
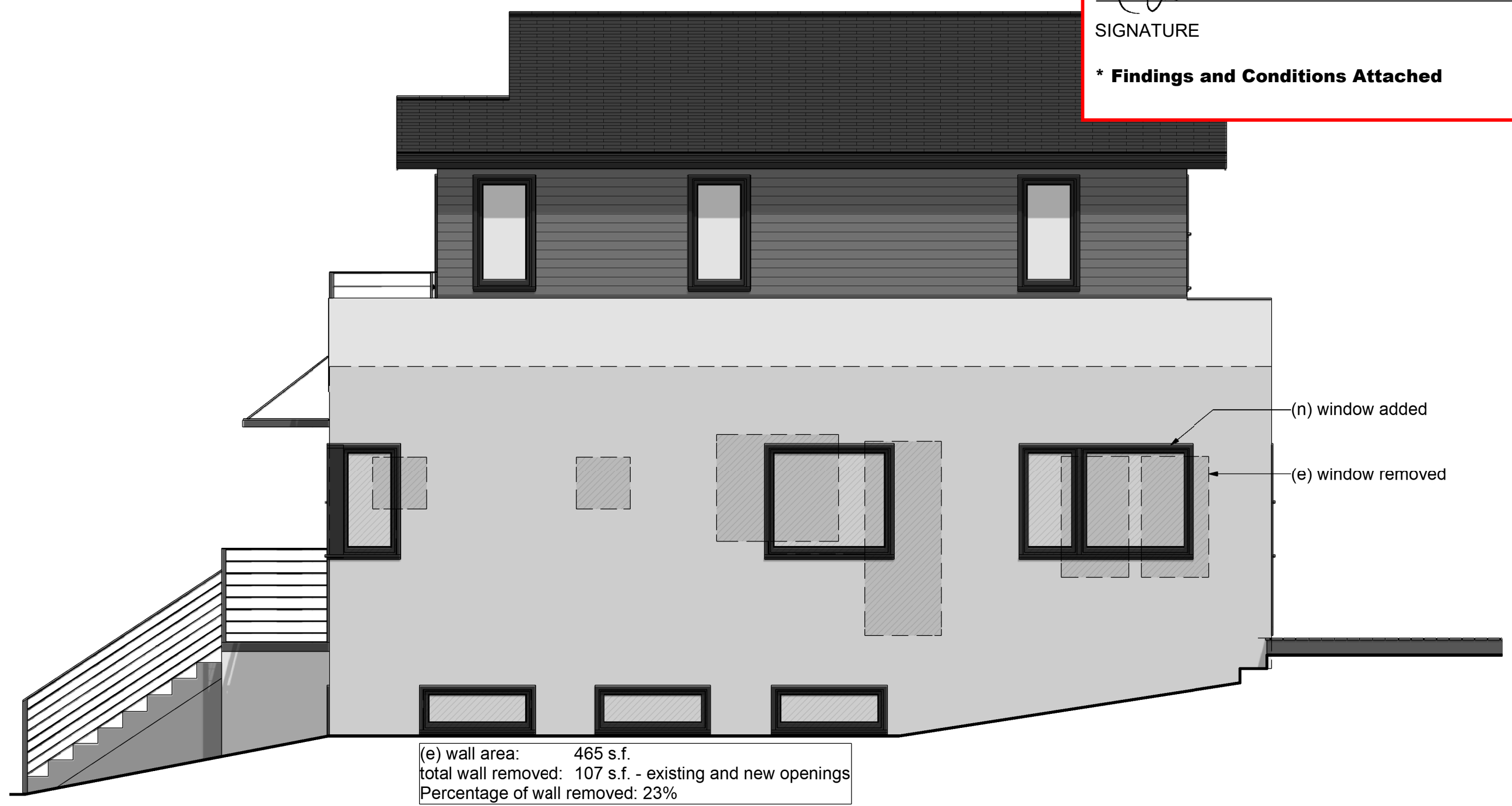


PLANS APPROVED BY ZONING ADJUSTMENTS BOARD


 SIGNATURE DATE
 December 9, 2021
 * Findings and Conditions Attached

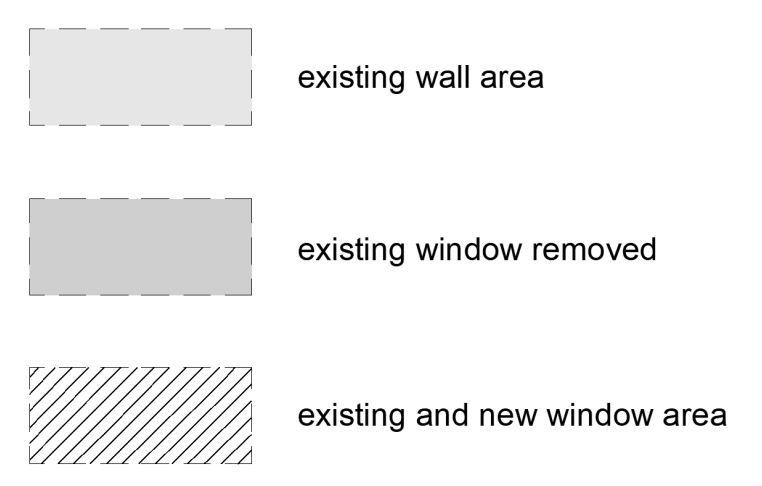


4 Proposed South Elevation - Right Side



3 Proposed East Elevation - Rear

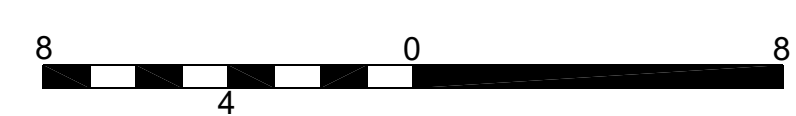
Wall demolition Notes:
 Total wall area: 1,921 s.f.
 Total wall removed: 520 s.f. (existing and new openings)
 Percentage removed: 27.1%



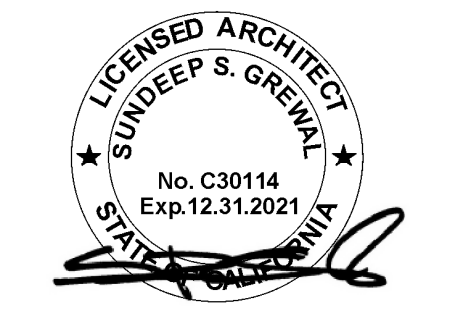
2 Proposed North Elevation - Left Side



1 Proposed West Elevation - Front



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



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

Sheet Contents:
 Demolition Diagram

These designs, drawings and specifications are the property of Studio GS, Inc. Any use in part or in whole without the written permission of Studio GS, Inc. is prohibited by law.
 © 2021 by Studio GS, Inc.

Project No:
 20-13-420

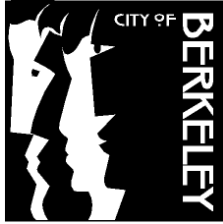
Drawn By:
 SSG

Checked By:
 SSG

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

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

Sheet
A5.1



Planning and Development Department
Land Use Planning Division

PROOF OF SERVICE

DATE: December 20, 2021

TO: Whom It May Concern

FROM: Melinda Jacob, OSII

SUBJECT: **USE PERMIT #ZP2021-0001 – 1643-1647 CALIFORNIA STREET**

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

ZONING ADJUSTMENTS BOARD NOTICE OF DECISION

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

Sundeep Grewal
Studio G+S Architects
2223 Fifth Street
Berkeley, CA 94710

Ido & Tamar Oppenheimer
1643 & 1647 California Street
Berkeley, CA 94703

- By First Class Mail - I am readily familiar with the City's practice for collecting and processing of correspondence for mailing. Under the practice, the correspondence is deposited with the U.S. Postal Service on the same day as collected, with First Class postage thereon fully prepaid, in Berkeley, California, for mailing to the addressee following ordinary business practices.
- By Personal Service - I caused each such envelope to be given to the City of Berkeley mail service person to personally deliver to the office of the addressee.

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 20, 2021 at Berkeley, California.

Melinda Jacob, OSII

Jacob, Melinda

From: Zoning Adjustments Board (ZAB)
Subject: FW: The HAA as applied in the December 9 ZAB hearing

From: Anna Cederstav AIDA <acederstav@gmail.com>
Sent: Monday, December 27, 2021 10:31 PM
To: Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>; Armour, Nicholas <NArmour@cityofberkeley.info>; Adam Safir <cederfir@hotmail.com>
Subject: The HAA as applied in the December 9 ZAB hearing

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

To whom it may concern:

These comments are in reference to the December 9, 2021 ZAB hearing, in which the ZAB voted unanimously to approve a project proposed for 1643-47 California street in Berkeley. We would like to request reconsideration of that decision for multiple reasons, the most important being what we see as a potentially incorrect application of the Housing Accountability Act (HAA). If posted as decided at the ZAB hearing, we plan to appeal this decision to the City Council, but we believe it is in the City's best interest to resolve this matter and reconsider the project before it is allowed to reach that level. We are therefore submitting some of our comments about this process and decision in advance of any appeal.

In short, the decision made, if allowed to stand, threatens all of zoning in Berkeley and significantly reduces the power of the City to protect the character of its neighborhoods, as well as the availability of lower income housing within those neighborhoods. The City's interpretation of the law and the ZAB decision made based on that interpretation is entirely counter to the intended purposes of the HAA (to address the housing crisis and particularly the lack of affordable homes at below market rates in California) and could promote massive development of luxury housing in Berkeley, all but eliminating affordable residences in the City. That's because under the current interpretation, there would be no way for the city to stop property owners from enlarging their homes and building to the max limitations of their property – regardless of whether or not their properties comply with existing zoning regulations.

The project proposed for 1643-47 California is on a site where an original duplex was illegally converted by the project proponents from two one-bedroom units into one single-family residence long ago, and which has been owner occupied as such for decades. The proponents now seek to expand the building from a total of 1,342 to 3,763 square feet by reconvert it into a duplex, not creating any new units in the building but rather reducing the size of one unit to a smaller apartment (501 sq ft.), and massively increasing the size of the other unit to become an enormous 5-bedroom, 4-bathroom unit including a home gym (3,262 sq ft. total).

The project in question is – as stated in the staff report – “non-conforming for lot coverage, density, and yards” and “does not comply with the applicable, objective zoning standards.” Nevertheless, the ZAB decided to approve the project over the strong objections of adjacent neighbors and without even considering requiring modifications such as lowering the building height or reducing the amount of square footage to be added.

It was evident during the hearing that the ZAB made its decision in large part because it felt forced under the HAA to approve any project that increases housing availability – defined at one point in the discussion as being the units, number of bedrooms, or square footage in the development. The ZAB also felt it could not require modifications because there are not yet objective standards that have been passed by Berkeley for implementing the HAA.

Further, it was clear at the hearing that the ZAB had little prior experience in applying the law; one ZAB member noted that this was the first time they were asked to review this kind of project with the HAA being in force. At one point, a

section from a memo from the city attorney that much of the ZAB did not seem to fully understand was used to suggest that the ZAB had no option other than to vote to approve the project.

The process of consideration and review of this project and the decision made by the ZAB sets a dangerous precedent for zoning and housing development in Berkeley and should not be allowed to stand. If the decision made is upheld without further consideration as to the applicability of the HAA, then in effect no future expansion project in Berkeley could be denied because all such projects are likely to request an increase in units, bedrooms, or square footage. This is clearly not the intent of the law. An interpretation of the law along these lines would contravene the HAA in that it would force the city to permit all proposed housing expansions up to the maximum size allowable for the lot even when zoning standards are being violated. The result would be one in which all small – and thus affordable and lower income – housing in Berkeley would eventually disappear.

Our reading of the HAA and experience during the ZAB meeting highlights the following inconsistencies, among others.

1) The HAA states that a preliminary housing development application is to be considered complete when the applicant has provided information including “The number of proposed below market rate units and their affordability levels” (Section 65941.1.10). **This requirement exists because the restrictions placed on cities via the HAA apply largely in cases where the proposed development is intended for “very low, low, medium or moderate income housing.” (Section 65589.5(d))** We saw no information in the application for this project indicating that there has been a discussion as to whether or not the proposed project falls into these categories of affordable housing.

2) The city staff report to the ZAB, in section B “Housing Accountability Act Analysis” suggests that the ZAB can only deny approval of a project if there is a finding of significant adverse impact on public health, and no feasible way of mitigating such impact. However, **a close read of the law, shows that these conditions ONLY APPLY in the event of a “housing development project, ..., for very low, low-, or moderate-income households, or an emergency shelter” (Section 65589.5(d))**

3) Given the above limitation related to the affordability of the housing to be developed, the city should assess whether the proposed development fits into an affordable housing category prior to deciding whether this section of the HAA applies. There are two ways for a housing development to qualify under the HAA (Section 65589.5 (h) (3, 4); either 20% of the units to be developed must constitute low-income housing and be guaranteed to be maintained as such for at least 30 years, or 100% of the units to be developed must fall in the category for moderate income housing. The law provides specific guidance as to how to make these determinations based on recent local income data. Considering the units proposed in this project, we do not see how either of these two conditions could possibly be met for the proposed project, nor do we see any evidence of the city having tried to make the determination. The proponents also explicitly state that they intend to continue using the building as their personal residence and for their son.

4) **Assuming that the above affordable housing requirements are not met by the project, the section of the law cited in the staff report as limiting the rights and power of the city does not apply to this project.** The only other limitations the HAA places with respect to approval for housing developments are delineated in section 65589.5 (j). The staff report to the ZAB clearly states that “the proposed project does not comply with the applicable, objective zoning standards.” Therefore, it is only subsection 2 of section J that applies in this case:

(2) (A) If the local agency considers a proposed housing development project to be inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision as specified in this subdivision, it shall provide the applicant with written documentation identifying the provision or provisions, and an explanation of the reason or reasons it considers the housing development to be inconsistent, not in compliance, or not in conformity as follows:

(i) Within 30 days of the date that the application for the housing development project is determined to be complete, if the housing development project contains 150 or fewer housing units.

5) The above suggests that – rather than believing it has to feel forced to approve this project -- the only thing the city would need to comply with the HAA in this case, is to a) request affordability data on the project to be

able to consider the project complete and b) assuming the low to moderate income limitation doesn't apply to the project, issue a finding as to why the project is not in compliance with current applicable objective zoning standards within 30 days of the project proposal being deemed complete. There is no reason for the ZAB or City to feel it must approve the project.

6) The staff report also suggested that if it chose to do so, there is nothing that hinders the ZAB from requesting "modifications to the project to mitigate impacts or avoid specific adverse impacts on surrounding properties, so long as the project is not approved at a reduced density." That fact doesn't mean that the ZAB has to approve the project, again considering that the property already fails to meet the zoning standards.

7) Further, during the hearing, it was suggested that the law should be interpreted to mean that cities are prevented from requiring that proposed developments reduce the project square footage. This is counter to the traditional interpretation of density which is taken to mean number of units. Applying a definition based on square footage or bedrooms for determining density should not be allowed because the purpose of the law – as set out in extensive detail in the beginning sections – is clearly to provide AFFORDABLE housing in California, and to make sure that cities do not develop in ways that prevent lower income residents from being able to continue living there. Interpreting this law to mean that Berkeley must approve the conversion of a duplex consisting of two one-bedroom units into a duplex consisting of a small apartment and a gigantic luxury home clearly runs counter to the purpose of the law and sets a dangerous precedent for its interpretation in Berkeley and other California cities.

