

PUBLIC HEARING
May 28, 2019
(Continued from May 14, 2019)

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Timothy Burroughs, Director, Planning and Development Department

Subject: ZAB Appeal: 1444 Fifth Street, Administrative Use Permit #ZP2018-0172

#### RECOMMENDATION

Conduct a public hearing, and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board (ZAB) decision to approve Administrative Use Permit #ZP2018-0172 to construct four detached, three-story, approximately 1,900 square-foot, single-family dwellings, each with an average height of 33 feet, on a 5,744 square-foot vacant lot in the MU-R District, and dismiss the appeal.

## FISCAL IMPACTS OF RECOMMENDATION None.

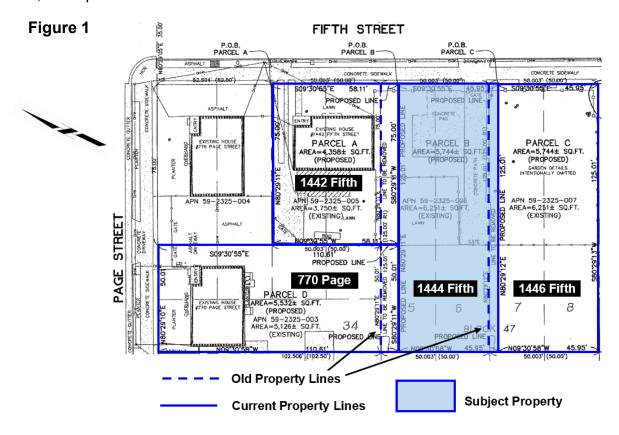
#### **CURRENT SITUATION AND ITS EFFECTS**

On January 24, 2019, the Zoning Adjustments Board (ZAB) held a public hearing and approved Administrative Use Permit (AUP) #ZP2018-0172 by a 5-1-1-1 vote (Yes: Pinkston, Clarke, Selawsky, O'Keefe, Kahn; No: Olson; Abstain: Sheahan; Absent: Tregub). On January 29, 2019, staff issued the notice of the ZAB decision, and on February 6, 2019, Jeffrey Spahn and Niels Traynor of the Ocean View Neighborhood Council filed an appeal of the ZAB decision with the City Clerk. The Clerk set the matter for review by the Council on May 14, 2019.

#### BACKGROUND

On December 14, 2016, Matthew Wadlund, the applicant for the current project, submitted an application for an Administrative Use Permit (AUP) and Staff Level Design Review to construct a similar four-unit development at 1446 Fifth Street, the parcel abutting the subject parcel to the south. After appeal of the staff-level approval and approval on appeal by ZAB, the City Council approved the project in July 2018. Council approval occurred after the applicant recorded a Lot Line Adjustment (LLA) to shift the shared property line between 1444 Fifth Street and 1446 Fifth Street and 1442 Fifth Street and 770 Page Street approximately eight feet to the south (see Figure 1

below).<sup>1,2</sup> The LLA, recorded on July 23, 2018, resulted in a decrease in parcel size of both the subject lot (1444 Fifth Street) and 1446 Fifth Street from 6,250 square feet to 5,744 square feet.



The LLA and associated decrease in parcel size affects the applicability of the Inclusionary Housing requirements in BMC Chapter 23C.12. These requirements apply to new construction of projects with five or more ownership units (e.g. condominium), or for sites whose size and zoning designation allow the construction of five or more units (BMC Section 23C.12.020.A.3). Applicable projects are required to provide either affordable units or an in-lieu fee.

The underlying Mixed Use-Residential (MU-R) zoning district has a density standard of one dwelling unit for each 1,250 feet of lot area and one additional unit for any remaining lot area which may be less than 1,250 square feet but greater than 750 square feet. Prior to the LLA, at 6,250 square feet each, both the parcels at 1444 and 1446 Fifth Street were large enough to accommodate up to five units. However, each

<sup>&</sup>lt;sup>1</sup> The applicant is the property owner of all four affected parcels.

<sup>&</sup>lt;sup>2</sup> An LLA is a ministerial approval subject to specific objective standards that relate to parcel characteristics in applicable building and zoning ordinances, including minimum lot size and minimum lot frontage.

parcel now can only accommodate four dwelling units so the Inclusionary Housing requirements no longer apply.

On August 31, 2018, the applicant submitted applications for an AUP and Staff Level Design Review to construct four new single-family dwellings on the vacant lot at 1444 Fifth Street. Design Review staff determined that the project was compatible with Citywide Design Guidelines and approved the design review application on January 9, 2019. The appeal period for the design review approval ended with no appeal on January 28, 2019.

Given the level of neighborhood interest in the project, the Zoning Officer set the AUP decision before ZAB as allowed by Berkeley Municipal Code (BMC) Section 23B.28.030. At the January 24, 2019 meeting, the ZAB held a public hearing, discussed the project, and approved the project.

#### **ENVIRONMENTAL SUSTAINABILITY**

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

#### RATIONALE FOR RECOMMENDATION

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; refer to the appeal letter (Attachment 2) for full text.

- Issue 1: Lot Line Adjustment. The appellants contend that the approved Lot Line Adjustment is illegal because it required the Public Works Department to "override zoning laws," and because it allowed the applicant to "avoid inclusionary housing requirement [sic]" [p. 1 and 2 of attached appeal letter].
- Response 1: As noted above, during the review process for entitlement of the southern abutting parcel, the applicant obtained an LLA, which modified the size of both parcels. Since the LLA has already been approved and recorded, it is not relevant to the pending AUP application, which must be evaluated in terms of the newly established lot size and configuration. The LLA conforms to applicable zoning and subdivision regulations, e.g. minimum lot area and width, access, and utilities.
- Issue 2: Lot Line Adjustment. The appellants contend that the approved Lot Line Adjustment is illegal because it violates State laws: SB 35 and the Housing Accountability Act [p. 1].
- Response 2: The LLA does not violate SB 35, as the provisions of SB 35 do not apply; the developer is not requesting streamlined processing of an affordable housing project. In addition, project approval is in compliance with the

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Housing Accountability Act as it would not involve denial of a development project or approval of such a project at a reduced density.

Issue 3: <u>Environmental Review</u>. The appellants contend that the approval of this project is "piecemeal," which subsequently "means no environmental impact study was needed," [p. 1 of attached appeal letter].

Response 3: The ZAB found that both the pending application and the project at 1446 Fifth Street are categorically exempt from additional review under the California Environmental Quality Act (CEQA) because they qualify as Infill Developments pursuant to Section 15332 of the CEQA Guidelines. The appellants refer to the approved project at 1446 Fifth Street and several other parcels on the same block that the applicant has said he plans to develop in the future, and they suggest that additional environmental impact analysis would have been required if development on all the parcels were considered together.

The CEQA Guidelines require evaluation of potential environmental impacts on a per project basis and require analysis of "the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects." Therefore, since there is no other currently pending application at a lot abutting the subject property, the City can only base its analysis for this project on the project itself, the existing neighborhood, and other pending or approved projects nearby.

