

Jacob, Melinda

From: Zoning Adjustments Board (ZAB)
Subject: FW: Supplemental Communication related to ZAB 7-14-22 meeting, Item #5, ZP2021-0001
Attachments: 07-14-22 ZAB- Item 5_Appallent Slides.pdf

From: Adam Safir <cederfir@hotmail.com>
Sent: Tuesday, July 12, 2022 4:27 AM
To: Zoning Adjustments Board (ZAB) <Planningzab@cityofberkeley.info>
Cc: Anna Cederstav <acederstav@gmail.com>; Adam Safir <cederfir@hotmail.com>; Kay Bristol <kbristol@berkeley.edu>
Subject: Supplemental Communication related to ZAB 7-14-22 meeting, Item #5, ZP2021-0001

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Dear ZAB members,

In addition to the written document that we sent to you several weeks ago, and which is now attachment 4 (p70) of the staff report, we are sharing a set of slides with you via this email. We will in part cover these slides in our presentation at the July 14th meeting, but given the time limitation we wanted to make sure you have all this information as the slides detail both our reasoning and suggestions for potential modification of this project.

We look forward to speaking with you later this week.

Sincerely,
Anna, Adam, Kay

ZAB Hearing 7/14/2022 Action Item #5

Appellant slides detailing opposition to project

Adam Safir and Anna Cederstav

1609 Virginia St.

Kay Bristol

1639 / 1641 California St.

Why did we appeal the prior ZAB decision?*

1. As has since been confirmed, the city memo used by the ZAB in making its decision misinterpreted the HAA, leading the ZAB to believe that it's "hands were tied" and that the ZAB could not require a reduction in the number of bedrooms or square footage of this project, entirely counter to past City practice.
 - The Housing Accountability Act (HAA) -- meant to drive new affordable housing and protect low-to-moderate income housing – had been misinterpreted to suggest that the city was obligated to permit conversion of two lower-income units into a luxury home with an attached ADU, drastically limiting the powers of the City and ZAB in contravention of the law.
 2. We felt that the city was unjustly allowing addition of a massive expansion and second story that adjacent neighbors oppose because it impacts their properties and multiple City goals:
 - Even though this project does not add any new housing or in any way alleviate the current housing crisis, and to the contrary decreases availability of lower-income housing in the neighborhood.
 - Even though the zoning standards would be exceeded and no objective standards are in place to either allow or disallow the impacts of the proposed project on shadow, light and privacy of adjacent properties.
 - Even though it would set a precedent for gentrification and elimination of lower-income units, in contravention of the General Plan and the goals of the City Counsel related to maintaining diversity.
 - Without considering all potential modifications initially suggested by the City Planner (removal of top floor to reduce impacts on neighbors) and by us in conversations with the City Planner.
- * See Pages 1-2 of written submission for detail

What's at stake here?

Detriment to city:

- Loss of two, small protected units that would be rent-controlled if rented, appropriate for single persons, students, elderly, new families – in the highly sought-after North-Berkeley neighborhood where diversification is a priority.
- Precedent that such units will be allowed to be converted into massive single-family homes.
- Precedent that illegal modification of a protected-unit duplex into a single family home will yield no consequence, with the City eventually permitting further modifications in that direction.
- Precedent that exceeded lot coverage of a storage shed with no impact on neighbors can be traded in to justify lot coverage exceedance of a three-level structure with significant impact on neighbors.

Detriment to neighbors:

- Significant reduction in property value and enjoyment of properties due to loss of light, air and privacy.

ZAB Role and Responsibilities

Approves or denies permits related to the use and development of land in Berkeley. (ZAB website)

Is not limited by HAA or SB330 from requiring significant modifications, including potentially denying or limiting request for expansion of square footage. (City Council, City Attorney)

Considers multiple factors in making land-use decisions, including the existing land uses (in this case, a rent-controlled low-income duplex) and social and economic consequences of the proposed project. (LU-4 on Discretionary Review)

Is appointed by City Council which delegates to the ZAB the administrative duty of applying established policies to make sure decisions to issue or deny permits are in line with current City goals. (Groch vs. City of Berkeley, 1981)

Relevant elements of City Plan and Policies that would support denial of this permit but are not mentioned in staff report

Berkeley General Plan Goal 2:

“Take steps to maintain an adequate supply of decent, affordable housing ...One major threat to Berkeley’s character and to its diversity is gentrification.”