8) To correctly implement the HAA in the spirit of the law and for the purpose of safeguarding affordable housing in Berkeley, the City and ZAB should-- rather than approving the conversion of a small, affordable living unit into a giant luxury home -- safeguard its right to impose limits on the conversion of affordable units into luxury properties, as it is fully entitled to do when a project that does not provide very low to moderate income housing does not comply with applicable objective zoning standards.

Again, the purpose of the HAA is to increase the amount of affordable housing available in California, and to bring clarity and efficiency to permit processes and timelines. The law should not be interpreted to prevent cities from enforcing zoning standards and laws related to projects that do not in any way contribute to – or worse, detract from—the provision of affordable or lower income housing. The project in question in fact REDUCES the amount of affordable housing in Berkeley and thus should not benefit from the HAA.

We will appreciate a response to this email as well as to our prior requests for information regarding the December 9 ZAB hearing and Berkeley City guidance on how to apply the HAA.

Thank you so much and best wishes for a happy new year!

-Anna Cederstav
1609 Virginia Street

January 10, 2022

To: The Berkeley City Council

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

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

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

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

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

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

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

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

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

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

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

THE FACTS

The project

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

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

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

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

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

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

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

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

The ZAB hearing and decision¹

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

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

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

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

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

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

THE LAW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DISCUSSION AND ANALYSIS

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

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

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

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

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

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

³ See for example:

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

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

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

Further, the opinion states that

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you for your consideration and action on these matters,



Anna Cederstav



Adam Safir



Kay Bristol

Owners of properties adjacent to 1643-47 California.

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

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

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

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

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

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

Mark Numainville, City Clerk

Mailed: April 12, 2022

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

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

Page 63 of 63

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.

SUPPLEMENTAL COMMUNICATIONS AND REPORTS 2

BERKELEY CITY COUNCIL REGULAR MEETING

DATE OF MEETING: TUESDAY, APRIL 26, 2022

TIME: 6:00 P.M.

The agenda packet for this meeting was distributed/posted on April 14, 2022. Communications in this supplement were received after 5pm on April 19, 2022. This communication packet was distributed/posted on April 25, 2022.

Consent Calendar

Each item in this supplement follows the corresponding item on the City Council Agenda for this date.

Item #29: Budget Referral: Hopkins Corridor Bike, Pedestrian, and Placemaking Improvements

- 45. Josie Gerst
- 46. Michael Katz
- 47. Donna Dediemar
- 48. David Brandon
- 49. Clifford Fred
- 50. Zelda Bronstein

Action Calendar – New Business

Item #32: Issuance of \$40,000,000 General Obligation Bonds for Measure O – Affordable Housing

- 51. Supplemental material, submitted by Finance

Action Calendar – Public Hearings

Item #33: ZAB Appeal: 1643-1647 California Street, Use Permit #ZP2021-0001

- 52. Sunny Grewal, on behalf of studio g+s Architects
- 53. Adam Safir

Action Calendar – New Business

Item #38a: Development of Crisis Stabilization Program in Berkeley

54. Supplemental material, submitted by the Homeless Commission

55. Supplemental material, submitted by Councilmember Taplin

Benado, Tony

From: Sunny Grewal <sunny@sgsarch.com>
Sent: Friday, April 22, 2022 12:29 PM
To: City Clerk
Cc: All Council; Riemer, Allison; Ido Oppenheimer
Subject: Re: 1636 California St Appeals UP ZP2021-0001

Thank you for the information Tony.

Sunny Grewal
studio g:s ARCHITECTS
2223 5th. Berkeley, CA 94710
510.548.7448 office
510-393-5691 cell
www.sgsarch.com

On Fri, Apr 22, 2022 at 12:17 PM City Clerk <clerk@cityofberkeley.info> wrote:

Good day Sunny,

This was included in the Communications Packet and is item #4. Since you addressed your email to "All Council", they all received a copy of it. The information you sent is public information and are distributed as follows.

Please review the Written Communications section on how communications to Council are distributed to the public.

https://www.cityofberkeley.info/Clerk/City_Council/City_Council_General_Information.aspx

- Written communications addressed to the City Council and submitted to the City Clerk Department by 5:00 p.m. fifteen days before the Council meeting are placed on the next available Council agenda.
- Written communications pertaining to an item on the agenda which are received after the deadline for inclusion in the agenda packet will be accepted and distributed according to the following timeline (see link provided above). They are called Supplemental Communications 1, 2 and 3.

Since all communications are public information it can be viewed via our Records Online portal at:

<https://www.cityofberkeley.info/recordsonline/paFiles/cqFiles/index.html>

Search Type: Communications Date Range: 4/26/22 to 4/26/22

Addressing the last sentence in your email, please be aware that communications are not included in the agenda packet.

Thank you,

Tony Benado

City Clerk's Office

From: Sunny Grewal <sunny@sgsarch.com>

Sent: Friday, April 22, 2022 11:31 AM

To: All Council <council@cityofberkeley.info>; Riemer, Allison <ARiemer@cityofberkeley.info>; Buckley, Steven <StBuckley@cityofberkeley.info>; Klein, Jordan <JKlein@cityofberkeley.info>; Ido Oppenheimer <idoopp@gmail.com>

Subject: Re: 1636 California St Appeals UP ZP2021-0001

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Hi Allison and city council,

Regarding the public hearing for appeal of 1636 California St (UP ZP2021-0001), we had emailed correspondence to council@cityofberkeley.info email. We noticed that this correspondence is not included in the project packet in the 2022-04-026 council agenda. This correspondence is very important as it relates to all neighbors who SUPPORT this project.

We request that this correspondence be given to all city council members before the 26th. hearing.

See attachments below.

Also, was there any additional correspondence the city received from the public that too was not included in the agenda?

Sunny Grewal
studio g+s ARCHITECTS

2223 5th. Berkeley, CA 94710
510.548.7448 office
510-393-5691 cell
www.sgsarch.com

On Mon, Apr 11, 2022 at 2:34 PM Sunny Grewal <sunny@sgsarch.com> wrote:

Please see letters in support of the ZAB approved project at 1636 California St. that is scheduled for city council meeting on April 26th. 2022.

Let me know if you have any questions.

Sunny Grewal
studio g+s ARCHITECTS

2223 5th. Berkeley, CA 94710
510.548.7448 office
510-393-5691 cell
www.sgsarch.com

Benado, Tony

From: Adam Safir <cederfir@hotmail.com>
Sent: Friday, April 22, 2022 1:20 PM
To: All Council
Subject: Supplemental material from appellant on items 33 of 4/26 City Council agenda
Attachments: Appellant slides for 04-26-22 Council Meet Item 33.pdf; 12-09-21 ZAB corrected transcript_item7_1643-1647 California.pdf

Categories: Orange Category

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear Mayor and City Council members,

Attached please find a slide deck that we will review in next Tuesday's City Council meeting associated with item #33 (appeal of ZAB decision on ZP2021-0001; we are the appellants). Here is a short summary of the key points:

- The ZAB, in reviewing a memo from City Planning, misinterpreted the HAA and as a result ended a conversation about limiting the square footage of an upper story addition with a vote to approve the project. The city attorney has since determined that ZABs HAA interpretation was incorrect and that the city has no restrictions with respect to limiting the square footage or number of bedrooms of the addition. Thus, at a minimum this project should be returned to the ZAB for reconsideration, so that they can use the legally correct interpretation of the HAA in making their decision.
- We have outlined a number of potential changes to this project that would benefit the city (retention of low income housing) while addressing the concerns of adjacent neighbors who are opposed to the upper floor addition.

Also attached is a transcript of the relevant section of the ZAB hearing. Note that the version the city created had some errors and gaps that we have fixed (strike-throughs and lower-case text added) by listening to the recording of the ZAB hearing. We have also added minute markers throughout this transcript, in case you would like to confirm anything by listening to the ZAB recording yourselves.

Sincerely,
Anna, Adam, Kay

[start of section for ZP2021-0001 @ 1:03:25] LET'S PROCEED WITH OUR NEXT ITEM. THANK YOU, EVERYBODY FOR THAT. NEXT ITEM IS 1643 CALIFORNIA STREET, 1643 AND 47 CALIFORNIA STREET. SAMANTHA, WHO IS OUR PLANNER ON THIS?

>> NICK ARMOUR.

>> LET ME SHARE MY SCREEN FOR A SECOND. ALL RIGHT. GOOD EVENING, WE ARE DISCUSSING USE PERMITS ZP2021-0001 AT 1643 AND 1647 CALIFORNIA STREET TO CREATE A NEW LOWER STOREY BASEMENT AND CONSTRUCT A NEW SECOND STOREY and modify the existing duplex layout RESULTING IN 3,700 DUPLEX on an existing property. The zoning permits that are triggered are ~~[THERE IS]~~ A USE PERMIT TO ENLARGE a structure for reasons of lot coverage. ~~{CLEAR CONFORMING STANDARD}~~. A use permit enlarge A non-conforming STRUCTURE THAT IS NONCONFORMING BY REASONS OF THE ALLOWABLE DENSITY. ADMINISTRATIVE USE PERMITS TO HORIZONTALLY EXTEND TWO NONCONFORMING YARDS FRONT AND REAR. And administrative use permit a ~~AND~~ MAJOR RESIDENTIAL addition. A ~~DECISION~~ ANOTHER TO ALLOW and addition OVER fourteen 4 FEET IN HEIGHT AND lastly an ADMINISTRATIVE USE PERMIT TO CONSTRUCT A FIFTH BEDROOM. THIS SUBJECT SITE is located in north Berkeley ON THE EAST SIDE OF CALIFORNIA STREET AT THE CORNER OF CALIFORNIA AND VIRGINIA STREETS. SURROUNDING AREA CONSISTS OF residential uses ranging from ONE AND TWO-STOREY single FAMILY DWELLINGS and two story multifamily dwellings. SUBJECT PROPERTY IS A SMALL RECTANGULAR LOT. ORIENTED IN THE EAST/WEST DIRECTION AND

APPROXIMATELY 3100 SQUARE FOOT IN ~~MAIN~~ total AREA. It features a one story building ORIGINALLY CONSTRUCTED AS A DUPLEX. AT SOME POINT IN THE PAST THE KITCHEN OF THE LEFT SIDE UNIT WHICH IS 1643 CALIFORNIA WAS REMOVED WITHOUT PERMITS AND A DOORWAY was installed between the units effectively CONVERTING THE HOUSE TO A SINGLE-FAMILY HOUSE WITHOUT THE NECESSARY APPROVAL OF A USE PERMIT TO REMOVE THE DWELLING. THE PROPERTY AND STRUCTURE IS CURRENTLY NONCONFORMING due to several reasons. The property is ~~IT'S~~ NONCONFORMING TO THE LOT COVERAGE currently AT 50% COVERAGE WHERE 45% IS THE LIMIT FOR ONE-STOREY STRUCTURE. The property is nonconforming to the allowable density containing only two using where only ONE UNIT IS PERMITTED. THIS IS PRIOR TO THE UNAUTHORIZED REMOVAL OF 1643. AND THE STRUCTURE IS LOCATED WITHIN THE FRONT REAR AND LEFT SIDE YARDS. THE PROJECT WOULD MAKE SEVERAL ALTERATIONS. THE RESIDENTIAL STRUCTURE WOULD BE SHIFTED BY ONE INCH TO THE SOUTH to create a conforming A SIDE SETBACK. PROPOSAL WOULD RESTORE THE LEFT DWELLING UNIT at 1643 California but would ~~AND~~ SHRINK the size of this unit from 650 square feet TO 510 ~~105~~ SQUARE FEET. THE FLOOR PLAN OF THE main level of the RIGHT UNIT WHICH IS 1647 CALIFORNIA WOULD BE MODIFIED TO SERVE AS A MAY BE LIVING AREA WITH AN OPEN FLOOR PLAN KITCHEN, DINING, LIVING ROOM AND FULL BATHROOM. The structure would be expanded by ~~IT WILL~~ CREATING A NEW BASEMENT LEVEL contained below the existing building footprint THAT IS solely

SERVING 1647 CALIFORNIA. THIS **proposal** WOULD also ADD A NEW SECOND LEVEL ON TOP OF THE EXISTING STRUCTURE also SOLELY SERVING 1647 CALIFORNIA. This second story would ~~AND~~ STEP IN AT THE FRONT of the building to create ~~TO PROVIDE~~ A BALCONY AND step in from the rear to COMPLY WITH THE REAR YARD SET BACK. In total 1647 California WOULD EXPAND BY 2,612 SQUARE FOOT from 650 square feet to 3262 square feet in total. STAFF HAS RECEIVED SEVERAL COMMUNICATIONS REGARDING THIS PROJECT BOTH IN SUPPORT AND ~~ON~~ OPPOSITION. CONCERNS that have been raised INCLUDE THE NEIGHBORS TO THE ~~NORTHEAST~~ north, east AND SOUTH RAISING CONCERNS DUE TO THE PROPOSED INCREASE IN SIZE on a small lot. CONCERNS FROM THE SAME NEIGHBORS REGARDING THE IMPACTS TO PRIVACY, SHADOWS AND LIGHT ACCESS FROM THE TWO-STOREY DESIGN AND INCREASE IN HEIGHT AND CONCERNS THAT THE PROJECT IS OUT OF SCALE WITH THE NEIGHBORHOOD AND THE SURROUNDING PROPERTIES ESPECIALLY GIVEN THE EXISTING NONCONFORMITY'S ON THE PROPERTY. SUPPORT OF THE APPLICATION INCLUDES THE IMPROVED STRUCTURE AND PROJECT SITE AND RESTORATION OF THE SECOND DWELLING UNIT. THIS PROPERTY, OR THIS PROJECT IS CONSIDERED TO BE SB-330 COMPLIANT AND THIS DECEMBER 9TH ZAB HEARING REPRESENTS THE FIRST PUBLIC HEARING FOR THE proposed PROJECT since it was deemed complete. THE CITY CAN HOLD UP TO FOUR ADDITIONAL PUBLIC HEARINGS on this project if needed BUT ONE of those MUST BE reserved ~~CONCERNED~~ FOR COUNCIL APPEAL WHEN NECESSARY. SIMILAR TO THE LAST PROJECT THAT WE DISCUSSED HERE,

THE HOUSING ACCOUNTABILITY ACT IS A MAJOR COMPONENT OF THIS APPLICATION. THIS REQUIRES IF THE ZAB IS GOING TO DENY A PROJECT, IT MUST MAKE SPECIFIC WRITTEN FINDINGS SUPPORTED BY SUBSTANTIAL EVIDENCE THAT IT HAS A SIGNIFICANT IMPACT ON PUBLIC SAFETY unless disapproved or approved at a lower density . OR THERE IS NO FEASIBLE METHOD TO satisfactorily MITIGATE OR AVOID THE SPECIFIC ADVERSE IMPACTS other than the disapproval or approval at a lower density . THIS EXISTING STRUCTURE IS NONCONFORMING for THE LOT COVERAGE DENSITY AND YARDS as previously explained . THE PROPOSED additions CONDITIONS WOULD CONTINUE THE NONCONFORMITIES therefore the project ~~THUS IT~~ DOES NOT COMPLY WITH THE applicable objective zoning ~~EXISTING~~ STANDARDS.