Per CEQA guidelines Section 15300.2, determination that a project is categorically exempt is subject to several exceptions, including "Cumulative Impact: All exemptions...are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant." In other words, for this pending AUP application, staff considered the proposed project, the approved development at the abutting parcel, and all other proposed and approved developments in the neighboring area and ultimately determined that no significant cumulative impact would occur. Analysis of impacts from any future proposals in the area (by the applicant or anyone else) would be evaluated according to the same criteria and would therefore be required to account for impacts of the other pending development.

Moreover, to the extent that the appellants contend that additional CEQA analysis would be required if all potential development projects in the vicinity were considered to be a single project, the same infill categorical exemption is not restricted to projects of a certain size, and the City has consistently applied the exemption to other recently approved development projects in the area, including projects that are larger than

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the proposal. For example, both 739 Channing Way, which the appellants cite and included 10 dwelling units, four live-work units, and one office space, and nearby 1500 San Pablo Avenue, which included 170 dwelling units and ground-floor commercial space, were approved as infill categorically exempt projects. Thus, even projects larger than the pending proposal could be deemed categorically exempt.

Issue 4: <u>Traffic Impact Analysis</u>. The appellants contend that the approval of this project is "piecemeal," which subsequently "means no traffic impact analysis was needed" [p. 1 of attached appeal letter].

Response 4: The appellants are correct that the City did not require a Traffic Impact Analysis (TIA) during the review of the proposal. Per the Zoning Project Submittal Requirements, while TIAs are typically required only for projects involving 10 or more units, the Traffic Engineer may require a TIA for any project when deemed necessary. In this case, the city Traffic Engineer reviewed both the approved project at the abutting parcel and the proposed project at the subject parcel, and in both cases, concluded that a TIA was not required given the existing neighborhood conditions and the proposed scope of work. If the applicant applies to develop another nearby parcel in the future, the Traffic Engineer will review that application in the same manner and other approved or pending projects will be considered. Thus, consideration of hypothetical future projects is unnecessary.

Issue 5: Construction Impacts. The appellants contend that the approval of this project is "piecemeal," which subsequently "means 5 years of construction in our neighborhood." [p. 1 of attached appeal letter].

Response 5: The City cannot control when entitled developments are constructed; building permit submittal and approval will not necessarily occur immediately after a developer has received land use approval, and construction timelines vary widely. However, while the City is not able to dictate when construction for approved projects occurs, it can address the appellants' concern regarding impacts from construction via standard conditions of approval.

In this case, the ZAB approved the project with several conditions of approval intended to reduce such impacts. Those conditions include the designation of a project liaison in charge of reporting construction-related complaints to the Planning Department (COA#10), a Transportation Construction Plan to help manage activities that could affect nearby sidewalks and streets (#18), and limits to the hours and days when construction activities may occur (#19). While there are no pending applications to develop abutting parcels by the applicant or anyone else,

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if such applications are submitted, the City may impose additional conditions of approval if it found necessary to limit impacts to the neighborhood from construction activities.

Issue 6:

<u>Driveway Easement</u>. The appellants contend that "the driveway easement...is only needed because the developer reduced the lot size widths thereby making 1444 Fifth Street too narrow for a driveway" [p. 2 of attached appeal letter].

Response 6:

The site plan approved by ZAB includes a driveway serving each of the four proposed attached one-car garages at the project site, and which would occur along the north side of the property. The driveway would be part of a proposed shared access easement that would also provide access to the northern abutting parcels at 1442 Fifth Street and 770 Page Street. The City's Traffic Engineer reviewed this proposal and confirmed that the proposed parking and driveways would operate acceptably.

The appellants imply that the driveway easement is required only because the Lot Line Adjustment was approved. However, as previously stated, the LLA was a ministerial approval creating newly configured parcels, all of which meet the standards of both the Planning Department and the Public Works Department. The driveway easement is required to provide code-compliant vehicle access to the proposed garages and the existing buildings at the northern abutting parcels. Such easements, which allow shared access for vehicles in the areas between residential buildings, are common across the city, do not create detriment, and tend to result in less impermeable paving in final development.

Issue 7:

<u>Design Review Committee</u>. The appellants contend that the project should be scheduled for a meeting at the DRC because it "was never in front of DRC and thus never had public input" [p. 2 of attached appeal letter].

Response 7:

Because the project is located in the MU-R District and requires a staff level zoning permit (i.e. AUP), design review is performed at staff level. The applicant submitted a staff level design review application in conjunction with the AUP application. Design Review staff evaluated the proposal in terms of its consistency with applicable Design Guidelines and its compatibility with the massing, design, and materials of buildings in the surrounding neighborhood. Staff determined that the project meets design review requirements and posted notices of staff-level approval on the project site.

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Staff Level Design Review approvals are subject to a 14-day appeal period and if appealed, are scheduled for a public meeting at the Design Review Committee (DRC). In this case, no appeal was filed during the 14-day positing period; therefore, a public meeting at the DRC was not required.

#### HOUSING ACCOUNTABILITY ACT ANALYSIS

This project complies with applicable, objective general plan and zoning standards, and thus the Housing Accountability Act (§65589.5(j)) applies. In order to deny the project or approve it at a lower density, the City Council must base its decision on written findings supported by a preponderance of the evidence that:

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

Staff is not aware of any basis to make the findings listed above.

#### ALTERNATIVE ACTIONS CONSIDERED

Pursuant to BMC Section 23B.32.060.D, the Council may (1) continue the public hearing, (2) reverse, affirm, or modify the ZAB's decision, or (3) remand the matter to the ZAB.

#### **CONTACT PERSON**

Timothy Burroughs, Director, Planning & Development Department, (510) 981-7437 Leslie Mendez, Senior Planner, Land Use Planning Division, (510) 981-7426

#### Attachments:

1: Resolution

Exhibit A: Findings and Conditions

Exhibit B: Project Plans dated January 8, 2019

- 2: Appeal Letter dated February 6, 2019
- 3: Index to Administrative Record
- 4: Administrative Record
- 5: Public Hearing Notice

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

UPHOLD THE ZONING ADJUSTMENTS BOARD (ZAB) DECISION TO APPROVE ADMINISTRATIVE USE PERMIT #ZP2018-0172 TO CONSTRUCT FOUR DETACHED, 3-STORY, APPROXIMATELY 1,900 SQUARE-FOOT, SINGLE-FAMILY DWELLINGS, EACH WITH AN AVERAGE HEIGHT OF 33 FEET, ON A 5,744 SQUARE-FOOT VACANT LOT IN THE MIXED USE-RESIDENTIAL ZONING DISTRICT, AND DISMISS THE APPEAL

WHEREAS, on August 31, 2018, 1444 5<sup>th</sup> Street LLC ("applicant") filed an application for an Administrative Use Permit and Staff Level Design Review to construct four detached, 3-story, approximately 1,900 square-foot, single-family dwellings, each with an average height of 33 feet, on a 5,744 square-foot parcel at 1444 Fifth Street ("project"); and

WHEREAS, on November 19, 2018, staff deemed this application complete and determined that the project is categorically exempt from the California Environmental Quality Act ("CEQA") under Section 15332 of the CEQA Guidelines as an infill project; and

