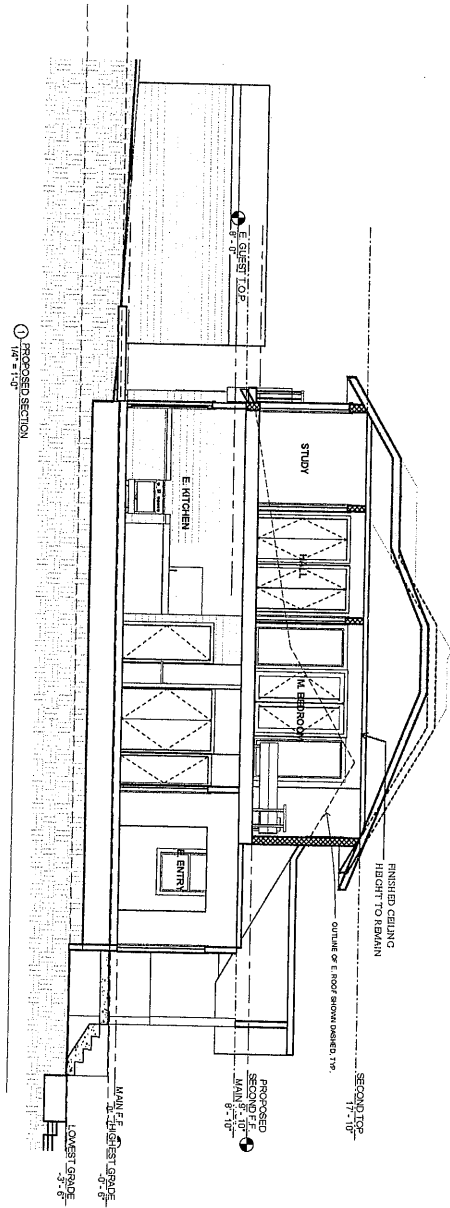
**J. Allen Sayles  
Architects**

880 San Diablo Ct  
Suite 202  
Lafayette, CA 94549  
allen@jaysayles.com  
925.937.3998

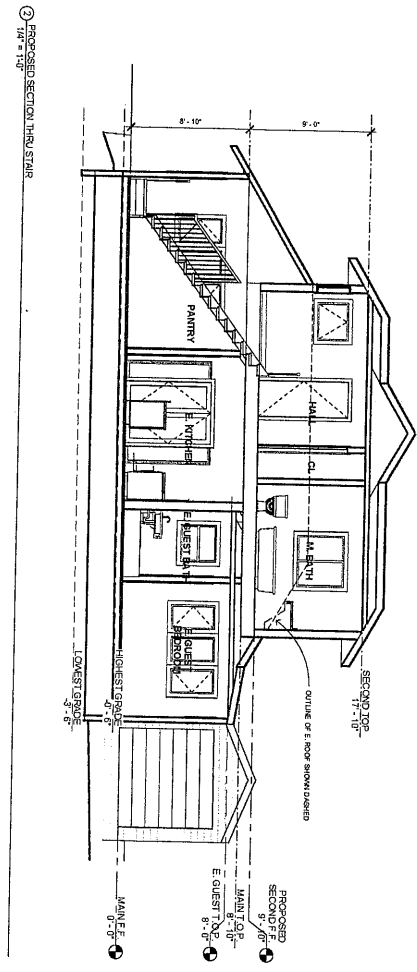
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A-32



PROPOSED SECTION  
1/4" = 1'-0"



PROPOSED SECTION THRU STAIRS  
1/4" = 1'-0"



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ADDITION & REMODEL FOR  
**ROB & ANNE NACHTWEY**  
 2943 PINE AVENUE, BERKELEY, CA 94705  
 (925) 618-7739

SECTIONS

**J. Allen Sayles Architects**  
 3249 Mt Diablo Ct  
 Suite 202  
 Lafayette, CA 94648  
 allen@jasaarch.com  
 925.937.8888  
 © J. Allen Sayles Architects, 2020

To: Mayor Arreguin and City Council Members  
 2180 Milvia Street  
 Berkeley, CA 94604

This letter is to appeal the Zoning Adjustment Board (ZAB)'s approval of the ZONING PERMIT # ZP2020-0107. This is a residential single-family major addition that will add 729 sq ft. to 2943 Pine Avenue. The ZAB made their findings without considering our written concerns regarding the impact on 2916 Elmwood Court. 2916 Elmwood Court is located South-East of 2943 Pine Avenue.