However the project ~~HAA~~ IS ELIGIBLE FOR ZONING ADJUSTMENTS using the use permits process AND THERE ARE NO OBJECTIVE STANDARDS OR findings for considering such permits so the HAA still applies to this project ~~FINES~~ . ~~SO~~ THEREFORE THE CITY MAY NOT DENY THE PROJECT OR APPROVE IT TO REDUCE DENSITY WITHOUT BASE THE DECISION ON THE written FINDINGS required by the HAA. [**@1:09:31**] HOWEVER THE CITY MAY REQUEST that MODIFICATIONS to the project are made TO MITIGATE IMPACTS OR AVOID ADVERSE IMPACTS ON SURROUNDING NEIGHBORING PROPERTIES SO LONG THE PROJECT IS NOT APPROVED AS A REDUCED DENSITY. THERE ARE SEVERAL FINDINGS REQUIRED TO BE MADE IN ORDER TO APPROVE THE PROJECT. FIRSTLY, THIS INCLUDES AN EXPANSION OF A BUILDING THAT IS NONCONFORMING TO THE RESIDENTIAL LOTS COVERAGE. THE CURRENT

SITE IS AT 50% COVERAGE WHERE 45% IS THE LIMIT FOR THIS PROPERTY for a single family house. THIS ADDITION WOULD REMOVE AN EXISTING SHED IN THE REAR YARD WHICH ~~does~~ REDUCES THE LOT COVERAGE TO 44% ~~42%~~ but it also creates a two story house which ~~AND~~ DECREASE THE ALLOWABLE LOT COVERAGE 40%. BECAUSE THIS project WOULD REDUCE the nonconformity FROM 5% over the allowable limit TO 4% OVER THE ALLOWABLE LIMIT, and THIS ADDITION IS LOCATED OVER THE EXISTING COVERED AREA, IT DOES NOT INCREASE THE NONCONFORMING LOT COVERAGE. And THE addition does consist of a second story but the ADDITION DOES COMPLY WITH THE AVERAGE MAXIMUM HEIGHT OF 28 FEET. NEXT, THIS ADDITION IS ON A SITE OVER THE RESIDENTIAL DENSITY. BUT THAT ~~— BUT THAT~~ IS ALLOWED THROUGH THE USE PERMIT IF the addition or enlargement ~~IT~~ DOESN'T increase the density or EXCEED THE HEIGHT LIMIT. AS THIS PROPOSES TO RESTORE and maintain THE DENSITY TO TWO UNITS, IT DOES NOT INCREASE THE DENSITY ON THE SITE AND it would COMPLY WITH THE HEIGHT LIMIT. THIS PROJECT IS PROPOSING TO VERTICALLY EXTEND OR ALTER PORTIONS OF THE BUILDING THAT ~~DOES NOT~~ ENCROACHES INTO NONCONFORMING YARDS. As mentioned before the property is ~~IT'S~~ NONCONFORMING TO THE FRONT yard, the left side yard AND the REAR ~~AND SIDE~~ YARD. THIS project WOULD SHIFT the house over ~~IT A~~ AN INCH so it would comply with the side setback, but it would ~~TO~~ EXPAND THE FRONT YARD EXISTING NONCONFORMITY BY GOING DOWN INTO THE BASEMENT AS WELL AS while ~~IT~~ THE SECOND STOREY WOULD STEP

BACK BY 3½ FEET, IT does INCREASES the HEIGHT IN THE
NONCONFORMING SETBACK. IN THE REAR, THE SECOND STOREY WOULD
COMPLY, BUT THE BASEMENT WOULD BE EXPANDED DOWN AT THE EXISTING
NONCONFORMING REAR YARD. AS THE ENLARGEMENT WOULD COMPLY WITH
THE PERMITTED residential USE OF THE PROPERTY AND THE VERTICAL
EXPANSIONS WOULD NOT further reduce the nonconformity, these expansions
~~{INDISCERNIBLE}~~ ARE CONSIDERED PERMISSIBLE. An administrative use permit
is also required to approve ~~THERE IS~~ THE ADDITION OF A FIFTH BEDROOM to a
parcel in the R2 zoning district. THIS PROJECT PROPOSES TO INCREASE THE
TOTAL BEDROOMS ON THE PROPERTY FROM FOUR TO FIVE BEDROOMS. THE
ADDITION OF THE FIFTH BEDROOM WOULD NOT add density to the site or
INTENSIFY THE USE OF THE RESIDENTIAL PROPERTY. THIS PROJECT ALSO
PROPOSES THE MAJOR RESIDENTIAL ADDITION OVER 14 FEET HEIGHT AND
THE ZAB MUST MAKE FINDINGS OF GENERAL NON-DETRIMENT for any
administrative use permit IN THE R-2 ZONING DISTRICT. ~~IF~~ The project WOULD
ADD 2429 SQUARE FEET TO THE EXISTING 1334 SQUARE FOOT duplex
~~COMPLEX~~. The project would be ~~IT'S~~ CONSIDERED NON-DETRIMENTAL BECAUSE
the project ~~IF~~ WOULD ADD A SECOND LEVEL TO THE HOME of which there are
several examples in the neighborhood. The SECOND STOREY addition WOULD step in to
COMPLY WITH THE REQUIRED REAR YARD SETBACK and further comply with the
nonconforming front yard. A BASEMENT IS PROPOSED TO BE ADDED WHILE THIS
ADDS ADDITIONAL SQUARE FOOTAGE IT WOULD NOT create any additional impacts

on the surrounding neighbors as it is placed partially below grade ~~--- IT WOULD~~
MAINTAINING THE existing FIRST FLOOR LEVEL. THE NEIGHBORHOOD IS A
MIX OF RESIDENTIAL UNITS OF SINGLE-family AND MULTI-FAMILY HOMES.
EXISTING STRUCTURES IN THE immediate NEIGHBORHOOD VARY FROM ONE TO
TWO-STOREYS AND in addition the project approval is SUBJECT TO
THE STANDARD CONDITIONS OF APPROVAL regarding construction noise, air quality,
waste diversion, toxics and storm water requirements. BECAUSE THE PROJECT
CONSISTENCY WITH THE ZONING ORDINANCE AND GENERAL PLAN and minimal
impacts ON the surrounding properties, STAFF RECOMMENDS THE ZONING
Adjustments BOARD APPROVES ZP2021-0001 SUBJECT TO FINDINGS AND
CONDITIONS. Alternatively THE ZAB COULD REQUIRE MODIFICATIONS TO
REDUCE IMPACTS TO THE PROPERTY SO LONG AS the project is ~~IT'S~~ NOT
DENIED OR APPROVED AT A LOWER DENSITY. I CAN TAKE ANY QUESTIONS.

[1:13:56]>> C. KAHN: GO AHEAD IGOR.

>> I. TREGUB: THANKS, NICK, FOR THAT DETAILED PRESENTATION.
OBVIOUSLY UNLIKE THE LAST PROJECT, THIS ONE JUST THE NATURE OF
THE EXISTING CONDITIONS INTRODUCED SOME UNIQUE ATTRIBUTES THAT
HAVE TO BE DISCUSSED. BUT UNLIKE THE LAST PROJECT WE WENT
THROUGH, I DIDN'T SEE A DISCUSSION IN THE STAFF REPORT REALLY,
AROUND PRIVACY IMPACTS, SHADOW IMPACTS. AND I had ~~HAVE~~ TO GO
THROUGH the A4.X SERIES OF DRAWINGS TO GET THE INFORMATION. SINCE

ACCOUNT the MAJORITY OF THE COMMENTS WITH CONCERNS about this project HAS WITH THIS REVOLVED AROUND SHADOWS and view impacts and privacy, could you speak to what kind of analysis went in and WHAT IS YOUR GENERAL RECOMMENDATION BASED ON THE IMPACTS that were studied ~~WE'RE STUDYING?~~

>> THAT'S A GREAT QUESTION. The analysis WE DID LOOKED AT SHADOW STUDIES AS THEY'RE SHOWN in the project plans IN THE IMPACTS that would create ON THE NEIGHBORS. GENERALLY WE do SEE SHADOW IMPACTS FROM SECOND STOREY ADDITIONS and it's considered part of the urban development pattern. THE OTHER ISSUE IS THAT OUR CURRENT FINDINGS as we've discussed before ARE NOT CONSIDERED OBJECTIVE AND THERE IS NO SPECIFIC FINDING ABOUT HOW MUCH SHADOW IMPACT ON A PROPERTY, WHAT THE PRIVACY IMPACTS MAY BE ON A SPECIFIC SITE. So FOR AHA PURPOSES, IT'S NOT SOMETHING THAT CAN Actually BE LOOKED AT TO OUR UNDERSTANDING.

>> C. KAHN: A FOLLOW-UP QUESTION, IGOR?

>> I. TREGUB: I WASN'T PLANNING ON IT, BUT, YEAH, THIS IS ONE OF THE FIRST PROJECTS WE'VE SEEN WHERE THE DISCUSSION ON SHADOWS AND PRIVACY IMPACTS LITERALLY WAS NOT IN THE STAFF REPORT. I UNDERSTAND THAT IT IS NOT SOMETHING UPON WHICH WE CAN BASE OUR DECISIONS AS THERE ARE NO OBJECTIVE STANDARDS. BUT GOING FORWARD AND MAYBE THIS IS A QUESTION ACTUALLY FOR SAMANTHA, IS THIS GOING TO BE THE PRACTICE THAT IT'S NOT GOING TO BE DISCUSSED IN

STAFF REPORTS AT ALL?

[1:17:00] >> Samanthan: THAT'S A GREAT QUESTION COMMISSIONER TREGUB. I DON'T HAVE AN ANSWER FOR YOU OFF THE TOP OF MY HEAD. IT IS, IT IS CHALLENGING BECAUSE THEY ARE NOT OBJECTIVE. AND I WOULD NEED TO LOOK A LITTLE MORE INTO THAT. But what I THINK I'M HEARING is THAT THE BOARD WOULD LIKE TO SEE THOSE, THAT ANALYSIS, EVEN IF IT'S NOT SUBJECTIVE, I mean EVEN IF IT'S NOT OBJECTIVE. SORRY.

>> I. TREGUB: I CAN'T SPEAK FOR MY COLLEAGUES, BUT I certainly WOULD LIKE TO SEE THAT OR CONTINUE TO SEE THAT. But MORE IMPORTANTLY, I THINK MEMBERS OF THE PUBLIC -- THEY WOULD really BENEFIT FROM BOTH HEARING THAT DISCUSSION DURING STAFF PRESENTATIONS AND ALSO FOR THOSE THAT CAN'T COME TO THE MEETING OR EVEN THOSE WHO CAN, IN PREPARATION FOR MEETING, IT WOULD BE HELPFUL FOR THEM TO UNDERSTAND what is THE ACTUAL IMPACT IF THEY LIVE IN ADJACENT PROPERTIES.

>>Samanthan: THANK YOU FOR THAT. AND I WILL TAKE THAT BACK AND WE'LL TALK ABOUT THAT.

[1:18:28]>> C. KAHN: I THINK, TO ADD MY TWO CENTS WORTH, THAT AS NICK POINTED OUT, WE CAN'T DEMAND THAT THE APPLICANT REDUCE THE DENSITY, NUMBER OF UNITS. Actually WE CAN't, ACCORDING TO THE MEMO FROM STEVE, DEMAND THEY reduce the size of the project,

NUMBER OF SQUARE FEET OR NUMBER OF BEDROOMS. HOWEVER, WE CAN SPEAK TO ISSUES OF PRIVACY AS CARRIE HAS FREQUENTLY DONE -- LED THE CHARGE. IT'S GOOD TO HAVE THAT AS PART OF THE STAFF DISCUSSION SO THAT WE HAVE THE OPTION DISCUSSING THAT WITH THE APPLICANT. PARTICULARLY PRIVACY. THERE ARE OCCASIONS WHERE WE HAVE MADE RECOMMENDATIONS WHICH HAVE BEEN ACCEPT BY THE APPLICANT, THIS IS THE ZONING ADJUSTMENTS BOARD. ADJUSTMENTS TO MITIGATE SHADOW IMPACTS OR VIEW IMPACTS. WE HAVE THE POWER TO MAKE ADJUSTMENTS AS LONG AS AHA IS NOT VIOLATED. SO, YEAH, I SUPPORT IGOR'S POINT. THANK YOU, IGOR. WHY DON'T WE KEEP THINGS MOVING HERE. WE HAVE A LOT DO AND THERE ARE A LOT OF ATTENDEES THAT WOULD LIKE TO SPEAK. DEBBIE.

[1:19:53]>> IF YOU DON'T WANT TO ANSWER ALL THESE QUESTIONS NOW, LET ME PUT THEM ON THE TABLE. AND NICHOLAS, IF YOU WANT TO COME BACK later AND ANSWER THEM, THAT'S FINE. I SPENT A FAIR AMOUNT OF TIME LOOKING AT THE SHADOW IMPACT AND PRIVACY IMPACTS. I NEED CLARITY AND I WENT THROUGH ALL THE LETTERS SEVERAL TIMES. And I need ~~ANY~~ CLARITY ON ALL THESE LITTLE GARAGES THAT ARE IN THE BACKS OF THE BUILDINGS. THE DIAGRAM I FOUND MOST USEFUL TO WORK FROM IS FROM PLAN SHEET A4.2, the middle one ON THE PROPOSED SITE. THE WAY I THINK I UNDERSTAND IT IS THAT STARTING FROM THE RIGHT -- LOWER RIGHT SIDE, THE DUPLEX IS 1651. THE GARAGE DIRECTLY TO ITS EAST IS ITS GARAGE AS WELL AS THE ONE IN THE CORNER OF THE PROPERTY SO that 1651 HAS TWO GARAGES AND THEIR

SITTING AREA THAT THEY DISCUSSED IS KIND OF WITHIN THAT BUILDINGS ON THREE SIDES. THEN IF YOU GO TO THE LEFT SIDE OF THAT DIAGRAM, ARE MY DIRECTIONS MAKING ANY SENSE?

>> YES.

>> Debra. SANDERSON: THE HOUSE TO THE LEFT WHICH WOULD BE THE NORTH OF IT IS 1639, WHATEVER STREET WE WERE ON, AND THE GARAGE that is to its back right corner GOES TO 1639. THEN THERE IS, WHEN YOU'RE AT 1637, THERE IS A GARAGE DIRECTLY TO THE EAST OF THEIR PROPERTY. DOES THAT GARAGE GO WITH 1609? I KNOW THERE IS A BUILDING in there that I REMOVED which is not showing ~~THAT DOESN'T SHOW UP~~ APPROPRIATELY ON THE SHADOW MAP. IT LOOKS LIKE THERE IS A GARAGE THAT WOULD BE DIRECTLY TO THE EAST OF THE PROPOSED DECK. NORTHEAST. DOES THAT GARAGE GO WITH 1609 VIRGINIA?

>> Nick: THAT'S MY UNDERSTANDING, YES.

>> D. SANDERSON: SO ITS DRIVEWAY GOES THE LENGTH OF THE 1609 PARCEL TOWARDS VIRGINIA street. So what separate 1609 ~~WHAT ACCEPT RATS~~ VIRGINIA from the back of ~~TO~~ 1651 AND 1637 OR 40 IS THE DRIVEWAY IT'S BETWEEN THOSE TWO PROPERTIES.

>> RIGHT.

