



Office of the City Manager

PUBLIC HEARING  
February 28, 2023

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: 1262 Francisco Street, Administrative Use Permit #ZP2021-0006

### RECOMMENDATION

Conduct a public hearing and, upon conclusion, adopt a Resolution affirming the decision of the Zoning Adjustments Board to approve Administrative Use Permit ZP#2021-0006, to modify Administrative Use Permit ZP#2020-0122, to add 40 square feet on the first floor and a balcony on the second floor of an existing single-family dwelling unit.

### FISCAL IMPACTS OF RECOMMENDATION

None.

### CURRENT SITUATION AND ITS EFFECTS

On October 27, 2020, Sunny Grewal (Architect) submitted an application for an Administrative Use Permit (AUP, #ZP2020-0122) for a major residential addition to an existing single-family dwelling unit.

On November 18, 2020, after two rounds of comments from staff, the application was deemed complete.

On January 5, 2021, a Notice of Administrative Decision approving the application was issued by the Zoning Officer, which established a 20-day appeal period. No appeals were submitted and the AUP went into effect on January 25, 2021.

On February 5, 2021, Sunny Grewal submitted an application for an AUP Modification (#ZP2021-0006) to add 40 square feet on the first floor and a balcony on the second floor of the existing single-family dwelling unit.

On June 28, 2022, after several rounds of comments from staff, the application was deemed complete.

On August 3, 2022, a Notice of Administrative Decision approving the AUP application was issued by the Zoning Officer, which established a 20-day appeal period.

On August 4 and 23, 2022, Aimee Baldwin and John Vinopal, neighbors at 1256 Francisco Street, filed appeals of the Zoning Officer's decision to the Zoning Adjustments Board (ZAB).

On September 29, 2022, staff posted the public hearing notice near the site and mailed notices to property owners and occupants within 300 feet of the project site and to all registered neighborhood groups that cover this area.

On October 13, 2022, the ZAB conducted a public hearing for the appeal of the Zoning Officer's decision. After considering the staff report and administrative record, and hearing comments from the applicant, property owner (1262 Francisco Street), and appellants, the ZAB added Condition of Approval #11 to include a permanently affixed privacy screen located along the western portion of the balcony between the subject properties, 1262 Francisco Street and 1256 Francisco Street. The ZAB then upheld the Zoning Officer's decision to approve the AUP by a unanimous vote (Yes: Duffy, Gaffney, Kim, Matthew, O'Keefe, Thompson, Tregub, and Sanderson; No: None; Abstain: None; Absent: None).

On October 26, 2022, staff issued the notice of the ZAB decision, which established a 14-day appeal period.

On November 11, 2022, John Vinopal, the neighbor at 1256 Francisco Street, filed an appeal of the ZAB decision with the City Clerk.

On February 14, 2023, staff posted the public hearing notices near the site and mailed notices to property owners and occupants within 300 feet of the project site and to all registered neighborhood groups that cover this area. This public hearing is required to resolve the appeal.

### BACKGROUND

The project modifies Administrative Use Permit ZP#2020-0122 by adding 40 square feet on the first floor and a balcony on the second floor of an existing single-family dwelling unit at 1262 Francisco Street. The original project proposed a 717 square foot addition to an existing 1,518 square foot dwelling. The addition resulted in one new bedroom and expansion of the common spaces on the first floor, and a new primary bedroom suite on the second floor. The original project was consistent with all applicable development standards. After the Notice of Decision was issued on January 5, 2021, no appeals were filed.

Subsequent to the approval of AUP ZP#2020-0122, the applicant submitted an application to modify the AUP. The revised project proposes a minor addition along the southeastern portion of the first floor and a 108 square foot balcony along the southwest portion of the second floor, accessed from the primary bedroom. Paralleling the adjacent residence to the west (1256 Francisco Street), the balcony design included a six-foot privacy screen. The proposed balcony would not result in additional habitable

floor area and is located atop the roof of the expanded first floor. Both modifications are consistent with underlying development standards (an AUP is required for a residential addition over 14 feet in height).

Two appeals were filed by the immediate neighbors to the west. Appeal issues included concerns about potential impacts to view, noise, and privacy. Several other issues were raised in the appeals outside of the purview of the ZAB, including the character and intent of the applicant. In the October 13, 2022 staff report for the appeal, staff addressed the appeal issues raised, noting that the proposed modifications would not result in the obstruction of significant views in the neighborhood as defined in BMC Section 23.502 and that regulating activity on the residential balcony on the basis of noise is not within the purview of the Zoning Ordinance. Staff recommended that ZAB dismiss the appeal and approve the project with the added condition that the project permanently maintain a screen along the balcony between the two properties to mitigate potential privacy impacts (COA#11).

At the October 13, 2022 hearing, ZAB members had substantive discussion regarding one of the three appeal points – privacy. To mitigate the potential privacy impacts of the project, ZAB discussed the location of the balcony and the quality of the proposed privacy screen. After agreeing to maintain the proposed location of the balcony, ZAB amended a condition to include language that ensures how the permanent screen will be attached to the balcony for the life of the project and upheld the Zoning Officer's decision to approve the AUP.

For additional project background, please see Attachment 3, the October staff report to ZAB for this project.

#### RATIONALE FOR RECOMMENDATION

The neighbors filed an appeal of the ZAB's decision during the 14-day appeal period. The issues raised in the appellant's letter, and staff's responses, are as follows. For the sake of brevity, the appeal issues are not re-stated in their entirety; refer to the appeal letter (Attachment 2) for full text. The issues raised do not discuss specific components of the project, but take issue with City processes.

**Issue 1:**            **Ex-Parte Disclosure** [p. 1 of attached appeal letter]  
The appellant asserts that the ZAB Acting-Chair Shoshanna O'Keefe failed to disclose ex-parte communication with the applicant. The appellant asserts that a personal relationship exists between the applicant and Chairperson O'Keefe and that the subject parties communicated through a proxy at one point during the review period of the AUP.

Response 1: As stated in the [Berkeley Commissioners' Manual](#)<sup>1</sup>, public hearings are subject to minimum standards of receiving testimony. This may include, but are not limited to, disclosure of ex-parte communications by the commission, receipt of any relevant documentation, and recusal for a conflict of interest. Per the commissioners' manual, ex-parte contacts include "any contact between a commissioner and a person that is a party to the public hearing regarding the subject matter of the hearing." The parties involved in the subject appeal include 1) John Vinopal (appellant) and 2) Jonathan Miller and Sunny Grewal (applicants). A friend who is not authorized to act on the application is not considered a party in the subject application. Therefore, any communication with a friend of one of the mentioned parties would not constitute disclosure of ex-parte communications or require recusal from the matter.

**Issue 2: Character of Applicant** [p. 2 of attached appeal letter]  
The appellant describes the character of the applicant throughout the project review process. The central issues discussed herein are outside of the purview of zoning review.

Response 2: As described above, after the application to modify the AUP was received (ZP#2021-0006), several rounds of corrections followed, requiring the applicant to clarify aspects of the project. Once staff received all the necessary information to make a recommendation, the project was deemed complete. The described review process is standard for all zoning permit applications. Inaccuracies that were referenced are commonly corrected through an iterative review process. The ZAB acted on the basis of the final design and the required findings as set forth in the zoning ordinance.

#### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

#### ALTERNATIVE ACTIONS CONSIDERED

Pursuant to BMC 23.410.040(G)(2), 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.

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<sup>1</sup> Berkeley Commissioners Manual <https://berkeleyca.gov/sites/default/files/2022-03/Commissioners-Manual.pdf>

CONTACT PERSONS

Jordan Klein, Director, Planning & Development Department, (510) 981-7534

Steven Buckley, Land Use Planning Manager, (510) 981-7411

Katrina Lapira, Project Planner, (510) 981-7488

Attachments:

1: Resolution

    Exhibit A: Findings and Conditions

    Exhibit B: Project Plans dated July 21, 2022

2: Appeal Letter dated November 11, 2022

3: ZAB Staff Report, dated October 13, 2022

4: Index to Administrative Record

5: Administrative Record

6: Public Hearing Notice

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

AFFIRMING THE ZONING ADJUSTMENTS BOARD'S APPROVAL OF ADMINISTRATIVE USE PERMIT # ZP2021-0006 TO MODIFY ADMINISTRATIVE USE PERMIT ZP#2020-0122 TO ADD 40 SQUARE FEET ON THE FIRST FLOOR AND A BALCONY ON THE SECOND FLOOR OF AN EXISTING SINGLE-FAMILY DWELLING UNIT IN THE RESTRICTED TWO-FAMILY RESIDENTIAL DISTRICT (R-2) ZONING DISTRICT AND DISMISSING THE APPEAL

On February 5, 2021, Sunny Grewal submitted an application for an AUP Modification (#ZP2021-0006) to add 40 square feet on the first floor and a balcony on the second floor of the existing single-family dwelling unit.

On June 28, 2022, after several rounds of comments from staff, the application was deemed complete.

On August 3, 2022, a Notice of Administrative Decision approving the AUP application was issued by the Zoning Officer, which established a 20-day appeal period.

On August 4 and 23, 2022, Aimee Baldwin and John Vinopal, neighbors at 1256 Francisco Street, filed appeals of the Zoning Officer's decision to the Zoning Adjustments Board (ZAB).

On September 29, 2022, staff posted the public hearing notice near the site and mailed notices to property owners and occupants within 300 feet of the project site and to all registered neighborhood groups that cover this area.

On October 13, 2022, the ZAB conducted a public hearing for the appeal of the Zoning Officer's decision. After considering the staff report and administrative record, and hearing comments from the applicant, property owner (1262 Francisco Street), and appellants, the ZAB added Condition of Approval #11 to include a permanently affixed privacy screen located along the western portion of the balcony between the subject properties, 1262 Francisco Street and 1256 Francisco Street. The ZAB then upheld the Zoning Officer's decision to approve the AUP by a unanimous vote (Yes: Duffy, Gaffney, Kim, Matthew, O'Keefe, Thompson, Tregub, and Sanderson).

On October 26, 2022, staff issued the notice of the ZAB decision, which established a 14-day appeal period.

On November 11, 2022, John Vinopal, the neighbor at 1256 Francisco Street, filed an appeal of the ZAB decision with the City Clerk.

On or before February 14, 2023, staff posted the public hearing notices near the site and mailed notices to property owners and occupants within 300 feet of the project site and to all registered neighborhood groups that cover this area.

WHEREAS, on February 28, 2023, 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 comments made at the public hearing, warrant approving the project.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council hereby adopts the findings made by the ZAB in Exhibit A, affirms the decision of the ZAB to approve Administrative Use Permit #ZP2021-0006, adopts the conditions in Exhibit A and the project plans in Exhibit B, and dismisses the appeal.

Exhibits

A: Findings and Conditions

B: Project Plans dated July 21, 2022

# ATTACHMENT 1, EXHIBIT A

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## FINDINGS AND CONDITIONS AUGUST 3, 2022

### 1262 Francisco Street

#### Administrative Use Permit #ZP2021-0006

#### Modification of Administrative Use Permit #ZP2020-0122 to add 40 square feet on the first floor and a balcony on the second floor.

#### PERMITS REQUIRED

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- Administrative Use Permit pursuant to Berkeley Municipal Code (BMC) Section 23.202.080(D) for an addition greater than 14 feet in height.

#### CEQA FINDINGS

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1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to CEQA Guidelines Section 153301 ("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.

#### FINDINGS FOR APPROVAL

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3. As required by BMC Section 23.406.030(F), the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:
  - A. The subject property complies with the BMC Section 23D.202.080(D) (R-2 Restricted Two-Family Residential District Development Standards) for maximum residential density (one dwelling unit on the lot where two dwelling units are allowed for a lot of this size), maximum lot coverage (29.5 percent lot coverage where the maximum allowed is 40 percent), and usable open space (over 1,000 square feet where a minimum of 400 square feet is required per dwelling unit). There is a permitted Accessory Dwelling Unit located at the rear of subject lot. Additionally, a minor accessory structure- a tool shed



(non-habitable space) that is less than 120 square feet, is located along western property line, that is proposed to remain.

- B. An average height of 21 feet-3 inches was approved under #ZP2020-0122. The modification to allow a second story balcony will not increase the average height of the dwelling beyond that approval.
  - C. The site complies with the following required setbacks: left side setback is 9 feet-6 inches and the right-side setback is 4 feet-7 inches where 4 feet is required, and the rear setback is 57 feet-11 inches where 20 feet is required. The existing front setback is legally nonconforming, providing 16 feet-6 inches where 20 feet is required. The modifications to extend the walls of the addition approved under #ZP2020-0122 are outside of all required setbacks.
  - D. The modification on the first floor does not propose new openings different those that were approved under the previous administrative use permit, although one window will be located closer to the east lot line, and are not expected to be detrimental to the privacy of abutting neighbors.
  - E. The proposed balcony at the second-story level is accessed through the primary bedroom, and setback 8 feet-8 inches from the western property line and over 20 feet from the eastern property line. The proposed balcony parallels an existing second floor bedroom at 1256 Francisco Street. To mitigate potential impacts to privacy, a privacy screen is proposed along the west side of the balcony.
4. Pursuant to BMC Section 23.202.030(A)(2)(a), the Zoning Officer finds that the proposed modifications would not unreasonably obstruct sunlight, air, or views for the following reasons:
- A. Sunlight: The proposed modifications to the previously approved project under #ZP2020-0122 will not further increase shadow impacts on the surrounding neighborhood dwellings.
  - B. Air: The 40-square-foot addition to the east side of office (bedroom four) will slightly reduce the distance from the east neighbor (1266 Francisco), but exceeds the required left side setback. Therefore, there will be no impacts to air circulation.
  - C. Views: The modifications would not result in obstruction of significant views in the neighborhood as defined in BMC Section 23.502 (Glossary). In addition, this area 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.
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**STANDARD CONDITIONS**

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

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

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

**2. Compliance Required (BMC Section 23.102.050)**

All land uses and structures in Berkeley must comply with the Zoning Ordinance and all applicable City ordinances and regulations. Compliance with the Zoning Ordinance does not relieve an applicant from requirements to comply with other federal, state, and City regulations that also apply to the property.

**3. Approval Limited to Proposed Project and Replacement of Existing Uses (BMC Sections 23.404.060.B.1 and 2)**

- A. This Permit authorizes only the proposed project described in the application. In no way does an approval authorize other uses, structures or activities not included in the project description.
- B. When the City approves a new use that replaces an existing use, any prior approval of the existing use becomes null and void when permits for the new use are exercised (e.g., building permit or business license issued). To reestablish the previously existing use, an applicant must obtain all permits required by the Zoning Ordinance for the use.

**4. Conformance to Approved Plans (BMC Section 23.404.060.B.4)**

All work performed under an approved permit shall be in compliance with the approved plans and any conditions of approval

**5. Exercise and Expiration of Permits (BMC Section 23.404.060.C)**

- A. A permit authorizing a land use is exercised when both a valid City business license is issued (if required) and the land use is established on the property.
- B. A permit authorizing construction is exercised when both a valid City building permit (if required) is issued and construction has lawfully begun.
- C. The Zoning Officer may declare a permit lapsed if it is not exercised within one year of its issuance, except if the applicant has applied for a building permit or has made a substantial good faith effort to obtain a building permit and begin construction. The Zoning Officer may declare a permit lapsed only after 14 days written notice to the applicant. A determination that a permit has lapsed may be appealed to the ZAB in accordance with Chapter 23.410 (Appeals and Certification).
- D. A permit declared lapsed shall be void and of no further force and effect. To establish the use or structure authorized by the lapsed permit, an applicant must apply for and receive City approval of a new permit.

**6. Permit Remains Effective for Vacant Property (BMC Section 23.404.060.D)**

Once a Permit for a use is exercised and the use is established, the permit authorizing the use remains effective even if the property becomes vacant. The same use as allowed by the original permit may be re-established without obtaining a new permit, except as set forth in Standard Condition #5 above.

**7. Permit Modifications (BMC Section 23.404.070)**

No change in the use or structure for which this Permit is issued is permitted unless the Permit is issued is permitted unless approved by the review authority which originally approved the permit. 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.

**8. Permit Revocation (BMC Section 23.404.080)**

The City may revoke or modify a discretionary permit for completed projects due to: 1) violations of permit requirements; 2) Changes to the approved project; and/or 3) Vacancy for one year or more. However, no lawful residential use can lapse, regardless of the length of time of the vacancy. Proceedings to revoke or modify a permit may be initiated by the Zoning Officer, Zoning Adjustments Board (ZAB), or City Council referral.

**9. Indemnification Agreement**

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

**ADDITIONAL CONDITIONS IMPOSED BY THE ZONING OFFICER**

Pursuant to BMC Section 23.404.050(H), the Zoning Officer attaches the following additional conditions to this Permit:

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

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

**Project Liaison**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Phone #

**11. Privacy Screen.** As shown on Sheet A3.1 of the approved plan set, the privacy screen located towards the western portion of the balcony shall be maintained for the life of the project.

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

**12. Transportation Construction Plan.** The applicant and all persons associated with the project are hereby notified that a Transportation Construction Plan (TCP) is required for all phases of construction, particularly for the following activities:

- Alterations, closures, or blockages to sidewalks, pedestrian paths, or vehicle travel lanes (including bicycle lanes);
- Storage of building materials, dumpsters, debris anywhere in the public ROW;
- Provision of exclusive contractor parking on-street; or
- Significant truck activity.

The applicant shall secure the City Traffic Engineer’s approval of a TCP. Please contact the Office of Transportation at 981-7010, or 1947 Center Street, and ask to speak to a traffic engineer. In addition to other requirements of the Traffic Engineer, this plan shall include the locations of material and equipment storage, trailers, worker parking, a schedule of site operations that may block traffic, and provisions for traffic control. The TCP shall be consistent with any other requirements of the construction phase.

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

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

14. If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division and carry out any necessary corrective action to their satisfaction.
15. Subject to approval of the Public Works Department, the applicant shall repair any damage to public streets and/or sidewalks by construction vehicles traveling to or from the project site.
16. All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter in thickness and secured to the ground.
17. All active construction areas shall be watered at least twice daily, and all piles of debris, soil, sand, or other loose materials shall be watered or covered.
18. Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.
19. Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.
20. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way.
21. The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.
22. Any construction during the wet season shall require submittal of a soils report with appropriate measures to minimize erosion and landslides, and the developer shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.
23. Halt Work/Unanticipated Discovery of Tribal Cultural Resources. In the event that cultural resources of Native American origin are identified during construction, all work within 50 feet of the discovery shall be redirected. The project applicant and project construction contractor shall notify the City Planning Department within 24 hours. The City will again contact any tribes who have requested consultation under AB 52, as well as contact a qualified archaeologist, to evaluate the resources and situation and provide recommendations. If it is determined that the resource is a tribal cultural resource and thus significant under CEQA, a mitigation plan shall be prepared and implemented in accordance with State guidelines and in consultation with Native American groups. If the resource cannot be avoided, additional measures to avoid or reduce impacts to the resource and to address tribal concerns may be required.
24. 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.

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

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

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

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

27. All construction at the subject property shall substantially conform to the approved Use Permit drawings or to modifications approved by the Zoning Officer.
28. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated July 21, 2022.

**At All Times (Operation):**

29. 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.
30. Drainage Patterns. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.



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Prepared by: Katrina Lapira  
For Samantha Updegrave, Zoning Officer

SITE PHOTOS



Street View



Rear View

# MILLER RESIDENCE

1262 Francisco St. Berkeley, CA 94702

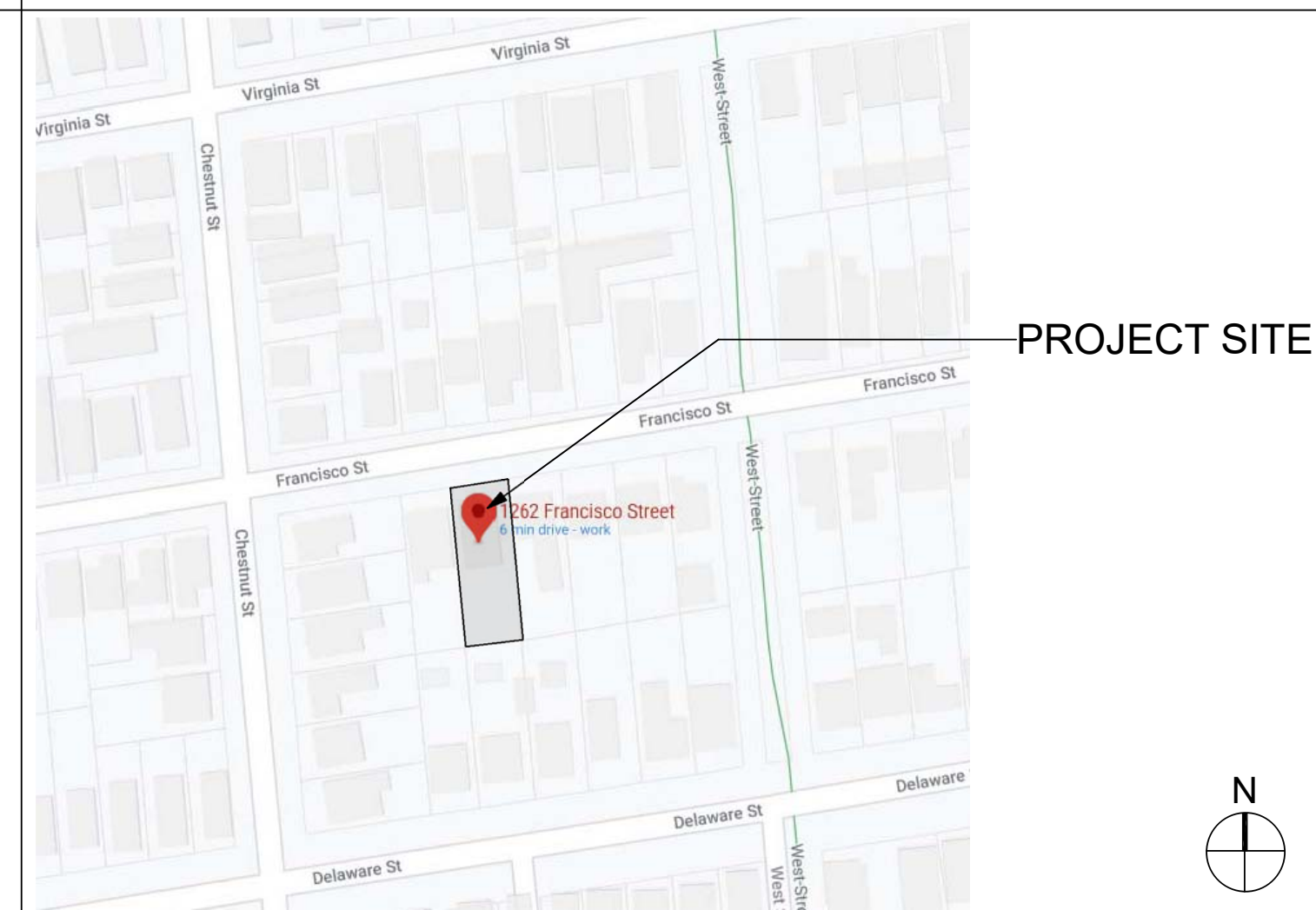
SCOPE OF WORK

The proposed project includes a modification to an approved AUP (ZP2020-0122) for a second story addition