“To maintain Berkeley’s unique character and quality of life, Berkeley must strive to maintain the cultural, social, and economic diversity that is such an important aspect of the character of Berkeley.”

LU-4 on Discretionary Review specifically states that among factors to be considered for land-use decisions are the existing land uses (in this case, a rent-controlled duplex of small, low-income units) and social and economic consequences of the proposed project.

H-1 which seeks to Increase the number of housing units affordable to Berkeley residents with lower income level. We assume this translates to a directive to not permit the elimination of more affordable housing units by allowing those that exist to be substantially reduced in size or converted into much larger residences, as proposed here.

H-32 (cited as H-33 in the staff report) regarding the need to encourage housing production adequate to meet City needs and the City’s share of regional housing needs. The question for ZAB here becomes whether it is more important for meeting City needs to maintain the existing smaller, protected rent-controlled, lower-income units, or to allow gentrification via massive expansion beyond zoning standards.

Comments on elements of City Plan and Policies that were mentioned in staff report

LU-3 regarding infill development was cited by staff as applicable to this project, but it is not. Whereas the City plan indeed advocates for infill development, infill development” refers to **building within unused and underutilized lands within existing development patterns.** (www.opr.ca.gov/planning/land-use/infill-development/)

“Infill revitalizes communities by breathing new life into empty buildings, vacant lots, and unused parcels.”

This property is already built beyond zoning standards for density and lot coverage and thus could not possibly be considered infill development. Thus LU3 does not apply.

LU-7. Here the staff focuses on subpart A and the requirement that new development be consistent with zoning standards. If this project is indeed new development, then it should be required to meet the 40% lot coverage for a two story building. If it is not new development, then subpart B that requires the city to “monitor new and existing uses to minimize or eliminate negative impacts on adjacent residential uses” should apply. In either scenario, the second story should not be allowed.

H-12 which seeks to encourage construction of new medium and high density housing on major transit corridors was referenced. The proposed project is not new construction and does not add any units, and thus this policy would not apply.

Current permitted structure.

- One-story duplex, with two identical units, each 671 sq. ft. (total 1,342)
- Both are protected, rent controlled units, ideal for lower-income residents.
- Duplex structure represents 44% lot coverage (3100 sq. ft. lot), where the maximum allowed for a single story structure is 45%. (Added backyard shed raised lot coverage to 50%)
- Duplex was illegally converted by project proponents into a single home, when their four children were young more than 20 years ago



Owner's current cars use all adjacent street parking and no off-street parking exists on this property

Proposed conversion

- The two 671 sq ft units would be eliminated and be replaced by a 3763 sq.ft. home containing an apartment.
 - One 3,262 sq. ft., three-level home with 4 bedrooms, a 'storage room', 5 bathrooms, and a 700 sq. ft. gym/family room, to be occupied by two adults.
 - One 501 sq. ft. apartment to be occupied by an adult son (who lives in Canada / Switzerland).
- Per the City Planner staff report: “non-conforming for lot coverage, density, and yards” (40% lot coverage is maximum for this structure) and thus “does not comply with the applicable, objective zoning standards” (requires 7 UPs/AUPs)
- Proposed design is opposed by two of three adjacent neighbors because it would be a massive dwelling on a tiny lot and because the third level generates privacy and shadow impacts, thus reducing property values.
- Both units would theoretically remain rent-controlled, but it is unlikely an owner would ever rent out the 4BR, 5 bath unit + gym under rent control.



Subjective vs. objective standards

City Planning argues that this project poses “no detrimental impacts” BUT that analysis:

- Does not consider loss of lower-income units, impacts on gentrification, and diversity in the city;
- Does not consider likelihood of rent-controlled units with the new configuration actually being rented;
- Does not consider precedents established by this case for future development in the city;
- Is based on a department policy of recommending for approval any permit that can be legally requested; and
- Makes an entirely subjective determination as to what constitutes minimal impact on neighbors.

The Berkeley City Council has not yet established objective standards for privacy, air and shadows.