WHEREAS, on January 14, 2019, design review staff posted the approval of the Staff Level Design Review (DRSL) Application in three locations; and

WHEREAS, on January 24, 2019, at a duly noticed public hearing, the Zoning Adjustments Board (ZAB) held a public hearing in accordance with BMC Section 23B.28.030 and approved the Administrative Use Permit application with findings and conditions; and

WHEREAS, on January 28, 2019, the posting period for the DRSL approval ended with no appeal, and the DRSL approval became effective; and

WHEREAS, on January 29, 2019, staff issued the notice of the ZAB decision; and

WHEREAS, on February 6, 2019, Jeffrey Spahn and Niels Traynor filed an appeal of the ZAB decision with the City Clerk; and

WHEREAS, on May 14, 2019, at a duly noticed public hearing, 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 City Council of the City of Berkeley that the City Council hereby adopts the findings to approve made by the ZAB in Exhibit A,

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adopts the conditions of approval in Exhibit A, dismisses the appeal, and approves Administrative Use Permit #ZP2018-0172 as shown in Exhibit B.

#### **Exhibits**

A: Findings and Conditions

B: Project Plans dated January 8, 2019

## ATTA COMMENT 1, EXHIBIT A

# FINDINGS AND CONDITIONS JANUARY 24, 2019

### 1444 Fifth Street

Administrative Use Permit #ZP2018-0172 to construct four detached, 3-story, approximately 1,900 square-foot single-family dwellings, each with an average height of 33 feet, on a 5,744 square-foot vacant lot.

#### **PERMITS REQUIRED**

• Administrative Use Permit, under BMC 23E.84.030, to construct four new dwelling units.

#### I. CEQA FINDINGS

- 1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15332 of the CEQA Guidelines ("In-Fill Development").
- 2. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

#### II. FINDINGS FOR APPROVAL

- 1. As required by Section 23B.32.040.A of the Zoning Ordinance, 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:
  - The proposed development on this parcel is equal to or below the Mixed-Use Residential (MU-R) standards set by BMC 23E.84.070 for maximum residential density, floor area, and height (four dwelling units on the 5,744 square-foot lot, where four dwelling units is the maximum allowed based on the size of this lot; floor area ratio of 1.3, where the maximum allowed is for residential development 1.5; average height of 33', where the maximum allowed is 35'). The proposed project also meets or exceeds the requirements for setbacks, parking, and useable open space (1 parking space per dwelling unit, and 816 square feet of useable open space, where 600 square feet is required (150 square feet per unit));
  - The proposed project retains the mixed but primarily residential character of the surrounding street and is consistent with the overall scale of the one-, two-, and three-story residences and commercial and manufacturing spaces in the neighborhood. The proposed design references the industrial context of West Berkeley and its mix of uses and aesthetics;
  - No substantial land use conflicts are expected from the project due to the site's location in a
    mixed area of commercial and residential development, because the project's density will be
    within the range of the surrounding development, and because no substantial privacy or shadow
    impacts will occur;

- Sunlight: The Board finds that the project will not result in significant loss of direct sunlight on abutting residences for several reasons. No residences occur to the west and new shadows cast towards the east will occur primarily along Fifth Street, and not any dwellings. The project will cast shadows on the northern abutting dwelling at 1442 Fifth Street during the winter solstice and on the southern abutting dwellings (currently under construction) at 1446 Fifth Street during the summer solstice. However, in both cases, shadows will only affect some windows and occur during some morning hours. Because impacts to neighboring residences will be limited to certain hours a day and certain months of the year, these shading impacts are not deemed detrimental;
- Air: The Board finds that the proposal is consistent with the existing development and buildingto-building separation patter – or air – in this MU-R neighborhood because the buildings will exceed minimum setback and useable open space requirements and will be three stories where the maximum allowed is three; and
- Views: The proposed project will not result in additional obstruction of significant views in the neighborhood because there are no significant views as defined in BMC Section 23F.04 (Definitions) available to residences in the area. The area is generally flat, developed with oneto three-story buildings, and includes mature vegetation which provides visual screening.
- 2. Pursuant to Berkeley Municipal Code Section 23E.84.090, the Zoning Adjustments Board finds that the proposed project is consistent with the purposes of the MU-R District for the following reasons:
  - The project will strengthen the residential concentration in this neighborhood. The residential use
    of the project will protect neighboring residents from the unreasonably detrimental effects of
    nonresidential uses, such as noise, vibration, odors, smoke, fumes, gases, dust, heat and glare;
  - The project is consistent with the West Berkeley Plan because the proposed massing and design is appropriate for the neighborhood and reflects the nature of the MU-R District;
  - The project is not likely, under reasonably foreseeable circumstances, to either induce or contribute to a cumulative change of use in buildings away from residential, live/work, light industrial, or arts and crafts uses because the site location is in an area of West Berkeley known for a diverse mix of land uses and because the project will continue the residential pattern on the west side of Fifth Street at this block; and
  - The proposed project is able to meet the applicable performance standards as described in BMC 23E.84.070.H because no additional performance standards are applicable to this project.

#### III. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

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

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

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

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

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

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

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

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

No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Zoning Officer.

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

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

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

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

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

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

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

- A. A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.
- B. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.

C. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has: (1) applied for a building permit; or, (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

#### 9. Indemnification Agreement

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

#### IV. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD

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

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

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

☐ Project Liaison		
	Name	Phone #

#### **Prior to Issuance of Any Building Permit:**

- **11.** The applicant shall file an "Address Assignment Request Application" with the Permit Service Center (1947 Center Street) for any address change or new address associated with this Administrative Use Permit. The new address(es) shall be assigned prior to issuance of a building permit.
- **12.** The applicant shall provide the recorded driveway easements, as depicted on the Site Plan, to the Zoning Officer.