Statement of Facts:

1. 2916 Elmwood Court has been in the Shen family for over 35 years. It is a multi generational household, and is now being occupied by 2nd - 4th generation occupants.
2. The addition at 2943 Pine Avenue blocks sunlight entering the dining area from the South-East in the early to late afternoons year round. We depend on the current sunlight as the major source of direct light into the first floor. Otherwise, it would be so dark that we need to turn on artificial lights throughout the day. The dining area is most frequently used as our place to gather together as a family.
3. The residents of 2916 Elmwood Court sent a letter to the ZAB project manager, Ms. Allison Riemer, stating our concerns regarding (1) the protected Coastal Live Oak tree that is situated at the boundary of 2918 and 2916 Elmwood Ct and near the project site (2) The impact of the addition on the path of light from the sun into our house.
4. The letter was postmarked March 31st. According to the Certified tracking information, the letter had been attempted to be delivered since April 6th. It was not successfully delivered to the ZAB office until April 13th due to office closures and finally processed April 20th, 2021. (Exhibit 1, Exhibit 2, Exhibit 3)

In non-COVID times, this letter would have been hand delivered to the ZAB secretary prior to April 8th, 2021. I inquired about doing this, but was subsequently denied by the ZAB/ Zoning Office. As such, Ms. Allison Riemer states in her April 8th, 2021 statement that "no written communications were received by the ZAB" regarding this permit.

5. The letter sent to Ms. Allison Riemer included the following:
  1. The observation that Ms. Anne Nachtwey and the project's architects have not reached out or made any contact through any medium regarding the project or the

oak tree. As of the date of this appeal (April 26, 2021), the Nachtweys and the project architects have not made contact.

2. An offer to work with the Nachtweys and their architects in properly placing the oak tree in a manner that was in keeping with the COVID-19 guidelines issued by Alameda County and the State of California.
3. Ground level, detailed photos of the tree that we included in the letter to the ZAB that demonstrates that Ms. Anne Sum's approximations of the tree was guesswork, and thus the shadow study was also inaccurate.
4. A statement that 2916 Elmwood Court was left out of the studies, but should be included due to the blocking of the sun's path.

4. The Architects for 2943 Pine Avenue use "COVID-19" as justification for why they did not specifically contact any of the surrounding neighbors. However, the county already began transitioning away from "Stay At Home" to less restrictive tiers in late January 2021.

We request the following:

1. An arborist report that appropriately defines the Critical Root Zone and the biological root zone of the protected Coastal Live Oak tree at 2918/ 2916 Elmwood Court.
  1. The rhetoric that has been used to describe the tree and suggesting that the "oak tree canopy that can be trimmed back" as a response to our concern about tree protection. Construction may impact this tree and its root system, and the effects have not yet been evaluated. A typical Live Oak root system can extend far beyond the canopy drip line  
([https://nature.berkeley.edu/garbelottowp/?qa\\_faqs=what-is-the-critical-root-zone](https://nature.berkeley.edu/garbelottowp/?qa_faqs=what-is-the-critical-root-zone))  
. This tree is a protected species within the State of California and it is illegal to do anything "injurious" to the tree within California and within the City of Berkeley without the appropriate data. Based on the scope of work presented by the Permit, it is reasonable to conclude that the tree's critical root zone will be negatively impacted by the foundation work unless it is appropriately protected.
2. Adding story poles and validated shade/solar studies that approximate the impact of the addition on the street so that the residents may be appropriately informed of the impact of this addition. Ms. Anne Sum, the representative from J Allen Sayles Architects, stated at the ZAB board that placements and shadow studies, in particular that of the Coastal Live Oak Tree, had to be approximated using Google maps due to COVID-19. Ms. Sum claims that the programs are accurate. However, they are only as accurate as the parameters that are input into the system. If the parameters are off, then her results would also be incorrect. Validating their existing calculations is now easily achievable as the COVID-19 vaccine is open to everyone 16+, and Contra Costa/ Alameda county has entered the Orange tier.

This appeal and a copy of our check mailed to the Planning Department for the appeal will also be transmitted via facsimile (to (510) 981-6901) as per the publicly posted guidelines listed on the Land Use Division website ([https://www.cityofberkeley.info/Planning\\_and\\_Development/Land\\_Use\\_Division/Guidelines\\_for\\_Filing\\_an\\_Appeal.aspx](https://www.cityofberkeley.info/Planning_and_Development/Land_Use_Division/Guidelines_for_Filing_an_Appeal.aspx)).