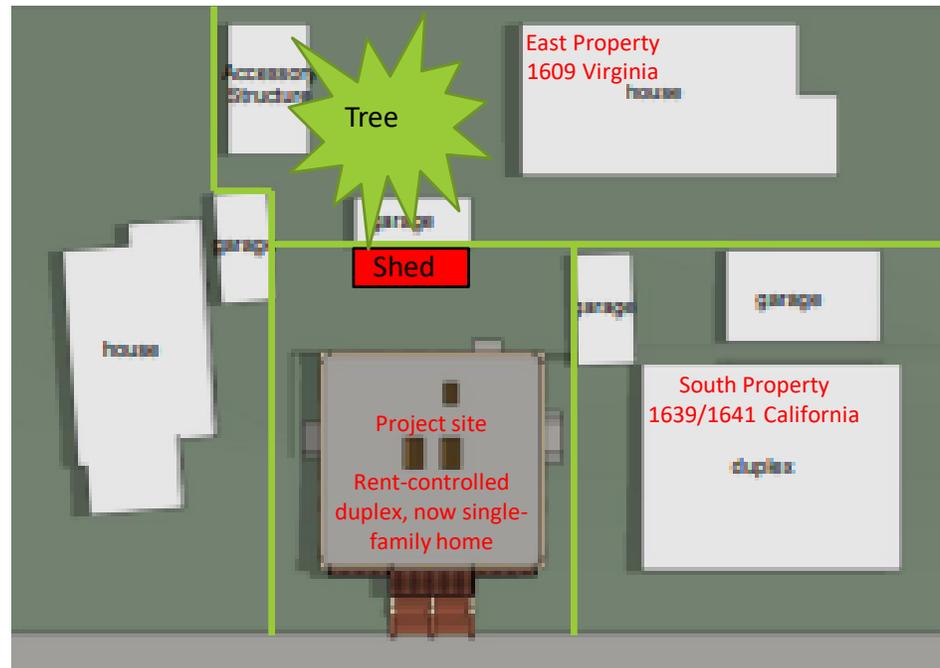
In absence of objective standards, it is our belief that ZAB should act with precaution with regard to detriment to neighbors, and focus on promoting the longer-term interests of the city, which in this case favors retaining existing smaller, lower-income units to promote diversification and help alleviate the housing crisis while also meeting sustainability goals.

Detriment to the City: Why you should not eliminate smaller, more affordable units.

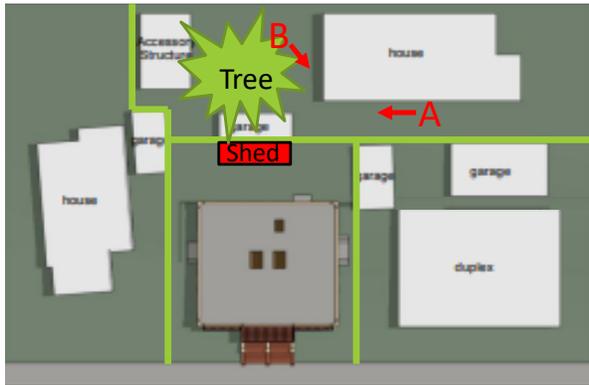
- Protect lower-income units that increase economic and racial diversity in Berkeley, especially North Berkeley.
- Promote inclusion and integration by maintaining a variety of size, price and kinds of units that are currently interspersed throughout neighborhoods.
- Help meet Berkeley's climate change goals by protecting and promoting smaller dwellings.
- Limit real estate speculation and gentrification that in the long-term will drive out lower-income residents and increase Berkeley's carbon foot-print.

These goals can all be accomplished by the ZAB and planning department exercising their discretion to not issue UPs and AUPs. There is nothing in the law that requires the City to give use permits for expansion of structures that do not bring additional housing units and it is ZAB's responsibility to approve OR DENY permits requested. This project does not add housing and thus is not protected under SB 330 or the HAA.

Detriment to neighbors: Property lines/structures impacted



Detriment to neighbors: Shading of 1609 Virginia

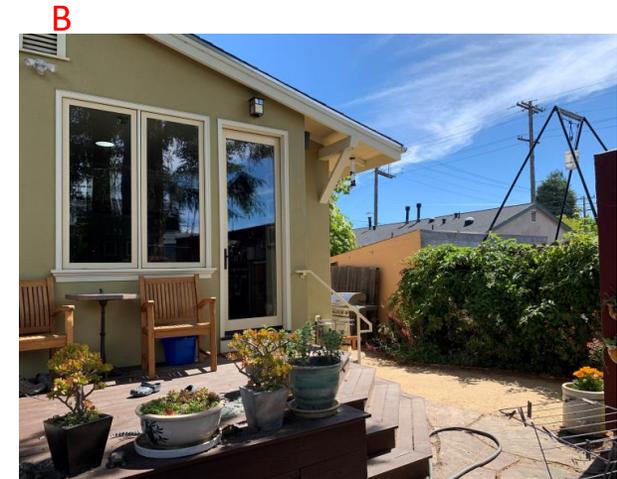


During the spring/summer months, much of the light entering the kitchen, dining room, and bedroom in the afternoon and evenings would be eliminated.