- 13. Geotechnical Plan Review. The applicant shall follow all conditions and recommendations outlined in the geotechnical report and response letters prepared by Peters and Ross (December 16, 2016, May 12, 2017, and October 2018) and the peer reviews prepared by Cotton, Shires and Associates, Inc. (February 6, 2017, May 24, 2017, and October 2018). In addition, the applicant's geotechnical consultant shall review and approve all geotechnical aspects of the project building and grading plans (i.e., site preparation and grading, site drainage improvements and design parameters for foundations, retaining walls, and driveway) to ensure that their recommendations have been properly incorporated. In addition the consultant shall review project drainage and grading plans and verify that proposed site drainage discharge is acceptable from a geotechnical perspective. The results of the plan review shall be summarized by the geotechnical consultant in a letter and submitted to the City Engineer for review and approval prior to issuance of building permits.
- **14.** <u>Toxics</u>. The applicant shall contact the Toxics Management Division (TMD) at 1947 Center Street or (510) 981-7470 to determine which of the following documents are required and timing for their submittal:
  - A. Environmental Site Assessments:
    - 1) Phase I & Phase II Environmental Site Assessments (latest ASTM 1527-13). A recent Phase I ESA (less than 6 months old\*) shall be submitted to TMD for developments for:
      - All new commercial, industrial and mixed use developments and all large improvement projects.
      - All new residential buildings with 5 or more dwelling units located in the Environmental Management Area (or EMA).
      - EMA is available online at:
      - http://www.cityofberkeley.info/uploadedFiles/IT/Level 3 General/ema.pdf
    - 2) Phase II ESA is required to evaluate Recognized Environmental Conditions (REC) identified in the Phase I or other RECs identified by TMD staff. The TMD may require a third party toxicologist to review human or ecological health risks that may be identified. The applicant may apply to the appropriate state, regional or county cleanup agency to evaluate the risks.
    - 3) If the Phase I is over 6 months old, it will require a new site reconnaissance and interviews. If the facility was subject to regulation under Title 15 of the Berkeley Municipal Code since the last Phase I was conducted, a new records review must be performed.
  - B. Soil and Groundwater Management Plan:
    - 1) A Soil and Groundwater Management Plan (SGMP) shall be submitted to TMD for all non-residential projects, and residential or mixed-use projects with five or more dwelling units, that: (1) are in the Environmental Management Area (EMA) and (2) propose any excavations deeper than 5 feet below grade. The SGMP shall be site specific and identify procedures for soil and groundwater management including identification of pollutants and disposal methods. The SGMP will identify permits required and comply with all applicable local, state and regional requirements.
    - 2) The SGMP shall require notification to TMD of any hazardous materials found in soils and groundwater during development. The SGMP will provide guidance on managing odors during excavation. The SGMP will provide the name and phone number of the individual responsible for implementing the SGMP and post the name and phone number for the person responding to community questions and complaints.
    - 3) TMD may impose additional conditions as deemed necessary. All requirements of the approved SGMP shall be deemed conditions of approval of this Administrative Use Permit.
  - C. Building Materials Survey:
    - 1) Prior to approving any permit for partial or complete demolition and renovation activities involving the removal of 20 square or lineal feet of interior or exterior walls, a building

materials survey shall be conducted by a qualified professional. The survey shall include, but not be limited to, identification of any lead-based paint, asbestos, polychlorinated biphenyl (PBC) containing equipment, hydraulic fluids in elevators or lifts, refrigeration systems, treated wood and mercury containing devices (including fluorescent light bulbs and mercury switches). The Survey shall include plans on hazardous waste or hazardous materials removal, reuse or disposal procedures to be implemented that fully comply state hazardous waste generator requirements (22 California Code of Regulations 66260 et seq). The Survey becomes a condition of any building or demolition permit for the project. Documentation evidencing disposal of hazardous waste in compliance with the survey shall be submitted to TMD within 30 days of the completion of the demolition. If asbestos is identified, Bay Area Air Quality Management District Regulation 11-2-401.3 a notification must be made and the J number must be made available to the City of Berkeley Permit Service Center.

- D. Hazardous Materials Business Plan:
  - A Hazardous Materials Business Plan (HMBP) in compliance with BMC Section 15.12.040 shall be submitted electronically at <a href="http://cers.calepa.ca.gov/">http://cers.calepa.ca.gov/</a> within 30 days if on-site hazardous materials exceed BMC 15.20.040. HMBP requirement can be found at http://ci.berkeley.ca.us/hmr/
- 15. The Coast Live Oak tree on the site, near the south property line, and its roots shall be protected from all injuries that could endanger survival. The applicant shall consult with the City's Arborist and, prior to excavation work or issuance of any building permit, provide a plan to protect and preserve the tree during and after construction for the City Arborist's approval. The plan shall include the following conditions for construction work:
  - The applicant shall provide an onsite sign that is visible from the street and includes the contact information of the person responsible for monitoring the site and ensuring tree protection measures are followed.
  - The applicant shall install a 6' fence, which shall remain for the duration of construction, to protect the area within the drip-line. No construction activity, including storage, may occur within the fenced area.
  - If roots are damaged, construction shall cease until a certified arborist has been contacted and comes on site and provides direction to protect the trees as necessary.
  - Failure to adequately protect the existing oak tree from damage such that one or more branch is removed through negligence or intentional action shall require corrective measures as determined by the Zoning Officer.
  - Any pruning that involves the removal of more than one-fourth of the functioning leaf, stem, or root system of a Coast Live Oak tree in any 24 month period is prohibited.
- **16.** Any proposed street tree removal shall be subject to the approval of a street tree removal permit by the City Forester.
- **17.** Any proposed new trees, including planting, irrigation and maintenance methods, in the public right of way shall be approved by the City's Arborist and the Public Works Department prior to issuance of a building permit.

#### **During Construction:**

- **18.** <u>Transportation Construction Plan</u>. The applicant and all persons associated with the project are hereby notified that a Transportation Construction Plan (TCP) is required for all phases of construction, particularly for the following activities:
  - Alterations, closures, or blockages to sidewalks, pedestrian paths or vehicle travel lanes (including bicycle lanes);
  - Storage of building materials, dumpsters, debris anywhere in the public ROW;
  - · Provision of exclusive contractor parking on-street; or
  - Significant truck activity.

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

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

- **19.** 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.
- **20.** 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.
- **21.** 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.
- **22.** 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.
- **23.** 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.
- **24.** Trucks hauling debris, soil, sand, or other loose materials shall be covered or required to maintain at least two feet of board.
- **25.** Public streets shall be swept (preferably with water sweepers) of all visible soil material carried from the site.
- **26.** The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way.

- **27.** 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.
- 28. 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.
- Palt 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.
- **30.** 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.
- 31. <u>Human Remains (Ongoing throughout demolition, grading, and/or construction)</u>. 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.

32. 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:**

- **33.** All construction at the subject property shall substantially conform to the approved Administrative Use Permit drawings or to modifications approved by the Zoning Officer.
- **34.** All landscape, site and architectural improvements shall be completed per the attached approved drawings dated January 8, 2019.

#### At All Times (Operation):

- **35.** 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.
- **36.** <u>Drainage Patterns</u>. 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.
- **37.** <u>Electrical Meter</u>. Only one electrical meter fixture may be installed per dwelling unit.