Respectfully,  
2916 Elmwood Court

Exhibit 1: Proof of mailing

7019 1640 0000 2981 1188

**U.S. Postal Service™**  
**CERTIFIED MAIL® RECEIPT**  
Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)®

**OFFICIAL MAIL**

Berkeley, CA 94704

Certified Mail Fee \$3.60

Extra Services & Fees (check box, add fee \$1.00/Rate)

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|--|----|--------|
| <input type="checkbox"/> Return Receipt (hardcopy)           | \$ | \$0.00 |
| <input type="checkbox"/> Return Receipt (electronic)         | \$ | \$0.00 |
| <input type="checkbox"/> Certified Mail Restricted Delivery  | \$ | \$0.00 |
| <input type="checkbox"/> Adult Signature Required            | \$ | \$0.00 |
| <input type="checkbox"/> Adult Signature Restricted Delivery | \$ | \$0.00 |

Postage \$0.75

**Total Postage and Fees \$4.35**

Sent To *Alison Riemer*

Street and Apt. No., or PO Box No. *1947 Park St*

City, State, ZIP+4® *Berkeley CA 94704*

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

Weight: 0 lb 1.20 oz  
Estimated Delivery Date  
Mon 04/05/2021  
Certified Mail 1®  
Tracking #: 7019164000029811188

Total \$4.35

PERMIT # ZP2020-0110

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Exhibit 2: April 2nd, 2021 Letter to the ZAB concerning the addition at 2943 Pine Avenue

Subject: Concerns regarding ZONING PERMIT # ZP2020-0107

1 of 5

Subject:

ZONING PERMIT # ZP2020-0107  
2943 Pine Avenue Addition  
City of Berkeley-

Dear Ms. Allison Riemer,

I am writing concerning the second story addition at 2934 Pine Avenue.  
2943 Pine Avenue is located south-west to 2916 Elmwood Ct.

This project affects 2916 Elmwood because it will un-naturally darken the first floor. It will block the natural light from entering the first floor. On sunny days, the dining room is flooded with natural sunlight as the sun takes it position from noon until sunset.

Attached are photos of the winter sun from the dining area of the house, at about 4pm during the winter (Photos 1 and 2). While there is a mature oak tree between 2916 and 2918 Elmwood Ct., the tree only filters some light but we still receive some direct sunlight (rays of light). The canopy is much higher than the houses in question, and therefore does not significantly occlude or scatter the path of the sunlight. One can see the sun still through the branches of the tree. As it is now, we can also see parts of the water from our vantage point. Adding in this addition would occlude the rays of light entering the dining room, and our view these natural elements and of the sky. In other words, a structure as proposed would permanently occlude the sun's light path from entering the house.

Any shading or light blocking from the oak tree and ivy is temporary and is not permanent; We have asked a tree trimming service to come and do maintenance in late May 2021. The oak tree in question will be thinned appropriately and a significant portion of the ivy canopy is to be removed at that point. Therefore, these should *not* be used as a permanent reference point.

The existing "tree" as diagrammed in the shade studies and the angle taken from the pictures appears to have a density that is not representative of reality. The branches begin at least 9 feet above the ground (Photo 3). Introducing additional branches yields inaccurate results to the shade studies and

- (a) overestimates the existing oak tree's ability to "absorb" additional shadow from a solid structure;
- (b) unfairly adds more pre-existing oak-related shading in the neighboring properties than there are in reality.

We ask that the shade studies be re-done so that it appropriately reflects the oak's true positioning, in addition to an accurate sun and shadow study that also accounts for our property.

We would be happy to provide photos to the project architect to assist in locating the tree trunk and the path of growth, in addition to accurately mapping the branches. A Google Maps satellite image is lacking in high resolution detail, and cannot accurately depict the true texture and



Subject: Concerns regarding ZONING PERMIT # ZP2020-0107

2 of 5

density of a tree canopy. The various pictures and perspectives of the oak tree presented in previous documents do not capture the true sparseness of the tree canopy and the amount of light that passes through it (Photo 3).

We ask that the architect re-design the Pine Avenue addition so that it does not block the path of the sun entering our house.

This house has been home to four generations of our family and we hope that it will see more. The dining room is high traffic and has always been our place for gathering. I grew up in this house doing homework in the dining room with my grandparents, and the next generation also now does homework with my parents in the same room on the same table that I learned how to add and subtract.