Components of the project include:

- First floor:**
- Expand office (bedroom 4) by a 40 s.f. addition
- Second floor:**
- Create new balcony at master suite
  - Add new patio doors to access balcony
  - Add new transom window above balcony

VICINITY MAP



PROJECT DIRECTORY

**Owner:**  
Jonathan Miller  
1262 Francisco St.  
Berkeley, CA 94702  
Tel: 415-999-2797

**Project Address:**  
1262 Francisco St.  
Berkeley, CA 94702  
APN: 058 213500300

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

**Occupancy:** R-3 Duplex  
U - Private garage

**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

Tabulations			
	Required/Allowed	Existing	Proposed
<b>Set Backs:</b>			
Front:	20'-0"	16'-6"	16'-6" to (e) structure 33'-10" to (n) addition
Rear:	20'-0"	61'-11"	57'-11"
Left side:	4'-0"	9'-5"	9'-6"
Right side:	4'-0"	6'-9.5"	4'-7.5"
<b>Habitable Floor Area:</b>			
First floor:		1,078 s.f.	1,393 s.f. (315 s.f. new)
Second floor:		440 s.f.	882 s.f. (442 s.f. new)
Total Area:		1,518 s.f.	2,275 s.f. (757 s.f. new)
<b>Bedroom Count:</b>		3	4
<b>Building Height:</b>			
Average Height:	28'-0" 35'-0" w/ AUP	16'-5"	21'-3"
<b>Parking:</b>	1	1	1
<b>Lot Size:</b>	5,000 s.f.	6,000 s.f.	6,000 s.f.
<b>Total Footprint:</b>			
House:	2,400 s.f.	1,334 s.f.	1,649 s.f.
Storage Shed:		202 s.f.	120 s.f.
Total footprint:		1,536 s.f.	1,769 s.f.
<b>Lot Coverage:</b>	40% (2 story building)	25.60%	29.48%
<b>Usable Open Space:</b>	400 s.f.	2,500 s.f.	2,608 s.f.
<b>ADU:</b> Not subject to lot coverage. Therefore, it is not included in the calculations above			

SHEET INDEX

Architectural:

- A0.0 Scope Of Work, Vicinity Map, Project Data, Sheet Index, Abbreviations, Applicable Codes, Project Directory, Photos
- A0.1 Existing & Proposed Site Plan
- A1.1 Existing Floor & Demo Plans
- A1.2 Existing Exterior Elevations
- A1.3 Proposed Floor Plans - Original Approved AUP
- A1.4 Proposed Exterior Elevations - Original Approved AUP
- A2.1 Proposed Floor Plans - AUP Modification
- A3.1 Proposed Exterior Elevations, Renderings - AUP Modification
- A4.1 Shadow Study - AUP Modification
- A4.2 Shadow Study - Original Approved AUP
- Boundary Survey

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 (CBES)  
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	flash.	flushing	p.t.	pressure treated
(e)	existing	fluor.	fluorescent	ptd.	pointed
(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	rwd.	rough opening
bd.	board	gnd.	ground	rwd.	redwood
bidg.	building	gr.	grade	r.w.l.	rain water leader
blk.	block	gyp. bd.	gypsum board	s.	south
blkg.	blocking	h.b.	hose bibb	s.c.	solid core
bm.	beam	hdwd.	hardwood	sched.	schedule
bot.	bottom	h.f.	hem fir	sect.	section
b.p.	building paper	horiz.	horizontal	sh.	shelf
b/w.	between	hgt.	height	shr.	shower
cab.	cabinet	i.d.	inside diameter (dia.)	sim.	similar
cem.	cement	insul.	insulation	s.mech.	see mechanical drawings
cer.	ceramic	int.	interior	s.o.	sash opening
cl.	center line	int.	interior	spec.	specification
clg.	ceiling	jt.	joint	sq.	square
clg.	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	sti.	steel
col.	column	lt.	light	stor.	storage
comp.	composition	max.	maximum	struct.	structure
conc.	concrete	m.c.	mechanical	sym.	symmetrical
constr.	construction	mech.	mechanical	sym.	symmetrical
cont.	continuous	memb.	membrane	t.	tread or tempered
det.	detail	manuf.	manufacturer	t.b.	telephone
d.f.	douglas fir	min.	minimum	tel.	telephone
dia.	diameter	mir.	mirror	t. & g.	tone & groove
dim.	dimension	misc.	miscellaneous	thk.	thick
dir.	direction	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	nc.	necessary	typ.	typical
drw.	drawer	neo.	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.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
encl.	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



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Sheet Contents:

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

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Project No: 20-07-414

Drawn By: SSG





Checked By: SSG

Scale: as noted

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Sheet A0.0



-  existing structure
-  1st floor addition
-  2nd floor addition
-  usable open space



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Sheet Contents:  
Existing Site Plan  
Proposed Site Plan

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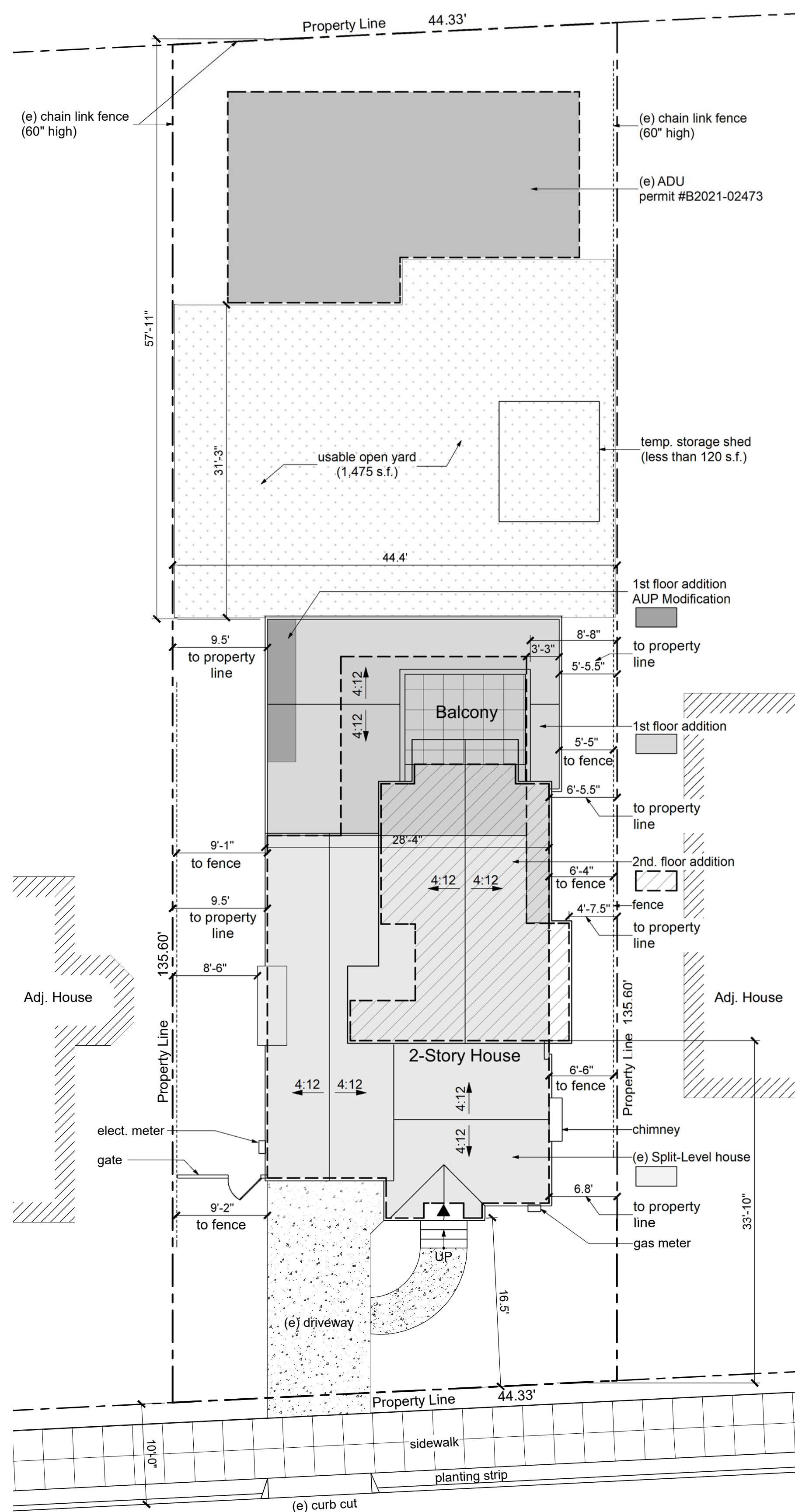
Drawn By:  
SSG

Checked By:  
SSG

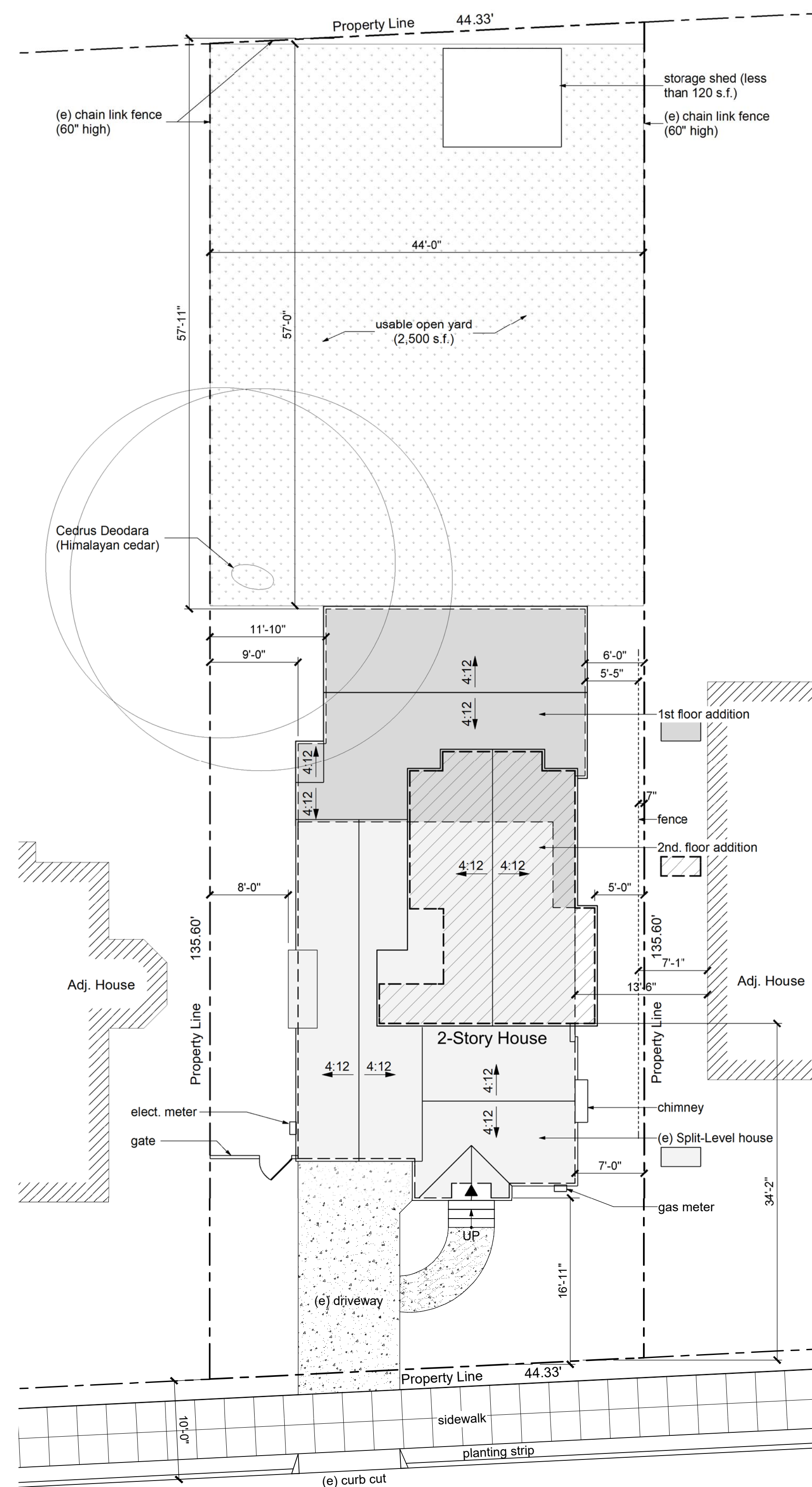
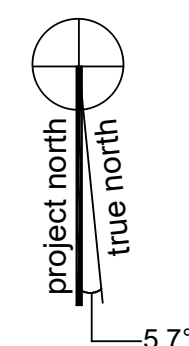
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Revisions:  
AUP Modification Submittal:  
07-21-2022

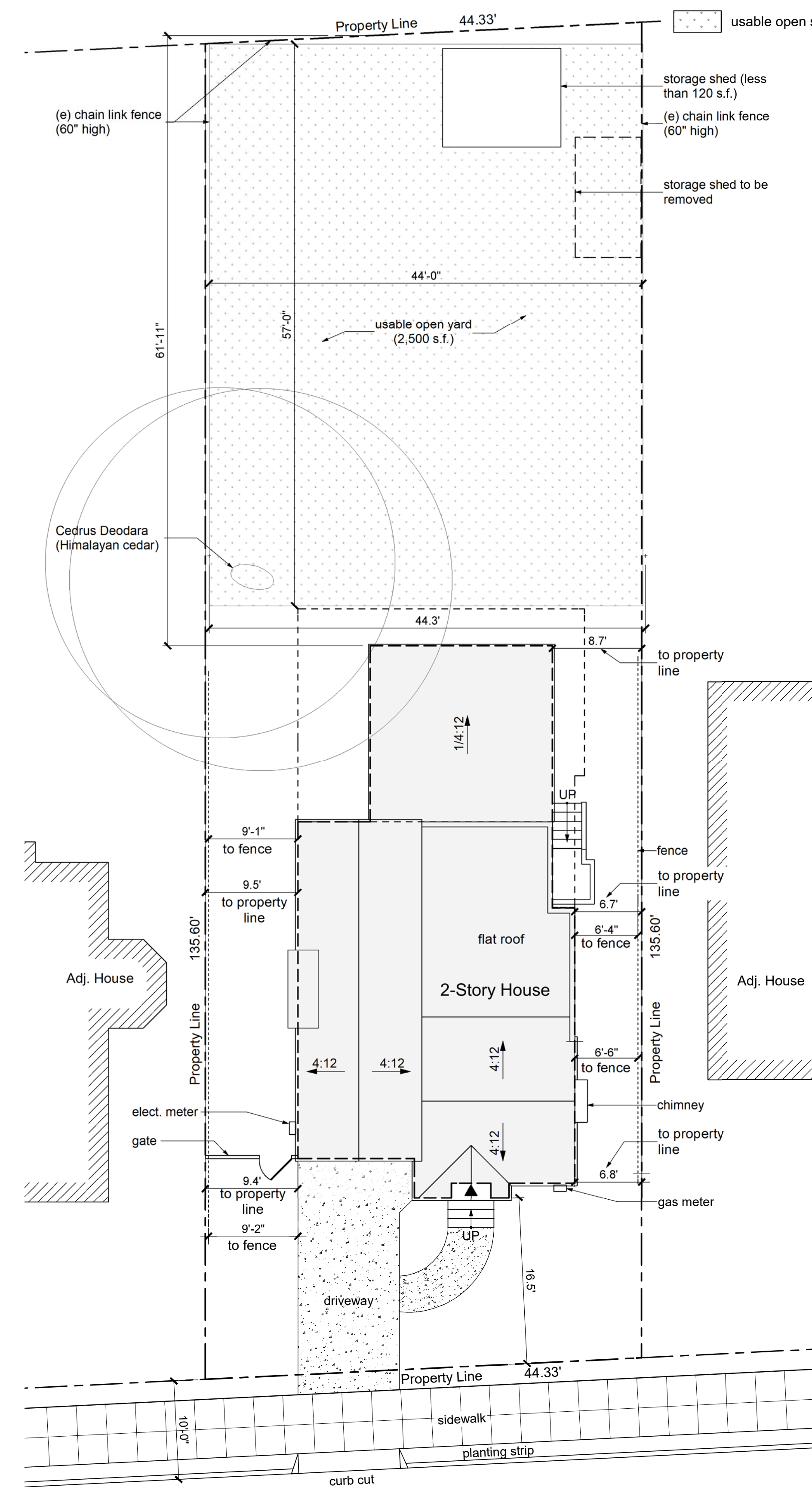
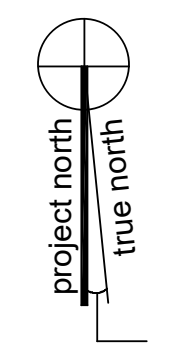
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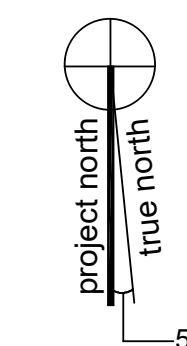
**3** Proposed Site Plan  
AUP Modification

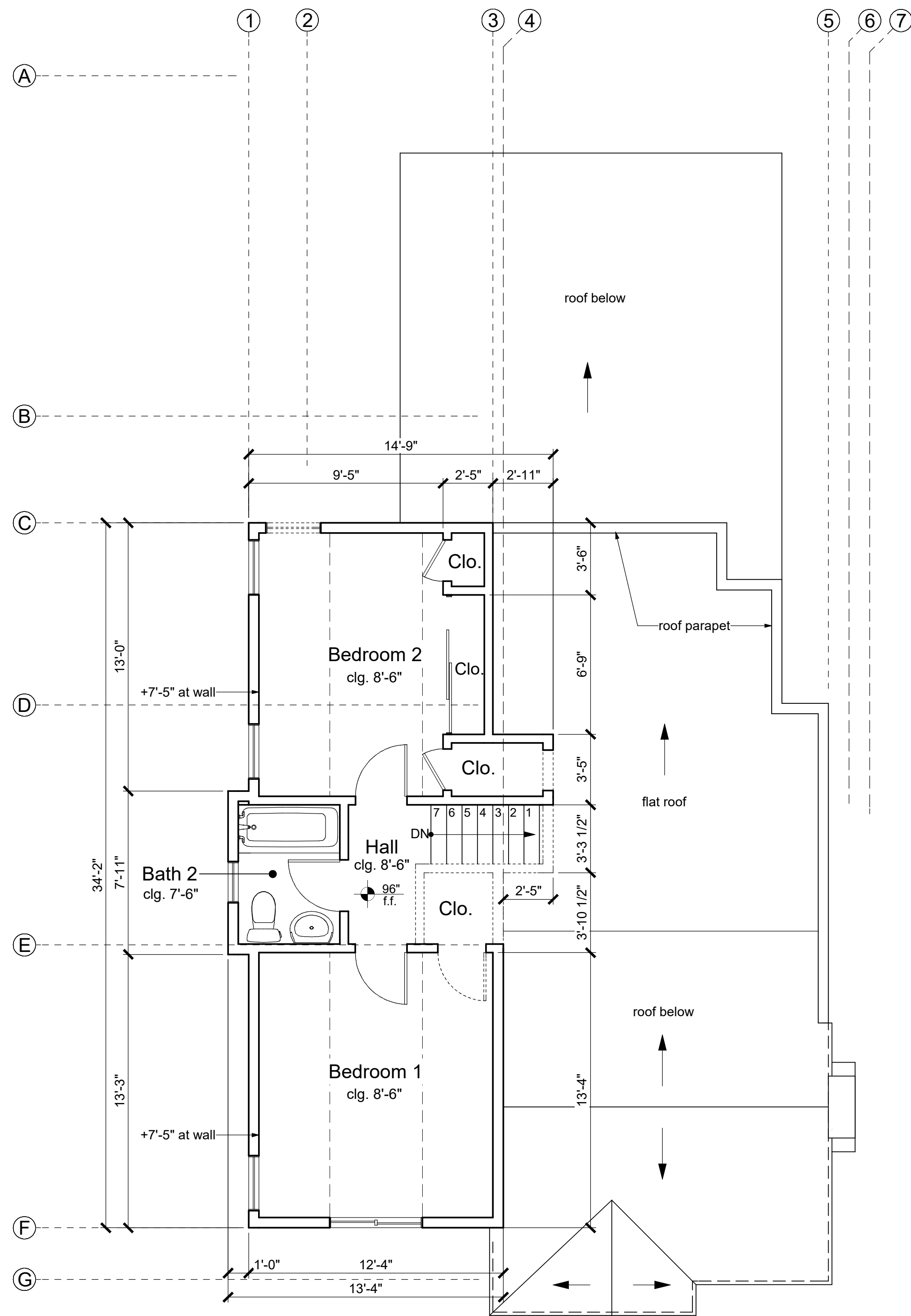


**2** Proposed Site Plan  
Original Approved AUP

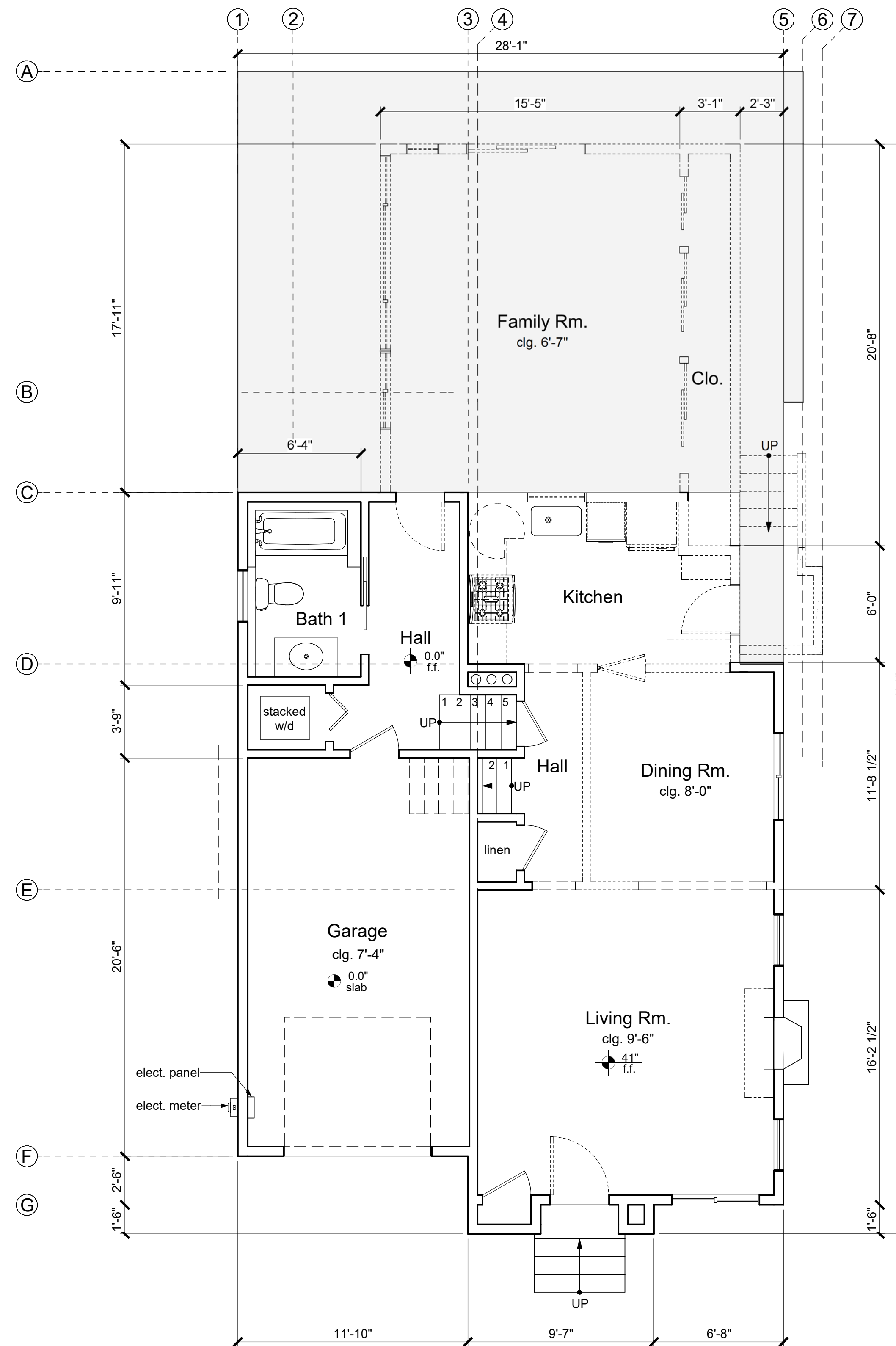


**1** Existing Site Plan





2 Existing Second Floor Plan



1 Existing First Floor Plan



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Sheet Contents:  
Existing Floor Plans