Redwood trees largely shade the back yard. During the summer months, the frequently used small sunny back yard deck and sitting area to the west of the house would both lose late-afternoon/evening sun from the proposed top story.

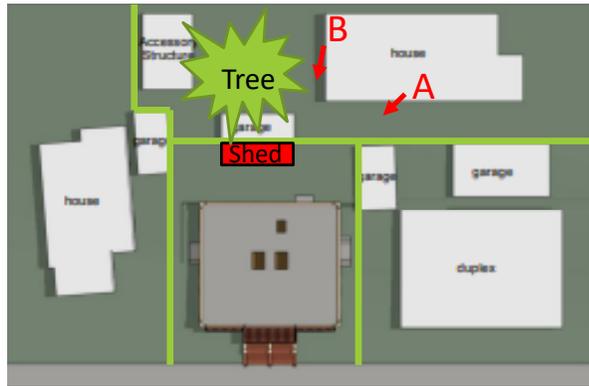


('driveway', looking north)



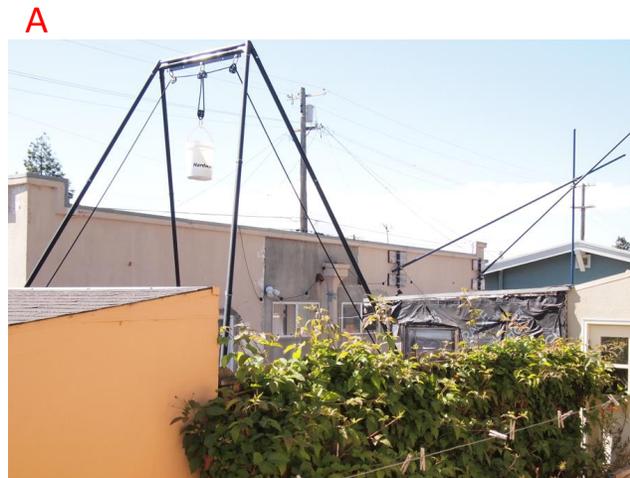
(rear deck, looking south-west)

Detriment to neighbors: Privacy at 1609 Virginia



When the neighbors walk on their roof, we have a clear view of them from the bedroom and dining room windows. We already removed a west-facing window to eliminate views of their house. A large new window facing east would now look into ours.

The proposed top floor would not only reduce light, but would also provide direct views into the house. The sky in these pictures would be almost entirely replaced by construction.

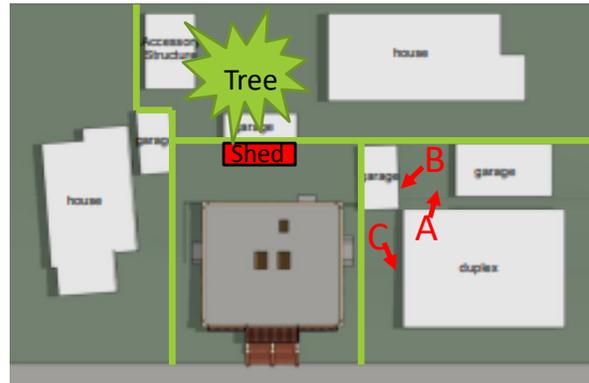


(View from mid-house dining room window)



(View from farthest east bedroom window)

Detriment to neighbors: 1639/1641 California



A - patio



B – from patio looking north



C – north fenestration



If this project were allowed, the very small outdoor space (a quiet and private patio) would be adjacent to a towering structure with views into the patio, and the view of the sky from north facing windows would be eliminated.