Introducing the 2943 addition would block natural light from entering and make the first floor unenjoyable.

Thank you for your consideration.

Respectfully,  
The Occupants of 2916 Elmwood Court

Subject: Concerns regarding ZONING PERMIT # ZP2020-0107

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Photo 1: View from the Southwest Corner Window at sundown. Note that parts of the Bay are visible despite the oak tree foliage.

Subject: Concerns regarding ZONING PERMIT # ZP2020-0107

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Photo 2: Southwest facing window at around 4pm, January 2021.

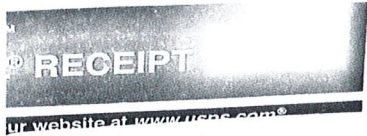
Subject: Concerns regarding ZONING PERMIT # ZP2020-0107

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Photo 3: View of the oak tree and its canopy from 2916 Elmwood Court. The fence is approximately 7.5 feet high. The lowest branch begins about 9 feet off the ground.

Exhibit 3: Response letter from Ms. Allison Riemer



PERMIT # ZP2020-0107



Department of Planning and Development  
Land Use Planning Division  
1947 Center Street, 2nd Floor  
Berkeley, California 94704-1107

Occupants  
2916 Elmwood Court  
Berkeley, CA 94705

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U.S. Postal Service™  
CERTIFIED MAIL® RECEIPT

April 21, 2021

Occupants  
2916 Elmwood Court  
Berkeley, CA 94705

Re: Use Permit ZP2020-0107 for 2943 Pine Avenue

Dear Occupants of 2916 Elmwood Court,

I received the letter you sent on April 20, 2021; based on the envelope, it appears the letter was mailed on April 2. The project was approved by the Zoning Adjustments Board on April 8, and the appeal period ends on April 27, 2021. Below are the instructions to appeal the project to the City Council.

**TO APPEAL THIS DECISION (see Section 23B.32.050 of the Berkeley Municipal Code):**  
*Please note that the new method for appeal submittals described below have been put in place to comply with the requirements of the Shelter In Place Order and shall be effective for the duration of Shelter In Place requirements.*

Mail your complete appeal to the City Clerk Department, 2180 Milvia Street, Berkeley, CA 94704 with payment of fees by check or money order included. Appeals submitted by mail must be postmarked on or before the deadline date for filing the appeal.

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

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

Please call (510-981-7433), or email me ([ariemer@cityofberkeley.info](mailto:ariemer@cityofberkeley.info)), if you have any questions.

Sincerely,



Allison Riemer, Assistant Planner



# 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  
APRIL 8, 2021

## 2943 Pine Avenue

Use Permit #ZP2020-0107 to construct a 729 sq. ft., second-story addition to an existing one-story 1,822 sq. ft. single-family dwelling, with an average height of 23 ft. 1 in., add a fifth bedroom, and legalize an existing 10 ft. fence at the rear and left side, on a lot that is existing non-conforming for lot coverage.

### I. Background

#### A. Land Use Designations:

- General Plan: LDR - Low Density Residential
- Zoning: R-1 – Single-Family Residential

#### B. Zoning Permits Required:

- Use Permit, under Berkeley Municipal Code (BMC) 23C.16.070.C, to construct an addition to a dwelling that is non-conforming by reason of violation of the maximum allowable lot coverage
- Administrative Use Permit, under BMC Section 23D.16.030, to construct a major (i.e. > 500 sq. ft.) residential addition
- Administrative Use Permit, under BMC Section 23D.16.050.A, to add a fifth bedroom to the parcel
- Administrative Use Permit, under BMC Section 23D.16.070.C, to allow a residential addition which exceeds 14 feet in average height
- Administrative Use Permit pursuant to BMC Section 23D.08.060 for a fence within the required side and rear yards over six feet in height

**C. CEQA Recommendation:** It is staff's recommendation to ZAB that this project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15301 ("Existing Facilities") and Section 15303 ("New Construction or Conversion of Small Structures") of the CEQA Guidelines. The determination is made by ZAB.