ATTACHMENT 1, EXHIBIT B

ARCHICAD EDUCATION VERSION

STREE JONES

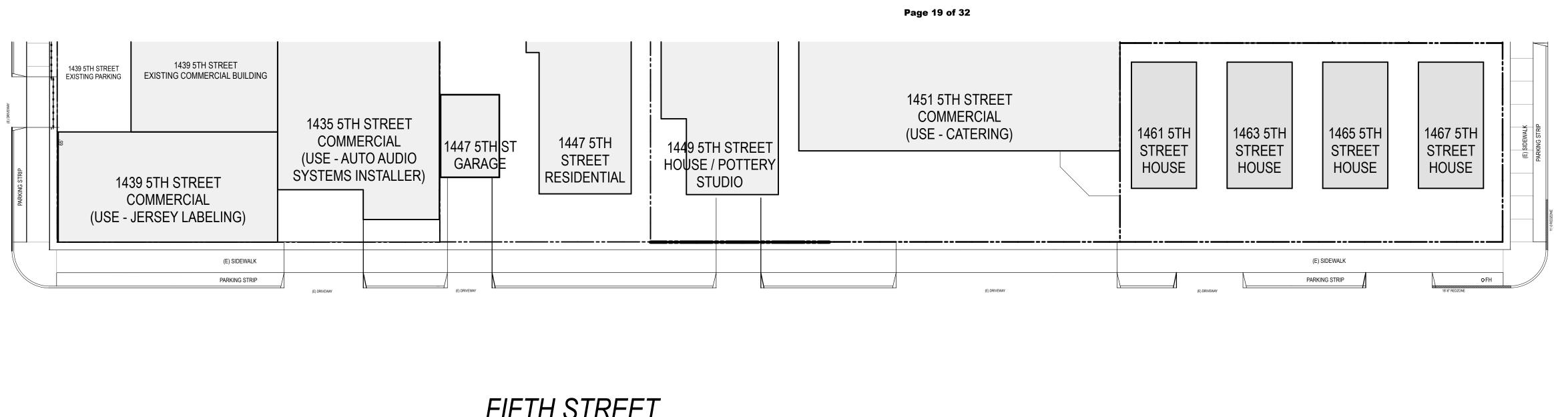
JAN 08 2019

RECEIVED

LAND USE PLANNING

1444 5th STREET **VICINITY MAP** 

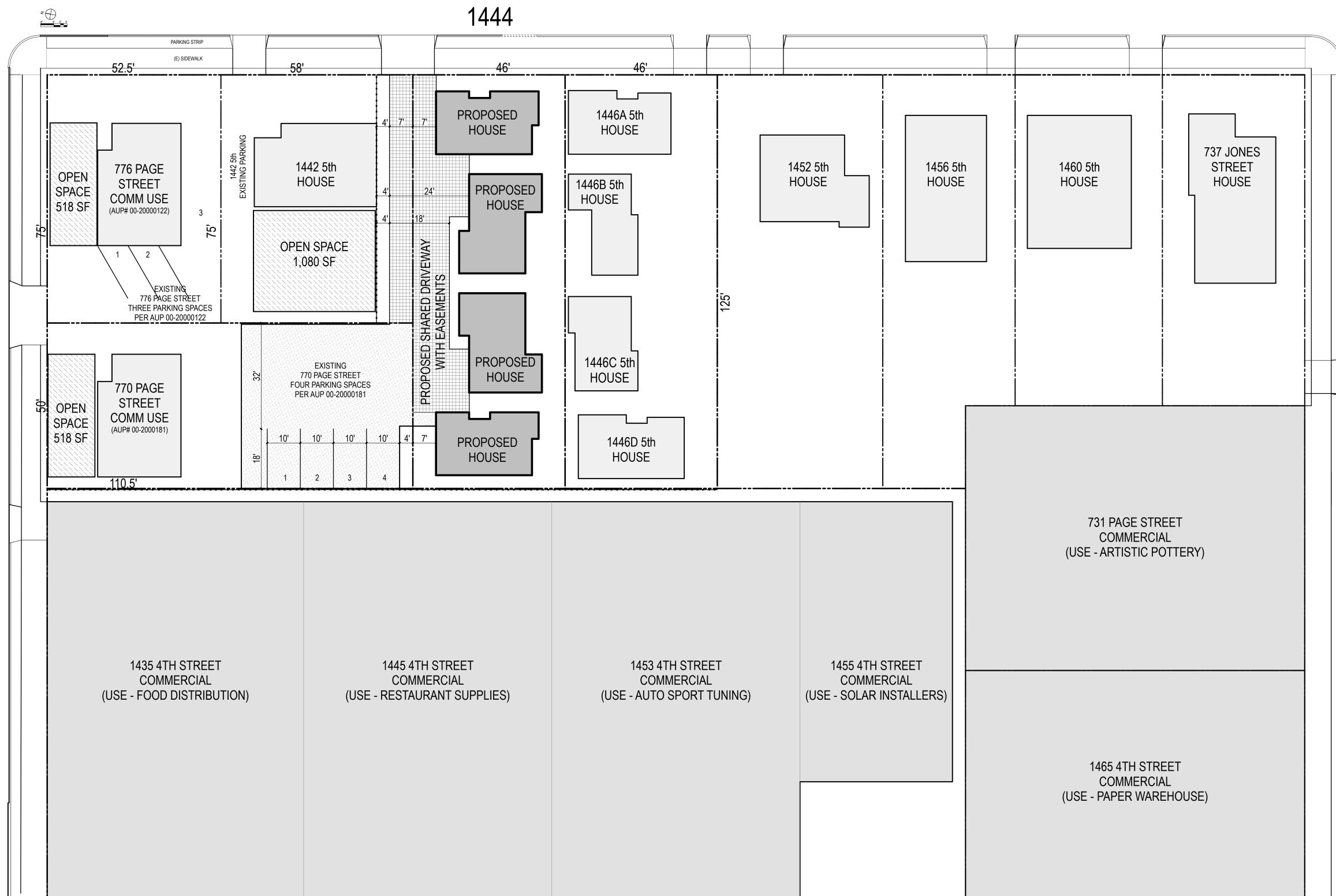
> WADLUND+ Design Studio 1444 5TH STREET -- AUP DECEMBER 2018



