



Office of the City Manager

PUBLIC HEARING
November 3, 2022

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Jordan Klein, Director, Planning & Development Department
Subject: ZAB Appeal: 1643-1647 California Street, Use Permit #ZP2021-0001

RECOMMENDATION

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

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

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

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

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

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

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

Expressions of support of the application included:

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

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

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

On April 26, 2022, Council remanded the project to ZAB for reconsideration of the applicability of the Housing Accountability Act, and the Rent Stabilization and Eviction for Good Cause Ordinance.

On July 14, 2022, the ZAB conducted a public hearing for the remand. The Housing Accountability Act (HAA), California Government Code Section 65589.5(j), does not apply to the proposed project because no new dwellings are proposed. The two existing dwellings would remain, and the size of the dwellings would change. Rent Board staff prepared a memorandum that analyzed whether the Rent Stabilization and Eviction for Good Cause Ordinance applies to the project. Since there are currently no tenants, there are no tenant protections at issue currently. Future tenants would be protected by the ordinance. Both units are subject to rent control when rented.

After hearing public comments and holding discussion, the ZAB approved the use permit by a vote of 7-0-0-2 (Yes: Duffy, Gaffney, Kahn, Kim, Sanderson, Thompson, Tregub; No: None; Abstain: None; Absent: O'Keefe, Olson).

On July 21, 2022, staff issued the ZAB Notice of Decision, and on August 2, 2022, an appeal of the ZAB decision was filed with the City Clerk by Kay Bristol, the owner of 1651-1653 California Street, and Anna Cederstav and Adam Safir, the owners of 1609 Virginia Street. The Clerk set the matter for review by the Council on November 3, 2022.

On October 20, 2022, staff posted the public hearing notice at the site and three nearby locations, and mailed notices to property owners and occupants within 300 feet of the project site, and to all registered neighborhood groups that cover this area. The Council must conduct a public hearing to resolve the appeal.

BACKGROUND

The project site is located in the North Berkeley neighborhood, on the east side of California Street at the corner of California and Virginia Street. It is one block east of

Sacramento Street and four blocks west of Martin Luther King Junior Way. The surrounding area consists of residential uses including one- and two-story single-family dwellings and two-story multi-family buildings.

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

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

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

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

For additional project background, please see Attachment 3, the July 14, 2022 ZAB staff report for this project.

RATIONALE FOR RECOMMENDATION

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

Issue 1: ZAB did not address the appellants' requested changes, including conditioning the permit to prevent post-permit modification of the upper floor of the exterior of the building.

Response 1: Pursuant to Berkeley Municipal Code (BMC) Section 23C.04.070.C², additions and/or enlargements of lawful non-conforming structures that are non-conforming by reason of lot coverage are permitted with a Use Permit if the addition/enlargement does not increase coverage or exceed the height limit. The property is eligible for the use permit because it is non-conforming for the maximum allowable lot coverage, with 50 percent coverage where 45 percent is the maximum on this R-2 zoned property. The proposed project would remove an existing shed in the rear yard which would reduce the lot coverage to 44 percent, but the standards are different for a one-story or a two-story house, so the property would remain non-conforming for the revised allowable lot coverage of 40 percent.

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

Pursuant to BMC Section 23C.04.070.E, additions and/or enlargements of lawful non-conforming structures that are non-conforming by reason of residential density are permitted with a Use Permit if the addition/enlargement does not increase the density or exceed the height limit. The project proposes to maintain the density at two units, and the addition would comply with the allowable average height limit in the district. Pursuant to BMC Section 23C.04.070.C, additions and/or enlargements which vertically extend or alter a portion of a building which encroaches into a non-conforming yard are permitted with an Administrative Use Permit if the existing use of the property is conforming and if the addition/enlargement would not: 1) reduce any yard below the minimum setback requirements or further reduce existing non-conforming yards; or 2) exceed the maximum or calculated height limits. The existing residential structure is non-conforming to the front, rear, and left (north) side setbacks. The proposed addition/enlargement of the house would correct the non-conforming left side setback, but is proposed to vertically extend the non-conforming front and rear setbacks. Because the enlargement of the building would comply with the permitted residential use on the property, and the vertical expansions within the non-conforming setbacks would not further reduce the non-conformity, these expansions are permissible.

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

The BMC requires findings of general non-detriment³ for approval of discretionary permits, and each zoning district has district purposes to guide development. The ZAB determined that the project is compliant with all applicable, objective general plan and zoning standards. Even if neighbors are opposed to a project, ZAB may choose to not modify a project and approve it as is.

Issue 2: Approval of the project goes against policies and statements made by City Council in regards to preventing gentrification, and protecting small, more affordable, and rent-controlled housing. The appellants contend that it is unlikely that the proposed large dwelling unit will be rented because it is subject to rent control. The appellants further contend that zoning standards and permit requirements should be used to impose conditions to force owners to preserve the nature and purpose of rent-controlled properties (Appeal Letter, page 3).

Response 2: Whether or not a property will be rented or owner-occupied is beyond the purview of ZAB and the Land Use Planning Division. The Rent Board implements Berkeley's Rent Stabilization Ordinance. The Zoning Ordinance does not prevent property owners from applying for applicable development permits based on the tenancy of a property. ZAB considered and discussed the evidence presented at the hearing, and acted within its purview to approve the proposed project.

Issue 3: The project does not comply with the applicable, objective zoning standards. In the absence of objective standards regarding privacy and light, and in the absence of clear guidance regarding rent-controlled properties, ZAB's decision on a project is based on subjective standards regarding what constitutes harm to neighbors and the city (Appeal Letter, page 1).

Response 3: Per California Government Code, Section 65913.4(a)(5), objective standards are standards that involve no personal or subjective judgement by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by the applicant and the public official before submittal. The project site is existing non-conforming for residential density, lot coverage, and front, rear, and left setbacks. The lot was created and the duplex was built before the current R-2 District standards were developed; this is true of many residential properties in Berkeley, and the BMC allows property owners to apply for Use Permits to make alterations to non-conforming properties so long as non-conforming conditions are not worsened. An Administrative Use Permit is required for the addition

³ The findings for approval of use permits, sometimes referred to as "general non-detriment findings" are described in BMC Section 23.406.040(E)(1) Findings for Approval:

"To approve a Use Permit, the ZAB shall find that the proposed project or use:

- (a) Will not be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or visiting in the area or neighborhood of the proposed use; and
- (b) Will not be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City."

of more than 600 square feet (a major residential addition). Per BMC Section 23.202.030(A)(2)(a), to deny an AUP for a residential addition the review authority must find that the residential addition would unreasonably obstruct sunlight, air, or views. These subjective standards established in the BMC do not prevent ZAB from approving the project.

ENVIRONMENTAL SUSTAINABILITY

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

ALTERNATIVE ACTIONS CONSIDERED

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

Action Deadline:

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

CONTACT PERSONS

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

Attachments:

1. Draft Resolution
 - Exhibit A: Findings and Conditions
 - Exhibit B: Project Plans, received August 26, 2021
2. Appeal Letter, received August 2, 2022
3. July 14, 2022 ZAB Hearing Staff Report
4. Index to Administrative Record
5. Administrative Record
6. Public Hearing Notice

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

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

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

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

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

WHEREAS, on April 26, 2022, Council remanded the project to ZAB for reconsideration of the applicability of the Housing Accountability Act, and the Rent Stabilization and Eviction for Good Cause Ordinance; and

WHEREAS, on July 14, 2022, the ZAB conducted a public hearing for the remand. After hearing public comments and holding discussion, the ZAB approved the use permit by a vote of 7-0-0-2 (Yes: Duffy, Gaffney, Kahn, Kim, Sanderson, Thompson, Tregub; No: None; Abstain: None; Absent: O’ Keefe, Olson); and

WHEREAS, on July 21, 2022, staff issued the ZAB Notice of Decision, and on August 2, 2022, an appeal of the ZAB decision was filed with the City Clerk by Kay Bristol, the owner of 1651-1653 California Street, and Anna Cederstav and Adam Safir, the owners of 1609 Virginia Street. The Clerk set the matter for review by the Council on November 3, 2022; and

WHEREAS, on October 20, 2022, staff posted the public hearing notice at the site and three nearby locations, and mailed notices to property owners and occupants within 300 feet of the project site, and to all registered neighborhood groups that cover this area; and

WHEREAS, on November 3, 2022, the Council held a public hearing to consider the ZAB’s decision, and in the opinion of this Council, the facts stated in, or ascertainable from the public record, including the staff report and comments made at the public hearing, warrant approving the project.

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

Exhibits

A: Findings and Conditions

B: Project Plans, received August 26, 2021

ATTACHMENT 1, EXHIBIT A

FINDINGS AND CONDITIONS

JULY 14, 2022

1643 & 1647 California Street

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

PERMITS REQUIRED

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

I. CEQA FINDINGS

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

II. FINDINGS FOR APPROVAL

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

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

III. OTHER FINDINGS FOR APPROVAL

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

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

IV. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

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

1. Conditions Shall be Printed on Plans

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

2. Applicant Responsible for Compliance with Conditions

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

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

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

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

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

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

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

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

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

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

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

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

11. Construction and Demolition Diversion. Applicant shall submit a [Construction Waste Management Plan](#) that meets the requirements of BMC Chapter 19.37 including 100% diversion of asphalt, concrete, excavated soil and land-clearing debris and a minimum of 65% diversion of other nonhazardous construction and demolition waste.
12. Toxics. The applicant shall contact the Toxics Management Division (TMD) at 1947 Center Street or (510) 981-7470 to determine which of the following documents are required and timing for their submittal:
- A. Environmental Site Assessments:
- 1) Phase I & Phase II Environmental Site Assessments (latest ASTM 1527-13). A recent Phase I ESA (less than 2 years old*) shall be submitted to TMD for developments for:
 - All new commercial, industrial and mixed use developments and all large improvement projects.
 - All new residential buildings with 5 or more dwelling units located in the Environmental Management Area (or EMA).
 - EMA is available online at: http://www.cityofberkeley.info/uploadedFiles/IT/Level_3_-_General/ema.pdf
 - 2) Phase II ESA is required to evaluate Recognized Environmental Conditions (REC) identified in the Phase I or other RECs identified by TMD staff. The TMD may require a third party toxicologist to review human or ecological health risks that may be identified. The applicant may apply to the appropriate state, regional or county cleanup agency to evaluate the risks.
 - 3) If the Phase I is over 2 years old, it will require a new site reconnaissance and interviews. If the facility was subject to regulation under Title 15 of the Berkeley Municipal Code since the last Phase I was conducted, a new records review must be performed.
- B. Soil and Groundwater Management Plan:
- 1) A Soil and Groundwater Management Plan (SGMP) shall be submitted to TMD for all non-residential projects, and residential or mixed-use projects with five or more dwelling units, that: (1) are in the Environmental Management Area (EMA) and (2) propose any excavations deeper than 5 feet below grade. The SGMP shall be site specific and identify procedures for soil and groundwater management including identification of pollutants and disposal methods. The SGMP will identify permits required and comply with all applicable local, state and regional requirements.
 - 2) The SGMP shall require notification to TMD of any hazardous materials found in soils and groundwater during development. The SGMP will provide guidance on managing odors during excavation. The SGMP will provide the name and phone number of the individual responsible for implementing the SGMP and post the name and phone number for the person responding to community questions and complaints.
 - 3) TMD may impose additional conditions as deemed necessary. All requirements of the approved SGMP shall be deemed conditions of approval of this Use Permit.
- C. Building Materials Survey:
- 1) Prior to approving any permit for partial or complete demolition and renovation activities involving the removal of 20 square or lineal feet of interior or exterior walls, a building materials survey shall be conducted by a qualified professional. The survey shall include, but not be limited to, identification of any lead-based paint, asbestos, polychlorinated biphenyl (PBC) containing equipment, hydraulic fluids in elevators or lifts, refrigeration systems, treated wood and mercury containing devices (including fluorescent light bulbs and mercury switches). The Survey shall include plans on hazardous waste or hazardous

materials removal, reuse or disposal procedures to be implemented that fully comply state hazardous waste generator requirements (22 California Code of Regulations 66260 et seq). The Survey becomes a condition of any building or demolition permit for the project. Documentation evidencing disposal of hazardous waste in compliance with the survey shall be submitted to TMD within 30 days of the completion of the demolition. If asbestos is identified, Bay Area Air Quality Management District Regulation 11-2-401.3 a notification must be made and the J number must be made available to the City of Berkeley Permit Service Center.

D. Hazardous Materials Business Plan:

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

During Construction:

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

screening criteria after a screening-level health risk assessment is conducted in accordance with current guidance from BAAQMD and OEHHA. The health risk assessment shall be submitted to the Land Use Planning Division for review and approval prior to the issuance of building permits; or

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

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

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

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

The applicant shall secure the City Traffic Engineer's approval of a TCP. Please contact the Office of Transportation at 981-7010, or 1947 Center Street, and ask to speak to a traffic engineer. In addition to other requirements of the Traffic Engineer, this plan shall include the

locations of material and equipment storage, trailers, worker parking, a schedule of site operations that may block traffic, and provisions for traffic control. The TCP shall be consistent with any other requirements of the construction phase.

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

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

- D. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while mitigation measures for cultural resources is carried out.
- E. If significant materials are recovered, the qualified professional shall prepare a report on the findings for submittal to the Northwest Information Center.
- 21. Human Remains (Ongoing throughout demolition, grading, and/or construction).** In the event that human skeletal remains are uncovered at the project site during ground-disturbing activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to Section 15064.5 (e)(1) of the CEQA Guidelines. If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.
- 22. Paleontological Resources (Ongoing throughout demolition, grading, and/or construction).** In the event of an unanticipated discovery of a paleontological resource during construction, excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified paleontologist (per Society of Vertebrate Paleontology standards [SVP 1995,1996]). The qualified paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the project on the qualities that make the resource important, and such plan shall be implemented. The plan shall be submitted to the City for review and approval.
- 23. Stormwater Requirements.** The applicant shall demonstrate compliance with the requirements of the City's National Pollution Discharge Elimination System (NPDES) permit as described in BMC Section 17.20. The following conditions apply:
- A. The project plans shall identify and show site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants to the City's storm drainage system, regardless of season or weather conditions.
- B. Trash enclosures and/or recycling area(s) shall be covered; no other area shall drain onto this area. Drains in any wash or process area shall not discharge to the storm drain system; these drains should connect to the sanitary sewer. Applicant shall contact the City of Berkeley and EBMUD for specific connection and discharge requirements. Discharges to the sanitary sewer are subject to the review, approval and conditions of the City of Berkeley and EBMUD.
- C. Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to stormwater pollution. Where feasible, landscaping should be designed and operated to treat runoff.

When and where possible, xeriscape and drought tolerant plants shall be incorporated into new development plans.

- D. Design, location and maintenance requirements and schedules for any stormwater quality treatment structural controls shall be submitted to the Department of Public Works for review with respect to reasonable adequacy of the controls. The review does not relieve the property owner of the responsibility for complying with BMC Chapter 17.20 and future revisions to the City's overall stormwater quality ordinances. This review shall be conducted prior to the issuance of a Building Permit.
 - E. All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.
 - F. All on-site storm drain inlets/catch basins must be cleaned at least once a year immediately prior to the rainy season. The property owner shall be responsible for all costs associated with proper operation and maintenance of all storm drainage facilities (pipelines, inlets, catch basins, outlets, etc.) associated with the project, unless the City accepts such facilities by Council action. Additional cleaning may be required by City of Berkeley Public Works Engineering Dept.
 - G. All on-site storm drain inlets must be labeled "No Dumping – Drains to Bay" or equivalent using methods approved by the City.
 - H. Most washing and/or steam cleaning must be done at an appropriately equipped facility that drains to the sanitary sewer. Any outdoor washing or pressure washing must be managed in such a way that there is no discharge or soaps or other pollutants to the storm drain. Sanitary connections are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
 - I. Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry to the storm drain system. If any cleaning agent or degreaser is used, wash water shall not discharge to the storm drains; wash waters should be collected and discharged to the sanitary sewer. Discharges to the sanitary sewer are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
 - J. The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations, or a project stop work order.
- 24. Public Works.** All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter thick and secured to the ground.
- 25. Public Works.** The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.
- 26. Public Works.** The project sponsor shall maintain sandbags or other devices around the site perimeter during the rainy season to prevent on-site soils from being washed off-site and into the storm drain system. The project sponsor shall comply with all City ordinances regarding construction and grading.

27. Public Works. Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season the applicant shall obtain approval of an erosion prevention plan by the Building and Safety Division and the Public Works Department. The applicant shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.
28. Public Works. The removal or obstruction of any fire hydrant shall require the submission of a plan to the City's Public Works Department for the relocation of the fire hydrant during construction.
29. Public Works. If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.

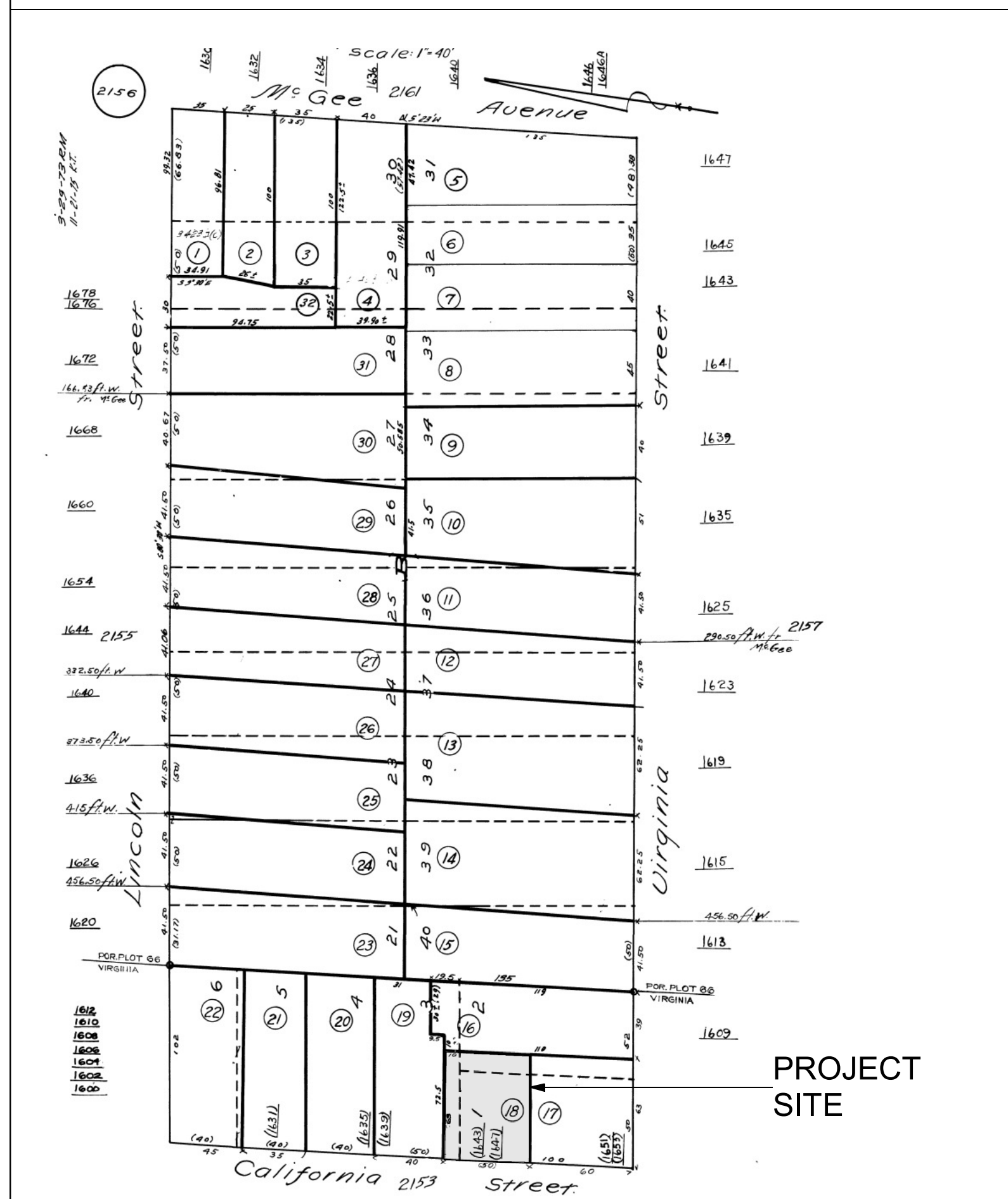
Prior to Final Inspection or Issuance of Occupancy Permit:

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

At All Times:

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

PARCEL MAP



PROJECT SITE

OPPENHEIMER RESIDENCE

1643 & 1647 California St. CA 94703

SCOPE OF WORK

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

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

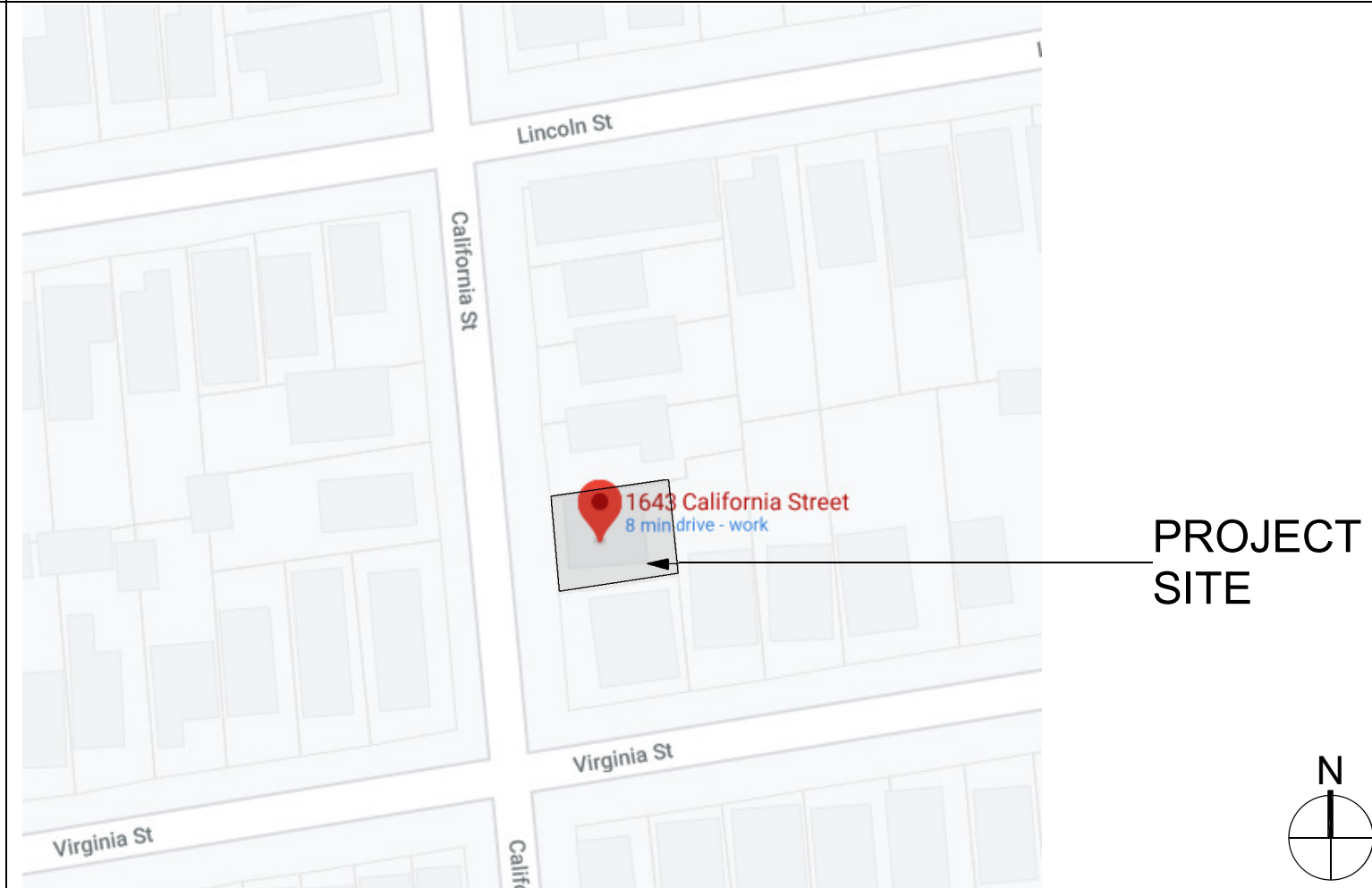
- Basement/First floor:**
- Excavate down to create new bedroom, full bath, home gym and family room and mech. room/storage

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

- Third floor:**
- Create new bedrooms, bathrooms and laundry room
 - Create new balcony at front