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Checked By: SSG

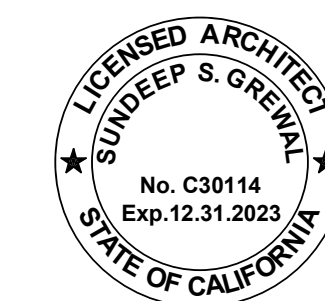
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Revisions:  
AUP Modification Submittal:  
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Sheet **A1.1**



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Sheet Contents:  
Existing Exterior Elevations

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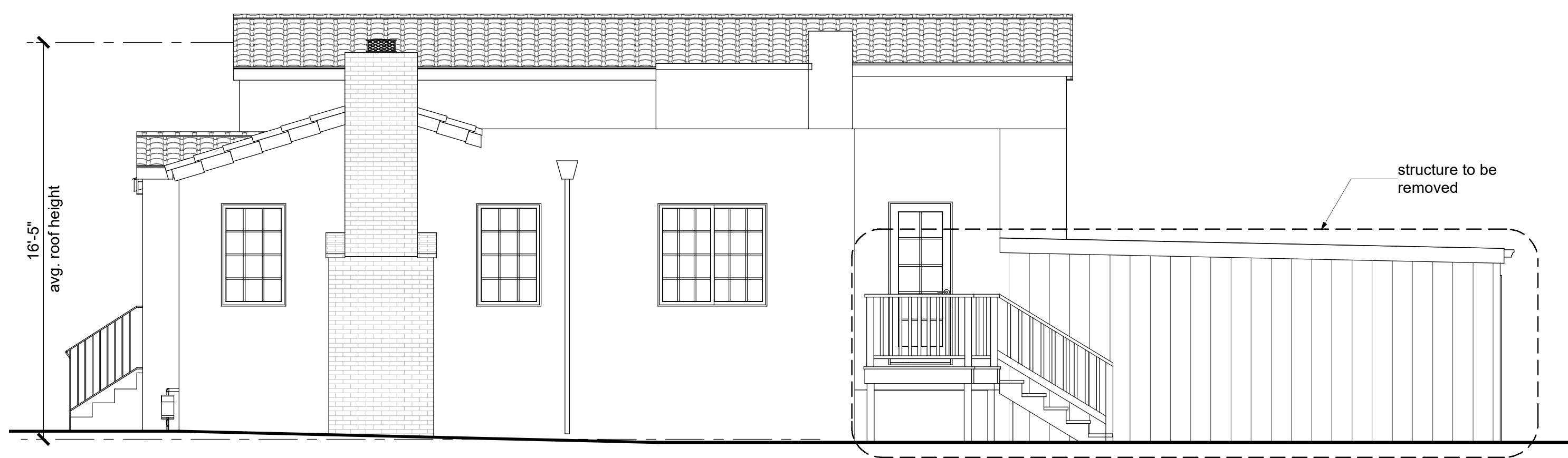
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Checked By:  
SSG

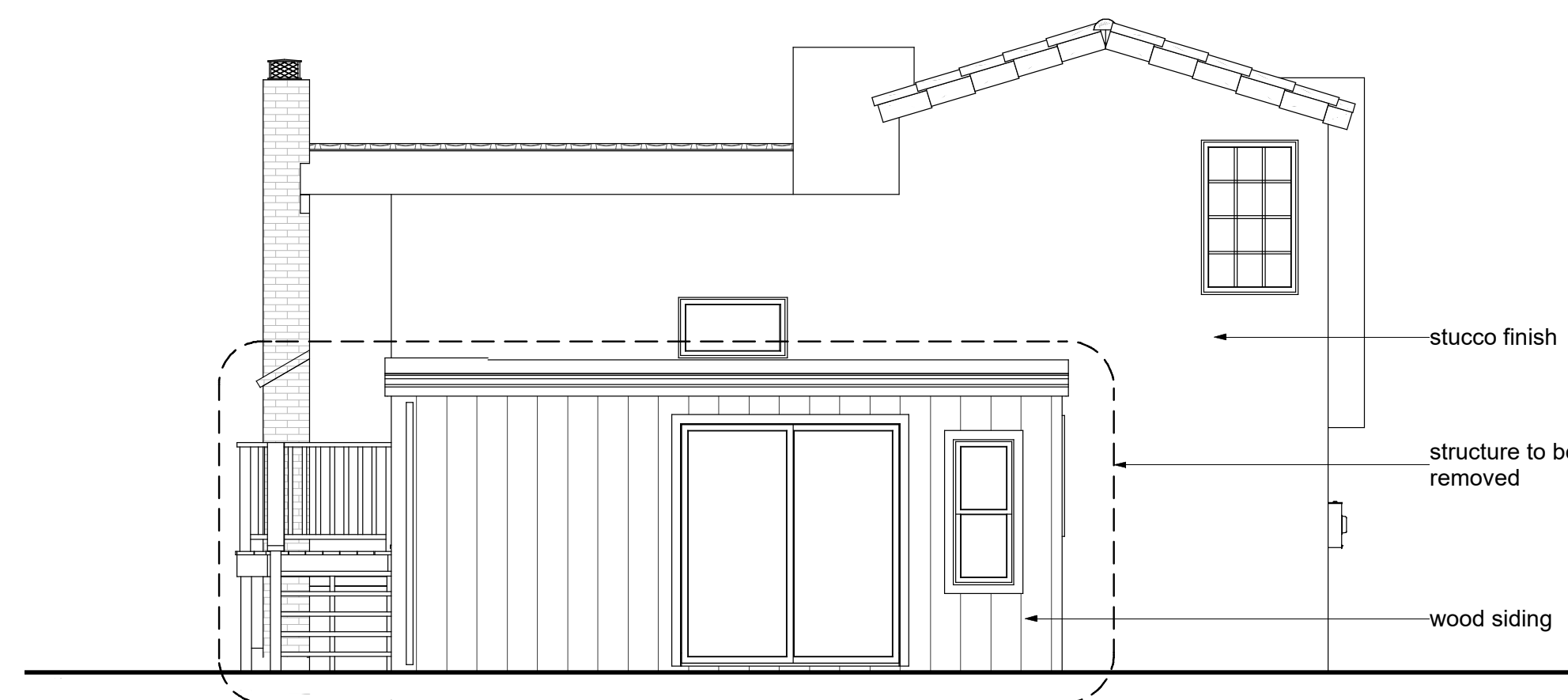
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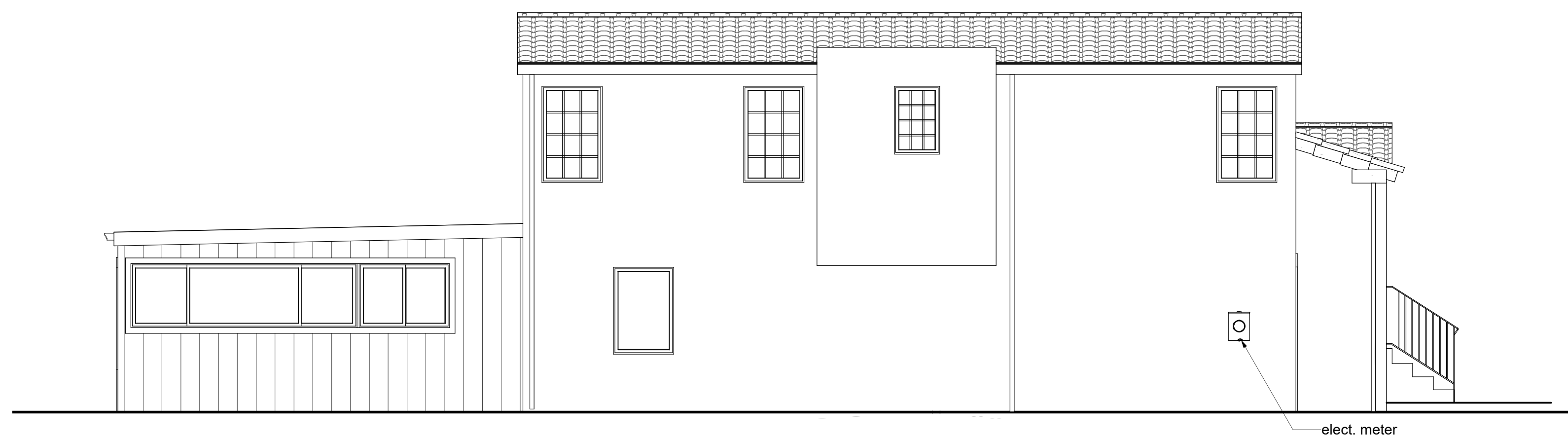
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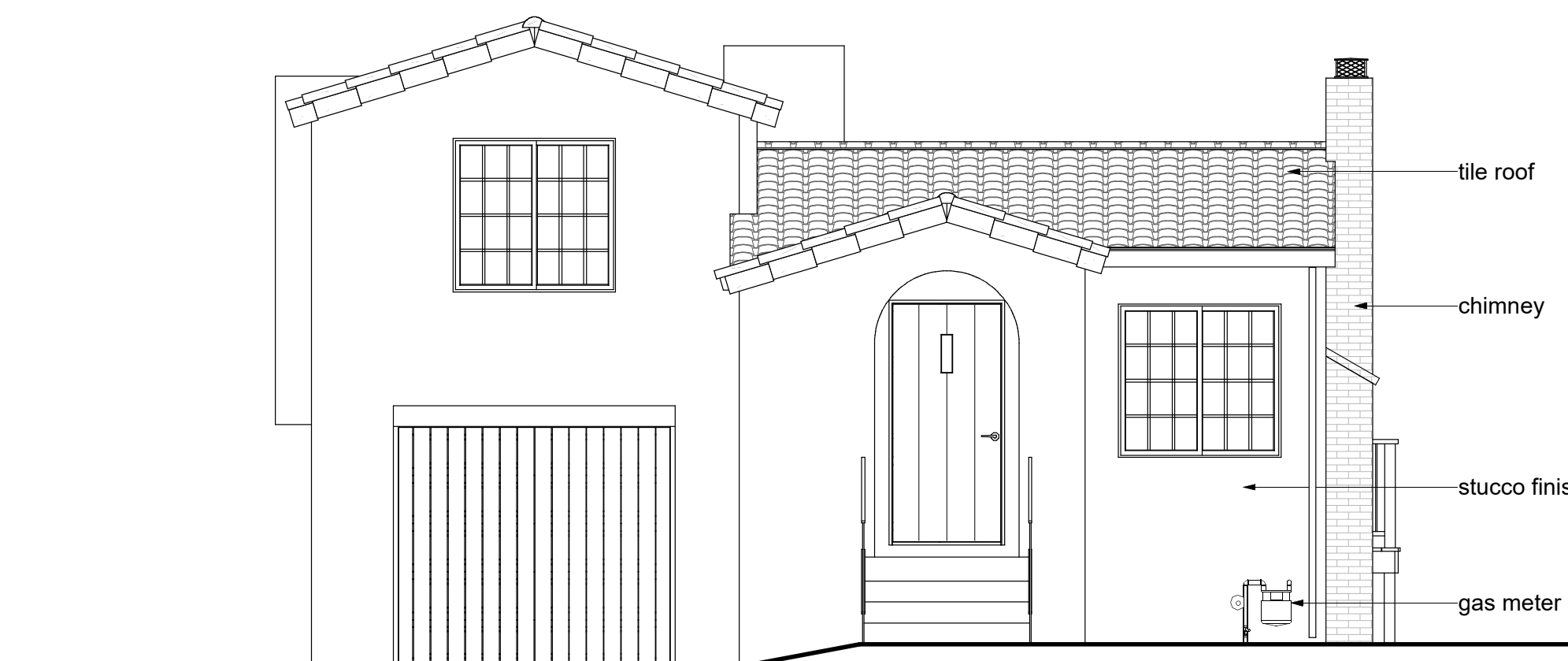
④ Existing West Elevation - Right Side



③ Existing South Elevation - Rear



② Existing East Elevation - Left Side



① Existing North Elevation - Front



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Sheet Contents:  
Approved AUP  
Proposed Floor Plans

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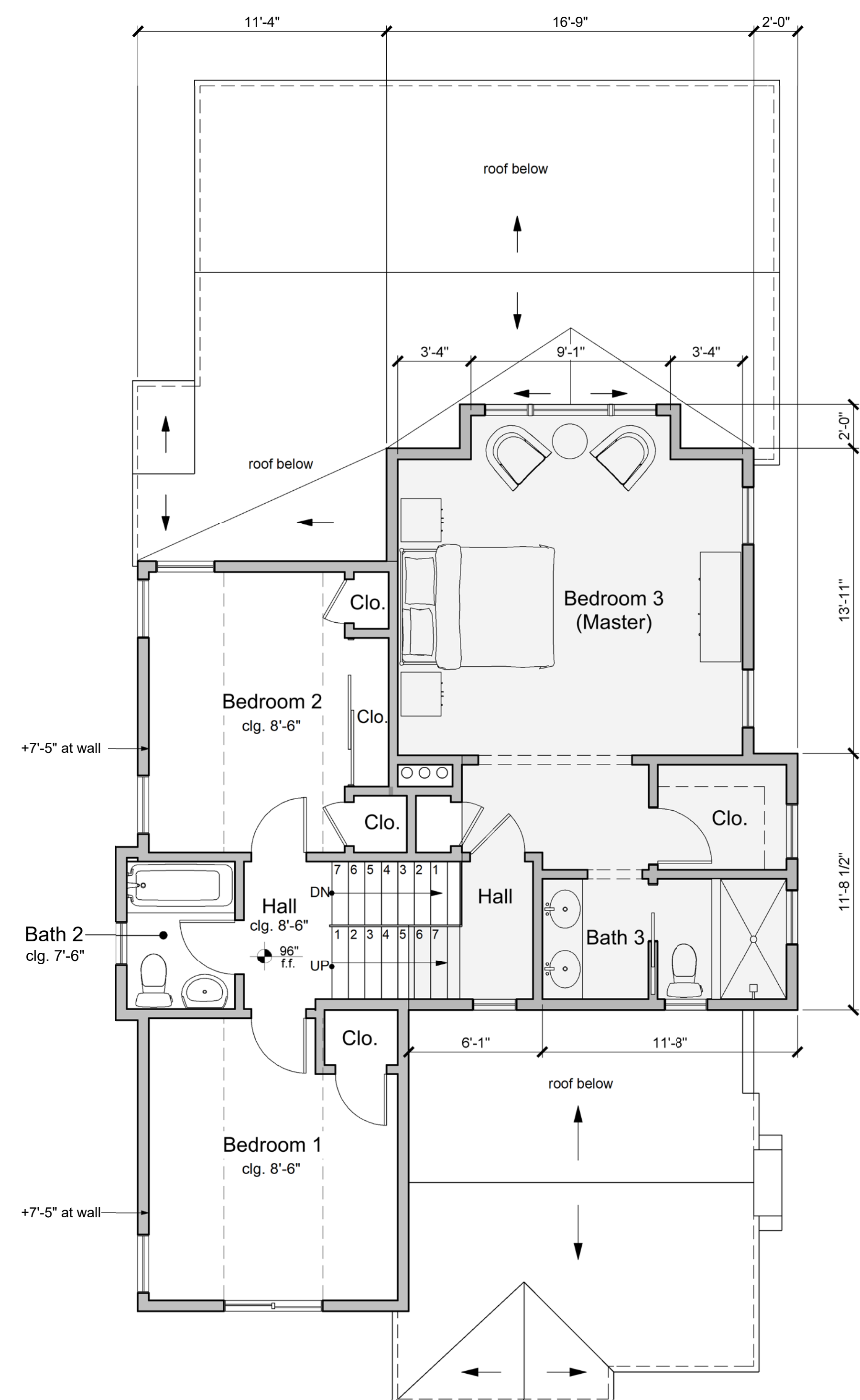
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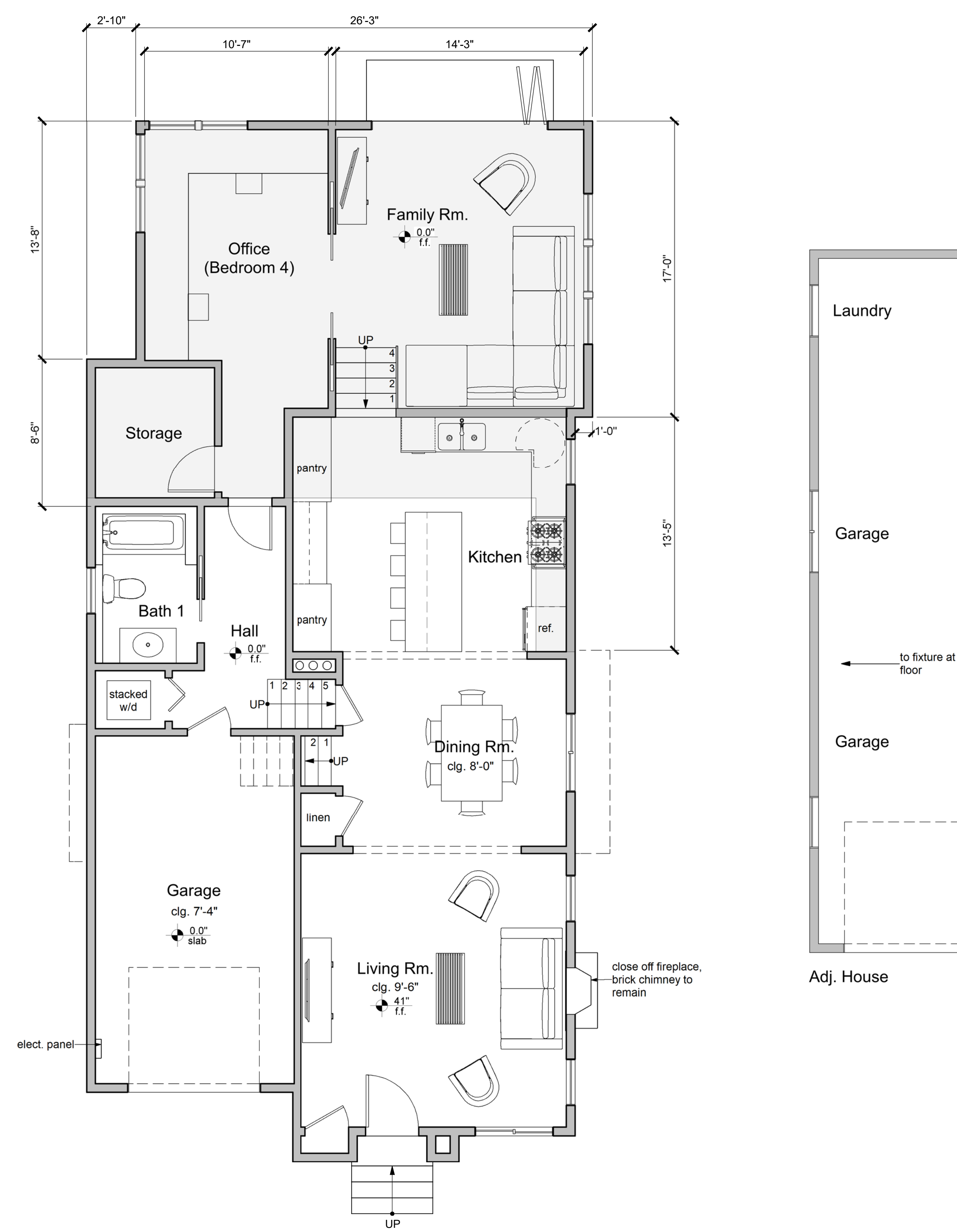
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Revisions:  
AUP Modification Submittal:  
07-21-2022