STREET PAGE

(E) SIDEWALK

FIFTH STREET



SITE PLAN WITH FIRST FLOOR

1444 5TH STREET -- AUP

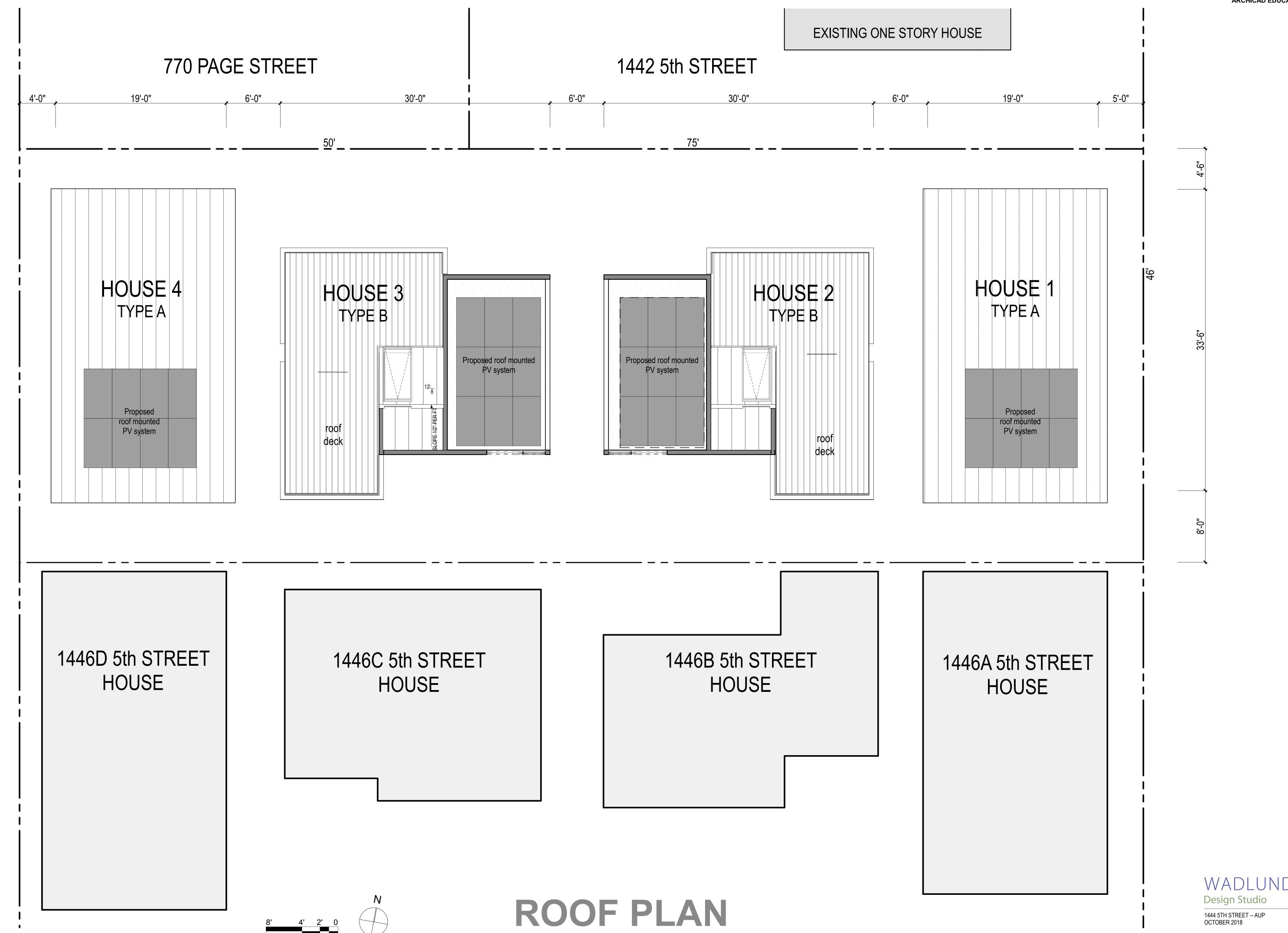


STREET

**EXISTING WAREHOUSE FACING 4TH** 

STREET

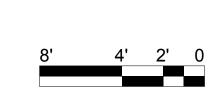
EXISTING WAREHOUSE FACING 4TH



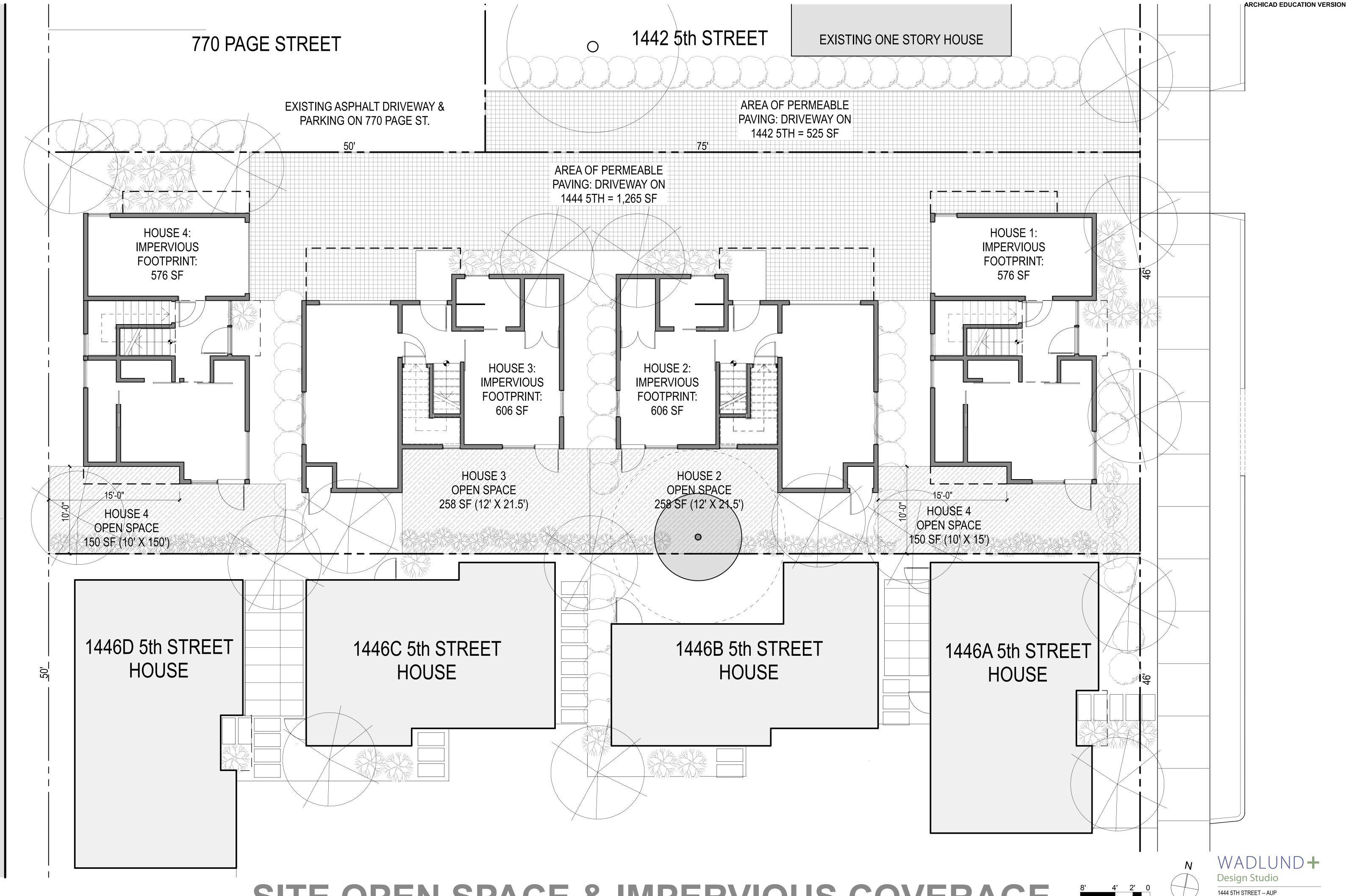
WADLUND+



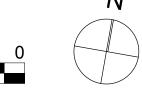
LANDSCAPE PLAN

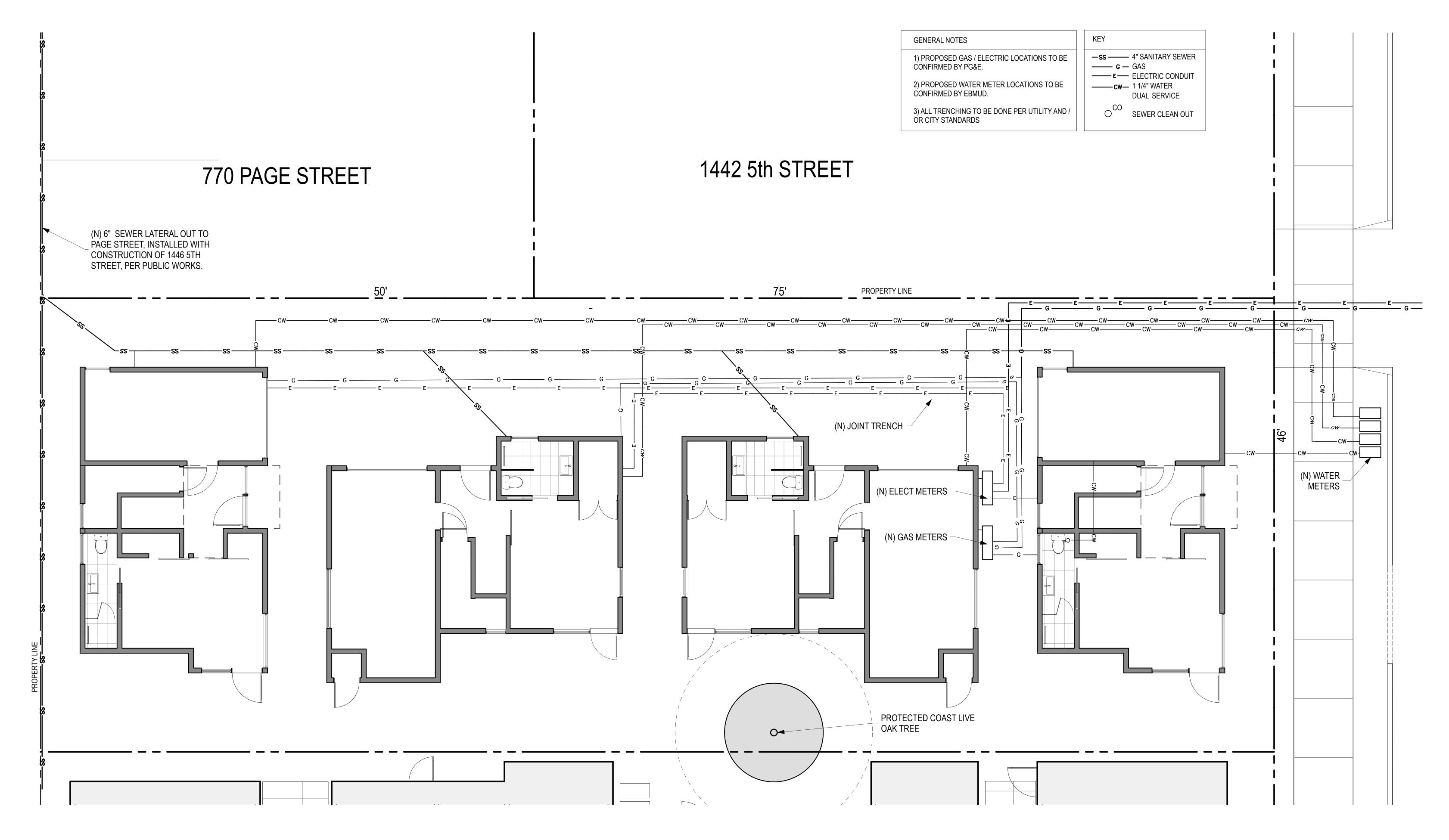






SITE OPEN SPACE & IMPERVIOUS COVERAGE

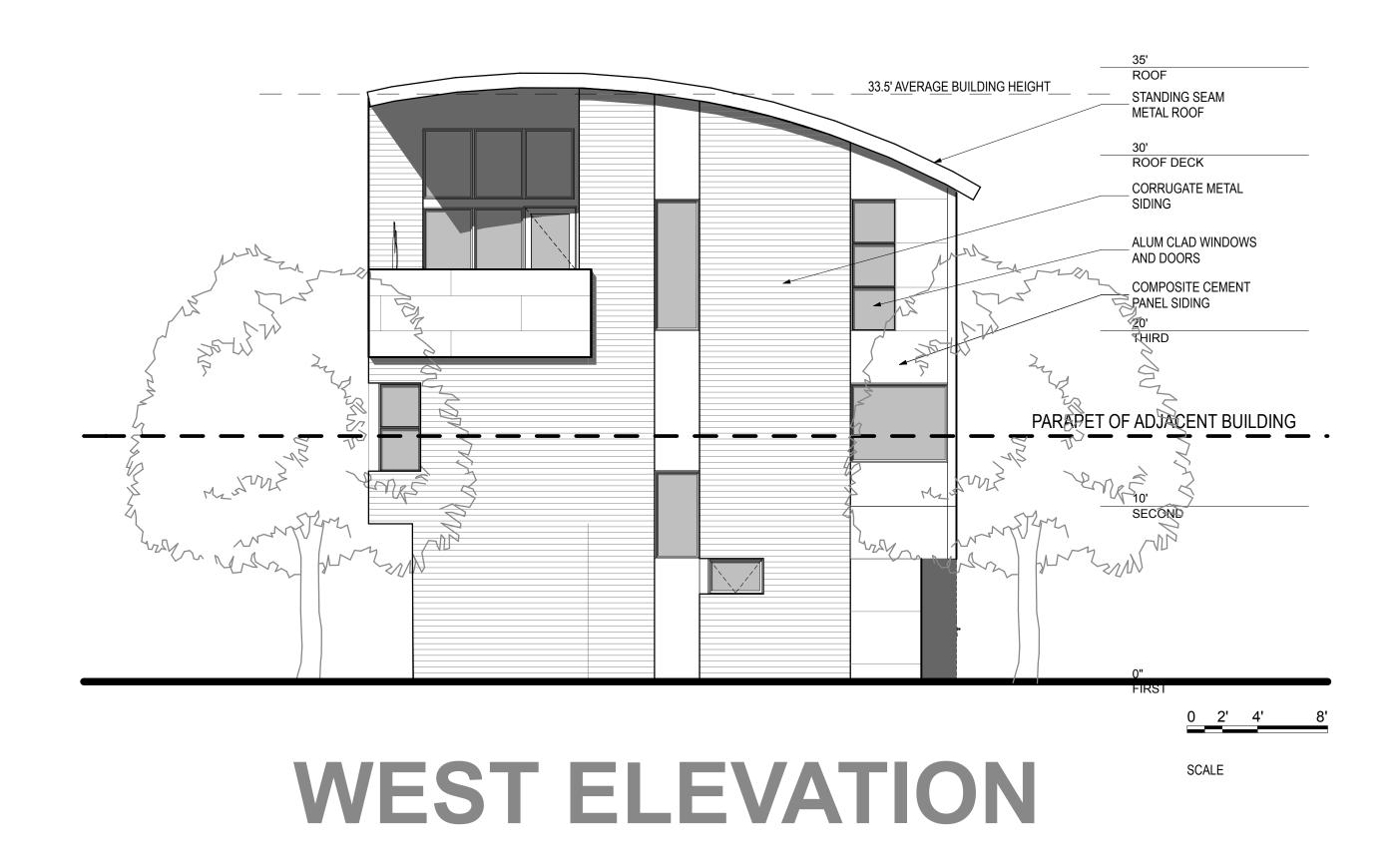




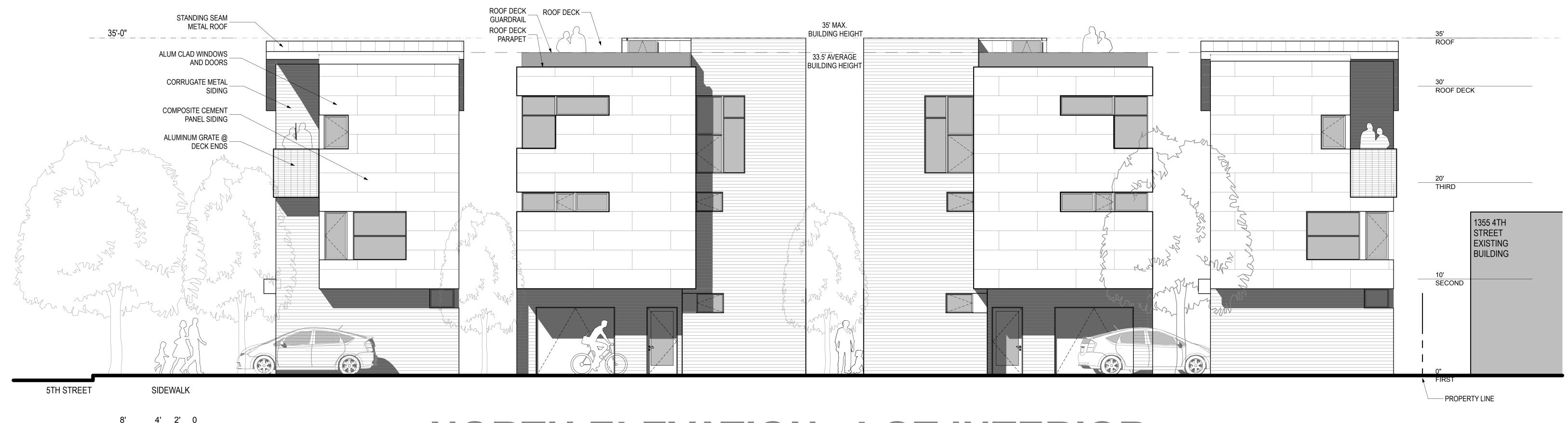




Design Studio







# NORTH ELEVATION - LOT INTERIOR



CITY CLERK DEPT

2/5/19

Ocean View Neighborhood Council Jeffrey Spahn and Niels Traynor 809 Page Street Berkeley, CA 94710 2019 FEB -6 PM 2: 15

To The Mayor and Berkeley City Council

Appeal of 1444 5th Street

ZP-2018-0172

Before Lot Line Adjustment by Public Works was complete,

1446 5<sup>th</sup> Street 6,251sf (size of lot can allow 5 units) 1444 5<sup>th</sup> Street 6,251sf 1442 5<sup>th</sup> Street 3,750sf 770 Page Street 5,126sf 776 Page Street 3,900sf

Total: 25,278sf Total Lot Development –

The developer disclosed that he plans to develop all 5 lots at the ZAB meeting, January 24<sup>th</sup> 2019.

#### Appeal Items:

- 1. Can Public Works override zoning laws? Should property sizes be reduced to avoid inclusionary housing requirement?
- 2. Lot Line Adjustments to reduce density is a violation of SB35. Lot Size reduction to reduce density is also a violation of the Housing Accountability Act. A city can not impose changes that reduce density or the percentage of a lot that may be occupied by a building or structure. If you allow one developer to do this then you allow anyone in the neighborhood to do this thereby eliminating the inclusionary housing. This is a major set back for affordable housing.
- 3. Piecemeal construction, with each project taking one year to complete means five years of construction in our neighborhood. This is a big negative impact on our neighborhood. It should be built all at one time.