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

VICINITY MAP



PROJECT SITE

PROJECT DIRECTORY

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

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

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

PROJECT DATA

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

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

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

Historic Preservation
Landmarks or Structure of Merit: No

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

Wildlife Urban Interface: No

SHEET INDEX

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

APPLICABLE CODES

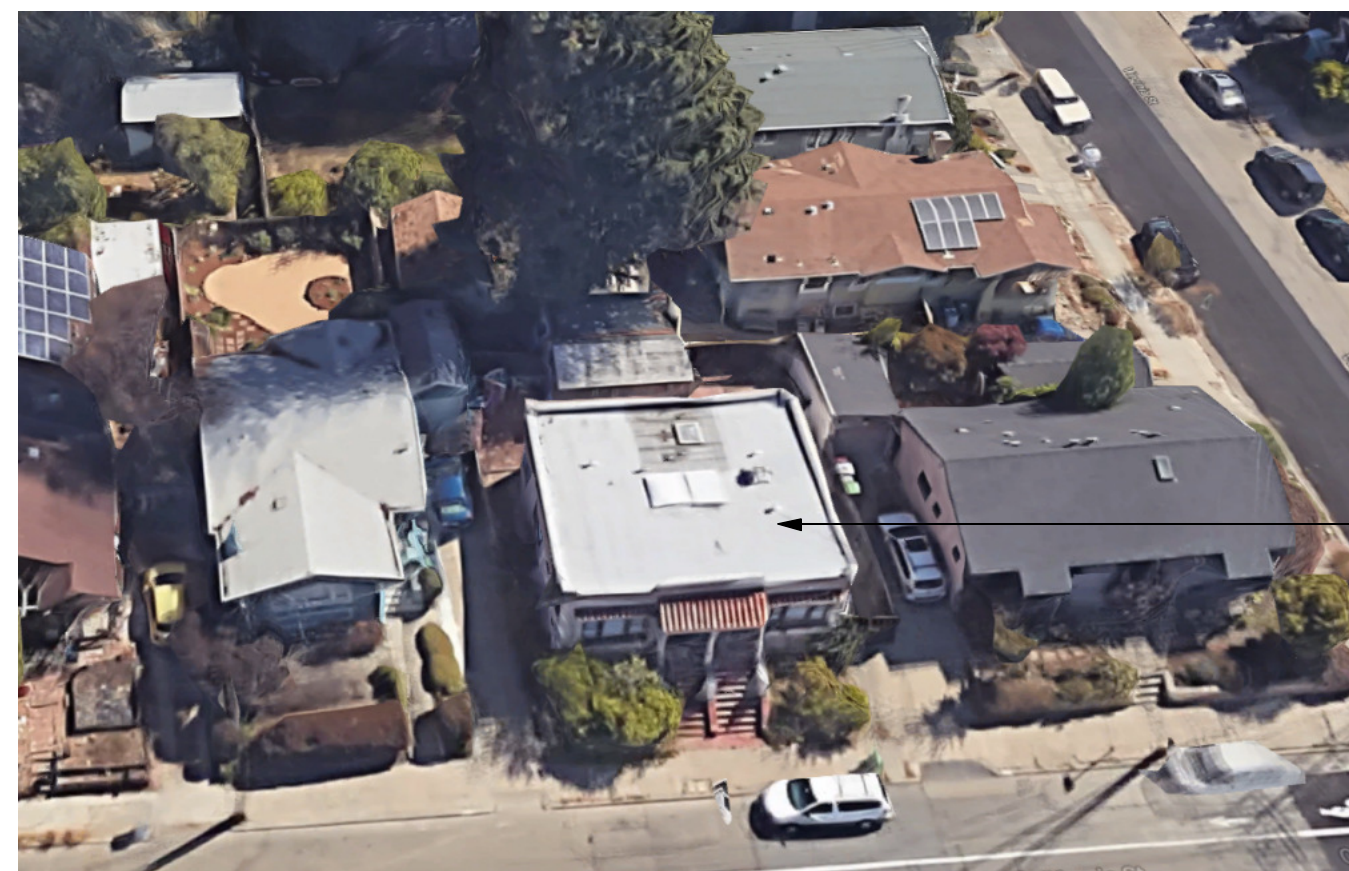
- 2019 California Building Code (CBC) Volume 1
- 2019 California Building Code (CBC) Volume 2
- 2019 California Residential Code (CRC)
- 2019 California Energy Code (CBEECS)
- 2019 California Green Building Standards Code (CALGreen)
- 2019 California Electrical Code (CEC)
- 2019 California Plumbing Code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

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

ABBREVIATIONS

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

SITE PHOTOS



PROJECT SITE

Aerial of existing duplex



Front and right Side of existing duplex



Front and left Side of existing duplex

Tabulations

	Required/Allowed	Existing	Proposed
Set Backs:			
Front	20'-0"	10'-10"	10'-10" no change
Rear:	20'-0"	16'-10"	16'-10" no change
Left side:	4'-0"	4'-11"	4'-0" no change
Right side:	4'-0"	5'-6"	5'-5" no change
Habitable Floor Area:			
Unit 1:			
Basement floor:		0 s.f.	1,342 s.f.
First floor:		667 s.f.	901 s.f.
Second floor:		0 s.f.	1,019 s.f.
Total Area Unit 1:		667 s.f.	3,262 s.f. (2,595 s.f. new)
Unit 2:			
Basement floor:		0 s.f.	0 s.f.
First floor:		667 s.f.	501 s.f.
Second floor:		0 s.f.	0 s.f.
Total Area Unit 2:		667 s.f.	501 s.f.
Total Area:		1,334 s.f.	3,763 s.f. (2,229 s.f. new)
Bedroom Count:		3 total	5 total
Non-Habitable Area:			
Accessory Structure:		167 s.f.	0 s.f.
Building Height:			
Main Building:	28'-0" 35'-0" w/ AUP	13'-6" 13'-6"	23'-10"
Parking:	2	0	0
Lot Size:	4,500 s.f.	3,142 s.f.	3,142 s.f.
Total Foot Print:			
House:		1,342 s.f.	1,342 s.f.
Covered Porch:		60 s.f.	0 s.f.
Accessory Structure:		167 s.f.	0 s.f.
Total:	1,085 for 3 stories	1,569 s.f.	1,382 s.f.
Lot Coverage:	45% (1 story) 40% (2 story) 35% (3 story)	49.94%	43.98% (5.96% reduction)
Usable Open Space:	400 s.f./unit	500 s.f.	1,029 s.f.



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



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

Sheet Contents:

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

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Project No:

20-13-420

Drawn By:

SSG

Checked By:

SSG

Scale:

N/A

Revisions:

Use Permit Set: 12-10-2020

Redesign: 5-25-2021

Planning Review: 6-29-2021

Planning Review: 7-15-2021

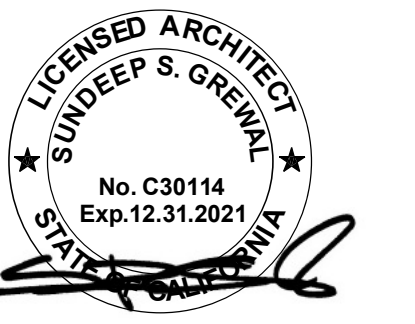
Planning Review: 8-26-2021

Sheet

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



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

Sheet Contents:
Existing Site Plan
Proposed Site Plan

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Project No:
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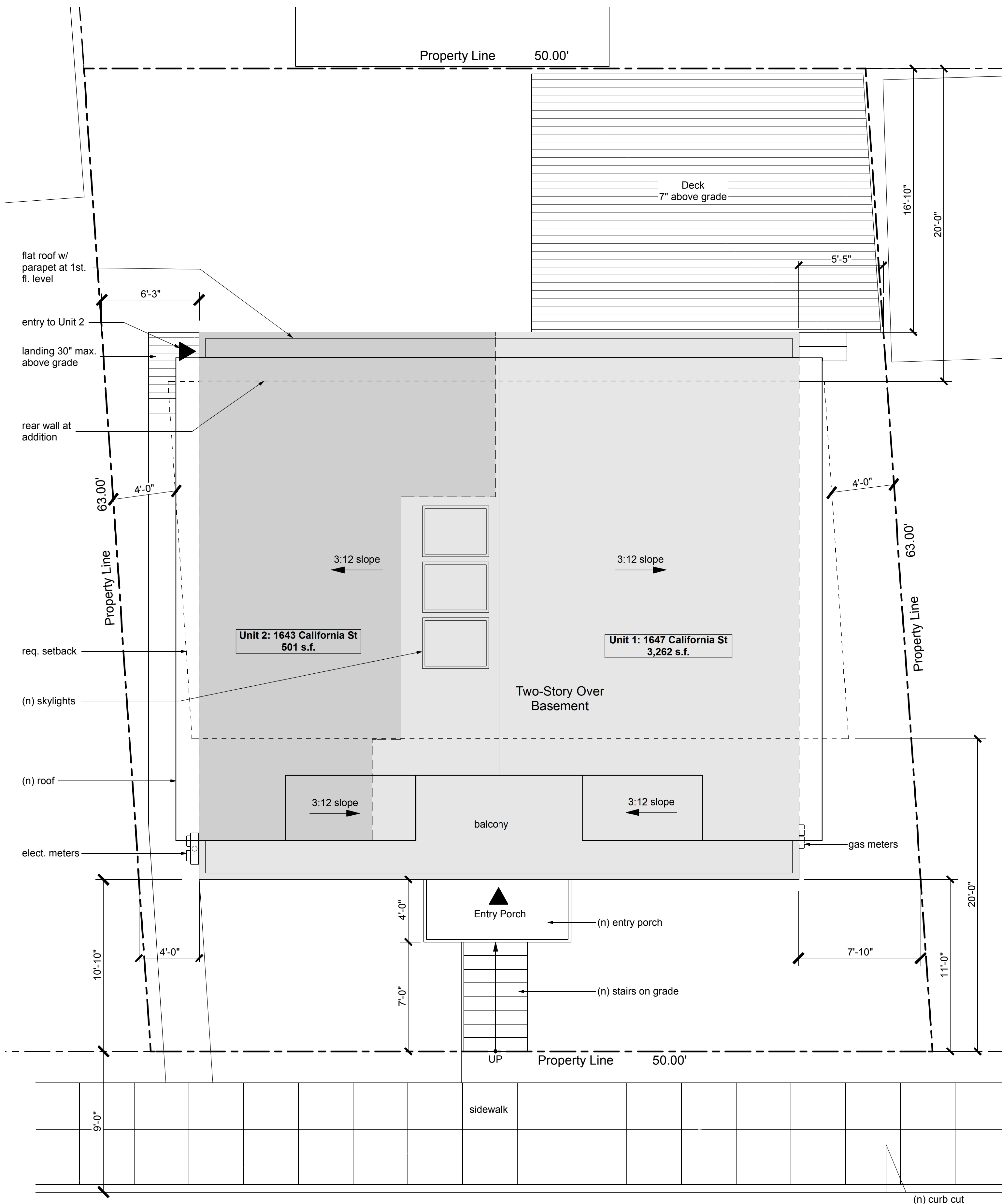
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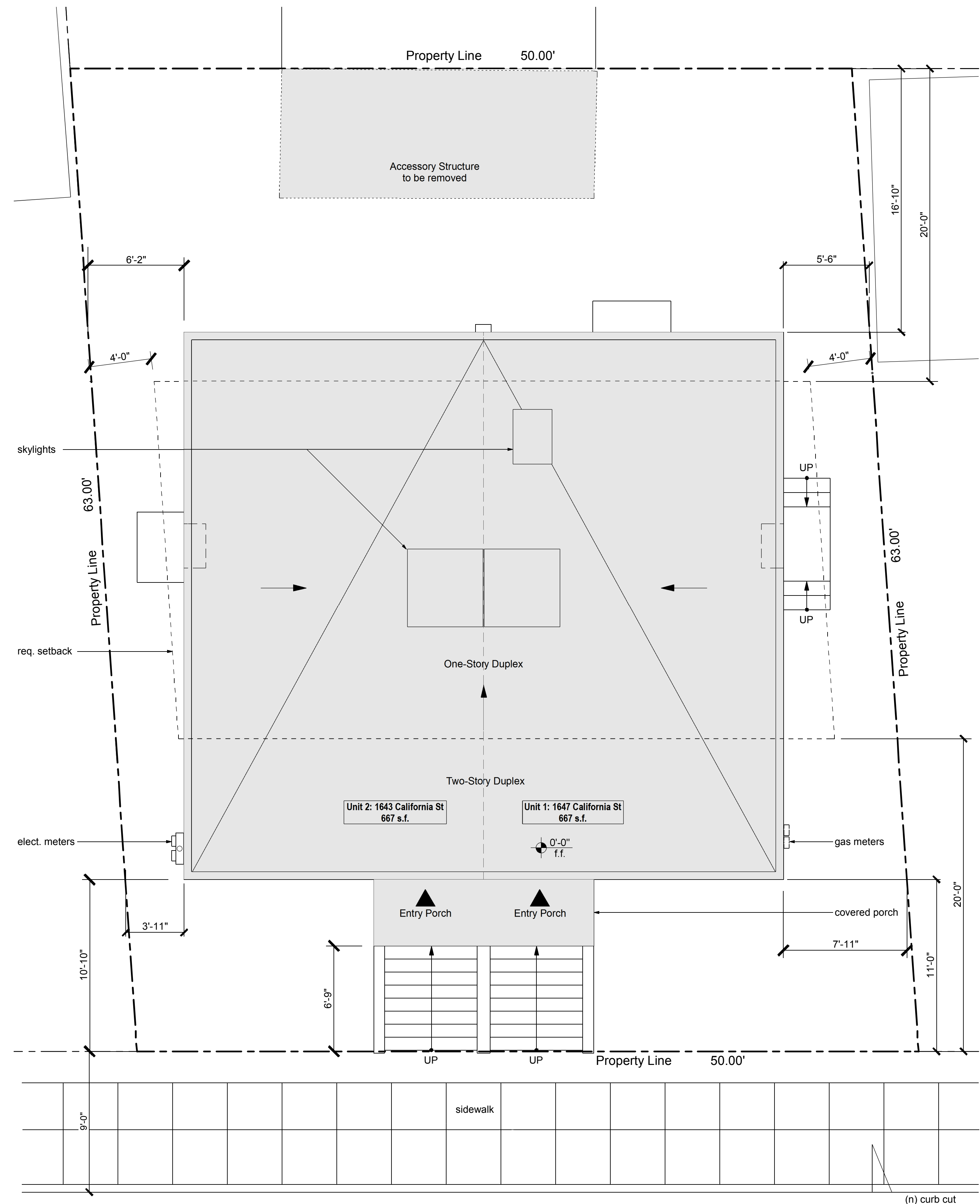
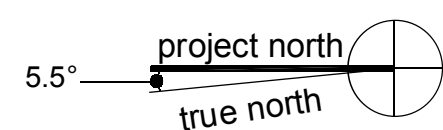
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Revisions:
Use Permit Set: 12-10-2020
Redesign: 5-25-2021
Planning Review: 6-29-2021
Planning Review: 7-15-2021

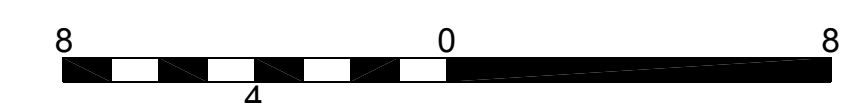
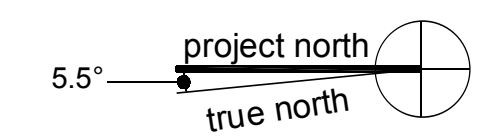
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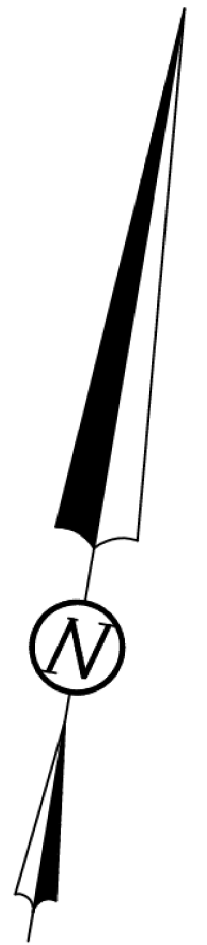


2 Proposed Site Plan

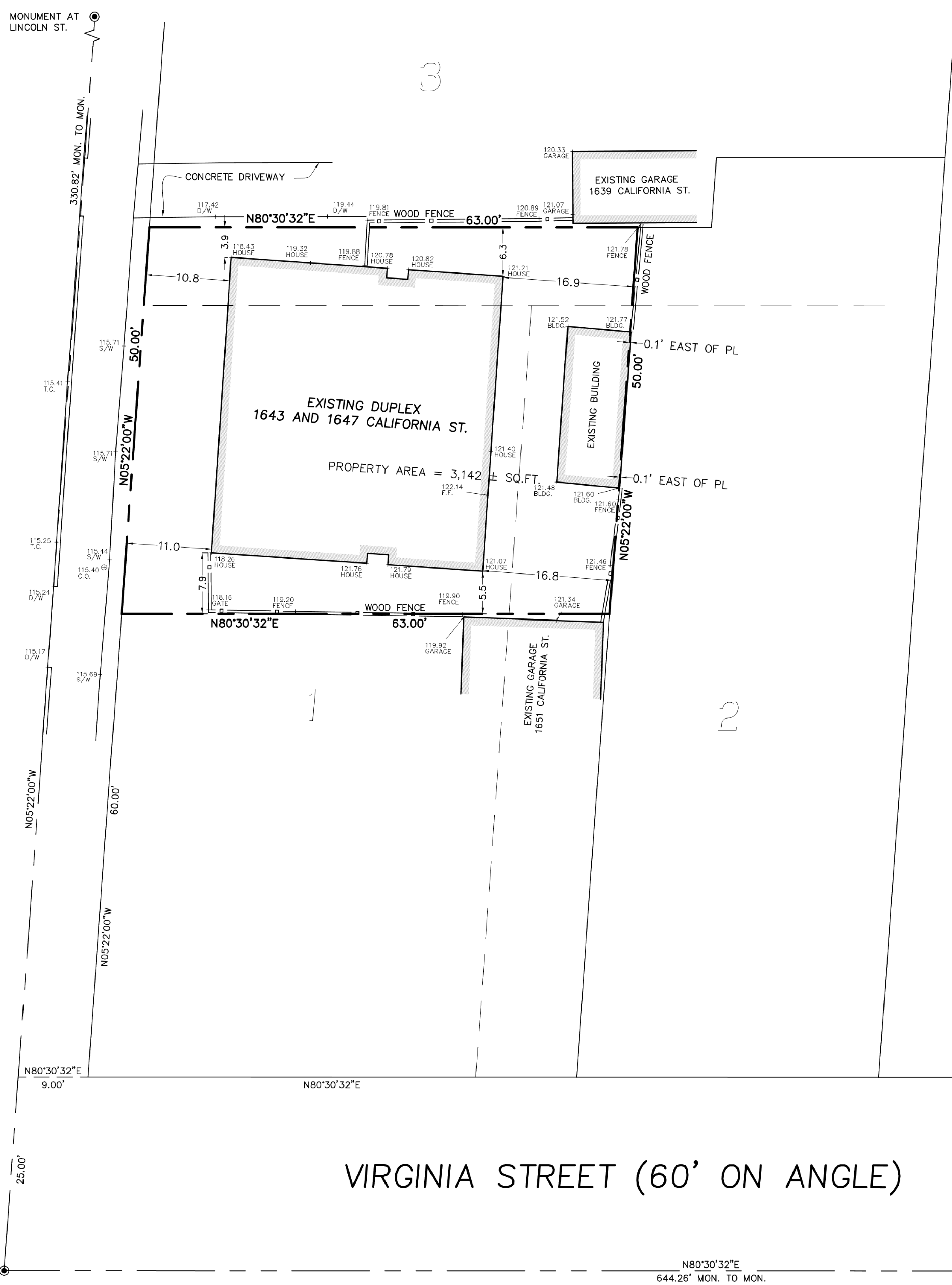


1 Existing Site Plan

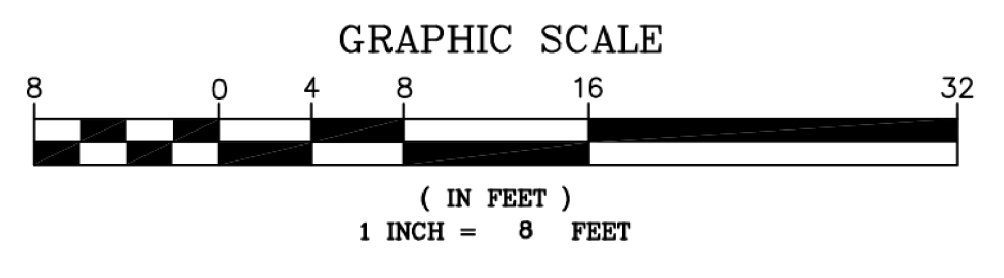




CALIFORNIA STREET (60' ON ANGLE)



VIRGINIA STREET (60' ON ANGLE)



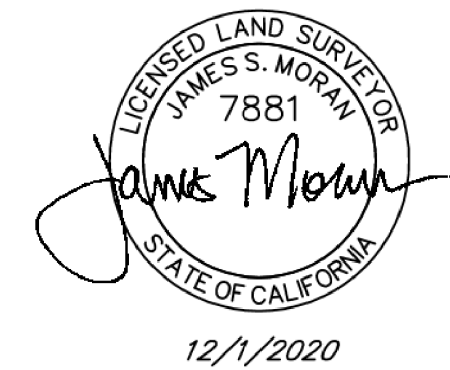
HOUSE LOCATION SURVEY

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

NOVEMBER 17, 2020 SCALE: 1" = 8'

MORAN ENGINEERING, INC.

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



LEGEND

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

GENERAL NOTES

BENCHMARK: MONUMENT PIN ON THE WEST SIDE OF SACRAMENTO STREET AT VIRGINIA STREET. ELEVATION = 108.683 PER CITY OF BERKELEY ENGINEERING DIVISION RECORDS. ELEVATIONS ARE BASED UPON THE CITY OF BERKELEY DATUM.

THIS SURVEY IS BASED UPON THE GRANT DEED TO LAWYERS ASSET MANAGEMENT INC. RECORDED DECEMBER 1, 1989 SERIES 89-324628, ALAMEDA COUNTY RECORDS.

THE BEARINGS ON THIS MAP ARE BASED UPON THE MONUMENT LINE IN CALIFORNIA STREET WITH A BEARING OF N05°22'00"W AS SHOWN ON PARCEL MAP 6679 FILED MARCH 29, 1994 IN BOOK 213 OF MAPS PAGES 49-50.