Current design significantly exceeds allowed floor area for new construction

The architect argues that the proponents need to be issued AUPs and UPs because it is a pre-existing building that has many constraints. "...we have to deal with a small lot and it was already overbuilt...if this was an empty lot we'd be building a very, very different structure on the site" (Sonny Grewal, ZAB hearing @ 1:27)

That is absolutely true and the owners were presumably 100% aware of these limitations and the rent-controlled nature of the property when they purchased it.

Per City Planning, 6/24/21: a "replacement building would have to comply with all applicable development standards of the R-2A zoning district, including lot coverage and setbacks."

So, just because the project might require use permits if ZAB allowed expansion, does not mean that ZAB has to permit square footage beyond what would normally be allowed for the lot.

- **Today's standards for new construction, if complying with all zoning, would permit ~2700 sq.ft.**
- **By comparison, a 2-level structure at the existing footprint and beginning at ground level – as initially proposed by the City Planner - would be 2,668 sq.ft and would have little impact on neighbors although it would still remove a low-income unit from the City.**
- Meanwhile, the current proposed design is for 3,763 sq. ft.

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

City planning considers that removal of a backyard shed added in 1952 represents a reduction in lot coverage that somehow justifies issuing a Use Permit to exceed lot coverage for a multi-level structure rather than requiring a variance for exceeding lot coverage. Allowing a shed removal to guarantee a right to a second story creates a pathway for others in Berkeley to circumvent zoning standards to build huge multi-level homes that exceed lot coverage for the new number of levels.

The 40% lot coverage zoning standard for a two-story structure should be applied as the impacts to neighbors of a shed vs. a second story are not even remotely comparable.



New upper level would substantially impact privacy and light



Current shed barely visible over fence

Discussion of options

We want to be clear that we do NOT feel that it is appropriate for a substantial expansion of this lower-income, rent-controlled duplex to be permitted, given current housing pressures in Berkeley, the City council's environmental & housing goals and objectives, the scale of the project proposed, and the detriment it would bring to our properties and property values.

The original City Planner assigned to this project agreed with the above, which is why he recommended we ask for major modifications of the permit, and why his advisory comments initially recommended a much smaller project (two stories, one of which is at street level to limit impacts on neighbors.)

Nevertheless, because this is our only opportunity to show ZAB various potential options, the following slides show different options for mitigating impacts.

Summary of options in order of preference

- 1. Protect and retain small lower-income duplex units in Berkeley by requiring structure to remain at current size and to restore the unit that was illegally removed.**
2. Allow expansion of one unit through addition of basement level.
3. Allow expansion of one unit by raising current structure 3' to add a 1st floor at street level.
4. Allow 3rd level (2nd story) with greatly reduced sq.ft. to south and east sides
5. Make minor modifications to proposed project (fencing, windows, parapet)

Options presented to ZAB (Five options, in order of preference), Options 1&2

1. Do not allow UPs/AUPs where not required and where the outcome is contrary to City goals and needs. Instead, choose to protect and maintain the lower income, rent controlled units of this North-Berkeley duplex. Require the owners to reconvert the current single-family residence into the original and legally registered duplex, thus bringing back the second unit to the neighborhood.
2. Allow only an expansion of the structure to 2,668 sq. ft. by adding the basement level with little impact to neighbors. **This option would be in line with the maximum square footage allowed on this lot, if this project were new construction.**
 - Removal of the basement 700 sq.ft 'gym/family-room' would allow for additional bedrooms / bathrooms on that level.
 - This would still be the only house on the block that has expanded to the size limit based on setbacks and lot coverage

Option 3

3. Consider an expansion of the structure by raising the current level 3ft and adding a 1st floor at street level again increasing square footage to 2,668 sq.ft. while allowing easier access and more light into the lower story.

Note that this is the **design that city planner Nick Armour originally suggested to the applicants in his February 2021 staff advisory comments even prior to learning that neighbors were opposed.**

- We might be willing to support raising a two level house by ~3' so that more windows could be added to the lower level
 - In this case, as well as for options 4 and 5 below, addition of a 2-3' obscuring trellis above the current property line fence could mitigate privacy concerns

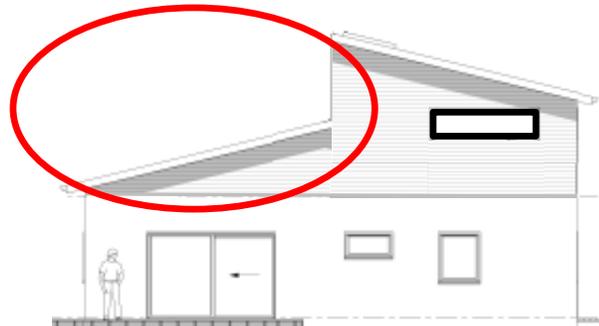
Option 4.