>> D. SANDERSON: THANK YOU. THAT'S VERY HELPFUL. SO I'VE SPENT -- I DON'T WANT TO GO OVER IT NOW UNLESS PEOPLE WANT ME TO, BUT I SPENT TIME LOOKING AT THE COMPLAINTS OR COMMENTS FROM THE NEIGHBORS AND THE DISTANCE BETWEEN THE BUILDING SUBJECT

PROPERTY AND THE AREAS THAT PEOPLE REFER TO BECAUSE THAT WAS WITHIN OF MY CONCERNS IS WHAT IS THE PHYSICAL DISTANCE BETWEEN THE SUBJECT PROPERTY AND SITTING AREAS. WHAT IS IN BETWEEN SUBJECT PROPERTY AND SITTING AREAS AND WHAT IS -- WHAT'S ON THAT SIDE OF THE BUILDING? IF WE WANT TO TALK ABOUT THAT LATER, BUT THAT'S KIND OF WHERE I'VE SPENT A LOT OF TIME AND I WILL -- AS LONG AS I KNOW I HAVE THE LAYOUT RIGHT, THEN WE CAN GO ON. THANK YOU.

>> C. KAHN: CARRIE.

[1:24] >> C. OLSON: I'll try and be quick. I WANT TO SPEAK TO SAY THANK YOU IGOR AND CHARLES AND DEBBIE FOR TALKING ABOUT PRIVACY AND SHADOWS and why we still need to see it. THE SIMPLE REASON SAMANTHA IS BECAUSE THE PUBLIC DOESN'T KNOW WHAT YOU KNOW OR WHAT WE SEE IN OUR PACKET. BY THE TIME ~~THOUGH~~ they WRITE THEIR LETTER TO US, THEY'RE REALLY MAKING SUPPOSITIONS ON THINGS THAT ARE NOT NECESSARILY RIGHT. WE NEED TO SET THE RECORD STRAIGHT. THEY NEED TO UNDERSTAND. BUT ALSO BECAUSE THERE ARE ALTERNATIVES. WE'RE NOT SHOWN, AND I'VE ASKED FOR THIS MANY TIMES, WHAT THE fenestration ~~CAN~~ ~~[INDISCERNIBLE]~~ IS IN THE ADJACENT PROPERTIES. WE DON'T KNOW IF WE'RE ALLOWING FOR A LARGER WINDOW OR NEW WINDOW ADJACENT OR 8 FEET AWAY FROM ANOTHER PROPERTY. And as I've said many times, I GREW UP like this, 8 FEET AWAY FROM MY NEIGHBOR'S HOUSE AND NOT KNOWING THAT THAT neighbor ~~MAY BE~~ WAS STARING AT ME AS A KID!

IT'S REALLY CREEPY AND WE SHOULD KNOW AND THE NEIGHBORS SHOULD KNOW. IF YOU COULD PASS THAT ON TO THOSE MAKING THOSE DECISIONS, IT'S NOT THAT BIG OF AN ASK. THANK YOU.

[1:25:16] >> C. KAHN: IF THERE ARE NO FURTHER QUESTIONS FOR STAFF FROM THIS COMMISSION, LET'S BRING IN THE APPLICANT. I BELIEVE THIS IS **Studio G&S**, So, I'M LOOKING FOR THE APPLICANT.

>> Nick: IT'S SUNNY.

>> C. KAHN: THERE HE IS.

>> Nick: I BELIEVE THE PROPERTY OWNER IS here as well.

>> C. KAHN: **Sonny**, who else WOULD YOU LIKE TO JOIN you FOR THE PRESENTATION? SUNNY. Can I HEAR YOU?

>> **Sonny**: YES. CAN YOU HEAR ME?

>> C. KAHN: YES, YOU HAVE FIVE MINUTES TO PRESENT, BUT IT NEEDS TO BE YOU AND WHOEVER ELSE YOU WISH TO HAVE.

>> YES. BOTH OWNERS ARE HERE. IF THERE IS ANY TIME LEFT OVER, THEY'LL SPEAK. THANK YOU FOR THE GOOD EXPLANATION OF THE PROJECT. I WANTED TO JUST KIND OF REITERATE THAT WHEN WE FIRST STARTED THIS PROJECT, IT WAS A VERY DIFFERENT PROJECT THAN WHAT YOU ARE CURRENTLY SEEING. AND AFTER HAVING SOME DISCUSSIONS WITH THE NEIGHBORS LOOKING AT THE **shadow study** and PRIVACY ISSUES, WE DID TAKE THOSE INTO CONSIDERATION AND ORIGINALLY WE ACTUALLY HAD A THREE-STOREY BUILDING WHERE WE DEVELOPED THE BASEMENT AS A FULL STOREY WITH A GARAGE WHICH IS WHAT THE HOMEOWNERS WANTED.

BECAUSE A THREE-STOREY BUILDING it WAS BECOMING PROBLEMATIC,
TALKING WITH NICK WE DECIDED THAT WE WOULD ELIMINATE THE GARAGE
AND DO NOT LIST THE building because WE WERE actually LIFTING THE
EXISTING HOUSE UP TO ACCOMMODATE THE GARAGE LEVEL and IT WAS
MAKING THE BUILDING MUCH TALLER. So, ONCE WE DECIDED THAT we
were ~~WE'RE~~ GOING TO FORGO THE GARAGE AND NOT LIFT THE BUILDING
AT ALL, WE WERE JUST GOING TO, ONLY GOING TO create A SECOND
STOREY ADDITION SO IT WOULD BE A TWO-STOREY BUILDING technically.
AND WE CHANGED THE ROOFLINE CONSIDERABLY TO HAVE A SMALLER
IMPACT ON AT ADJACENT PROPERTIES. AND WE ALSO RECONFIGURED SOME
OF THE BEDROOMS ON THE UPPER FLOOR SO ON THE BACK OF THE HOUSE,
WE ONLY HAVE ONE BEDROOM AND THEN WE HAVE TWO BATHROOMS WHICH
HAVE HIGH WINDOWS LOOKING TOWARDS THE EAST. AND THAT WAS THE
NEIGHBORS AT 1609 CONCERNS ABOUT PRIVACY. SO WE HAVE TWO HIGH
WINDOWS IN THE BATHROOMS WHICH TECHNICALLY, are NOT REALLY
LOOKING DOWN. THE OTHER BEDROOM ON THE NORTH SIDE, RIGHT ACROSS
FROM THERE IS A VERY LARGE TREE, so THAT'S WHAT WE WOULD BE
LOOKING AT PLUS THE NEIGHBOR'S GARAGE BACK THERE AND ACCESSORY
BUILDING. YOU CAN'T SEE MUCH INTO THEIR YARD. AND BY LOWERING
THE BUILDING, CHANGING THE ROOFLINE, WE REDUCED THE ORIGINAL
SHADOW IMPACT THAT WE WERE HAVING. SAME THING WITH THE NEIGHBORS
ON THE LEFT SIDE AND THE RIGHT SIDE, WE REDUCED THE SHADOW
IMPACT. AND THE SHADOW IMPACT THAT WE HAVE IS MINIMAL AT THIS

POINT. And you know I, you know I've designed many ~~I CAN MIND~~
~~FOR~~ SECOND STOREY ADDITIONS here IN THE BAY AREA. IT'S HARD TO
DESIGN SOMETHING THAT YOU HAVE ZERO IMPACT on the neighbors IN
THIS URBAN ENVIRONMENT. We've tried to ~~RETRY~~ DO AS MUCH AS WE
CAN to take things into consideration. WE CHANGE ROOFLINES,
CHANGE THE ROOF PITCH. WE ARE DOING ALL THE THINGS WE DID HERE.
TO MINIMIZE THE IMPACT ON THE NEIGHBORS. [1:29] ORIGINALLY THE
NEIGHBOR ON THE LEFT-HAND SIDE AND RIGHT-HAND SIDE HAD GIVEN US
THEIR SUPPORT ON THIS PROJECT. AND THAT'S WHEN WE MOVED FORWARD
WITH THINGS. AS FAR AS THE SCALE OF THE PROJECT, IT'S BASICALLY
A SECOND STOREY ADDITION. AND THE BASEMENT BUILD OUT IS A BONUS
AT THIS POINT, BUT THAT WHOLE BASEMENT IS GENERALLY BELOW GRADE.
WE'RE ABLE TO GET WINDOWS IN THE FRONT AND NO WINDOWS IN BACK
AND VERY LITTLE ON THE SIDE. YOU ASK FOR A SECOND STOREY
ADDITION WHICH IS NOT UNREASONABLE, WE SET THE FRONT OF THE
FACADE BACK TO STAY WITHIN THE 20-FOOT SETBACK AND DID THE SAME
THING IN THE REAR. WE SET THE REAR WALL BACK SO WE'RE 20
FEET FROM THE SETBACK. THE BUILDING ITSELF HAS A FAIRLY GOOD
SEPARATION BETWEEN THE ADJACENT PROPERTIES, particularly ~~TECHNICALLY~~
THE PROPERTY FROM THE REAR SO PRIVACY IS IT IS THERE, but WILL
SOMEBODY BE ABLE TO STAND THERE AND LOOK OUT? YES, BUT I DON'T
THINK IT'S THAT INTRUSIVE. I think WE'VE DONE AS MUCH AS WE CAN
GIVEN THIS SMALL LOT WE HAVE AND THE REASON FOR ALL OF THE
AMOUNT OF USE PERMITS AND ADMINISTRATIVE USE PERMITS IS BECAUSE

OF THE CONSTRAINTS WE HAVE TO DEAL WITH A SMALL LOT AND IT WAS
already overbuilt ~~OVER-FILLED~~. And IN ORDER -- I MEAN, IF THIS WAS AN
EMPTY LOT WE'D BE BUILDING A very very DIFFERENT STRUCTURE ON THE
SITE. BUT WE'RE WORKING WITH A GIVEN CONDITION and we've tried
to do. ~~WE WOULD LIKE~~ DO AS MUCH AS WE CAN AND give the ~~GIFT~~
HOMEOWNERS A PROJECT THAT THEY WANT TO CONTINUE LIVING IN. I'M
RUNNING OUT OF TIME and they many not have time to speak, BUT THIS IS A
PROJECT THAT IS DESIGNED FOR THEIR FAMILY, (@1:31) AND ONE OF
THE SONS WHO GOING TO CONTINUE LIVING IN THE APARTMENT NEXT DOOR
IS VISUALLY IMPAIRED. HE DOES NOT DRIVE.

>> C. KAHN: SUNNY, YOU'RE OUT OF TIME. THANK YOU VERY MUCH FOR
THE PRESENTATION. YOU WILL HAVE A COUPLE MORE MINUTES AFTER THE
PUBLIC SPEAKS TO ADDRESS ANY CONCERNS THAT THEY BRING UP. SO,
NOW IS THE TIME -- ANY QUESTIONS FOR THE APPLICANT? FROM THIS
COMMISSION? SEEING NONE, I WOULD LIKE TO MOVE FORWARD WITH THE
PUBLIC PARTICIPATION. I SEE ONE HAND UP. IF YOU WISH TO SPEAK ON
THIS PROJECT, THIS IS YOUR OPPORTUNITY. PLEASE RAISE YOUR HAND
NOW. SO THAT I'LL HAVE A CLEAR IDEA OF HOW MANY PEOPLE WISH TO
SPEAK ON THIS. I ONLY SEE -- I SEE ANNA, ADAM, TAMAR AND
BARBARA. DOES ANYONE ELSE WISH TO SPEAK ON 1643, 1647

CALIFORNIA? Kay? YES NO? Yes? OKAY. WE HAVE

>> I. TREGUB: CHAIR.

>> C. KAHN: WE HAVE FOUR PEOPLE SHOWING INTEREST IN SPEAKING.

I'LL GIVE YOU EACH TWO MINUTES TO SPEAK. IF YOU CAN KEEP IT TO LESS, THAT'S GREAT. BUT YOU HAVE TWO MINUTES. WE'LL START WITH ANNA. ANNA, YOU NEED TO UNMUTE.

>> CAN I RESPOND TO THE COMMENT THAT SUNNY MADE FIRST BEFORE I BEGIN MY TWO MINUTES?

>> C. KAHN: NO, YOU HAVE TO SPEND YOUR TWO MINUTES HOWEVER YOU WISH.

[1:33] >> THE ARCHITECT OR THE NEIGHBORS HAVE NEVER SPOKEN TO US ABOUT THIS PROJECT. SUNNY CAME TO ASK US IF WE HAD ANY QUESTIONS ON THE SAME DAY THEY SUBMITTED THE SECOND SUBMISSIONS. OUR PROPERTY HAS ~~two TOO MUCH~~ LARGE TREES that shade much of our yard. THE REMAINING SUN SPOTS ARE THE REAR DECK AND OPEN AREA TO THE WEST of the house. Both of those ~~THEY~~ WOULD BE entirely SHADED by the top floor of this project during summer afternoons and evenings. THIS POSES A really DRAMATIC IMPACT ON OUR PROPERTY in that we have designed our home to be a very small indoor / outdoor living space. THE PROPOSED UPPER LEVEL WILL also PROVIDE A CLEAN LINE OF SIGHT into both ~~TO~~ OUR KITCHEN AND BEDROOM. IF THIS REMODEL HAPPENS AND WE LEAVE OUR BEDROOM AND BATHROOM DOORS in our house OPEN, especially at night when the light are on, THE PROJECT PROPONENTS WOULD BE ABLE TO SEE ME SITTING ON THE TOILET. THE PRIVACY OF OUR HOUSE WILL BE GONE. We RECENTLY SIGNIFICANTLY REMODELED OUR HOME MAKING CHANGES SO WE WOULD NOT HAVE TO LOOK AT THIS DILAPIDATED PROPERTY. WE MOVED side ~~THE~~

WINDOWS and added large windows on the back of our house. THE light provided by these windows and the VIEW PROVIDED INTO AND OUT OF OUR HOUSE by them ARE THREATENED BY THIS PROJECT. THE MATERIAL SUBMITTED misrepresents some MISSED KEY FACTS, suggesting that two adjacent neighbors support the project, that's untrue. ALL THREE ADJACENT NEIGHBORS OPPOSE THE proposed top level PROJECT BECAUSE OF THE IMPACT ON PRIVACY AND shade SHAPE. THE RATIONALE for the requested 5 bedrooms and extra unit IS the supposed need TO HOUSE THE adult children FAMILIES—EVEN THOUGH THEY'RE all EXTREMELY SUCCESSFUL IN THEIR CAREERS AND ABLE TO LIVE INDEPENDENTLY, WHILE THE FAMILY OWNS a twelve unit AN APARTMENT COMPLEX LESS THAN A MILE AWAY. Moreover, THIS WOULD BE A TWO UNIT SIX BEDROOM HOUSE WITH NO PARKING. One reason sited in the staff report in favor of the project is the restoration of the second dwelling unit. On this point IT'S KEY TO KNOW IT WAS THE OPPENHEIMERS THEMSELVES who illegally removed the second unit long ago to construct a single family residence. THAT WOULD --

>> C. KAHN: ANNA.

>> Anna: The restoration of that illegally converted unit ~~IT~~ SHOULD NOT BE CONSIDERED IN FAVOR OF PROJECT.

>> C. KAHN: ANNA -- ANNA, WHAT WILL IS YOUR ADDRESS JUST SO WE KNOW WHICH PROPERTY.

>> Anna: I'M ONE OF THE RESIDENTS ON THE 1609 UNIT IN BACK OF

THIS HOUSE. THEIR ENTIRE BACKYARD --

>> C. KAHN: THAT'S OKAY. I JUST WANTED TO KNOW THE ADDRESS.

THANK YOU. THANK YOU FOR COMING. ADAM, YOU ARE UP. YOU NEED TO UNMUTE.

[1:35:43]>> Adam: CAN YOU HEAR ME IN.

>> C. KAHN: YES.