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APN: 58-2156-1-18

Sheet Contents:
Site Survey

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Project No: 20-13-420

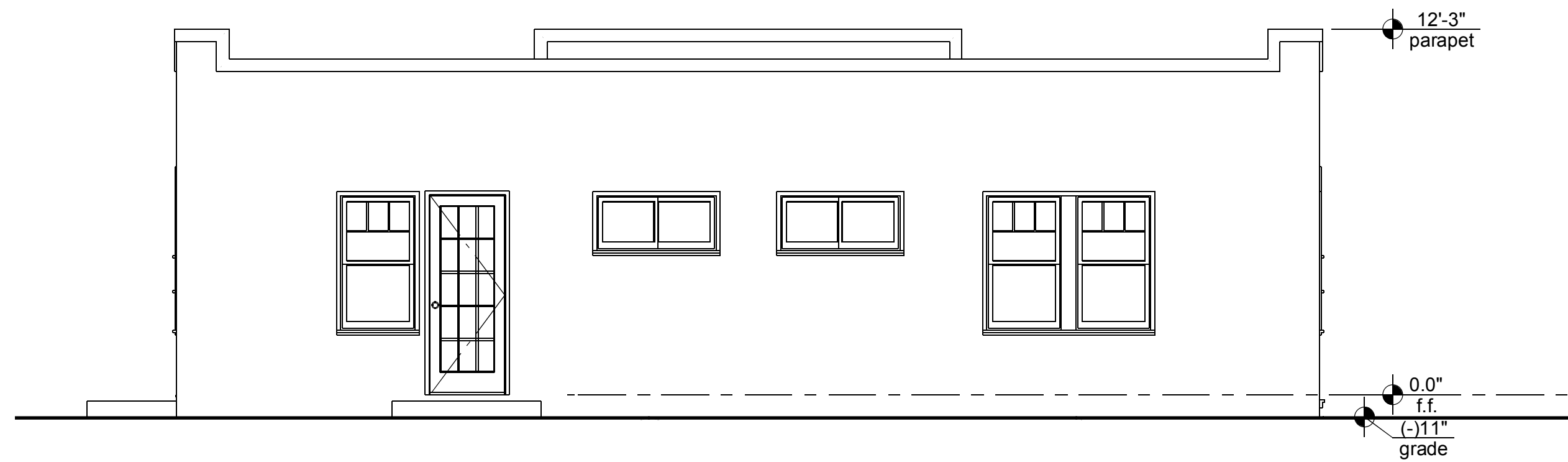
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Checked By: SSG

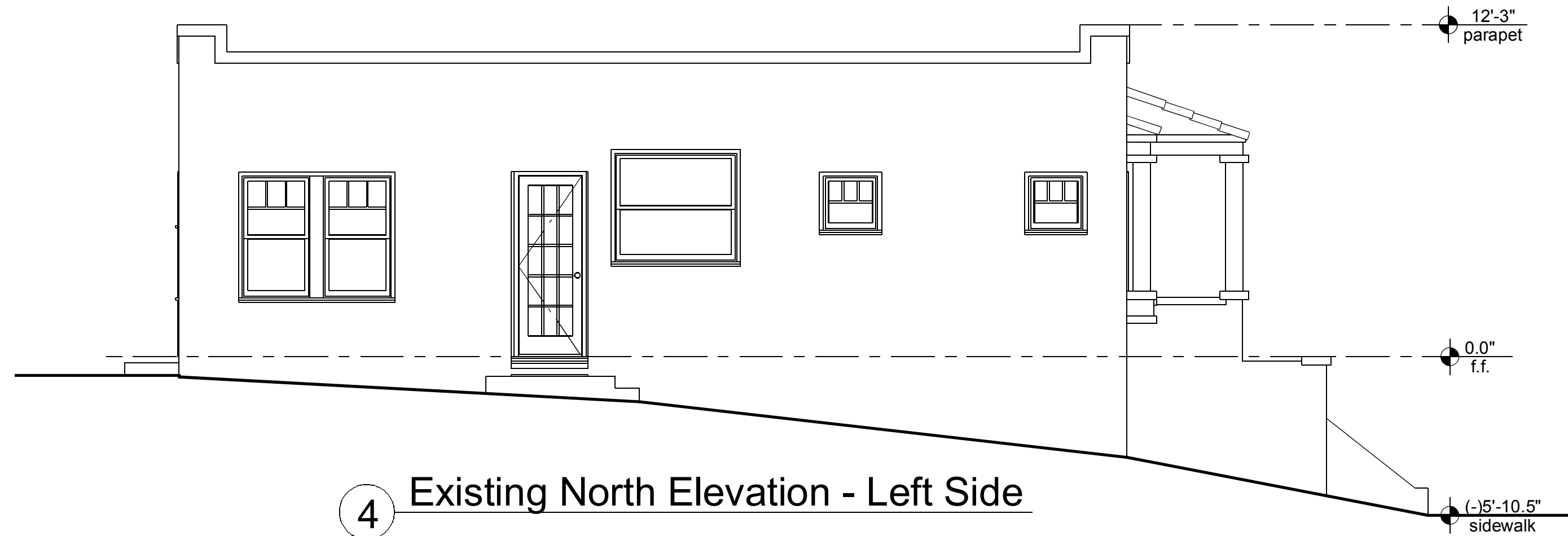
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Redesign: 5-25-2021
Planning Review: 6-29-2021
Planning Review: 7-15-2021

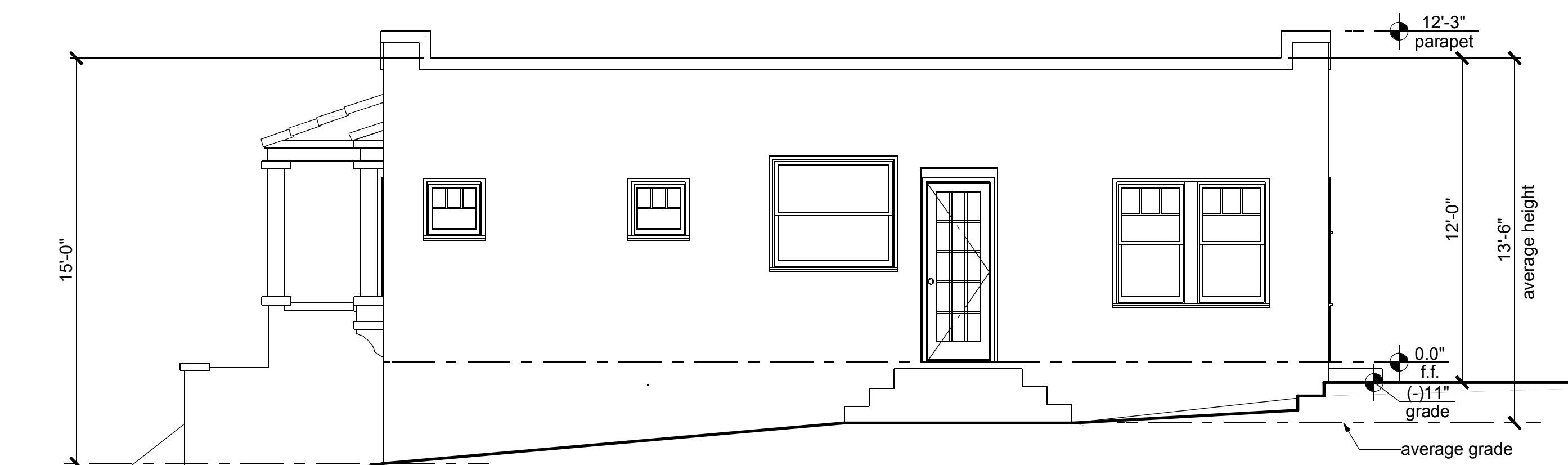
Sheet **A0.2**



5 Existing East Elevation - Rear



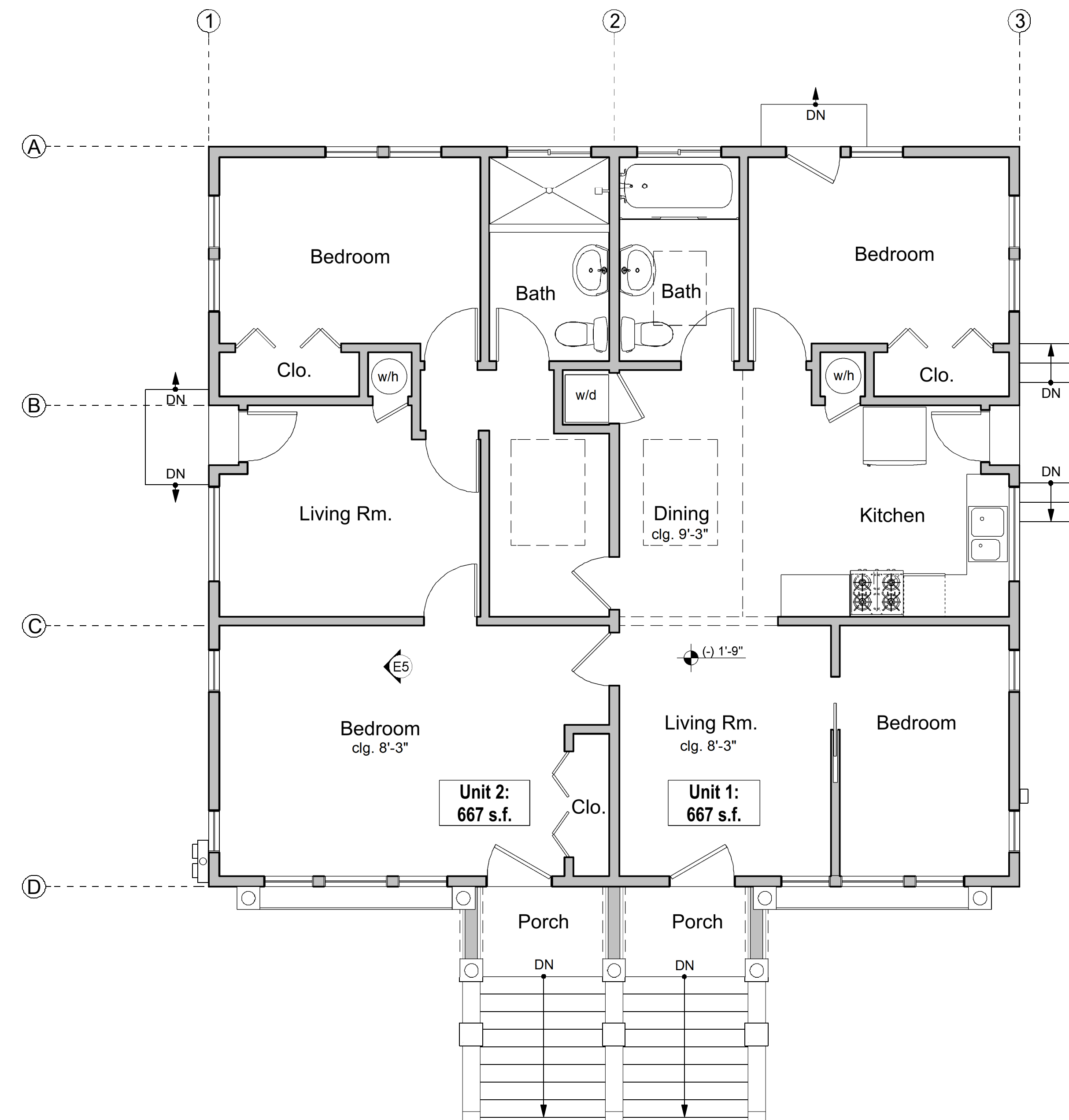
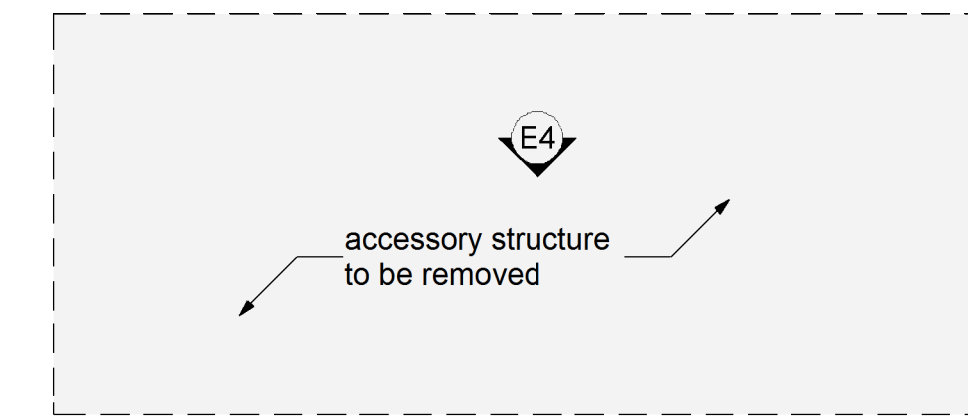
4 Existing North Elevation - Left Side



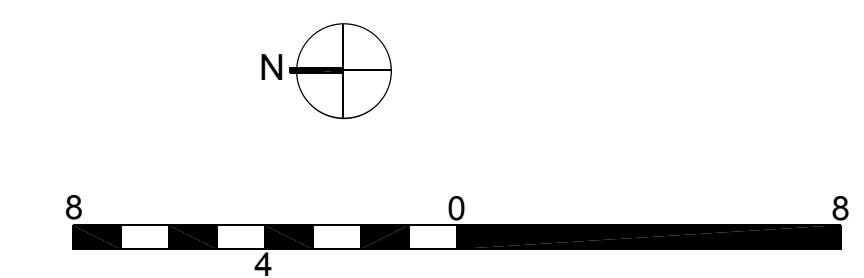
3 Existing South Elevation - Right Side



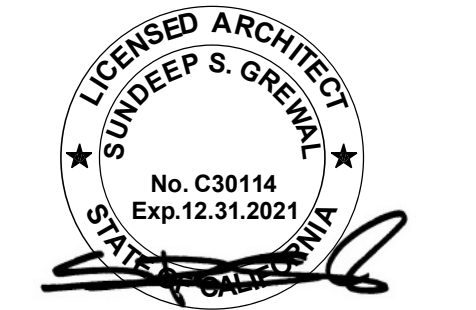
2 Existing West Elevation - Front



1 Existing First Floor Plan



2223 Fifth St.
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Sheet Contents:
Existing Floor Plans
Existing Exterior Elevations

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Checked By: SSG

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Planning Review: 7-15-2021

Sheet **A1.1**



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

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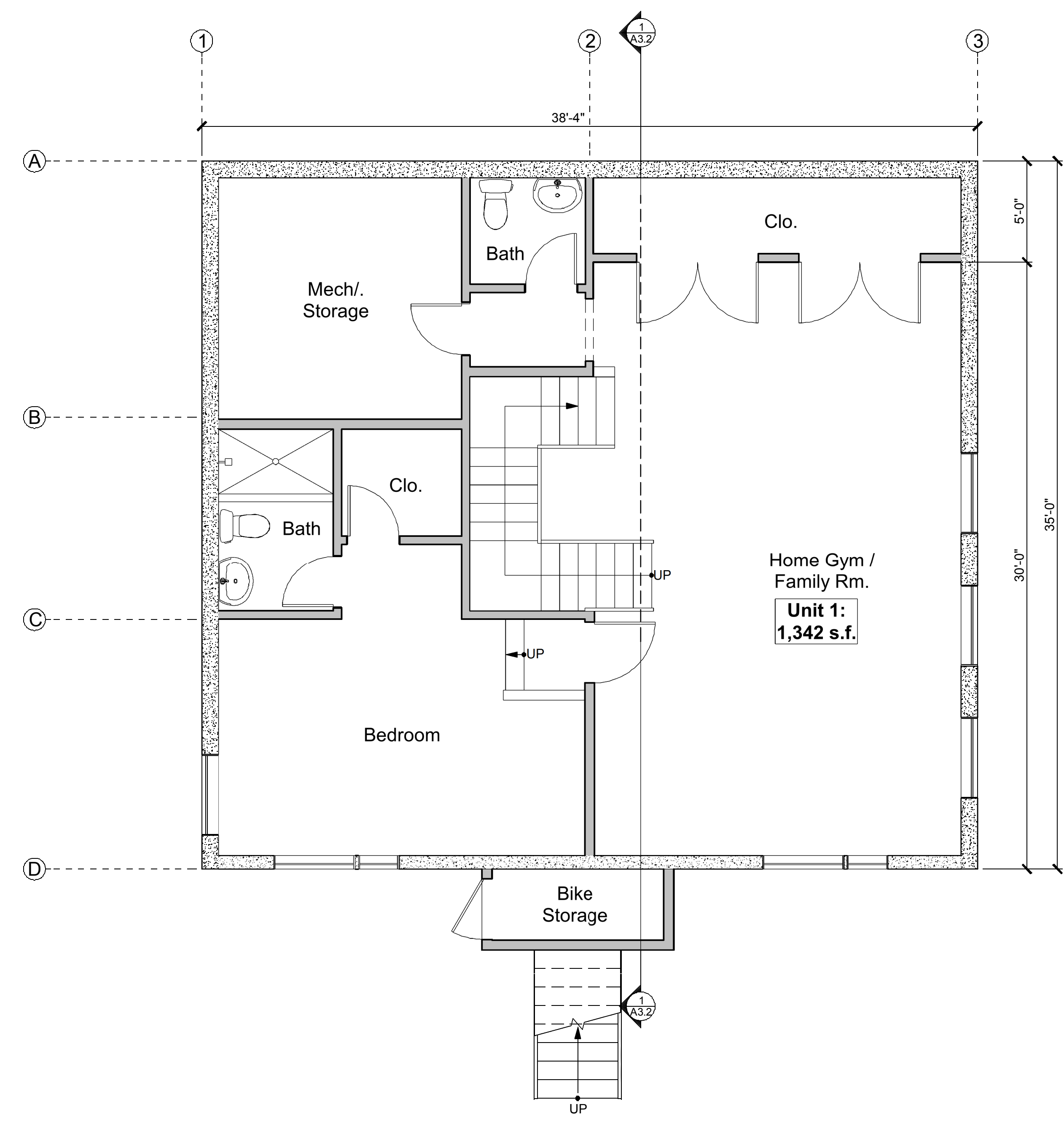
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Checked By: SSG

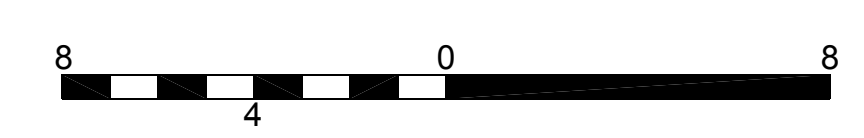
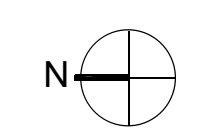
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Sheet **A2.1**



1 Proposed Basement Floor Plan





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Proposed Floor Plans

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Project No: 20-13-420

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Checked By: SSG

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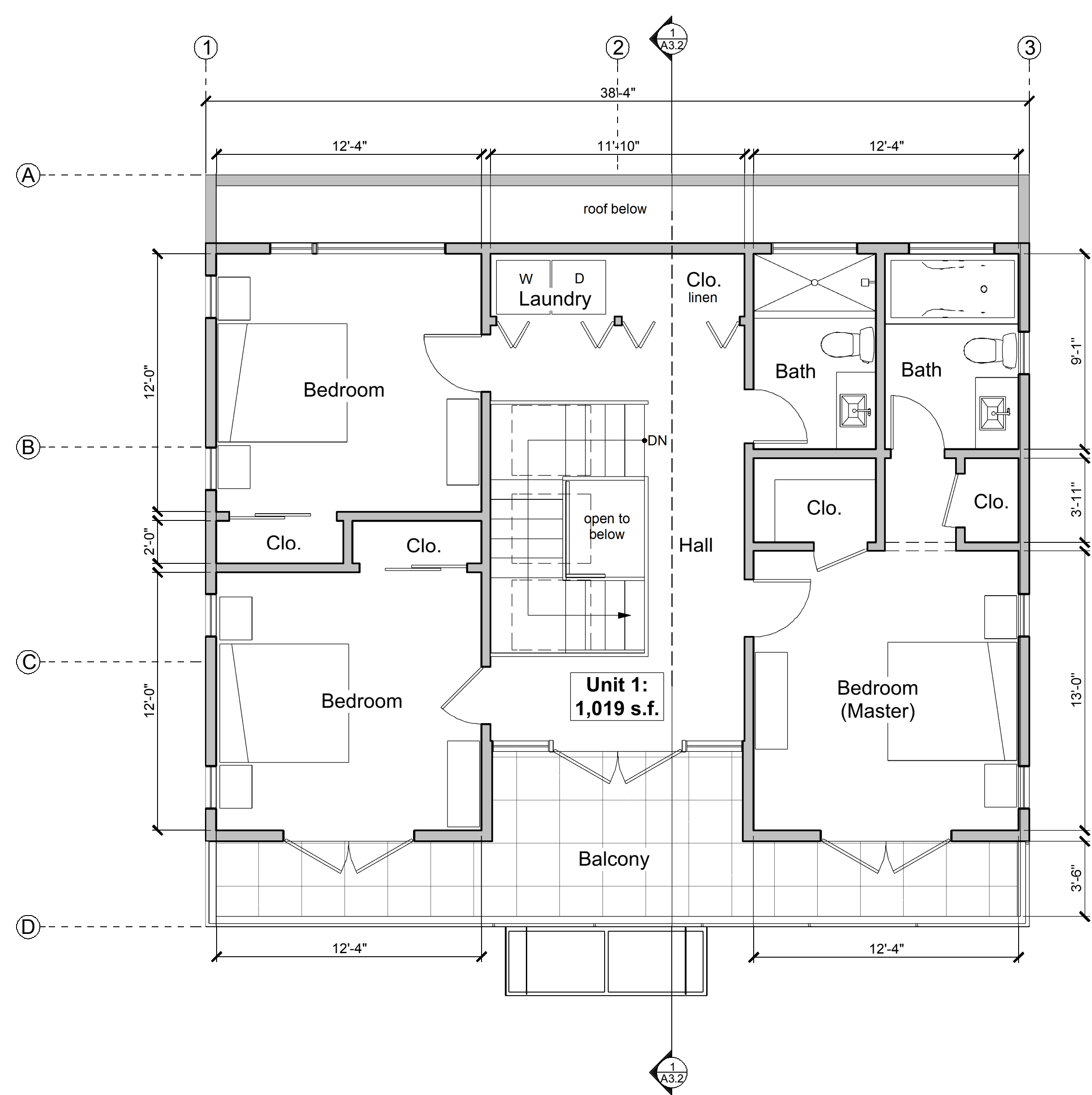
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Planning Review: 6-29-2021

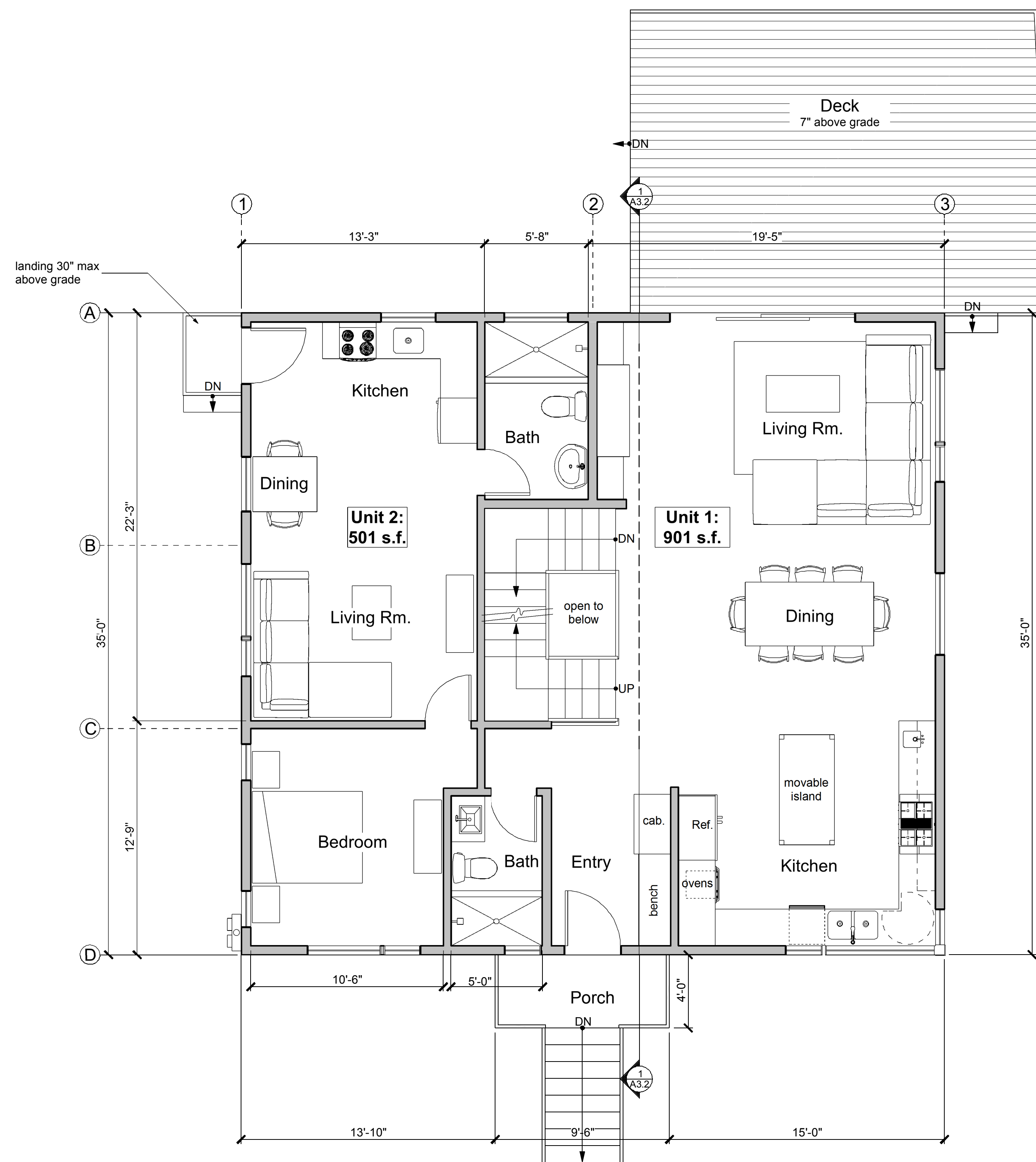
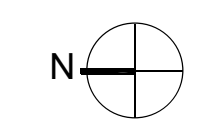
Planning Review: 7-15-2021

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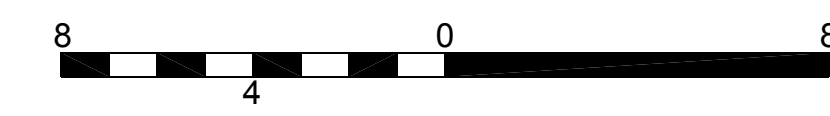
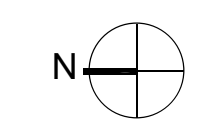
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2 Proposed Second Floor Plan