**D. Parties Involved:**

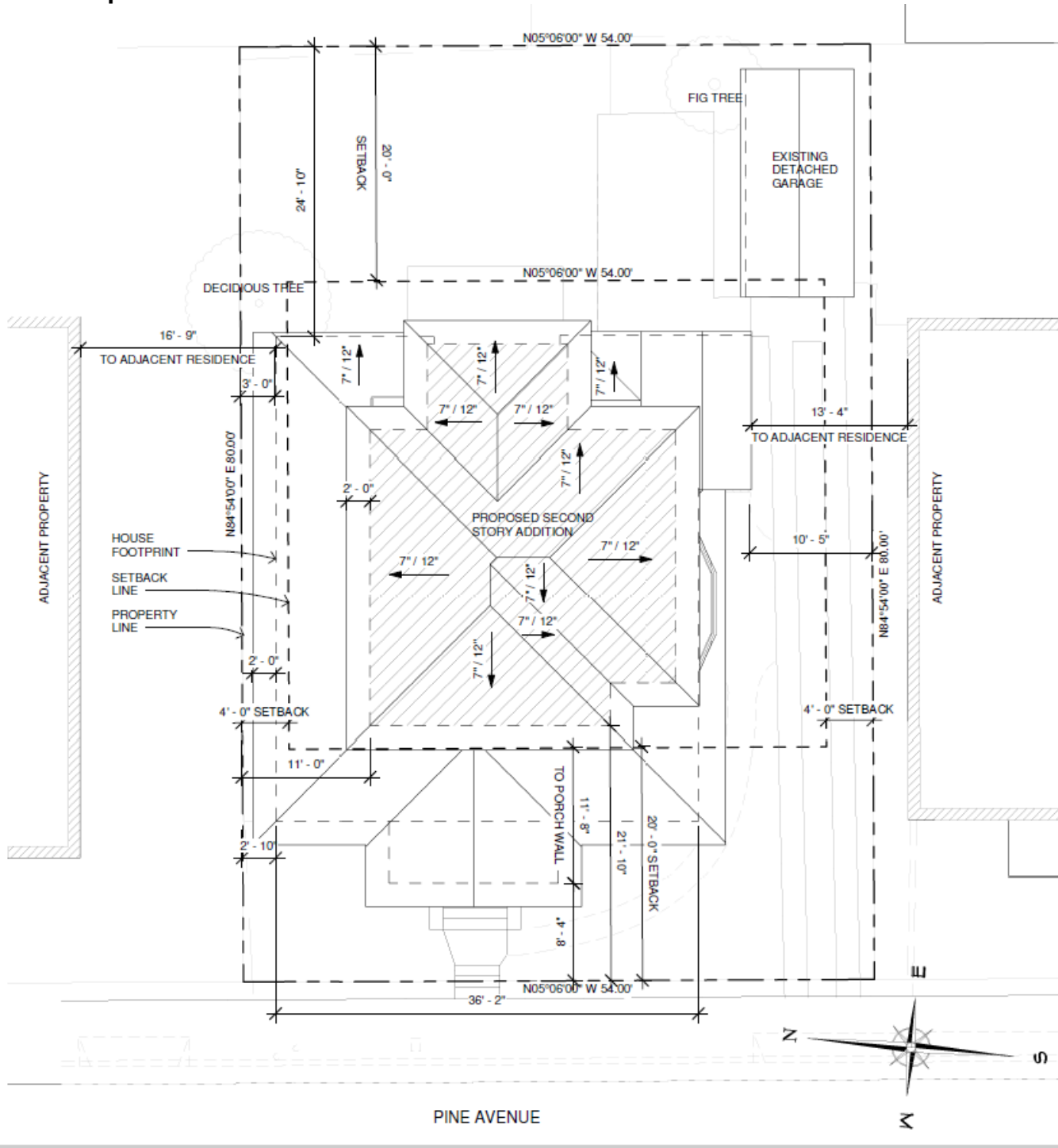
- Applicant: Anne Sum, J. Allen Sayles Architects, 3249 Mt Diablo Court, Suite 202, Lafayette
- Owner: Robert and Anne Nachtwey, 2943 Pine Avenue, Berkeley

**Figure 1: Vicinity Map**





Figure 2: Proposed Site Plan



**Table 1: Land Use Information**

| Location               |       | Existing Use            | Zoning District                 | General Plan Designation     |
|------------------------|-------|-------------------------|---------------------------------|------------------------------|
| Subject Property       |       | One-story dwelling      | R-1 - Single-Family Residential | LDR -Low Density Residential |
| Surrounding Properties | North | One-story dwelling      |                                 |                              |
|                        | South | Two two-story dwellings |                                 |                              |
|                        | East  | Two two-story dwellings |                                 |                              |
|                        | West  | Two one-story dwellings |                                 |                              |