>> Adam: I'M THE OTHER RESIDENT AT -- 1609 VIRGINIA STREET. AND I ALONG WITH all the OTHER NEIGHBORS THAT ARE actually ADJACENT PROPERTIES, WE'RE STRONGLY AGAINST THIS project for a lot of the reasons brought up by the board members, the SHADOW STUDIES AND IMPACT ON PRIVACY AND SO I'm glad A LOT OF PEOPLE LOOKed AT THAT. You know, WE ALL DO WANT TO SEE THE OPPENHEIMERS FIX UP THEIR HOUSE. IT'S IN really BAD SHAPE ON THE EXTERIOR. OVER THE PAST 20 YEARS ALL FOUR OF THESE HOUSEHOLDS HAD GOOD RELATIONS AND IT'S really UNFORTUNATE THAT THIS PROPOSED PLAN IS ASKING FOR SO MUCH AND CREATING TENSION IN OUR CORNER OF COMMUNITY. THE PROPOSAL IS ASKING FOR SEVEN USE PERMITS THAT WOULD ALLOW FOR ADDITIONAL OVER 2600 SQUARE FEET OF LIVING SPACE AND THEY would HAVE A ~~2800~~ 3800 ~~CAN~~ SQUARE FOOT PROPERTY AND ONLY a 3100 SQUARE FOOT LOT. I understand that the Oppenheimer's want a large house but that doesn't mean that this property of theirs is the appropriate place to build it. I'ts ~~THIS IS ALREADY~~ NON-CONFORMING IN COVERAGE, DENSITY, YARD AND HAS NO PARKING ~~ON~~ off THE STREET AT ALL. APPROVING THIS WOULD DEGRADE THE VALUE OF

THE ZONING RULES AND WOULD ~~INCREASE~~ decrease the ~~OF~~ VALUE OF OUR PROPERTY AND OTHER PROPERTIES IN LIEU OF INCREASING THE VALUE OF THE OPPENHEIMER'S PROPERTY. The city planner NICK STATED IN HIS REPORT, I'm going to repeat something he said, THIS WILL PROPOSED PROJECT DOES NOT COMPLY WITH THE APPLICABLE Objective ZONING STANDARDS AND THE CITY MAY REQUEST MODIFICATIONS TO MITIGATE OR AVOID THE IMPACT TO THE SURROUNDING PROPERTIES. NICK ALSO SPECIFICALLY SUGGESTED DURING THE PROCESS LAST YEAR THAT THE APPLICANTS REDUCE THE IMPACT TO THE NEIGHBORS BY ELIMINATING THE AMOUNT OF THE FLOOR GIVING THEM A 2700 SQUARE FOOT LIVING SPACE WHICH IS LARGER THAN THE OTHER NEIGHBORS AROUND THEM, which was completely ignored in their earlier submission. WE THUS ASK THE BOARD TO REQUEST A MAJOR MODIFICATION IN LINE WITH ~~THE~~ this SUGGESTION PRIOR TO CONTINUING THE HEARING.

>> C. KAHN: THANK YOU A -- THANK YOU ADAM. I NOTE THAT BARBARA FRITZ -- I'M GOING TO RECOGNIZE YOU NEXT!

[1:38]>> Barbara: I'M HERE. I LIVE AT 1639 SO I'M THE NORTH NEIGHBOR AND I'M HAPPY THAT THE OPPENHEIMERS ARE FINALLY GOING TO BE ABLE TO DO THIS PROJECT. I'VE LIVED HERE 40 YEARS SO I LIVED HERE SINSE THEY MOVED IN. And their aware AND ADAM AND ANNA AND THE OTHER NEIGHBOR KAY ON THE CORNER ARE AWARE OF I'M NOT HAPPY ABOUT THE SHADOW ISSUES, BUT I really APPRECIATE THE EXPLANATION THAT THE BOARD HAS GIVEN ABOUT WHAT YOU CAN AND CANNOT DEAL WITH. SO I JUST WANT TO GIVE MY SUPPORT. I'M SAD

THAT I AM GOING TO LOSE A CERTAIN AMOUNT OF LIGHT IN THE WINTER.
IT IS SIGNIFICANT TO ME. BUT I DO WANT TO -- I'M NOT LOOKING
FORWARD TO THE NOISE. BUT I'M HAPPY THAT THE OPPENHEIMERS ARE
GOING TO FINALLY FIX UP THEIR HOUSE WHICH has NEEDED WORK FOR A
LONG TIME AND I LOOK FORWARD TO HAVING THEM AS NEIGHBORS FOR A
LONG TIME. THAT'S ALL. I'M DONE.

>> C. KAHN: THANKS FOR COMING AND SPEAKING. THAT'S IT FOR PUBLIC
COMMENT. WE DO HAVE -- I NOTICED TAMAR AND Orr ~~{INDISCERNIBLE}~~
OPPENHEIMER. Sonny, ARE THOSE TWO THE OWNERS?

>> Sonny: Yes TAMAR IS ONE OF THE OWNERS. AND ~~{INDISCERNIBLE}~~
Orr IS THEIR SON.

>> C. KAHN: I'M GOING TO BRING THEM IN BECAUSE THEY ARE ALLOWED
TO PARTICIPATE IN THE RESPONSE. THIS THEY HAVE TWO MINUTES TO
RESPONSE AS DO YOU. BUT YOU ONLY HAVE TWO MINUTES BETWEEN THE
THREE OF YOU SO USE IT WISELY.

>> I. TREGUB: MR. CHAIR --

>> CAN YOU HEAR ME?

>> C. KAHN: YES.

>> I. TREGUB: I THINK KAY ALSO KEEPS RAISING THEIR HAND BUT IT
KEEPS GOING DOWN.

>> C. KAHN: TAMAR, BEFORE YOU SPEAK, THERE IS ANOTHER PERSON
TRYING TO SPEAK THAT I THINK -- KAY. IT APPEARS AND DOESN'T
APPEAR. NOT -- THERE SHE IS. KAY. HER CONNECTION MUST BE BAD.
~~SHE KEEPS CAN~~ SHE KEEPS DISAPPEARING. THERE IS A PROBLEM WITH

HER CONNECTION, I THINK. ALL RIGHT. I DON'T WANT TO STOP THE PROCEEDINGS. THERE IS KAY. CAN YOU -- I DON'T KNOW WHAT THE PROBLEM IS WITH KAY. KAY. IS THERE ANYTHING THAT WE CAN DO TO GIVE HER A CHANCE TO SPEAK?

>> Samanthan: I FEEL LIKE I CAN HEAR SOMETHING LIGHT IN THE BACKGROUND. KAY, I WONDER IF YOU HAVE A SETTING OF SOME SORT TURNED DOWN OR YOUR MICROPHONE IS COVERED?

>> C. KAHN: WE NEED TO KEEP THE MEETING MOVING ALONG. KAY, I'LL GIVE YOU THE OPPORTUNITY TO SPEAK AFTER THESE NEXT TWO MINUTES IF YOU CAN manage ~~IMAGINE~~ TO CUT IN AND SAY SOMETHING.

>> Samantha (BOARD SECRETARY): KAY COULD also CALL IN.

>> C. KAHN: YOU CAN TRY THAT WITH A CELL PHONE POSSIBLY.

>> Samantha - BOARD SECRETARY: And then we could, YEAH.

>> C. KAHN: KAY, IF YOU COULD WOULD LIKE TO TRY CALLING IN YOU CAN PUT YOUR HAND DOWN AND TRY DO THAT. OKAY. I THINK WE NEED TO KEEP ROLLING. SORRY KAY, BUT I DON'T WANT TO HOLD THIS UP. SUNNY, START WITH YOUR TWO MINUTES.

>> Sonny: I'LL HAVE EITHER TAMAR OR ORR SPEAK.

>> Tamar: CAN YOU HEAR ME?

>> C. KAHN: YES.

[1:43:10] >> Tamar: I ACTUALLY, it's me AND MY HUSBAND IS HERE, we just have one computer. I WANTED TO TALK ABOUT [INDISCERNIBLE due to phone ringing]

>> Kay: Hi Adam, ANNA IS HEAR.

>> C. KAHN: Oh hold on, LET'S HAVE KAY SPEAK. KAY, WE CAN HEAR YOU NOW. KAY. SPEAK UP. WE CAN HEAR YOU.

>> A --

>> C. KAHN: I DON'T KNOW WHAT TO DO.

>> I'M ON? OKAY.

>> C. KAHN: KAY, I DON'T KNOW IF YOU CAN HEAR ME BUT --

>> Kay: CAN YOU HEAR ME?

>> C. KAHN: YES.

[1:44:10] >> Kay: I'M KAY RISTOL AND I OWN THE SMALL DUPLEX SOUTH OF THE PROPOSED REMODEL. I LIVE in the side of ~~AT~~ 1651. I JUST WANT TO ASK, IT SEEMS LIKE IN READING THINGS, THAT THIS PROJECT HAS already BEEN APPROVED. BUT I DON'T KNOW IF THAT'S TRUE. CAN YOU TELL ME?

>> C. KAHN: NO.

>> Kay: I CAN'T HEAR YOU, BUT I GUESS YOU CAN HEAR ME. I'M WONDERING, THERE ARE 6 TO 7 USE PERMITS OR VARIANCES NEED FOR THIS PROJECT. I'M WONDERING IF THOSE ARE ALL APPROVED, WHAT IS THE USE OF HAVING THOSE PERMITS? ALL OF THE NEIGHBORS I THINK FEEL STRONGLY THREE OF THE NEIGHBORS ON THIS -- ON THE north, east, ~~NORTHEAST~~ AND ON THE SOUTH, me, FEEL very STRONGLY ABOUT THE PRIVACY ISSUE. AND ALSO THE DECREASED VALUE OF OUR PROPERTY IF THIS HUGE PROJECT IS GOING TO BE OKAYED. SO, IT SEEMS LIKE THAT A LOT OF THE CONSIDERATION OF THE SHADE HAS NOT BEEN FULLY MADE -- DONE -- HAS NOT DONE -- HAS NOT BEEN EVALUATED

CORRECTLY. IT'S A BIG PROBLEM.

>> C. KAHN: PLEASE WRAP IT UP.

>> Kay: AND PRIVACY IS ALSO THE BIGGEST PROBLEM. I GUESS MY TIME IS RUNNING OUT. I JUST WANT TO SAY THAT ALL OF US FEEL SO STRONGLY ABOUT THIS. AND THANK YOU VERY MUCH FOR YOUR ATTENTION. SORRY ABOUT THE MIX-UP.

>> C. KAHN: No problem, THANK YOU. I'M GLAD YOU GOT A CHANCE TO SPEAK. WE'LL TRY TO ADDRESS YOUR QUESTIONS IN THE DISCUSSION. OK, very good. So NOW, SUNNY OR TAMAR, YOU HAVE YOUR TWO MINUTES.

>> Sonny: I'LL LET TAMAR SPEAK.

>> C. KAHN: GO FOR IT TAMAR. YOU NEED TO YOU BE MUTE IF YOU WISH TO SPEAK. - you need to unmute if you wish to speak.

>> Tamar: CAN YOU HEAR ME NOW?

>> C. KAHN: YES.

1:47:02 - Tamar: THE MAIN THING of the project IS THAT ONE OF THE UNITS WOULD go toward my son. Sunny started to say that.-- ~~HE'S~~ Our YOUNGest ~~AND~~ is VISION IMPAIRED AND he will NEVER HAVE A CAR. So THERE WON'T BE A PROBLEM WITH THE PARKING on the street. HE CANNOT USE A CAR AND ~~HE'LL~~ he will USE PUBLIC TRANSPORTATION, BART and busses, AND WALK TO SHOPS like Monterey market for shopping. So WHEN WE GIVE HIM ONE UNIT, IF WE DON'T DO ANY REMODELING WE STAY WITH A ONE-BEDROOM APARTMENT FOR THE

FAMILY WHEN WE HAVE FOUR KIDS THAT LIKE TO COME OVER AND WE HAVE A FAMILY GATHERING AND HOPE THAT WE'LL GET TO THE PART OF GRANDKIDS ONE DAY THAT WE'D LIKE TO HOST THE BIG FAMILY PARTIES INSIDE ~~ASK~~ and OUTSIDE IN OUR YARD LIKE WE DID MOST IN THE CORONAVIRUS TIME and we still do it. And about the shadow and the privacy, I SENT this morning A PICTURE FROM THE SECOND FLOOR AND WENT TO THE AREA WHERE THE BEDROOM IS going to be that everyone is very concerned, and to ~~IN~~ THE CORNER CLOSE TO KAY'S AREA. IN THE PICTURE ~~BEING~~ you can SEE WE DON'T SEE ANY OF THE seating of KAY'S AREA at all. Nothing of the yard just plants and roof and trees, and THERE IS NO REASON TO BE CONCERNED ABOUT THAT AREA, definitely also because we ~~THEY'LL~~ HAVE BATHROOMS there AND the windows ~~THEY~~ WON'T BE THE WINDOWS YOU SEE THROUGH. And about ~~IN~~ ANNA'S and Adam's AREA, THERE ARE TWO PICTURES IN THOSE PHOTOS THAT I SENT TODAY THAT SHOW THAT DIRECTLY FROM THAT BEDROOM IS THE TREES. SO WE DON'T SEE ANYTHING. And if I did a wide angle picture YOU CAN SEE ON THE SIDE THE BEDROOM WINDOWS BUT DEFINITELY YOU CANNOT SEE ANYTHING IN THEIR YARD OR the seating they are mentioning in their yard that they we are taking all of their privacy. ONE OF THE other PICTURES SHOWS THAT RIGHT NOW WE CAN SEE THEIR KITCHEN WINDOW. AND THAT WOULD STAY SAME FROM THE YARD, we can always see their kitchen window.

>> C. KAHN: YOU NEED TO WRAP IT UP.

>> Tamar: AND also Kay's ~~CASE~~ WINDOWS WILL BE THE SAME. WE CAN

SEE IT NOW AND we'll KEEP SEEING IT, because we see her kitchen window now. ALSO MY HUSBAND WOULD LIKE TO TALK.

[1:49:20]>> C. KAHN: Oh no, YOU USED YOUR TIME. THANK YOU VERY MUCH. SO, I WOULD LIKE TO BRING IT BACK TO THE COMMISSION, FOR COMMENT. Open it up for ~~WE WILL HAVE~~ ANY DISCUSSION THAT YOU MAY WANT TO HAVE. I WOULD LIKE TO RESPOND TO SOME OF THE QUESTIONS THAT WERE VOICED IN PARTICULAR BY KAY THERE, AT THE END. KAY, I APPRECIATE YOUR CONCERN THAT THIS FEELS LIKE A FOREGONE CONCLUSION. AND TO SOME EXTENT IT IS. BECAUSE OF THE STATE STATUTE THAT really RESTRICTS WHAT WE CAN DO, NOT 100 PERCENT. WE CAN MAKE ADJUSTMENTS to, or recommend adjustments to the plans, specific adjustments THAT CAN HELP WITH THE PRIVACY CONCERNS for example. BUT WE CAN'T RULE ON PARKING BECAUSE THE CITY ~~HALL~~ NO LONGER REQUIRES PARKING OF NEW UNITS. AND WE AREN'T EMPOWERED TO GO AGAINST THE WILL OF THE COUNCIL, AND WE CAN'T DENY THE NEW UNIT BECAUSE THE STATE LAW DOESN'T ALLOW THAT. IF ANY OF YOU MEMBERS OF THE COMMUNITY had made ~~MAKE~~ SPECIFIC REQUESTS OR RECOMMENDATION ABOUT REDUCING OR MODIFYING ARCHITECTURAL ELEMENTS TO THE BUILDING, THAT'S THE KIND OF THING THAT WE HAVE REQUESTED IN THE PAST AND WOULD REQUEST AGAIN. I DIDN'T HEAR ANYTHING SPECIFIC REQUESTS ALONG THOSE LINES. SO I DON'T -- I DON'T KNOW IF THERE IS ANYTHING WE CAN DO TO HELP YOU OUT HERE. IGOR, I SEE YOU HAVE YOUR HAND UP.