1 Proposed First Floor Plan





Previous Proposal



Previous Proposal



Previous Proposal



Current Proposal



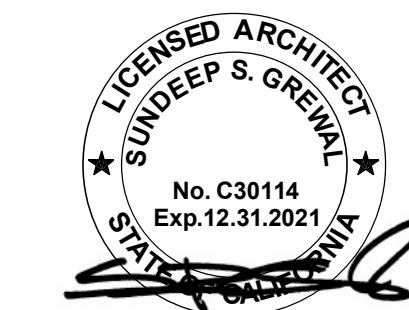
Current Proposal



Current Proposal



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Ph: 510.548.7448
info@sgsarch.com
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Sheet Contents:
Front Elevation Comparison

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Drawn By: SSG

Checked By: SSG

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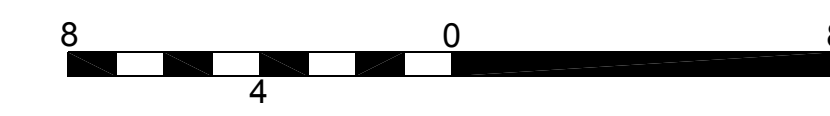
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Use Permit Set: 12-10-2020
Redesign: 5-25-2021
Planning Review: 6-29-2021
Planning Review: 7-15-2021



② Proposed West Elevation - Front
Original Proposal



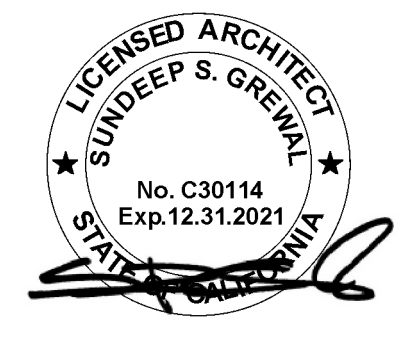
① Proposed West Elevation - Front
Current Proposal



Sheet **A3.1**



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Ph: 510.548.7448
info@sgsarch.com
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Sheet Contents:
Proposed Exterior Elevations

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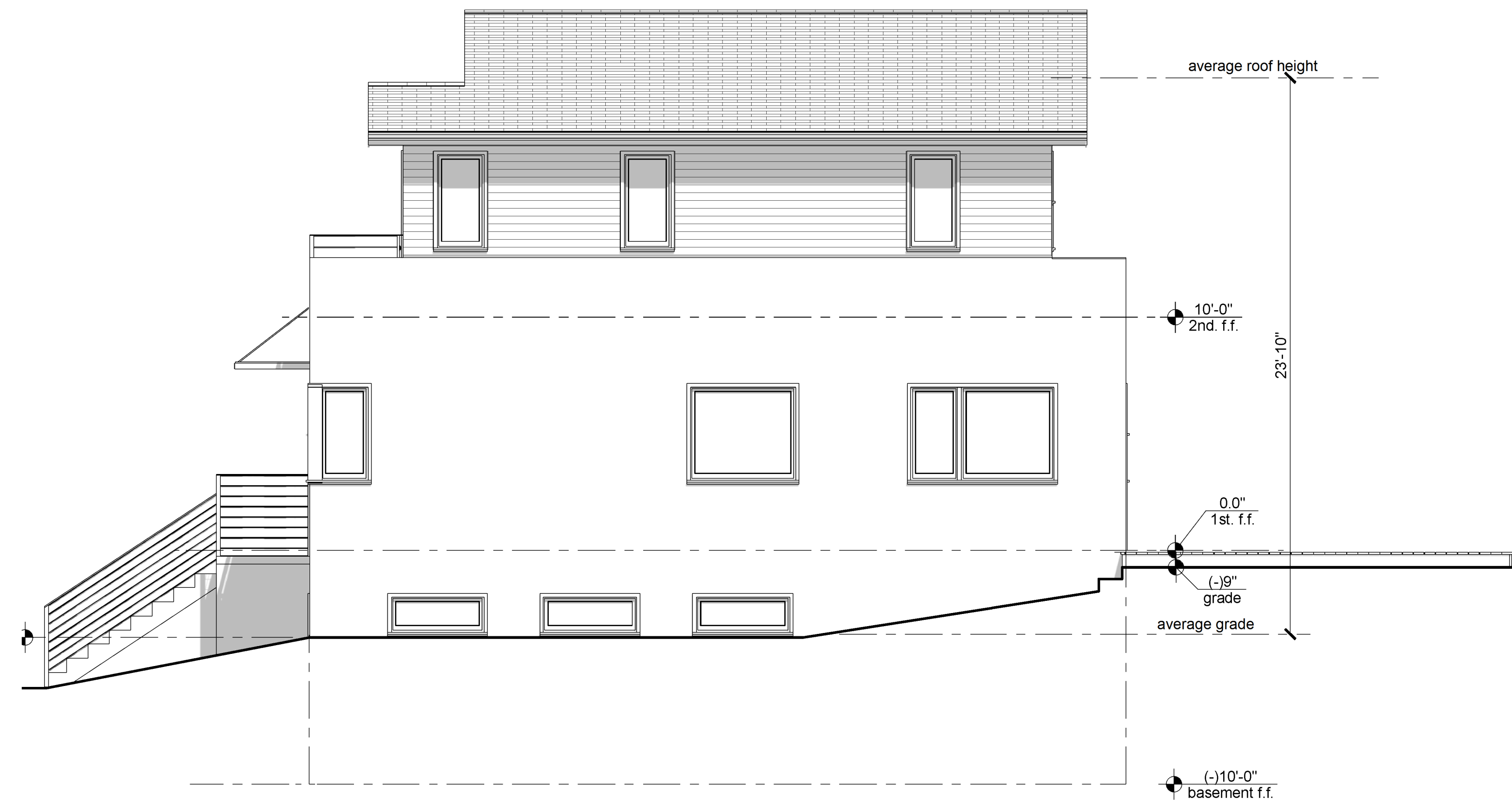
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Checked By: SSG

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Redesign: 5-25-2021
Planning Review: 6-29-2021
Planning Review: 7-15-2021

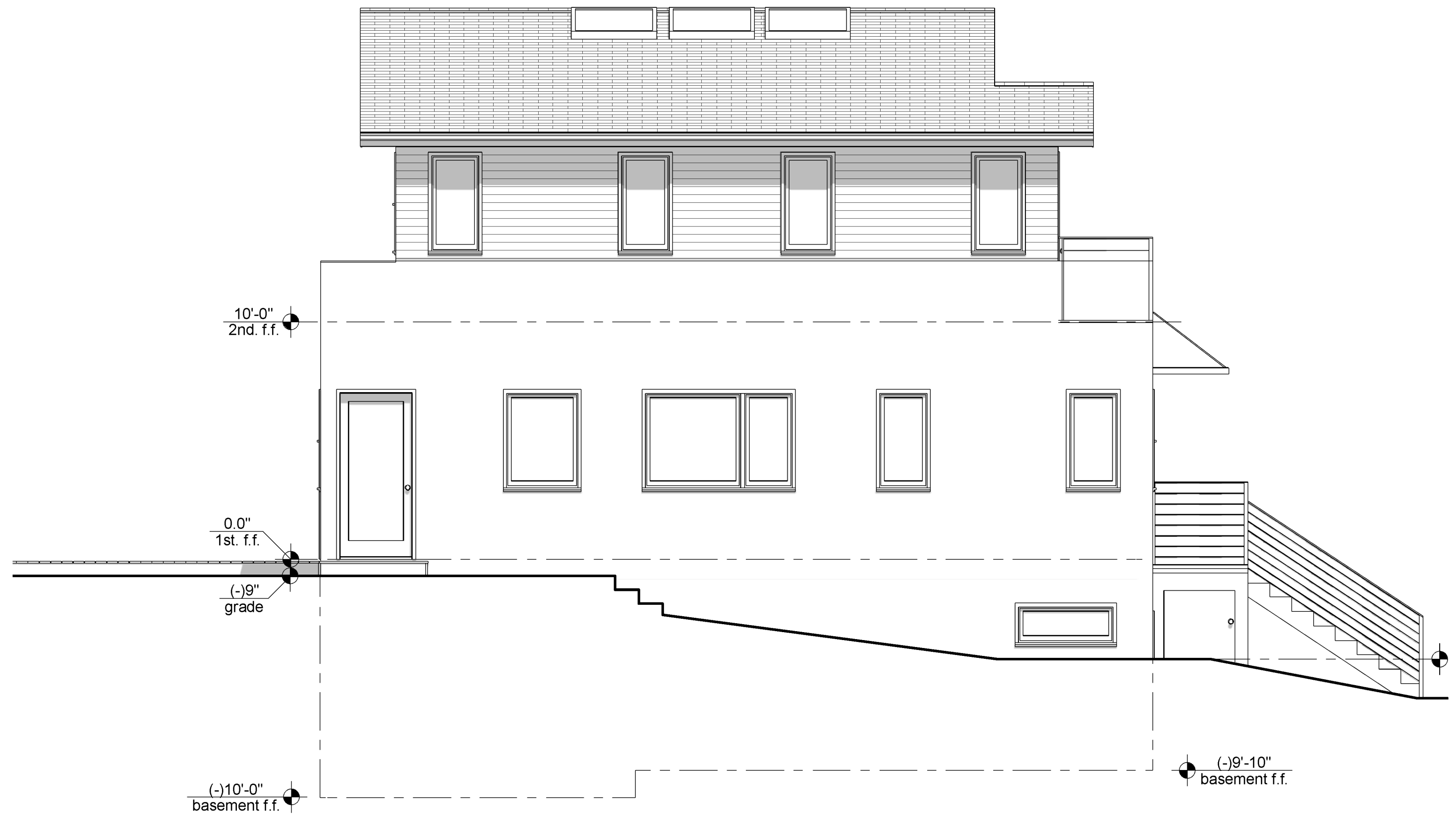
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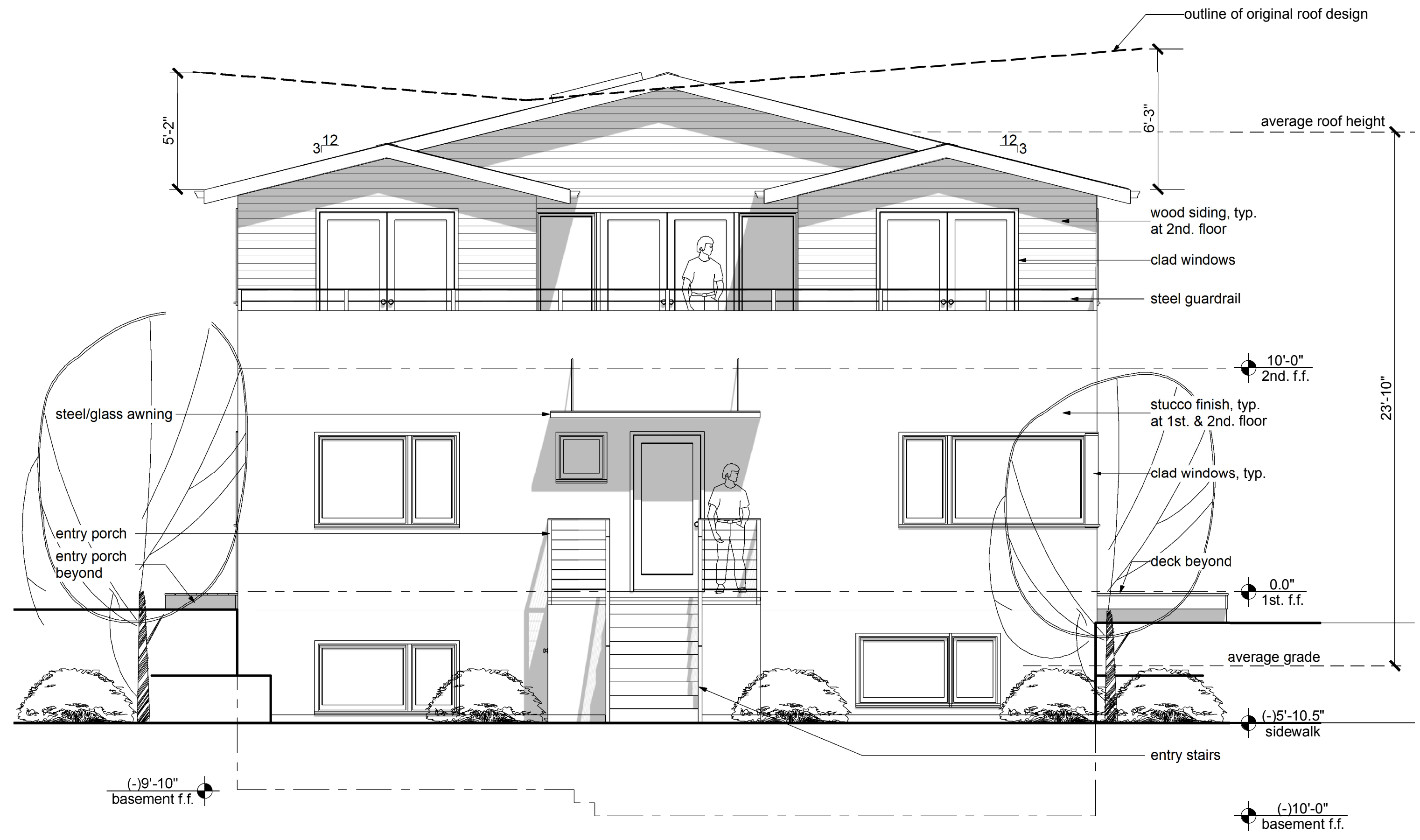
4 Proposed South Elevation - Right Side



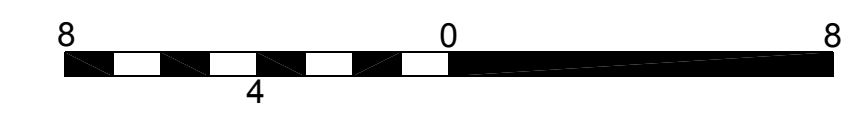
3 Proposed East Elevation - Rear



2 Proposed North Elevation - Left Side



1 Proposed West Elevation - Front

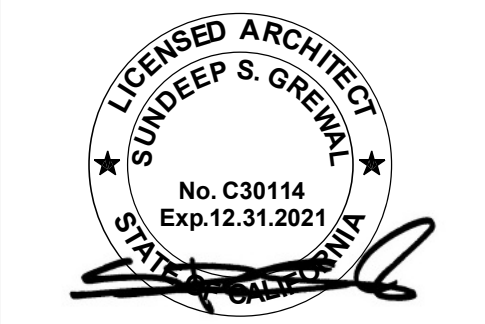




2 Renderings

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info@sgsarch.com
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Sheet Contents:
Building Section
Renderings

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1 Proposed Building Section

Existing Shadow Line
New Shadow Line



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

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Scale:
NTS

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

Sheet
A4.1



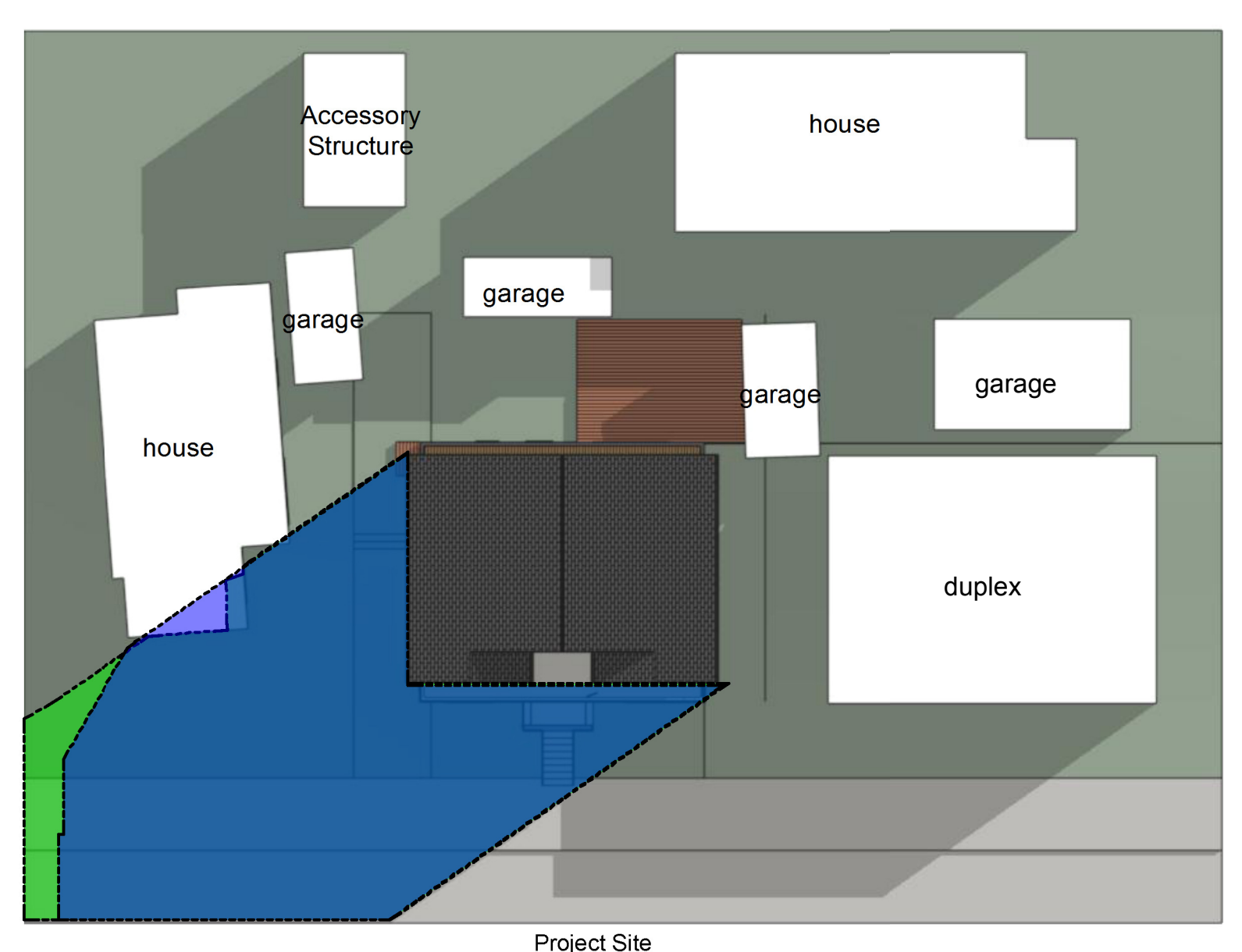
Proposed

12-21-2021 / 2:54 pm



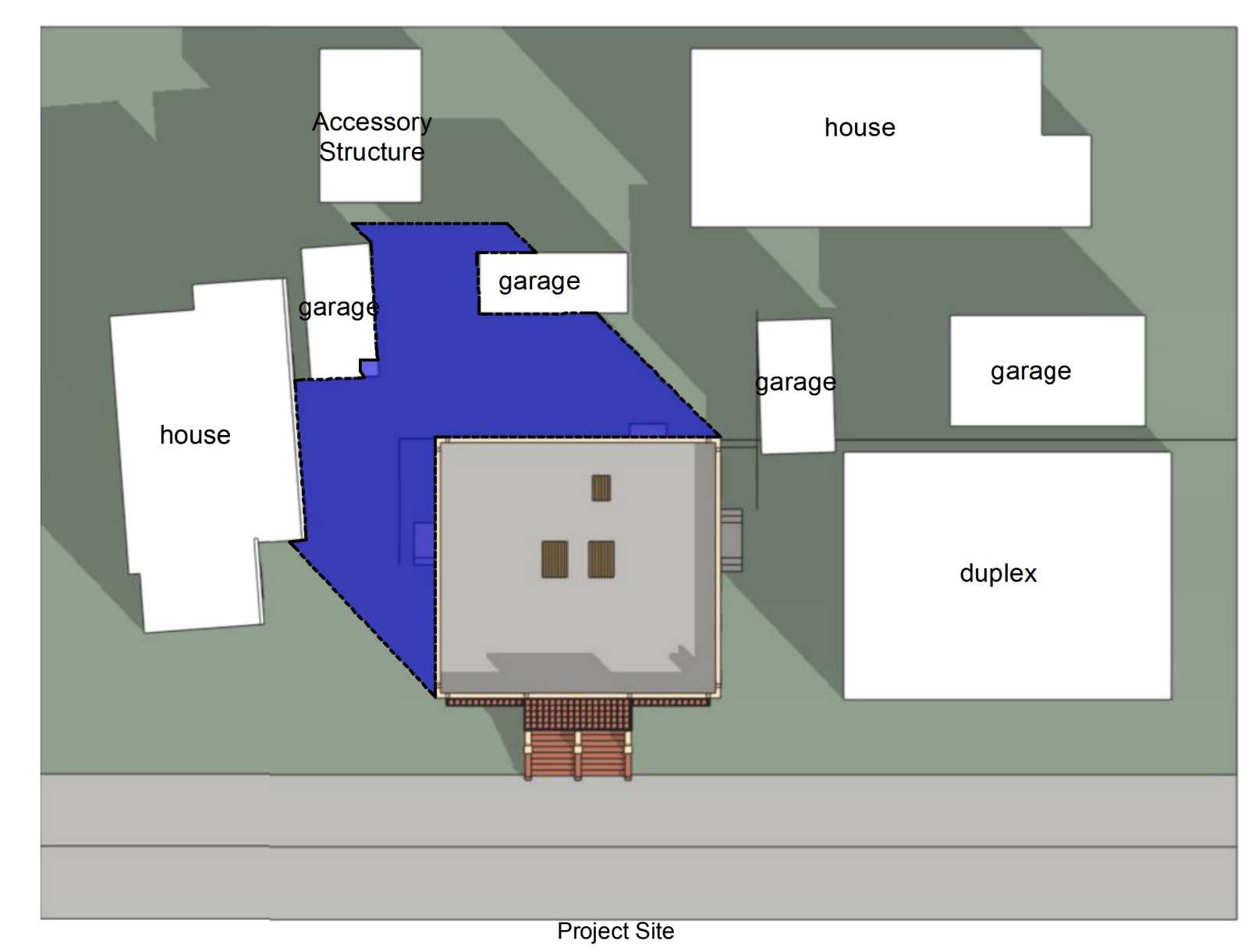
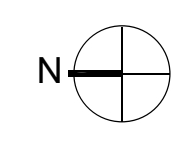
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12-21-2021 / 12:00 pm



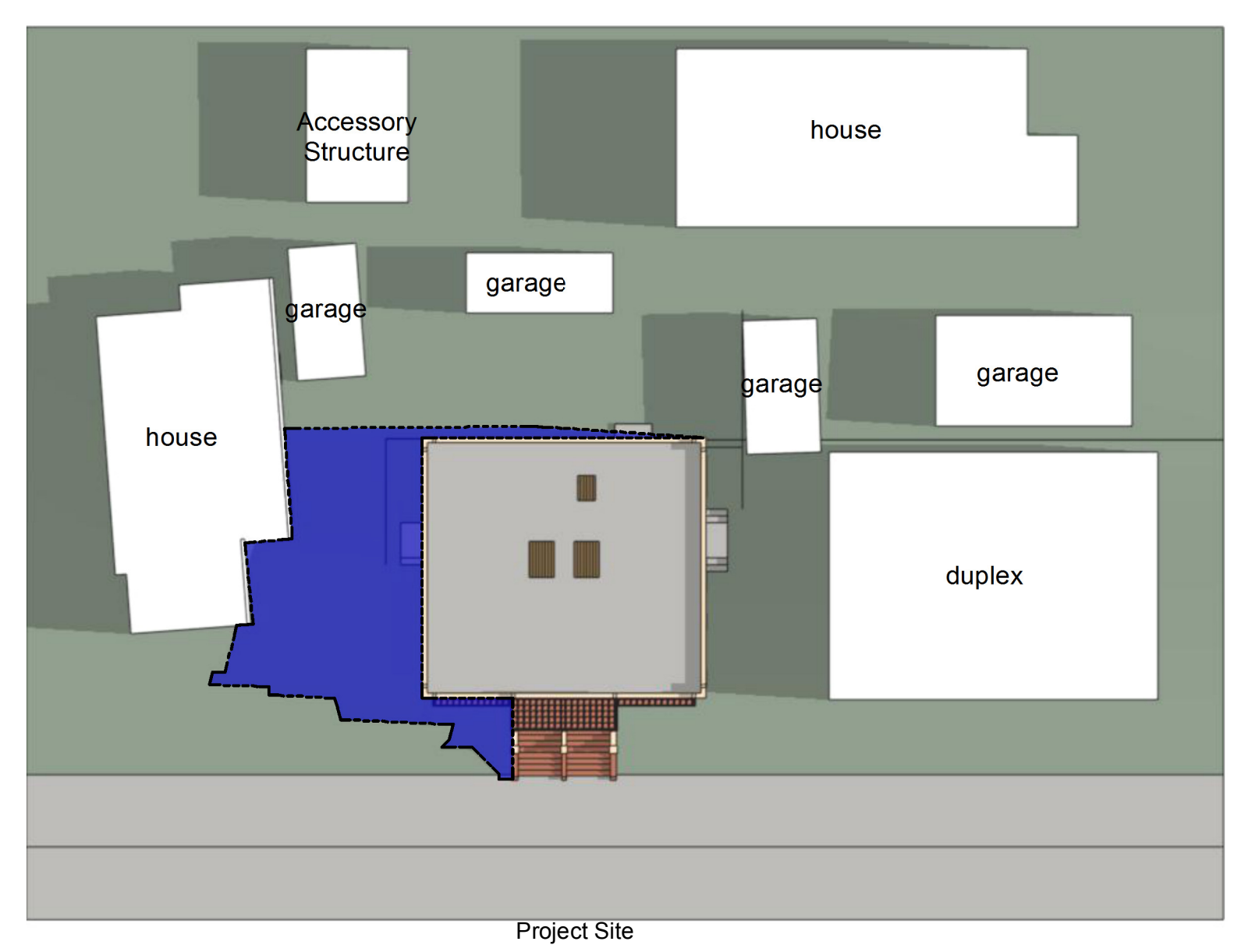
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12-21-2021 / 9:21 am