Sheet  
**A1.3**



② Proposed Second Floor Plan  
Original Approved AUP



① Proposed First Floor Plan  
Original Approved AUP





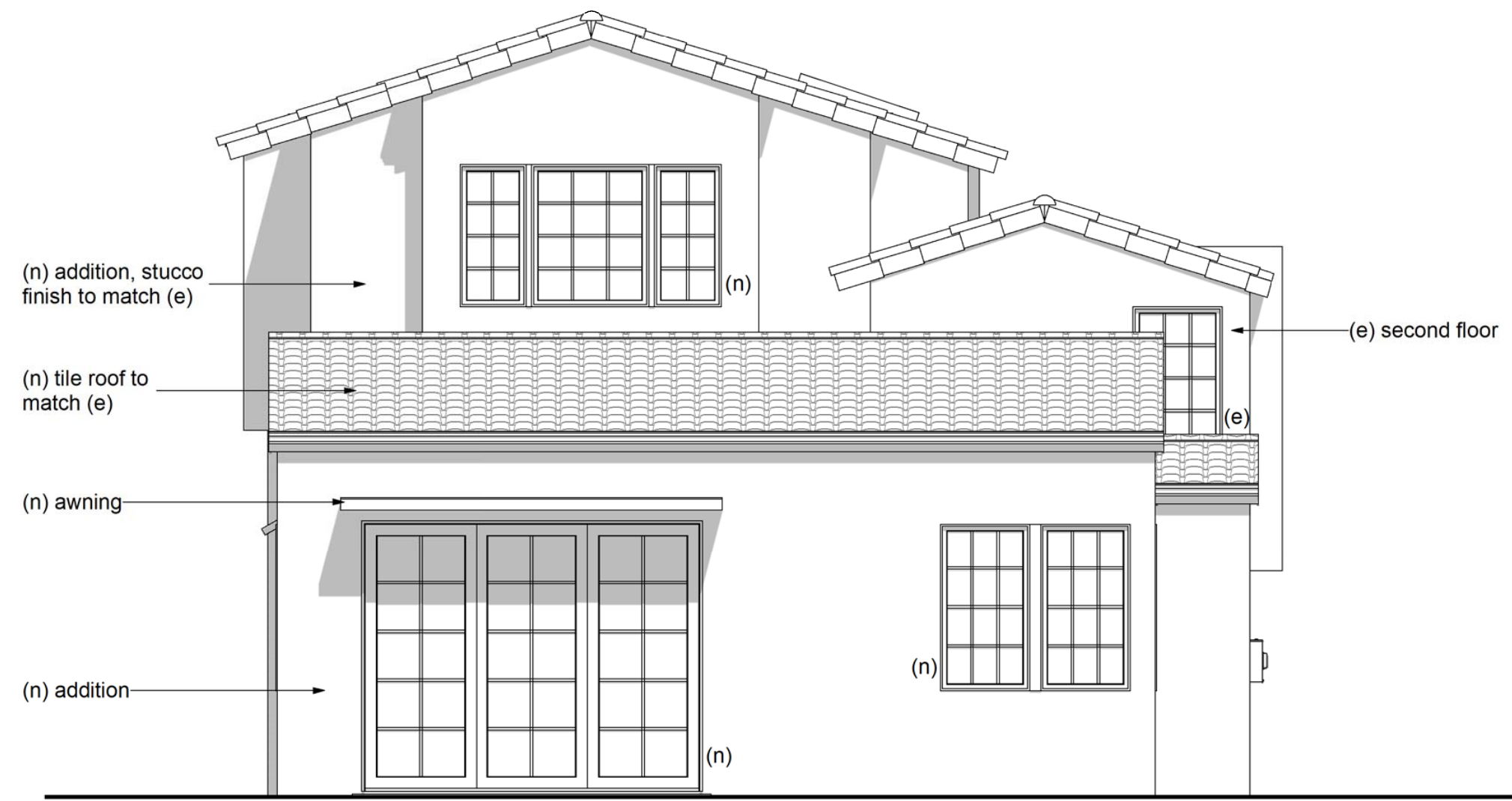
7 Right Rear View Of Proposed Addition



6 Left Rear View Of Proposed Addition



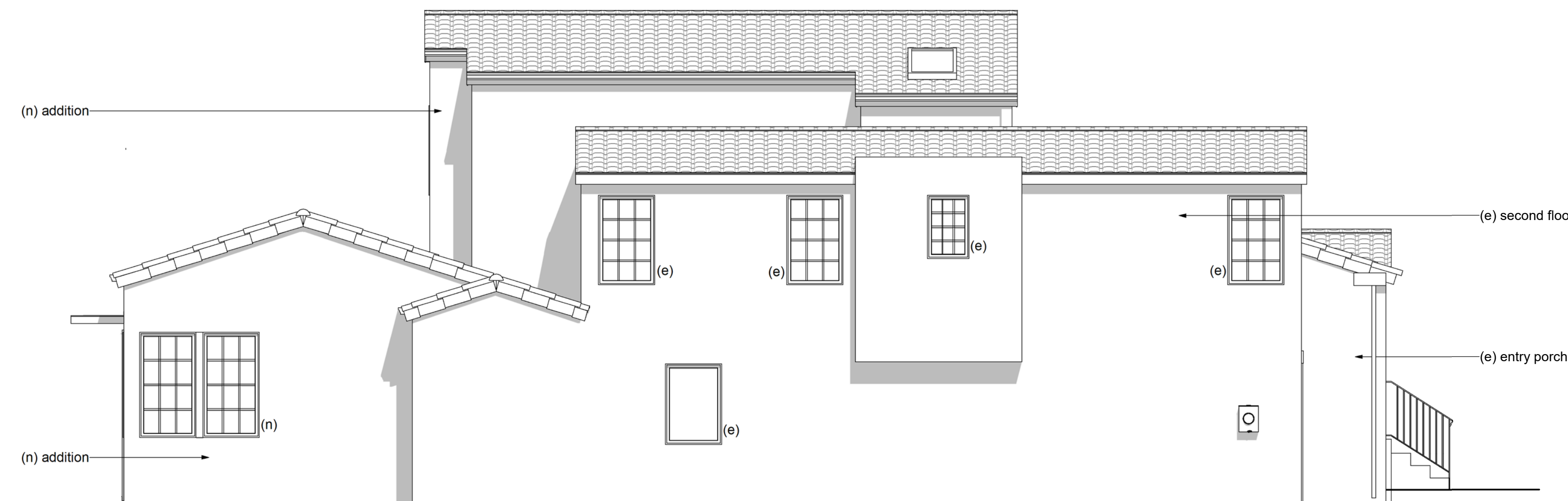
5 Street View Of Proposed Addition



4 Proposed South Elevation - Rear  
Original Approved AUP



3 Proposed West Elevation - Right Side  
Original Approved AUP



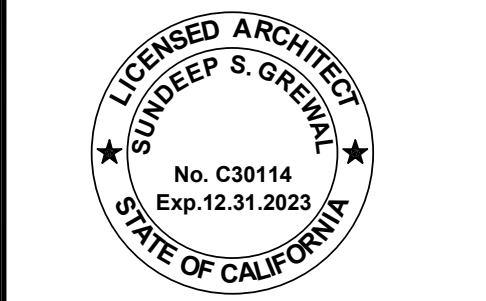
2 Proposed East Elevation - Left Side  
Original Approved AUP



1 Proposed North Elevation - Front  
Original Approved AUP



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Sheet Contents:  
Approved AUP  
Proposed Exterior Elevations

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Scale:  
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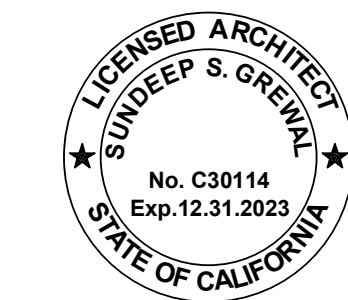
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AUP Modification Submittal:  
07-21-2022

Sheet  
**A1.4**

-  Existing floor area
-  Approved AUP New floor area
-  AUP Modification New floor area



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Sheet Contents:  
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Proposed Floor Plan

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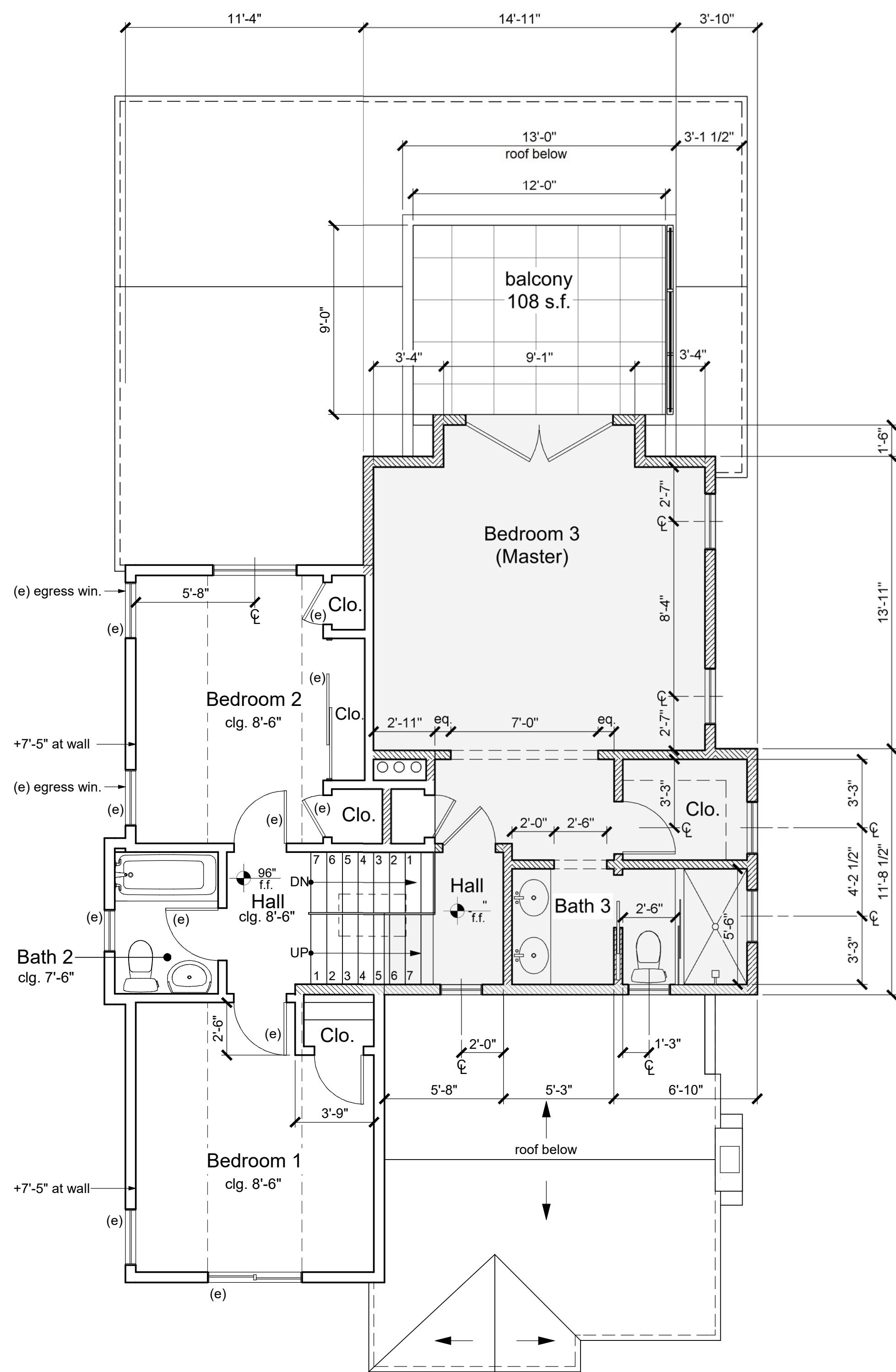
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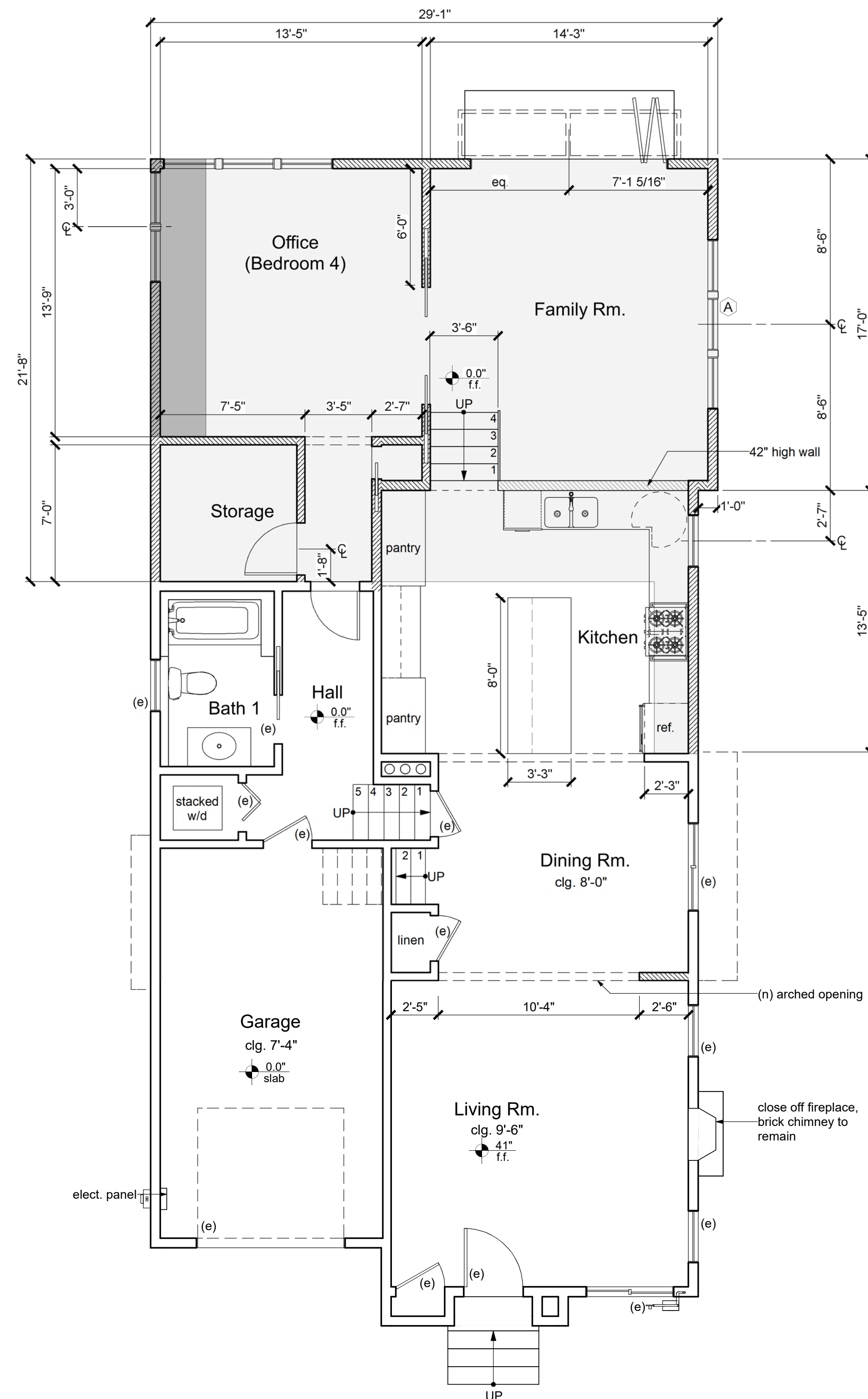
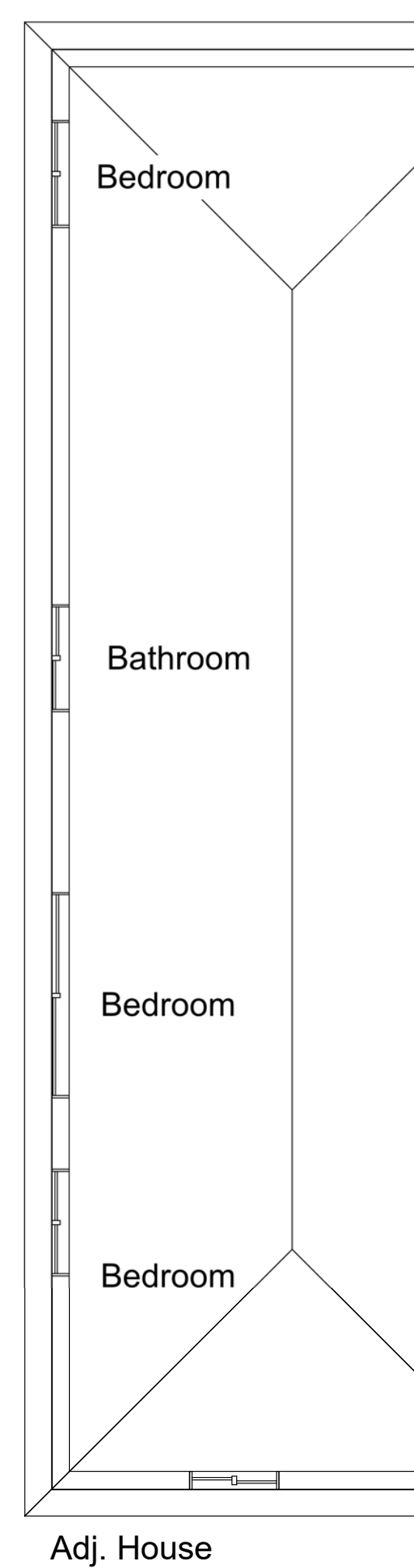
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AUP Modification Submittal:  
07-21-2022

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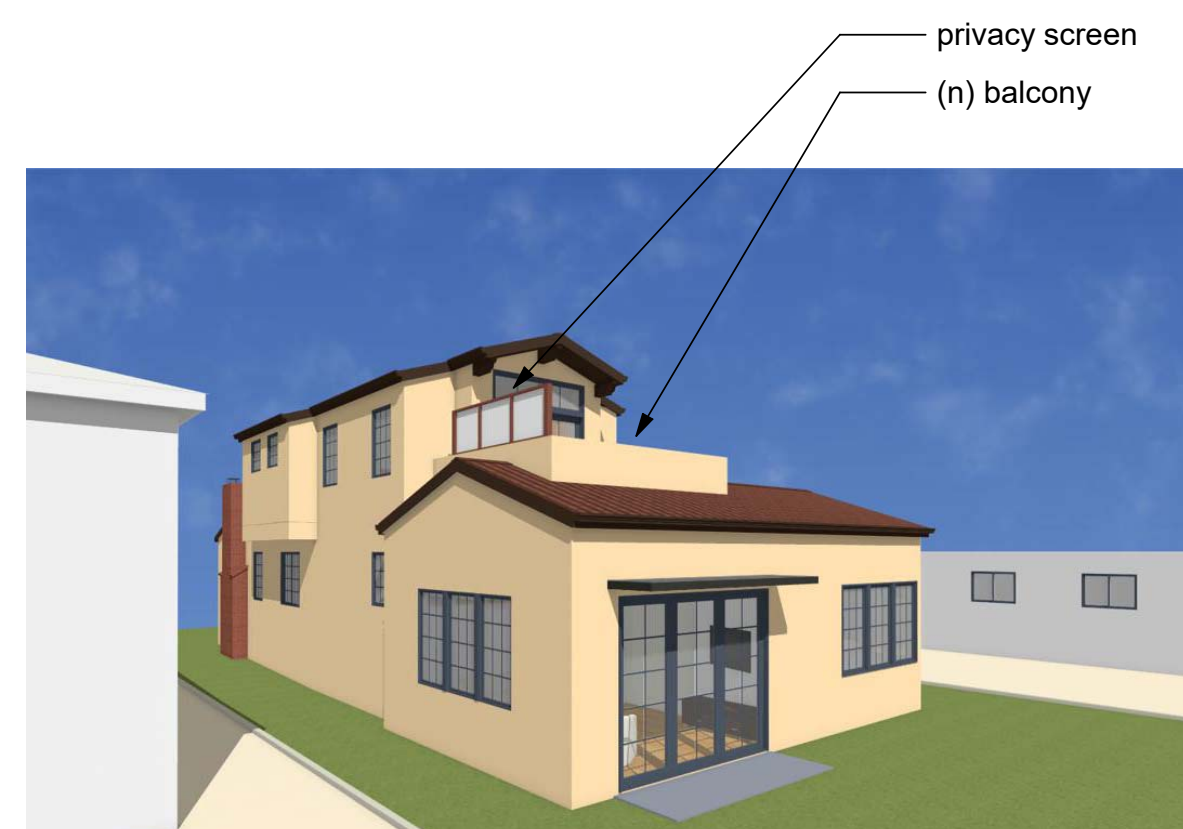


② Proposed Second Floor Plan  
AUP Modification



① Proposed First Floor Plan  
AUP Modification





8 Aerial View Of Proposed Addition  
AUP Modification

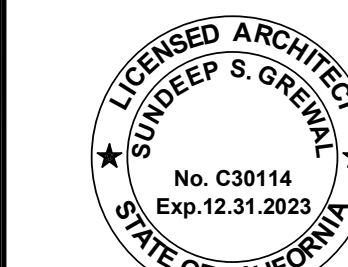
7 Right Rear View Of Proposed Addition  
AUP Modification

6 Left Rear View Of Proposed Addition  
AUP Modification

5 Street View Of Proposed Addition  
AUP Modification



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Proposed Exterior Elevations

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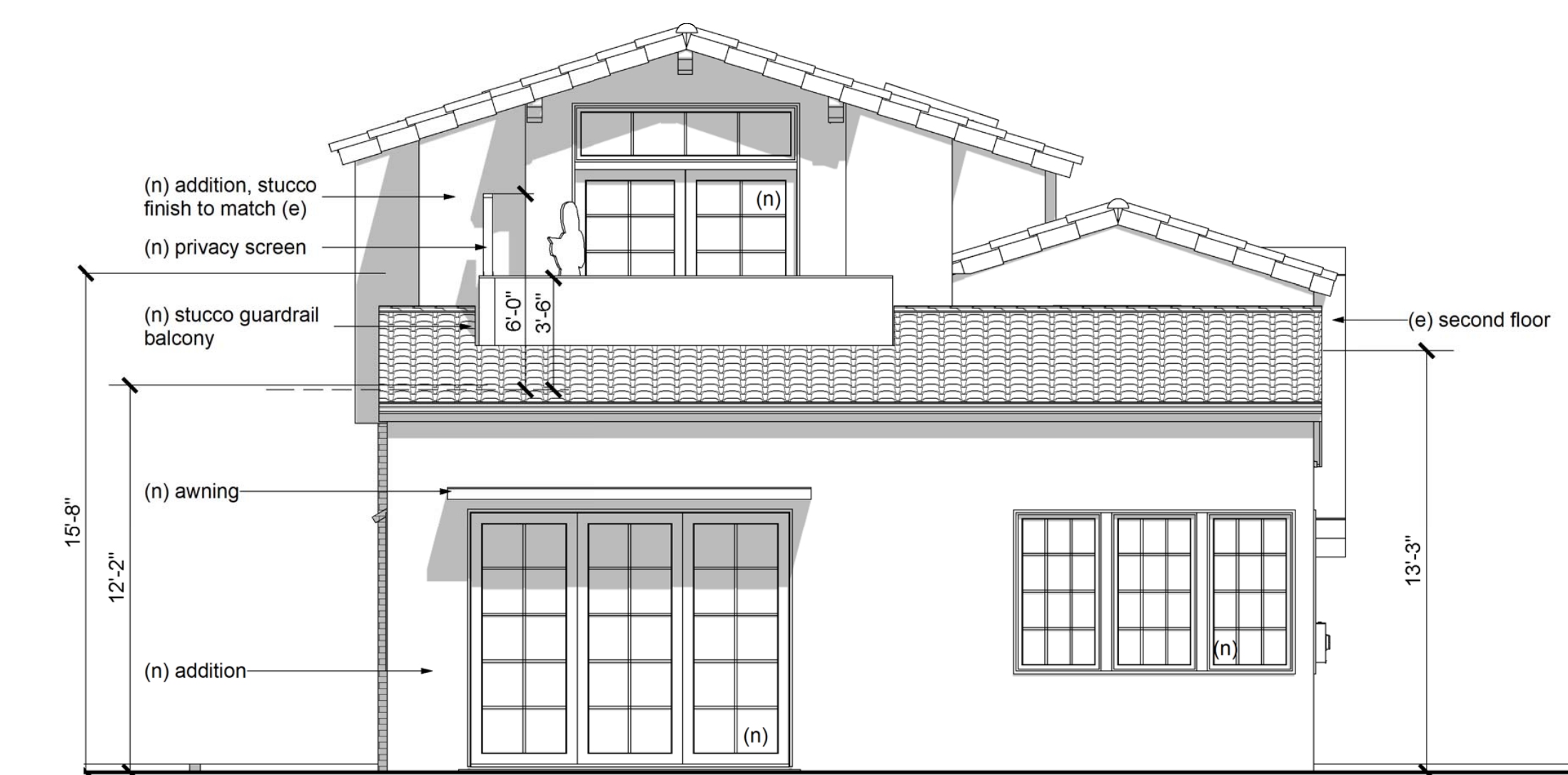
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Checked By:  
SSG