[1:51:13]>> I. TREGUB: I HAD A COUPLE OF QUESTIONS FOR STAFF IN

RESPONSE TO SOME OF THE COMMENTS I HEARD. THE FIRST ONE, ON THE NUMBER OF USE PERMITS BEING REQUESTED AND I RECOGNIZE THIS IS A TERM OF ~~EYE~~ ART FOR US. WE DEAL WITH THIS EVERY TWO WEEKS BUT THIS IS NEW TO A LOT OF MEMBERS OF THE PUBLIC. JUST TO CONFIRM, STAFF, CAN YOU CONFIRM THAT THERE ARE IN TOTAL TWO USE PERMITS AND FOUR ADMINISTRATIVE USE PERMITS THAT TYPICALLY WOULD BE, YOU KNOW, IF IT WAS JUST ADMINISTRATIVE USE PERMITS AND NO USE PERMITS, THIS COULD BE APPROVED THROUGH STAFF REVIEW. WOULDN'T EVEN GO TO US.

>> Nick: YOU ARE CORRECT. TWO USE PERMITS, But THERE ARE actually FIVE TOTAL ADMINISTRATIVE USE PERMITS. THE THIRD BULLET ON THE zoning PERMITS REQUESTED MENTIONS ADMINISTRATIVE USE PERMITS FOR HORIZONTAL extending two nonconforming SETBACKS. Technically THOSE ARE individual ~~TWO~~ ADMINISTRATIVE use permits ~~TERMS~~ as you can ask for one and not the other. TYPICALLY, ADMINISTRATIVE USE PERMITS WOULD BE DONE OUTSIDE OF THE ZAB'S PURVIEW.

[1:52:30] I. TREGUB: THANK YOU SO MUCH. MY NEXT QUESTION IS IF YOU COULD, ONCE AGAIN, CLARIFY WHAT YOU SAID ABOUT OBJECTIVE STANDARDS BECAUSE I THINK I HEARD IT DIFFERENTLY THAN THE WAY THAT A NEIGHBOR HEARD IT, BUT I JUST WANTED TO MAKE SURE, ARE THERE ANY OBJECTIVE STANDARDS INVOLVED THAT GOVERN THIS PARCEL AND IF SO, WHAT ARE THEY?

>> Nick: THERE ARE ACTUALLY are. THE TWO USE PERMITS HAVE

SPECIFIC OBJECTIVES REQUIREMENTS THAT MUST BE MADE. THE USE PERMIT OF BEING OVER THE DENSITY SAYS THAT YOU'RE NOT INCREASING THE DENSITY OR GOING OVER THE HEIGHT LIMIT. They are meeting both of those standards. SIMILARLY WITH THE USE PERMIT FOR NONCONFORMING LOT COVERAGE AS LONG AS THEY'RE NOT INCREASING THE LOT COVERAGE OR GOING OVER THE HEIGHT LIMIT, THEY ARE PERMITTED. STILL THROUGH THE USE PERMIT STANDARDS AND GENERAL NON-DETRIMENT FINDINGS. AND THE ADDITIVE USE PERMITS WITHOUT EXTENDING THE YARDS STIPULATES THEY'RE NOT FURTHER DECREASING THE NONCONFORMING YARDS AND THEY ARE NOT further decreasing the nonconforming yards, and they are not DOING THAT.

[1:53:45] >> I. TREGUB: THANK YOU. AND MY LAST QUESTION, ONE MEMBER OF THE PUBLIC COMMENTED THAT ~~IT~~ there WAS SOME BACK AND FORTH ALLEGEDLY BETWEEN YOU AND THE APPLICANT TEAM AND RECOMMENDATIONS WERE MADE TO REDUCE THE FLOOR AREA. COULD YOU SPEAK TO THAT? BECAUSE I DIDN'T HEAR THAT PART IN THE INTRODUCTORY REPORT.

>> Nick: DURING THE COMPLETENESS REVIEW PROCESS OF APPLICATIONS, WE SOMETIMES INCLUDE what we call advisory ~~ISRAELI~~ COMMENTS TO APPLICANTS. THEY AREN'T SPECIFIC INCOMPLETENESS items where ~~THAT~~ THEY MUST BE RESOLVED before a complete application, BUT they are COMMENT THAT STAFF CAN provide ~~DO~~ IF we feel it will lead to ~~IT-NEEDS~~ A BETTER PROJECT. WE did provide ~~INCLUDED~~ ADVISORY COMMENTS in the first round of the

application SPECIFICALLY AROUND THE TOP LEVEL OF THE BUILDING. IN THE INITIAL APPLICATION AS SUNNY MENTIONED, IT WAS A THREE-STOREY DESIGN. THAT PROJECT WOULD HAVE REQUIRED A VARIANCE TO THE LOT COVERAGE. ONE OF THE ADVISORY COMMENTS WAS THAT THEY REMOVE THE VARIANCE REQUIREMENT BY WAY OF NOT LIFTING THE HOUSE AND CREATING A BASEMENT STOREY, but ~~WITH YOU~~ BY KEEPING IT AS A TWO-STOREY ELEMENT. But ONE OF THE SUGGESTIONS WAS AN AS OPTION TO LIFT THE HOUSE as they had originally proposed TO CREATE THE BASEMENT LEVEL BUT NOT TO ADD THE TOP LEVEL ~~OF~~ TO THE BUILDING. THEY CHOSE TO DO THE OTHER OPTION WHICH WAS TO NOT TO RAISE THE HOUSE BUT STILL KEEP THE TOP LEVEL. THEY ALSO DID MODIFY, THEY HAD A BUTTERFLY SHED ROOF DESIGN THAT PUSHED OUT THE TALLER ELEMENTS OF THE OUTER EDGES OF THE BUILDINGS AND THAT WAS MODIFIED TO A GABLED ROOF DESIGN TO REDUCE THE IMPACTS AND REDUCE THE AVERAGE HEIGHT OF THE BUILDING.

>> C. KAHN: ANY MORE QUESTIONS, IGOR?

>> I. TREGUB: THANK SO MUCH.

>> C. KAHN: DEBBIE.

[1:55:56]>> Debbie: MY QUESTION IS, I'VE BEEN STRUGGLING WITH THE SHADOW STUDIES, and Terry you may have some ideas on this, or Charles. I'm TRYING TO FIGURE OUT WHAT KIND OF CONFIGURATION MIGHT REDUCE THE SHADOWS ON 1639 AND 1609. AND THEY'VE ALREADY MOVED THE FRONT OF THE BUILDING BACK, THEY'VE PULLED THE BACK OF THE BUILDING IN. THE ONLY OTHER WAY I COULD SEE TO REDUCE THAT

SHADOW IMPACT WOULD BE TO ACTUALLY LOWER THE ROOF. THAT GETS INTO WHAT YOU JUST DESCRIBED, NICK, ABOUT, YOU KNOW, RAISING THE HOUSE AND MAKING THE BASEMENT A FULL STOREY WHICH WOULD MAKE IT MUCH MORE FUNCTIONAL. IT'S NOT GOT A whole LOT OF LIGHT. IT'S GOING TO BE A REC ROOM PRIMARILY. SO IF THEY HAD RAISED THE HOUSE SO THEY HAD, EITHER WAY, THEY WOULD HAVE HAD THE SAME AMOUNT OF SHADOW AND I GUESS THAT'S MY QUESTION. I DON'T SEE A WAY TO REDUCE THE AMOUNT OF SHADOW ON 1639 OR 1609 WITHOUT SAYING NO SECOND STOREY. I'M TRYING TO SEE IF THERE IS A WAY THAT WE COULD TWEAK THE SECOND STOREY AND other than saying HAVE ~~LESS~~ half as much SPACE AND MAKE DUE WITH THE BASEMENT, which is not going to be very nice space because THERE AREN'T MANY WINDOWS AND THEY ARE HIGH UP. I WAS TRYING TO FIND IF THERE ARE ANY OPTIONS FOR REDUCING THE SHADOWS AND IT SEEMS TO ME UNLESS WE JUST SAY REDUCE THE SQUARE FOOTAGE OF THE SECOND FLOOR, CUT THE SECOND FLOOR IN HALF, I DON'T KNOW WHAT OTHER OPTIONS WE WOULD HAVE. IT LOOKED TO ME THAT THEY HAD ALREADY MADE THE CHANGES, MADE A NUMBER OF CHANGES THAT REDUCE SHADOWS. BUT NOT COMPLETELY. SO, AND I GUESS -- SO I GUESS MY QUESTION IS AS YOU LOOKED AT THESE POSSIBLE CHANGES OF THE FIRST FLOOR OR SECOND FLOOR AND WHAT THE RESTRICTIONS ARE ON US BY THE STATE, WE CAN'T DENY THE UNIT. CAN WE REDUCE THE SQUARE FOOTAGE? I'M NOT SAY WE ~~GO~~ WANT TO, BUT I WANT TO BETTER UNDERSTAND what THE PARAMETERS are ON WHAT WE MAY OR MAY NOT DO. ~~IF~~ IT'S IN THAT GRAY AREA that

I NEED SOME GUIDANCE.

[1:59:05] >> Nick: AS ONE POINT OF CLARITY, THE SECOND UNIT IS NOT technically being ADDED TO THE PROPERTY BECAUSE IT was originally on the property and had been illegally ~~WILL HAVE BEEN~~ REMOVED. So as a component of the project THEY HAVE TO RESTORE IT. ~~BECAUSE IT WAS ILLEGALLY REMOVED.~~ THERE IS NOT ANYTHING IN THE HAA ~~AHA~~ THAT says that a reduction in square footage would not be permitted if it is a way to mitigate some of the impacts. It's just that you cannot ~~THERE IS A STRUCTURE THAT NEEDS TO BE REMOVED BUT YOU CAN'T~~ APPROVE IT AS A LOWER DENSITY OR DENY THE PROJECT. So IT DOESN'T SAY THAT YOU COULD NOT REDUCE THE SQUARE FOOTAGE OF the PROJECT.

[1:57:45] >> C. KAHN: HOLD THAT THOUGHT, NICK. I'M REFERRING, I'M PULLING UP THE ~~DATA~~ memo FROM STEVE. I'LL BE ABLE TO QUOTE IT precisely TO MAKE SURE THAT WE'RE DOING THE RIGHT THING. ANY OTHER QUESTIONS HERE OR COMMENTS?

>> D. SANDERSON: Charles, I just wanted to let you know WE'RE AT 8:55, WE'LL NEED A CAPTIONER'S BREAK AT 9:00.

>> C. KAHN: HOPEFULLY WE CAN GET TO A VOTE BEFORE THEN. MY COMPUTER IS TAKING ITS OWN SWEET TIME. I'M READING THE MEMORANDUM and THE -- LET'S SEE, IS THERE ANYONE ELSE THAT WOULD LIKE TO SPEAK WHILE I'M -- BRINGING THIS UP.

>> D. SANDERSON: CARRIE, YOU HAVE YOUR HAND UP.

>> C. KAHN: WHILE I'M LOOKING AT THIS, SHOSHANA, COULD YOU TAKE

OVER AS CHAIR?

>> S. O'KEEFE: SURE, CARRIE.

[2:00:57]>> C. OLSON: I'M NOT SURE IF WE HAVE ANY WIGGLE ROOM ON THIS. I'M ASSUMING THAT WE DON'T, BUT STAFF CAN TELL ME IF WE DO. THIS IS -- I'M SORRY, MY KIDS GREW UP AND LEFT HOME. IT'S just MY HUSBAND AND I. THIS IS A HOUSE WHERE IT'S JUST GOING TO BE MOM, DAD AND ONE SON, and YET WE APPROVE SIX BEDROOMS? We don't have any wiggle room. JUST LET ME KNOW, NICK. I'm curious.

>> Nick: Just to clarify, FIVE BEDROOM.

>> C. OLSON: OKAY. FIVE BEDROOMS. I JUST DON'T WANT DO A MINI DORM HERE you know, SORRY.

>> S. O'KEEFE: NICK, DO YOU WANT TO ANSWER? I have a comment but I THINK THAT WAS ADDRESSED TO YOU.

>> Nick: AGAIN, OUR UNDERSTANDING OF AHA IS THAT IT CAN'T BE DENIED OR REDUCED IN DENSITY. But IF THERE IS A SPECIFIC EFFORT, WE HAD A PROJECT THAT THE ZAB CONSIDERED PREVIOUSLY IN THE HILLSIDE THAT DID REQUIRE THE MOVING OF THE STRUCTURE in order to attempt to reduce the impacts, WHILE that project ~~HE~~ WAS HAA ~~AHA~~ COMPLIANT.

>> S. O'KEEFE: YOU SAY MOVING, was the square footage reduced?

>> Nick: ~~THE~~ TECHNICALLY THE SQUARE FOOTAGE WAS REDUCED just slightly BUT THE MAJOR COMPONENTS of it WERE NOT.

[2:02:20] C. KAHN: I FOUND THE PARAGRAPH. THE SMOKING GUN. THIS IS FROM PAGE 3 OF STAFF COMMUNICATION TO ZAB 8/26/2021 FROM

STEVE BUCKLEY, PLANNING DIRECTOR. Planning MANAGER, SORRY. The first paragraph. FOR PURPOSES OF THE HAA ~~AHA~~ LOWER DENSITY INCLUDES ANY CONDITIONS THAT HAVE THE SAME EFFECT OR IMPACT OF THE ABILITY FOR THE PROJECT TO PROVIDE HOUSING GENERALLY UNDERSTOOD TO BE THE TOTAL NUMBER OF DWELLING UNITS, BUT ALSO RELATED TO OVERALL SQUARE FOOTAGE, NUMBER OF BEDROOMS, ET CETERA. So THAT WAS a new finding, that was NOT THE OLD POLICY OF THE CITY. THAT'S WHY I MADE NOTE OF IT AT THE TIME. THE PRIOR POLICY OF THE CITY prior to this memo WAS THAT IT WAS ONLY NUMBER OF UNIT PROTECTED BY THE HAA ~~AHA~~. Steve ~~HE~~ DID HIS HOMEWORK and worked with the city attorney to clarify square footage or bedrooms are also covered because they provide housing. ~~ON THIS~~. So THAT'S FROM 8/26/21, I'LL SEND YOU THE LINK, Nick, SO YOU CAN SHARE IT with other members of the staff. So Carrie that answers your question, WE CAN'T REDUCE THE NUMBER OF BEDROOMS PER HAA. SO, OUR HANDS ARE -- I MEAN IT DOES SEEM LIKE OUR HANDS ARE TIDE ON THESE ISSUES. SHOSHANA, I'LL GO AHEAD AND RESUME THE CHAIR WITH YOUR PERMISSION.