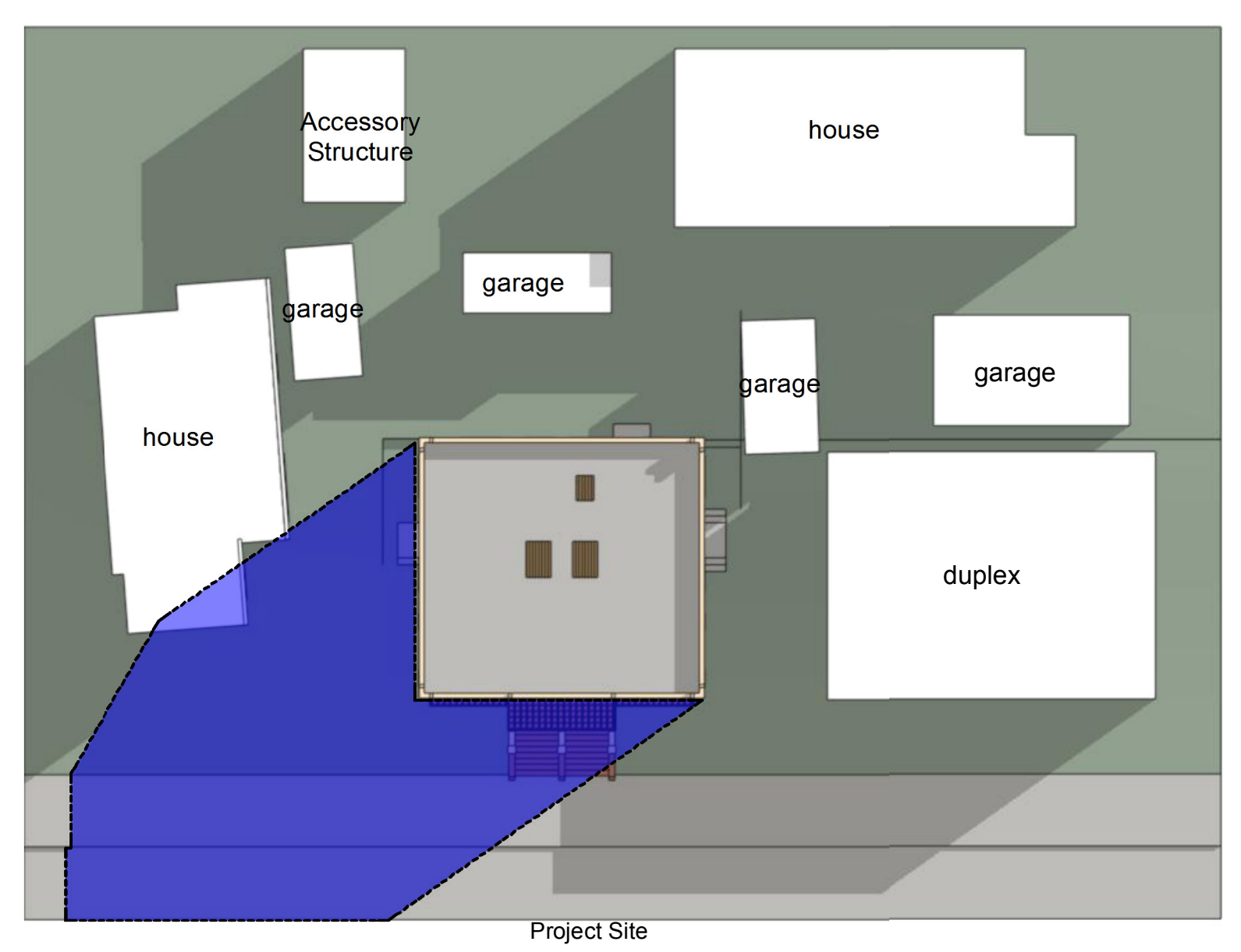
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12-21-2021 / 2:54 pm



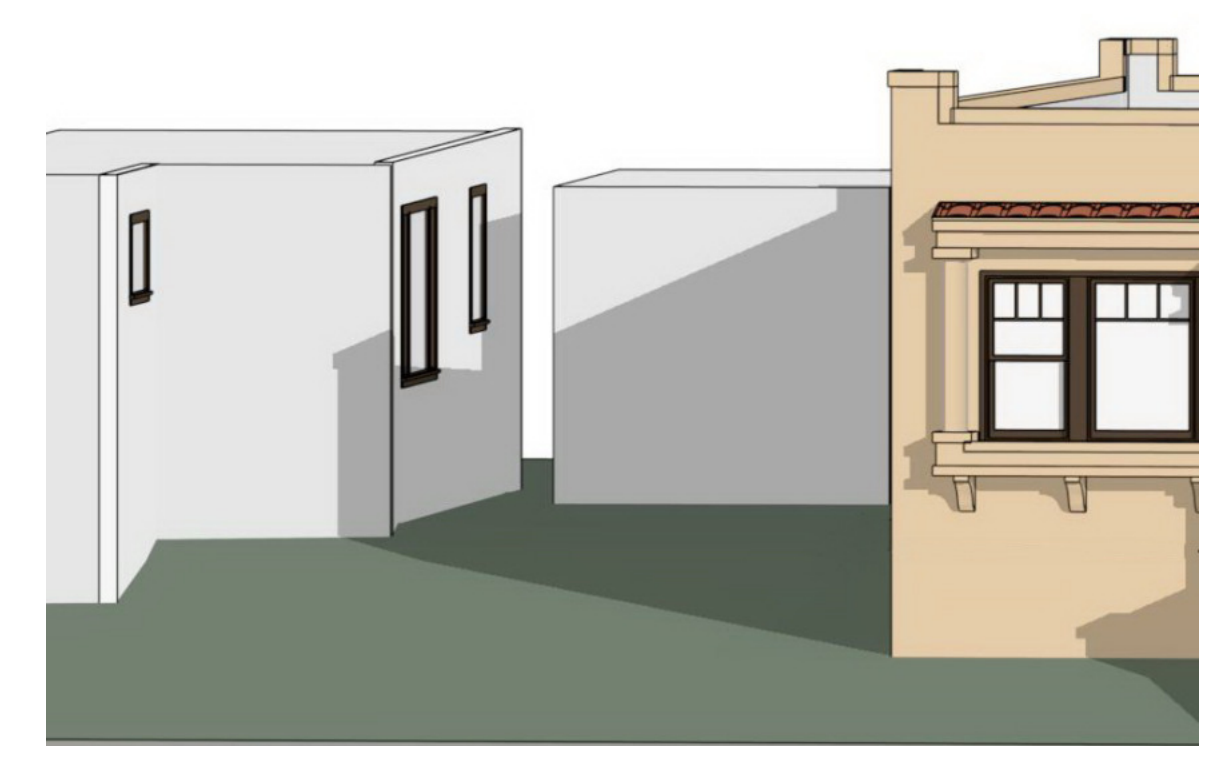
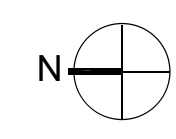
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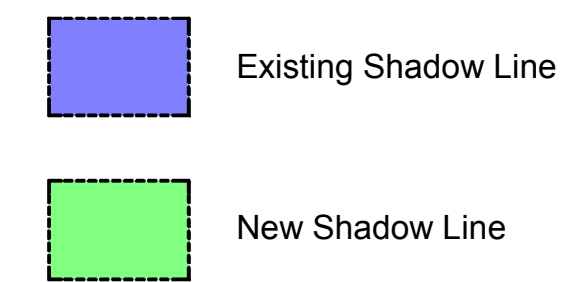


Shadow Accuracy Simulation
12-08-2020 / 3:00 pm

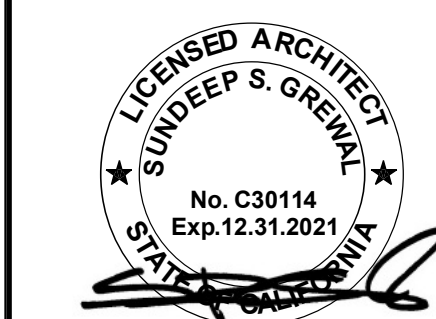


Actual
12-08-2020 / 3:00 pm

Shadow Accuracy Simulation



2223 Fifth St.
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Ph: 510.548.7448
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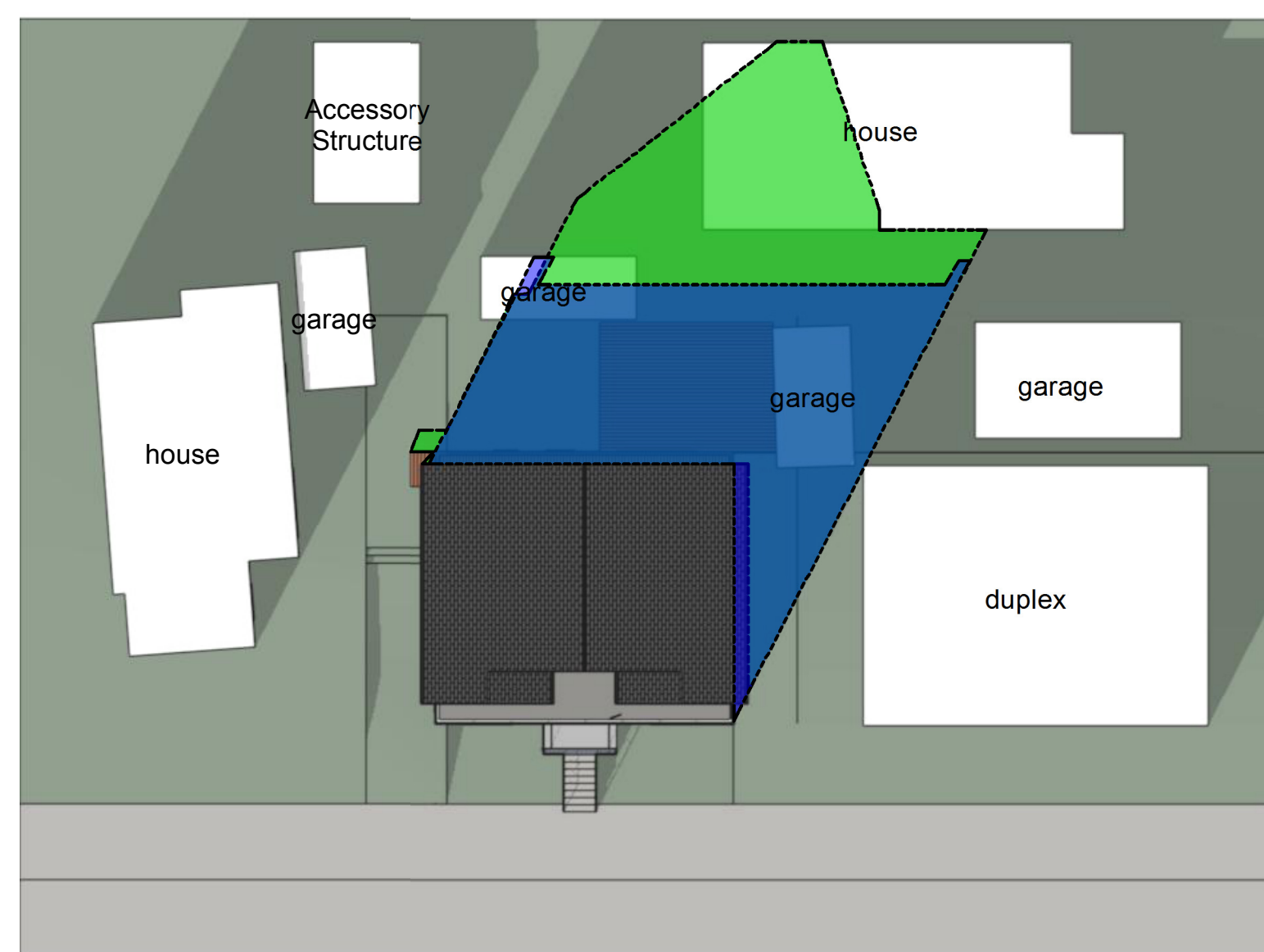
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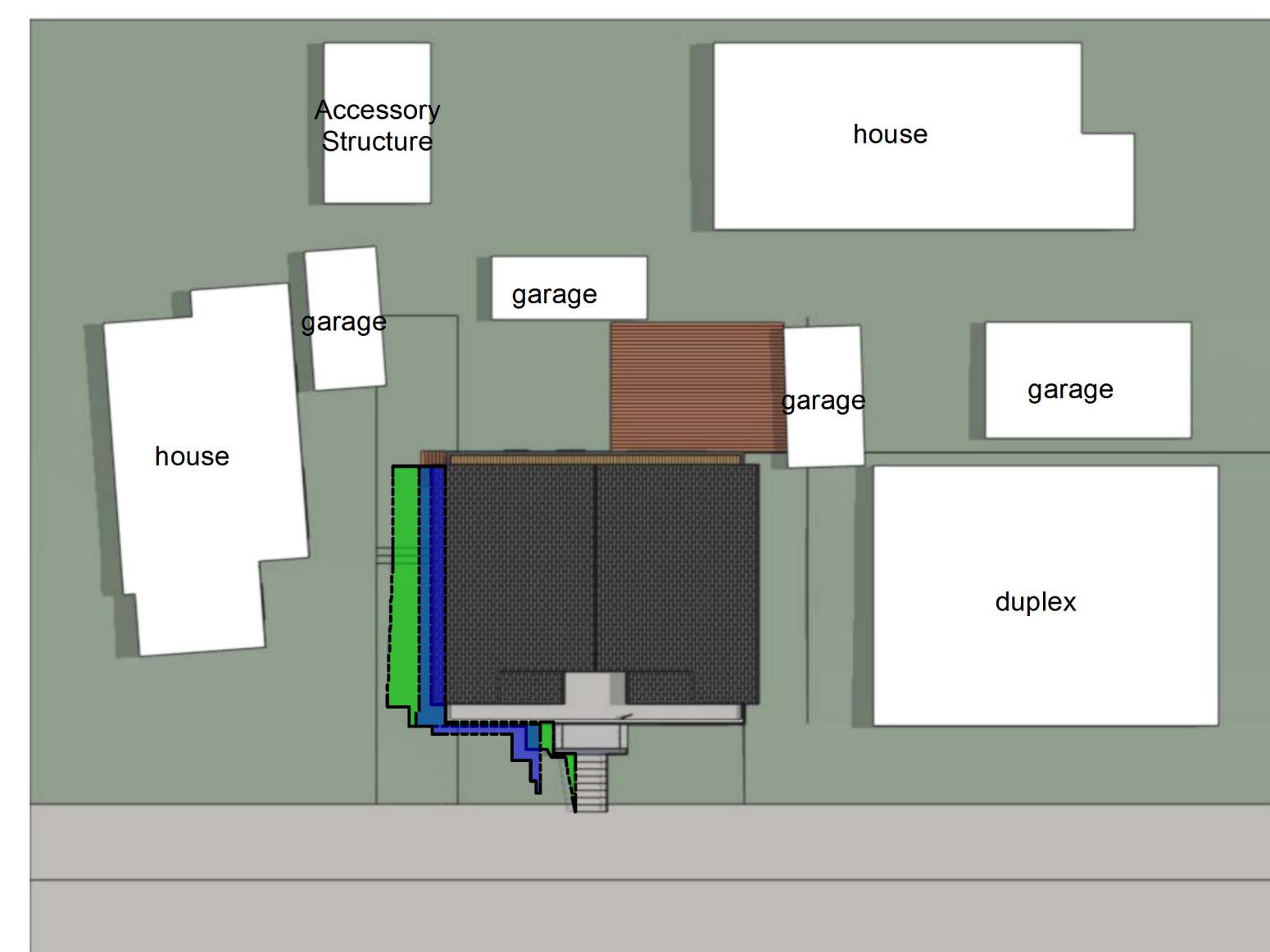
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Planning Review: 6-29-2021
Planning Review: 7-15-2021

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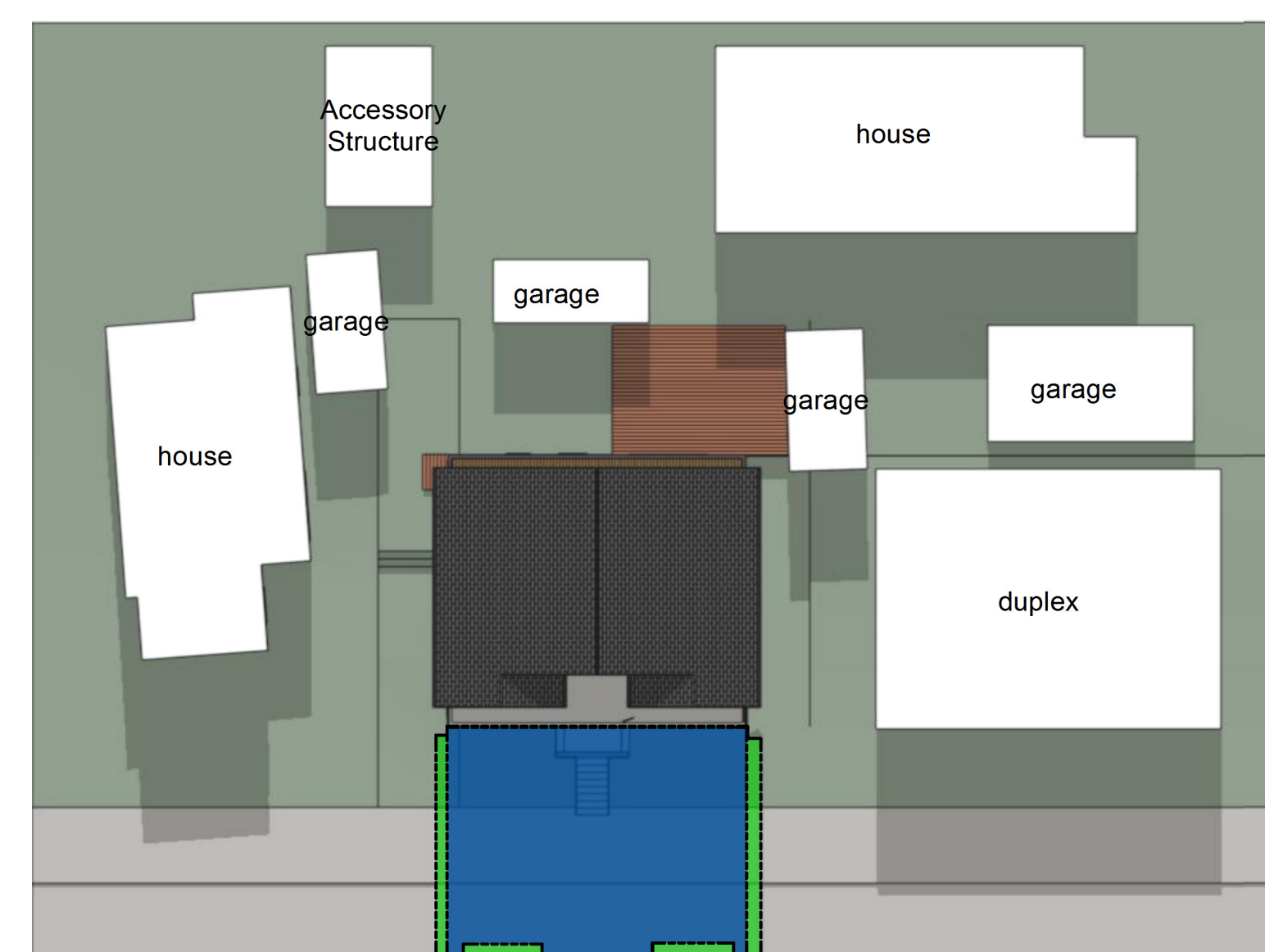
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Proposed
6-21-2021 / 6:35 pm