- 4. Piecemeal development means no environmental impact study was needed.
- 5. Piecemeal development means no traffic Impact Analysis was needed, also a negative impact on our neighborhood. Unlike a very similar sized project at 739 Channing also in MUR zoning with a total combined square foot lot coverage of 16,300. This project provided a Traffic Impact Study. This project also provided/paid inclusionary housing fees. This project provided live work units which our neighborhood group requested. The developer Trachtenberg Architects worked with the neighbors to resolve conflicts. Finally this project is not being appealed.

- 6. The Driveway easement on 1442 5<sup>th</sup> and 770 Page is only needed because the developer reduced the lot size widths thereby making 1444 Fifth Street too narrow for a driveway.
- 7. We urge the city council to review, fix, and enforce 23C.12.020 inclusionary fees for ownership projects.
- 8. Add Conditional approval to Use Permit ZP-2018-0172. Approve but deny the lot line adjustments. Enforce inclusionary fees. If the fees are too high can these be negotiated with the city and paid in advance with a 20% reduction? Also please clarify if the developer does not pay the fee but they are included in the sale or escrow of the homes. Please Review this and add a piecemeal development ordinance in the future. When a developer owns contiguous lots in different LLC names they should be considered one.
- 9. Approve ZP-2018-0172 with the condition of a Traffic Impact Analysis to be done for all five projects.

Thank You. It so Design Review Committee

Thank You. It was never when to be and one of the Design ocean View Neighborhood Council how changed considerably since

The 1st public TRC. and now that the developer how admitted to ble larger Design impact of Replicating the designs