[2:04:30]>> S. O'KEEFE: I WAS GOING IT MAKE A COMMENT BUT I SEE YOU'RE BACK. SO, THAT WAS MY THINGking AS WELL. THANK YOU SO MUCH FOR CLARIFYING. I DON'T THINK WE CAN REDUCE THE SQUARE FOOTAGE. That's what I thought the rules were also. I just want to say IN RESPONSE TO CARRIE'S COMMENTS, sort of mute at this point but, I WANT TO REMIND THE BOARD WHEN WE MAKE DECISIONS, WE

CANNOT, SHOULD NOT AND CANNOT TAKE INTO ACCOUNT THE STATED PURPOSE BY THE APPLICANT. IT DOESN'T MATTER WHO IS GOING TO LIVE THERE BECAUSE WE'RE GRANTING A USE PERMIT THAT GOES TO THE HOUSE. THEY COULD SELL THE SECOND THEY GET THE PERMIT AND SOMEONE ELSE CAN BUILD IT. It's just a mirage. WE just NEED TO look ~~LIKE~~ CAREFULLY AT WHAT WE'RE APPROVING, what the concrete objective impacts are, regardless of how the house is used or who lives there, or what they are doing. THANK YOU.

>> C. KAHN: I HAVE TWO HANDS UP, CARRIE AND DEBBIE AND I'LL RECOGNIZE YOU IN THAT ORDER.

>> C. OLSON: THANK YOU SHOSHANA FOR THAT. I'M NOT ASKING FOR MYSELF, I'M ASKING BECAUSE WE HAVE VERY INTERESTED NEIGHBORS. AND THEY NEED TO UNDERSTAND WHY IT IS THAT this zoning board is going to end up approving this project. It's not that we couldn't make modifications, I want to stress that, I have a couple of ideas. ~~THEY NEED TO UNDERSTAND WHY THIS ZONING BOARD MAKES DECISION.~~ But THIS IS THE SIZE OF THE PROJECT WE'RE PRESENTED WITH.

>> C. KAHN: DO YOU WANT TO EXPAND ON THESE IDEAS, CARRIE? OR DO YOU WANT TO WAIT?

>> C. OLSON: I THINK THERE ARE A LOT OF WINDOWS THAT LOOK DOWN ON NEIGHBORS AND THEY'RE CONCERNED ABOUT PRIVACY. WE COULD ASK THAT THOSE WINDOWS ON THE SECOND FLOOR BE WE CUT IN HALF. A COUPLE OF THEM ON THE FIRST FLOOR ON THE NORTH SIDE THAT ARE

ALREADY SMALL NOW, SO THEY COULD REMAIN SMALL. AND I THINK THAT WOULD HELP. I AGREE WITH DEBBIE, I DON'T SEE ANY WAY TO CHANGE THE BULK OF THIS THING UNLESS WE MADE THE ROOF LOWER. BUT CHARLES, I WOULD HAVE TO RELY ON YOU TO COME UP WITH AN IDEA FOR ~~ON~~ THAT. THAT'S ALL I HAVE TO SUGGEST. THE OTHER THING IS THAT PATHWAY THAT GOES TO UNIT NUMBER TWO ON THE NORTH SIDE OF THE BUILDING, THERE IS NO FENCE THERE. AND IT JUST SEEMS LIKE EYE IT'S EXPECTED THIS TO BE A GATE TO AN ENTRYWAY AND DRIVEWAY THAT PROBABLY DOESN'T EXIST. SHOULD WE ASK FOR A FENCE? JUST PUTTING IT OUT THERE.

>> C. KAHN: I WOULD LIKE TO -- DEBBIE, WITH YOUR PERMISSION I WOULD LIKE TO RESPOND TO CARRIE'S QUESTION ABOUT THE WINDOWS AND STUFF.

>> Samantha: WE NEED TO TAKE A BREAK.

>> C. KAHN: OKAY, IT'S 9:00. THEN I'LL HOLD THAT AND DEBBIE, YOU'LL BE THE FIRST ONE HEARD WHEN WE COME BACK. AND I GUESS IT'S STANDARD TO TAKE A 10-MINUTE BREAK. WE HAVE ONE MORE. I THINK WE HAVE TO STOP AT 10:00 ANYWAY. LET'S BE BACK AT 9:12. WE'LL MAKE IT 9:12 ON BUTTON. THANKS.

>> C. KAHN: OKAY. LET'S GET THIS UNDERWAY. IT BY, WHY DON'T YOU GO AHEAD AND SAY YOUR PEACE. CAN YOU HEAR ME, DEBBIE? CAN ANYONE HEAR ME? HOLD YOUR THUMB UP IF YOU CAN HEAR ME. DEBBIE DOESN'T SEEM TO BE HEARING ANYTHING. I'LL TRY TO TEXT HER. DEBBIE. CAN

YOU HEAR ME? HOLD YOUR THUMB UP IF YOU CAN HEAR ME. NO? WELL, I
THINK WE SHOULD MOVE FORWARD. DEBBIE, CAN YOU HEAR ME? YES? NO?
SAMANTHA, CAN YOU HEAR ME?

>> Samantha: BOARD SECRETARY: I CAN HEAR YOU.

>> C. KAHN: THIS SEALS TO BE A PROBLEM WITH DEBBIE'S SYSTEM. I
SENT HER A TEXT -- SHE IS GOING TO SIGN OFF AND TRY TO GET BACK
ON. SO, MOST OF THE CONCERNS VOICED WHICH THE NEIGHBORS WERE
RELATED TO SHADOW AND LIGHT. AND I DON'T SEE ANYTHING MORE THAN
WE CAN DO. THIS IS AS LOW AS IT CAN GO AND RECOMMENDATION FROM
STAFF TO GO UP INTO THE BUTTERFLY ROUTE WHICH THEY COULD HAVE
REQUESTED TO THE AVAILABLE ROUTE IS GOOD ADVICE, VERY THOUGHTFUL
THAT THE NEIGHBOR'S PRIVACY AND SHADOWING CONCERNS, LIGHT AND
AIR. THAT WAS A GOOD MOVE. Certainly DROPPING -- NOT PUSHING UP
THE HIGHEST THAT THEY COULD GO IS HELPING. THESE ARE NOT HIGH
CEILING HEIGHTS. I'M KIND OF -- OTHER THING IS THEY DID RESPECT
THE 20-FOOT SETBACK AT THE REAR AND THE FRONT ON THE NEW SECOND
FLOOR. WHICH REALLY DOES MITIGATE THE SHADOW LINES OF THE FLOORS
SUBSTANTIALLY. I FEEL LYING MOST OF THE MITIGATIONS ARE IN
PLACE. I DIDN'T HEAR ANYTHING FROM THE NEIGHBORS EXPRESSING
CONCERNS ABOUT WINDOWS AND WINDOW PRIVACY. AND I LISTENED TO
NEIGHBORS AND TRY TO RESPOND TO THEIR CONCERNS RATHER THAN JUST
TRYING TO APPLY A RESTRICTION FOR THE SAKE OF APPEALING TO BE
APPEARING TO BE ACCOMMODATING OF NEIGHBOR'S CONCERNS. IT DOESN'T
ADDRESS THE CONCERNS THAT THEY VOICED. I HEARD VOICES ABOUT

PARKING AND LIGHT AND ACTUALLY, HONESTLY, I LOOKED AT THE SHADOW PLANS AND I DON'T THINK THAT THIS IS DRAMATICALLY INCREASING THE AMOUNT OF SHADOW THAT THE NEIGHBORS ARE CURRENTLY EXPERIENCING. IT'S A SECOND STOREY ADDITION AND THE OWNER HAS THE RIGHT FOR A SECOND STOREY. I'M GOING TO MOVE FOR APPROVAL. IS DEBBIE BACK ON? SHE SEEMS TO BE HAVING TROUBLE WITH HER --

>> D. SANDERSON: NO I HAVE TO REMEMBER TO TURN THE HEAD SET ON. I TURN IT OFF. I HAVE COME TO THE SAME CONCLUSION. I SPENT A FAIR AMOUNT OF TIME LOOKING AT THE DISTANCES BETWEEN THE HOUSE AND THE DIFFERENT SITTING AREAS. AND NOTICED THAT THE SOUTHEAST, THE SOUTHEAST CORNER THAT LOOKS OUT OVER -- I MEAN I UNDERSTAND FROM THE NEIGHBORS' CONCERN THAT THIS IS DIFFERENT AND IT WILL ~~INCLUDE~~ introduce CHANGES IN HOW THEY ARRANGE THEIR LIVING PATTERN WITH THEIR NEIGHBORS. I LIVE IN A HOUSE WHERE I CAN SEE INTO MY A NEIGHBOR'S DINING ROOM WINDOW ON ONE SIDE AND DIRECTLY INTO THE KITCHEN WINDOW ON THE OTHER SIDE. SOMEHOW IT EVOLVED. ~~IF YOU PUT SEE-THROUGH~~ In who put CURTAINS up WHERE, see-thoughty curtains that lets light rhoguh but YOU CAN'T really SEE THE PEOPLE ~~BUT IT LETS THE LIGHT IN~~. So you can accommodate this increased density over time, and it won't be the same but it won't be awful. I UNDERSTAND THAT THE CHANGE IS UPSETTING AND ~~IRE~~ you're CONCERNED WITH THE IMPACT. BUT THE IMPACT HAVE OTHER WAYS OF BEING ACCOMMODATINGEd WITHOUT SAYING NO, YOU CAN'T BUILD This BUILDING. AS FAR AS THE SHADOWS GO, I DON'T SEE ANY OTHER

WAY AROUND IT. And most of THE SHADOWS MENTIONED I consider ~~ARE~~ TRANSITORY shadows. ONE TIME OF THE YEAR, ~~AND particularly~~ TWO OR THREE MONTHS AND it will be a late afternoon, IT WON'T BE -- THE WINDOWS WILL BE SHADED ALL DAY. SO I'M WITH YOU, CHARLES, I MEAN I'VE LOOKED AT WHO IS SITTING IN WHAT ROOM AND LOOKING OUT WHERE AND HOW FAR AWAY IT IS. I THINK IT'S -- THESE ARE THE TYPICAL IMPACTS IN AN URBAN AREA EVEN THOUGH FOR THESE NEIGHBORS, I RECOGNIZE AND APPRECIATE THAT IT'S DIFFERENT THAN WHAT YOU'RE USED TO. BUT THAT SAID, I THINK I WOULD SUPPORT THE PROJECT.

>> C. KAHN: THANK YOU FOR YOUR COMMENTS. CARRIE.

[2:24] >> C. OLSON: I DON'T DISAGREE. AND -- BUT I THINK IT'S IMPORTANT THAT WE HAVE THIS DISCUSSION. AGAIN IN FRONT OF THE PUBLIC. SO THEY UNDERSTAND WHY WE'RE MAKING THE DECISIONS WE MAKE. I'LL SECOND YOUR MOTION, CHARLES.

>> C. KAHN: THANK YOU, CARRIE. OKAY. WE HAVE A MOTION, WE HAVE A SECOND. IF THERE IS NO FURTHER DISCUSSION, I WOULD LIKE TO HAVE A VOTE SO WE CAN HAVE OUR FINAL ITEM TONIGHT. SAMANTHA.

>> CLERK: THANK YOU. THIS IS TO APPROVE 1643, 1647 CALIFORNIA STREET. COMMISSIONER DUFFY.

>> YES.

>> COMMISSIONER THOMPSON.

>> YES.

>> COMMISSIONER OLSON.

>> YES.

>> COMMISSIONER GAFFNEY.

>> YES.

>> COMMISSIONER KIM.

>> YES.

>> COMMISSIONER KAHN.

>> YES.

>> COMMISSIONER SANDERSON.

>> YES.

>> VICE CHAIR O'KEEFE.


>> YES.

>> AND COMMISSIONER TREGUB.

>> YES.

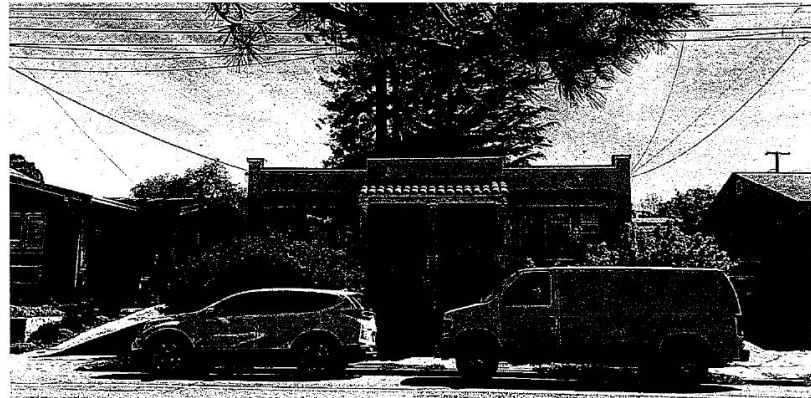
>> C. KAHN: THANK YOU SAMANTHA, THAT WAS A UNANIMOUS VOTE IN
FAVOR OF THE USE PERMIT WHICH IS NOW GRANTED SUBJECT TO ALL THE
TERMS AND CONDITIONS THAT APPLY.

Why support this appeal?

- The City / ZAB initially erred in interpreting the restrictions imposed by the HAA, significantly limiting their own power to mandate modifications for proposed projects. This case and appeal caused the City to reconsider the faulty information on which the ZAB based its decision. The appellants who brought this error to the attention of the City deserve a new ZAB hearing in which the corrected interpretation of the HAA can be applied.
 - Protect lower-income units that increase economic and racial diversity in Berkeley, especially North Berkeley.
 - Promote inclusion and integration by maintaining a variety of size, price and kinds of units in neighborhoods.
 - Ensure the HAA is applied correctly, protecting the City's right to modify plans for remodels that do not bring additional housing to Berkeley.
 - Help meet Berkeley's climate change goals by protecting and promoting smaller dwellings.
 - Limit real estate speculation and gentrification that in the long-term will drive out lower-income residents.
- 

Current structure.

- One-story duplex, total 1,342 sq. ft.
- Two identical units, each 671 sq. ft.
- Two lower-income housing units.
- Duplex structure constitutes a 44% lot coverage (3100 sq. ft. lot), where the maximum allowed for a single story structure is 45%.
- Illegally converted by current owners into a single family dwelling, when their four children were young



Why did we appeal the ZAB decision?


1. We felt confident that the ZAB had misinterpreted the HAA and was using it inappropriately
 - The Housing Accountability Act (HAA), which is meant to drive new affordable housing and protect low-to-moderate income housing, was being interpreted to suggest that the city was obligated to allow the conversion of two lower-income units (duplex) into a luxury home with an attached ADU (See project description above)
 - After reviewing a city planning office memo produced during the meeting, ZAB believed that it's "hands were tied" and approved this project believing that the new law meant that they could not require a reduction in the number of bedrooms or square footage of projects, entirely counter to past City practice.
2. We felt that the city was unfairly allowing addition of a top story that all adjacent neighbors oppose
 - Even though the zoning standards would be exceeded and no objective standards are in place to either allow or disallow the impacts of the proposed project on shadow, light and privacy of adjacent properties
 - Even though it would set a precedent for gentrification and construction of luxury homes
 - Without considering important potential modifications initially suggested by the City Planner (removal of top floor)
3. We felt misled by City staff with whom we had discussed how the ZAB meeting is run and used, what our opportunities for participation would be, what decisions might be made at the meeting, and what we should put in our letter and verbal arguments to the ZAB.

1. The city attorney (Bren Darrow) agrees with our main contention on the HAA having been misinterpreted.

Memo to city council from Jordan Klein, Director, Planning and Development; page 5

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

In other words, it is only the number of housing units, not the square footage or the number of bedrooms in a unit, that is protected under the HAA. Thus the ZAB could absolutely have required a reduction in the size of the project as well as other conditions to mitigate impacts on neighbors.



The city therefore can absolutely require significant alterations to this project.