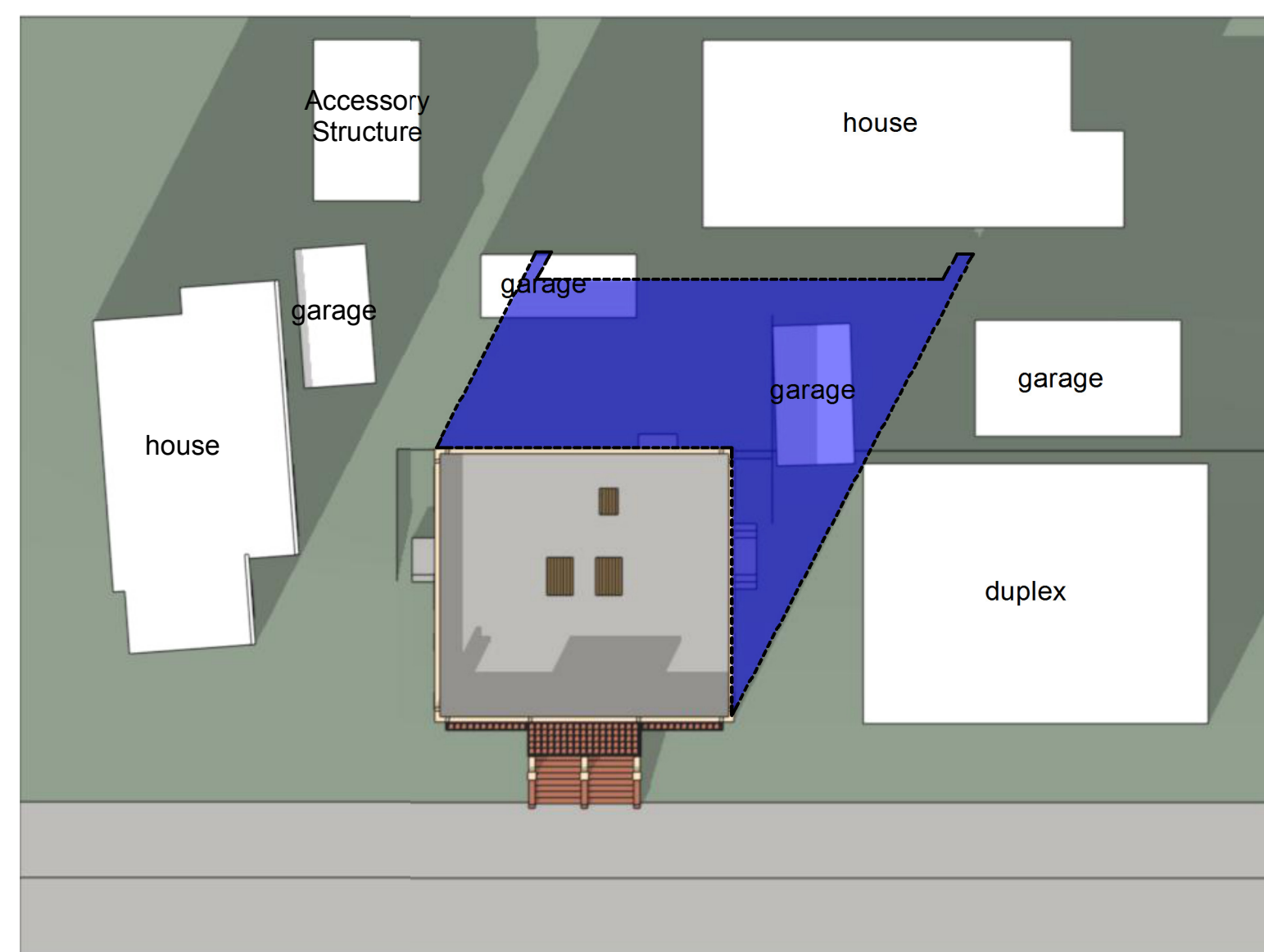
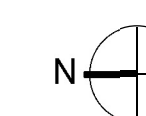
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Proposed
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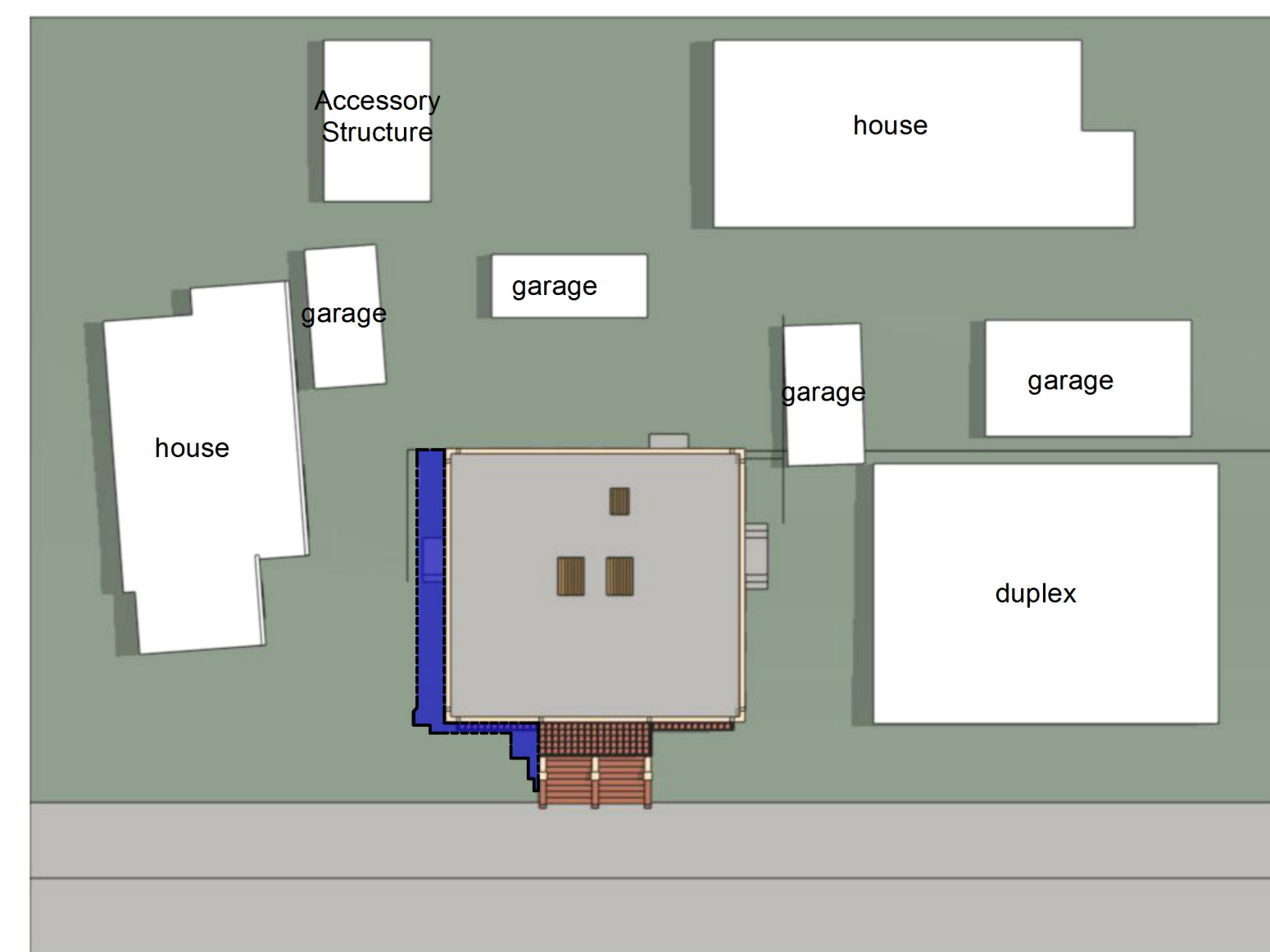
Project Site

Proposed
6-21-2021 / 7:47 am



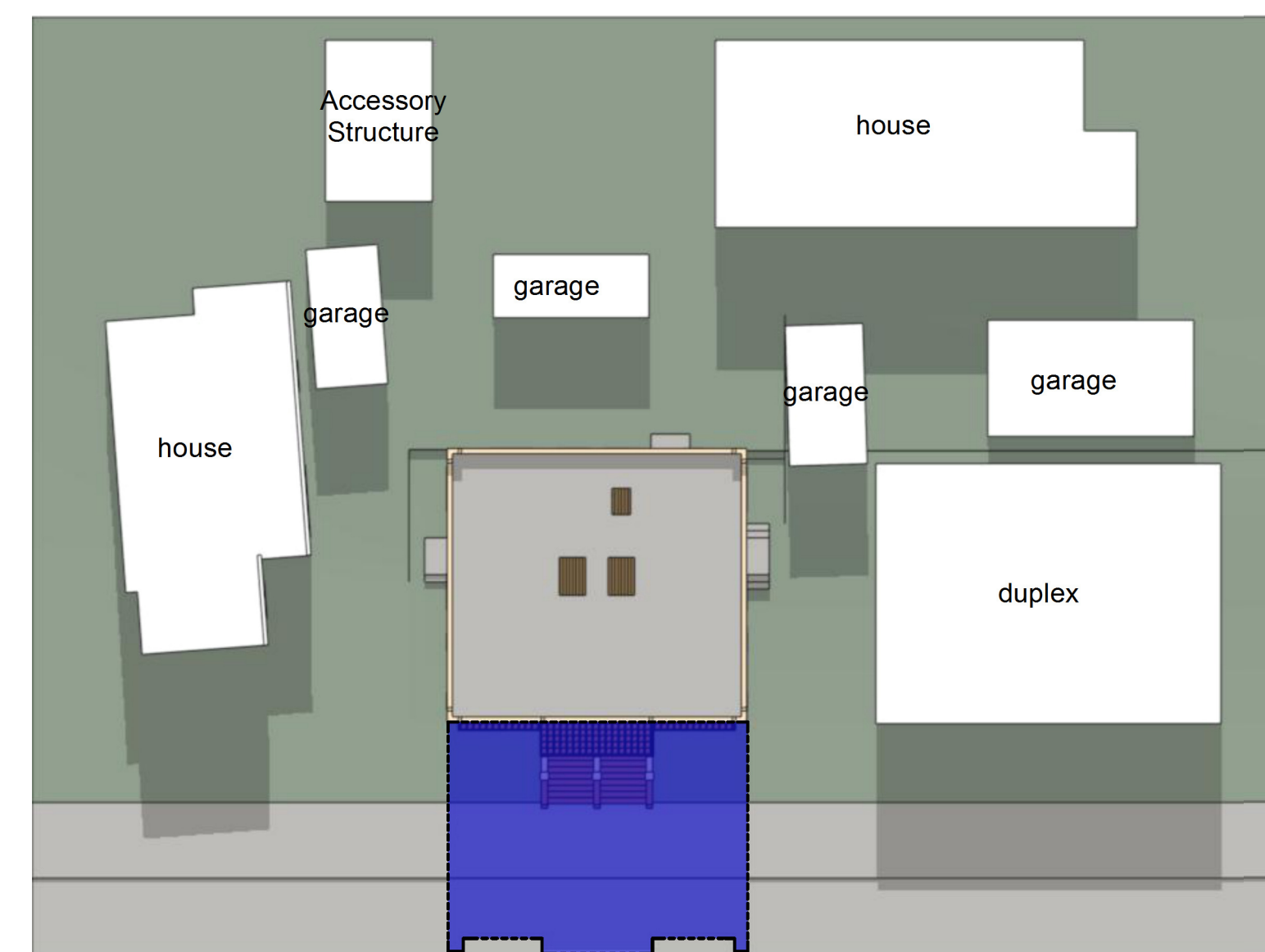
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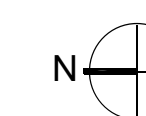
Project Site

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6-21-2021 / 12:00 pm



Project Site

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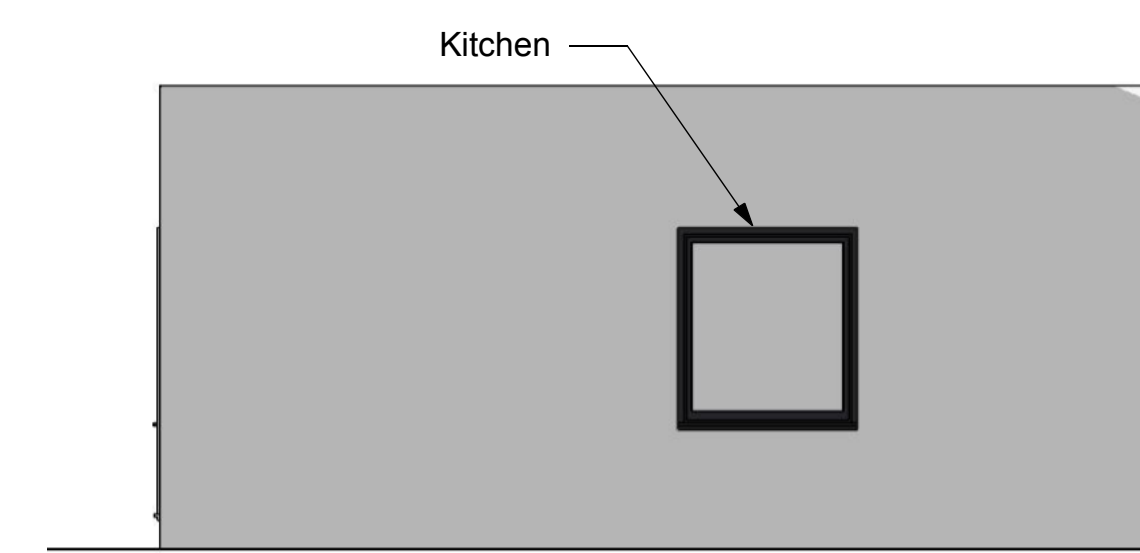




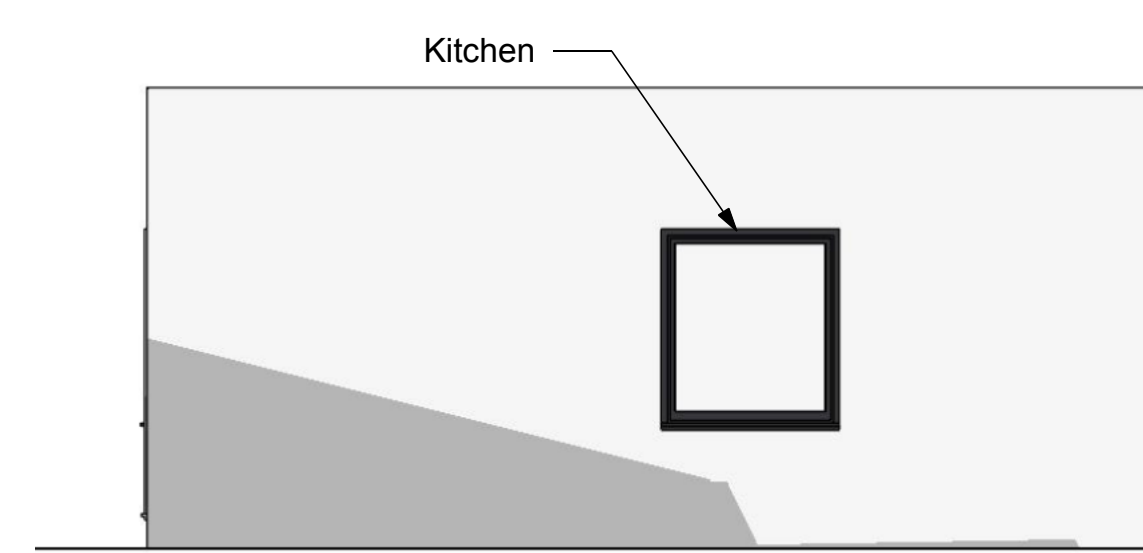
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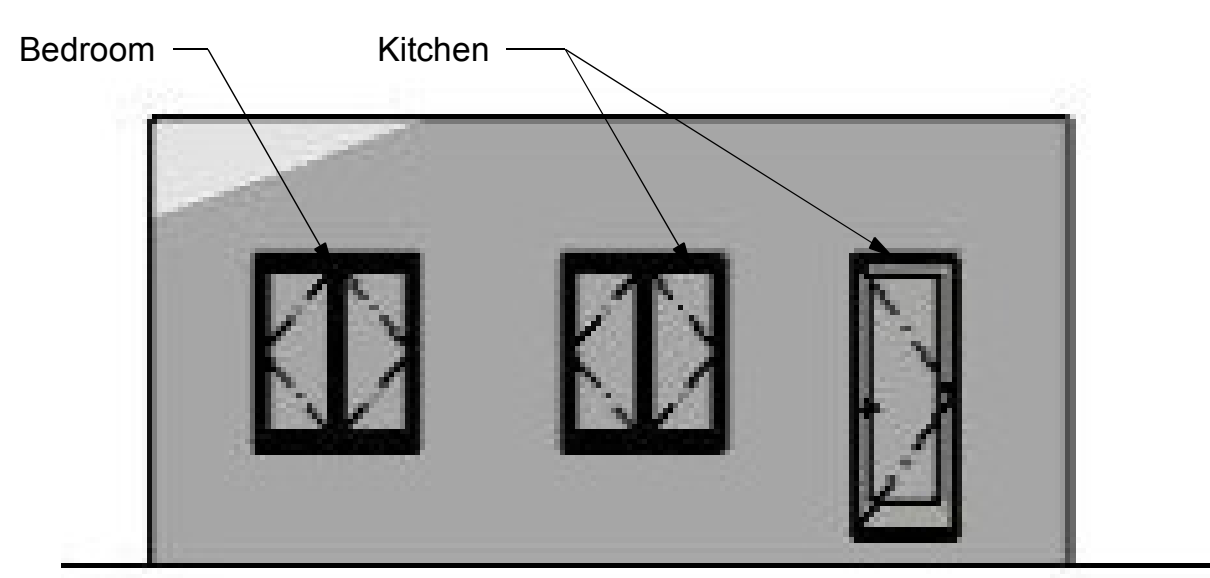
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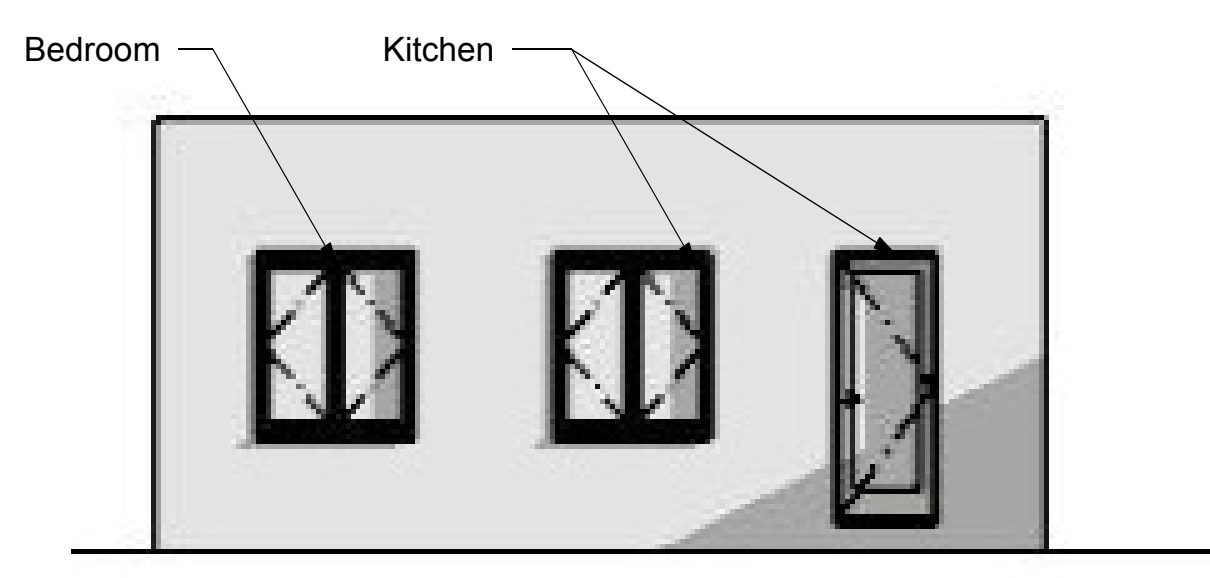
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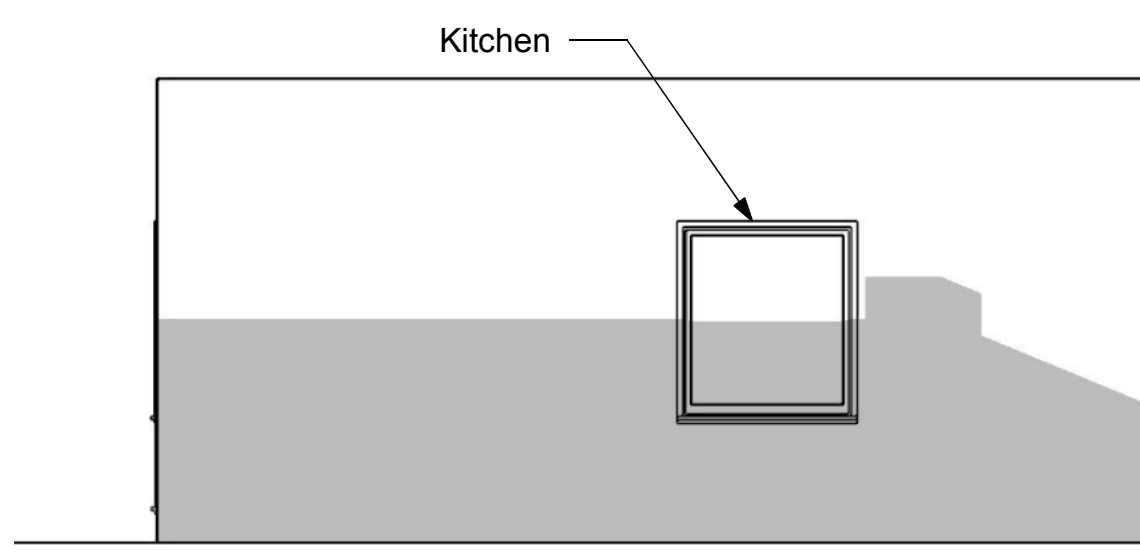
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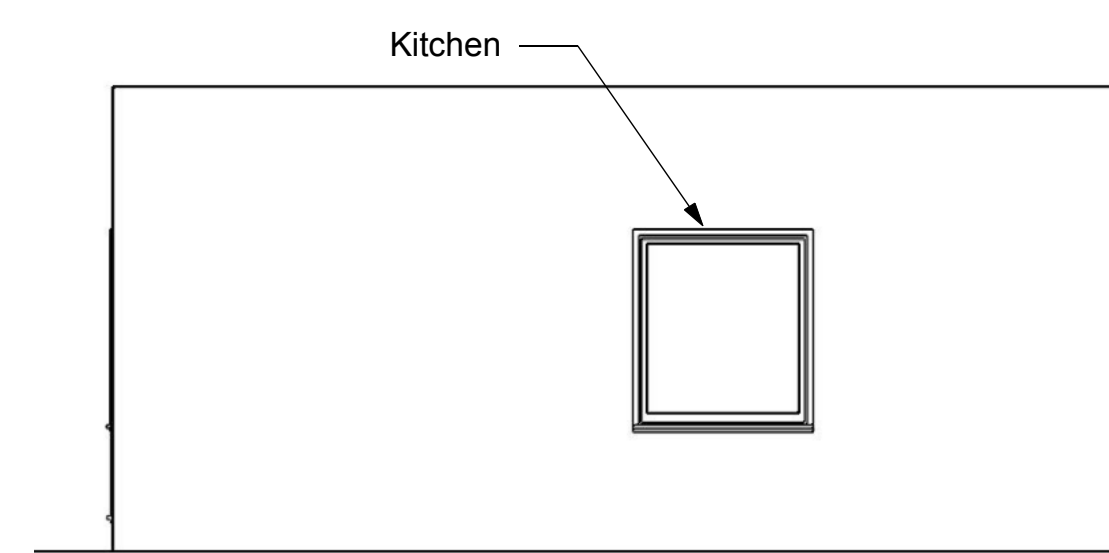
Proposed North Wall