4. If the ZAB opts against preserving rent-controlled, lower-income housing and decides to permit the massive three-level, two-story structure, even so it could still modify the project to significantly limit the size of the upper floor addition by pulling it back from the south side of the building. Shadow studies would be needed to determine the amount of reduction needed, but this could reduce privacy and shadow impacts on the adjacent neighbors that oppose the project. Also require the modifications described in option 5 below.

East Side



Current design



Proposed partial upper floor



New partial upper floor
addition two blocks away at
California and Buena

Option 5 a – Add trellis to fence to increase 1st floor privacy

- 5. As a very last option, if the permit for this huge structure on such a small lot were nevertheless to be issued, require the following modifications on the south and east side of the house
 - a. Addition of trellis to fence between properties (raised to ~8½ ft) would block 1st floor views between properties
 - b. Modify all upper-level windows facing south and east to be awning windows (positioned above 5') to increase privacy for everyone (see following slides)
 - c. Remove the parapet feature from the upper-level east side of the house and replace it with a sloped roof that will not collect debris from the overhanging trees in a difficult-to-reach area. Specifically condition the permit so that no deck can be added through permit modification (see following slides)



Option 5 b - Window Reduction East Side

Make all eastern facing windows awning style windows set at 5' or above

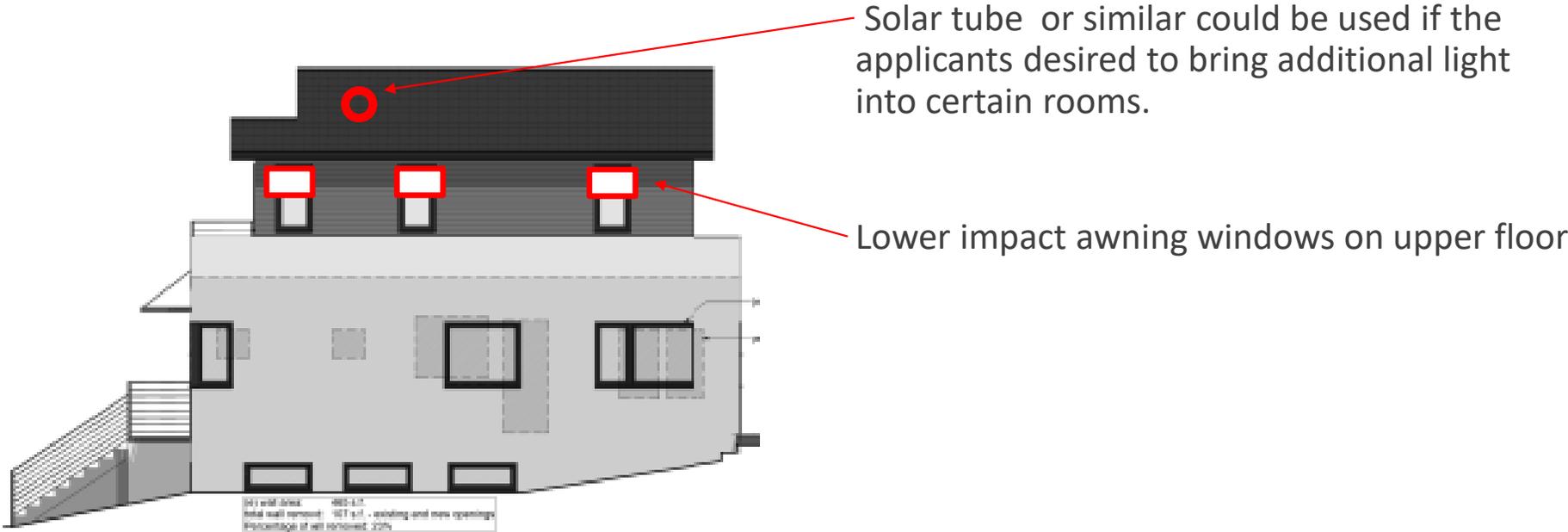


(Shadow's show existing windows)