Memo to city council from Jordan Klein, Director, Planning and Development; page 5

'...ZAB may have had faulty information that led them to believe that they could not modify the project. Council may add conditions to the proposed project to address the appellants' concerns (such as the three specific modifications to the project that were requested by the appellant, as described on page 9 of the appeal letter, included as attachment 2), or may remand the project back to ZAB'

In other words, the city is by no means required to permit the proposed project. If the city were to do so against the opposition of neighbors without considering potential square footage reductions and other modifications to mitigate impacts, it would unfairly favor one property-owner over others while also going counter to the City Council's expressed intentions of protecting lower income housing in Berkeley.

The “faulty information” that the ZAB had at the time, clearly led them to believe they could not modify the project.

(Excerpts from the ZAB meeting recording, full detail in slides 21-22)

(1:56) D. Sanderson – ZAB Commissioner: Can we reduce the square footage?

(1:59) N. Armour – City Planner: There is not anything in the HAA that says that a reduction in square footage would not be permitted if it is a way to mitigate some of the impacts. . It’s just that you cannot approve it at a lower density or deny the project. It doesn’t say that you could not reduce the square footage of the project.

(1:57) C. Kahn - ZAB Chairperson): Hold that thought Nick. I’m pulling up the memo from Steve. I’ll be able to quote it precisely to make sure that we’re doing the right thing.

(2:00) C. Olson - ZAB Commissioner: This is a house where it’s just going to be mom, Dad and one son, and yet we approve [five] bedrooms? We don’t have any wiggle room?... I just don’t want to do a mini dorm here.

(2:02) C. Kahn – ZAB Chairperson: I found the paragraph. The smoking gun. This is from page three of the staff communication to ZAB on 8/26/2021 from Steve Buckley, planning manager. The first paragraph: “for purposes of the HAA lower density includes any conditions that have the same effect or impact of the ability for the project to provide housing generally understood to be the total number of dwelling units, but also related to overall square footage, number of bedrooms, etc.” Steve did his homework and worked with the city attorney to clarify square footage or bedrooms are also covered because they provide housing. So, Carrie to answers your question, we can’t reduce the number of bedrooms per HAA. So it does seem like our hands are tied on these issues.

(Blue highlights is the erroneous interpretation that has since been corrected)

(2:04) S. O’Keefe – ZAB Vice Chairperson: That’s what I thought the rules were also.

(2:06) C. Olson - ZAB Commissioner : I’m not asking for myself, I’m asking because we have very interested neighbors, and they need to understand why it is that this zoning board is going to end up approving this project. It’s not that we couldn’t make modifications, I want to stress that, I have a couple ideas. But this is the size of the project we’re presented with



It is possible that the ZAB would have approved only a much smaller project with lesser impacts to neighbors if the ZAB had correctly understood the law.

In the hearing...

One ZAB member highlighted that this was the first time a project of this kind was brought before the ZAB, referring to a project opposed by neighbors and in which no privacy and shadow impacts were discussed in the staff report.

Multiple ZAB members expressed concern that the HAA seemed to unduly limit the power of the ZAB, making their role much less relevant.

There was a discussion of whether or not the ZAB could require a reduction in bedrooms or square footage of the third level, including removing it or cutting it in half. This discussion stopped because of the assertion that no changes in size could be made.

One ZAB member clearly expressed opposition to the size of the project, but conceded upon being told that the ZAB had no option but to approve the project.

That same ZAB member mentioned the need to prepare materials to explain to the public why the ZAB would be approving this kind of project.

There was a short discussion of whether there were other potentially mitigating conditions that could be required of this project, but because neighbors' microphones were muted and the webinar chat was disabled for the audience, we were not able to respond to the ZAB member who posed the question about whether neighbors were suggesting any changes other than the square footage reduction that they believed was prohibited.

This review and correction of city policy occurred because of our appeal and the associated \$500 charge paid by the neighbors. The corrected city policy should therefore be applied to our appeal, not just to future projects, and we therefore request that this project be remanded back to the Planning department or at a minimum to the ZAB for another hearing

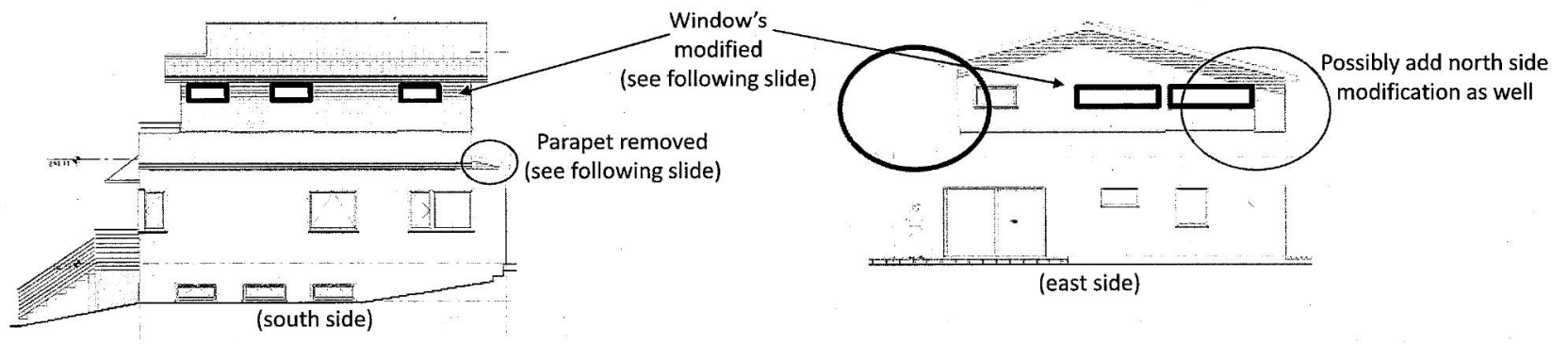
Our request to the City Council

1. At a minimum, remand this project back to ZAB, so that they can reassess the project and the neighbors comments in light of the corrected guidance on the HAA driven by our appeal.
2. Additionally the council could recommend to ZAB, or set conditions to the project themselves, to use their authority to limit square footage and either deny the upper floor addition or limit the size of that addition.
3. If possible, please set conditions on any future permit for this project such that any changes to the exterior of the house on the south, east or north sides would need to go back through a ZAB hearing (i.e. cannot be done simply via a permit modification in the permits office or through a simple AUP that doesn't require the ZAB approval).

A reduction in top floor area could reduce impacts on neighbors

Even if the City Council / ZAB decides to allow the upper story of this project, a reduction of that level would mitigate against impacts to neighbors while keeping the unit at a slightly smaller size.

- Moving the south wall back ~7 feet would maintain much of the summer dinner-time light on the back porch and also into the kitchen (east). It would also increase the distance from and impact to the yard of the neighbor to the south.
- Equivalent movement of the wall on the north side could be similarly beneficial to the neighbor to the North.



ZAB hearing (@1:56) – D. Sanderson: I was trying to find if there are any options for reducing the shadows and it seems to me unless we just say reduce the square footage of the second floor, cut the second floor in half, I don't know what other options we would have.

By disallowing the third level, the City would prevent loss of a smaller, lower-cost dwelling unit in Berkeley.

The project seeks to capitalize on past modification to permit nonconforming elements with far greater impact to neighbors.

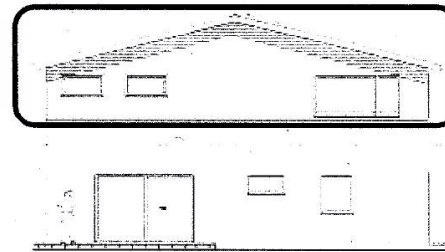
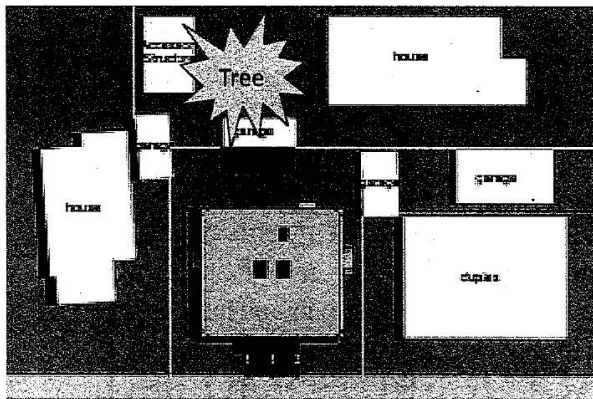
- 1924: Permitted and built as a duplex w/ 45% lot coverage
- 1952: Backyard storage shed built (8'x20', 8'6" tall) taking lot coverage to 50%. Storage shed has no impact on neighbors.
- 1989: Current owners purchase property. Sometime thereafter, they illegally remove the kitchen from 1643 California and add an internal door between the two units, thus converting the duplex to a single family dwelling.
- 2021: Owners seek to capitalize on "restoring" the illegally removed unit, and present plans to demolish the low impact storage shed and trade in the resulting reduction in lot coverage to enable construction of a 'high impact' upper level with a new project that just slightly reduces the existing total lot coverage.

Without the storage shed, we believe this project would require a variance (project would not meet the objective standards for the UP on lot coverage).

Approval would set a precedent and model how property owners can bypass UP objective standards. (Get a permit for a storage shed and build, then later trade that lot coverage in for a much greater expansion.) Is this really allowed?

Current storage shed. Not a fair trade for the new upper floor for the neighbors.

Without the shed to remove we believe the upper floor would need a variance for lot coverage, and would definitely not meet objective zoning standards



Current shed barely visible over fence

Even if the city decided to allow the upper floor, minor modifications could help reduce the impacts to light and privacy

Planning Director's letter to city council, p5: 'Council may add conditions to the proposed project to address the appellants' concerns (such as the three specific modifications to the project that were requested by the appellant, as described on page 9 of the appeal letter, included as attachment 2), or may remand the project back to ZAB.'

1. Limit size of windows on second floor (awning style windows, above 5' from floor) for privacy
2. Increase size of fence between yards to increase first floor privacy.
3. Remove second floor rear parapet feature to prevent future illegal conversion to a deck within the setback

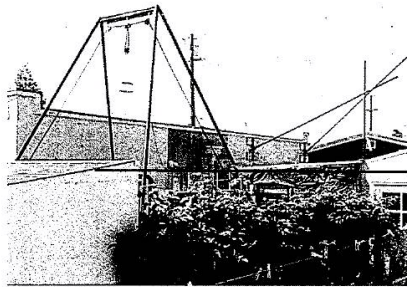
ZAB member C. Olson from ZAB hearing: 'I think there are a lot of windows that look down on neighbors and they're concerned about privacy. We could ask that those windows on the second floor be cut in half. A couple of them on the first floor on the north side are already small now, so they could remain small, and I think that would help.'

1&2. Window reduction and taller fence on east side

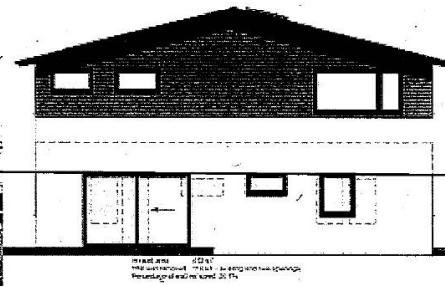
Conversion of east side upper level windows to awning windows that are placed above 5' from the floor would increase privacy for everyone

- An additional awning window could be added to allow more light into the room

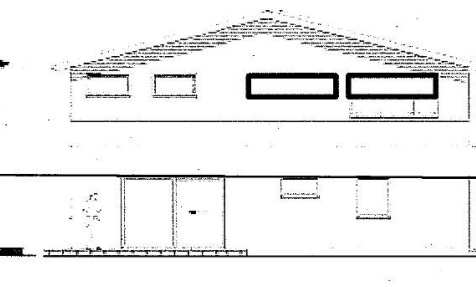
Addition of 8' fence between properties would block 1st floor views between properties



(Pic from our mid-house dining room window)



(Shadow's show existing windows)

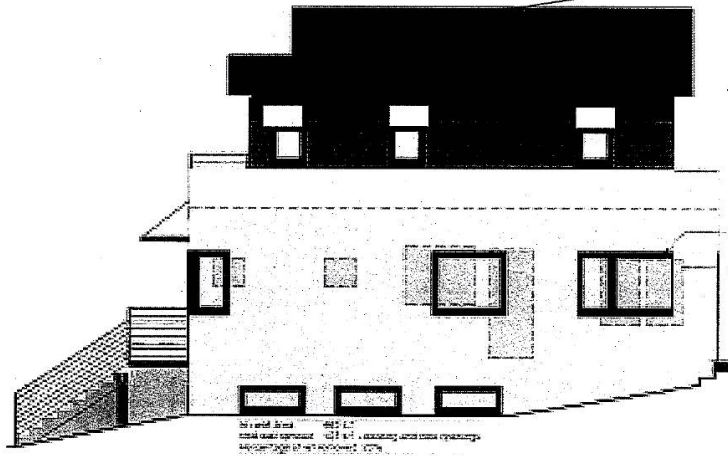


(Red show 'lower impact' windows)



(Pic from our farthest east bedroom window)

1. Window reduction on south side



Solar tube or similar could be used if the applicants desired to bring additional light into certain rooms.

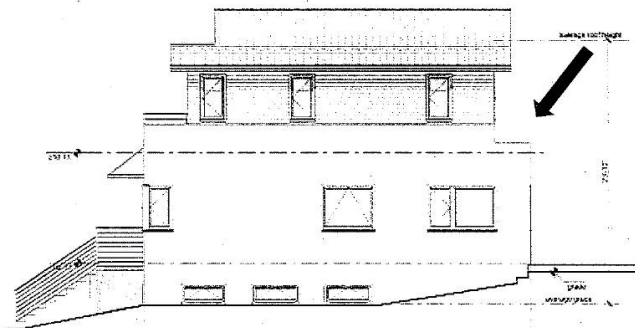
Awning windows on upper floor

Similar window / lighting changes may be appropriate on the north side of the building as well.

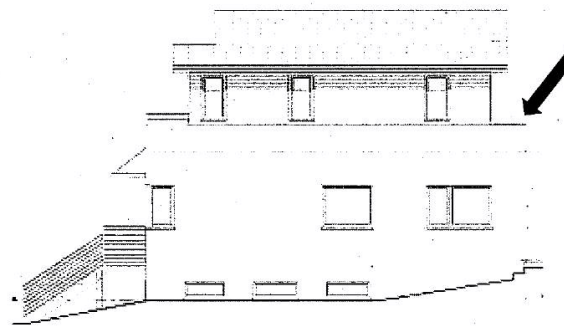
3. Parapet Removal

Given the initial design submitted, and history of modifications, we are concerned about a possible future conversion of the parapet roof to a 'deck' within setback.

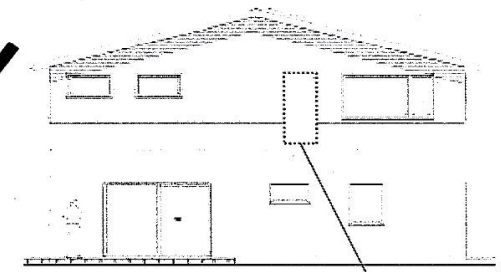
- The rear parapet was removed in 1st resubmission, but then added back in the final in spite of there being no critical design continuity on sides of house
- Parapet only serves to collect tree debris (a continual source of frustration for the property owners on their current flat roof)



From 1st resubmission 5/25/21
(south side)



From Final resubmission 8/21/21
(East side - rear)



Location of possible door addition if a rear 'deck' is added later.