**Table 2: Special Characteristics**

| Characteristic  | Applies to Project? | Explanation  |
|---|---------------------|--|
| Creeks<br>(Per BMC Section 17.08.045)   | No                  | No creek or culvert, as defined by BMC Chapter 17.08, exists on or within 30' of the site.   |
| Green Building Score  | No                  | The project involves a remodel and addition to the existing residential building and does not involve construction of new dwelling units.  |
| Historic Resources<br>(Per Gov't Code §15064.5, BMC Chapter 3.24 or BMC Chapter 23C.08) | No                  | The project does not propose the demolition or substantial alteration of a building over 40 years old. Staff approved a waiver from the Historical Resource Evaluation requirement and it was determined that the building is not likely to be a resource. |
| Housing Accountability Act<br>(Per Gov't Code Section 65589.5(j))                       | No                  | The project is an addition to an existing residential building that does not add residential units, and is therefore not a "housing development project" as defined by Government Code.  |
| Oak Trees<br>(Per BMC Section 6.52.010)   | No                  | There are no existing oak trees on the site.   |
| Rent Controlled Units<br>(Per BMC Chapter 13.76)  | No                  | According to the Rent Stabilization Board (RSB), the subject building is a single-family dwelling and is therefore not subject to BMC Chapter 13.76.   |
| Seismic Hazards Mapping Act<br>(Per State Hazards Mapping Act)                          | No                  | The project site is not located in an area susceptible to liquefaction, fault rupture or landslide, as defined by the State Seismic Hazards Mapping Act (SHMA). Thus, the project is not subject to additional review to comply with the Act.              |
| Soil/Groundwater Contamination  | No                  | The site is not located within the City's Environmental Management Area and is not on the Cortese List.  |
| Transit Access  | Yes                 | Bus stops for AC transit route 604 are within 300 feet of the project site on Ashby Avenue.  |

**Table 3: Project Chronology**

| Date              | Action                                   |
|-------------------|--|
| October 16, 2020  | Application submitted                    |
| November 3, 2020  | Application deemed incomplete            |
| November 24, 2020 | Revised application materials submitted  |
| December 23, 2020 | Application deemed incomplete            |
| January 25, 2021  | Revised application materials submitted  |
| February 24, 2021 | Application deemed incomplete            |
| March 4, 2021     | Revised application materials submitted  |
| March 9, 2021     | Revised application materials submitted  |
| March 10, 2021    | Application deemed complete              |
| March 25, 2021    | ZAB Public hearing notices mailed/posted |
| April 8, 2021     | ZAB hearing                              |

**Table 4: Development Standards**

| Standard                         |            | Existing | Proposed  | Permitted/<br>Required           |
|----------------------------------|------------|----------|-----------|----------------------------------|
| BMC Sections 23D.16-070 and .080 |            |          |           |                                  |
| Lot Area (sq. ft.)               |            | 4,320    | No Change | 5,000 min                        |
| Dwelling Units on Lot            |            | 1        | No Change | 1 main dwelling unit max.        |
| Bedrooms                         |            | 3        | 5         | AUP required for addition of 5th |
| Gross Floor Area of (Sq. ft.)    |            | 1,822    | 2,551     | n/a                              |
| Building Height                  | Average    | 15'-1"   | 23'-1"    | 28' max. (35' with Use Permit)   |
|                                  | Stories    | 1        | 2         | 3 max.                           |
| Building Setbacks                | Front      | 8'-4"    | No Change | 20' min.                         |
|                                  | Rear       | 24'-10'  | No Change | 20' min.                         |
|                                  | Left Side  | 2'-10"   | No Change | 4' min.                          |
|                                  | Right Side | 10'-5"   | No Change | 4' min.                          |
| Lot Coverage (%)                 |            | 42       | No Change | 40 max.                          |
| Usable Open Space (sq. ft.)      |            | 1,488    | No Change | 400 min.                         |
| Automobile Parking               |            | 1        | No Change | 1 min. for existing dwellings    |

## II. Project Setting

**A. Neighborhood/Area Description:** The subject property is located on Pine Avenue, between Ashby Avenue and Webster Street. The area is residential in nature and consists predominantly of one- and two-story single-family dwellings. The site is west of Claremont Avenue.