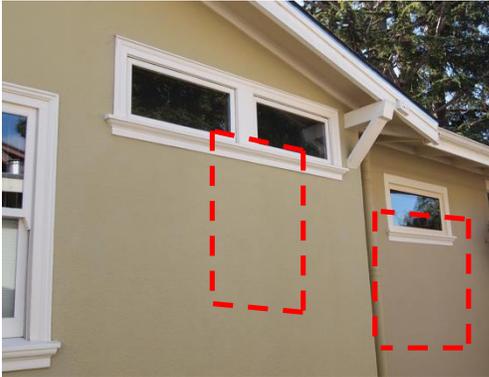
(Red shows 'lower impact' window)

Option 5 b – Window Reduction South Side



Example: 1609 Virginia remodel and fenestration (2017) was planned to decrease views between neighbors

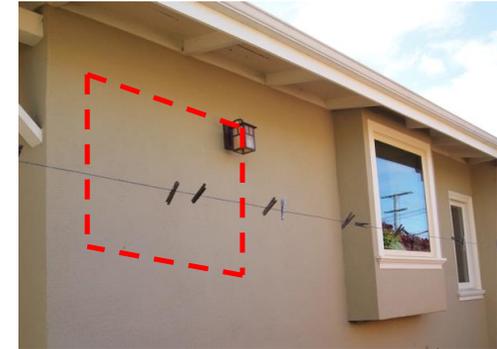
East side



North side



West side

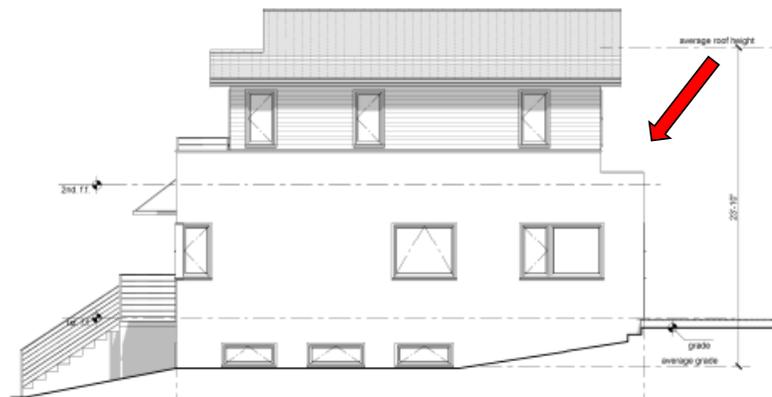


- North Side: Our 2017 remodel moved most of our windows to the north side, to increase privacy without losing too much light/sun. Very large windows on the North side now bring light into our bedroom and kitchen, but would be shaded part of the year by the proposed project.
- East Side: Bedroom and bathroom remodels utilized high-awning windows to ensure privacy w/ neighbors
- West Side: One window removed (---) to eliminate our direct view of the project property

Option 5 c - Parapet removal

Given the initial design submitted, history of illegal modifications on this property, and the potential to seek a post-permit legal modification directly from planning, we are concerned about a possible future conversion of the parapet roof to a 'deck' within the setback.

- The rear parapet was removed in 1st resubmission, but then added back in the final version for no apparent reason.
- Parapet only serves to collect tree debris and would be difficult to clean with no direct access (a continual source of frustration for the property owners for their current flat roof)
- Add condition to permit such that upper floor east side deck cannot be added in the future



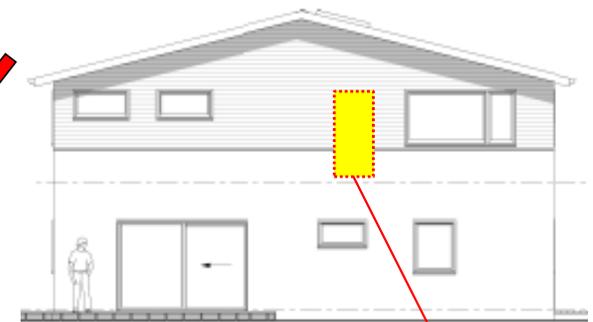
From 1st resubmission 5/25/21
(south side)

5/25/21 applicant response p3:

"We have eliminated the balcony at the rear (east side)"



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



Location of possible door if a rear 'deck' were to be added later and as proposed to planning in early 2021.