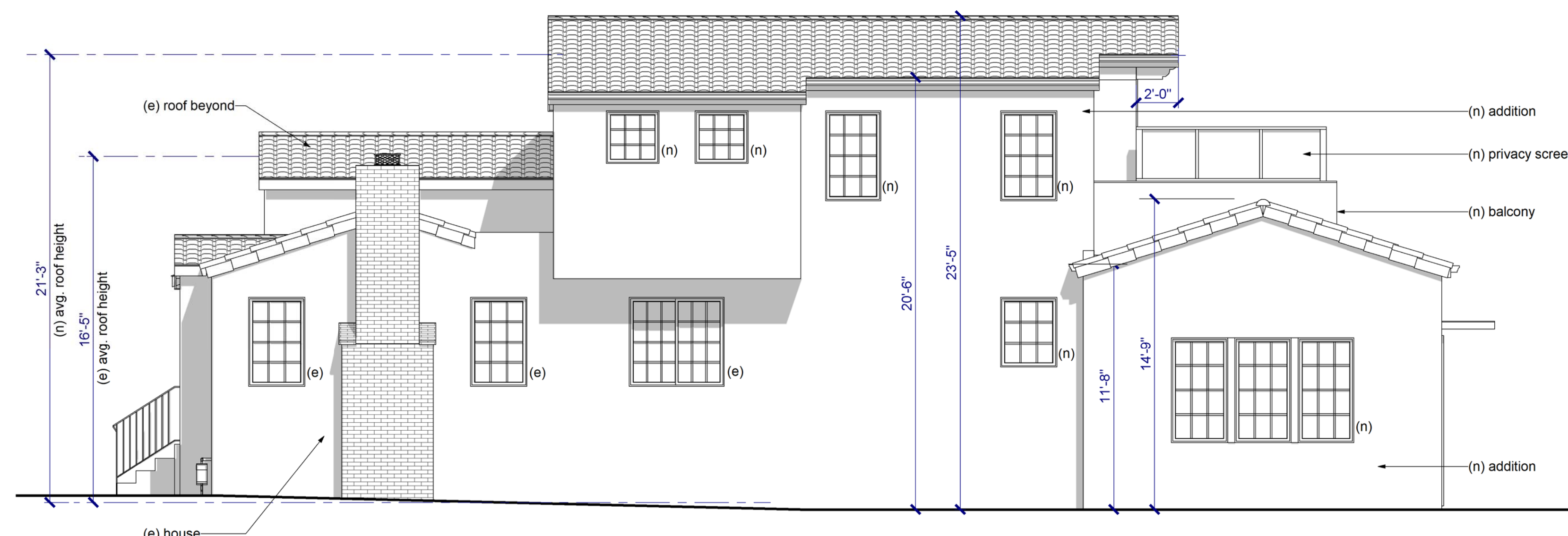
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AUP Modification Submittal:  
07-21-2022

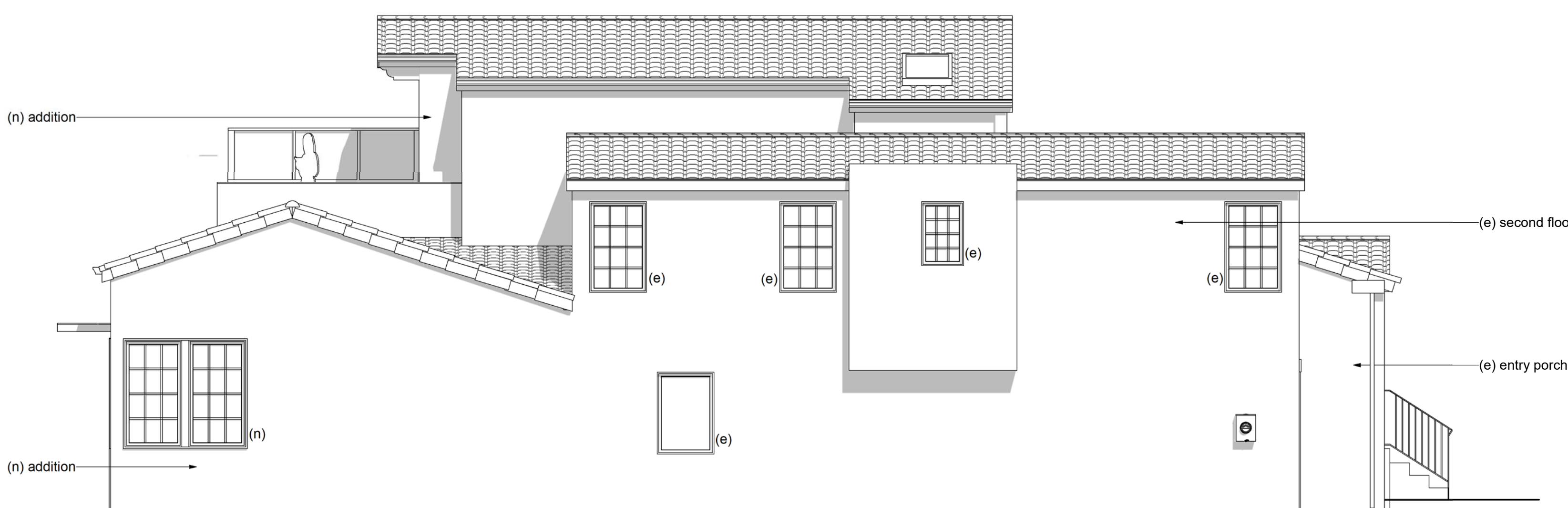
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4 Proposed South Elevation - Rear  
AUP Modification



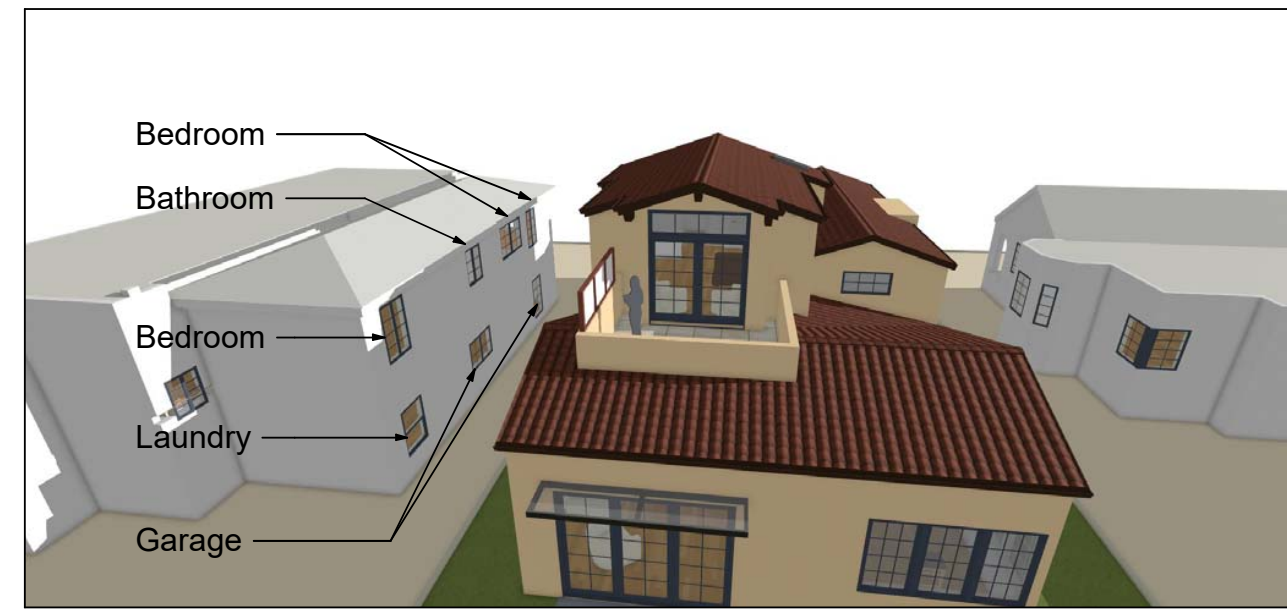
3 Proposed West Elevation - Right Side  
AUP Modification



2 Proposed East Elevation - Left Side  
AUP Modification



1 Proposed North Elevation - Front  
AUP Modification



Proposed  
6-21-2020 / 7:47 am



Proposed  
12-21-2020 / 9:21 am



Proposed  
6-21-2020 / 6:35 pm



Existing  
6-21-2020 / 7:47 am



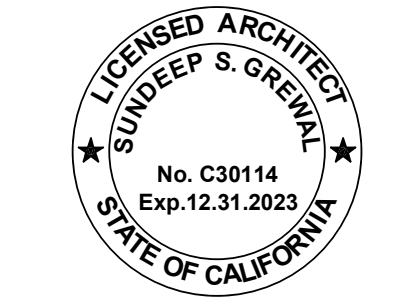
Existing  
12-21-2020 / 9:21 am



Existing  
6-21-2020 / 6:35 pm



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Sheet Contents:  
AUP Modification  
Shadows Studies

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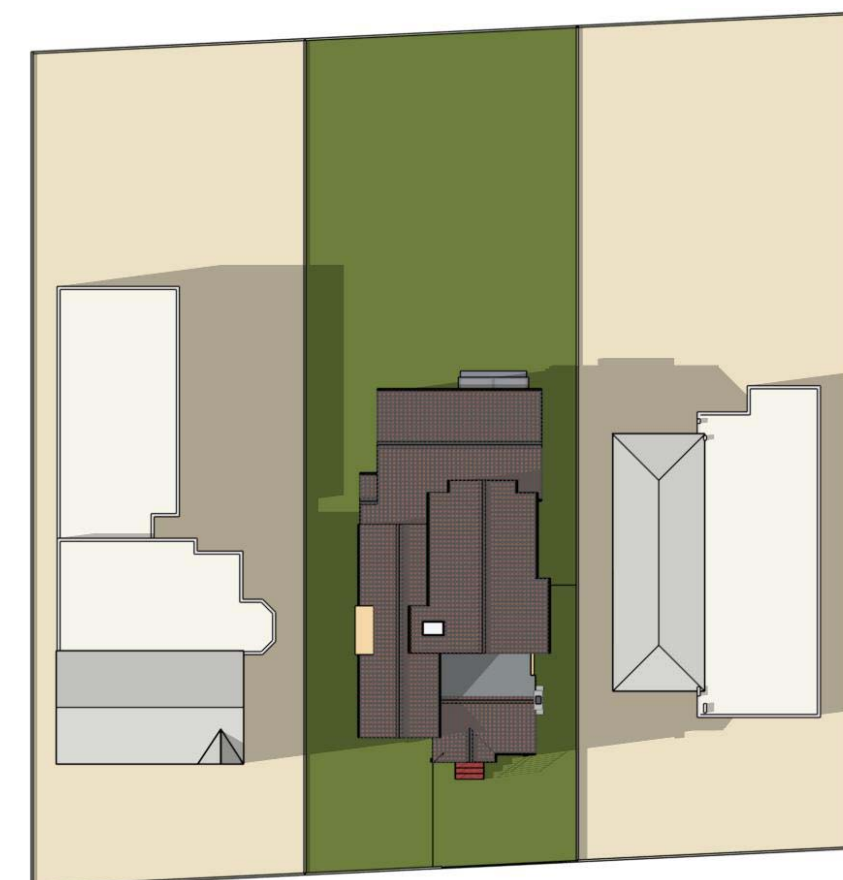
Drawn By:  
SSG

Checked By:  
SSG

Scale:  
NTS

Revisions:  
AUP Modification Submittal:  
07-21-2022

Sheet  
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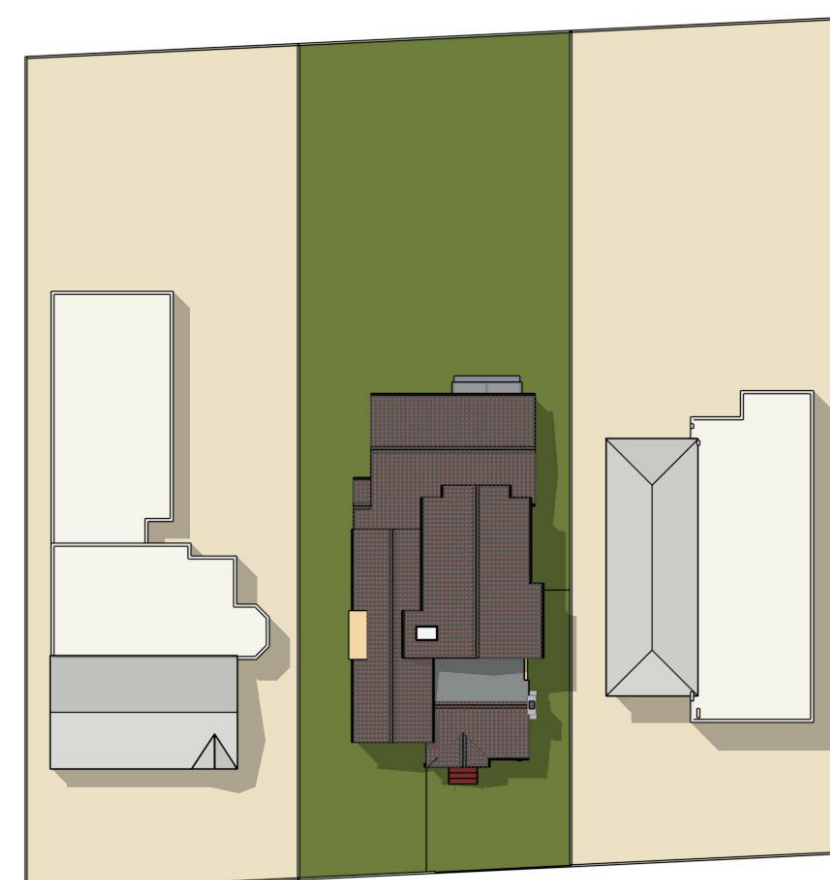


Approved Project

6-21-2020 / 7:47 am  
See Above

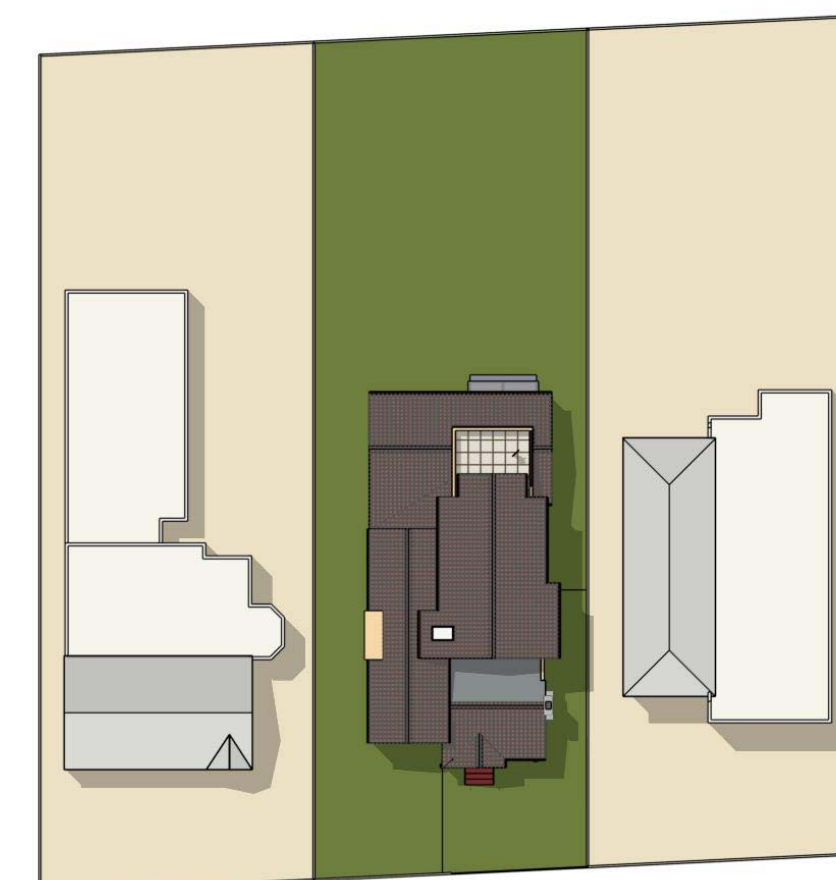


Proposed Modification

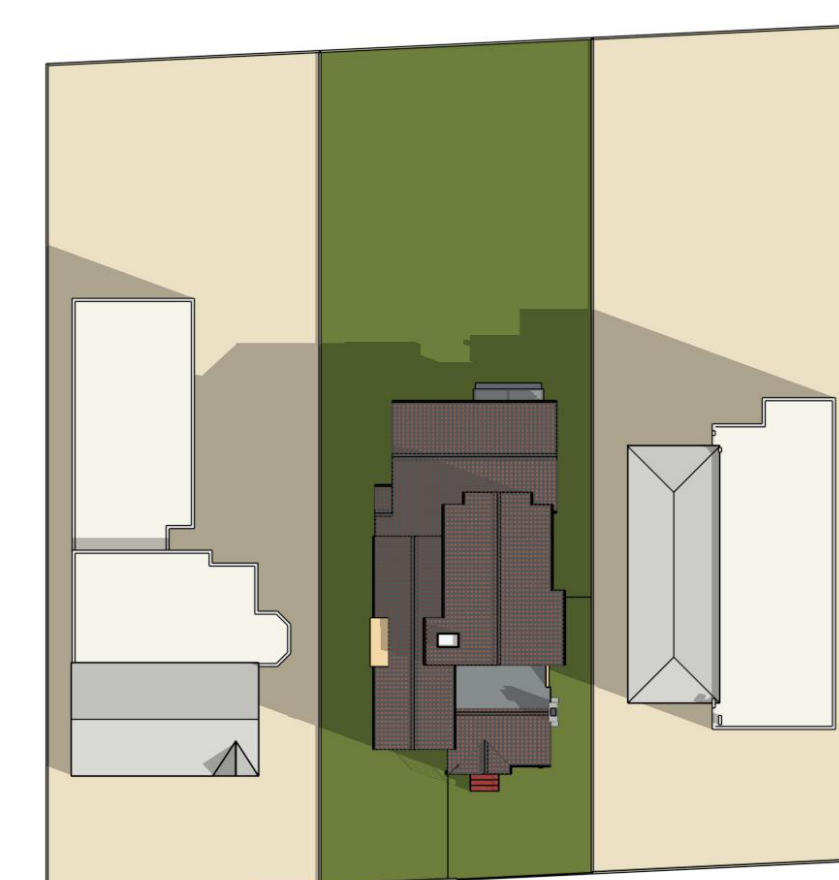


Approved Project

6-21-2020 / 12:00 pm

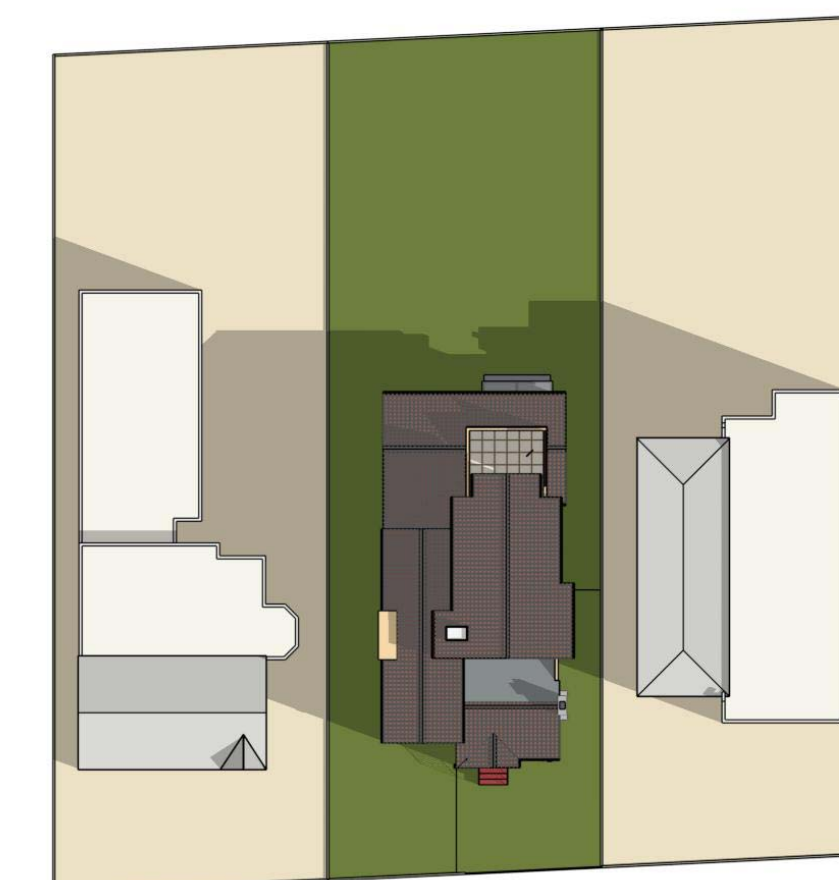


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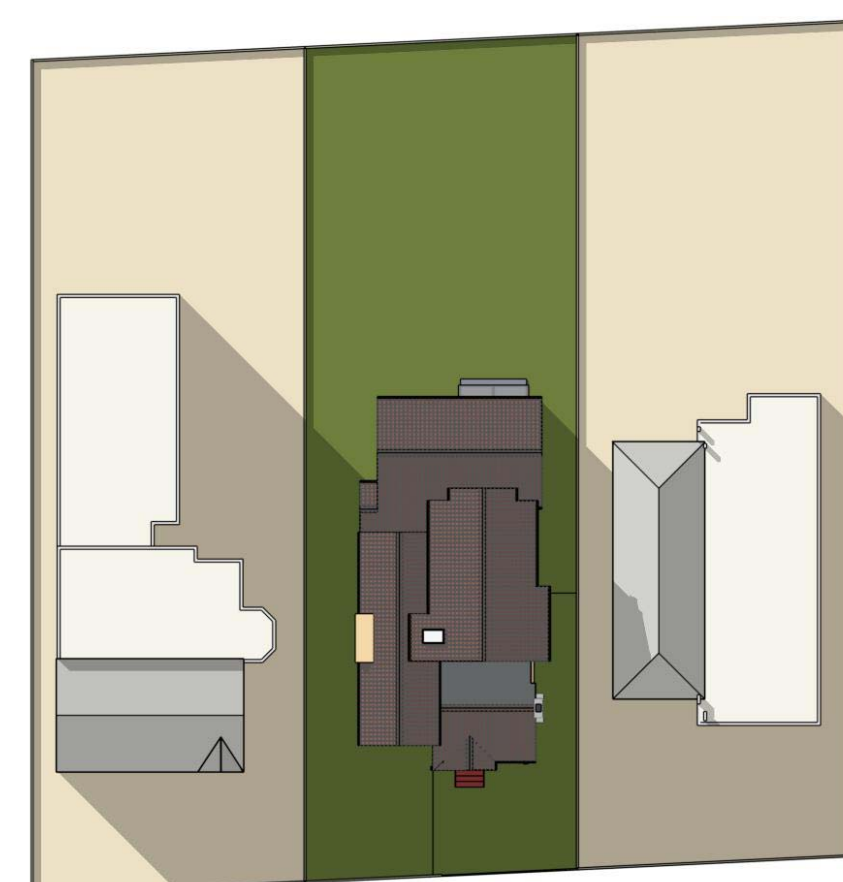