**B. Site Conditions:** The subject property is 4,320 square feet in area, with an existing 1,822 square foot one-story single-family dwelling on the property. The site is non-conforming for lot size as a minimum lot size of 5,000 square feet is required in the R-

1 Residential District, and the left (north) side, and front setbacks are non-conforming. The lot has coverage of 42% where 40% is permitted. There is an existing curb cut and driveway along the southern (right) side of the parcel, which leads to a one-car garage. There is an existing fence along the rear (east) and right (north) side property lines exceeds 10 feet in height.

### III. Project Description

The proposed project is a 729 square-foot second-story addition to the existing one-story single-family dwelling on the property. The proposed addition would increase the average height of the existing residential dwelling unit from 15'-1" to 23'-1". Although the existing dwelling has non-conforming front and left side yard setbacks, the addition would be outside of all required setbacks: it would be setback 21 feet-10 inches from the front property line, and 11 feet from the left side property line.

The first floor would largely remain the same, with no exterior changes, and on the second floor a new bedroom and a study would be added. The proposed study meets the definition of a bedroom from BMC Section 13.42.020, and therefore counts as a fifth bedroom on the parcel. Two small balconies would also be added on the new second floor, one on the south side overlooking the right side yard, and the other on the east side overlooking the rear yard.

No change is proposed to the existing garage.

### IV. Community Discussion

**A. Neighbor/Community Concerns:** Due to Shelter in Place, City staff sent postcards to the owners and occupants of surrounding residences to notify them of the project. Staff also posted posters in the vicinity to notify residents of the project. One neighbor located at 2918 Elmwood Court (located to the southeast) emailed concerns regarding shadows. The applicant responded to the neighbor's concerns and the applicant's responses were sent to the neighbor. On March 25, 2021, the City mailed notices for the ZAB hearing to property owners and occupants within a 300-foot radius, to interested neighborhood organizations, and the City posted notices within the neighborhood in three locations. At the time of this writing, staff has not received any written communications.

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

### V. Issues and Analysis

**A. Addition to Structure on Parcel with Non-Conforming Lot Coverage:** Pursuant to BMC Sections 23C.04.070.A and 23C.04.070.C, additions and/or enlargements of lawful non-conforming structures that are non-conforming by reason of exceeding lot coverage are permitted with a Use Permit if the existing use of the property is conforming, the addition/enlargement complies with all applicable laws, and the addition/enlargement does not increase lot coverage or exceed the height limit. As described in Site Conditions, above, the property is non-conforming for lot coverage;

the sub-standard lot has a coverage of 42% where 40% is the maximum. However, the proposed addition would not increase lot coverage, the proposed height is approximately 23 feet, where 28 feet is the maximum allowed without a Use Permit, the existing residential use is conforming, the project conforms with the Zoning Code, and conformance with other applicable laws will be confirmed during review of the building permit.

- B. Addition of a Fifth Bedroom:** While the project increases the number of bedrooms on this parcel, as defined in BMC Section 13.24.020 (Definitions), from three to five, the addition of a fifth bedroom would provide more room for the existing residents within the single-family residence and would not result in an increase in density or intensity of the parcel.
- C. Over height (>6') Fence:** An existing, unpermitted fence is ten feet in height, along the north and rear property lines, and ends near the garage at the back of the lot. (The portion of the fence in front of the house is less than six feet in height). The fence provides privacy and security for the residents of the subject property, and for residents of the surrounding properties. The fence has been in place since before the current owners purchased the property (in 2014), and there have been no neighbor complaints about the fence.
- D. General Non-Detriment for Use Permits and Administrative Use Permits:** Pursuant to BMC Section 23D.16.090.B, the Zoning Officer may issue Administrative Permits to allow residential additions to exceed 14 feet in average height, up to the district limit of 28 feet, and allow a major residential addition, so long as the proposal would not unreasonably obstruct sunlight, air or views.

Sunlight/Shadow: Shadow studies submitted by the applicant document the addition's projected shadow angles and lengths at three times throughout the day during the summer and winter solstice. The project involves a new second floor, thus increased shadows would occur to the abutting properties to the rear (east) and left (north), and to the northwest across Pine Avenue. The studies show that the addition would create an incremental increase in shadows on two neighboring dwellings, 2932 Pine Avenue and 2939 Pine Avenue, as follows:

- Two hours after sunrise on the winter solstice, shadows on the east side of the dwelling at 2932 Pine Avenue would increase and cover a living room window;
- At noon on the winter solstice shadows on the south side of the dwelling at 2939 Pine Avenue would increase, and reach the bottom third of a bedroom window;
- Two hours after sunset on the winter solstice shadows on the south side of the dwelling at 2939 Pine Avenue would increase and cover the majority of a bedroom window, and would fully cover two office windows.