repeatedly this has NEW Design impacts on the entire sheet view and committee when the public than the entire sheet view and committee when the public than the entire sheet view and committee when the public than the entire sheet when and committee when the public than the entire sheet when and committee when the public than the entire sheet when and committee when the public than the public than the public than the entire sheet when and committee when the public than the public that the public than the public tha



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 <a href="http://www.cityofberkeley.info/citycouncil/">http://www.cityofberkeley.info/citycouncil/</a>

# NOTICE OF PUBLIC HEARING-BERKELEY CITY COUNCIL SCHOOL DISTRICT BOARD ROOM, 1231 ADDISON STREET

**ZAB APPEAL: ADMINISTRATIVE USE PERMIT #ZP2018-0172** 

Notice is hereby given by the City Council of the City of Berkeley that on **TUESDAY**, **MAY 14**, **2019** at **6:00 P.M.** a public hearing will be conducted to consider an appeal against a decision by the Zoning Adjustments Board's approval of Administrative Use Permit #ZP2018-0172, to construct four detached, three-story, approximately 1,900 square-foot, single-family dwellings on a 5,744 square-foot vacant lot at 1444 Fifth Street.

A copy of the agenda material for this hearing will be available on the City's website at <a href="https://www.CityofBerkeley.info">www.CityofBerkeley.info</a> as of **May 2, 2019**.

For further information, please contact <u>Leslie Mendez</u>, <u>Project Planner at (510) 981-7426</u> Written comments should be mailed or delivered directly to the <u>City Clerk</u>, <u>2180 Milvia Street</u>, <u>Berkeley</u>, <u>CA 94704</u>, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

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

Mark Numainville, City Clerk

Mailed: April 30, 2019

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

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