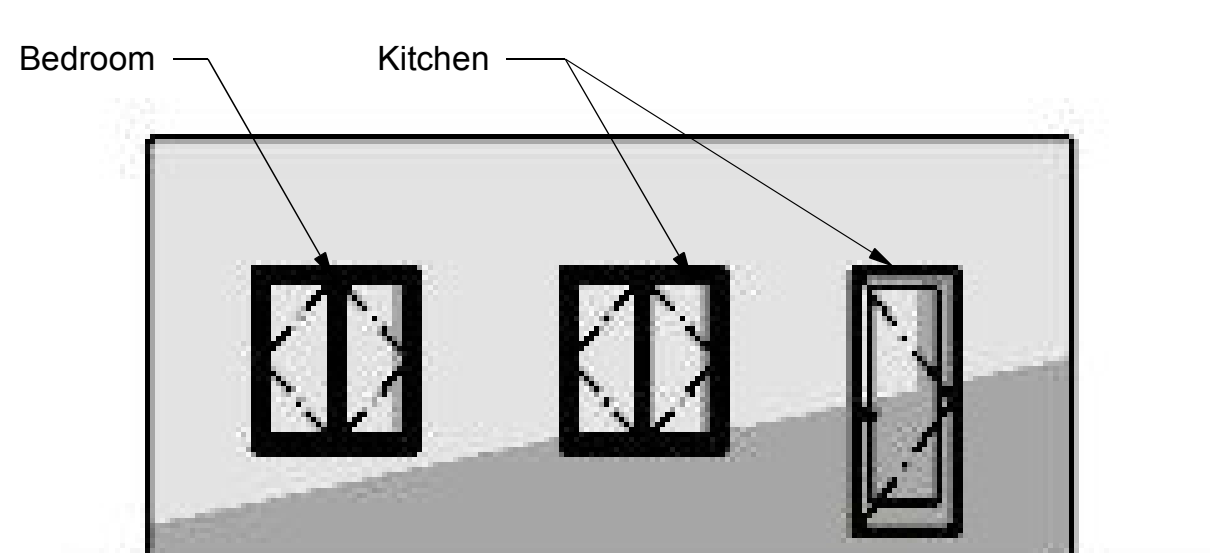
Proposed North Wall



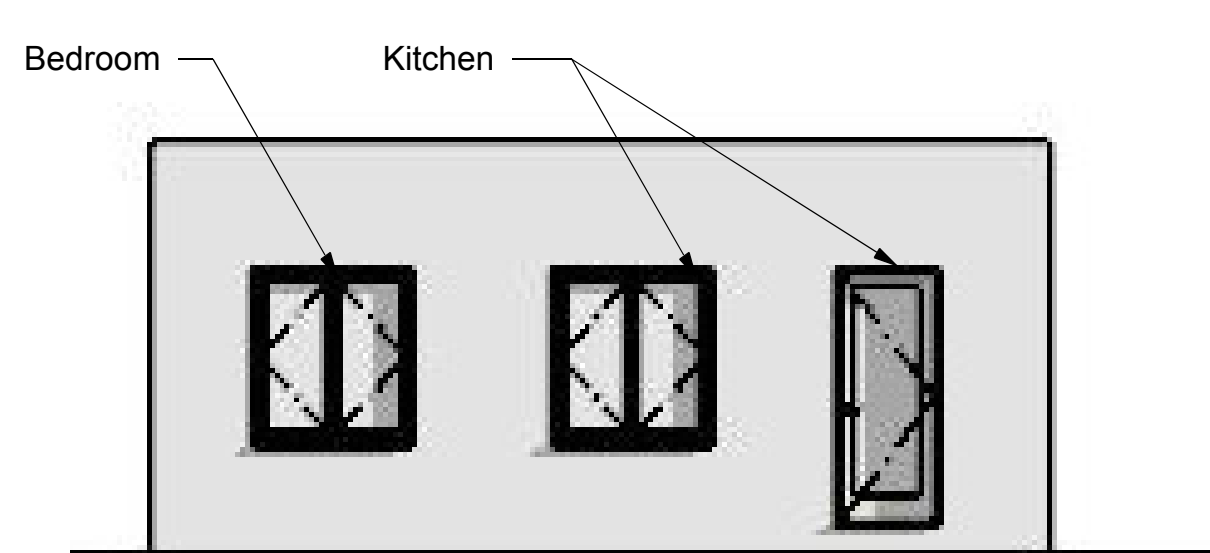
Existing West Wall



Existing West Wall



Existing North Wall



Existing North Wall

6-21-2021 / 6:35 pm

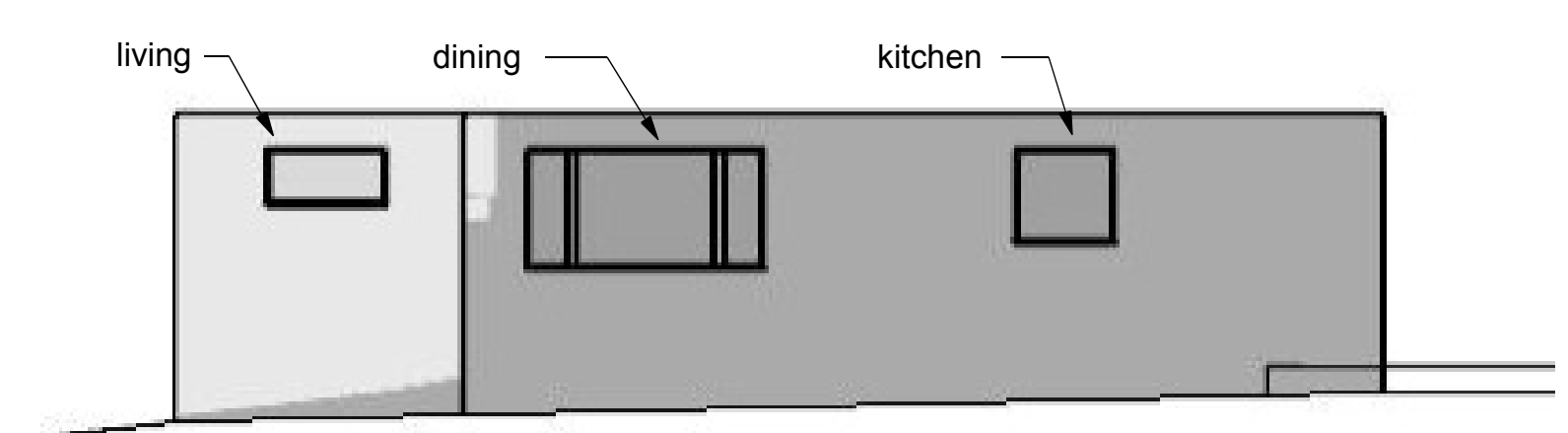
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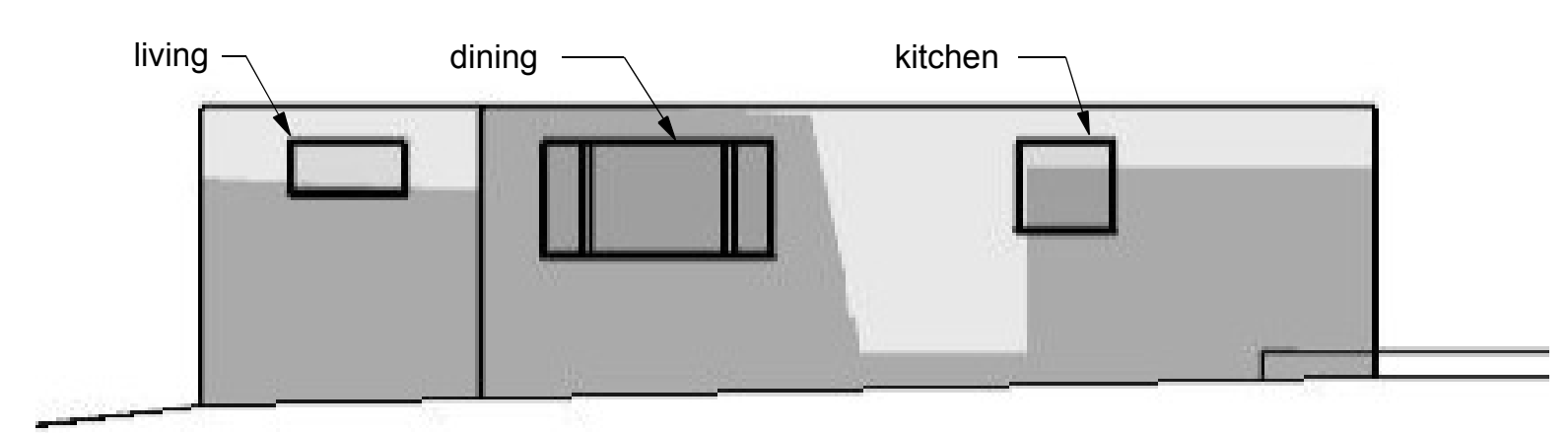
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1609 Virginia St. Shadow Impact Study

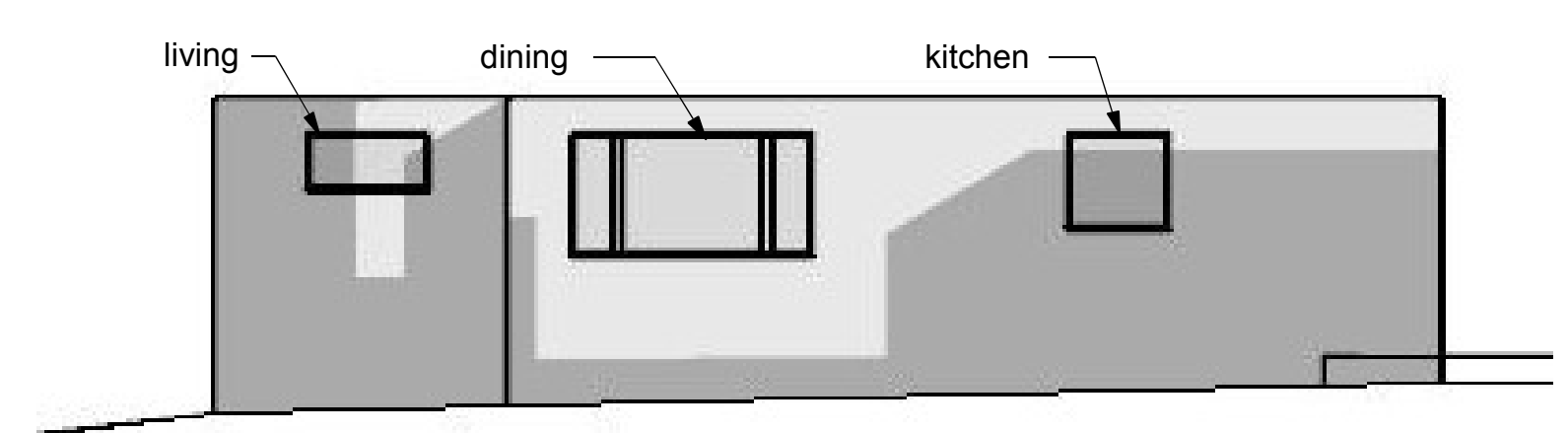
Sheet Contents:
Shadows Studies



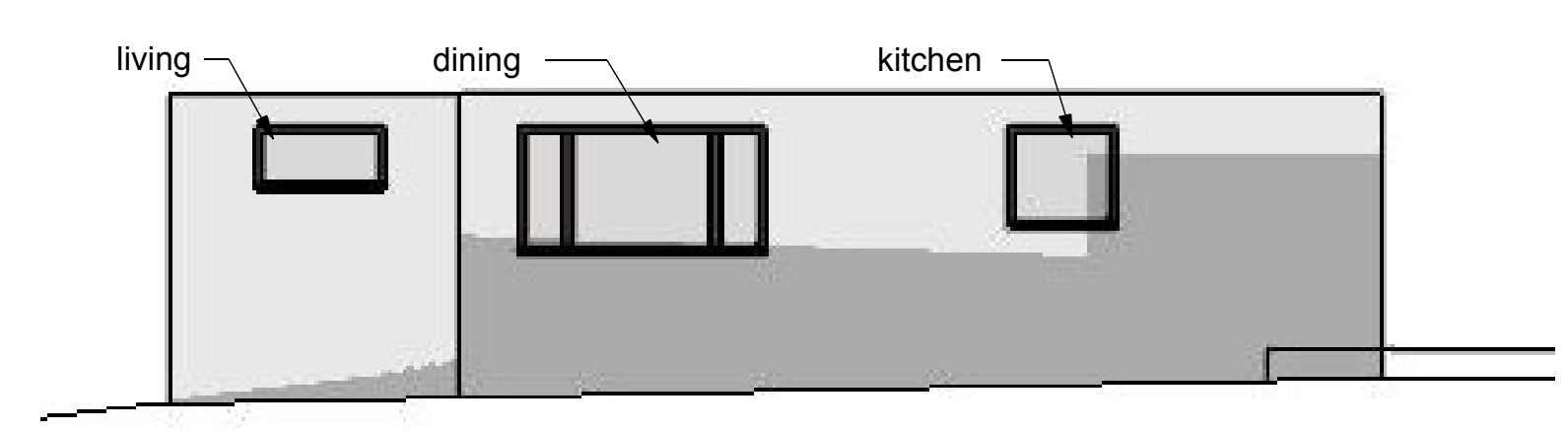
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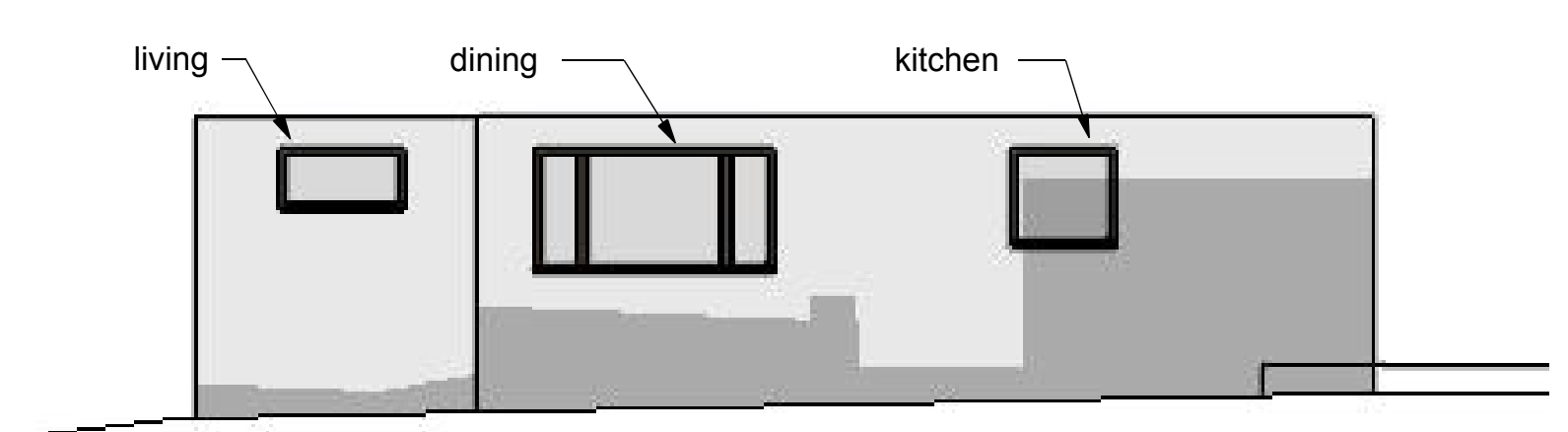
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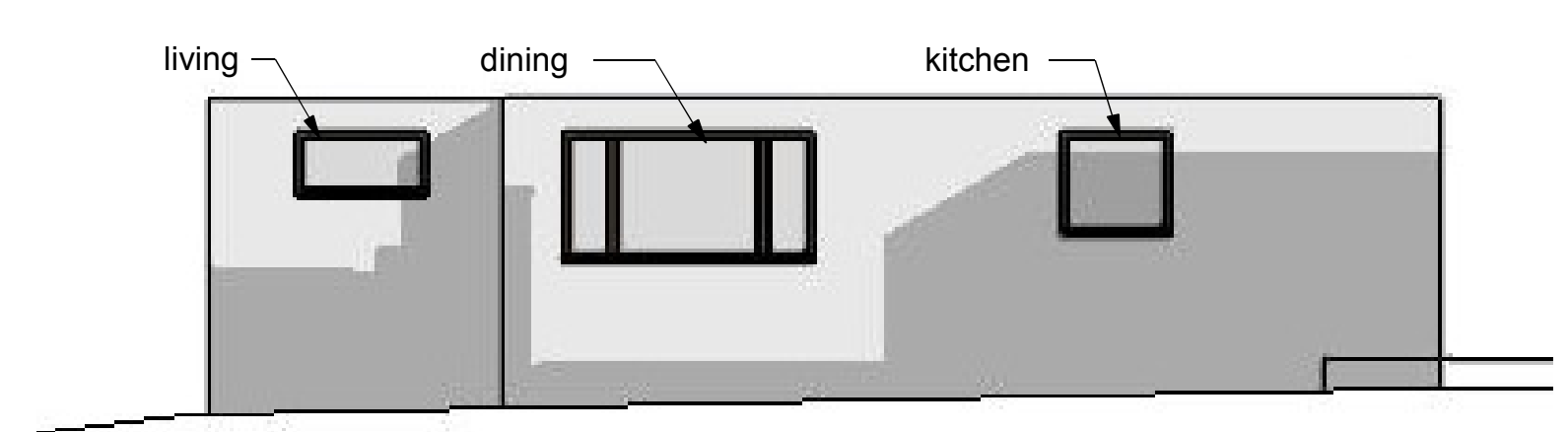
Proposed



Existing



Existing



Existing

12-21-2021 / 2:54 pm

12-21-2021 / 12:00 pm

12-21-2021 / 9:21 am

1639 California St. Shadow Impact Study

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Checked By:
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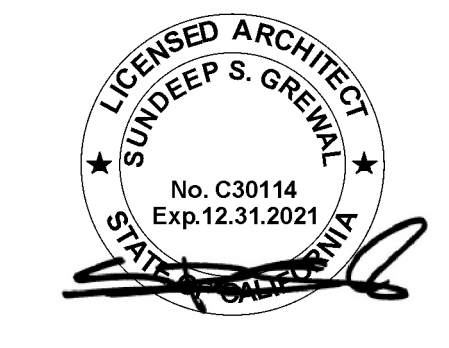
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Planning Review: 6-29-2021
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Sheet
A4.3



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Ph: 510.548.7448
info@sgsarch.com
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**OPPENHEIMER
RESIDENCE**
1643 & 1647 California St.
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Sheet Contents:
Demolition Diagram

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Project No: 20-13-420

Drawn By: SSG

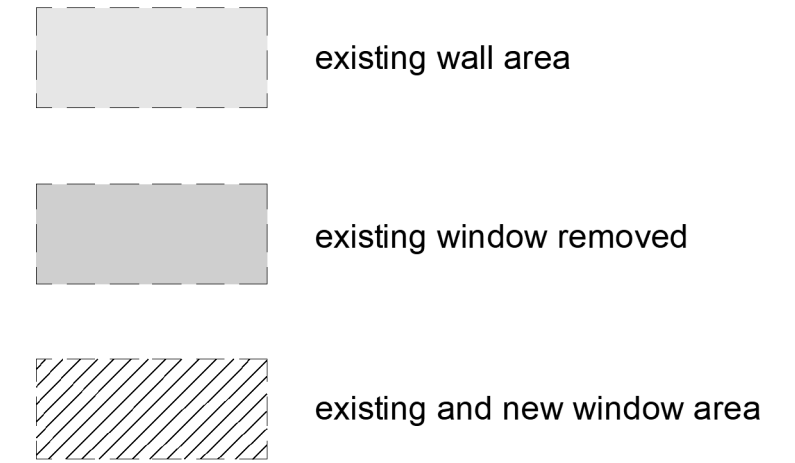
Checked By: SSG

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

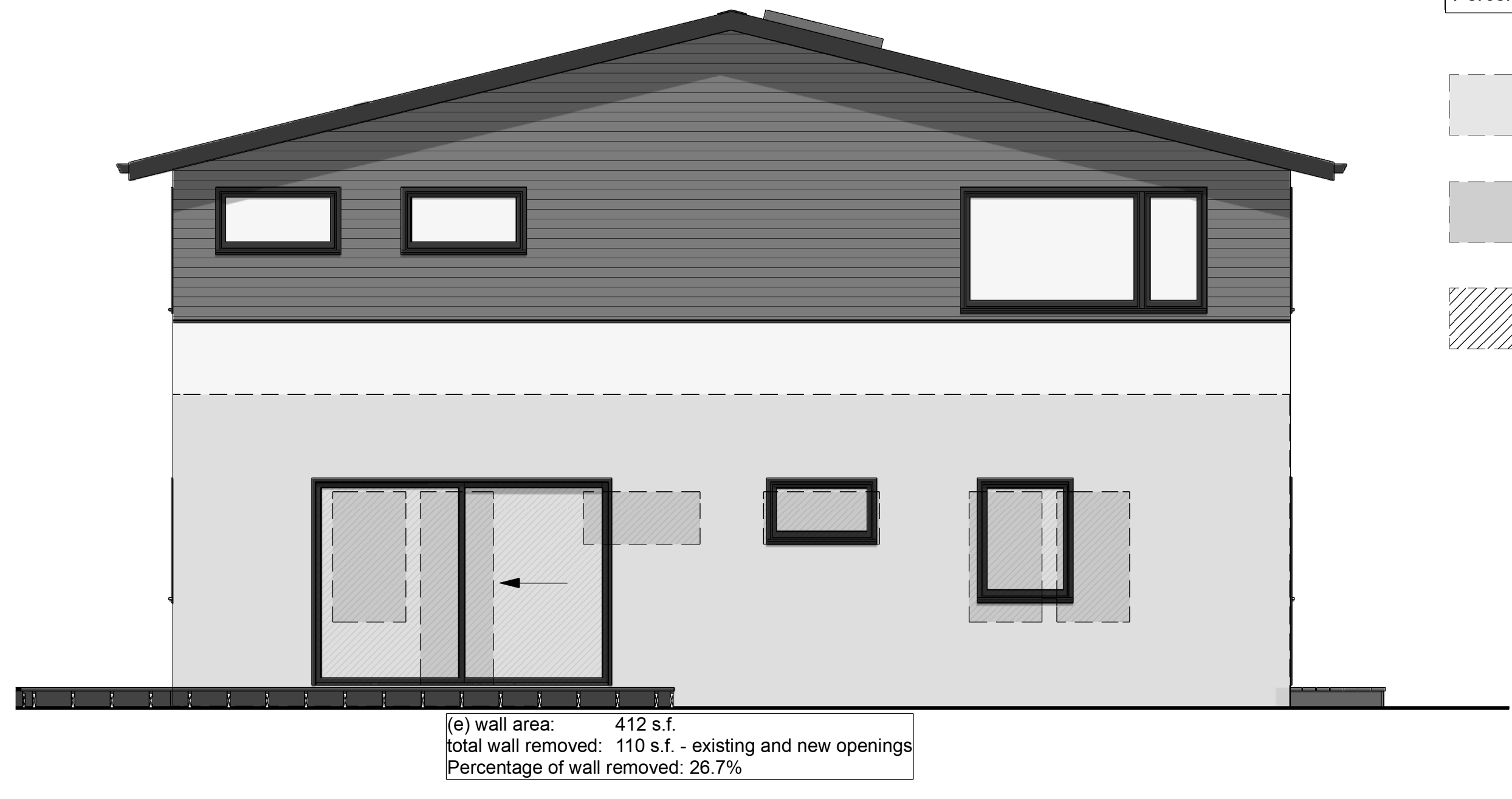
Revisions:
Use Permit Set: 12-10-2020
Redesign: 5-25-2021
Planning Review: 6-29-2021
Planning Review: 7-15-2021
Planning Review: 8-26-2021

Sheet **A5.1**

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



4 Proposed South Elevation - Right Side



3 Proposed East Elevation - Rear



2 Proposed North Elevation - Left Side



1 Proposed West Elevation - Front



August 2nd, 2022

To: The Berkeley City Council

Re: ZAB decision to approve ZP2021-0001

We are filing this appeal for the below reasons:

- 1) Even after this matter being reverted for another hearing by ZAB after our successful appeal to the Council, the ZAB did not address the specific changes we had requested for this project to reduce impacts on neighbors, not even the most basic request for conditioning the permit to prevent post-permit modification of the upper floor exterior of the building.
- 2) The City Planner's decision to support and the ZAB's decision to approve this project seems entirely counter to policy and statements made by the City Council regarding the need to promote diversification of neighborhoods by preventing gentrification, and to protect small, more affordable and in this case rent-controlled housing units in Berkeley.
- 3) The City Planners have repeatedly affirmed that this project does not comply with the applicable, objective zoning standards. The project requires issuance of a total of seven different Administrative Use and Use Permits. The ZAB is supposed to consider and approve permits if doing so will not be detrimental to the peace, comfort, or general welfare of persons residing in the area and if doing so does not injure adjacent properties or the general welfare of the City. In the absence of objective standards regarding privacy and light, as well as in the absence of clear guidance regarding how to handle rent-controlled properties, the ZAB is using entirely subjective standards regarding what constitutes harm to neighbors and the city in making its decision to approve this project.

When this project was proposed, two of three adjacent neighbors independently opposed it. Before the ZAB hearing, we discussed with the city planner varied potential project modifications, ranging from reducing window sizes to eliminating the whole upper floor. He suggested we ask ZAB for "major modifications" by citing his initial recommendation to eliminate the top floor. That is what we did at the December 9, 2021 ZAB hearing.

At that meeting, the ZAB began to discuss reducing the square footage and number of bedrooms of the project, but the chairman cut that conversation short by citing a Planning department memo suggesting that ZAB could not consider options for reducing the size of projects. One ZAB member raised the possibility of other minor changes like window configuration to minimize privacy impacts but the chairman said he didn't want to discuss ideas from ZAB members that he had not heard voiced by the opponents. Since we were not allowed to speak at that time even though we raised our hand to try to say that we had indeed discussed such proposals with planning, the ZAB moved forward and eventually voted to approve the project.

We appealed to the city with the central argument that the Planning Department memo incorrectly interpreted the HAA and imposed restrictions on ZAB and the City that do not exist legally. Prior to the council meeting, the City Attorney clarified that indeed the memo from Planning was incorrect, and that the City can in fact limit the size or otherwise modify proposed projects such as this one. Our appeal

was successful with the Council reverting the matter to ZAB. Mayor Arreguin also noted that this property might be rent controlled, potentially requiring additional protections.

The City determined that both units of this duplex (not a Golden Duplex) are subject to rent control if rented. This is so even though the project proponents have been living in the structure as a single-family home for decades, after having -- without obtaining the necessary permits -- turned two units into one by removing a kitchen and opening the wall between the original units. (See original project submission where the proponents include an inaccurate floorplan showing two separate units, as compared to a later submission required by the City Planner that shows the actual current floor plan for their single-family home.)

In preparing for the second ZAB hearing we considered the ZAB's comments about the lack of specific modification proposals. Accordingly, we presented a detailed set of ideas, ranging from fully protecting the small rent-controlled units by not issuing the permits for the project as proposed, to a short list of minor modifications requested if the City was going to allow the full expansion. We also included options for restricting the square footage in ways that would still allow significant expansion, but with much lower impact to neighbors. One of these options is for construction to the maximum allowed size for new construction on this lot (2700 sq. ft.), much less than the 3763 sq ft currently being proposed.

Unfortunately, at the July 14th ZAB meeting, most of the ZAB members didn't discuss or comment on our specific proposed modifications, making us question whether they had seen our submission or supplemental materials. The ZAB member who said he had reviewed all the materials stated that he supported the project because modifications proposed by neighbors had already been implemented by the proponents, a statement that is incorrect. In fact, the current project plan is identical to the very first plan the proponents ever informed us about, after their May 25, 2021 resubmission to planning. At no point has planning, ZAB or the proponents considered or commented on the specific modifications regarding window height and size reduction or guarantees to prevent creation of a rear deck that we have requested, and which would reduce impacts to neighbors. The only changes to design that have been made are those initially required by the Planning department before it was willing to support the project at all.

Unlike the first ZAB hearing where potential and minor modifications were starting to be discussed by ZAB, the second meeting focused on whether the proposed final structure seems in line with other homes in the neighborhood, without considering whether those homes (on much larger properties) also exceed zoning standards, required Use Permits, or contained rent-controlled units. The ZAB Chairman stated that according to the Municipal Code, Berkeley homeowners are entitled to develop and improve their properties (in the first ZAB hearing the chairman stated that all owners have a right to a second story), and that the ZAB will permit them to do so unless there is a preponderance of evidence that weighs against approving a project, not just a presumed argument reflecting affordability. The ZAB chairman also stated that the ZAB is not the appropriate venue for addressing matters like this. If these statements are true, and the ZAB will not use city zoning standards or the requirements for public hearings and obtention of Use Permits to protect smaller and thus more affordable rent-controlled housing, then it seems a matter for the City Council to make this determination.