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

Air: As discussed above, the proposed second story would not increase the footprint of the dwelling, and meets all setback requirements of the R-1 district. The addition is found to be consistent with the existing development and building-to-building separation pattern – or air – in this R-1 neighborhood because the addition would be outside of all required setbacks, and would not exceed height or story limits. Therefore, there would be minimal if any air impacts.

Views: The addition would not result in obstruction of significant views in the neighborhood as defined in BMC Section 23F.04.010 (Definitions). The neighborhood is generally flat and developed with one- and two-story residences that filter or obscure most views that may be available of the Berkeley hills or the Golden Gate Bridge from off-site view angles, and the area includes mature vegetation which provides additional visual screening.

### **E. Additional Findings**

Privacy: The new second-story windows would create new views from the subject residence to adjacent properties, but the new windows would be outside of required setbacks. Mature vegetation would separate the addition from adjacent properties, except for the front dwelling at 2947 Pine Avenue, which is next to the driveway for 2943 Pine Avenue; new views of 2947 Pine Avenue would be of the roof of the front dwelling. In addition, the new second story windows would be modest in scale, similar in size and frequency of those on the existing first story. The proposed second story would consist of one bedroom, and a study, and not common living spaces used for congregating. The terrace off of the master bedroom is only accessible through the bedroom and it is too narrow to allow many people at a time. Since it would overlook the wider side yard of the subject property, including the driveway, minimal privacy impacts are anticipated.

**F. General Plan Consistency:** The 2002 General Plan contains several policies applicable to the project, including the following:

1. Policy LU-7–Neighborhood Quality of Life, Action A: Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area.
2. Policy UD-16–Context: The design and scale of new or remodeled buildings should respect the built environment in the area, particularly where the character of the built environment is largely defined by an aggregation of historically and architecturally significant buildings.
3. Policy UD-24–Area Character: Regulate new construction and alterations to ensure that they are truly compatible with and, where feasible, reinforce the desirable design characteristics of the particular area they are in.
4. Policy UD-32–Shadows: New buildings should be designed to minimize impacts on solar access and minimize detrimental shadows.

Staff Analysis: As discussed above, the project would not substantially block views, cast shadows, or create impacts on the privacy of adjacent neighbors. The proposed second story addition occurs within the existing building footprint, meets

the R-1 District development standards, and would not increase the non-conforming lot coverage. Additionally, the project is consistent with the single-family use and residential design character of other buildings in the vicinity.

## VI. Recommendation

Because of the project's consistency with the Zoning Ordinance and General Plan, and its minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board **APPROVE** Use Permit #ZP2020-0107 pursuant to Section 23B.32.030 and subject to the attached Findings and Conditions (see Attachment 1).

### Attachments:

1. Findings and Conditions
2. Project Plans, dated March 10, 2021
3. Notice of Public Hearing

**Staff Planner:** Allison Riemer, [ariemer@cityofberkeley.info](mailto:ariemer@cityofberkeley.info), (510) 981-7433



Index &  
Administrative Record  
ZAB Appeal:  
2943 Pine  
Avenue

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

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

or from:

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



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

**ZAB APPEAL: 2943 PINE AVENUE, USE PERMIT #ZP2020-0107**

Notice is hereby given by the City Council of the City of Berkeley that on **TUESDAY, SEPTEMBER 28, 2021 at 6:00 P.M.** a public hearing will be conducted to consider an appeal of the decision by the Zoning Adjustments Board to approve Use Permit #ZP2020-0107, to construct a 729 square-foot, second-story addition to an existing one-story 1,822 square-foot single-family dwelling, with an average height of 23 feet 1 inch, add a fifth bedroom, and legalize an existing 10-foot fence at the rear and left side, on a lot that is existing non-conforming for lot coverage.

A copy of the agenda material for this hearing will be available on the City's website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of **SEPTEMBER 16, 2021**. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology.**

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

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

---

Mark Numainville, City Clerk

Mailed: September 14, 2021

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

*If you challenge the above in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Berkeley at, or prior to, the public hearing. Background information concerning this proposal will be available by request from the City Clerk Department and posted on the City of Berkeley webpage at least 10 days prior to the public hearing.*