Approved Project

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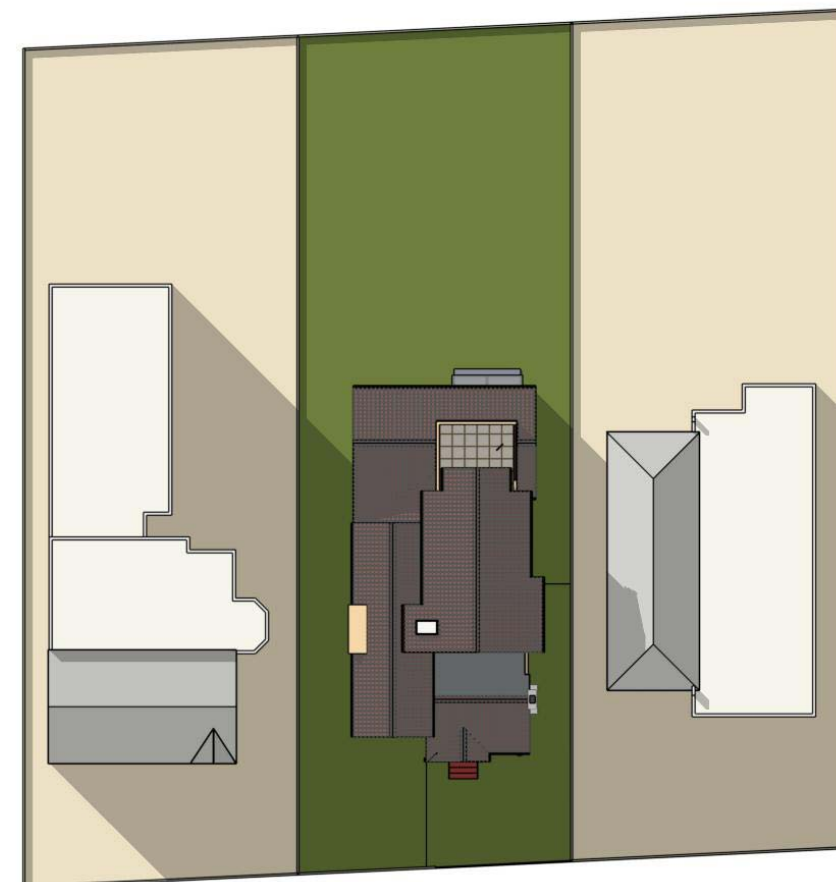


Proposed Modification

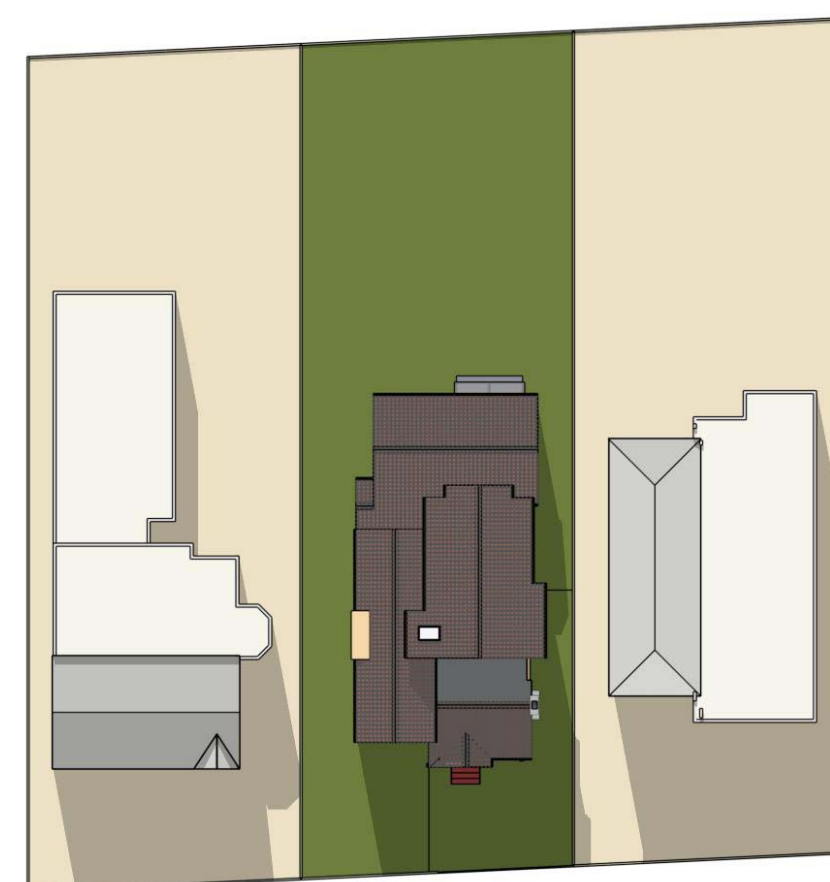


Approved Project

12-21-2020 / 9:21 am  
See Above

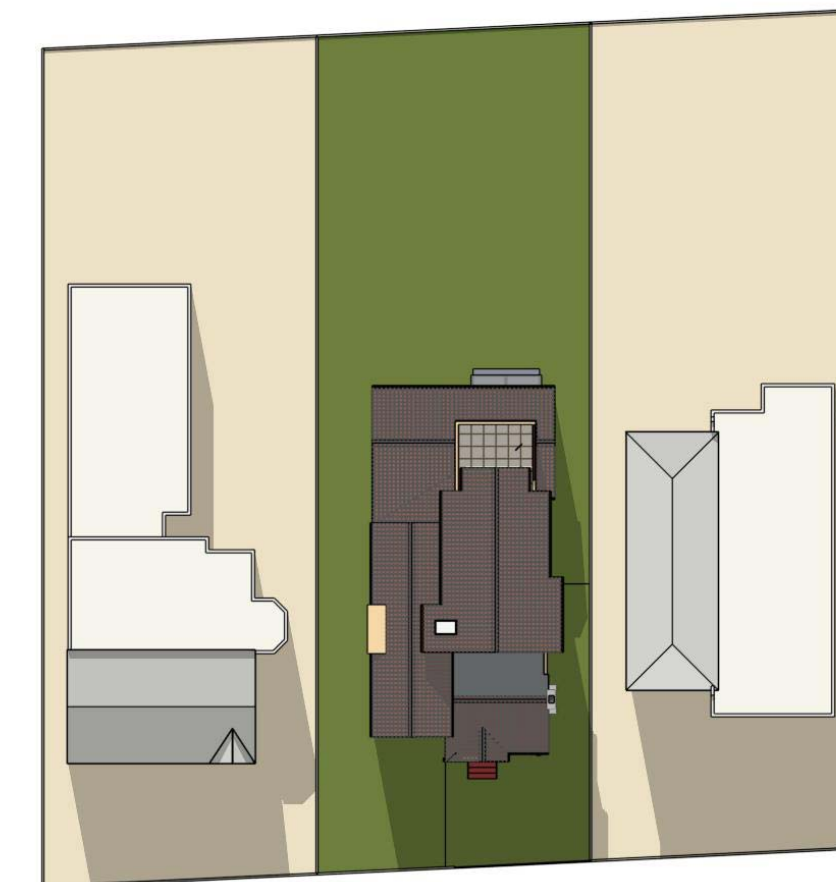


Proposed Modification

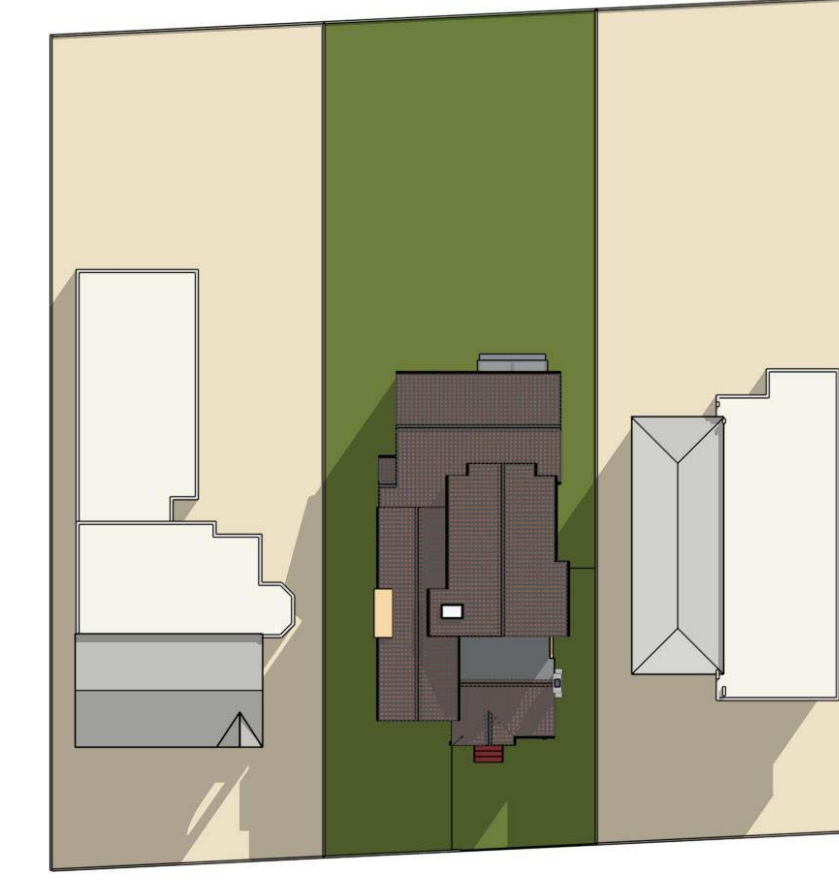


Approved Project

12-21-2020 / 12:00 pm

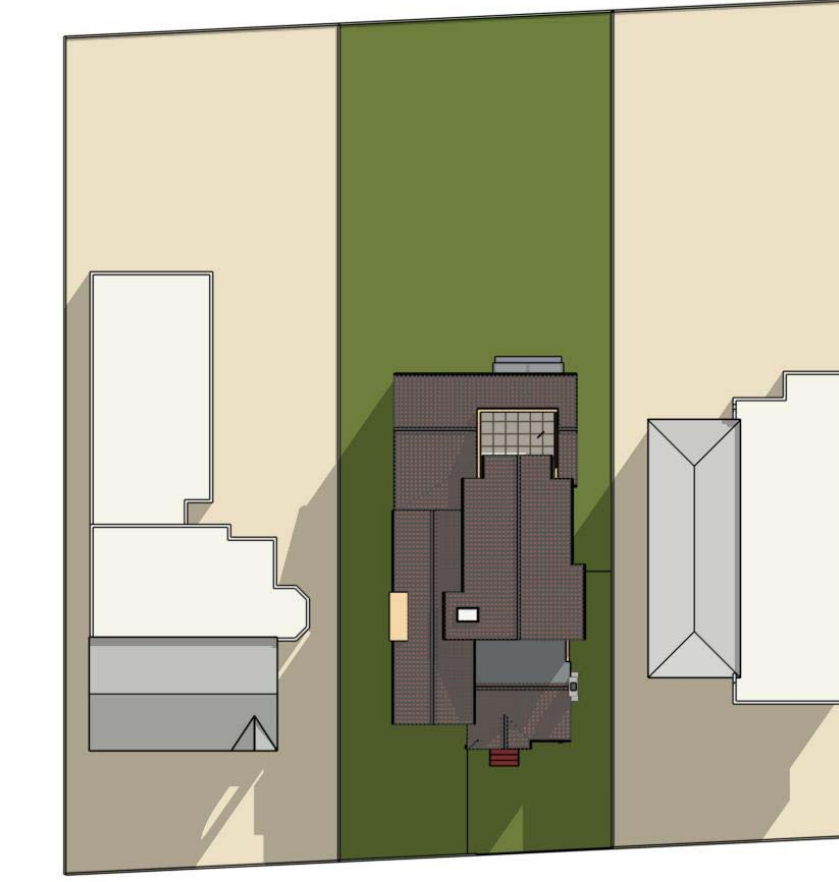


Proposed Modification



Approved Project

12-21-2020 / 2:54 pm



Proposed Modification







Shadow Accuracy Simulation  
**6-09-2020 / 4:00 pm**



Shadow Accuracy Simulation  
**6-09-2020 / 4:00 pm**



Proposed  
**6-21-2020 / 7:47 am**



Existing  
**6-21-2020 / 7:47 am**



Proposed  
**12-21-2020 / 9:21 am**



Existing  
**12-21-2020 / 9:21 am**



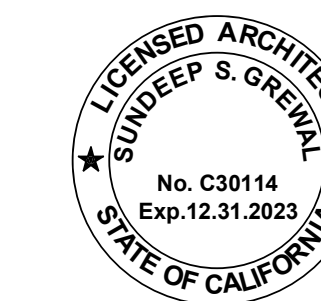
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**6-21-2020 / 6:35 pm**



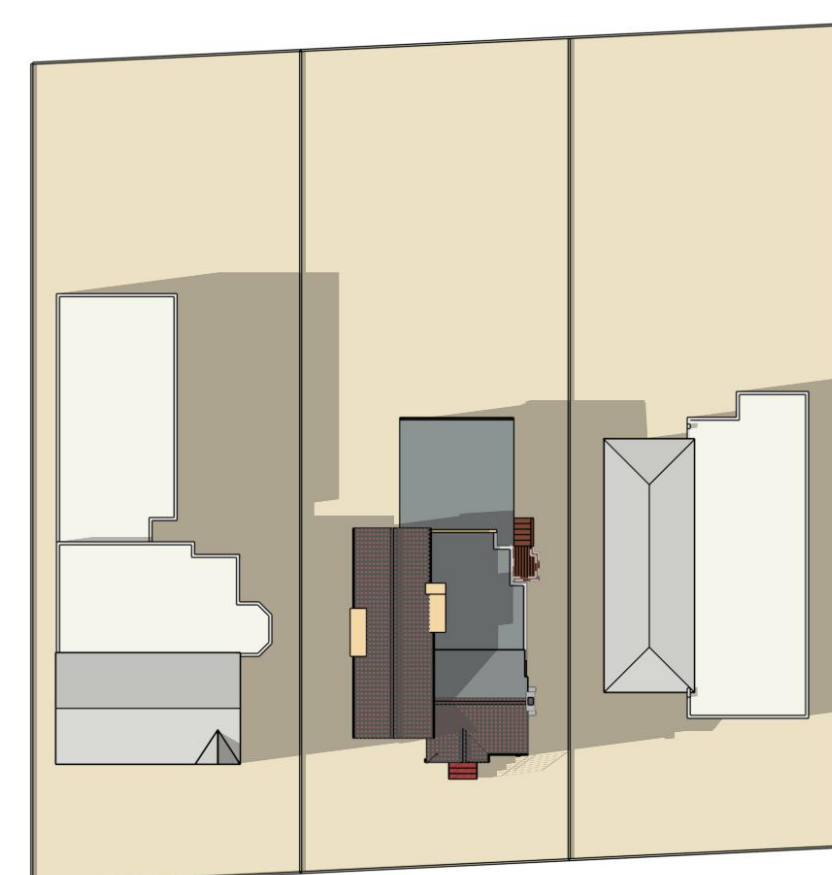
Existing  
**6-21-2020 / 6:35 pm**



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



**MILLER RESIDENCE  
AUP Modification**  
1262 Francisco St.  
Berkeley, CA 94702  
APN: 058 213500300

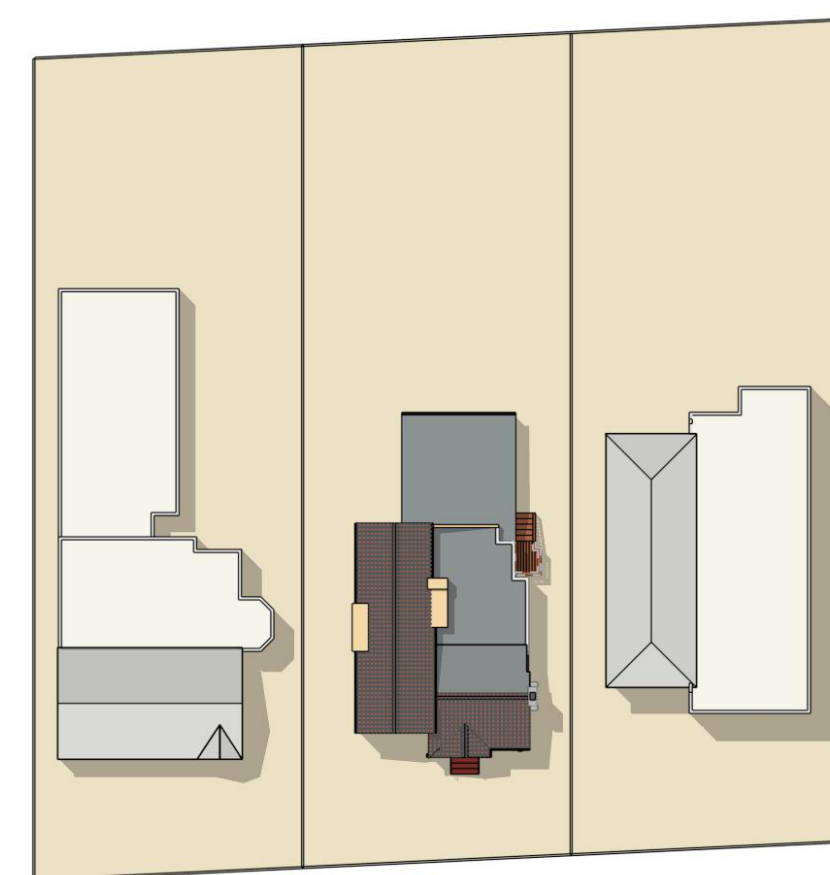


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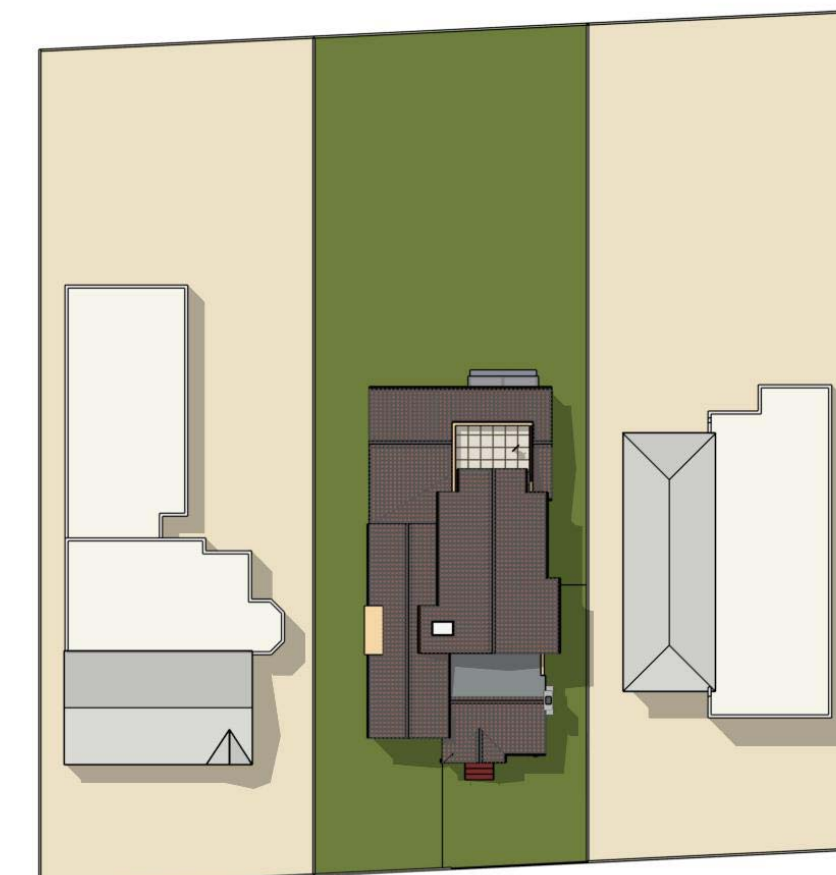


Proposed Modification



Existing

**6-21-2020 / 12:00 pm**

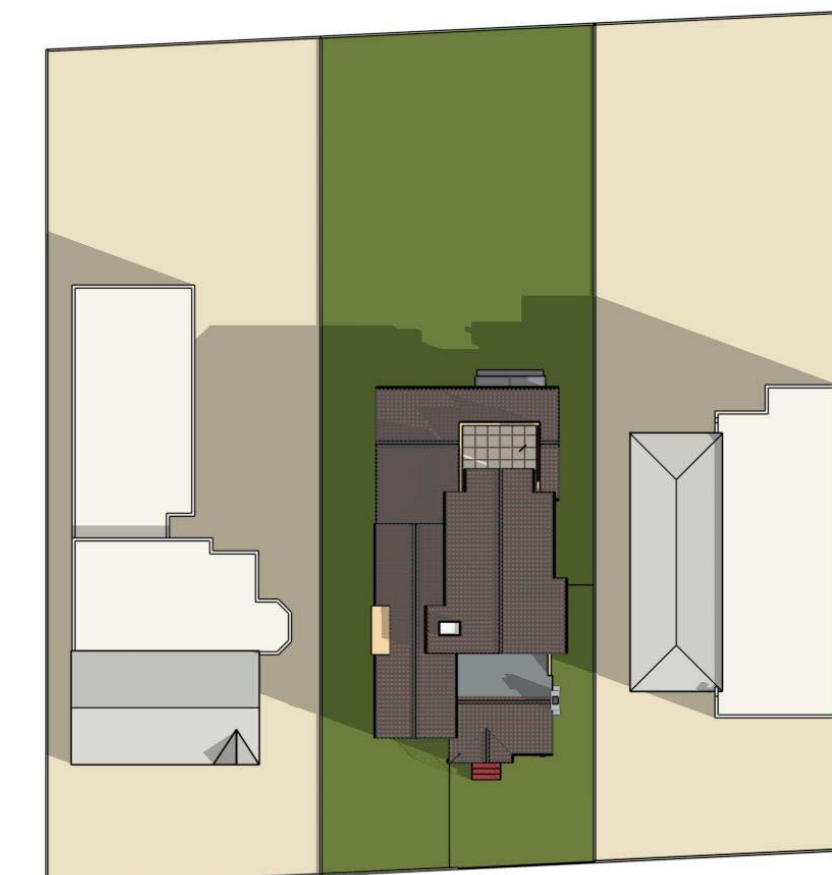


Proposed Modification



Existing

**6-21-2020 / 6:35 pm**  
See Above



Proposed Modification

Sheet Contents:  
Original Approved AUP  
Shadows Studies

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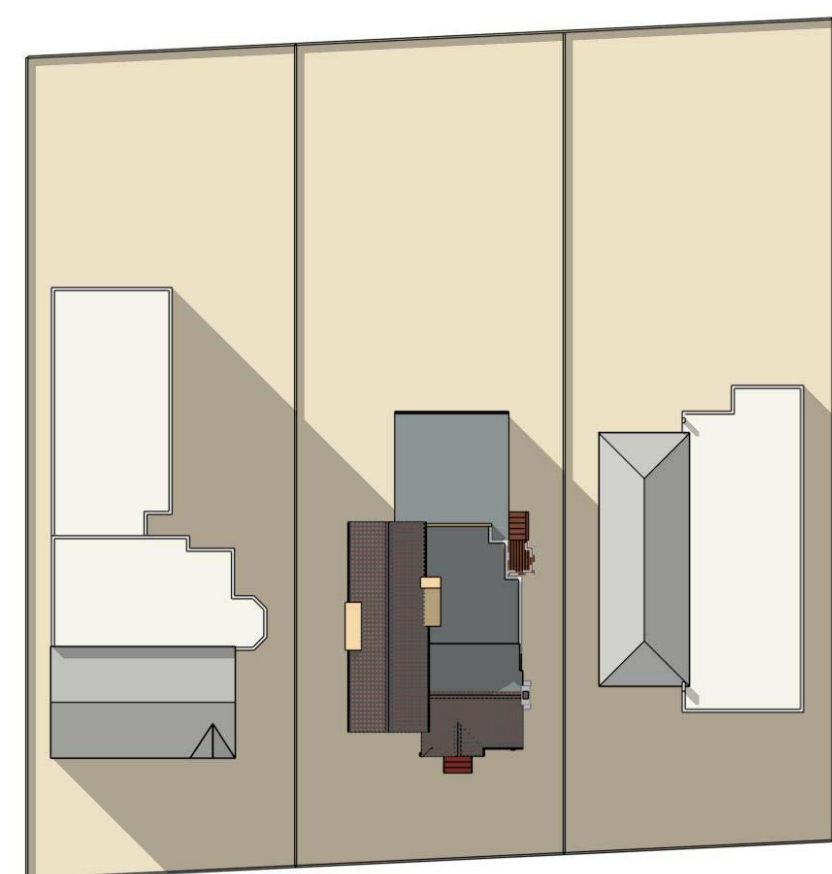
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20-07-414