On the rent control issue, we raised the concern that this project permits the conversion of two 670 square foot rent-controlled units into one smaller unit and one massive 5-BR, 5-bath home, and that

although both units will indeed be rent-controlled if rented, it is extremely unlikely that the owner of a multi-million dollar home will ever opt to rent that larger unit out subject to rent-control. Thus, the project in effect removes a small rent-controlled unit from the Berkeley rental market. In response, one ZAB member suggested that the city might benefit from having large 5-bed, 5-bath units like the one that would be created here under rent control because it could provide rent-controlled housing for five different people living together. This rationalization ignores the reality of how rent-control works and the reluctance of owners to rent to multiple tenants, especially under rent-control. Meanwhile, the City Planner stated that while the project proponents may have converted the rent-controlled duplex into a single-family home without obtaining the permit to do so many years ago, that change does not matter because removal of a kitchen and opening up a wall between two units is simply an "internal" modification and both rent controlled units were owner occupied at the time.

It is worth noting that on the very same night, the ZAB also approved the conversion of another rent-controlled North Berkeley duplex (on Milvia street) from two moderately sized units to a conformation with one much smaller and one much larger unit. Again, the project required multiple permits yet the ZAB approved with barely any discussion. Again, a moderately sized, rent-controlled unit will be converted into a massive home that is unlikely to ever be rented, and a Use Permit for exceeding lot coverage was being awarded to allow this conversion. There thus seems to be a trend in which the City mounts no opposition, even when zoning standards are being exceeded and Use Permits are required, to property owners effectively converting rental properties subject to rent control into massive owner-occupied homes with accompanying much smaller rental units.

Thus, together, Planning and Zoning seem to be setting a policy that is extremely developer friendly, favors gentrification, and leads to conversion of the City's existing, smaller/lower-income, rent-controlled units into large luxury homes. This seems entirely at odds with things this mayor and council have been reported to say over the past few years as part of discussions about how Berkeley might address its housing crisis.

We therefore ask the City Council to review its stance on the City's rent-controlled duplexes and decide whether it is in the City's best interest and in line with the current City General Plan, to support gentrification projects in cases like this where the owner does not have the legal right to expand without being pro-actively issued Use Permits for exceeding the zoning standards. We strongly believe the City both can and should use existing zoning standards and permit requirements to impose conditions on development that will force owners to preserve the nature of and purpose of the rent-controlled properties they purchased. Owners who have purchased rent-controlled duplexes should not be "entitled" to modify these into massive homes unlikely to be rented. Allowing this project and others like it to proceed sets a precedent that creates such an expectation among property owners.

If the Council believes it is important to safeguard Berkeley's stock of smaller, more affordable rent-controlled units, then projects like this should not be approved and we ask that the permits afforded in this case be denied for the current application plans. By doing so, the Council would signal to City Planning and ZAB that it is important to balance City Policies seeking to protect more affordable rental units and prevent gentrification so as to promote diversity in neighborhoods -- especially in North Berkeley -- with the "entitlement" of owners to develop their properties.

If the mayor and the City Council decide that even with the existing affordability and housing crisis, permits for conversions like this should nevertheless be issued, we ask that the Council still review the minor modifications we requested to ZAB (identical to those presented in our initial appeal to Council).

Specifically, we request that the Council at a minimum make a condition to this permit that would hold the project proponents to their word about their plans, such that the agreements that the project proponents made with Planning to get their support in the ZAB hearings cannot later be modified. Such a condition to the permit would restrict the applicants from make any changes to the exterior windows and doors on the South and East sides of the upper floor through post-permitting modification requests to the Building Department. This would include (i) not adding an entrance to convert the parapet structure on the east side upper floor into a shallow deck, and (ii) not increasing the size or changing the location of any windows on the upper floor's east and south sides.

We request this permit condition in part because of a precedent with this very same architect in Berkeley having made concessions to planning and neighbors to obtain a building- permit and then immediately proceeding to request and obtain post-permit modifications undoing those concessions (this was brought up by a member of the public who spoke at both the December Council meeting and the July ZAB meeting). We imagine that such a condition to the permit would be supported by Planning since it would only hold the applicants to their agreement with Planning. This condition should also be supported by the project proponents if they are in fact happy with their current designs and have no plans to request post-permit modifications. Finally, we request that the windows on the upper floor east and south sides be converted to high-awning windows to minimize impact on appellants.

Thank you for your consideration,

Adam Safir (1609 Virginia St)
Anna Cederstav (1609 Virginia St)
Kay Bristol (1651/1653 California St)

Communication regarding this appeal should be directed to:

**Adam Safir
1609 Virginia St., Berkeley CA. 94703
510-725-9350
cederfir@hotmail.com**



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

FOR BOARD ACTION
JULY 14, 2022

1643 & 1647 California Street

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

I. Background

A. Land Use Designations:

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

B. Zoning Permits Required:

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

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

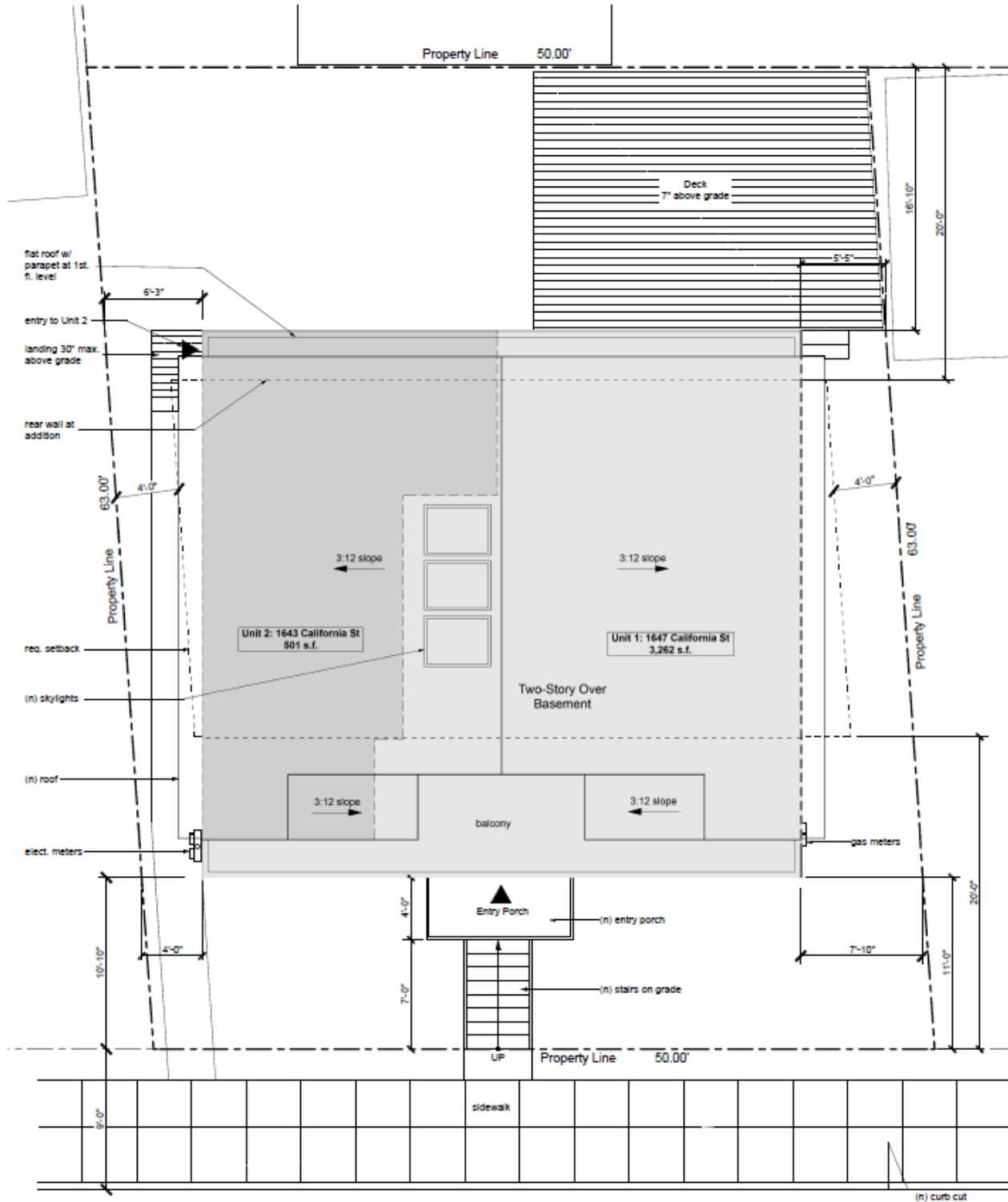
Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no

cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

D. Parties Involved:

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

Figure 2: Site Plan



2 Proposed Site Plan

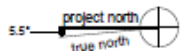
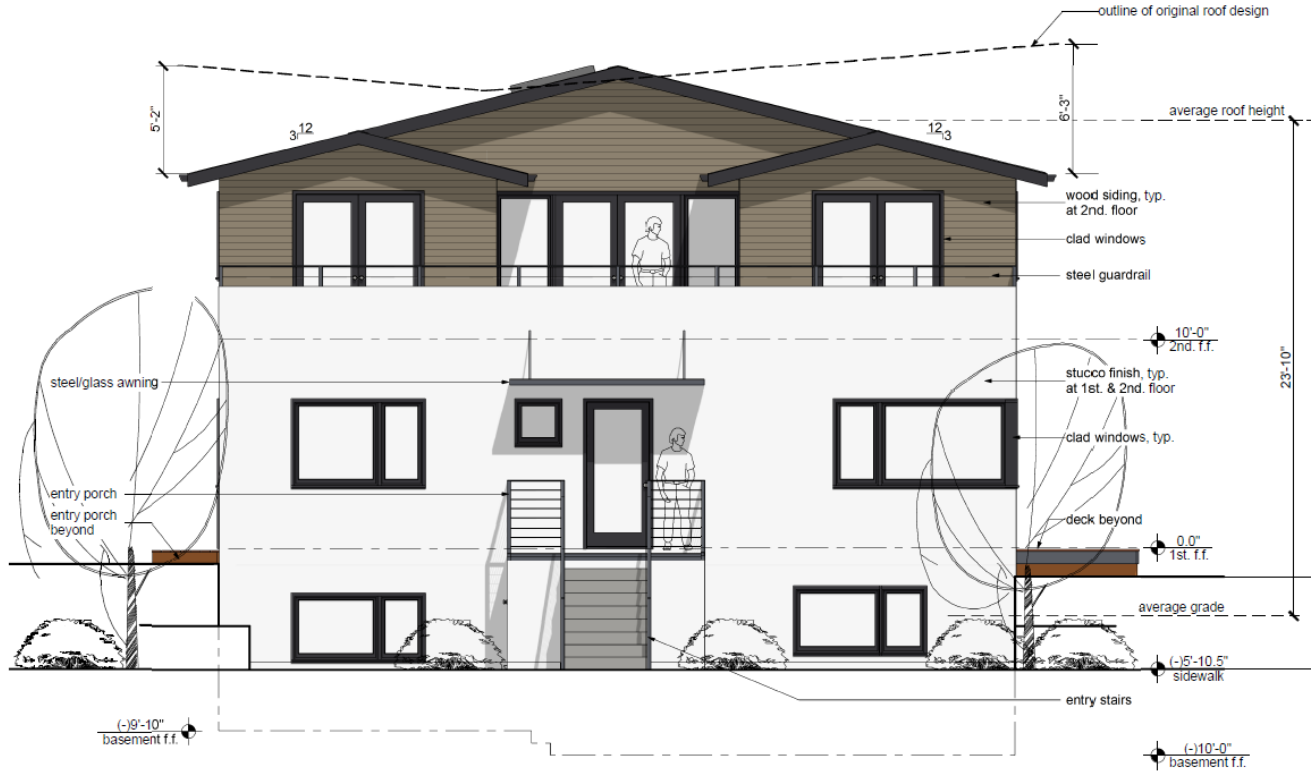


Figure 3: Front Elevation



① Proposed West Elevation - Front
Current Proposal



Figure 4: Rear Elevation



Table 1: Land Use Information

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

Table 2: Special Characteristics

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

Density Bonus	No	The project is not proposing to add dwelling units through a Density Bonus application
Natural Gas Prohibition (Per BMC 12.80.020)	No	This project is an application for construction to an existing two-unit structure, and is therefore not subject to the Natural Gas Prohibition.
Historic Resources	No	The project site is not designated as a Landmark by the City, nor is the application proposing to demolish the existing structure.
Housing Accountability Act (Gov't Code Section 65589.5(j))	No	The project is not a "housing development project," as no additional units would be created. The project is to increase the size of one of the dwellings, and reduce the size of the other dwelling. Therefore, the HAA findings do not apply to this project.
Housing Crisis Act of 2019 (SB330)	No	The project is all residential, but no new dwellings are proposed, and no dwellings would be demolished.
Oak Trees	No	There are no Coast Live Oak Trees on the property.
Rent Controlled Units	No	The property contains two units that are owner-occupied. The Rent Control Ordinance would apply if either unit were rented.
Residential Preferred Parking (RPP)	No	This property is not located in a Residential Preferred Parking Zone
Seismic Hazards (SHMA)	No	The site is not located within an area susceptible to liquefaction, Fault Rupture, or Landslides as shown on the State Seismic Hazard Zones map.
Soil/Groundwater Contamination	No	The project site is not listed on the Cortese List (an annually updated list of hazardous materials sites). Per §15300.2 of the CEQA Guidelines, a categorical exemption may be used on sites not listed on the Cortese List.
Transit	Yes	The site is located near the corner of California and Virginia Streets, one block east of Sacramento Street. Sacramento is served by AC Transit line 52 and there are bus stops one block away to the west.

Table 3: Project Chronology

Date	Action
January 8, 2021	Application submitted
September 24, 2021	Application deemed complete
November 23, 2021	Public hearing notices mailed/posted
December 9, 2021	ZAB hearing
December 20, 2021	Notice of Decision issued
January 10, 2022	Appealed to City Council
April 26, 2022	Council meeting, remanded to ZAB
June 30, 2022	ZAB public hearing notices mailed/posted
July 14, 2022	ZAB hearing
July 25, 2022	Remand deadline

Table 4: Development Standards

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

II. Project Background

- A. ZAB Action:** On December 9, 2021, the Zoning Adjustments Board (ZAB) approved Use Permit ZP2021-0001 by a vote of 9-0-0-0 (Yes: Duffy, Kahn, Kim, Gaffney, O'Keefe, Olson, Sanderson, Thompson, Tregub; No: None; Abstain: None; Absent: None).

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

In the appeal letter, the appellants stated that they were concerned about the applicability of the Housing Accountability Act (HAA), the lack of modification by ZAB, procedural requirements, and inadequate opportunities for public participation.

- B. Council Consideration of the Appeal:** On April 26, 2022, the Council held a public hearing to consider the ZAB's decision. During the staff presentation, staff clarified that the HAA should not apply to the project since no new units will be added. The addition may be modified. By a vote of 9-0-0 (Ayes: Bartlett, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin), Council remanded the Use Permit to ZAB for reconsideration of the applicability of the Housing Accountability Act, and the Rent Stabilization and Eviction for Good Cause Ordinance.

III. Project Description

- A. Neighborhood/Area Description:** The project site is located in the North Berkeley neighborhood, on the east side of California Street at the corner of California and Virginia Street. It is one block east of Sacramento Street and four blocks west of Martin Luther King Junior Way. The surrounding area consists of residential uses ranging from one- and two-story single-family dwellings, and two-story multi-family buildings. Bus service is available via transit lines on Sacramento Street.
- B. Site Conditions:** The subject property is a small, rectangular lot, oriented in the east-west direction, and is approximately 3,100 square feet in total area. It features a one-story main building originally constructed as a duplex. The building faces west, toward California Street. At some point in the past, the kitchen of the left side unit (1643 California) was removed without permits, and a doorway was installed between the two units, effectively converting the house to one unit, without the necessary approval of a Use Permit to remove a dwelling.

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

- C. Proposed Project:** The project would make several alterations to the existing property. The existing residential structure would be shifted by 1-inch to the south to create a conforming left (north) side setback of 4 feet. The proposal would restore the

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

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

IV. Community Discussion

A. Neighbor/Community Concerns:

On June 30, 2022, the City mailed public hearing notices to nearby property owners and occupants, and to interested neighborhood organizations and the City posted notices within the neighborhood in three locations.

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

Concerns raised include:

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

Support of the application includes:

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

V. Issues and Analysis

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

- A. SB 330 – Housing Crisis Act of 2019:** The Housing Crisis Act, also known as Senate Bill 330, seeks to boost homebuilding throughout the State with a focus on urbanized zones by expediting the approval process for and suspending or eliminating restrictions on housing development. Housing development is defined as a project that is: all residential; a mixed-use project with at least two-thirds of the square-footage residential; or for transitional or supportive housing. SB 330 does not apply to the proposed project because no new dwellings are proposed. Per Government Code Section 66300 and the attached memorandum from the Rent Stabilization Board (Attachment 5), both dwelling units are “protected units” because both are subject to rent control when rented.
- B. Housing Accountability Act Analysis:** The Housing Accountability Act (HAA), California Government Code Section 65589.5(j), requires that when a proposed housing development complies with the applicable, objective general plan and zoning standards, but a local agency proposes to deny the project or approve it only if the density is reduced, the agency must base its decision on written findings supported by substantial evidence that:

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

The HAA does not apply to the proposed project because no new dwellings are proposed. The two existing dwellings would remain, and the size of the dwellings would change.

- C. Rent Stabilization and Eviction for Good Cause Ordinance:** Rent Board staff prepared a memorandum (Attachment 5) that analyzes whether the Rent Stabilization and Eviction for Good Cause Ordinance applies to the project. Since there are currently no tenants, there are no tenant protections at issue currently. Future tenants would be protected by the ordinance. Both units are subject to rent control when rented.
- D. Findings for Addition to a Structure on Parcel with Non-Conforming Lot Coverage:** Pursuant to BMC Section 23C.04.070.C, additions and/or enlargements of lawful non-conforming structures that are non-conforming by reason of lot coverage are permitted with a Use Permit if the addition/enlargement does not increase coverage or exceed the height limit. As previously mentioned, the property is non-conforming to the maximum allowable lot coverage, with 50 percent coverage, where 45 percent is the District maximum on this R-2 property. The proposed addition would remove an existing shed in the rear yard, which would reduce the lot coverage to 44 percent, while creating a two-story house, which decreases the allowable lot coverage to 40 percent. While the proposed structure would still be non-conforming to the allowable lot coverage, the project would reduce the non-conformity from 5 percent over the allowable limit to 4 percent over the allowable limit. The proposed addition is located

over existing covered area, and therefore, does not increase the non-conforming lot coverage. Additionally, while the addition consists of a second story addition, reaching a total of 23 feet, 10 inches, which complies with the maximum average height limit of 28 feet.

- E. Findings for Addition to a Structure on Parcel with Non-Conforming Density:** Pursuant to BMC Section 23C.04.070.E, additions and/or enlargements of lawful non-conforming structures that are non-conforming by reason of residential density are permitted with a Use Permit if the addition/enlargement does not increase the density or exceed the height limit. The project proposes to maintain the density at two units, therefore, it does not increase the density. As described in Section V.C, above, the addition would comply with the allowable average height limit in the district.
- F. Findings for Addition to Vertically Extend and Alter a Structure with Non-Conforming Yards:** Pursuant to BMC Section 23C.04.070.C, additions and/or enlargements which vertically extend or alter a portion of a building which encroaches into a non-conforming yard may be of lawful non-conforming structures that are non-conforming by reason of residential density are permitted with an Administrative Use Permit if the existing use of the property is conforming and if the addition/enlargement would not 1) reduce any yard below the minimum setback requirements, or further reduce existing non-conforming yards; or 2) exceed the maximum or calculated height limits. As previously explained, the existing residential structure is non-conforming to the front, rear, and left (north) side setbacks. The proposed addition/enlargement of the house would correct the non-conforming left side setback, but is proposed to vertically extend the non-conforming front and rear setbacks. The front setback would be vertically extended both up (with the second story) and down (with the basement), while the rear setback would be vertically extended down with the expansion of the basement. The second story at the rear would comply with the required 20-foot rear yard setback. As the enlargement of the building would comply with the permitted residential use on the property, and the vertical expansions within the non-conforming setbacks would not further reduce the non-conformity, these expansions are permissible.
- G. Addition of a Fifth Bedroom to an R-2 Parcel:** Pursuant to BMC Section 23D.28.050, an Administrative Use Permit is required to approve the addition of a fifth bedroom to a parcel in the R-2 Zoning District. This project proposes to increase the total number of bedrooms on the property from four to five bedrooms. The addition of this fifth bedroom would not add more units to the site, but would provide more room in one of the dwellings.
- H. Restricted Two-Family Residential District (R-2) Findings:** This project proposes to construct a major residential addition over 14-feet in height. As required by BMC Section 23D.28.090.A and BMC 23B.32.040.A, the Zoning Adjustments Board must make a finding of general non-detriment for any Administrative Use Permit in the R-2 Zoning District. This project would add approximately 2,429 square feet to the existing 1,334 square foot duplex. The project would not be detrimental to the health, safety,

peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City because of the following reasons:

- i. The project would add a second level to the home, of which there are several examples in the neighborhood.
- ii. The second story addition would step in and comply with the required front and rear yard setbacks.
- iii. A basement is proposed to be added. While adding additional square footage to the building, the basement would not create any new impacts to the surrounding neighbors due to its placement partially below grade, maintaining the existing first floor level.
- iv. The neighborhood is a mix of residential uses, including apartments and single-family and multi-family homes. Existing structures in the immediate neighborhood vary in height from one to two stories.
- v. In addition, the project approval is subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, thereby ensuring the project will not be detrimental.

I. General Non-Detriment for Use Permits and Administrative Use Permits: Pursuant to BMC Section 23.28.090.B, the Board may issue a Use Permit if it meets the findings for non-detriment. An analysis of sunlight/shadows, air, and views follows:

Sunlight/Shadow: Shadow studies submitted by the applicant document the addition's projected shadow angles and lengths at three times throughout the day during the summer and winter solstice. The studies show that the addition would create an incremental increase in shadows on two neighboring dwellings, 1609 Virginia Street and 1639 California Street, as follows:

- Two hours after sunrise on the winter solstice, shadows on the south side of the dwelling at 1639 California Street would increase and cover the left third of a living room window;
- At noon on the winter solstice shadows on the south side of the dwelling at 1639 California Street would increase and cover a dining room window, and reach the sill of a living room window;
- Two hours before sunset on the winter solstice shadows on the south side of the dwelling at 1639 California Street would increase and cover a dining room window and a kitchen window. Shadows would also reach a garage and an accessory building at 1609 Virginia Street, and a garage at 1639 California Street.
- Two hours before sunset on the summer solstice, shadows on the west side of the dwelling at 1609 Virginia Street would increase and cover a kitchen window, and shadows on the north side of the dwelling at 1609 Virginia Street would increase and cover a bedroom window, a kitchen window, and a kitchen door. Shadows would also reach a garage at 1609 Virginia Street.

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

Air: As discussed above, the addition would not increase the footprint of the dwelling, and would not further reduce setbacks. The addition is found to be consistent with the existing development and building-to-building separation pattern – or air – in this R-2 neighborhood because the alteration would not further reduce the front and rear setbacks, and would not exceed height or story limits. Therefore, there would be minimal, if any, air impacts.

Views: The addition would not result in obstruction of significant views in the neighborhood as defined in BMC Section 23.502 (Glossary). The neighborhood is generally flat and developed with one- and two-story residences that filter or obscure most views that may be available of the Berkeley hills or the Golden Gate Bridge from off-site view angles.

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

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

VI. Recommendation

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

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

Attachments:

1. Findings and Conditions
2. Project Plans, dated August 26, 2021
3. Notice of Public Hearing
4. Correspondence Received, separated into pre-ZAB meeting and post-ZAB meeting
5. Rent Stabilization Board Memo, dated June 6, 2022
6. December 9, 2021 ZAB Staff Report, and Findings and Conditions
7. Appeal Letter, dated January 10, 2022
8. April 26, 2021 Council Report, and Resolution

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



Administrative Record

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

City Clerk Department

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

or from:

The City of Berkeley, City Council's Web site

<https://berkeleyca.gov/your-government/city-council/city-council-agendas>

**NOTICE OF PUBLIC HEARING – BERKELEY CITY COUNCIL
BERKELEY UNIFIED SCHOOL DISTRICT BOARD ROOM,
1231 ADDISON STREET
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 **THURSDAY, NOVEMBER 3, 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 <https://berkeleyca.gov> as of **October 20, 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, or emailed to council@cityofberkeley.info 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 by: October 20, 2022

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

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