Drawn By:  
SSG

Checked By:  
SSG

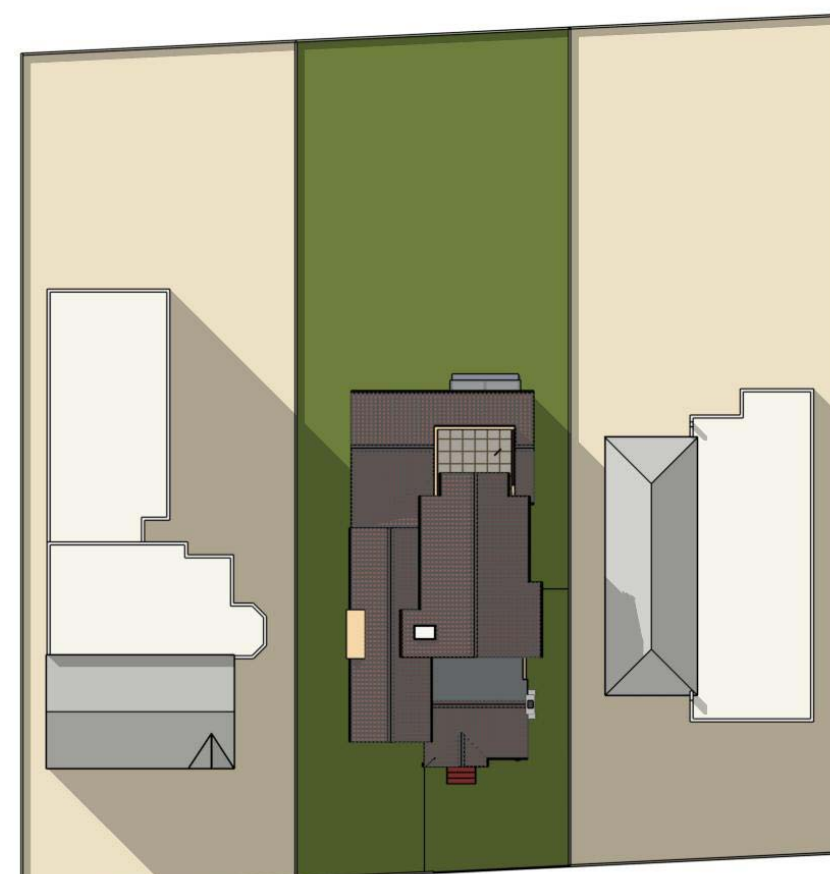
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Revisions:  
AUP Modification Submittal:  
07-21-2022

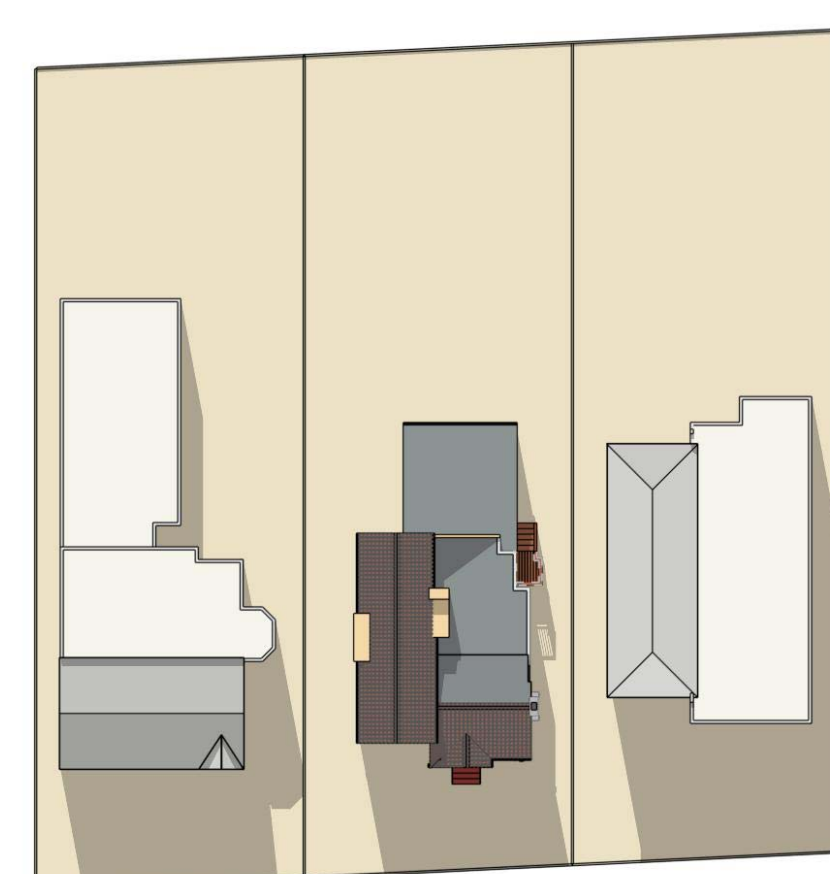


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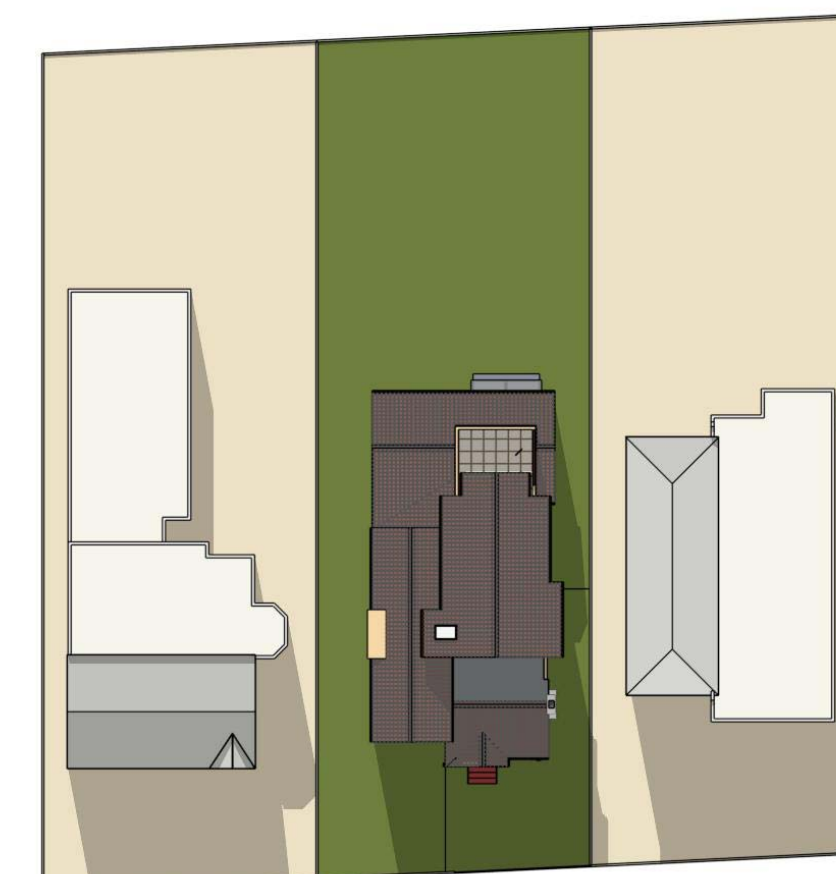


Proposed Modification

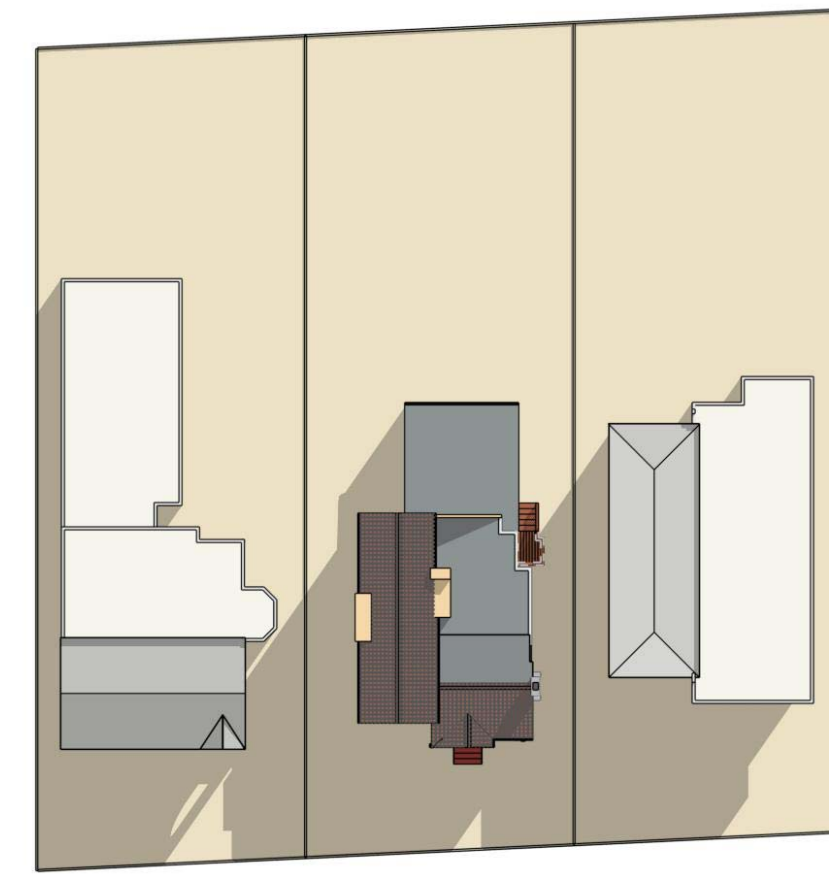


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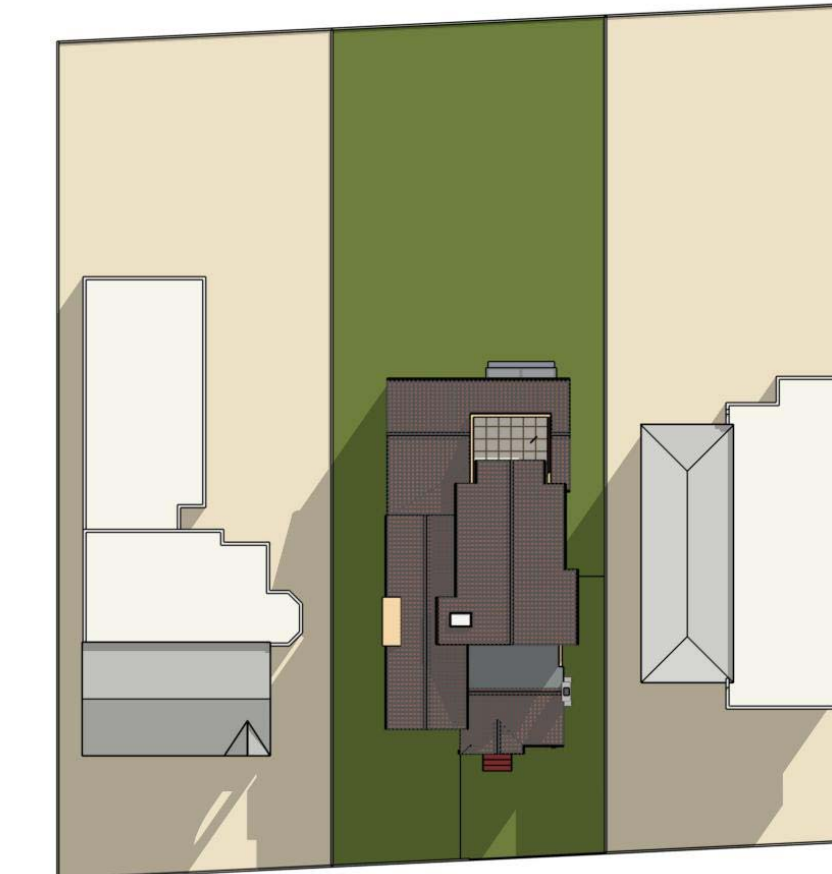


Proposed Modification



Existing

**12-21-2020 / 2:54 pm**



Proposed Modification



Sheet

**A4.2**

CITY OF BERKELEY - CITY CLERK  
2022 NOV 9 PM4:22

Dear City Council,

I wish to appeal the Zoning Officer's Decision to approve Administrative Use Permit #ZP2021-0006, which modifies AUP ZP#2020-0122 to add 40 square feet on the first floor and a balcony on the second floor.

I wish to appeal on two grounds:

1. A failure to disclose ex-parte communication between the Applicant (and/or his proxy) and the ZAB Acting-Chair Shoshana O'Keefe.
2. The inability of the ZAB to address the material misrepresentations made by the Architect Sunny Grewal in his AUP submission.

As to the first item regarding ex-parte disclosure, it became obvious during the ZAB Action Calendar of October 13 2022, that the Acting-Chair Shoshana O'Keefe was personally acquainted with the Applicant Mr Miller, to the degree that Mr Miller felt comfortable referring to Acting-Chair O'Keefe by her first name during his presentation.

Further, Acting-Chair O'Keefe failed to disclose an ex-parte communication from the Applicant (or his proxy) made to the ZAB Chair in March 2021. According to City records, the ZAB Chair at that time was Shoshana O'Keefe. The existence of this communication was clearly stated in my Appeal Letter.

I was unaware during the October 13 2022 meeting that Acting-Chair O'Keefe was the Chair referenced by the Applicant Mr Miller. The ZAB Secretary has been unable or unwilling to clarify the presumed acquaintanceship.

Berkeley's Commissioners Manual states:

*Commissioners shall verbally disclose all ex parte contacts concerning the subject of the hearing. Commissioners shall also submit a report of such contacts in writing prior to the commencement of the hearing. Ex parte contacts includes any contact between a commissioner and a person that is a party to the public hearing regarding the subject matter of the hearing.*

The communication from the Applicant Mr Miller in March 2021 stated:

*"I consulted with one of my best friends, whose high school buddy is the chair of the Berkeley ZAB, and given our situation, she assured him that, while you could delay my construction, you would lose any type of eventual challenge to #ZP2021-0006, as it satisfies all of the zoning restrictions and requirements with margin. Also, it's already been approved, awaiting the appeals period."*

If the Acting-Chair is acquainted with the Applicant and/or received communications on his behalf, this should have been disclosed.

As to the second item regarding the Architect Sunny Grewal, Mr Grewal made two false claims in the AUP filing for ZP2021-0006. Furthermore after mediation he refused to revise these claims. This led to a breakdown in the relationship with our neighbor and directly contributed to out-of-pockets costs exceeding \$5000.

1. Sunny Grewal claimed that the adjoining neighbors supported the proposed project.
  - a. My wife was never advised of, nor supported, a large roof deck 13' from our bedroom looking directly down onto our bed.
2. Sunny Grewal used dodgy arithmetic to claim a property line sufficient to avoid a required property survey.
  - a. Eventually the Planning Department required a property survey, but this took over 9 months – at which point we had already paid for our own.

While AUPs are signed under penalty of perjury, this is a high bar. Mr Grewal's claims were more in the realm of "little white lies" – meant to ease the passage of his submission through the Planning Department.

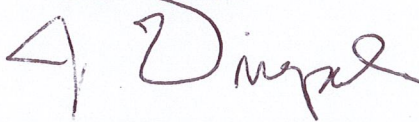
The Planning Department works with Applicants in a collegiate manner, asking for corrections where they are required. But this leaves them ill-equipped to deal with or discipline an Architect who intentionally chooses to make material misrepresentations. Asking residents to have their own laser measure and to double-check an Architect's measurements seems like a failure of the process.

How then can a progressive City act on the behalf of its residents in order to protect them against an Architect who might be tempted to put his thumb on the scale?

It would be helpful for the City to unambiguously state that Architect misrepresentation is unacceptable.

Be honest with your numbers. Be honest with your neighbors. Respect the mediation process.

John Vinopal  
1256 Francisco

  
2022-11-09



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

FOR BOARD ACTION  
OCTOBER 13, 2022

# 1262 Francisco Street

**Appeal of Zoning Officer’s Decision to approve Administrative Use Permit #ZP2021-0006 to modify Administrative Use Permit ZP#2020-0122 to add 40 square feet on the first floor and a balcony on the second floor of an existing single-family dwelling unit.**

## I. Background

### A. Land Use Designations:

- General Plan: Low Medium Density Residential (LMD)
- Zoning: Restricted Two-Family Residential District (R-2)

### B. Zoning Permits Required:

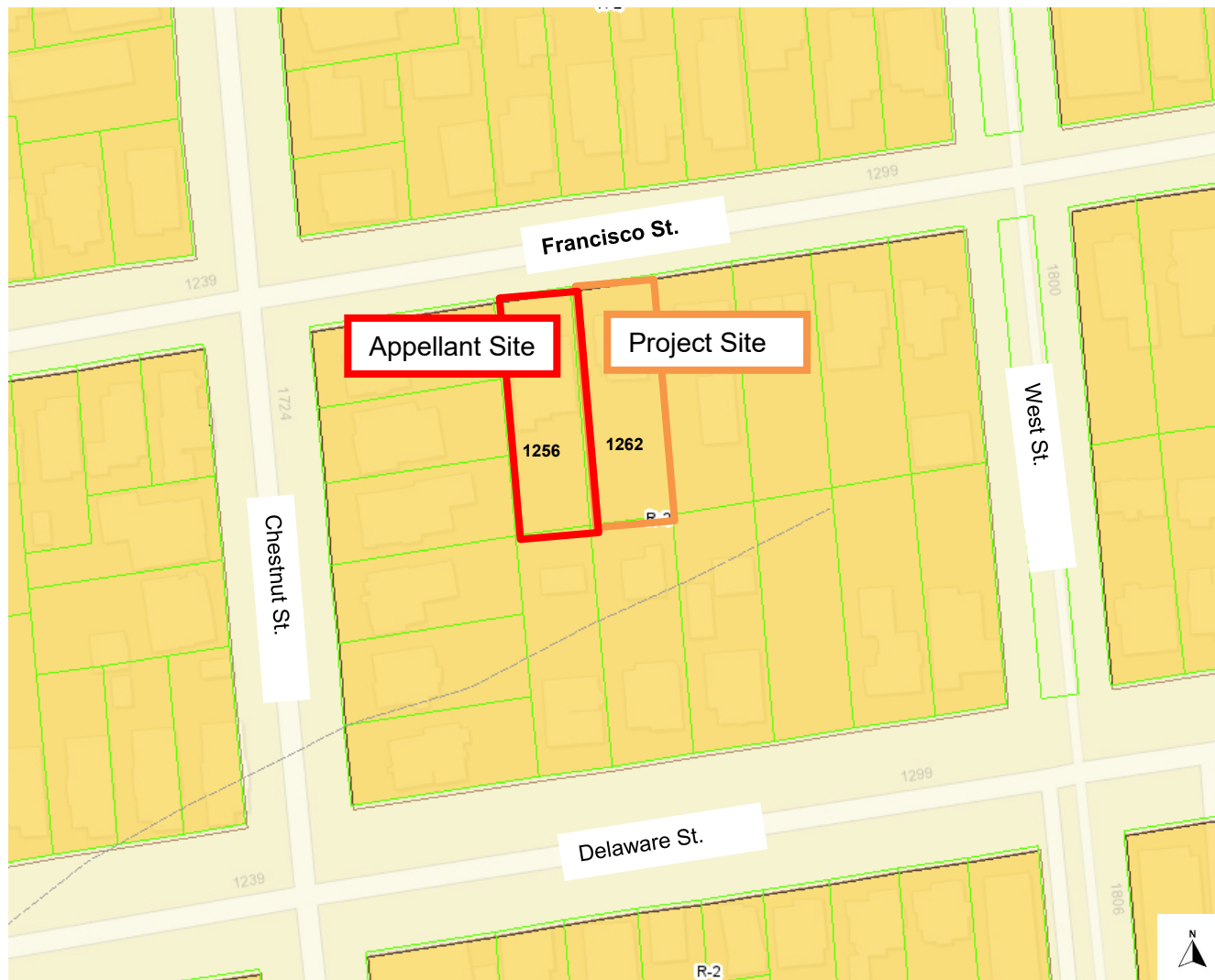
- Administrative Use Permit for an addition greater than 14 feet in height, under BMC Section 23.202.080(D).

**C. CEQA Recommendation:** It is staff’s recommendation that the project is categorically exempt pursuant to Section 153301 of the CEQA Guidelines (“Existing Facilities”). The determination is made by ZAB.

### D. Parties Involved:

- Applicant Sunny Grewal (Architect), Oakland
- Property Owner Jonathan Miller, 1262 Francisco, Berkeley
- Appellants: Aimee Baldwin, 1256 Francisco, Berkeley  
John Vinopal, 1256 Francisco, Berkeley

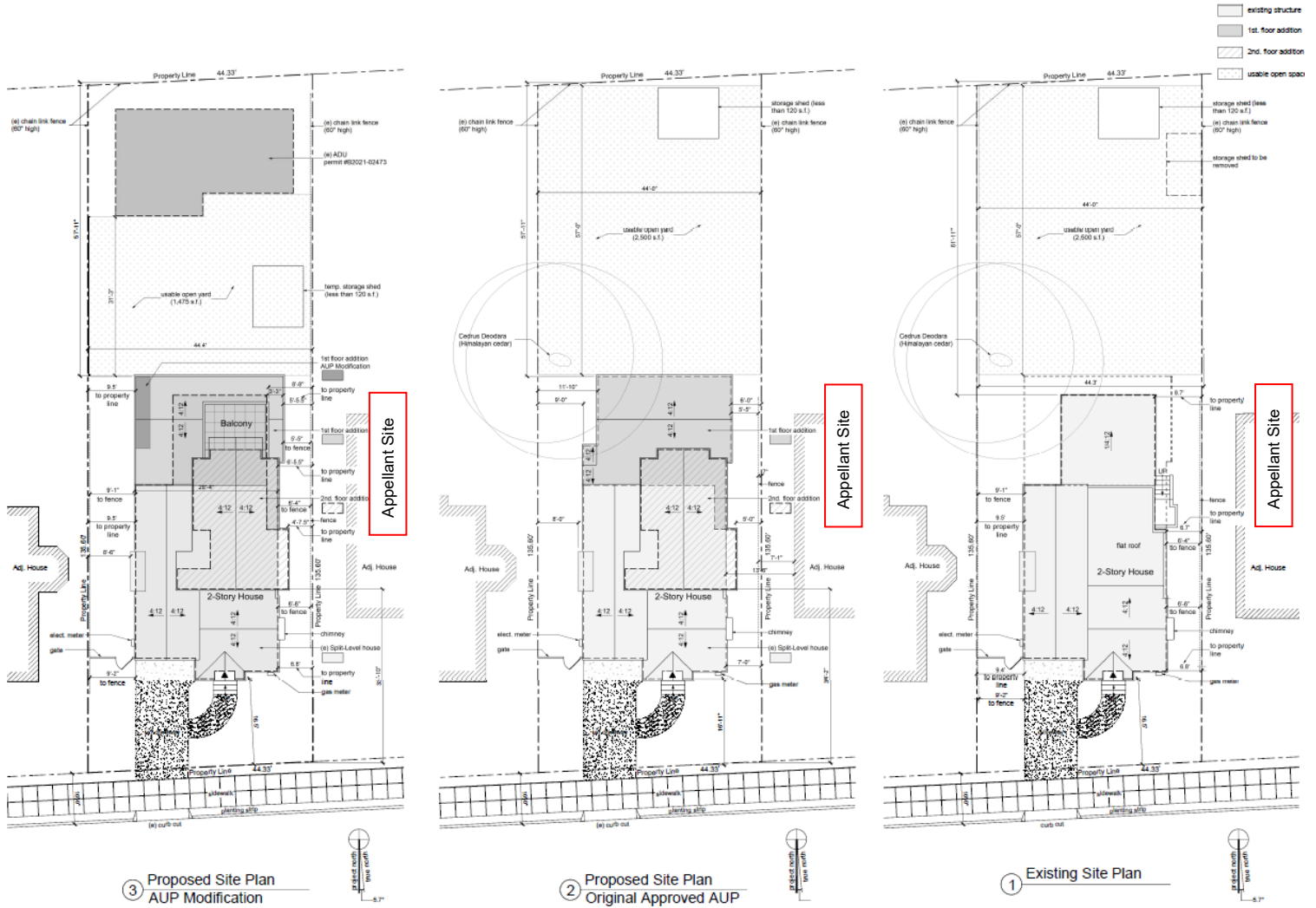
Figure 1: Vicinity Map – 1262 Francisco (Project Site) + 1256 Francisco (Appellant Site)



\*Map not to scale.

Yellow = R-2 Zoning District

Figure 2: Site Plan



3 Proposed Site Plan  
AUP Modification

2 Proposed Site Plan  
Original Approved AUP

1 Existing Site Plan

Figure 3: Original Approved First and Second Floor Plans

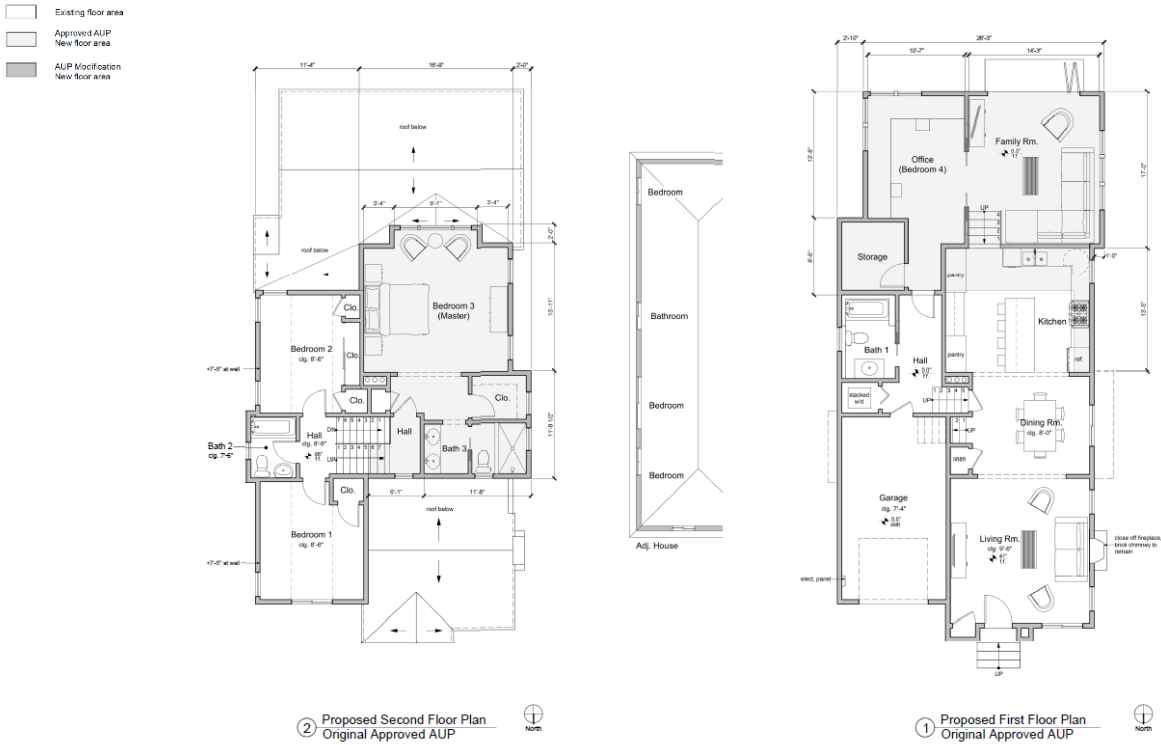
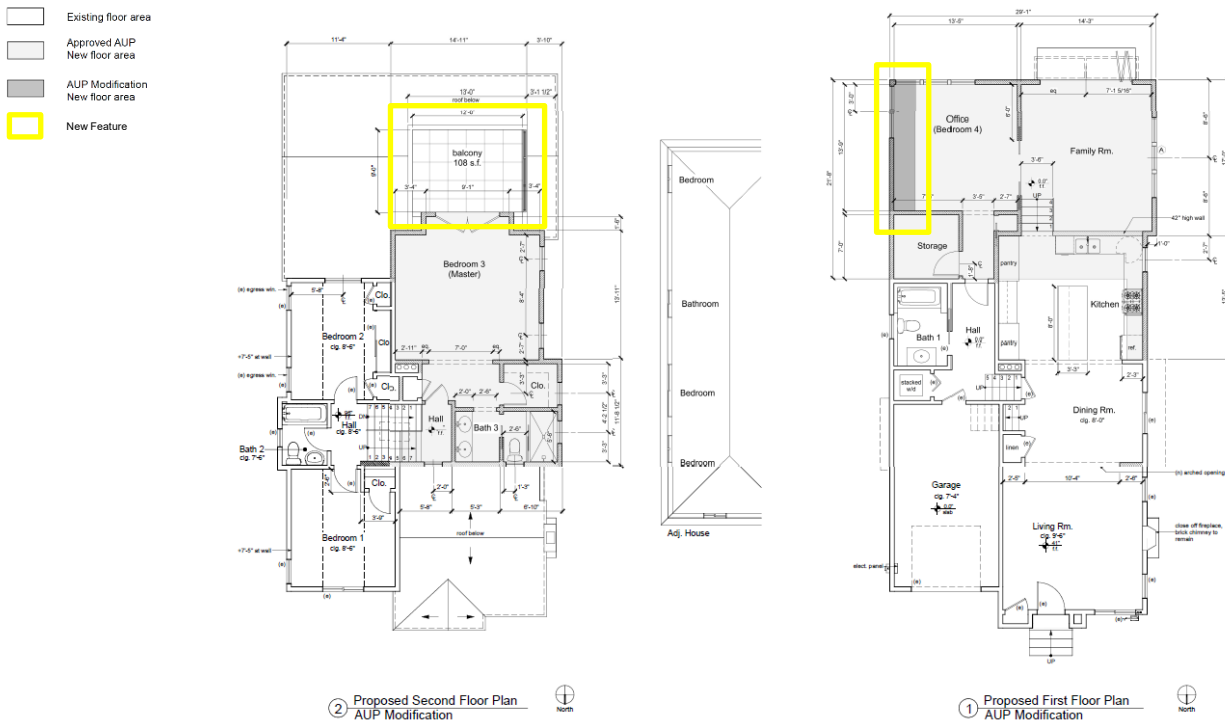


Figure 4: Proposed Modified First and Second Floor Plans



**Table 1: Land Use Information**

Location		Existing Use	Zoning District	General Plan Designation
Subject Property		Single – Family Dwelling	R-2	LMD
Surrounding Properties	North			
	South			
	East			
	West			

**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	The project involves only new residential floor area, and thus this requirement does not apply.
Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.)	No	This fee applies to projects with net new 7,500 square feet of non-residential floor area. The project involves only new residential floor area, and thus this requirement does not apply.
Affordable Housing Mitigations for rental housing projects (Per BMC 22.20.065)	No	This fee applies to projects that propose 5 or more rental dwelling units. This project does not propose rental units.
Alcohol Sales/Service	No	The project is a residential project.
Creeks	No	The project is not located within the creek buffer.
Density Bonus	No	The project is not a density bonus project.
Natural Gas Prohibition (Per BMC 12.80.020)	No	The project is 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	A "housing development project" is defined as a project that is: residential units only, a mixed-use project with at least two-thirds of the square-footage residential, or for transitional or supportive housing. The project proposes modifications to an existing dwelling unit and does not meet the definition of a "housing development project," therefore HAA is not applicable.
Housing Crisis Act of 2019 (SB330)	No	The project is: all residential; a mixed-use project with at least two-thirds of the square-footage residential; or for transitional or supportive housing. However, the project proposes modifications to an existing dwelling unit and does not meet the definition of a "housing development project," therefore the Housing Crisis Act is not applicable.
Coast Live Oak Trees (BMC 6.52.010)	No	There are no coast live oak trees on or abutting the project site.
Rent Controlled Units	No	There are no rent controlled units on the subject site.
Residential Preferred Parking (RPP)	No	The neighborhood surrounding the subject site is not located in an RPP Zone.



Seismic Hazards (SHMA)	No	The project is not located within an area susceptible to liquefaction 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), however it is located within the City's Environmental Management Area. Standard Toxics Conditions of Approval apply.
Transit	Yes	North Berkeley BART, AC Transit 72, 72M, 800

**Table 3: Project Chronology**

Date	Action
October 27, 2020	AUP (ZP2020-0122) application submitted
January 5, 2021	AUP (ZPA2020-0122) Approved
February 5, 2021	AUP Modification (ZP2021-0006) application submitted
June 28, 2022	Application deemed complete
August 3, 2022	Notice of Decision Issued
August 4, 2022	Appeal Received (#1)
August 23, 2022	Appeal Received (#2)
September 29, 2022	Public hearing notices for appeal hearing mailed/posted
October 13, 2022	ZAB appeal hearing

**Table 4: Development Standards (Does not include ADU)**

Standard		Existing	Approved AUP (ZP2021-0006)	Proposed/ Approved by Zoning Officer	Permitted/ Required
BMC Sections 23.202.080.070-080					
Lot Area (sq. ft.)		6,000	No change	No change	5,000 min
Gross Floor Area (sq. ft.)		1,518	2,235	2,275	N/A
Dwelling Units	Total	1	No change	No change	2 max
	Affordable	0	No change	No change	N/A
Building Height	Average (ft.)	16'-5"	21'-3"	No change	28 max
	Stories	2	No change	No change	max
Building Setbacks (ft.)	Front	16'-11"	No change	No change	20 min
	Rear	61'-11"	57'	No change	20 min
	Left Side (West)	6'-7"	4'-7.5"	No change	4 min
	Right Side (East)	9'-6"	9'-6"	No change	4 min
Lot Coverage (%)		25.6%	28.8%	29.5%	40 max
Usable Open Space (sq. ft.)		1,000+	No change	No change	400 min
Parking	Automobile	1	No change	No change	N/A

## II. Project Setting

- A. Neighborhood/Area Description:** The subject site is located midblock along Francisco Street, between Webster Street and Chestnut Street in North Berkeley. The site is located about two blocks east of San Pablo Avenue and a block and a half west from the North Berkeley Bart Station. The surrounding area is composed of single to two-family dwelling units.
- B. Site Conditions:** The project site is rectangular, generally level, and is currently developed with a two-story dwelling unit, shed, and an Accessory Dwelling Unit (ADU), which was approved subsequent to the approval of the Administrative Use Permit (ZP2020-0122). The lot is accessed by an existing driveway and curb cut located east of center towards the front of the lot.

## III. Project Description

The project approved by the Zoning Officer would modify the original Administrative Use Permit (AUP) (ZP2020-0122) by adding 40 square feet to the office (bedroom 4) located on the first floor and a 108 square foot balcony located on the second floor accessed off the primary bedroom suite (bedroom 3). The subject balcony is located atop the existing roof of the first floor.

The original AUP, issued on January 5, 2021, was for a two-story major residential addition greater than 14 feet in average height.

## IV. Community Discussion

- A. Neighbor/Community Concerns:** At the time of submitting this application, the City had temporarily waived the Neighborhood Contact and Project Yellow Poster requirements for proposed zoning project applications to comply with the Shelter-in-Place order issued by the County Health Official. Instead, the City mailed a Notice of Received Application on February 23, 2020 to July 2021.

Staff received several communications from the residents at 1256 Francisco about the proposed balcony and its potential impacts on privacy, site lines, and noise. Staff determined that the proposed modifications were consistent with the underlying development standards and would not unreasonably obstruct sunlight, air, or views, and would not be detrimental neighboring properties.

- B. Zoning Officer's Decision to Approve:** The Zoning Officer determined that the proposed project, which would add 40 square feet to the southeast corner of single-family dwelling on the first floor and a balcony on the second floor, would not result in detrimental air, views, light, or privacy impacts and would be consistent with the underlying development standards in BMC Section 23.202.080.

The first appeal of the administrative decision was filed on August 4, 2022 by one owner of 1256 Francisco. The second appeal was filed on August 23, 2022 by a second resident of 1256 Francisco.

**C. Public Notice:** On October 6, 2022, the City mailed public hearing notices to all adjacent property owners and occupants within 300 feet of the subject property. Staff also posted the Notice of Public Hearing at two locations within the immediate vicinity of the subject site. At the time of this writing, Staff has not received any communications, outside of the appellants, regarding this project.

## V. Appeal Issues and Analysis

The issues raised in the appellants' letter and staff's responses are as follows. For the sake of brevity, the appeal issues are not re-stated in their entirety. Other issues were raised in the appeal letter, however, only the appeal points and analysis that are within the purview of the Zoning Adjustments Board are discussed below. Please refer to the appeal letters (Attachment 3) for full text.

**A. Appeal Issue:** The appellants state the application should be denied based on the privacy, views, and noise detriments created by the proposed balcony. The appellants assert that the balcony should be designed and located elsewhere on the property to preserve existing conditions between the neighboring dwellings. In addition to the balcony, the appellants note privacy concerns with the location of the windows along the western portion of the primary bedroom suite.

### Staff Response:

- *Views* – The modifications would not result in obstruction of significant views in the neighborhood as defined in BMC Section 23.502 (Glossary)<sup>1</sup>. This area 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. Further, during a site visit of the subject properties conducted on September 1, 2022, staff observed that the views from 1256 Francisco looking eastward were not significant.
- *Noise* – Community noise is regulated pursuant to BMC Section 13.40 under the authority of the Environmental Health Department. The following information is provided for reference. Exterior noise limits are established to mitigate the detrimental impacts of specific sound levels and vibrations. Shown below, Table 13.40-1 outlines the exterior noise limit levels according to Zoning District.

### Figure 5: Exterior Noise Limits by Zoning District

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<sup>1</sup> *View Corridor.* A significant view of the Berkeley Hills, San Francisco Bay, Mt. Tamalpais, or a significant landmark such as the Campanile, Golden Gate Bridge, and Alcatraz Island or any other significant vista that substantially enhances the value and enjoyment of real property.

Table 13.40-1. EXTERIOR NOISE LIMITS

(Levels not to be exceeded more than 30 minutes any hour)

Zoning District	Time Period	Noise Level (dBA)
R-1, R-2, R-1A, R-2A, and ESR	7:00 a.m. – 10:00 p.m.	55
	10:00 p.m. – 7:00 a.m.	45
R-3 and above	7:00 a.m. – 10:00 p.m.	60
	10:00 p.m. – 7:00 a.m.	55
Commercial	7:00 a.m. – 10:00 p.m.	65
	10:00 p.m. – 7:00 a.m.	60
Industry	Anytime	70

Noise levels at 55 decibels A<sup>2</sup> (dBA) is equivalent to conversation amongst a group of people about three feet apart or the noise generated by a coffee percolator<sup>3</sup>.

Activity on the residential balcony is not within the purview of the Zoning Ordinance, however, the noise levels noted above are applicable and enforceable through Environmental Health.

- *Privacy* – The propose balcony will not result in significant privacy impacts. As shown in Figures 2 and 4, the proposed balcony at the second-story level is setback 8 feet-8 inches from the western property line and over 20 feet from the eastern property line. The proposed balcony parallels an existing second floor bedroom at 1256 Francisco Street. To mitigate the potential impacts to privacy, a privacy screen is proposed along the west side of the balcony, between the subject properties. Further, Staff amended the approved Conditions of Approval, adding Condition of Approval #11 to ensure that the privacy screen shall be maintained throughout the life of the project.

The location of the new primary bedroom, bathroom, and closet windows were approved under the original AUP (ZP2020-0122), and are not subject to the modification request. Although outside the purview of the modification and appeal, staff notes that the previously approved windows and second floor addition are located outside of the required side setback.

## VI. Recommendation

Because of the project's consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board **APPROVE #ZP2021-0006** pursuant to Section 23.406.030.F and subject to the attached Findings and Conditions (see Attachment 1) and **DISMISS the Appeal**.

<sup>2</sup> *Decibel*. A unit used to measure the intensity of a sound or the power level of an electrical signal by comparing it with a given level on a logarithmic scale.

<sup>3</sup> *Sound Effects Decibel Level Chart* <https://www.creativefieldrecording.com/2017/11/01/sound-effects-decibel-level-chart/>

**Attachments:**

1. Findings and Conditions, #ZP2021-0006 August 3, 2022
2. Project Plans, dated July 21, 2022
3. Survey, dated May 16, 2022
4. Appeal Letters
5. Notice of Public Hearing

**Staff Planner:** Katrina Lapira, [klapira@cityofberkeley.info](mailto:klapira@cityofberkeley.info), (510) 981-7488

## INDEX TO ADMINISTRATIVE RECORD

1262 FRANCISCO STREET

Use Permit #ZP2021-0006

Prepared: March 28, 2022

	DOCUMENT	DATE	PAGE	# of pages
<b>A</b>	<b>STAFF REPORTS</b>			
1	ZAB Materials: staff report and attachments	10/13/2022	1	39
<b>B</b>	<b>CAPTIONER'S RECORD and minutes of all hearings</b>			
2	ZAB captioner's record	10/13/2022	40	55
<b>C</b>	<b>REMAINDER OF ADMIN RECORD</b>			
3	Application materials	2/5/2021	95	29
4	Welcome letter	2/19/2021	124	1
5	Notice of Received Application postcard notice with mailing list	2/23/2021	125	3
6	Notice of Received Application poster	2/23/2021	128	1
7	Email of Objection: John Vinopal	3/2/2021	129	4
8	Resubmittal: sightlines	3/7/2021	133	9
9	Resubmittal: project plans	3/26/2021	142	8
10	Survey	5/16/2022	150	1
11	Letter of Objection: Aimee Baldwin	6/15/2022	151	54
12	Resubmittal: project plans	6/24/2022	205	10
13	Letter of Completion	6/28/2022	215	1
14	Resubmittal: project plans	7/21/2022	216	10
15	Notice of Administrative Decision postcard with mailing list	8/3/2022	226	3
16	Notice of Administrative Decision	8/3/2022	229	20
17	Letter of Appeal filed by Aimee Baldwin	8/4/2022	249	5
18	ZAB Public Hearing Notice postcard with mailing list	9/29/2022	254	7
19	ZAB Notice of Decision	10/26/2022	261	23
20	Appeal letter filed by John Vinopal	11/9/2022	284	2
21	Appeal Receipt letter from City Clerk to Appellant	11/18/2022	286	4



Administrative Record

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

**City Clerk Department**

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

or from:

**The City of Berkeley, City Council's Web site**

<http://www.cityofberkeley.info/citycouncil/>

**NOTICE OF PUBLIC HEARING – BERKELEY CITY COUNCIL**

**ZAB APPEAL: 1262 FRANCISCO, USE PERMIT #ZP2021-0006**

**The public may participate in this hearing by remote video or in-person.**

Notice is hereby given by the City Council of the City of Berkeley that on **TUESDAY, FEBRUARY 28, 2023 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 Administrative Use Permit #ZP2021-0006 to modify Administrative Use Permit ZP#2020-0122 to add 40 square feet on the first floor and a balcony on the second floor of an existing single-family dwelling unit.**

The hearing will be held at the Berkeley Unified School District Board Room located at 1231 Addison Street, Berkeley CA 94702.

A copy of the agenda material for this hearing will be available on the City's website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of February 16, 2023. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology, as well as any health and safety requirements for in-person attendance.**

For further information, please contact Katrina Lapira, Project Planner, (510) 981-7488 or [klapira@cityofberkeley.info](mailto:klapira@cityofberkeley.info). Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

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

---

Mark Numainville, City Clerk

Mailed: **FEBRUARY 14, 2023**

**NOTICE CONCERNING YOUR LEGAL RIGHTS:** *If you object to a decision by the City Council to approve or deny (Code Civ. Proc. 01 94.6(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.*